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SUMART

CA Intermediate Taxation - GST

Sep 26/Jan 27 & onwards

Version X

From Chaos ..... to Clarity





CA Ramesh Soni

CHARTMASTER's

SUM-ART

On

Goods and Services Tax
(Group 1 – Paper 3 - Section B)

For

CA Intermediate
Sep 26/Jan 27 & onwards

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CHARTMASTER'S SUMART Book

On Taxation - GST

For CA Intermediate

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Laws stated in this book is amended upto February, 2026

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CHARTMASTER's GST

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Chapter 1: GST in India - An Introduction

What is Tax?

Tax is a compulsory financial charge imposed upon a taxpayer

- under an act/law by the government
- in order to fund various public expenditures and fulfil the developmental needs like infrastructure, health care, education, security, military, defence etc.

Types of Taxes

Taxes are broadly classified into direct taxes and indirect taxes.

Let us understand the difference between Direct Taxes and Indirect taxes

Direct taxes	Indirect taxes
A direct tax is charge, which is imposed directly on the taxpayer and paid directly to the Government by the persons on whom it is imposed. The burden of this tax cannot be shifted by the taxpayer to someone else.	Indirect taxes are imposed on goods and services and its incidence is borne by the consumers who ultimately consume the product or the service. It is also called consumption taxes.
A significant direct tax imposed in India is income tax.	Significant Indirect taxes in India are GST & Customs.
Direct taxes are progressive in nature. Rich pays more taxes compared to poor. Example: Income tax is higher for higher income groups and lower for lower income groups.	Indirect taxes are regressive in nature because they equally impact the rich or poor. Example: GST paid on food in restaurant is same whether a person is rich or poor.

Features of Indirect Taxes

(i) An important source of revenue for government: Indirect taxes are a major source of tax revenue for governments worldwide and continues to grow as more countries move to consumption-based tax regimes.

(ii) Tax on commodities and services: It is levied on commodities at the time of sale or import/export thereof. Hence, it is also known as commodity taxation. It is also levied on provision of services.

(iii) Shifting of burden: There is a clear shifting of tax burden in respect of indirect taxes. For example, GST paid by the supplier of the goods is recovered from the buyer at the time of sale.

(iv) No perception of direct pinch: Since, value of indirect taxes is generally inbuilt in the price of the commodity, most of the time the tax payer pays the same without actually knowing that he is paying tax to the Government. Thus, tax payer does not perceive a direct pinch while paying indirect taxes.

(v) Promotes social welfare: High taxes are imposed on the consumption of harmful products (also known as 'sin goods') such as alcoholic products, tobacco products etc. This not only checks their consumption but also enables the State to collect substantial revenue.

(vi) Regressive in nature: Generally, the indirect taxes are regressive in nature. The rich and the poor have to pay the same rate of indirect taxes.

What is GST – Goods and Services Tax?

As per Article 366: Definitions of Goods and Services Tax

Clause 12A: 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.

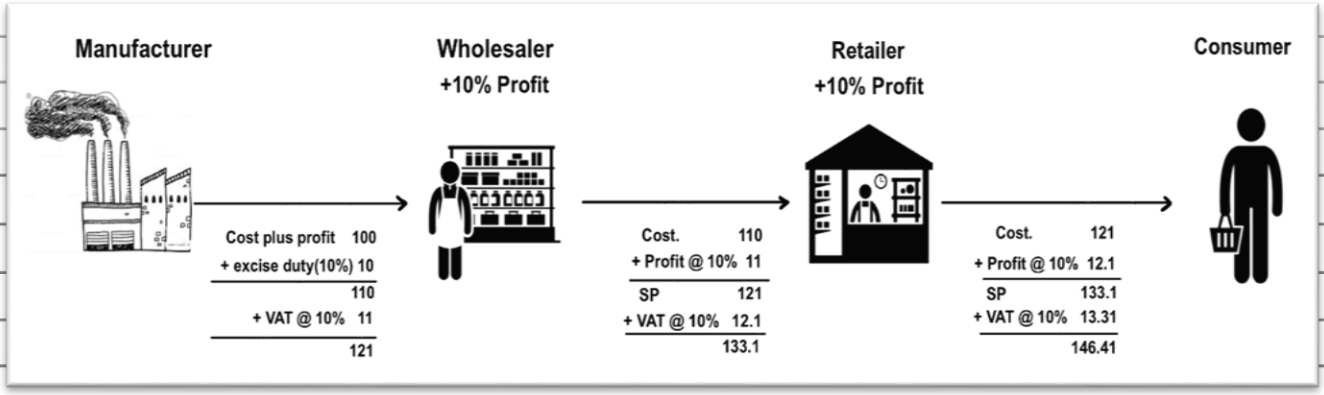
Author's comment: Alcoholic liquor for human consumption is a major source of revenue for the states & hence all the states disagreed to subsume it into GST and so the government in order to ensure smooth transition into GST, agreed to keep alcoholic liquor for human consumption out of the ambit of GST.

Why is GST Introduced? i.e., Deficiencies in the erstwhile indirect tax regime

1. Cascading effect of tax is one of the vital ill of existing Indirect Tax.
   It means, a tax that is levied on a good at each stage of the production process up to the point of being sold to the final consumer. It is also known as tax on tax.

2. Double taxation on certain transactions.
   Certain transactions were subject to double taxation and were taxed as both goods and services, since under the earlier regime, distinction between goods & services was often blurred.

3. No CENVAT (Central excise duty) credit after manufacturing stage to a dealer.
   In the earlier regime, a manufacturer of dutiable goods charge excise duty and value added tax on intra-state sale of goods or central sales tax (CST) on inter-state sale of goods. VAT or CST is levied inclusive of excise duty.



4. Several taxes were not subsumed.
   There were several taxes in the States, such as, Luxury Tax, Entertainment Tax, etc. which were not subsumed in the VAT. Hence for a single transaction, multiple taxes in multiple forms were required to be paid.

5. CST was another source of distortion in terms of its cascading nature.
   Being an origin-based tax, CST was also against one of the basic principles of consumption taxes that tax should accrue to the jurisdiction where consumption takes place.

Various features of GST are as under:

1. GST is a tax: Since it's a tax, as per article 265 it can be levied only under the authority of law.

2. It's a tax on supply of goods or services or both: Whenever goods or services or both are supplied GST shall be levied. The word supply is very important here.

3. GST is a consumption tax: Consumption tax means the tax is ultimately borne by the consumers, not by suppliers. Suppliers are collection agents acting on behalf of government.

4. GST is a destination-based tax (DBT): If Destination principle is followed, India will tax imports and not exports, On the other hand, as per Origin principle we will tax Exports and not imports.

5. GST is a Value added tax: VAT as a model is adopted in GST: VAT refers to a staged collection process. It refers to a system where taxes paid at an earlier stage are allowed as a credit to a taxable person, which he uses to set off against his output tax liability.

Pre and Post GST Scenario

Tax	Goods/ Service	Taxable Event	Taxable person	Tax charged	Tax levied by
Pre GST					
Excise	Goods	Manufactured	Manufacturer	Central Excise duty	CG
VAT	Goods	Sales – Intrastate	Trader/Dealer	Value added tax	SG
CST	Goods	Sales – Interstate	Trader/Dealer	Central Sales tax	SG
Service tax	Services	Provisioning of service	Service provider	Service tax	CG
Post GST					
GST	Goods/ Services	Supply	Taxable person	Goods and Services tax	CG + SG

Note: CG: Central government, SG: State government

Dual Model of GST

India has adopted dual model of GST which is imposed concurrently by the centre and the state i.e., both centre and state will impose tax on a transaction simultaneously.

GST to be levied by centre will be called CGST & that to be levied by states (incl. states with legislature) will be called SGST. GST to be levied by UTs to be called UTGST (UTs without legislature).

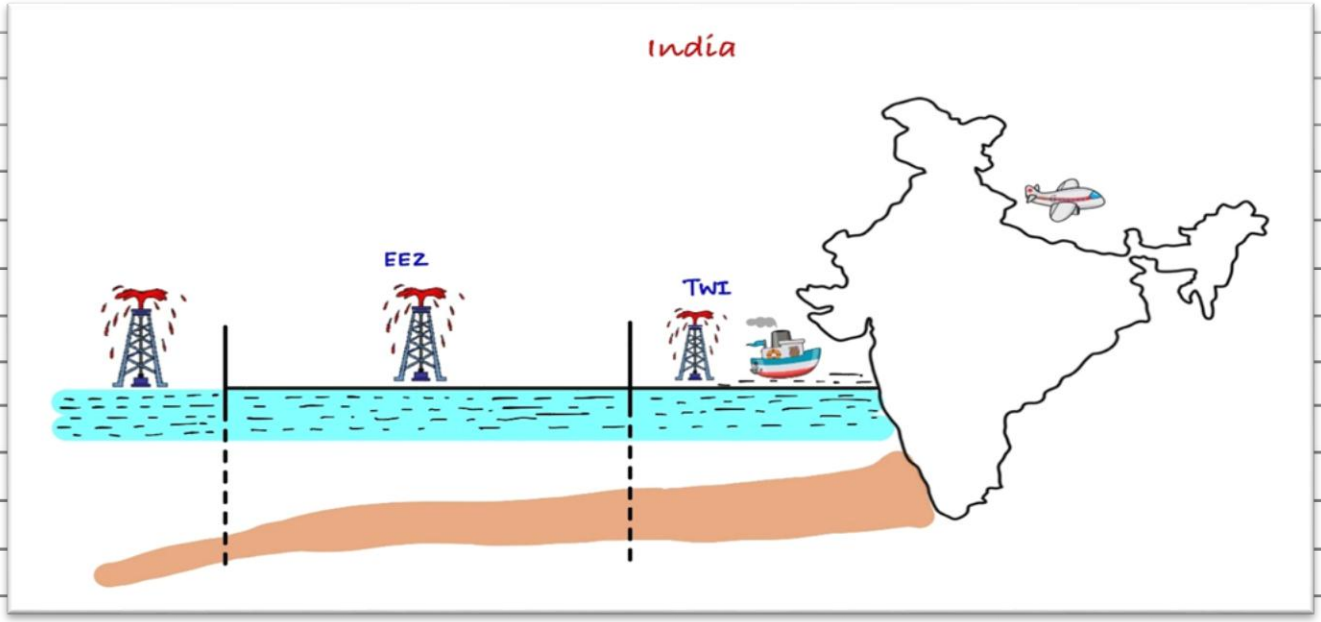
Note: India has adopted its GST model from Canada.

