

# **Hand Book on GST**

*for*

# **Service Providers**



**The Institute of Chartered Accountants of India**  
(Set up by an Act of Parliament)  
New Delhi

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# Foreword

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Gaps in erstwhile indirect taxes law are sought to be overcome by Goods and Services (GST) law which provides utilization of cross credit across goods vs services or vice versa, ambiguity of analysing a transaction to be exigible to erstwhile service tax or VAT has been resolved by the explicitly stating supply to be goods or services under GST Law. Availability of exemption in case of inter state supply provided to service provider is a welcome step as the same was forcing to register small service provider even a Guest faculty. Robust growth in service industry and smooth implementation of GST calls for scribbling of summary of various provisions in Act, Rules, Notification, Press release etc.

Considering these facts, Indirect Taxes Committee of ICAI has decided to come up with a '**Hand Book on GST for Service Providers**' which has been specifically developed to provide in-depth knowledge of provisions pertaining to services i.e Levy and exemption, Input service distributor, Registration, Time and place of supply, Valuation, Input tax credit, and Job work etc. in a very simple and easy to comprehend language.

I appreciate the efforts put in by CA. Madhukar N. Hiregange, Chairman; CA. Sushil Kumar Goyal, Vice-Chairman and other members of the Indirect Taxes Committee of ICAI for timely developing this handbook for use of all.

I am sure that the readers will be benefited by this in-depth study being made available to them in eloquent and simple manner.

**CA. Nilesh S. Vikamsey**  
**President, ICAI**

Date: 23.10.2017

Place: New Delhi



# Preface

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The development of an economy, as eminent economists say, could be gauged by the percentage of the contribution of the service sector to the total GDP. In the Indian scenario the services sector is continuously growing. Presently it accounts for around 55% and may reach 60% in the next decade. The indirect tax on services in the last year was 2.5 Lakh Crores growth at 20%.

However many services of the unorganised sector which was working in the composition scheme in the VAT regime were not in the mainstream though liable. This sector also has a high proportion of uneducated entrepreneurs who are scared of the taxes due to the tax terrorism of the past.

It is expected that compliance under GST would be encouraged and to some extent forced due to the quantum of information being collected which could be mined / analysed.

“**Hand Book on GST for Service Providers**” is compiled keeping in mind the State/ Union Territory – level Goods and Services Tax Law. The relevant provisions under the State/ Union Territory Laws are similar to that of the CGST Law. Therefore, the reader is required to bear in mind that this handbook is equally applicable for the States and Union Territories as well.

We would like to express our sincere gratitude to CA. Nilesh Vikamsey, President and CA. Naveen N. D. Gupta, Vice-President, ICAI, as well as other esteemed members of the Committee for their suggestions and support in this initiative. We would also like to thank CA. S. Venkatramani, CA. A. Jatin Christopher and CA. Ashok Batra for making this publication possible. The sincere efforts of the Secretariat is worth appreciating in this specialised publication.

We would like the professionals to make full use of this learning opportunity. Interested persons from the trade may also visit the website of the committee, that is, [www.idtc.icai.org](http://www.idtc.icai.org) and register themselves to get frequent updates. We also request to share your valuable feedback on our website to help us help you.

**CA. Madhukar Narayan Hiregange**  
Chairman  
Indirect Tax Committee

**CA. Sushil Kumar Goyal**  
Vice-Chairman  
Indirect Tax Committee

Date: 23.10.2017

Place: New Delhi



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# Chapter 1

## Introduction

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This handbook compiled keeping in mind the Central / Union Territory - level Goods and Services Tax Law. The relevant provisions under the State / Union Territory Laws are similar to that of the CGST Law. Therefore, the reader is required to bear in mind that this handbook is equally applicable for the States and Union Territories as well. While care has been exercised to cover the important provisions relating to services, the aspect relating to goods has not been touched upon. It is therefore, imperative that a reader can only apply the principles / discussions to services, and services alone. Complex topics in relation to services have been addressed in this Handbook, in tabular form for ease of comprehension. It is fondly hoped that this Handbook will stir up debates while providing an insight into the basics of law. Several concerns have been raised in this Handbook which need the attention of the law-makers to amend / clarify the issues, to alleviate the difficulties of the stakeholders.

The services sector in India is continuously evolving, complex in structure, while generating substantive revenues for the Union and State Governments. This Handbook covers the relevant topics relating to services while some of the issues may not have been addressed, considering the complex nature of services.

1. Services currently contribute more than 57 per cent of the GDP of India. As such this sector has been taxed for more than two decades now. Imposition of tax on services requires legislative power to impose tax, as well as clear articulation of the subject matter of such tax. Although Entry 97 of the Union List of the Constitution of India permits the Union Government to impose a tax on services, the Constitution has been amended in 2004 to introduce Entry 92C in the Union List in Schedule VII. Despite all this progress, service tax continues to reside in Chapter V (Chapters V-A and VI) of Finance Act, 1994.
2. Services have been given different meanings to meet their needs rather than expressly lay down the definition of the word of 'service'. Until June 2012, each service was given its own definition and they were not free from legal challenges. Imperfections in the legislations could not be effectively resolved when in 2012, negative tax regime was introduced. This tax regime basically imposed tax on all services unless they were expressly excluded or exempted (in law, or by notification). In order to impose tax on services, the lawmaker had to find an appropriate definition of 'service'. As we have seen from the history of service tax in India, we can note the difficulty that the lawmaker has faced in finding the right balance in restricting the extent to which taxes are imposed without trespassing into other fields of taxation or activities that demand immunity from tax.

3. Until the introduction of service tax under the negative tax regime in 2012, service tax was understood as a tax on an active form of service being performed by a service provider to a service receiver. Upon introduction of the negative tax regime from July 2012, the concept of “service” underwent a sea change where the law provided that tax would apply on any activity performed by one person for another for a consideration. For an activity to remain beyond the reach of service tax under the law effective from July 2012, it was required to be found in any one of the following three :
  - Exclusion from the definition of service; or
  - In the negative list of services; or
  - In the mega exemption notification.
4. Services have been given different meanings to suit the needs of each statute. For instance, in a VAT regime, defining services became relevant to identify and carve out portions of the contract sum which was not permitted to bear the incidence of VAT. It was consistently described as ‘Labour and other like charges’ so as to comprehensively meet the needs of the VAT law. But in the case of service tax, ‘services’ mean any activity carried out for consideration. The divergence in the understanding of the word ‘services’ under the old laws did not require reconciliation because they were meant for two different and dissimilar purposes.
5. Services of a doctor or an artist have been exempted from service tax, and services of an employee towards the employer are excluded from the definition of service. These are examples of the force which the definition of service exerts, and except by such exemption or exclusion, tax would have come to rest on these services also.
6. While proceeding along this path, the following aberrations emerged which were vehemently resisted by trade and industry:
  - Dually taxed services – are services, where the nature of the definition contained in the statutes brought the incidence of VAT as well as service tax to be imposed on the same transaction. For example – sale of software along with license to use.
  - Tax on overlapping value of service – are services, where the value of taxable portion of the contract sum was unevenly bifurcated by the respective tax laws – VAT and service tax – such that the tax was computed on a taxable base that extended beyond 100% of the contract sum. For example supply of food and beverage is liable to VAT on the entire value paid by customer, and at the same time, service tax is leviable on 40% of the same value. Another example could be works contracts that are liable to VAT on 65% to 75% of the contract sum and service tax is liable on 40 to 60% of the said contract sum.

7. The difficulty in equitably treating tax on services so that these aberrations do not occur and the long pending demand of trade to introduce a tax regime, that can be complied with ease and efficiency, has motivated both sides to work towards a common goods and services tax.

## Chapter 2

# Services under GST

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1. Under the CGST Act, 2017, services is defined by section 2(102) as under :

*“services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;*

Therefore, it can be understood as follows:

  - Services include transactions in money but does not include money and securities;
  - Services do not include transaction in money other than an activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.
2. This short definition has two parts to it, that is:
  - What it “means”; and
  - What it “excludes”.
3. As stated earlier, express exclusion of ‘something’ pre-supposes its inclusion of that thing. Now, in this definition:
  - firstly, we see that service is defined with the use of the word ‘means’. In doing so, the GST Law seeks to declare that this and this alone shall be the meaning of the word service and nothing else. It also denies to any person, an opportunity to entertain any other meaning even if it is well known and well understood in trade or in preceding tax legislations;
  - secondly, service means ‘anything’. Anything includes ‘everything’ and excludes ‘nothing’. If that is what service means, then everything is a service. For something not to be a service it must come within the express exclusion provided by the same definition section or elsewhere in the statute;
  - thirdly, when the words in the definition ‘anything other than goods’, are read together, the scope of ‘anything’ is curtailed by ‘all things’ that fit in the definition of goods.
4. Therefore, it becomes necessary to look at the GST law [section 2(52) of the CGST Act] and examine the definition of ‘Goods’ which is as under:

*“Goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply;*

5. The above definition is common and well understood in trade as well as in taxation arenas. Having said that ‘every kind of movable property’ is goods, to state that “other than money and securities” makes it very clear that securities are movable property but deliberately excluded from being regarded as goods. In other words, certain things which are admittedly goods, for the limited purpose of GST, will be treated as if they are services. However, the definition of service very precisely excludes money and securities from its ambit. Hence, money and securities are neither ‘goods’ nor ‘services’ for the purpose of GST Law.
6. Therefore, according to the GST law, services are of three kinds:
  - Those services that are commonly understood as services;
  - Those that are goods but are to be treated as services;
  - Transaction in money in the nature of an activity relating to the use of money or its conversion for which a separate consideration is charged. Eg. Conversion of Rupees to US dollars
7. Services under the GST Laws may be wider than what they are currently understood to be. Transactions involving goods (certain cases) as well as transactions involving conventionally understood services, both will be regarded as supply of services.
8. As per Schedule III to the CGST Act, 2017 services by an employee to the employer in the course or in relation to his employment are not treated as ‘supply’ for the purposes of the Act. Further, according to press release dated 10<sup>th</sup> July, 2017, if services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The relevant extract aforesaid press release is as under:

*“Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17(5)(b)(ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C).”*

*[<http://pib.nic.in/newsite/PrintRelease.aspx?relid=167285>]*

Furthermore, in terms of proviso to clause 2 of Schedule I of CGST Act, 2017 provides that, gift exceeding ₹ 50,000/- by an employer to employee will be a supply even if made without consideration as employee is also deemed as related person as per explanation to section 15 of CGST Act, 2017. Hence, any gifts for a value not exceeding ₹ 50,000/- in a financial year will not qualify as supply and will not be liable to tax. Please bear in mind that gifts in excess of ₹5,000/- given by an employer to an employee is taxable as perquisite and when it is subject to income tax it cannot again be taxed as a supply in GST. This conflict must be kept in mind while examining GST implications on gifts.

However if any amount is recovered from the employee will be subject to GST and value be determined as per section 15 of CGST Act, 2017.

9. While the meaning of the word 'supply' is dealt with in a later Chapter, the two kinds of services identified in the previous discussion can be corroborated by examining the scope of supply in section 7 of CGST Act, 2017 which is as follows:

*7. Meaning and scope of supply*

(1) *Supply includes*

.....

*(d) Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services.*

(2) .....

10. As can be seen, Schedule II of the CGST Act determines two things:
- What is – supply of goods or supply of services; and
  - What is to be treated as – supply of goods or supply of services.
11. In other words, consistent with our previous discussion about services being of two kinds / classes, section 7 of CGST Act, 2017 confers powers on the legislature, to determine:
- what is obviously supply of goods or supply of services; as well as
  - to determine that which is not supply of goods or supply of services, to nevertheless be treated as one or the other.
12. Hence, a discussion about supply of goods or supply of services is impossible by merely looking at the definition of goods or definition of services in isolation, but recourse to Schedule II is imperative and its outcome will override all previous understanding. Accordingly, while reading the words 'supply of goods or services or both' in the charging section 9 in the CGST Act, and section 5 in the IGST Act,

'supplies', 'goods' and 'services' cannot be read as individual terms with their meanings available in sections 7, 2(52) and 2(102), respectively.

13. Schedule II describes 18 types of transactions and declares them to be treated as either supply of goods; or as supply of services. On a careful consideration of each of the seven Entries in this Schedule, the following key inferences can be made:
- 5 classes of transactions will be treated as supply of goods and the balance 13 transactions will be treated as supply of services and none of these 5 transactions are '*simplicitor* supply of goods';
  - Transactions involving 'absolute transfer' of immovable property do not find a place here except stating that when the entire consideration for sale of an immovable property is received after issuance of completion certificate;
  - 4 specific transactions 'inferior' to an absolute transfer involving immovable property are listed to be treated as a supply of services. The full import of each of these specific transaction needs careful examination by reference to substantive legislations such as Transfer of Property Act, Easements Act and Registration Act to understand their full import;
  - Manufacture in its most rudimentary form – treatment or process – is included here and without making express mention appears to be covering job work in view of its definition in section 2(68);
  - Transactions involving transfer or disposal of business is included to the extent relevant for GST;
  - All 6 clauses from the 46<sup>th</sup> Amendment to the Constitution are expressly included here, namely, paras 1(a) 1(c), 5(f), 6(a), 6(b) and 7;
  - Transactions that attracted widespread litigation under the service tax laws are also expressly included here, namely, para 5(a) to (e).

## Chapter 3

# Supply of Services

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1. The phrase “supply of services” has been discussed earlier, whereas, certain aspects in the definition of supply in relation to services calls for a very fascinating discussion for the following reasons:
  - Firstly, services include even transactions involving goods and mandated to be treated as services, for the purposes of GST, apart from other general services.
  - Secondly, words used to define supply such as sale, disposal, transfer, rental, lease, etc. appear to originate in relation to goods, but extended to apply to services also.
  - Thirdly, when transactions involve both goods and services (composite) uniformity in application of the rules of supply maybe in doubt.
  - Lastly, transactions involving goods are more easily verifiable during their supply, whereas, transactions involving services lack this element of verifiability.
2. Services being defined as ‘anything other than goods’, occupies an envious position as services are not to mean the polar opposite of goods. In fact, it implies that ‘goods’ are but a sub-sect carved out of the super-sect that is ‘services’. In relation to services, supply refers to ‘services treated as services’, as well as ‘goods treated as services’. While it is easy to relate to services that are treated as services, it requires a certain degree of mental alertness when considering goods that are treated as services. As mentioned earlier, there are 5 instances (paras 4(b), 5(b), 5(f), 6(a) and 6(b)) in Schedule II where transactions involving goods are treated as supply of services.
3. Section 7(1) of the CGST Act, 2017 states that:

*“For the purposes of this Act, the expression “Supply” includes:*

  - (a) *all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
  - (b) *import of services for a consideration whether or not in the course or furtherance of business;*
  - (c) *the activities specified in Schedule I, made or agreed to be made without a consideration; and*
  - (d) *the activities to be treated as supply of goods or supply of services as referred to in Schedule II.”*

*{Schedule I, II and III are Annexed in **Annexure - A** at the end of this book}*



Of the 8 words used in section 7(1)(a) [*sale, transfer, barter, exchange, license, rental, lease or disposal*] to describe the various forms of supply, one needs to examine as to whether they are exhaustive or illustrative, and whether there is any order or method in their enumeration. The use of the phrase “such as” in section 7(1)(a) of the CGST Act, 2017 indicates that they are not exhaustive. As regards the order or method, ‘sale’ at the one end and ‘disposal’ at the far end, appear to represent a continuum of various forms of supply in between and that too in a descending order. This descending order is with respect to completeness of the ingredients required to constitute supply. Hence, the word ‘sale’ appears to be used in its widest form (*even as understood under VAT law*) and embodies all ingredients involved in constituting an absolute sale. And the rest of the words used to describe the other forms of supply address one or the other aspect concerning the absoluteness of the sale, which was challenged under VAT law. Supply, therefore, must be given a very wide amplitude covering all transactions of transfer of property in them. The phrase “in the course or furtherance of business” is the measure of purpose behind such supply.