Nature of supply and types of GST charged on different types of trade and Commerce

India: Section 2(56) of CGST act

India means

- the territory of India as referred to in article 1 of the Constitution,
- its territorial waters,
- seabed and sub-soil underlying such waters,
- continental shelf,
- exclusive economic zone
- the air space above its territory and territorial waters



State includes a Union territory with Legislature

Union territory means the territory of—

(a) the Andaman and Nicobar Islands;	(b) Ladakh
(c) Lakshadweep;	(d) Chandigarh; and
(e) Dadra and Nagar Haveli and Daman and Diu;	(f) other territory.

Section 7 of IGST act: Inter-State supply

Supply of goods/Supply of services, where the location of supplier and place of supply are in—
(a) two different States;
(b) two different Union territories; or
(c) a State and a Union territory,
shall be treated as a supply of goods in the course of inter-State trade or commerce.

In case of Interstate supply: we always charge IGST (i.e., CGST & SGST integrated together).

Section 8 of IGST act: Intra-State supply

Supply of goods/services where the LOS and the POS of goods are in the
- same State or same UT shall be treated as intra-State supply.

In case of Intrastate supply within state/UT: we always charge CGST & SGST/CGST & UTGST.

Section 9 of IGST act: Supplies in territorial waters

(a)	where the location of the supplier is in the territorial waters,	the location of such supplier; or	shall, be deemed to be in the coastal State/UT where the nearest point of the appropriate baseline is located.
(b)	where the place of supply is in the territorial waters,	the place of supply,	

Taxes Subsumed & not subsumed into GST

Central taxes subsumed	State taxes subsumed	Taxes not subsumed into GST
Central Excise duty	Entertainment Tax (except those levied by local bodies)	Basic custom duty
Service tax	Tax on lottery, betting & gambling	Property Tax and Stamp duty
CVD & Special CVD (Countervailing duty) levied under Customs	Entry Tax (All Forms) & Purchase Tax	Electricity duty
Central Sales Tax	VAT/ Sales tax	Excise duty on Alcoholic liquor for Human consumption
Central surcharges & Cesses in so far as they relate to supply of goods & services	State surcharges and cesses in so far as they relate to supply of goods & services	Excise duty on petrol, diesel etc.
	Taxes on advertisements	Entertainment tax charged by local bodies (municipality)
	Luxury tax	

Note: In case of tobacco and tobacco products, the centre alone would have the power to levy excise duty in addition to GST. GST is leviable on the amount (inclusive of excise duty)

Various Taxes on Goods/Services (Summary)

Goods/Services	SED	CED	VAT/CST	GST
Alcoholic Liquor for Human Consumption	Yes		Yes	
High Speed Diesel, Crude Petroleum, Motor Spirit, Aviation turbine fuel, Natural Gas (HPMAN)		Yes	Yes	
Tobacco and tobacco products		Yes		Yes
Opium, Indian hemp and other narcotic drugs and narcotics	Yes			Yes
Other Goods/Services				Yes

SED: State excise duty, CED: Central excise duty

Benefits of GST

- **Creation of Unified national market:** GST aims to make India a common market with common tax rates and procedures & remove the economic barriers thus paving the way for an integrated economy at the national level.

- **Boost to 'Make in India' initiative:** 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.

- **Enhanced investment and employment:** The subsuming of major Central and State taxes in GST, setoff of input tax reduces the cost of locally manufactured goods and services and increases the competitiveness of Indian goods and services in the international market and thus, gives boost to investments and Indian exports. With a boost in exports and manufacturing activity, more employment is generated and GDP is increased.

- **Ease of doing business:** Simpler tax regime with fewer exemptions along with reduction in multiplicity of taxes under GST has led to simplification and uniformity. The uniformity in laws, procedures and tax rates across the country makes doing business easier.

- **Automated procedures with greater use of Information technology:** There are simplified and automated procedures for various processes such as registration, returns, refunds, tax payments.

- **Reduction in compliance costs:** The compliance cost is lesser under GST as multiple record-keeping for a variety of taxes is not needed, therefore, there is lesser investment of resources and manpower in maintaining records.

- **Benefits to industry:** GST has provided relief to trade and industry through a wider coverage of input tax set-off, subsuming of several Central and State taxes in the GST and phasing out of CST. The transparent and complete chain of set-offs which results in widening of tax base and better tax compliance also leads to lowering of tax burden on dealer in trade and industry.

- **Mitigation of ill effects of cascading:** By subsuming most of the Central & 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.

- **Benefits to small traders and entrepreneurs:** GST has increased the threshold for GST registration for small businesses. Further, single registration is needed in one State. Small businesses have also been provided the additional benefit of composition scheme. With the creation of a seamless national market across the country, small enterprises have an opportunity to expand their national footprint with minimal investment.

Genesis of GST (History from origin)

GST is a path breaking indirect tax reform which will create a common national market. GST has subsumed multiple indirect taxes like excise duty, service tax, VAT, CST, luxury tax, entertainment tax, entry tax, etc.

Year	Events
1954	France was the first country to implement GST. At present about 160 countries have adopted GST.
2000	The then Prime Minister mooted the concept of GST and set up a committee to design a Goods and Services Tax (GST) model for the country.
2004	Kelkar Task force strongly recommended fully integrated GST on national basis.
2006-07	Union FM, P. Chidambaram, while presenting the Budget, announced that GST would be introduced from April 1,2010
2014	The Constitution (122nd Amendment) Bill, 2014 introduced in the Lok Sabha
2015	The Lok Sabha passed the Constitution (122nd Amendment) Bill, 2014
2016	The Rajya Sabha passed the Bill on August 03, 2016.
2016	Constitution (122nd Amendment) Bill, 2014 received the assent of the President on 8th September, 2016 and became the Constitution (101st Amendment) Act, 2016
March 2017	On 27th March, 2017, the Central GST legislations introduced – CGST Bill, 2017, IGST bill 2017, UTGST bill 2017, (GST compensation to states) bill, 2017 in Lok Sabha & On 29th March, 2017, Lok Sabha passed these bills.
April 2017	President's assent was given and bills were enacted.
30.06.2017	All States except J & K passed their SGST Act
01.07.2017	GST rolled out in India.
08.07.2017	SGST Act passed by J&K & GST law was made applicable to the state of Jammu and Kashmir

Constitutional Provisions

A study of the basic provisions of the Constitution is essential for understanding the genesis of the various taxes being imposed in India.

Article 265: No tax to be levied without authority of Law

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".

Article 245: Power to make laws by Parliament and by state legislature

This Article empowers

- 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"

Article 246: Distribution of Power to make Law

It gives the respective authority to Union and State Governments for levying tax.
Seventh Schedule to Article 246: Divides the legislative powers into the following three lists:

Union list – List I Parliament (CG)		State list – List II (State legislature)		Concurrent list - List III	
Entry no.	Items (1 to 97)	E No.	Items (1 to 66)	E No.	Items (1 to 47)
82	Taxes on income other than agricultural income	46	Taxes on agricultural Income	1	Criminal law
83	Custom duty	51	SED on AL for HC, opium, Indian hemp and other narcotics drugs	44	Stamp duties
84	Duties of excise on HPMAN and Tobacco and Tobacco products	54	Taxes on the sale or purchase of goods (Value added tax)		
92A	Central sales tax	62	Tax on luxuries, including taxes on entertainments, amusements, betting & gambling.		
97	Any other matters not enumerated in List II/III				

Article 254 of the constitution deals with the effect of inconsistency between the law of parliament and law of state legislature. Article 254 deals with the supremacy of the laws made by Parliament.

AL for HC: Alcoholic Liquor for Human Consumption
HPMAN: High speed diesel; Petroleum crude; Motor spirit (petrol); Aviation turbine fuel; Natural gas.

Why was the constitution amendment?

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

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

- Concurrent powers on Parliament and State Legislatures to make laws governing taxes on goods and services.
- Levy of IGST on inter-State transactions of goods and services to be levied and collected by the Central Government and apportioned between the Union and the States in the manner provided by Parliament by Law as per the recommendation of the GST Council.
- Principles for determining the place of supply and when a supply takes place in the course of inter-State trade or commerce shall be formulated by the Parliament, by law.
- GST will be levied on all supply of goods and services except alcoholic liquor for human consumption.
- On the following products GST shall not be levied, till a date to be notified on the recommendations of the GST Council:
  - High Speed Diesel
  - Petroleum Crude
  - Motor Spirit (commonly known as Petrol)
  - Aviation Turbine Fuel
  - Natural Gas
- The Union Government shall retain the power to levy duties of excise on the aforesaid products besides tobacco and tobacco products manufactured or produced in India.
- Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council).
- The provisions relating to GST Council came into force on 12th September, 2016. President constituted the GST Council on 15th September, 2016.
- The Union Finance Minister is the Chairman of this Council and Ministers in charge of Finance/Taxation or any other Minister nominated by each of the States & UTs with Legislatures are its members. Besides, the Union Minister of State in charge of Revenue or Finance is also its member. The function of the Council is to make recommendations to the Union and the States on important issues like tax rates, exemptions, threshold limits, dispute resolution etc.

Significant amendments made by Constitution Amendment Act are discussed below in detail:

Article 246A: Special provisions with respect to GST

- 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 GST imposed by the Union or by such State.

Author's comment: This article overrides article 246 and 254, Article 246 distributes power between the parliament & state legislature and 254 deals with situation when there is inconsistency between the law of parliament and law of state legislature, where it says law by parliament shall prevail. Article 246A provides concurrent power to CG & SG to levy GST.

- Parliament has exclusive power to make laws with respect to GST where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.
- Explanation: Provisions in respect of petroleum crude, high speed diesel, motor spirit (petrol), natural gas, aviation turbine fuel shall apply from the date recommended by GST council.

Article 269A: Levy and collection of GST on inter-State supply

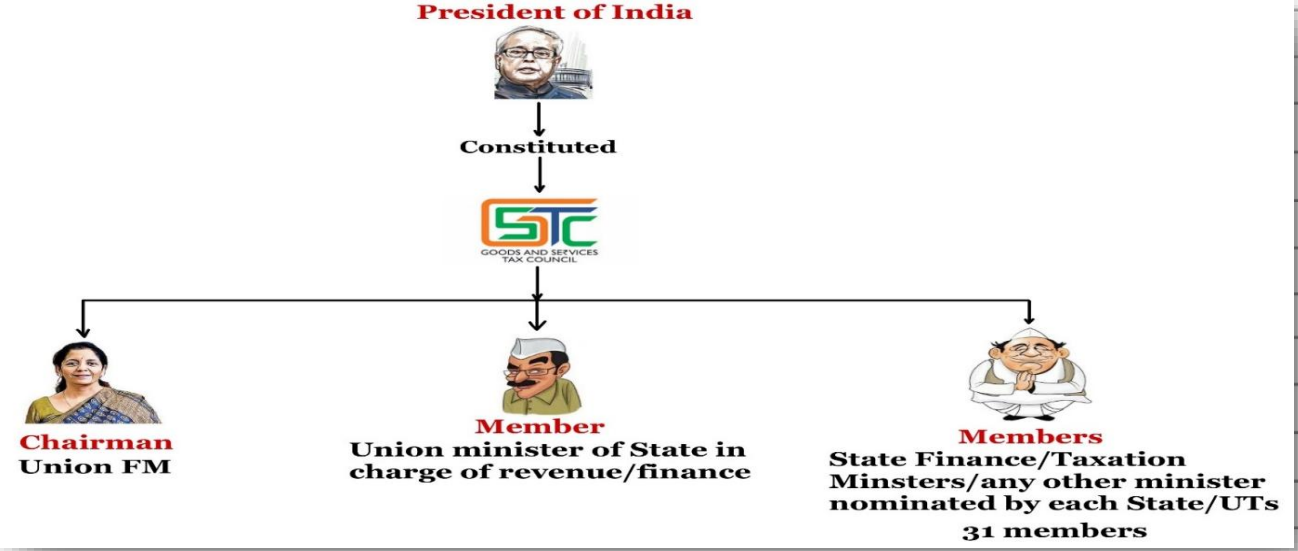
- GST on supplies in the course of inter-State trade or commerce (IGST)
  - shall be levied & collected by the government of India (CG) &
  - such tax shall be apportioned between the Union & the States
  - in the manner provided by Parliament by law on the recommendations of the GST Council.
- Supply of goods/of services/both in the course of import into the territory of India shall be deemed to be supply of goods/of services/both in the course of inter-state trade or commerce

Author's comments: IGST shall be levied by CG and apportioned between union and state.

GST (Compensation to states) act 2017

- A GST Compensation Cess at specified rate has been imposed under the GST (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 & inter-State supplies with a view to provide for compensation to the States for the loss of revenue arising on account of implementation of the GST.
- Initially, GST compensation cess shall be levied and collected till 31st March, 2026.

Article 279A: GST Council-Constitutional body



(1) 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).

(2) The joint forum of the Centre & States namely, GST Council.

a. The provisions relating to GST Council came into force on 12th September, 2016.

b. President constituted the GST Council on 15th September, 2016.

(3) Members of the GST council-total 33 members

- The Union Finance Minister - Chairman
- The Union Minister of State in charge of Revenue or Finance- Member
- Ministers in charge of Finance/Taxation or any other Minister nominated by each of the States & UTs with Legislatures - Members.

(4) Function of the Council is to make recommendations to the Union & the States on issues like:

- The taxes, cesses and surcharges which may be subsumed in the GST;
- The Goods and services subjected to/ exempted from GST
- Model GST laws, principles of levy, apportionment of GST levied on Inter-State supplies;
- Threshold limit of turnover below which no GST shall be charged on goods/services
- Rates of GST
- Special rates for specified period to raise additional resources during any natural calamity
- Special provisions with respect to the States of Himachal Pradesh, Uttarakhand, Manipur, Meghalaya, Mizoram, Arunachal Pradesh, Assam, Nagaland, Sikkim, Tripura, Jammu and Kashmir, and; and (Mnemonic: HUMANS of TRIPURA & J&K)
- The date on which GST be levied on high speed diesel, petroleum crude, motor spirit (Petrol), aviation turbine fuel and natural gas. (Mnemonic: HPMAN)

(5) One half of the total number of members of GST Council shall constitute the quorum at its meetings.

(6) Every decision of the GST Council is taken by a majority of not less than three-fourths of the weighted votes of the members present and voting.

- ✓ Vote of the Centre has a weightage of one-third (i.e., 33.33%) of total votes cast and
- ✓ Votes of all the State governments (31) taken together have a weightage of two-thirds (i.e., 66.67%) of the total votes cast, in that meeting.

(7) No act or proceedings of the GST Council shall be invalid merely by reason of—

(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.

Common Portal

- GST Portal – www.gst.gov.in – is a website managed by Goods and Services Tax Network.
- GSTN is a not-for Profit Company incorporated under provisions of Sec 8 of Companies Act.
- IT has been set by the Government to establish a uniform interface for the tax payer and a common & shared IT infrastructure between the Centre and States.
- The functions of the GSTN include
  - facilitating registration;
  - forwarding the returns to Central and State authorities;
  - computation and settlement of IGST;
  - matching of tax payment details with banking network;
  - providing various MIS reports to the CG & SGs based on the taxpayer return information;
  - providing analysis of taxpayers' profile.
- The portal is one single common portal for all GST related services like obtaining registration, paying tax, filing of returns, etc.
- GSTN provides three front end services to the taxpayers namely registration, payment and return through GST Common Portal.
- The Common GST Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in [managed by the National Informatics Centre].
- Further, Invoice Registration Portal (IRP) is the website for uploading/reporting of e-invoices. It is managed by National Informatics Centre.
- The Common GST Electronic Portal for preparation of the e-invoice:
  - www.einvoice1.gst.gov.in;
  - www.einvoice2.gst.gov.in;
  - www.einvoice3.gst.gov.in;
  - www.einvoice4.gst.gov.in;
  - www.einvoice5.gst.gov.in;
  - www.einvoice6.gst.gov.in;
  - www.einvoice7.gst.gov.in;
  - www.einvoice8.gst.gov.in;
  - www.einvoice9.gst.gov.in;
  - www.einvoice10.gst.gov.in;

GST Suvidha Providers (GSPs)/ Application Service Providers (ASPs)

- GSTN has selected certain Information Technology, Information Technology enabled Services and financial technology companies, to be called GST Suvidha Providers (GSPs).
- GSPs develop applications to be used by taxpayers for interacting with the GSTN.
- GSP develops applications having features like return filing, reconciliation of purchase register data with auto populated data for acceptance/rejection/modification, dashboards for taxpayers for quick monitoring of GST compliance activities.
- They customize products that address the needs of different segment of users.
- GSPs may take the help of ASPs who act as a link between taxpayers and GSPs.
- Hence, we can say that GSPs will act as link between taxpayer and GSTN portal, and ASP will act as link between taxpayer and GSPs.

GST Laws: Act and Rules

Particulars	CGST	IGST	SGST	UTGST
Act	CGST Act, 2017	IGST Act, 2017	SGST Act, 2017	UTGST Act, 2017
Applicability	On intra-state	On inter-state	On intra-state	On intra-state
No of Acts	1 CGST act	1 IGST act	31 SGST acts	1
Rule	CGST rules, 2017	IGST rules, 2017	State wise rules.	NA

Chapter 2: Supply

Introduction

- A taxable event is any transaction or occurrence that results in a tax being imposed.
- Various taxable events that existed under the previous law were manufacture, sale, rendering of service, etc. have been done away with and now the taxable event under GST is supply.
- Taxable event under GST law is supply of goods or services or both. Hence no supply no GST.

Definitions

Goods	Services
Means	Means
Every kind of movable property	Anything other than goods
Excludes	Excludes
• Money • Securities	• Money • Securities
But includes	But includes
• actionable claim,	• activities relating to the use of money or
• 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.	• its conversion by cash or by any other mode,
	From
	One form, currency/denomination
	to another form, currency or denomination
	for which a separate consideration is charged.
	Explanation - clarified that "services" includes facilitating/arranging transactions in securities.

Movable property shall mean property of every description, except immovable property

Immovable property shall include

- land,
- benefits to arise out of land, and
- things attached to the earth, or
- permanently fastened to anything attached to the earth;

Author's comment: Immovable property hence means

- Land
- Benefits to arise out of land: TDR (Transfer of Development Right), Rights to ways, the right to catch away fish, right to collect dues from a fair or market on a land.
- Things attached to the earth: Things rooted in the earth like trees, or embedded in the earth like Buildings, walls flats, cement factory, etc.

- Things permanently fastened to anything attached to the earth: Telecommunication towers, lift, etc.

"Money" means

- the Indian legal tender or any foreign currency,
- cheque, promissory note, bill of exchange,
- letter of credit, draft, pay order,
- traveller cheque, money order, postal or
- electronic remittance or
- any other instrument recognised by the RBI
- when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination
- but shall not include any currency that is held for its numismatic value;

"Securities" include shares, scrips, stocks, bonds, debentures, marketable securities, etc.

"Actionable claim" means a claim

- to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property,
- or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant,
- which the Civil Courts recognize as affording grounds for relief,
- whether such debt or beneficial interest be existent, accruing, conditional or contingent.