4. Let us look at a tabular depiction of each of the words used and their ingredients of completeness:

<b>Form of Supply</b>	<b>Inter vivos</b>	<b>Money consideration</b>	<b>Willing buyer</b>	<b>Willing seller</b>	<b>Permanent alienation</b>	<b>Valid object</b>
Sale	✓	✓	✓	✓	✓	✓
Transfer	✓	✓	✓	x / ✓	✓	✓
Barter	✓	x	✓	✓	✓	✓
Exchange	✓	x	✓	✓	✓	✓
License	✓	✓	✓	✓	x	✓
Rental	✓	✓	✓	✓	x	✓
Lease	✓	✓	✓	✓	x	✓
Disposal	✓	✓	x	✓	✓	✓ / x

5. As regards the words used in ‘implied supplies’ under Schedule I the following Table gives a clear picture::

<b>Form of Supply</b>	<b>Inter vivos</b>	<b>Money consideration</b>	<b>Willing buyer</b>	<b>Willing seller</b>	<b>Permanent alienation</b>	<b>Valid object</b>
Permanent transfer / disposal of business assets	✓	NA*	✓ / x	✓	✓	✓ / x

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Supply by related persons	x	NA*	✓	NA	x	✓
Supply of goods between Principal and Agent	x	NA*	✓	NA	✓	✓
Import of services	x	NA*	✓	NA	✓	✓

*\* Treated as supply without consideration even if any consideration flow is present and their value for tax purposes will be as determined by GST Valuation Rules*

6. Now, the words used to describe supply in its various forms, appear to be more akin to transactions involving goods rather than transactions involving services. Such usage shows that the 'form' in which the supply is made is subordinate to the 'fact' that supply is actually made. Services do not afford the luxury of verification because of their intangible and transient nature. The performance of services can be known only by inspection of the change produced over the articles on which the services are performed; or flow of payment from the recipient to the supplier. This is where GST calls for a fresh look at expressions that are otherwise all too familiar.
7. Sale of goods is well understood and in GST, it is inescapable that 'sale' ought to receive the widest amplitude in its interpretation and stands further expanded by the inclusion of 'barter' and 'exchange' in the definition of supply. In other words, transactions that fail to satisfy the test of sale for want of money-consideration do not escape the incidence of GST. Now, there are no words exclusively used in relation to services in the definition of 'supply'. 'Provision of services' is to services what 'sale of goods' is to goods. When such exclusive expressions are not employed and there is a mandate to supply the widest amplitude to the words describing supply, it is only appropriate that in understanding supply with respect to services, substitution of 'services' for 'goods' is required. Such interpretation by substitution is required in the understanding conveyed by each of the 8 words used in section 7(1)(a) of the CGST Act, 2017. Therefore, services too must be put through the same tests presented in the above tabulation as to whether they are for actual supplies or implied supplies.
8. Section 8 of the CGST Act, 2017 provides that the tax liability on a composite or a mixed supply shall be determined in the following manner, namely:
  - A composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
  - A mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

9. A composite supply is defined under section 2(30) of CGST Act, 2017 which reads: *“Composite Supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.*
10. In Section 2(90) of the CGST Act, 2017, “principal supply” has been defined as *supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.*
11. In terms of Section 2(74) of the CGST Act, 2017, *“mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.*
12. The concept of ‘naturally bundled services’ under section 66F of the Finance Act, 1994 is similar to the definition of composite supply under CGST Act. So, in order to understand composite supply, one may look at the concept of “naturally bundled services” under section 66F of the Finance Act 1994.
13. While there are no infallible tests for such determination, the following guiding principles could be adopted to determine as to whether a supply would be a composite supply or a mixed supply. However, every supply should be independently analysed as follows:

<b>Description</b>	<b>Composite Supply</b>	<b>Mixed Supply</b>
Naturally bundled	Yes	No
Taxable supplies	Yes	Yes / No
Supplied together	Yes	Yes
Bundling in the ordinary course of business	Yes	No
Can be supplied separately	No	Yes
One is predominant supply for recipient	Yes	No
Other supply is not ‘aim in itself’ of recipient	Yes	No
Each supply priced separately	Yes	No
Combinations:		
• All supplies are goods	Yes	Yes
• All supplies are services	Yes	Yes
• One supply is of goods and other supply is services	Yes	Yes

14. Supply of goods and / or services may be paraphrased as supply of goods and / or supply of services and whether goods are supplied or services are supplied, they will need to conform to the definition in section 7 of the CGST Act, 2017 for the purposes of GST.
15. As regards verifiability of service performance or completion, the insightfulness of the legislature is unmistakable, if one refers to section 13 of the CGST Act, 2017. Performance or completion of service is not open to verification is an admitted fact. It is for this reason, that in respect of services, from a careful reading of section 13(2)(a) read with section 31(2), it can be inferred that the Government, through the CGST Rules, 2017, has prescribed a time limit of 30 days within which the invoice is required to be issued in respect of supply of services. Note the phrase “..... if the invoice is issued within the prescribed period” in section 13(2)(a) of the CGST Act, 2017. When the invoice is issued within such ‘prescribed period’, the actual performance or completion of the service is *otiose*. Insightfulness is in eliminating inquiry into an aspect albeit an important one – performance or completion – that is not easily knowable and potentially prone for litigation.
16. It is important to mention that the word ‘supply’ includes import of a service, made for a consideration (as defined in Section 2(31)) of the CGST Act and whether or not in the course or furtherance of business. This implies that import of services even for personal consumption would qualify as ‘supply’ and therefore would be liable to tax. This would not be subject to the threshold limit as tax is expected to be payable on reverse charge basis, and the threshold limits do not apply in case of supplies attracting tax on reverse charge basis.

Please note that, import of services is included within the meaning of ‘supply’ under the CGST / SGST Acts. However, it would be liable to IGST since it would not be an intra-State supply. In fact, Section 2(21) of IGST Act has adopted the meaning of ‘supply’ from CGST/SGST Act.

## Chapter 4

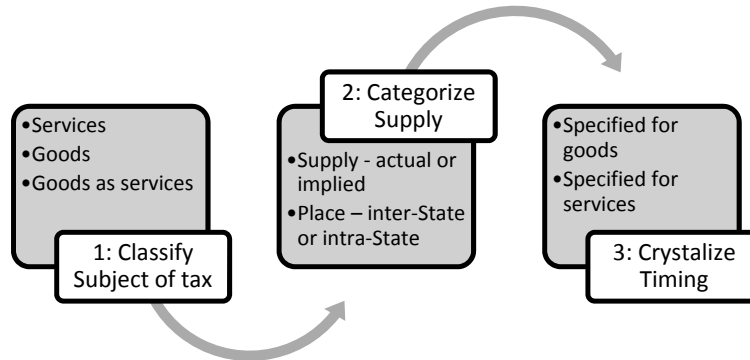
# Levy and Composition

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1. Tax is levied under section 9 of CGST Act, 2017 and the language appears clear and unambiguous. The ingredients for attracting the incidence of tax are:
  - Supply of goods and / or services except on the supply of alcoholic liquor for human consumption,  
Further, tax will be levied on supply of petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel only with effect from such date as may be notified by the Government after recommendation of the Council;
  - In an intra-State transaction;
  - Value determined as per Section 15;
  - At a rate specified by Notification, but not exceeding 40% (20% for State and 20% for Centre);

The collection of this tax would be in a manner 'as may be prescribed'.
2. Taxable event is that event, upon the happening or occurrence of which the incidence gets attached to the subject-matter of tax. Further, this incidence attaches itself as an encumbrance on the subject-matter. Only upon release of this encumbrance, can any further use or appropriation be permitted. To illustrate this statement, we can see in the Customs Act that 'all goods' come within the operation of section 12(1) and all 'excisable goods' are encumbered by section 3(1)(a) and (b) of Central Excise Act. Further, unless duties of customs or central excise have been paid, the goods retain the encumbrance like an albatross.
3. Where the tax incidence is on the person, like income-tax (Section 4), the said income can be freely expended even before the tax due is discharged, and without any form of encumbrance being attached to it. It is only the computation of tax that is based on the quantum of total-income but remains an impost on the person. And in this case, if the person fails to discharge the tax, the encumbrance remains even though all the income may have been legitimately expended.
4. The CGST Act poses a challenge to identify the subject-matter of the incidence. The difficulty is not in knowing 'when' the intra-State supply occurred but in identifying on 'what' this encumbrance attaches to. Levy of tax is when the taxing ingredients prescribed in the law are found in the facts of a transaction. Quantification is a matter of administrative freedom. Tax on manufacture can even be quantified on its MRP and this is perfectly fine in law.
5. Levy of tax is not over a period of time but at a point in time when the 'taxable event' occurs which is supply of good or services. Ambiguity in the description of this event

makes room for equally ambiguous explanations that may emerge. Courts have not supported strained interpretation of the plain language in provisions levying tax. The levy of CGST-SGST or IGST may be decided by applying the following steps:



## **COMPOSITION LEVY**

1. Section 10 of the CGST Act provides for the system of payment of taxes under a composition scheme, that is, payment of tax by a taxable person at a lower rate on the value of taxable supplies without the benefit of credit, but with restrictions as under:
  - a. the taxable person is not engaged in supply of services (other than a restaurateur);
  - b. the taxable person does not make any supply which are not liable to tax under the Act;

However, the Central Government *vide* Order No. 01/2017-Central Tax dated October 13, 2017 provides that if a person supplies goods/services referred to in clause (b) of paragraph 6 of Schedule II of the CGST Act, 2017 [i.e. Supply of food & beverages with services] and also supplies any exempt services, including services by way of extending deposits, loans or advances in so far as the consideration is in form of interest or discount, the said person shall be eligible for the composition scheme under Section 10 of the CGST Act, 2017, subject to the fulfilment of all other conditions specified therein.

Further, in computing his aggregate turnover in order to determine his eligibility for composition scheme, value of supply of any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

- c. the taxable person does not make any inter-State outward supplies of goods;

- d. the taxable person does not make any supply of goods through an e-commerce operator required to collect tax at source (TCS) under section 52;
  - e. the taxable person is not a manufacturer of notified goods.
2. Composition scheme would become applicable for all the business verticals having separate registrations within the State and all other registrations outside the State which are held by the person with same PAN.
  3. Taxable person opting to pay tax under the composition scheme is prohibited from collecting tax on the outward supplies
  4. This facility is not applicable to casual taxable persons or non-resident taxable persons.
  5. This facility is available up to the limit of aggregate turnover of ₹75 lacs [*vide Notification No. 8/2017-Central Tax dated June 27,2017 & Notification No. 2/2017-Union Territory Tax dated June 27,2017*]. But as stated above, a service provider (other than a restaurateur) cannot avail the benefit of Composition tax, and has to compulsorily operate under regular tax compliance.

It is pertinent to mention that the Central Government *vide Notification No. 46/2017-Central Tax dated October 13,2017* has revised the turnover limit for Composition Levy from ₹ 75 lakhs to ₹ 1 crore.

Thus, an eligible registered person, whose aggregate turnover in the preceding financial year did not exceed ₹1 crore, may opt to pay tax under composition levy at prescribed rates i.e. 1%, 2.5%, 0.5% as the case may be under respective Acts.

However, for the following States turnover limit for composition levy has been revised from ₹ 50 lakhs to 75 lakhs in the case of an eligible registered person:

- a. Arunachal Pradesh
- b. Assam
- c. Manipur
- d. Meghalaya
- e. Mizoram
- f. Nagaland
- g. Sikkim
- h. Tripura
- i. Himachal Pradesh

It may be noted that State of J&K and Uttarakhand have opted for ₹1 Crore Turnover limit instead of ₹75 Lacs.

6. It is important to note that for any tax payable under reverse charge mechanism, the option of payment under Composition scheme will not be available. In other words, a taxable person opting for composition scheme will be required to pay tax on supplies taxable under RCM at regular rates and not the composition rate. Further, such person shall not be eligible to claim Input tax credit of tax so paid under reverse charge mechanism.

## **NATURE OF SUPPLY**

1. Intra-State Supply are exigible to CGST/SGST while Inter State Supply is exigible to IGST. Therefore, it is pertinent to understand what is Inter/Intra State supply.
2. A supply shall be intra-State (liable to CGST, SGST) where the location of the supplier and place of supply are in the same State (or Union Territory) except to SEZ units/ developers. In any other case, the supply would be treated as an inter-State supply, liable to IGST.
3. *Where the supply is 'to' or 'by' an SEZ developer or unit*, then such supply will always be treated as inter-State supply.
4. Section 7 and 8 of IGST Act provides the definition of Inter and Intra State supplies. Same meaning is assigned to Intra State supplies of goods and services in the CGST Act, 2017 vide Section 2 (64) and (65) of the CGST Act respectively.