Examples of Actionable claims are:

- Lottery, Betting, gambling: Right to claim the prize or the amount.
- Claim for arrears of rent: Right to receive rent
- Claim for the money due under insurance policy: Right to receive policy amount

Author's comment:

1. Services means anything other than goods, hence we can say that immovable property is not goods but it will fall within the preview of services.
2. Activities relating to use of Money: Even if money is not service but activities relating to use of money is a service, for example lending money and receiving interest.
3. Examples for Conversion:
    - Giving cash to bank and getting DD for which bank charges a service charge
    - Converting Dollar to INR for which bank charges conversion charges
    - Getting Rs 500 converted in Rs 10 notes for which bank charges fees.
4. Securities are neither goods nor services but if stock broker charges a commission/ brokerages charges/ portfolio maintenance charges/ demat charges those will be services.

Section 7: Scope of Supply

Section 7(1): For the purposes of this Act, the expression "supply" includes—

Section 7(1)(a):

All forms of supply of goods or services or both such as:

- Sale (transfer of property in goods from one person to another person for a consideration)
- Transfer (where ownership may not be transferred but the right in the goods is transferred)
- Barter (the exchange of goods/services for other goods/services, without the use of money)
- Exchange (It is kind of Barter but money is also involved)
- Licence (When one person gives right to other person to use IPR, software licenses, etc)
- Rental (Periodical payment for use of another's property)
- Lease (A lease is an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period of time)
- Disposal (Disposal is a term generally used for selling of old scrap/second hand items)

❖ made or agreed to be made

❖ for a consideration by a person

❖ In the course or furtherance of business

Author's comment: The important elements for a transaction to fall in supply are:

1. A form of supply – Example: Sale, transfer, barter, exchange, etc.
2. For a Consideration
3. In the 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'.

Examples:

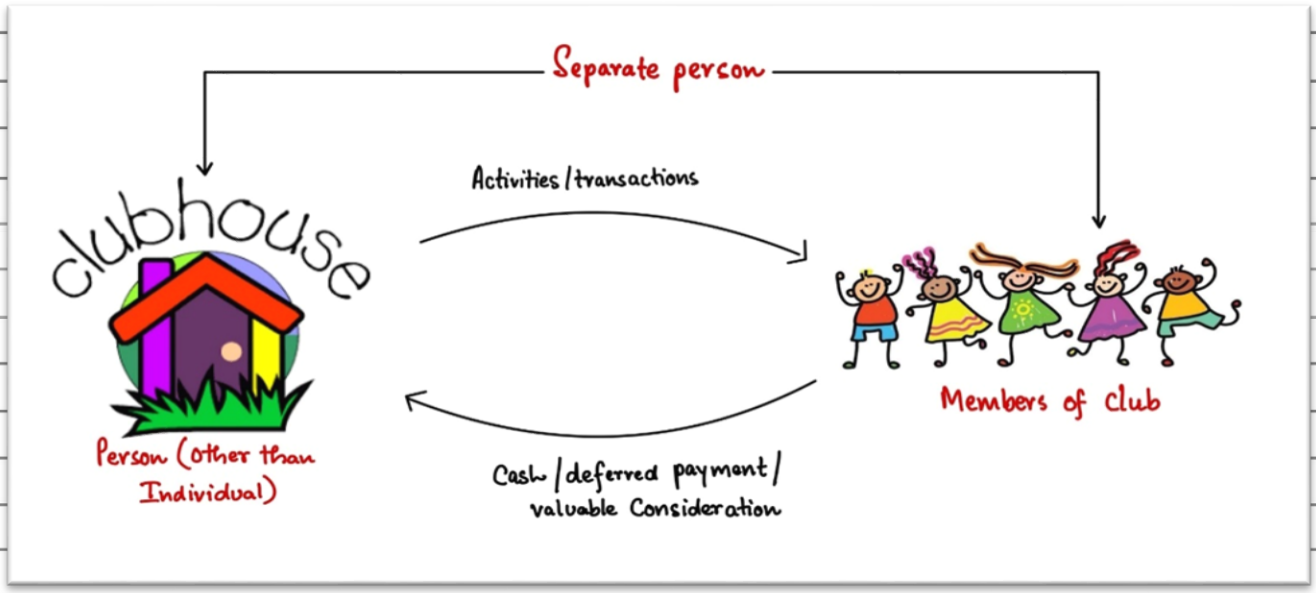
1. Ram buys a car for his personal use and after a year sells it to a car dealer. Sale of car by Ram to car dealer is not a supply under CGST Act because said supply is not made by Ram in the course or furtherance of business
2. Reena sold her old gold bangles and earrings to 'Aabhushan Jewellers'. Sale of old gold jewellery by an individual to a jeweler will not constitute supply as the same cannot be said to be in the course or furtherance of business of the individual

Section 7(1)(aa):

The activities or transactions, by a person, other than an individual,

- to its members or constituents or vice-versa,
- for cash, deferred payment or other valuable consideration.

Explanation. – Clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members/constituents shall be deemed to be two separate persons & the supply of activities/transactions inter se shall be deemed to take place from one such person to another.



Section 7(1)(b): Importation of services

Importation of services,

- For a consideration
- Whether or not in the course or furtherance of business and

Author's comments: Points to be observed while applying this provision

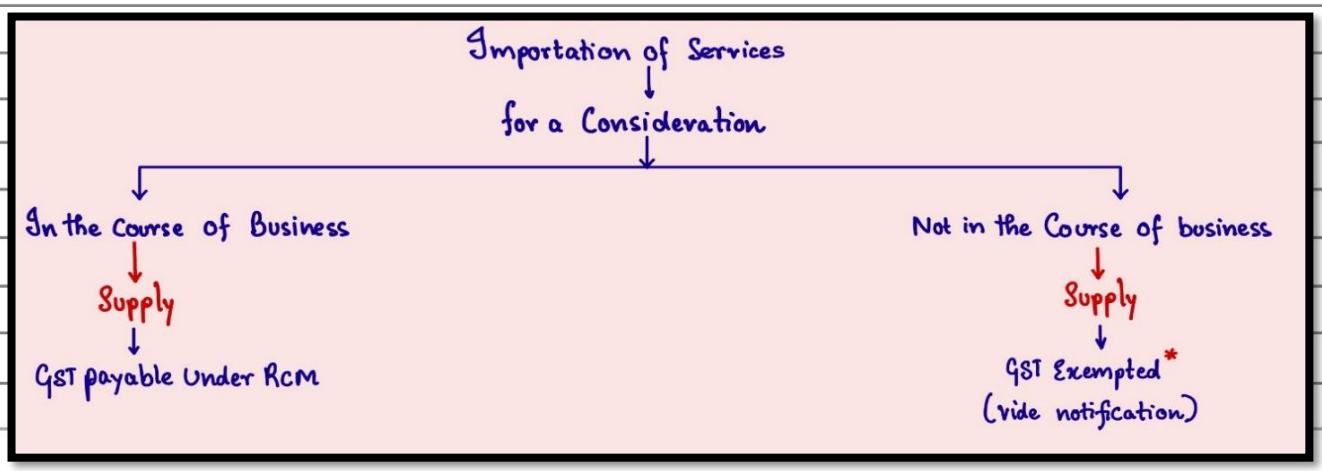
- It should be importation of services, not goods (for goods GST is imposed under customs)
- Import for a consideration
- Import may or may not be for in the course or furtherance of business.

Examples:

1. Ramesh & Co. received legal services from Lakshman in Malaysia for $ 1000

   Transaction covered u/s 7(1)(b), it is supply & Business entity to pay GST under RCM.

2. Ramesh wanted to construct his house and has taken interior designer service for his residential house from China for Yen 10000.
   Transaction covered under 7(1)(b), it is supply. However, GST is exempt on such transactions.
3. Ramesh wants to study abroad and receives some admission consultancy services from London based consultants for 1000 pounds
   Transaction covered under 7(1)(b), it is supply. However, GST is exempt on such transactions.



Section 7(1)(c): Deemed supply (Supply without consideration)

The activities specified in Schedule I

- made or agreed to be made
- without a consideration.

Four activities have been specified in Schedule I, Let us now analyse each of them one by one:
Let us now analyse them one by one:

Para 1: Permanent transfer/disposal of business assets where ITC has been availed on such assets:

Business asset means goods held for sale or used for the purpose of business

Conditions to be satisfied to qualify as supply

1. There must be disposal or transfer of business assets
2. Transfer must be on permanent basis.
3. Input tax credit has been availed on such assets.

Hence Permanent transfer or disposal will not cover the following assets

1. Business assets on which ITC is blocked under GST.
2. Business assets though eligible for ITC, ITC has not been availed by the registered person.

Examples:

1. Ram a trader in clothes permanently transfers stock of Rs 1 lakh to a trust free of cost.
2. A coaching institute donated its projector to charity (ITC was taken on the projector).
3. Ramesh has an electronic shop, transfer a TV to his home (ITC was taken on the TV).

Para 2: Supply of goods, services or both between related person/ distinct persons as specified in section 25, when made in the course or furtherance of business:

Exception: Gifts not exceeding Rs 50,000 in value in a FY by an employer to an employee shall not be treated as supply of goods or services or both.



Examples on Gift:

Gift to	Whether supply or not?
1. Employee Rs 45,000	No, it is not supply since within limit of Rs 50000
2. Employee Rs 55,000	Yes, it is supply since it crosses the limit of Rs 50000, accordingly Value of supply Rs 55000 and GST applicable on Rs 55000
3. Other (RP) Rs 5,000	Yes, it is supply, no monetary limit applicable

Related persons – Mnemonic: SCOPE + Family + Sole agent

S: Stock/Shares: Any third person owns/controls/holds at least 25% of voting stock/ shares of both of them;

C: Control: One of them directly/indirectly controls the other, Both of them are directly/ indirectly controlled by a third person, Together they directly/indirectly control a third person.

O: Officer/Director: Such persons are officers or directors of one another's businesses

P: Partners: Such persons are legally recognised partners in business

E: Employer & Employee: Such persons are employer and employee

+ Family: Spouse & Children (SC), parents, grand-parents, brothers & sisters (PGBS)-dependent.

+ Sole agent: sole agent or sole distributor or sole concessionaire (someone who has been given a concession to sell or do something), shall be deemed to be related.