The relevant extract of Section 7 and 8 of IGST Act, 2017 in respect of Intra/ Intra State supplies of services respectively are as under:

### ***"Inter-State Supplies***

- (3) *Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in—*
  - (a) *two different States;*
  - (b) *two different Union territories; or*
  - (c) *a State and a Union territory,**shall be treated as a supply of services in the course of inter-State trade or commerce.*
- (4) *Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.*
- (5) *Supply of goods or services or both, —*
  - (a) *when the supplier is located in India and the place of supply is outside India;*
  - (b) *to or by a Special Economic Zone developer or a Special Economic Zone unit; or*



- (c) *in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.”*

***Intra-State Supplies***

- (2) *Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:*

*Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.*

*Explanation 1 —For the purposes of this Act, where a person has, —*

- (i) an establishment in India and any other establishment outside India;*
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or*
- (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory,*

*then such establishments shall be treated as establishments of distinct persons.*

*Explanation 2. —A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.”*

## Chapter 5

# Payer of Tax

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1. Tax is levied on the subject matter – supply – and not on the payer of the tax. In fact, if the incidence were to be on the payer of the tax, then it would not be a tax on supply. The manner in which the tax levied is to be collected is entirely left to the administrative convenience of the Executive. Tax being made payable by persons who are not service providers has become so common that the name has been coined to refer to such administrative measures – **reverse charge**.
2. The use by legislature to appoint any person who is most convenient to recover tax has been practised for a very long time. An example may be in the case of Central Excise where procurer of molasses was appointed to be liable to discharge duty levied on the manufacture of molasses. The levy continues to remain on manufacture, but the person on whom the burden to discharge this liability is cast is the one, who the lawmaker can reach out to, most easily and conveniently. This convenience to administration is lawful as long as the levy continues to remain on the subject matter arising from the taxing event.
3. Under the GST law, the levy of tax is as follows:
  - (a) In the hands of the supplier - on the supply of goods and / or services (referred to as tax under forward charge mechanism);
  - (b) In the hands of the recipient – on receipt of goods and / or services (referred to as tax under reverse charge mechanism)
4. In the normal course, the tax would be payable by the supplier of goods and / or services. However, in specific cases (as may be notified), the onus of payment of tax is shifted to the recipient of goods and / or services. To impose tax on reverse charge basis, the following conditions would be mandatory:
  - (a) Notification to be issued by the Central Government specifying the categories of supply of goods and / or services.
  - (b) Should be notified only on recommendation of the GST Council.
5. Further, where both persons in a transaction are required to pay portions of the total tax imposed, each of them continues to be liable but only to the extent cast on him, until it is paid and discharged. This is true even though one of them has failed to discharge the portion of the tax payable by him, and also, if one of them somehow decides to pay the whole of the tax levied. In other words, failure to pay that portion of the tax due by one person does not enhance the liability to pay on the other person. Also, that one of the persons has paid the whole of the tax levied, does not exonerate the other from

payment of his portion of the liability and that tax, greater than that leviable under the Act has been realised by the Government, does not permit either of the persons to forestall his liability to the extent imposed. At best, he who has paid more than his share of tax is always at liberty to approach the same Government to restore back the excess payment.

It is imperative to mention here, that there is no concept of partial reverse charge under GST as was there in erstwhile service tax.

Payment of service tax on 'import of services' is just another application of the above principle where a transaction takes place containing all the taxing ingredients, including taxable territory in which the transaction takes place. And the law, very gladly, places the responsibility on the person from whom it can recover the levy, most conveniently.

6. Import of service under GST will be taxable in the hands of the recipient (importer).
7. Another concept to consider is the requirement of two persons for undertaking a transaction before tax can be imposed. In the case of an association comprising of members where the object of such association is to collect monies from its members and expending it for their common welfare, no tax can be imposed on such transactions because the members and the association are not distinct persons. For example, monies contributed by members of an apartment owners' association is not liable to income tax. Similarly, goods transferred from the factory of an entity located in one State to a sales outlet located in another State of the same entity were not liable to VAT. This principle is called the principle of mutuality. In other words, there is a requirement of two persons to be present to undertake a transaction that can attract the incidence of tax. Money contributed by members of the association is not income of the association and goods transferred from the factory to sales outlet of the same legal entity is not a sale because one cannot sell to oneself. In both these examples, two persons are required to constitute a taxable transaction. This principle of mutuality being a necessary concomitant for taxation, has been agitated in service tax laws with moderate amount of success compared to acceptance of this principle as salutary under VAT and Income Tax Laws.
8. However, the GST law overrides this legal requirement of mutuality and as a result, transactions between members of an association and the association of such members is also treated to be a service *inter se* and liable to tax unless it is goods which would also be treated as supply of goods by virtue of Paragraph 7 of Schedule II. Further transactions between the head office and a branch office are also liable to tax when the service provider is located outside the taxable territory as defined in service tax. In such cases, so long as it is established that the service provider operating within the taxable territory for purposes of service tax is a "fixed establishment" or a mere representational and non-functional office, it is to be treated as if it has the requirements of a distinct person capable of entering into such a transaction with the head office and become liable to tax.

9. The provisions of section 9(3) of the CGST Act, 2017 make it clear that the Government has armed itself with adequate powers to notify certain categories of persons to pay taxes on reverse charge basis on supply of goods or services or both. In this scenario, all the provisions of the Act, shall apply to the *Recipient* as if he were the supplier.
10. Apart from the above provision, the Government, in section 9(4) of the CGST Act, 2017, makes it clear that tax would become payable by a recipient of goods or services or both when supplies are effected by a supplier **who is not registered**. It must be noted that the phrase supplier **who is not registered** would mean and include – (a) a person who is not registered, but not in the State from where he is making the taxable supply; (b) a person who is not required to register; and (c) a person liable to register but not registered. The point for discussion would be – whether there can be a reverse charge in cases of persons not required to register? The moot point is whether tax can be imposed under reverse charge, when the forward charge itself fails.
11. In this regard, the Central Government *vide Notification No. 8/2017 – Central Tax (Rate) dated June 28, 2017* has exempted intra-State supplies of goods or services or both received by a registered person from any supplier, who is not registered, from the whole of the central tax leviable thereon under section 9 (4) of the CGST Act.

However, the said exemption shall not be applicable where the aggregate value of such supplies of goods or service or both received by a registered person from any or all the suppliers, who is or are not registered, exceeds ₹ 5000/- in a day.

The Central Government *vide Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017*, has amended Notification No. 8/2017 – Central Tax (Rate) dated 28th June, 2017 by omitting the proviso under Paragraph 1 which deals with the exemption limit of ₹ 5000 per day available to the registered person on procurement of goods or services from any or all unregistered suppliers. Now, the exemption shall be available to all the registered persons till March 31, 2018 without any limit in case of supplies procured from unregistered supplier.

Therefore, any registered person procuring taxable goods/services from unregistered suppliers, shall not be required to pay CGST under reverse charge mechanism under section 9(4) of CGST Act, 2017 till March 31, 2018 with effect from October 13, 2017

12. In GST, where any supply of services is effected through e-commerce operators (commonly known as services provided by aggregators), the law provides that the Central / State Government may on recommendation of the Council specify (notify) that the e-commerce operator will be liable to discharge the tax on such supplies. It is important to note that, in such supplies, the e-commerce operator is neither the supplier of services nor the service recipient. The Levy has been shifted to the third party who is aggregator of services as E-commerce operator such as Ola, Uber, Urban Clap. It is important to note that this exception is carved out only in respect of supply of services through an e-commerce operator and will not be applicable / relevant to supply of any

goods through an e-commerce operator which is covered under section 52 of CGST Act, 2017 wherein E- commerce operator such as Flipkart, Amazon is liable to deduct TCS.

Furthermore, where the e-commerce operator does not have a physical presence in the taxable territory, the representative (being agent / any other person) of the operator (if any) shall be the person liable to pay tax. Where such representative also does not have presence in such territory, the operator should appoint a person specifically for this purpose.

## Chapter 6

# Person and Taxable Person

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1. The term 'Person' has been defined in section 2(84) of the CGST Act to include natural persons and juridical entities being one with capacity to contract and perform such contract.

2(84) "person" includes—

- (a) *an individual;*
- (b) *a Hindu Undivided Family;*
- (c) *a company;*
- (d) *a firm;*
- (e) *a Limited Liability Partnership;*
- (f) *an association of persons or a body of individuals, whether incorporated or not, in India or outside India;*
- (g) *any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;*
- (h) *any body corporate incorporated by or under the laws of a country outside India;*
- (i) *a co-operative society registered under any law relating to co-operative societies;*
- (j) *a local authority;*
- (k) *Central Government or a State Government;*
- (l) *society as defined under the Societies Registration Act, 1860;*
- (m) *trust; and*
- (n) *every artificial juridical person, not falling within any of the above;*

'Taxable person' is defined in section 2(107) to be *a person who is registered or liable to be registered under section 22 or section 24*". By paraphrasing, the ingredients can be identified are:

- Person (section 2(84));
- Registration:

- Requiring registration (section 22 or 24);
  - Voluntary registration (section 22).
2. On a plain reading of the various definitions listed above, the following inferences can be drawn:
- A taxable person is always a natural or juridical entity first;
  - A natural or juridical entity becomes a taxable person when two facts are present – carrying on business and requiring registration;
  - Requirement to be registered alone does not constitute a taxable person which requires the twin tests to be fulfilled (refer above) as registration is required even when no business is carried on;
  - A natural or juridical entity constituting a taxable person is to be administered separately in each State;
  - A single natural or juridical entity can constitute more than one taxable person in India; and
  - A single natural or juridical entity cannot constitute multiple taxable persons in one State as registration within a State is permitted only on the condition of differentiation based on activities being distinct business verticals.
  - Further, the CGST Act lists down persons who are deemed to be taxable persons under the Law, even though they belong to one single person / entity:
    - (a) A person who has obtained or is required to obtain more than one registration, whether in one State or more than one State – is treated as distinct person in respect of each such registration for the purposes of this Act;
    - (b) An establishment of a person who has obtained or is required to obtain registration in a State, and any if his other establishments in another State are treated as establishments of distinct persons for the purposes of this Act.
3. Thus, any transaction between branches/units/corporate offices would be deemed as a supply under Section 7 and hence would be taxable.

## Chapter 7

# Input Service Distributor

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1. In the past, when goods in respect of which creditable taxes were paid, but were procured (by way of import or from a manufacturer) by a 'dealer', the available credit would be forfeited due to the interjection of the dealer in the supply chain. There may be several reasons for the supply of such goods to a dealer, which are not directly to the manufacturer. For example:
  - There may be a minimum order quantity for procurement that is beyond the average requirement or storage capacity of each manufacturer; or
  - That the goods may be of specialized nature that storage, transportation and handling requires sophisticated equipment that are not available with manufacturers; or
  - There could be economies in consolidated procurement which manufacturers are not able to leverage.
2. Since the introduction of MODVAT in the year 1986, dealer's registration has come to occupy an important place in Central Excise Laws where the dealer is permitted to issue a special document – Dealer's invoice – which dis-aggregates the total creditable duties paid in proportion to the quantity delivered to each manufacturer, that loss of credit (and hence cascading effects) were successfully avoided. Such dealers neither claimed credit of duties paid, nor charged duty to manufacturers. They merely 'passed on' actual creditable duties paid by referencing the procurement documents – bill of entry for imports and excise invoice for domestic manufacturers – and issuing this Dealer's invoice. *Excessive transparency in the cost of purchase and selling price, limited the popularity of this procedure in central excise.*
3. Total creditable duties paid and the quantity of goods in respect of which the duties are paid provides the 'credit per unit' that can be passed on. A manufacturer-purchaser is entitled to claim this 'credit per unit' for the quantity received from such dealer as evidenced by the Dealer's invoice. Any goods sold by the dealer to a non-manufacturer, is not retained and carried forward by the dealer, but lapses to the extent of such sales to non-manufacturers.
4. Based on the experience under the erstwhile central excise laws, the service tax law, in the year 2004, introduced the concept of input service distributor ("ISD"), within the CENVAT Credit Rules, 2004 on similar lines, except that the receipt and distribution of credit was within the same legal entity and not to third parties. That is, if one office receives the invoice (or other duty paying documents) in respect of costs, where creditable taxes are paid, but another office (or factory) where output taxes are payable, uses services involved in these costs, then the office registers as an 'input service



distributor’ and issues an ISD-invoice of the office (or factory) which utilizes the underlying services. ISD is free to distribute all creditable taxes paid, but the recipient of the ISD-invoice is responsible to demonstrate eligibility to avail such credit based on the credit entitlement provisions. While in central excise, the procedure of Dealer’s invoice is related to excisable goods, in service tax, the procedure of ISD is limited to input services.

5. Under GST Laws, the concept of ISD (as under the service tax law) is continued. That is, where invoice or other documents evidencing creditable taxes are received at a location, from where no taxable supplies are made or provided, the law provides for a system of permitting the location receiving such documents to be registered as an input service distributor. Location receiving the benefit of the underlying **services** may claim credit based on the invoice issued by such input service distributor, being the office or location of the same person (not same ‘taxable person’) that has received the document containing creditable taxes paid. There is one exception in ISD scheme under the GST Laws compared to that in the service tax regime. That is, ISD under the service tax regime is not responsible to examine eligibility of the recipient to the credit. In the GST regime, the ISD is permitted to distribute credit only to the extent the underlying service is ‘attributable’ to such recipient. So, the ISD is now required to inquire into the extent to which credit can be distributed to the recipient. Where, there are more than one recipient, the rule of proportion operates.. The ISD is also required to distribute the taxes ineligible for input tax credit, as ineligible credits, in order to enable the actual recipient-taxable-persons to disclose such amount of taxes ineligible for credits.
6. As regards the taxes paid and credit that is permitted to be distributed, the following tabulation may be referred:

<i><b>Location of ISD and Recipient</b></i>	<i><b>GST paid by ISD on underlying services</b></i>	<i><b>GST to be distributed by the ISD</b></i>
In different States	CGST, SGST and IGST	As IGST
In same State	CGST	As CGST
	SGST	As SGST
	IGST	As IGST

7. Distribution of credit by ISD is permitted in GST only in respect of tax paid on input services. Note that ‘services’ include certain supply of goods ‘treated as’ supply of services under Schedule II.

**Illustration:** The Corporate office of XYZ Ltd., is at New Delhi, having its business locations of selling and servicing of goods at New Delhi, Chennai, Mumbai and Kolkata. If the software license and maintenance is used at all the locations, invoice indicating CGST and SGST is received at Corporate Office. Since the software is used at all the four locations, the input tax credit of entire services cannot be claimed at New Delhi.

The same has to be distributed to all four locations. For that reason, the Delhi Corporate office has to act as ISD to distribute the credit.

**Illustration (Rule 39):**

**Rule 39 of Central Goods and Service Tax Rules, 2017**

The example provided below illustrates the application of Rule 39 of the Central Goods and Service Tax Rules, 2017 for distribution of credits by an Input Service Distributor (ISD) in terms of Section 20.

Yoko Infotech Ltd. has its head office in Mumbai, for which it additionally has an ISD registration. The company has 12 units across India including its head office. It receives the following invoices in the name of the ISD at Mumbai, for the month of January 2018:

**Invoice A:** ₹ 100,000 @ **IGST** 18,000 issued by Peace Link Technologies (registered in Uttar Pradesh) for repairs executed in 3 units – **Bangalore, Kolkata, Gurgaon** (Note: Gurgaon location is not registered as it is engaged in making only exempt supplies);

**Invoice B:** ₹ 300,000 @ **CGST** 27,000, **SGST** 27,000 issued by M/s. Tec Force (registered in Pune) for repairs executed in 3 units – **Mumbai, Bangalore, Kolkata**;

**Invoice C:** ₹ 500,000 @ **IGST** 90,000 issued by M/s.Georgia Marketing (registered in Bangalore) for marketing services for the **company as a whole**;

**Invoice D:** ₹ 10,000 @ **CGST** 900 & **SGST** ₹900 issued by M/s.Gopal Coffee works (registered in Mumbai) for supply of beverages during the month to its **Mumbai unit**.

All taxes have been considered at 18% (CGST and SGST at 9% each).

The turnover of each of the units during the year 2016-17 is: Mumbai: ₹ 1 crore; Bangalore ₹ 2 crore; Kolkata ₹ 1 crore; Gurgaon ₹ 2 crore; each of the other 8 units: ₹ 50 lakhs, resulting in the aggregate turnover of the company in the previous financial year, of ₹ 10 crores.

**Distribution of credits by the ISD:**

<i>Particulars</i>	<i>Invoice</i>	<i>Bangalore</i>	<i>Kolkata</i>	<i>Mumbai</i>	<i>Gurgaon</i>	<i>8 units</i>	<i>Total</i>
<b>Invoice A</b>							
T/o in State	<b>Note 1</b>	₹2 crore	₹1 crore	-	₹2 crore	-	₹5 crore
Pro-rata ratio		40%	20%	-	40%	-	100%
Credit	18,000	7,200	3,600	-	7,200	-	18,000
Type	IGST	IGST	IGST	-	IGST	-	

**Input Service Distributor**

<b>Invoice B</b>							
T/o in State	<b>Note 2</b>	₹2 crore	₹1 crore	₹1 crore	-	-	'4 crore
Pro-rata ratio		50%	25%	25%	-	-	100%
CGST Credit	27,000						
• Distribution		13,500	6,750	6,750	-	-	27,000
Type	CGST	IGST	IGST	CGST	-	-	
SGST Credit	27,000						
• Distribution		13,500	6,750	6,750	-	-	27,000
Type	SGST	IGST	IGST	SGST	-	-	
<b>Invoice C</b>							
T/o in State	<b>Note 3</b>	₹2 crore	₹1 crore	₹1 crore	₹2 crore	0.5 * '8 crore	₹10 crore
Pro-rata ratio		20%	10%	10%	20%	5% * 8 units	100%
Credit	90,000	18,000	9,000	9,000	18,000	4,500 * 8 units	90,000
Type	IGST	IGST	IGST	IGST	IGST	IGST	
<b>Invoice D</b>							
Attributable to	<b>Note 4</b>	-	-	Yes	-	-	-
Credit (ineligible)	900	-	-	900	-	-	900
Type	CGST	-	-	CGST	-	-	
Credit (ineligible)	900	-	-	900	-	-	900
Type	SGST	-	-	SGST	-	-	

**Hand Book on GST for Service Providers**

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Credit of CGST, SGST and IGST on invoice		Total eligible credits distributed as CGST, SGST and IGST as applicable (Refer Note below)					
CGST	<b>27,000</b>	-	-	6,750	-	-	<b>6,750</b>
SGST	<b>27,000</b>	-	-	6,750	-	-	<b>6,750</b>
IGST	<b>108,000</b>	52,200	26,100	9,000	25,200	4,500 each (viz. total of 36,000)	<b>148,500</b>
<b>TOTAL</b>	<b>162,000</b>	52,200	26,100	22,500	25,200	36,000	<b>162,000</b>

It can be seen from the illustration that credit of CGST of ₹ 27,000 is distributed as CGST credit only to the extent of ₹ 6,750; likewise, credit of SGST of ₹ 27,000 is distributed as SGST credit only to the extent of ₹ 6,750. This is because, the intra-State service billed to the ISD is attributable to 1 unit in the same State as the ISD and 2 other units located in different State. Thus, the balance of CGST credit and SGST credit is distributed as IGST to such units. This is the reason why the credit of IGST lying with the ISD prior to distribution is only ₹ 108,000 while the credit of IGST that is distributed aggregates to ₹ 148,500.

## Chapter 8

# Registration

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### Persons liable for registration [Section 22]

- Every supplier shall be liable to be registered under the Act in the State from which he makes a taxable supply of Goods or Services or both. Registration is required if his aggregate turnover in a financial year exceeds Rupees Twenty Lakhs. This threshold limit will be Rupees Ten Lakhs if a taxable person conducts his business in any of the special category States as specified in sub-clause (g) of clause (4) of Article 279A of the Constitution i.e. Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.

- **How the Aggregate Turnover is calculated?**

XYZ Pvt. Ltd. is a manufacturing unit in Mumbai, Maharashtra along with a unit at Assam. Turnover details of all the units are as follows:

Mumbai Unit: ₹ 8 Lakhs

Assam Unit: ₹ 11 Lakhs

Assam Unit is in a special category State wherein the registration limit is ₹ 10 lakhs. Hence, in the given case XYZ Pvt. Ltd would be required to take registration in Assam due to aggregate turnover being ₹ 11 Lakhs. Now it needs to be analyzed whether the Mumbai unit is also required to get registered even though the aggregate turnover of all the units is less than ₹ 20 lakhs.

Even though the aggregate turnover is less than ₹20 Lakhs, registration would be mandatory in Mumbai also by virtue of the mandatory registration in Assam

- It means that for each State, the supplier liable for registration will have to take a separate registration even though such supplier may be supplying goods or services or both from more than one State as a single entity. The application for registration shall be made within 30 days from the date when he becomes liable for registration.
- Casual taxable person or a non-resident taxable person shall apply for registration at least 5 days prior to the commencement of business.
- A person having multiple business verticals [as defined in Section 2(18)] in one State may obtain separate registration for each of the business vertical, subject to the prescribed conditions.
- For calculating the threshold limit, the turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals. Further, supply of goods by a registered Job-worker, after completion of job work, shall

be treated as the supply of goods by the “principal” referred to in section 143 (i.e. Job work procedure) of this Act. The value of such goods shall not be included in the aggregate turnover of the registered job worker.

- Every person who, on the day immediately preceding the appointed day, is registered or holds a license under an earlier law, shall be liable to be registered under this Act with effect from the appointed day.
- Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer can proceed to register such person in the manner as may be prescribed.
- A person, though not liable to be registered under Section 22, may get himself registered voluntarily, and once registered all provisions of this Act, shall apply to such person.
- Transfer of Business and Registration -If the registered taxable person transfers business on account of succession or otherwise, to another person as a going concern, the transferee, or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession. This means that the Registration Certificate issued under Section 22 of the Act is not transferable to any other person. In case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies by an order of a High Court, the transferee shall be liable to be registered with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court.

### **Persons not liable for registration [Section 23]**

In terms of section 23 of the CGST Act, following persons shall not be liable for registration

- (a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the IGST Act;
- (b) an agriculturist, to the extent of supply of produce out of cultivation of land- an agriculturist is not liable for registration only to the extent of supply of produce out of cultivation of land. If an agriculturist undertakes supplies which are not linked to the cultivation of land, he will fall within the provisions of Section 22 and may have to take registration in respect of such supplies
- (c) Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

In this regard, Central Government *vide Notification No. 05/2017-Central Tax, dated June 19, 2017* has w.e.f June 22, 2017 amended section 23 of the CGST Act, 2017 to include the persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by

the recipient of such goods or services or both under section 9(3) of the CGST Act, 2017 in the category of persons exempted from obtaining registration under the aforesaid Act.

### **Compulsory registration in certain cases**

As per Section 22 there are certain conditions subject to fulfillment of which registration must be taken. However, Section 24 enlists following eleven types of persons who shall compulsorily obtain registration even though these persons do not trigger the provisions prescribed under Section 22:

- (i) Persons making any inter-State taxable supply ;

It is imperative to mention here that, with effect from October 13, 2017, the Central Government *vide Notification No. 10/2017 – Integrated Tax dated October 13, 2017*, has exempted the persons making inter-State supplies of taxable services and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of ₹ 20 lakhs in a financial year from obtaining registration. Further, the aggregate turnover limit should not exceed ₹ 10 lakhs for availing exemption from registration for the States specified in Article 279A (4) (g) of the Constitution, other than the State of Jammu and Kashmir

*However, persons making any inter-State taxable supply of goods has to compulsory register under GST irrespective of aggregate turnover.*

- (ii) Casual taxable persons making taxable supply;
- (iii) Persons who are required to pay tax under reverse charge;
- (iv) Persons who are required to pay tax under sub-section (5) of section 9;
- (v) \Non-resident taxable persons making taxable supply;
- (vi) Persons who are required to deduct tax under section 51, whether or not separately registered under this Act;

It is important to mention here that, *Press Release for 22<sup>nd</sup> GST meeting on October 6, 2017* inter alia states that: *after assessing the readiness of the trade, industry and Government departments, it has been decided that registration and operationalization of TDS/TCS provisions shall be postponed till 31.03.2018.*

[[http://www.cbec.gov.in/resources//htdocs-cbec/gst/20171006\\_PressRelease\\_22<sup>nd</sup> GSTCMeeting.pdf](http://www.cbec.gov.in/resources//htdocs-cbec/gst/20171006_PressRelease_22<sup>nd</sup> GSTCMeeting.pdf)]

- (vii) Persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- (viii) Input Service Distributor, whether or not separately registered under this Act;
- (ix) Persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;

It is pertinent to mention that Press release dated June 26, 2017 inter alia provides thus:

*“3. The persons who were liable to be registered under clause (ix) of Section 24 of the CGST / SGST Act, 2017 (as they were supplying goods or services through electronic commerce operator who is required to collect tax at source under Section 52) will not be liable to register till the provision of Tax Collection at Source is brought under force. In other words, persons supplying goods or services through electronic commerce operator liable to collect tax at source would not be required to obtain registration immediately, unless they are so liable under Section 22 or any other category specified under Section 24 of the CGST / SGST Act, 2017.”*

[<http://pib.nic.in/newsite/PrintRelease.aspx?relid=166896>]

- (x) Every electronic commerce operator;
- (xi) Every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person.

Further, the Government on the recommendations of the Council may notify such other person or class of persons who are required to compulsorily obtain the registration.

### **Procedure for registration [Section 25 read with Rules 8 to 26 of the CGST Rules, 2017]**

- Section 25 read with Rules 8 to 26 of the CGST Rules, 2017 relating to registration provide a detailed road map on the procedural aspects of registration.
- Every person who is liable to take a registration or wants to obtain voluntary Registration shall have a Permanent Account Number (PAN).
- Every person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number (TAN)
- A non-resident taxable person can obtain registration on the basis of any other document as may be prescribed.
- Any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries and any other person or class of persons as may be notified by the Commissioner, shall obtain a Unique Identity Number (UIN)
- Rule 18 of CGST Rules, 2017 provides for **display of Registration Certificate & GSTIN** in a prominent location at the principal place of business and at every additional place of business.
- The Registration rules prescribe 30 different forms in respect of registration matters. The application for registration should be disposed off in a time bound manner and detailed time limits have been prescribed under the rules for various purposes.



- Following Table lists the relevant Forms:

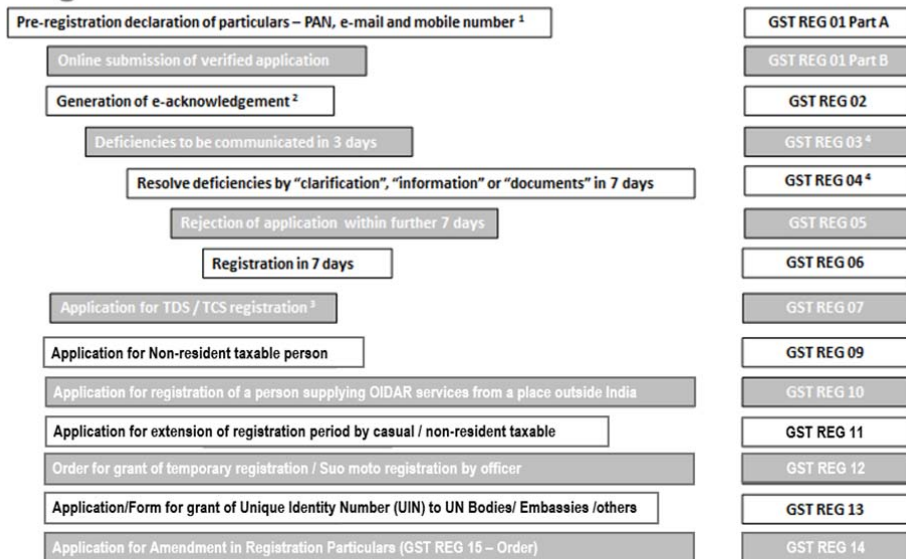
SL No.	Form No	Title of the Form
1	GST-REG-01	Application for registration
2	GST-REG-02	Acknowledgement
3	GST-REG-03	Notice Seeking Additional information/ clarification/ documents relating to application for registration / amendment / cancellation
4	GST-REG-04	Furnishing clarification sought in GST REG03
5	GST-REG-05	Order of rejection of Application
6	GST-REG-06	Registration Certificate issued
7	GST-REG-07	Application for Regn. of Tax Deductor / Tax Collector at source
8	GST-REG-08	Order of cancellation of registration as Tax deductor or Tax collector at source
9	GST-REG-09	Application for Registration for Non-Resident Taxable person
10	GST- REG-10	Application for registration of person supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person
11	GST-REG-11	Application for extension in period of causal taxable person or non-resident taxable person
12	GST-REG-12	Temporary \ <i>suo motu</i> Registration
13	GST-REG-13	Application for grant of UID
14	GST-REG-14	Application for Amendment in Registration Particulars (For all types of registered persons)
15	GST-REG-15	Order of Amendment
16	GST-REG-16	Application for Cancellation of Registration
17	GST-REG-17	Show Cause Notice for Cancellation of Registration
18	GST-REG-18	Reply to the Show Cause Notice issued for Cancellation
19	GST-REG-19	Order for Cancellation of Registration
20	GST-REG-20	Order for dropping the proceedings for cancellation of registration
21	GST-REG-21	Application for Revocation of Cancellation of Registration

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22	GST-REG-22	Order for revocation of cancellation of registration
23	GST-REG-23	Show Cause Notice for rejection of application for revocation of cancellation of registration
24	GST-REG-24	Reply to the notice for rejection of application for revocation of cancellation of registration
25	GST-REG-25	Certificate of Provisional Registration
26	GST-REG-26	Application for Enrolment of Existing Taxpayer
27	GST-REG-27	Show Cause Notice for cancellation of provisional registration
28	GST-REG-28	Order of cancellation of provisional registration
29	GST-REG-29	Application for cancellation of provisional registration
30	GST-REG-30	Form for Field Visit Report

For ease of reference the brief of Registration Rules with regard to obtaining registration are provided in a flowchart form:

### Registration Rules



<sup>1</sup> Verification of PAN with CBDT database and e-mail / mobile with OTP

<sup>2</sup> Casual taxable person to receive temporary identification number to make deposit u/s 19A

<sup>3</sup> Officer to cancel TDS-TCS registration no longer required in GST REG 08

<sup>4</sup> Deficiency notice in GST REG 03 and resolution in GST REG 04 apply for change request also

Separate application in GST REG 01 if registration required for each business vertical or change in PAN

### **Deemed registration**

The grant/ rejection of registration or the UIN under the SGST Act or the UTGST Act shall be deemed to be a grant/rejection of registration or the UIN under CGST Act.