Distinct persons (as specified in section 25)

Separate registration makes distinct person: A person who has obtained or is required to obtain more than one registration, whether in one state/UT or more than one state/UT shall, in respect of each such registration, be treated as distinct person for the purpose of this act.

Examples: Ram has an electronics shop registered in Bangalore (Karnataka) and another electronic shop in Mangalore (Karnataka) and he has obtained separate registration for both the shops. Ram shall be treated as distinct person in respect of both registrations.

Establishment in another state is a separate person: Where a person has obtained or is required to obtain registration in a state or union territory in respect of an establishment, has an establishment in another state or union territory, then such establishments shall be treated as establishments of distinct persons for the purpose of this act.

Example: Ram has electronics shop registered in Bangalore (Karnataka) and a liquor shop in Tamil Nadu. Since supply of alcoholic liquor for human consumption is a non-taxable supply i.e., exempt supply, Ram is not required to obtain registration in the state of Tamil Nadu. In such a situation the electronic shop and liquor shop shall be treated as establishment of distinct person.

Circular: Interstate movement of various modes of conveyance, carrying goods or passengers or for repairs & maintenance between distinct persons

Issue: Whether inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance, between distinct persons as specified in section 25(4) of the CGST act, 2017, [except for further supply of the same conveyance is leviable to IGST]?

Clarification: Inter-state movement of conveyances carrying goods/passengers/both: shall be treated 'neither as a supply of goods nor as a supply of service' & hence not leviable to IGST.



- On Repairs and maintenance or work done: applicable CGST/SGST/IGST, as the case may be, shall be leviable
- If movement is for further supply of conveyance: Treated as supply and IGST leviable.

Circular: Interstate movement of rigs, tools & spares and all goods on wheels (like cranes)

Issue: Whether the inter-state movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the CGST Act, 2017, carrying goods or passengers or both; or for repairs and maintenance, [except in cases where such movement is for further supply of the same conveyance] is leviable to GST?

Clarification: Inter-state movement rigs, tools & spares and all goods on wheels shall be treated 'neither as a supply of goods nor as a supply of service' & therefore not be leviable to IGST.



- On Repairs and maintenance or work done: applicable CGST/SGST/IGST, shall be leviable.
- If movement is for further supply of conveyance: Treated as supply and IGST leviable.

Para 3: Principal to Agent supply or vice-versa

Supply of goods

a. by a principal to his agent, where the agent undertakes to supply such goods on behalf of the principal is considered as supply.

b. by an agent to his principal, where the agent undertakes to receive such goods on behalf of the principalis considered as supply.

Author's comment: Points to be noted:

- Only supply of goods is covered and not supply of services.
- This section covers only transactions without consideration.
- Supply of services between principal and agent will be covered only if for a consideration.

Circular explaining scope of Principal-agent relationship in the context of Schedule I

Issue: How to determine whether the agent is an agent in terms of Schedule I?

Clarification:

- Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry.
- Where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act.
- Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry.
- In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

Para 4: Import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business

Examples:

1. Ram Ltd. of Mumbai imports business support services from its head office located in USA. The head office has rendered such services free of cost to its branch office. Services received by Ram Ltd. will qualify as supply even though the head office has not charged anything from it.
2. Ram, a proprietor registered in Karnataka, has sought architect services from his son located in London, with respect to their new home constructed house in Karnataka. Although services have been received by Ram is without any consideration from his son - a related person, still it will not qualify as supply since the same has not been received in course or furtherance of business.

Section 7(1A): Activities or transactions to be treated as supply of goods/supply of services

Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II;

Schedule II is as follows:

1. Transfer of title/right in goods
   (a) any transfer of the title in goods: supply of goods;
   (b) any transfer of right in goods/of undivided share in goods without the transfer of title thereof: supply of services;
   (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed: supply of goods.

Undivided share in goods

Ram and Shyam are co-owner of a JCB machine. Which they give on rent. Shyam sells his share in goods to another person Lakshman. This is also known as transfer of undivided share in goods. In this scenario only, the undivided share is transferred to Lakshman and not the title in goods and hence it is supply of service. However, if both Ram and Shyam transfer the share to Lakshman, it will involve transfer of title also and hence will be termed as Supply of goods.

Example:
(a) Audi sold a car to Ram for Rs 50 lakhs – Supply of goods
(b) Ram supplied a machine to Shyam on hire purchase basis (i.e., possession given immediately but title to be transferred on payment of last instalment) – Supply of goods

2. Land and Building
   (a) any lease, tenancy, easement, licence to occupy land – Supply of Services
   (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly- Supply of Services

Circular on Issue related to taxability of 'tenancy rights' under GST – Pagadi system

Issue: Whether Transfer of tenancy rights to a new tenant against consideration would attract GST although stamp duty & registration charges have been levied on such transfer?

Clarification:

- The activity of transfer of 'tenancy rights' is covered under the scope of supply and taxable.

- However, grant of tenancy rights in a residential dwelling for use as residence against tenancy premium or periodic rent or both to unregistered person is exempt.
- Merely because a transaction or a supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the scope of supply of goods and services and from payment of GST.

Issue: Whether services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium would be liable to GST?

Clarification: As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

3. Any treatment or process which is applied to another person's goods: supply of services
   Example: Varnishing chairs and tables, Heat treatment on glass, printing logo on tees, etc.

Circular on rethreading of tyres & Bus body building

Whether rethreading of tyres is a supply of goods or services?

Activity	SOG/SOS
Supplier buys old tyres, does the re-treading and supplies re-treaded tyres.	Supply of goods.
Supplier only does re-threading on old tyres for customers, using rubber & other material.	Supply of service.

Whether activity of bus body building, is a supply of goods or services?

Activity	Supply of Goods or Service
If the Bus body building entity build a bus by working on the chassis that is owned by him & supplies bus.	Supply of goods
Only building the body of the bus on the chassis provided by a customer and charging fabrication charges	Fabrication of body on chassis is the principal supply, and it is a supply of service.





4. Transfer of Business Assets

(a) where goods forming part of the assets of a business are transferred/disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are

- put to any private use or
- are used, or made available to any person for use, for any purpose other than a purpose of the business,
- the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person,

- any goods forming part of the assets of any business carried on by him
- 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,

unless-

(i) Business is transferred as a going concern to another person; or

(ii) Business is carried on by a personal representative who is deemed to be a taxable person.

5. Supply of Services

(a) Renting of immovable property

Author's comment: Land and building has already been covered under para 2, hence this para covers all other immovable property like telecommunication towers, furniture, etc.

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

Except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

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

Author's comments: IPR means patents, trademarks, copy rights, etc.

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

(e) Agreeing to obligation

- to refrain from an act, or
- to tolerate an act or situation, or
- to do an act

Author's comments: Refrain: stop oneself from doing something, Tolerate: allow the occurrence/practice of (something that one dislikes/disagrees with) without interference

(f) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

6. Composite Supplies

The following composite supplies shall be treated as a supply of services, namely: —

(a) works contract as defined in section 2(119); and

(b) Restaurant service [supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption)], where such supply or service is for cash, deferred payment or other valuable consideration.

Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

Clarification on 'agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act'

"Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5(e) of Schedule II of CGST Act if the same constitutes a "supply" within the meaning of the Act. The said expression has following three limbs: -

a. Agreeing to the obligation to refrain from an act-

Examples of activities that would be covered by this part of the expression would include

- Non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.
- a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or
- An industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

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

Some Examples would include activities such as

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

c. Agreeing to the obligation to do an act-

This would include the case

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

Above three activities must comply with the following conditions:

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

Above three activities must be under an "agreement" or a "contract" (whether express or implied) to fall within the ambit of para 5(e) of Schedule II.

In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain or (b) tolerate or (c) do.

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

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

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

Crux: Schedule II: Para 5(e) considers: Agreeing to the obligation to refrain from an act, to tolerate an act or a situation or to do an act as a supply of service.

To be considered as supply of service under Para 5(e), above three activities must comply with the following conditions:

- There must be an expressed/implied agreement/contract to refrain/tolerate/to do an act.
- Consideration must flow in return to this contract/agreement.

Section 7(2): Notwithstanding anything contained in sub-section (1),

(a) Activities or transactions specified in Schedule III or

(b) Such activities or transactions undertaken by the CG, SG, 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.

Section 7(2)(a) read with Schedule III: Activities/transactions shall be treated as neither supply of goods nor supply of services

Para 1: Services by an employee to the employer in the course of or in relation to his employment

Clarification on perquisite provided by the employer to its employees in terms of contractual agreement

Issue: Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?

Clarification: Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer & the employee are in lieu of the services provided by employee to the employer in relation to his employment & will not be subjected to GST.

Para 2: Services by any court/Tribunal established under any law for the time being in force

Court includes: District court, high court and Supreme Court.

Para 3: Services by Government officials (name given by author).

(a) Functions performed by the

- Members of Parliament, Members of State Legislature,
- Members of Panchayats, Members of Municipalities & Members of other local authorities;

(b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

Example: President of India, Vice President of India, Prime Minister of India, Chief Justice of India, Speaker of the Lok Sabha, Chief Election Commissioner, Comptroller and Auditor General of India, Attorney General of India, in that capacity.

(c) Duties performed by

- any person as a Chairperson or a Member or a Director
- in a body established by the CG/SG/LA and who is not deemed as an employee before the commencement of this clause.

Example: Chairman of Telecom regulatory authority of India (TRAI), Members and directors of finance commission who are not employees.

Para 4: Services of funeral, burial, crematorium/mortuary including transportation of deceased.

Para 5: Sale of land and, subject to clause (b) of para 5 of schedule II, sale of building

Particulars	Supply of Goods or Service	GST Liability
Sale of Land	Neither supply of goods nor service – Schedule III	No GST
Sale of building – Entire consideration received after issuance of completion certificate or first occupancy (whichever is earlier)	Neither supply of goods nor service – Schedule III	NO GST
Sale of building – where part or full consideration received before issuance of completion certificate/first occupancy (whichever is earlier)	Supply of service (schedule II- Para 5(b)	Liable to GST - Supply of service

Para 6: Actionable claims, other than specified actionable claims.