Provided such application of grant of registration has not been rejected under CGST Act within the time specified in section 25 (10).

### **Special provisions relating to casual taxable person and Non- resident taxable person [Section28 read with Rule 13 and 15]**

- The certificate of registration issued to a “casual taxable person” or a “non-resident taxable person” shall be valid for a period specified in the application for registration or 90 days from the effective date of registration, whichever is earlier, extendable by proper officer for further period of maximum 90 days at the request of taxable person.
- A casual taxable person or a non-resident taxable person while seeking registration shall make an advance deposit of tax in an amount equivalent to the estimated tax liability. Where any extension of time is sought, such taxable person shall deposit an additional amount of tax equal to the estimated tax liability for the period for which the extension is sought. Such deposit shall be credited to the electronic cash ledger of and utilized in the manner provided under section 44 (Payment of Tax, interest, penalty and other amounts) of the Act.
- Since, their nature of the activity are temporary, additional safeguards have been placed to ensure that the registration is granted for a limited period and the tax liability is recovered in advance.
- Rules 13 of the CGST Rules 2017 provides for the detailed process of grant of registration to non-resident taxable person and Rule 15 provides for the process of extension in period of operation by casual taxable person and non-resident taxable person .

### **Amendment of Registration [Section28 read with Rule19]**

- Every registered person and a person to whom a unique identity number has been assigned shall inform the proper officer of any changes in the information furnished at the time of registration or subsequent thereto, in accordance with Rule 19 of CGST Rules, 2017 (within 15 days of change).
- Proper officer may approve or reject amendments in the registration. Before rejecting such application a reasonable opportunity of being heard is provided.
- Any rejection or, approval of amendments under the SGST Act or UTGST Act shall be deemed to be a rejection or approval of amendments under the CGST Act.

### **Cancellation of registration [Section 29 read with Rule 20-22]**

- Any Registration granted under the CGST Act may be cancelled by the proper officer either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person.

A registered person, other than a person to whom a unique identification number has been granted under Rule 17 or a person to whom registration has been granted on the basis of TAN under Rule 12, can seek cancellation of his registration.

In respect of a taxable person who has obtained voluntary registration, the application for cancellation of registration would not be entertained before expiry of 1 year from effective date of registration.

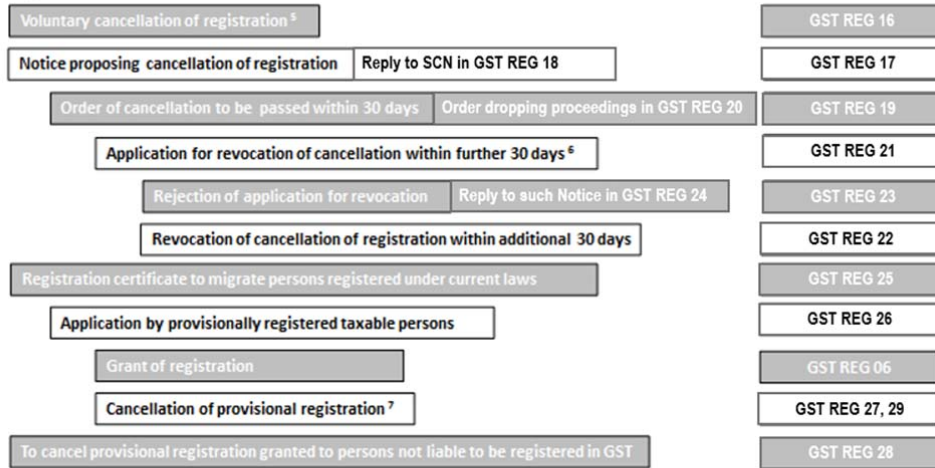
- A registration granted can be cancelled when –
  - The business is discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, de-merged or otherwise disposed of; or
  - There is any change in the constitution of the business; or
  - The taxable person, other than the person registered under Section 25(3), is no longer liable to be registered under Section 22 or Section 24; or
  - The registered person does not conduct any business from the declared place of business [Rule 21]; or
  - The registered person issues bill or invoice without supply of goods and/or services in violation of the provisions of the Act or the Rules made thereunder. [Rule 21]
  - Where registered taxable person has contravened the provisions of the Act as may be prescribed
  - A composition supplier has not furnished returns for 3 consecutive tax periods/ any other person has not furnished returns for a continuous period of 6 months
  - Non-commencement of business within 6 months from date of registration by a person who has registered voluntarily.
  - The registered person violates provisions of Section 171 of the Act or rules
- Proper officer may cancel the registration of a person from such date, including retrospective date, as he may deem fit only after affording an opportunity of being heard, when –
  - a registered taxable person has contravened such provisions of the Act or the rules made there under as may be prescribed; or

- a person paying tax under Composition Scheme has not furnished returns for three consecutive tax periods; or
  - any registered person, other than the person paying tax under composition scheme, has not furnished returns for a continuous period of six months; or
  - any person who has taken voluntary registration and has not commenced business within 6 months from the date of registration; or
  - where registration has been obtained by means of fraud, willful misstatement or suppression of facts.
- Cancellation of registration, shall not affect the liability of the taxable person to pay tax and other dues under the Act for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.
  - Cancellation of registration under SGST or UTGST Act shall be deemed to be a cancellation of registration under the CGST Act or vice versa
  - Notice of hearing and opportunity of being heard is a MUST before cancellation
  - Where the registration is cancelled, the registered taxable person shall pay an amount equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher. The payment can be made by way of debit in the electronic credit or electronic cash ledger.

In case of capital goods, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods reduced by the prescribed percentage points or the tax on the transaction value of such capital goods [under sub-section (1) of section 15 (Value of Taxable supply) of Act], whichever is higher. The amount payable under these provisions shall be calculated in accordance with the generally accepted accounting principles.

- For ease of reference the brief of Registration Rules with regard to Cancellation of Registration are provided in a flowchart form:

## Registration Cancellation Rules



<sup>5</sup> Persons who voluntarily registered need to retain registration for 1 year

<sup>6</sup> Deficiency notice in GST REG 03 and resolution in GST REG 04 apply for revocation also

<sup>7</sup> Cancellation of provision registration only on issue of notice in GST REG 23 and adjudication

If application for revocation not liable for *prima facie* rejection, deficient information to be called for and notice for adjudication in GST REG 19 required to be issued for disposal of revocation application

## Revocation of cancellation of registration (Section 30 of the CGST Act read with Rule 23]

- Any registered taxable person, whose registration is cancelled, subject to prescribed conditions and circumstances, may apply to the proper officer for revocation of cancellation of the registration within 30 days from the date of service of the cancellation order.
- A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, to such proper officer, within 30 days from the date of service of the order of cancellation of registration.

Provided that an application for revocation shall not be filed if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns has been paid along with any amount payable towards interest, penalties and late fee payable in respect of the said returns

## **Registration**

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- The proper officer may in prescribed manner and within prescribed period, by an order, either revoke cancellation of the registration, or reject the application for revocation for good and sufficient reasons.
- The proper officer shall not reject the application for revocation of cancellation of registration without giving a show cause notice and without giving the person a reasonable opportunity of being heard.
- Revocation of cancellation of registration under State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a revocation of cancellation of registration under the Central Goods and Service Tax Act and vice versa

## Chapter 9

# Exemption

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### STATUTORY PROVISION [Section 11 of CGST /UTGST Act]

Section 11 of the CGST Act ,2017 states that

#### **Power to grant exemption from tax**

- (1) *Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.*
- (2) *Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.*
- (3) *The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.*

*Explanation. —For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.“*

### **Introduction**

Section 11 of the CGST Act, 2017 confers powers on the Central Government to exempt either absolutely or conditionally goods or services or both of any specified description from whole or part of the central tax/ integrated, on the recommendations of the Council. It also confers power on the Central Government to exempt from payment of tax any goods or services or both, by special order, on recommendation of the Council.

### **Analysis**

The Central or the State Governments are empowered to grant exemptions from tax, subject to the following conditions:



- (i) Exemption should be in public interest
- (ii) By way of issue of notification
- (iii) On the recommendation from the Council
- (iv) Absolute / conditional exemption may be for any goods and / or services
- (v) Exemption by way of special order (and not notification) may be granted by citing the circumstances which are of exceptional nature.

The Central Government vide *Notification No. 09/2017-Central Tax (Rate) dated 28.06.2017* has exempted intra-State supplies of goods or services or both received by a deductor under section 51 of the said Act, from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the said Act, subject to the condition that the deductor is not liable to be registered otherwise than under sub-clause (vi) of section 24 of the said Act.

Further, Central Government vide *Notification No. 10/2017-Central Tax (Rate) dated 28.06.2017* has exempted intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the central tax on the value of outward supply of such second hand goods as determined under sub-rule (5) of rule 32 of the Central Goods and Services tax Rules, 2017, from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the Central Good and Services Tax Act, 2017

- (vi) The registered person supplying the goods or services or both shall not collect the tax more than the effective rate as exempted by the Government.

With specific reference to the fourth condition indicated above, it is important to note that the exemption would be in respect of goods or services or both, and not specifically for any classes of persons. E.g.: An absolute exemption could be granted in respect of supply of water. A conditional exemption could be supply of goods to canteen stores department.

From the explanation provided, there is one school of thought wherein it is opined / understood that in case of conditional exemptions, there is an option available to the taxable person to pay the tax (by which , there would be no requirement for input tax credit reversals). However, an absolute exemption is required to be followed mandatorily. The other view is that neither of the exemptions are optional but are mandatory when the conditions relating to the exemption are satisfied.

In terms of sub-section (2), the Government may issue a special order on a case-to-case basis exempting from payment of tax. The circumstances of exceptional nature would also have to be specified in the special order.

To provide more clarity to explain the exemption notification or the special order, it is provided that the Government may issue an “Explanation” at any time within a period of 1 year from the date of notification or special order. The effect of this “Explanation” would be retrospective, viz., from the effective date of the relevant notification or special order.

**Effective date of the notification or special order**

The effective date of the notification or the special order would be the date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would be the:

- date of its issue for publication in the official gazette;
- date on which it is made available on the official website of the Government Department

**Illustrations for Absolute Exemptions**

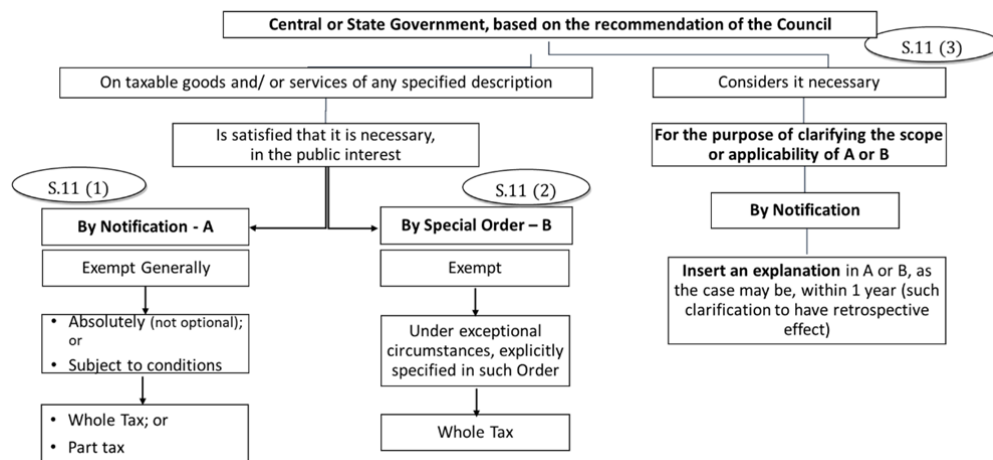
1. The Central Government has exempt the tax payable under the CGST / UTGST / IGST Acts by any taxable person on supply of “salt” with effect from 01.07.2017.
2. Transmission or distribution of electricity by an electricity transmission or distribution utility.

**Illustrations for Conditional Exemptions**

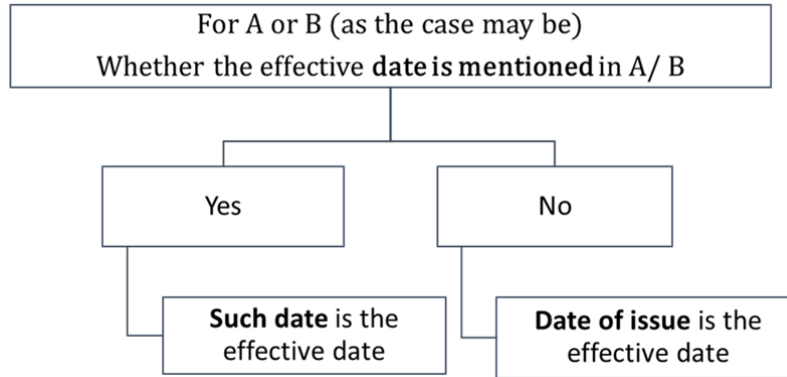
1. The Central Government has exempt the tax payable under the CGST/ UTGST/ IGST Acts by any taxable person on supply of "Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation less than ₹ 1000/- per day".

The above provision could be summarised through a flowchart as under:

**Power to grant exemptions: Sec. 11**



For the purpose Section 11, the effective date or date of issue of the Notification or Order, is determined as under:



Notification No. (on Services)	Particulars	Comments
Notification No. 08/2017-Central Tax (Rate) dated 28.06.2017	Exemption granted from levy of CGST under RCM on supplies received from unregistered persons. (if value of supplies does not exceed ₹ 5000 from any or all the suppliers in a day)	No such exemption under IGST.
Notification No. 09/2017-Central Tax (Rate) dated 28.06.2017	Exemption granted to supplies to a Tax deductor by a unregistered supplier	This exemption notification is not available under IGST (Rate).
Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017	Exemption to supply of 85 services under CGST Act. More or less, all the exemptions were available earlier also in service tax law	This Notification No. 9/2017-IGST (Rate) dated 28.06.2017. Under IGST grants Exemption to supply of 84 Services.

**Sec. 11 – Illustration I**

Notification issued under section 11(1): Conditional, partial exemption

- Intra state supplies of goods or services or both by a registered person from an unregistered person is exempt from payment of tax under reverse charge provided the aggregate value of such supplies received by a registered person from all or any of the suppliers does not exceed ₹ 5000/- in a day.

*Notification No. 08/2017-Central Tax (Rate) dated 28.06.2017*

**Sec. 11 – Illustration II**

Notification issued under section 11(1): Absolute exemption

Exemption to following taxable services from tax leviable thereon:

- Services by way of renting of residential dwelling for use as residence.
- Services by Reserve Bank of India.
- Services by a veterinary clinic in relation to health care of animals or birds.
- This notification has come into force on the 1st day of July 2017

[Notification No. 12/2017 - Central Tax (Rate) dt.28.06.2017]

**Exemptions issued under IGST Act**

Some exemptions have been issued under IGST Act:

- Notification No. 07/2017-Integrated Tax (Rate),dt. 28-06-2017: Exemption from IGST supplies by CSD to Unit Run Canteens and supplies by CSD / Unit Run Canteens to authorised customers under section 6 (1)
- Notification No. 9/2017-Integrated Tax (Rate): Mega exemption list for supply of service. The exemption notification covers 84 entries where services supplied by supplier of service has been exempted from levy of GST.
- Notification No. 18/2017 -Integrated Tax (Rate) : IGST exemption to SEZs on import of Services by a unit/developer in an SEZ

**Exemptions to Services**

Exemption has been given to Intra State Supplies of certain Services vide Notification No. 12/2017-Central Tax (Rate), dt. 28-06-2017 and Inter State Supplies of Goods vide 09/2017-Integrated Tax (Rate), dt. 28-06-2017. Exemption under UTGST Act to Intra State Supplies has been given vide Notification No. 12/2017-Union Territory Tax (Rate), dt. 28-06-2017. Respective States have also issued their exemption Notifications to notify exempted services. The list of Exempted Services is appended as Annexure I to this Chapter

**Annexure-I**

**List of Exempted Services**

<b>S. No.</b>	<b>Description of Services</b>	<b>Remarks</b>
1.	Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities.	This exemption is the same as under S.No.6 of Notification No. 25/2012-ST dated 20.06.2012.
2.	Services by way of transfer of a going concern,	This exemption is the same as

**Exemption**

	as a whole or an independent part thereof.	under S.No.37 of Notification No. 25/2012-ST dated 20.06.2012.
3.	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.	This exemption is the same as under S.No.25 of Notification No. 25/2012-ST dated 20.06.2012. The entry earlier was restricted to services by way of water supply, public health, sanitation conservancy, solid waste management or slum improvement and up-gradation;
4.	Services by Central Government, State Government, Union territory, local authority or governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.	This exemption is the same as under S.No.39 of Notification No. 25/2012-ST dated 20.06.2012.
5.	Services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.	This exemption is the same as under S.No.60 of Notification No. 25/2012-ST dated 20.06.2012.
6.	Services by the Central Government, State Government, Union territory or local authority excluding the following services— (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory; (b) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (c) transport of goods or passengers; or (d) any service, other than services covered under entries (a) to (c) above, provided to business entities.	The said services were there in the Negative list

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7.	<p>Services provided by the Central Government, State Government, Union territory or local authority to a business entity with an aggregate turnover of up to twenty lakh rupees (ten lakh rupees in case of a special category state) in the preceding financial year.</p> <p>Explanation.- For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to-</p> <p>(a) services-</p> <p>(i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</p> <p>(ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) of transport of goods or passengers; and</p> <p>(b) services by way of renting of immovable property.</p>	<p>This exemption is the same as under S.No.48 of Notification No. 25/2012-ST dated 20.06.2012.</p>
8.	<p>Services provided by the Central Government, State Government, Union territory or local authority to another Central Government, State Government, Union territory or local authority:</p> <p>Provided that nothing contained in this entry shall apply to services-</p> <p>(i) by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</p> <p>(ii) in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) of transport of goods or passengers.</p>	<p>Nil</p>
9.	<p>Services provided by Central Government, State Government, Union territory or a local authority</p>	<p>This exemption is the same as under S.No.56 of Notification</p>

**Exemption**

	<p>where the consideration for such services does not exceed five thousand rupees:</p> <p>Provided that nothing contained in this entry shall apply to -</p> <p>(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory;</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</p> <p>(iii) transport of goods or passengers:</p> <p>Provided further that in case where continuous supply of service, as defined in sub-section (33) of section 2 of the Central Goods and Services Tax Act, 2017, is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed five thousand rupees in a financial year.</p>	<p>No. 25/2012-ST dated 20.06.2012.</p>
10.	<p>Services provided by and to Fédération Internationale de Football Association (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 World Cup 2017 to be hosted in India</p> <p>Provided that the Director (Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U- 17 World Cup 2017.</p> <p>[Added vide Notification No. 21/2017- Central Tax (Rate) dated August 22,2017]</p>	
11.	<p>Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual</p>	<p>This exemption is the same as under S.No.12 of Notification No. 25/2012-ST dated 20.06.2012.</p>

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	house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.	
12.	Service provided by Fair Price Shops to Central Government by way of sale of wheat, rice and coarse grains under Public Distribution System(PDS) against consideration in the form of commission or margin. [Added vide Notification No. 21/2017- Central Tax (Rate) dated August 22,2017]	
13.	Service provided by Fair Price Shops to State Governments or Union territories by way of sale of kerosene, sugar, edible oil, etc. under Public Distribution System (PDS) against consideration in the form of commission or margin. [Added vide Notification No. 21/2017- Central Tax (Rate) dated August 22,2017]	
14.	Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex.	This exemption is the same as under S.No.13 of Notification No. 25/2012-ST dated 20.06.2012.
15.	Services by way of renting of residential dwelling for use as residence.	This exemption was earlier in the Negative List
16.	Services by a person by way of- (a) conduct of any religious ceremony; (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act) or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act: Provided that nothing contained in entry (b) of this exemption shall apply to, -	This exemption is the same as under S.No.5 of Notification No. 25/2012-ST dated 20.06.2012. However, monetary limit has been introduced to restrict the exemption to institutions which are charging for their facilities over such limits



**Exemption**

	<p>(i) renting of rooms where charges are one thousand rupees or more per day;</p> <p>(ii) renting of premises, community halls, kalian mandapam or open area, and the like where charges are ten thousand rupees or more per day;</p> <p>(iii) renting of shops or other spaces for business or commerce where charges are ten thousand rupees or more per month.</p>	
17.	Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent.	This exemption is the same as under S.No.18 of Notification No. 25/2012-ST dated 20.06.2012.
18.	<p>Transport of passengers, with or without accompanied belongings, by –</p> <p>(a) air, embarking from or terminating in an airport located in the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal;</p> <p>(b) non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or</p> <p>(c) stage carriage other than air-conditioned stage carriage.</p>	This exemption is the same as under S.No.23 of Notification No. 25/2012-ST dated 20.06.2012.
19.	<p>Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a regional connectivity scheme airport, against consideration in the form of viability gap funding:</p> <p>Provided that nothing contained in this entry shall apply on or after the expiry of a period of one year from the date of commencement of operations of the regional connectivity scheme airport as notified by the Ministry of Civil Aviation.</p>	This exemption is the same provided in S.No. 23A of Notification No. 25/2012-ST dated 20.06.2012.
20.	Service of transportation of passengers, with or	This exemption was earlier in

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	without accompanied belongings, by— (a) railways in a class other than— (i) first class; or (ii) an air-conditioned coach; (b) metro, monorail or tramway; (c) inland waterways; (d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and (e) metered cabs or auto rickshaws (including e-rickshaws).	the Negative List
21.	Services by way of transportation of goods- (a) by road except the services of— (i) a goods transportation agency; (ii) a courier agency; (b) by inland waterways.	This exemption was earlier contained in Section 66D of Finance Act, 1994
22.	Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.	This exemption is the same provided under S.no. 53 of Notification No. 25/2012-ST dated 20.06.2012.
23.	Services by way of transportation by rail or a vessel from one place in India to another of the following goods: (a) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; (b) defence or military equipments; (c) newspaper or magazines registered with the Registrar of Newspapers; (d) railway equipments or materials; (e) agricultural produce; (f) milk, salt and food grain including flours, pulses and rice; and (g) organic manure.	This exemption is the same as provided under S.no. 20 of Notification No. 25/2012-ST dated 20.06.2012.
24.	Services provided by a goods transport agency, by way of transport in a goods carriage of - (a) agricultural produce;	This exemption is the same as provided under S.no. 21 of Notification No. 25/2012-ST

**Exemption**

	<p>(b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;</p> <p>(c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty;</p> <p>(d) milk, salt and food grain including flour, pulses and rice;</p> <p>(e) organic manure;</p> <p>(f) newspaper or magazines registered with the Registrar of Newspapers;</p> <p>(g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or</p> <p>(h) defence or military equipments.</p>	dated 20.06.2012.
25.	<p>Services by way of giving on hire –</p> <p>(a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or</p> <p>(b) to a goods transport agency, a means of transportation of goods.</p>	This exemption is the same as provided under S.no. 22 of Notification No. 25/2012-ST dated 20.06.2012.
26.	Service by way of access to a road or a bridge on payment of toll charges.	This exemption was earlier contained in Section 66D of Finance Act, 1994
27.	Services by way of loading, unloading, packing, storage or warehousing of rice.	This exemption is the same as provided under S.no. 22 of Notification No. 25/2012-ST dated 20.06.2012. Benefit to rice however, is not found in new exemption.
28.	Transmission or distribution of electricity by an electricity transmission or distribution utility.	This exemption was earlier contained in Section 66D of Finance Act, 1994
29.	Services by the Reserve Bank of India.	This exemption was earlier contained in Section 66D of Finance Act, 1994

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30.	<p>Services by way of:</p> <p>(a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);</p> <p>(b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.</p>	<p>This exemption was earlier contained in Section 66D of Finance Act, 1994</p>
31.	<p>Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013).</p>	<p>This exemption is the same as provided under S.no. 26C of Notification No. 25/2012-ST dated 20.06.2012. Benefit to rice however, is not found in new exemption.</p>
32.	<p>Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government.</p>	<p>This exemption is the same as provided under S.no. 26D of Notification No. 25/2012-ST dated 20.06.2012. Benefit to rice however, is not found in new exemption.</p>
33.	<p>Services by the Employees' State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948 (34 of 1948).</p>	<p>This exemption is the same as provided under S.no. 36 of Notification No. 25/2012-ST dated 20.06.2012. Benefit to rice however, is not found in new exemption.</p>
34.	<p>Services provided by the Employees Provident Fund Organisation to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952 (19 of 1952).</p>	<p>This exemption is the same as provided under S.no. 49 of Notification No. 25/2012-ST dated 20.06.2012. Benefit to rice however, is not found in new exemption.</p>
35.	<p>Services provided by the Insurance Regulatory and Development Authority of India to insurers under the Insurance Regulatory and Development Authority of India Act, 1999 (41 of 1999).</p>	<p>This exemption is the same as provided under S.no. 50 of Notification No. 25/2012-ST dated 20.06.2012. Benefit to rice however, is not found in new exemption.</p>

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36.	Services provided by the Securities and Exchange Board of India set up under the Securities and Exchange Board of India Act, 1992 (15 of 1992) by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.	This exemption is the same as provided under S.no. 51 of Notification No. 25/2012-ST dated 20.06.2012. Benefit to rice however, is not found in new exemption.
37.	Services by an acquiring bank, to any person in relation to settlement of an amount upto two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card service. Explanation. — For the purposes of this entry, “acquiring bank” means any banking company, financial institution including non-banking financial company or any other person, who makes the payment to any person who accepts such card.	This exemption is the same as provided under S.no. 64 of Notification No. 25/2012-ST dated 20.06.2012. Benefit to rice however, is not found in new exemption.
38.	Services of general insurance business provided under the following schemes – (a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna (earlier known as Integrated Rural Development Programme); (c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women; (f) Agricultural Pumpset and Failed Well Insurance; (g) Premia collected on export credit insurance; (h) Weather Based Crop Insurance Scheme or the Modified National Agricultural Insurance Scheme, approved by the Government of India and implemented by the Ministry of Agriculture; (i) Jan Arogya Bima Policy; (j) National Agricultural Insurance Scheme (Rashtriya Krishi Bima Yojana);	This exemption is the same as provided under S.no. 26 of Notification No. 25/2012-ST dated 20.06.2012. Benefit to rice however, is not found in new exemption.

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	<p>(k) Pilot Scheme on Seed Crop Insurance;  (l) Central Sector Scheme on Cattle Insurance;  (m) Universal Health Insurance Scheme;  (n) Rashtriya Swasthya Bima Yojana;  (o) Coconut Palm Insurance Scheme;  (p) Pradhan Mantri Suraksha Bima Yojna;  (q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999).</p>	
39.	<p>Services of life insurance business provided under following schemes-</p> <p>(a) Janashree Bima Yojana;  (b) Aam Aadmi Bima Yojana;  (c) Life micro-insurance product as approved by the Insurance Regulatory and Development Authority, having maximum amount of cover of fifty thousand rupees;  (d) Varishtha Pension Bima Yojana;  (e) Pradhan Mantri Jeevan Jyoti Bima Yojana;  (f) Pradhan Mantri Jan Dhan Yojana;  (g) Pradhan Mantri Vaya Vandana Yojana.</p>	<p>This exemption is the same as provided under S.no. 26A of Notification No. 25/2012-ST dated 20.06.2012. Benefit to rice however, is not found in new exemption.</p>
40.	<p>Services by way of collection of contribution under the Atal Pension Yojana.</p>	<p>This exemption is the same as provided under S.no. 26B of Notification No. 25/2012-ST dated 20.06.2012. Benefit to rice however, is not found in new exemption.</p>
41.	<p>Services by way of collection of contribution under any pension scheme of the State Governments.</p>	
42.	<p>Services by the following persons in respective capacities –</p> <p>(a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branches;</p>	<p>This exemption is the same as provided under S.no. 29 of Notification No. 25/2012-ST dated 20.06.2012. Benefit to rice however, is not found in new exemption. However, the</p>

**Exemption**

	<p>(b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or</p> <p>(c) business facilitator or a business correspondent to an insurance company in a rural area.</p>	<p>exemption is restricted and is no longer available to sub broker and selling agents of SIM Cards</p>
43.	<p>Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory.</p>	<p>New Exemption</p>
44.	<p>One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units.</p>	<p>This exemption is the same as provided under Notification No. 41/2016-ST dated 22.9.2016</p>
45.	<p>Services provided by the Central Government, State Government, Union territory or local authority by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the period prior to the 1st April, 2016, on payment of license fee or spectrum user charges, as the case may be.</p>	<p>This exemption is the same as provided under S.no. 62 of Notification No. 25/2012-ST dated 20.06.2012.</p>
46.	<p>Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways.</p>	<p>Already exempted</p>
47.	<p>Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:-</p> <p>(a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and</p> <p>(b) a period of three years has not elapsed from the date of entering into an agreement as an incubate.</p>	<p>This exemption is the same as provided under S.no. 27 of Notification No. 25/2012-ST dated 20.06.2012.</p>