Actionable claims are goods, supply of actionable claims is supply of goods, and however GST shall be leviable only specified actionable claims.

Specified actionable claim means the actionable claim involved in or by way of—

(i) betting; (ii) gambling; (iii) lottery;
(iv) casinos; (v) horse racing; (vi) online money gaming;

Crux: Although actionable claims are goods but supply of only specified actionable claims viz. betting, casinos, gambling, horse racing, lottery or online money gaming: GST shall be levied.

Some of the other examples of actionable claims are: Right to recover insurance money, claim for arrears of rent, unsecured loans, unsecured debentures, bills of exchange, promissory notes, etc. These are not considered as supply of goods or services

Para 7 & 8 of schedule III are not applicable to CA Intermediate & discussed in CA Final.

Para 9: Activity of apportionment of co-insurance premium

Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in co-insurance agreements, subject to the condition that the lead insurer pays the CT, the ST, the UTT and the IT on the entire amount of premium paid by the insured.

Author:

- In a co-insurance arrangement, multiple insurers (led by a lead insurer) jointly underwrite a risk.
- The lead insurer collects the entire premium from the insured.
- The lead insurer pays GST (central, state/UT, integrated) on the entire premium amount.
- The co-insurers receive their respective share of the premium from the lead insurer as per the risk-sharing ratio.

Crux: Co-insurance premium apportionment: Not taxable if lead insurer pays GST on total premium.

Para 10: Services by insurer to the reinsurer

Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.

Crux: Ceding commission retained by the insurer is not separately taxable under GST if the reinsurer pays GST on the full reinsurance premium including such commission.

Schedule III - Mnemonic to remember: CAMEL - GI

C – Services by any court/Tribunal established under any law for the time being in force
A – Actionable claims, other than specified actionable claims.
M- Services of funeral, burial, crematorium/mortuary including transportation of deceased
E – Services by an employee to the employer in the course of or in relation to his employment
L – Sale of land and, subject to clause (b) of para 5 of schedule II, sale of building
G - Services by Government officials [MP, MLA, MLC, Constitutional post holders, CMD of a body established by government]
I – Co-Insurance premium or Re-insurance commission.

Notified services under section 7(2)(b)

- Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution.
- Services by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called.

Circular on applicability of GST on all other licenses and privileges by the government

Issue: Whether in case of all other licenses & privileges for a fee in other situations also no GST is payable?

Clarification:

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

Crux:

- Supply of service by way of grant of Alcoholic liquor license by SG is out of scope of supply
- Any other services by way of grant of mining right, natural resources against fees/royalty are taxable.

Section 7(3)

Subject to sub-sections (1), (1A) and (2)

- The Government may, on the recommendations of the Council, specify, by notification
- The transactions that are to be treated as —
  - (a) a supply of goods and not as a supply of services; or
  - (b) A supply of services and not as a supply of goods.

Section 8 - Tax liability on Composite & Mixed Supply

Composite supply [Section 2(30)]

Composite supply means a supply made by a taxable person to a recipient and:

- comprises two/more taxable supplies of goods/services/both, or any combination thereof.
- are naturally bundled and supplied in conjunction with each other, in the ordinary course of business
- one of which is a principal supply.



Section 8(a): Taxability of composite supply

A composite supply comprising two or more supplies, one of which is a principal supply,

- shall be treated as a supply of such principal supply.

Mixed supply [Section 2(74)]



Mixed supply means two or more individual supplies of goods or services, or any combination thereof,

- made in conjunction with each other by a taxable person
- for a single price where such supply does not constitute a composite supply.

Section 8(b): Taxability of mixed Supply

A mixed supply comprising of

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

Clarification on taxability of supply of food and beverages at cinema halls.

Issue: Whether supply of food and beverages at cinema halls is taxable as restaurant service which attract GST at the rate of 5% or not.

Clarification:



- Supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:
  (a) the food or beverages are supplied by way of or as part of a service, and
  (b) supplied independent of the cinema exhibition service.
- Further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

Crux:

- If food & beverages at cinema halls are supplied independently: taxable as restaurant service
- but if sale of cinema ticket and supply of food & beverage are clubbed & satisfying the test of composite supply, then rate of principal supply i.e. exhibition of cinema will apply.

Clarification on servicing of cars involving both supply of goods (spare parts) & services (labour)



Issue: Servicing of cars involving both supply of goods (spare parts) & services (labour), where the value of goods and services are shown separately, to be treated under GST?

Clarification:

Where a supply involves supply of both goods & services & the value of such goods and services supplied are shown separately, the goods & services would be liable to tax at the rates as applicable to such goods & services separately.

Clarification on taxability of printing contracts

Issue: whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies, would constitute supply of goods or supply of services.

Clarification:

Activity	Supply of Goods or Service
In case of printing of books, pamphlets, brochures, annual reports, where only content is supplied by the publisher/ person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to printer	Supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service.
In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. by the printer using its physical inputs including paper to print the design, logo etc. (supplied by the recipient of goods).	Predominant supply is supply of goods and the supply of printing of the content is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods







Clarification on various doubts related to treatment of sales promotion schemes under GST

There are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products.

Taxability of two such schemes has been clarified as under:

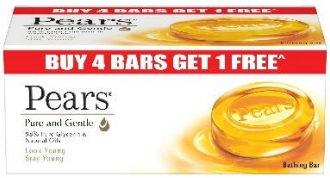
A. Free samples and gifts:

- Free samples (without consideration) are not treated as "supply" under GST, except for activities in Schedule I of the CGST Act.



- ITC is not available for the distribution of gifts/free samples if it doesn't fall within the scope of supply.
- If it falls within the scope of supply, ITC is available.

B. Buy one get one free offer:



Buy One, Get One Free is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply, it can either composite or mixed supply.

Circular: Levy of GST on the service of display of name/placing of name plates of the donor in the premises of charitable organizations receiving donation/gifts from individual donors.

Issue: whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.

About donations to Charitable organisation: Individual donors provide financial help in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude.

When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy (generosity) and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.

Hence, where all the 3 conditions are satisfied namely

- the gift or donation is made to a charitable organization,
- the payment has the character of gift or donation and
- the purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement,
- GST is not leviable.



All other cases – Where the name plate is basically for promoting business of donor – Activity will fall in supply and GST is leviable.

Clarification on various issues pertaining to GST treatment of vouchers

- Payment instruments that facilitate purchase of goods and/or services against the value stored on such instruments.
- Said voucher will fall under the definition of "money"
- Excluded from the definition of goods and services
- Transactions in voucher would be considered neither as a supply of goods nor services.

Not considered Pre-paid instruments (PPIs):

Voucher is an instrument which creates an obligation on supplier to accept it as consideration/part consideration and assure the beneficiary/voucher holder to claim certain goods and/or services as specified on the voucher or in the related documents.

Issue 1: Whether "transactions in vouchers" falls under the category of supply of goods &/or services?

Clarification: Where the voucher is covered as a pre-paid instrument recognized by the RBI and is used as a consideration to settle an obligation, then in such cases,

- Said voucher will fall under the definition of "money".
- In such a case, as "money" it is excluded from the definition of goods and services
- Hence, transactions in voucher would be considered neither as a supply of goods nor as a supply of services.

Where the voucher is not covered as a pre-paid instrument recognised by RBI & hence cannot be treated as money.

- Voucher is an instrument which creates an obligation on supplier to accept it as consideration/ part consideration and assure the beneficiary/voucher holder to claim certain goods and/or services as specified on the voucher or in the related documents
- Said voucher will be considered as an actionable claim.
- Actionable claims, other than specified actionable claims, is to be treated neither as a supply of goods nor as a supply of services.
- Hence, transactions in voucher would be considered neither as a supply of goods nor as a supply of services.

Issue 2: What would be the GST treatment of transactions in vouchers by distributors/ sub-distributors/ agents etc.?

A. Where vouchers are distributed through the distributors/ sub-distributors/ dealers on Principal-to-Principal (P2P) basis.

Clarification:

- The distributor/dealer purchases vouchers from the issuer at a discounted price and resells them to sub-distributors, corporates, or end customers, earning a trading margin, which is a difference between the acquisition cost & the selling price of the vouchers.

- In such cases, distributors/dealers own the vouchers and operate independently with full control from purchase to final sale.
- Trading in vouchers does not qualify as a supply of goods or services under GST.
- Accordingly, pure trading of vouchers is not liable to GST under Section 9(1) of CGST Act.

B. Where vouchers are distributed using distributors/ sub-distributors/ agents on commission/ fee basis:

- In such cases, the transactions between the voucher issuer and the distributors/ sub-distributors/ agents are on principal-agency basis.
- Such agents donot own vouchers, but act as an agent of voucher issuer and operate under specified obligations set by him (e.g., marketing, promotion, other support services). DSAs earn commission/fees which are treated as a supply of services to the voucher issuer.
- GST applicable on the commission/ fee or any other amount by whatever name called, charged for such purpose as a supply of services to the voucher issuer.

Issue 3 - What would be GST treatment of additional services such as advertisement, co-branding, marketing & promotion, customization services, technology support services, customer support services etc.

Clarification:

- There may be cases where additional services such as advertisement, co-branding, customization services, technology support services, customer support services, etc. are provided by either the distributor/ sub-distributor or by another person to the voucher issuer against a service fee/ service charge/ affiliate charge or any other amount, by whatever name called, as per contract/agreement between such service provider and the service recipient (voucher issuer).
- In such a case, the said service fee/ service charge/ affiliate charge or other amount for supply of such additional services to the voucher issuer as per the terms of contract/agreement, would be liable to GST at the applicable rate in the hands of the said service provider.

Issue 4 - What would be the GST treatment of unredeemed vouchers (breakage)?

Clarification:

- Unused/unredeemed vouchers at the end of their expiry period are accounted for as breakage in business income statements.
- In case of breakage, there is no redemption of voucher and no underlying supply, meaning GST does not apply.