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48.	<p>Services provided by-</p> <p>(a) an arbitral tribunal to –</p> <p>(i) any person other than a business entity; or</p> <p>(ii) a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category States) in the preceding financial year;</p> <p>(b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-</p> <p>(i) an advocate or partnership firm of advocates providing legal services;</p> <p>(ii) any person other than a business entity; or</p> <p>(iii) a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the- case of special category States) in the preceding financial year;</p> <p>(c) a senior advocate by way of legal services to-</p> <p>(i) any person other than a business entity; or</p> <p>(ii) a business entity with an aggregate turnover up to twenty lakh rupees (ten lakh rupees in the case of special category States) in the preceding financial year.</p>	<p>This exemption is the same as under S.No.6 of Notification No. 25/2012-ST dated 20.06.2012</p>
49.	<p>Services by a veterinary clinic in relation to health care of animals or birds.</p>	<p>Similar to Exemption vide S.no. 3 of notification no. 25/2012 dated 20.06.2012</p>
50.	<p>Services provided by the Central Government, State Government, Union territory or local authority by way of-</p> <p>(a) registration required under any law for the time being in force;</p> <p>(b) testing, calibration, safety check or</p>	<p>This exemption is the same as provided under S.no. 58 of Notification No. 25/2012-ST dated 20.06.2012.</p>



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	certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.	
51.	Taxable services, provided or to be provided, by a Technology Business Incubator or a Science and Technology Entrepreneurship Park recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India or bio-incubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India.	This exemption is the same as provided in Notification No. 32/2012-ST dated 20.06.2012.
52.	Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India.	This exemption is the same as provided under S.No. 17 of Notification No. 25/2012-ST dated 20.06.2012
53.	Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.	This exemption is the same as provided under S.No. 35 of Notification No. 32/2012-ST dated 20.06.2012
54.	Services provided by the Goods and Services Tax Network to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax.	New Exemption
55.	Services by an organiser to any person in respect of a business exhibition held outside India.	This exemption is the same as provided under S.No. 31 of Notification No. 32/2012-ST dated 20.06.2012
56.	Services by way of sponsorship of sporting events organised - (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country; (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council	This exemption is the same as provided under S.No. 11 of Notification No. 32/2012-ST dated 20.06.2012

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	<p>for the Deaf, Paralympic Committee of India or Special Olympics Bharat;</p> <p>(c) by the Central Civil Services Cultural and Sports Board;</p> <p>(d) as part of national games, by the Indian Olympic Association; or</p> <p>(e) under the Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme.</p>	
57.	<p>Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of—</p> <p>(a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing;</p> <p>(b) supply of farm labour;</p> <p>(c) processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, sun drying, fumigating, curing, sorting, grading, cooling or bulk packaging and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;</p> <p>(d) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;</p> <p>(e) loading, unloading, packing, storage or warehousing of agricultural produce;</p> <p>(f) agricultural extension services;</p> <p>(g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce.</p>	<p>This exemption was earlier part of Section 66D of Finance Act, 1994</p>
58.	<p>Carrying out an intermediate production process as job work in relation to cultivation of plants</p>	<p>This exemption is the same as provided under S.No. 30(a) of</p>

**Exemption**

	and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce.	Notification No. 32/2012-ST dated 20.06.2012
59.	Services by way of slaughtering of animals.	This exemption is the same as provided under S.No. 33 of Notification No. 32/2012-ST dated 20.06.2012. However, this exemption was restricted to bovine animals.
60.	Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.	This exemption is the same as provided under S.No. 44 of Notification No. 32/2012-ST dated 20.06.2012
61.	Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination.	This exemption is the same as provided under S.No. 52 of Notification No. 32/2012-ST dated 20.06.2012
62.	Services by a foreign diplomatic mission located in India.	This exemption was earlier part of Section 66D of Finance Act, 1994
63.	Services by a specified organisation in respect of a religious pilgrimage facilitated by the Ministry of External Affairs, the Government of India, under bilateral arrangement.	This exemption is the same as exemption given under S.No. 5A of Notification No. 25/2012-ST dated 20.6.2012
64.	Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate.	This exemption is the same as exemption given under S.No. 55 of Notification No. 25/2012-ST dated 20.6.2012
65.	Services provided by the Central Government, State Government, Union territory or local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract.	This exemption is the same as exemption given under S.No. 57 of Notification No. 25/2012-ST dated 20.6.2012

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66.	Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products.	This exemption is the same as exemption given under S.No. 59 of Notification No. 25/2012-ST dated 20.6.2012
67.	Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use any natural resource where such right to use was assigned by the Central Government, State Government, Union territory or local authority before the 1st April 2016: Provided that the exemption shall apply only to tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource.	This exemption is the same as exemption given under S.No. 61 of Notification No. 25/2012-ST dated 20.6.2012
68.	Services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges.	This exemption is the same as exemption given under S.No. 63 of Notification No. 25/2012-ST dated 20.6.2012
69.	Services provided - (a) by an educational institution to its students, faculty and staff; (b) to an educational institution, by way of, - (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; (iii) security or cleaning or house-keeping services performed in such educational institution;	This exemption is the same as exemption given under S.No. 9 of Notification No. 25/2012-ST dated 20.6.2012. However, the scope of such services has been limited when provided to educational institutions providing services by way of pre-school education and education up to higher secondary school or equivalent

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	<p>(iv) services relating to admission to, or conduct of examination by, such institution; upto higher secondary:</p> <p>Provided that nothing contained in entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent.</p>	
70.	<p>Services provided by the Indian Institutes of Management, as per the guidelines of the Central Government, to their students, by way of the following educational programmes, except Executive Development Programme:</p> <p>(a) two-year full time Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT) conducted by the Indian Institute of Management;</p> <p>(b) fellow programme in Management;</p> <p>(c) five year integrated programme in Management.</p>	<p>This exemption is the same as exemption given under S.No. 9B of Notification No. 25/2012-ST dated 20.6.2012.</p>
71.	<p>Services provided to a recognised sports body by-</p> <p>(a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body;</p> <p>(b) another recognised sports body.</p>	<p>This exemption is the same as exemption given under S.No. 10 of Notification No. 25/2012-ST dated 20.6.2012</p>
72.	<p>Any services provided by, _</p> <p>(a) the National Skill Development Corporation set up by the Government of India;</p> <p>(b) a Sector Skill Council approved by the National Skill Development Corporation;</p> <p>(c) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation;</p> <p>(d) a training partner approved by the National Skill Development Corporation or the Sector</p>	<p>This exemption is the same as exemption given under S.No. 9A of Notification No. 25/2012-ST dated 20.6.2012.</p>

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	<p>Skill Council, in relation to-</p> <p>(i) the National Skill Development Programme implemented by the National Skill Development Corporation; or</p> <p>(ii) a vocational skill development course under the National Skill Certification and Monetary Re- Ward Scheme; or</p> <p>(iii) any other Scheme implemented by the National Skill Development Corporation.</p>	
73.	<p>Services of assessing bodies empanelled centrally by the Directorate General of Training, Ministry of Skill Development and Entrepreneurship by way of assessments under the Skill Development Initiative Scheme.</p>	<p>This exemption is the same as exemption given under S.No. 9C of Notification No. 25/2012-ST dated 20.6.2012</p>
74.	<p>Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Training.</p>	<p>This exemption is the same as exemption given under S.No. 9D of Notification No. 25/2012-ST dated 20.6.2012</p>
75.	<p>Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.</p>	<p>New exemption</p>
76.	<p>Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.</p>	<p>This exemption is the same as under S.No.2A of Notification No. 25/2012-ST dated 20.06.2012</p>
77.	<p>Services by way of-</p> <p>(a) health care services by a clinical establishment, an authorised medical practitioner or paramedics;</p> <p>(b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.</p>	<p>This exemption is the same as under S.No.2 of Notification No. 25/2012-ST dated 20.06.2012.</p>
78.	<p>Services provided by operators of the common</p>	<p>This exemption is the same as</p>

**Exemption**

	bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.	under S.No.2B of Notification No. 25/2012-ST dated 20.06.2012.
79.	Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinals or toilets.	This exemption is the same as under S.No.2 of Notification No. 38/2012-ST dated 20.06.2012.
80.	Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution – (a) as a trade union; (b) for the provision of carrying out any activity which is exempt from the levy of Goods and service Tax; or (c) up to an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.	This exemption is the same as under S.No.28 of Notification No. 25/2012-ST dated 20.06.2012.
81.	Services by an artist by way of a performance in folk or classical art forms of- (a) music, or (b) dance, or (c) theatre, if the consideration charged for such performance is not more than one lakh and fifty thousand rupees: Provided that the exemption shall not apply to service provided by such artist as a brand ambassador.	This exemption is the same as under S.No.16 of Notification No. 25/2012-ST dated 20.06.2012.
82.	Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo.	This exemption is the same as under S.No.45 of Notification No. 25/2012-ST dated 20.06.2012.
83.	Services by way of training or coaching in recreational activities relating to: (a) arts or culture, or (b) sports by charitable entities registered under	This exemption is the same as under S.No.8 of Notification No. 25/2012-ST dated 20.06.2012. However, the scope of sports

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	section 12AA of the Income-tax Act.	training has been restricted to services when provided by Charitable entities
84.	Services by way of right to admission to- (a) circus, dance, or theatrical performance including drama or ballet; (b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event; (c) recognised sporting event, where the consideration for admission is not more than Rs 250 per person as referred to in (a), (b) and (c) above.	This exemption is the same as under S.No.47 of Notification No. 25/2012-ST dated 20.06.2012.
85.	Services by way of right to admission to the events organised under FIFA U-17 World Cup 2017. [Added vide Notification No. 25/2017- Central Tax (Rate) dated September 21,2017]	

There are three more exemptions notified under IGST Act which are as follows:

1	Services received from a provider of service located in a non- taxable territory by – (a) the Central Government, State Government, Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession; (b) an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or (c) a person located in a non-taxable territory: Provided that the exemption shall not apply to – (i) online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or (ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry
2.	Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves.
3.	Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.

- Further, a table depicting important Rate Notifications issued under CGST as well as IGST is provided as **Annexure B** of this publication



## Chapter 10

# Place of Supply

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### Place of Supply of Services where Location of Supplier and Recipient is in India

1. Place of supply of services has been dealt with in three sections i.e., section 12 to 14 of the IGST Act, 2017
2. Section 12 of the IGST Act lays down the 'place of supply' that is to apply to supply of services where the location of supplier and the location of the recipient are both, in India. Considering the language employed in section 12 of the IGST Act, 'place of supply' is not a phrase of common understanding. It is a legally specified phrase. Therefore, any common understanding of this phrase must not be resorted here. Section 12 uses two terms, namely:
  - Place of supply; and
  - Location of the supplier of services.
3. Place of supply is a geographic point which the law appoints to be one applicable to each circumstance dealt with by section 12 of the IGST Act. GST being a destination based tax, place of supply is one of the following:

<b>Place of Supply</b>	<b>Section</b>	<b>Types of Supply</b>
Instances under the GST law where the place of supply is statutorily appointed	Section 12(3)	Services in relation to immovable property;
	Section 12(4)	Supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health including cosmetic and plastic surgery;
	Section 12(5)(b)	Training and performance appraisal ( <i>unregistered recipient</i> );
	Section 12(6)	Admission to event – venue;
	Section 12(7)(b)(ii)	Organizing event, ancillary services and assigning sponsorship ( <i>unregistered recipient</i> );
	Section 12(8)(b)	Transportation of goods including mail or courier ( <i>unregistered recipient</i> );
	Section 12(9)(b)	Passenger transportation service ( <i>unregistered recipient</i> );
	Section 12(10)	Supply of service on-board conveyance;

<b>Place of Supply</b>	<b>Section</b>	<b>Types of Supply</b>
	Section 12(11)(a)	Telecommunication service – fixed connection;
	Section 12(14)	Advertisement to Government bodies;
	Section 12(2)	Services other than all of above.
Location of the recipient, if recipient is registered	Section 12(5)(a)	Training and performance appraisal;
	Section 12(7)(i)	Organizing event, ancillary services and assigning sponsorship
	Section 12(8)(a)	Transportation of goods including mail or courier;
	Section 12(9)(a)	Passenger transportation service;
	Section 12(13)(a)	Insurance services;
	Section 12(2)(a)	Services other than all of above.
'Address on record'	Section 12(11)(b)	Telecommunication service – mobile connection on post-payment basis;
	Section 12(12)	Banking and financial and stock broking services;
	Section 12(13)(b)	Insurance services ( <i>unregistered recipient</i> );
	Section 12(2)(b)(i)	Services other than all of above ( <i>unregistered recipient</i> ).
Location of service provider, if address of recipient not available	Section 12(11)(c)	Telecommunication service – mobile connection on pre-payment basis;
	Section 12(2)(b)(ii)	Services other than all of above.