Crux:

- Transactions in vouchers – Vouchers are instruments of payment rather than goods or services. Their trade does not constitute a taxable supply under GST. However, GST applies to the goods/services for which vouchers are redeemed.

Distribution of vouchers:

- Principal-to-Principal (P2P) basis – Distributors purchase vouchers at a discount and sell them for a margin. Since they own and control vouchers, GST is not applicable on voucher trading.
- Commission-based distribution – Distributors act as agents and receive a commission/fee. GST is applicable on this commission as a supply of services.
- Additional services – If distributors or third parties provide services like advertisement, co-branding, tech support, customer services, etc., to the voucher issuer for a fee, GST is payable.
- Unredeemed vouchers (breakage) – If vouchers expire unused, the retained amount does not qualify as consideration for any supply of goods or services. Thus, no GST is payable on breakage.

Chapter 3: Charge of GST

Section 9 of the CGST act: Levy & collection of CGST – The Charging section

Section 9(1): CGST levied on Intra-state supply of g/s/b (except AL)

Subject to the provisions of sub-section (2),

- there shall be levied a tax called the CGST
- on all intra-State supplies
- of goods or services or both,
- except on the supply of alcoholic liquor for human consumption and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption,
- on the value determined under section 15
- at such rates, not exceeding 20%,
- as may be notified by the Government on the recommendations of the Council (NG-RC)
- collected in such manner as may be prescribed
- and shall be paid by the taxable person.

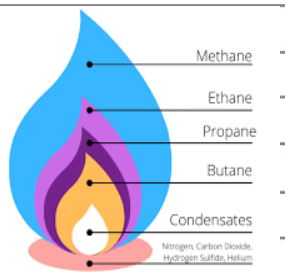
Notification no. 1/2017, 11/2017-Central Tax (Rate): Notifying the rates applicable.

Section 9(2): CGST on 5 specified petro products (HPMAN)

The central tax on the supply of [HPMAN]

- High speed diesel,
- Petroleum crude,
- Motor spirit (commonly known as petrol),
- Aviation turbine fuel
- Natural gas and





shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council (NG-RC).

Section 9(3): Reverse charge on notified goods & services

The Government may, on the recommendations of the Council, by notification,

- specify categories of supply of goods or services or both,
- the tax on which shall be paid on RCM by the recipient of such g/s/b and
- all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Notified categories of goods on which 100% GST to be paid by recipient: [NA For CA Inter]

Notified categories of services on which 100% GST to be paid by recipient of services

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
1	Supply of Services by a goods transport agency (a) Any factory registered under by the Factories Act (b) Any body-corporate established by/under any law; (c) Any society registered under Societies Registration Act/any other law for the time being in force (d) Any co-operative society established by/under any law (e) Any partnership firm (reg/un-reg) including AOPs; (f) Any person registered under GST act (g) Any Casual taxable person [Mnemonics – FBSCOOP]	Goods Transport Agency	Person mention under (a) to (g), but located in taxable territory (TT). 

Proviso: RCM is not applicable if:

Services provided by a GTA to—

(a) a Department/Establishment of CG/SG/UT;

(b) Local authority; or

(c) Govt agencies,

which has taken registration only for deducting TDS under section 51 & not for making a taxable supply of goods or services.

Proviso: RCM is not applicable if:

i. the supplier has taken registration and exercised the option to pay tax on the services of GTA under forward charge; and

ii. the supplier has issued a tax invoice to the recipient charging Central Tax at the applicable rates and has made a declaration as prescribed on such invoice issued by him.

Important notes on GTA:

- Goods transport agency means any person who provides service in relation to transport of goods by road and issues a consignment note by whatever name called, but does not include
  - an ECO by whom the services of local delivery are provided,
  - an ECO through whom the services of local delivery are provided
- Recipient of GTA service is person who pays/liable to pay the freight.
- GTA has the following two options:
  - If GTA opts to pay GST under FCM: 18% GST under FCM (with ITC) & 5% GST under FCM (Without ITC).
  - If GTA does not opt to pay GST under FCM: Recipient pays 5% RCM.

Exemptions to GTA:

Entry no. 21A: Services provided by a GTA to an unregistered person, including an unregistered casual taxable person, other than the following recipients: [Mnemonics – FBSCOOP]

- any factory registered under or governed by the Factories Act, 1948; or
- any body corporate established, by or under any law for the time being in force; or
- any Society registered under the Societies Registration Act, 1860/under any other law
- any Co-operative Society established by or under any law for the time being in force; or
- any partnership firm whether registered/not under any law including association of persons;
- any CTP registered under the CGST Act/ the IGST Act/the SGST Act/the UTGST Act

are exempt.

Entry No. 21B: Services provided by a GTA, by way of transport of goods in a goods carriage, to

(a) a Department or Establishment of the CG/SG/UT; or

(b) local authority; or

(c) Governmental agencies,

which has taken registration for the purpose of deducting tax u/s 51 & not for making a taxable supply of goods/services.

SN	Category of Supply of Services		Supplier of service	Recipient (liable)
2	Services provided by an individual advocate including a senior advocate/firm of advocates by way of legal services, directly or indirectly.		Individual advocate/ a senior advocate/ firm of advocates.	Any business entity located in the taxable territory.

Important notes on advocates:

- Legal service means any service provided in relation to advice, consultancy/ assistance in any branch of law, in any manner & includes representational services before any court, tribunal or authority.
- LLP formed & registered under LLP Act shall also be considered as a partnership firm

Exemption: Entry no. 45: Legal services

Services provided by -

- 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 ATO up such amount in the PFY as makes it eligible for exemption from registration under the CGST act; or

(iv)the CG, SG, UT, local authority, Governmental Authority or Government Entity

- a senior advocate by way of legal services to-

(i) any person other than a business entity; or

(ii) a business entity with an ATO up such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST act; or

(iii)the CG, SG, UT, local authority, Governmental Authority or Government Entity

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
3	Services supplied by an arbitral tribunal to a business entity	An arbitral tribunal	Any business entity in TT

Exemption: Exemption: Entry no. 45

Services provided by an arbitral tribunal to –

(i) any person other than a business entity; or

(ii) a business entity with an ATO up such amount in the preceding financial year as makes it eligible for exemption from registration under the CGST act; or

(iii) the CG, SG, UT, local authority, Governmental Authority or Government Entity

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
4	Services provided • by way of sponsorship • to any body corporate or partnership firm.	Any person other than a body corporate	Any Body corporate/ partnership firm located in TT

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
5	Services supplied by the CG, SG, UT, LA to a BE excluding- (1) renting of Immovable Property, and (2) services specified below- (i) Services by Department of Posts and the Ministry of Railways (Indian Railways); (ii) Services in relation to an aircraft/a vessel, inside/outside the precincts of a port/an airport; (iii)Transport of goods or passengers.	CG, SG, UT, LA	Any business entity located in TT

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
5A	Services supplied by the CG [excluding the Ministry of Railways (Indian Railways)], SG, UT/LA • by way of renting of immovable property • to a person registered under the CGST act	CG, SG, UT or LA	Any person registered under the CGST act 2017

Explanation: Provisions of this notification, in so far as they apply to the CG and SGs, shall also apply to the Parliament and State Legislatures, Courts and Tribunals.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
5AA	Service by way of renting of residential dwelling to a registered person.	Any person	Any registered Person

Exemption: Entry No. 12: Renting of Residential house

Services by way of renting of residential dwelling for use as residence except where the residential dwelling is rented to a registered person.

Explanation. - For the purpose of exemption under this entry, this entry shall cover services by way of renting of residential dwelling to a registered person where, –

(i) the registered person is proprietor of a proprietorship concern and rents the residential dwelling in his personal capacity for use as his own residence; and

(ii) such renting is on his own account and not that of the proprietorship concern.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
5AB	Services by way of renting of any immovable property other than residential dwelling.	Any unregistered person	Any registered person other than a person who has opted to pay tax under composition levy

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
6	Services supplied • by a director of a Company/ Body Corporate to the said company or the body corporate	A Director (non-executive director)	The Co/Body Corporate in TT

Clarification in respect of levy of GST on Director's remuneration

Issue: Whether the remuneration paid by companies to their directors falls under the ambit of entry in Schedule III i.e., "services by an employee to the employer in the course of or in relation

to his employment" or whether the same are liable to be taxed in terms of notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017 (entry no.6).

The issue of remuneration to directors has been examined under following two different categories:

(i) leviability of GST on remuneration paid by companies to the independent directors defined in terms of section 149(6) of the Companies Act, 2013 or those directors who are not the employees of the said company; and

(ii) leviability of GST on remuneration paid by companies to the whole-time directors including managing director who are employees of the said company.

Clarification:

- Independent Director - is not an employee of the company, GST payable by Company under RCM.
- Whole time director - as per definition under companies' act, he may be a person who is not an employee and hence,
  - If Director is working in the capacity of an employee + amount accounted as salary & TDS u/s 192 of IT act is deducted: then the same is falling in schedule III – Not a supply, hence no GST.
  - If Director is not working in the capacity of an employee + amount paid is in the nature of professional fees and not salary and TDS u/s 194J of the IT Act is deducted – Supply, GST payable by co. under RCM.

Clarification on Taxability of services supplied by director of a company in his personal capacity such as renting of immovable property to the company/body corporate.

- Those services supplied by director in the capacity of director shall be taxable under RCM
- Other services supplied by director in his personal capacity are not taxable under RCM.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
7	Services supplied • by an Insurance agent • to any person carrying on insurance business	An insurance agent	Any person carrying on insurance business in TT- life/ general insurance
8	Services supplied • by a recovery agent • to Banking Co/FI/NBFC in TT 	A recovery agent	Banking Co/ Financial institution/ NBFC in TT

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
9	Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright relating to original dramatic, musical/artistic works to a, music company, producer/the like.	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.
9A	Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered u/s 13(1)(a) of the Copyright Act, 1957 relating to original literary works to a publisher.	Author	Publisher located in the taxable territory:

However, an author can choose to pay tax under forward charge if-

(i) he has taken registration under the CGST Act and filed a declaration, in the prescribed form, that he exercises the option to pay CGST on the said service under forward charge in accordance with section 9(1) and to comply with all the provisions as they apply to a person liable for paying the tax in relation to the supply of any goods and/or services and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;

(ii) he makes a declaration on the invoice issued by him to the publisher.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
10	Supply of services by members of overseeing committee to Reserve Bank of India (rbi)	Members	RBI
11	Services supplied • by individual Direct Selling Agents (DSAs) other than a body corporate, partnership/ LLP • to bank or NBFCs.	Individual DSAs other than a body corporate, partnership/ LLP.	A banking company/a NBFC in TT

Direct selling agents

- A DSA is a person who works as a referral agent for a Bank.
- Their main job is to find potential customers who want to take a loan.
- Government banks appoint agents to bring business to banks certain percentage is given by banks to DSAs.

Author:

- RCM is applicable only if DSA is an Individual, and hence bank will be liable to pay.
- However, if DSA is another entity (body corporate/partnership Firm) FCM will be applicable.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
12	Services provided • by business facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the TT.
13	Services provided • by an agent of business correspondent to business correspondent (BC)	An agent of business correspondent	A business correspondent, located in the TT

Exemption: Entry No. 39: Services by business facilitator

Services by the following persons in respective capacities –

(a) business facilitator/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.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
14	Services provided by way of supply of security personnel to a RP: Proviso: this entry shall not apply to, — (i) a Department or Establishment of the CG/SG/UT; or LA/Governmental agencies; registered as TDS deductor & not for making a taxable supply of g/s; or (ii) A RP paying tax under section 10	Any person except a body corporate	A registered person, located in the TT.
15	Services provided by way of renting of a motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.	Any person other than a body corporate, who supplies the service to a body corporate and does not issue an invoice charging CT @ 6 % (CGST) to the service recipient	Any body corporate located in the taxable territory.

Author's comment:

There are two rates applicable on the service of renting of vehicles,

- 5% with limited ITC (ITC only of input service in the same line of business) and
- 12% with full ITC.

RCM shall be applicable only, If the supplier fulfils all the following conditions: –

1. Supplier of service is other than a body-corporate;
2. does not issue an invoice charging GST @12% from the service recipient; and
3. supplies the service to a body corporate.

Illustration on Renting of motor vehicles (fuel cost is included in consideration charged):

Case	Supplier	Invoice/Document issued	Recipient	Whether RCM is applicable?
1	Ram a registered person (RP)	Tax Invoice with GST @ 5%	Shyam (an individual)	NO RCM
2	Ram a RP	Tax Invoice with GST @ 5%	Shyam limited	RCM applicable
3	Ram limited a RP	Tax Invoice with GST @ 5%	Shyam limited	NO RCM
4	Ram an Unregistered person	Does not issue tax Invoice, however issues a commercial Invoice	Shyam limited	Shyam ltd to pay GST @ 5 % under RCM.

Clarification: Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers

Issue: Whether RCM is applicable on service of transportation of passengers or on renting of motor vehicle designed to carry passengers.

Clarification:

- Where body corporate hires the motor vehicle for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the body corporate shall be liable to pay GST on the same under RCM.
- where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under service of transportation of passengers and the body corporate shall not be liable to pay GST on the same under RCM.

SN	Category of Supply of Services	Supplier of service	Recipient (liable)
16	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended.	Lender i.e., a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme	Borrower i.e., a person who borrows the securities under the Scheme through an approved intermediary of SEBI.

Circular: Delhi Development Authority (DDA) -NOT a local authority under GST law

Issue: whether DDA can be treated as local authority under GST law.

Clarification: Local authority means an authority which is similar to the elected self-governing body such as Municipal Committee and which is entrusted with the control and management of municipal or local fund can be termed as local authority, DDA cannot be treated as local authority under GST law as DDA does not meet the requirement of local authority as per section 2(69).

Section 9(4): RCM on specified class of registered person w.r.t specified supplies from unregistered supplier. [Not applicable at intermediate level]

Section 2(44): Electronic commerce

Electronic commerce means the supply of goods or services or both, including digital products over digital or electronic network;

Section 2(45): Electronic commerce operator (ECO)

Electronic commerce operator means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

Section 9(5): Notified category of services on which tax payable by ECO

The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the ECO if such services are supplied through it, and all the provisions of this Act shall apply to such ECO as if he is the supplier liable for paying the tax in relation to the supply of such services:

ECO has physical presence in taxable territory (TT)	ECO liable to pay tax
ECO does not have physical presence in TT	Any Person representing such ECO (for any purpose) in TT liable to pay
ECO has neither physical presence not any representative in TT	ECO shall appoint a person in TT (for tax purpose) & such person shall be liable

NNo. 17/2017-CT(R): Notified categories of services supplied through ECO

(i) Services by way of transportation of passengers by a
- radio taxi (which is in two-way communication with central office through GPS/GPRS)
- motor cab (MV to carry $\leq$ 6 passengers excl. driver on hire/reward)
- maxi cab (MV to carry > 6 $\leq$ 12 passengers excl. driver on hire/reward)

- motor cycle, or any other motor vehicle except omnibus;

- Radio taxi: means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using Global Positioning System (GPS) or General Packet Radio Service (GPRS).
- Maxi cab: means any motor vehicle constructed or adapted to carry more than 6 passengers, but not more than 12 passengers, excluding the driver, for hire or reward.
- Motor cab: means any motor vehicle constructed or adapted to carry not more than 6 passengers excluding the driver for hire or reward.
- Motor car: means any motor vehicle other than a transport vehicle, omnibus, road-roller, tractor, motor cycle or invalid carriage.
- Omnibus: means any motor vehicle constructed or adapted to carry more than 6 persons excluding the driver.

(ia) Services by way of transportation of passengers by an omnibus except where the person supplying such service through electronic commerce operator is a company.

(ii) Services by way of providing accommodation

- In hotels, inns, guest houses, clubs, campsites/other commercial places
- meant for residential or lodging purposes,

Except where the person supplying such service through ECO is liable for registration u/s 22(1).

(iii) Services by way of house-keeping

- Such as plumbing, carpentering etc.,

Except where the person supplying such service through ECO is liable for registration u/s 22(1).

(iv) Supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.

Explanation: Specified premises for a financial year, means

(a) a premises from where the supplier has provided in the preceding FY, hotel accommodation service having the value of supply of any unit of accommodation above Rs. 7,500 per unit per day or equivalent; or

(b) a premises for which a registered person supplying 'hotel accommodation' service has filed a declaration, on or after the 1st of January and not later than 31st of March of the preceding financial year, declaring the said premises to be a specified premises; or

(c) a premises for which a person applying for registration has filed a declaration, within fifteen days of obtaining acknowledgement for the registration application, declaring the said premises to be a specified premises;

(v) Services by way of local delivery except where the person supplying such services through ECO is liable for registration under section 22(1) of the CGST Act, 2017.

Crux:

- Local delivery services brought under section 9(5) except when supplier is liable to register under section 22(1).
- Purpose of the amendment is to remove GST exemption for app-based local delivery services, ensuring they are taxable even though they involve transportation of goods by road.
- Local delivery service apps are apps that pick up & deliver goods within same city/local area:
- Swiggy Genie – pick-up & drop services for items within the city.
- Porter – local intra-city goods transportation (small parcels to mini-trucks).

Circular: GST on service supplied by restaurants through e-commerce operators

SN	Issue	Clarification
1	Would ECOs have to still collect TCS in compliance with section 52 of the CGST Act, 2017?	ECOs will no longer be required to collect TCS and file GSTR-8 in respect of restaurant services on which it pays tax under section 9(5).
2	Would ECOs have to mandatorily take a separate registration w.r.t supply of restaurant service [notified under 9(5)] through them even though they are registered to pay GST on services on their own account?	ECO is not required to take separate registration for payment of tax on restaurant service u/s 9(5).
3	Would the ECOs be liable to pay tax on supply of restaurant service made by unregistered business entities?	ECOs will be liable to pay GST on supplies made by unregistered restaurant.
4	What would be the aggregate turnover of person supplying 'restaurant service' through ECOs?	ATO of Restaurant will include supplies made` through ECO.
5	Can ECO utilize its Input Tax Credit to pay tax w.r.t 'restaurant service' supplied through the ECO?	The liability of payment of tax by ECO as per section 9(5) shall be discharged in cash. However, ITC can be utilized by him for discharge of tax liability in respect of supply of services on his own account i.e. on the GST payable for platform fees/ commission, etc.

SN	Issue	Clarification
6	Would supply of goods or services other than 'restaurant service' through ECOs be taxed at 5% without ITC?	On other supplies (other than restaurant services made through ECO) GST will continue to be billed, collected and deposited in the same manner as is being done at present. ECO will deposit TCS on such supplies.
7	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to TCS on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
8	Who will issue invoice in respect of restaurant service supplied through ECO - whether restaurant or ECO?	The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.

Section 5 of the IGST act: Levy and Collection of IGST

Sec 5(1): IGST is levied on Inter-state supply of g/s/b (except AL) on value u/s 15 @ max 40%

Subject to the provisions of sub-section (2),

- there shall be levied a tax called the IGST
- on all inter-State supplies of goods or services or both,
- except on the supply of alcoholic liquor for human consumption and un-denatured extra neutral alcohol or rectified spirit used for manufacture of AL for human consumption,
- on the value determined under section 15 of the CGST Act and
- at such rates, not exceeding forty per cent, as may be notified by the Government on the recommendations of the Council and
- collected in such manner as may be prescribed and shall be paid by the taxable person:

Section 5(2): IGST on 5 petroleum products (HPMAN)
Section 5(3): Reverse charge under IGST on notified goods & services

Any service supplied by any person who is located in a non-taxable territory to any person located in the taxable territory. Import of service, tax is payable by the person importing such service.

Section 5(4) & 5(5): Same as 9(4) & 9(5), just intra becomes inter.

CA Ramesh Soni

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