4. After the place of supply is determined as above, the location of the supplier needs to be examined. Location of supplier of service is defined in section 2(15) of IGST Act as:

(15) “location of supplier of service” means:

- (i) where a supply is made from a place of business for which registration has been obtained, the location of such place of business;
- (ii) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (iii) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and

(iv) *in absence of such places, the location of the usual place of residence of the supplier;*

5. The above definition can be tabulated as follows:

<b>Location of Supplier</b>	<b>Attribute of Location</b>	<b>Example 'for'</b>	<b>Example 'against'</b>
Place of business* from where supply is made and which is registered under GST	Nature of the service is such that, it can be supplied from the place of business of supplier	Architect's service (Service is supplied right at the place of business of the architect where supplies are ordinarily made from)	Civil construction (Service is supplied at each project site and the service cannot be supplied from the place of business of supplier)
Fixed establishment # from where supply is made but not the location which is registered under GST	Nature of the service is such that, it must be supplied from a fixed establishment of the supplier	Authorized service station (Service is supplied at the location of each service station of a person, where necessary infrastructure is held with sufficient degree of permanence at each of such service station)	Supply of food / drink on-board a conveyance (Service is not provided from any fixed establishment)
Either of above (not any third location)	Nature of the service is such that, it can be supplied from more than one such places	Chartered Accountant – audit services (Service is undertaken at client's premises but it is completed and performed either at the head office or at branch office and most certainly not at every client location)	Commission agent (Service is supplied wherever the deal is struck and not confined to any office or location. Any such office or location is merely a place to meet customers or for administrative purposes but not a necessary place to supply services)

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None of the above	Nature of the service is such that it can be supplied from any place	Abstain from doing something – non-compete fee paid (Service is not provided from any specific location in particular)	Beauty salon (Service cannot be supplied from anywhere but from a parlor or at client premises)
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\* Place of business is defined in section 2(85) of the CGST Act

# fixed establishment is defined in section 2(50) of the CGST Act

6. Location of recipient of services is defined in section 2(14) of IGST Act as:

(14) “location of recipient of service” means:

- (i) where a supply is received at a place of business for which registration has been obtained, the location of such place of business;
- (ii) where a supply is received at a place other than the place of business for which registration has been obtained, (a fixed establishment elsewhere), the location of such fixed establishment;
- (iii) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- (iv) in absence of such places, the location of the usual place of residence of the recipient;

7. The above definition can be tabulated as follows:

<b>Location of Recipient</b>	<b>Attribute of Location</b>	<b>Example ‘for’</b>	<b>Example ‘against’</b>
Place of business * where supply is received and which is registered under GST	Nature of the service is such that it is meant to receive services supplied	Government services (Service is received at the place of business which is the recognized location of the recipient in respect of this service)	Goods transport service (Service is received at any place where transport is to be arranged and not exclusively at the place of business of recipient)

**Place of Supply**

Fixed establishment # where supply is received but not the location which is registered under GST	Nature of the service is such that it meant to be supplied at a fixed establishment of recipient	Renting of immovable property (Service is received either at fixed establishment of the recipient though place of registration may be at any other location)	Event management services (Service is received wherever the event is actually conducted by the organizer and not the place of business or fixed establishment of recipient)
Either of above (not any third location)	Nature of the service is such that it can be received at one or more of the above places	Manpower supply service (Service is received only at the place of business of fixed est. of the recipient)	Air travel (Service is always received at a place not being the place of business or fixed est. of recipient)
None of the above	Nature of the service is such that it can be received anywhere	Maintenance or repair of equipment (Service is received where the equipment is installed)	Banking service (Service is received where the supplier supplies and not where the recipient is located)

\* Place of business is defined in section 2(85) of the CGST Act

# fixed establishment is defined in section 2(50) of the CGST Act

When the location of supplier of service and the appointed place of supply are in two different States then, it would be an inter-State supply and if not, it would be an intra-State supply. Based on place of supply of services provisions as discussed above, wherever the place of supply is different from the place of recipient, there are chances of ITC getting blocked unless the receiver has a registration in that State.

8. Section 13 of the IGST Act lays down the 'place of supply' that is to apply - to supply of services where the location of supplier or recipient is outside India. Considering the language employed in section 13 of the IGST Act, 'place of supply' is not a phrase of common understanding. It is a legally specified phrase. Therefore, any common understanding of this phrase must not be resorted to here. Similar to section 10, section 13 uses two terms, namely:

- Place of supply; and
- Location of the supplier or location of recipient of services.

**Place of Supply of Services Where Location of Supplier or Location of Recipient is Outside India**

9. Section 13 of the IGST Law would stand attracted when the location of any one person either the Supplier or the Recipient is outside India.

Place of Supply	Section	Types of Supply
Instances under the GST law where the place of supply is Statutorily appointed	Section 13(3)(a)	Where the recipient of services makes physically available goods then it shall be the location of goods;
	Section 13(3)(b)	Supplies to an individual where the recipient is required to be physically present;
	Section 13(4)	Services in relation to an immovable property;
	Section 13(5)	Admission to event – Venue
	Section 13(6) & (7)	In case the above services are supplied in more than one location, one of which is in the taxable territory, then place of supply shall be that location in the taxable territory ( <i>If supplies are in different States / UTs then such values are to be pro-rated</i> );
	Section 13(11)	Services on board a conveyance
Location of the recipient	Section 13(12)	<p>OIDAR Services: The recipient will be considered to be in the taxable territory if any two of the following conditions are fulfilled and is in taxable territory:</p> <ul style="list-style-type: none"> <li>• Address of recipient;</li> <li>• Credit card used for payment;</li> <li>• Billing address;</li> <li>• Internet protocol;</li> <li>• Bank of recipient;</li> <li>• Country code of SIM card;</li> <li>• Fixed line used by recipient.</li> </ul>
Location of supplier of service	Section 13(8)(a)	Services to account holders – Banks, Financial Institutions or NBFCs
	Section 13(8)(b)	Intermediary services

	Section 13(8)(c)	Hiring of means of transport upto a period of one month
Destination of goods	Section 13(9)	Supply of transportation services of goods (other than mail / courier)
Place of embarkation	Section 13(10)	Passenger transportation service

**SPECIAL POVISION FOR PAYMENT OF TAX BY A SUPPLIER OF ONLINE INFORMATION AND DATABASE ACCESS OR RETRIEVAL SERVICES (OIDAR)**

10. Section 14 of the IGST Act, 2017 lays down the principles of taxation relating to OIDAR services. These transactions are a separate class and the place of supply and taxable person are to be determined based on this section alone. Every transaction over the internet is not e-commerce; similarly, everything delivered online is not an OIDAR service. One has to keep in mind that the internet connectivity must always be active for a continuous supply of the underlying service. Mere use of internet for delivery of services that can otherwise be provided offline though some media like CD, pen-drive, etc., although less-securely, will not be OIDAR. The use of file-transfer-protocol (FTP) for delivery of software or music or games is only to ensure integrity in the delivery of these high-volume files and the use of internet for FTP does not become OIDAR.
11. To summarise, the following table depicts the ingredients prescribed in this section:

<b>Supplier</b>	<b>Supplier of Services in non-taxable territory</b>		
<b>Supplier-Recipient</b>	B2C (non-taxable online recipient – NTOR)	Intermediary@ recipient (deemed to be recipient re-supplying to NTOR)	B2B# (all others)
<b>Tax Payer</b>	Overseas supplier	Recipient, being the intermediary	Recipient
<b>Tax Payment</b>	Forward Charge (through representative)	Reverse Charge	Reverse Charge

@ issues invoice, authorizes charge for services, responsible to collect payment, authorizes delivery and controls terms and conditions of supply. Else, not an intermediary liable to pay

# B2B may be registered person for any outward supply

## Chapter 11

# Time of Supply

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1. As stated earlier, levy of tax under section 9 of CGST Act operates together with section 13 (in the case of services) to fasten the incidence of tax. Time of supply, in the case of services, is determined as follows:

Requirement	Compliance	Appointed Time of Supply
Forward charge	Invoice is issued within the due date	Earlier of: <ul style="list-style-type: none"> <li>• Date of invoice; or</li> <li>• Date of receipt of payment.</li> </ul>
	Invoice is not issued within the due date	Earlier of: <ul style="list-style-type: none"> <li>• Date of completion of service; or</li> <li>• Date of receipt of payment.</li> </ul>
Continuous supply of services	Due date ascertainable from contract	Earlier of: <ul style="list-style-type: none"> <li>• Date when payment is liable to be made by recipient (being the due date for issue of invoice); or</li> <li>• Date of receipt of payment.</li> </ul>
	Due date not ascertainable from contract	Earlier of: <ul style="list-style-type: none"> <li>• Date of invoice; or</li> <li>• Date of receipt of payment.</li> </ul>
Reverse charge		Earlier of: <ul style="list-style-type: none"> <li>• Date of payment; or</li> <li>• Date immediately following 60 days from the date of supplier's invoice / any other document;</li> </ul> Note: <ol style="list-style-type: none"> <li>a. If (a) or (b) not ascertainable, then date of entry in recipients' books]</li> <li>b. In case of associated enterprises, earlier of:               <ul style="list-style-type: none"> <li>• Date of entry in the books; or</li> <li>• Date of payment.</li> </ul> </li> </ol>



## Time of Supply

Vouchers	<ul style="list-style-type: none"><li>• The date of issue of voucher if supply is identifiable at that point; or</li><li>• Date of redemption, otherwise.</li></ul>
Interest, etc. for delayed payment of consideration, collected by the supplier	<ul style="list-style-type: none"><li>• Date of receipt of payment.</li></ul>
Unable to determine as above	<ul style="list-style-type: none"><li>• Due date for filing return or</li><li>• Date of payment of tax</li></ul>

### Note:

- A. As per Section 31 (2) read with Rule 47 of CGST Rules (Rules on Tax Invoice, Credit and Debit Notes) Due date in case of taxable supply of services is
- 30 days from date of supply of service or
  - 45 days from date of supply of service in case supplier of services is an Insurer or Banking Company or a financial institution including a non-banking financial company
- B. With effect from October,2017, any registered person procuring taxable goods/services from unregistered suppliers, shall not be required to pay CGST under reverse charge mechanism U/s 9(4) of CGST Act, 2017 till March 31, 2018 *vide Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017.* (Similar provision has been provided under IGST w.e.f October 13,2017)

Therefore, in case of services, where tax is payable on reverse charge basis, the time of supply shall be the earliest of the following:

- Date of payment to unregistered supplier
- Immediately following 60 days from the date of issue of invoice or any other document

Example: if service was obtained in the month of September for which invoice was issued on September 10,2017 and payment to an unregistered supplier is not made till October 13, 2017 then there would not be any reverse charge liability on such transactions.

2. Where supply of services ceases, then time of supply will be date of receipt of payment in respect of the supplies completed up to the date of such cessation.
3. It is important to note that at the time of applying the above tests for determining time of supply, services include supply of goods treated as supply of services, as also composite supplies where the principal supply is a service, and mixed supplies where the service component of the mixed supply attracts the higher rate of tax.

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4. Under the GST Laws, advances are subject to tax irrespective of whether the service is supplied or not, since the time of supply as determined above considers earliest of the events listed therein. It is pertinent to note that deposits are not considered as “advances” for the purpose of this test. That is to say that any deposit, whether refundable or not, given in respect of supply of service shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply. Consequently, accepting of deposits (such as rental deposits) would not attract GST.

<b>S. No.</b>	<b>Concept illustrations Section 13(2)</b>	<b>Invoice date</b>	<b>Invoice due date</b>	<b>Payment entry in supplier's books</b>	<b>Credit in bank account</b>	<b>Time of supply</b>
1	Invoice raised before completion of service	10-Oct-17	20-Oct-17	26-Oct-17	30-Oct-17	10-Oct-17
2	Advance received	30-Oct-17	20-Oct-17	10-Oct-17	30-Oct-17	10-Oct-17

	<b>Based on due date for invoicing Section 13(2) r/w Section 31(2) and Rule – 47 related to invoice</b>	<b>Invoice date</b>	<b>Commencement of service</b>	<b>Completion of service</b>	<b>Receipt of payment</b>	<b>Time of supply</b>
3	Delayed issue of invoice	26-Dec-17	20-Oct-17	16-Nov-17	28-Jan-18	16-Dec-17
4	Advance received, invoice for full amount issued on same day (40% advance, 60% post supply payment)	30-Oct-17	30-Oct-17	30-Dec-17	30-Oct-17	30-Oct-17
04-Dec-17					30-Oct-17	

<b>S. No.</b>	<b>Concept illustrations Section 13(2)</b>	<b>Invoice date</b>	<b>Invoice due date</b>	<b>Payment entry in supplier's books</b>	<b>Credit in bank account</b>	<b>Time of supply</b>
5	Section 31(5)(a) Contract provides for payments monthly on the 10th of succeeding month	02-Nov-17	10-Nov-17	15-Nov-17	31-Oct-17	02-Nov-17
		17-Dec-17	10-Dec-17	15-Dec-17	30-Nov-17	10-Dec-17
		10-Jan-18	10-Jan-18	06-Jan-18	31-Dec-17	06-Jan-18

**Time of Supply**

6	Section 31(5)(c)	12-Nov-17	10-Nov-17	25-Nov-17	12-Nov-17	10-Nov-17
	Contract provides for payments on completion of event. Recipient to pay within 1 month from date of completion	24-Apr-18	24-Apr-18	20-Apr-18	24-Apr-18	20-Apr-18
7	General	31-Oct-17	31-Oct-17	20-Nov-17	30-Nov-17	20-Nov-17
8	Advance paid	31-Oct-17	31-Oct-17	05-Nov-17	31-Oct-17	05-Nov-17
9	Delay in payment (Max. 60 days from date of invoice)	31-Oct-17	31-Oct-17	10-Jan-18	31-Oct-17	31-Dec-17
10	Service received from associated enterprise located outside India (No time extension allowed)	31-Oct-17	30-Nov-17	05-Apr-18	31-Mar-18	31-Mar-18
11	Service by unregistered person, no payment made	-	30-Nov-17	-	05-Dec-17	05-Dec-17
12	Voucher issued to a recipient after supply of a service [or specific goods], for the same service - valid for 1 year	01-Nov-17	01-Nov-17	14-Dec-17	30-Oct-18	01-Nov-17
13	Voucher issued to a recipient of machinery along at the time of delivery, for availing repair services [or specific goods] worth ₹ 5,000 - valid for 1 year	01-Nov-17	01-Nov-17	14-Dec-17	30-Oct-18	01-Nov-17
14	Voucher issued to a recipient after supply	01-Nov-17	01-Nov-17	14-Dec-17	30-Oct-18	14-Dec-17

	of a service, for any other services or goods across India, - valid for 1 year					
15	Gift voucher for ₹ 1,500 for services [or goods]- valid for 6 months	-	01-Nov-17	25-Dec-17	31-Mar-18	01-Nov-17

### **Concept of Tax Invoice**

It is important here to discuss the concept of Tax Invoice.

As per Section 31 of the CGST Act, 2017 supplier of services is required to issue a tax invoice:

- Before provision of the services or
  - After provision of the services but within a specified time.
- A.** In terms of Rule 46 of CGST Rules, 2017, a tax invoice referred to in this section shall be issued by the registered person containing the following: -
- (a) name, address and GSTIN of the supplier;
  - (b) a consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;
  - (c) date of its issue;
  - (d) name, address and GSTIN or UIN, if registered, of the recipient;
  - (e) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more;
  - (f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;
  - (g) Harmonised System of Nomenclature code for goods or services;
  - (h) Description of goods or services;
  - (i) quantity in case of goods and unit or Unique Quantity Code thereof;
  - (j) total value of supply of goods or services or both;
  - (k) taxable value of supply of goods or services or both considering discount or abatement, if any;

- (l) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (m) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (n) place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;
- (o) address of delivery where the same is different from the place of supply;
- (p) whether the tax is payable on reverse charge basis; and
- (q) signature or digital signature of the supplier or his authorized representative:

In respect of the particulars relating to HSN code cited in point (f) supra on the recommendations of the Council the Commissioner may, by notification for a specified period and class of registered persons who will be required to specify the number of digits of HSN code for goods or the Accounting Codes for services; The Commissioner is also empowered to specify by way of notification (on the recommendations of the Council the class of registered persons that would not be required to mention the HSN code for goods or the Accounting Codes for services, for such period as may be specified in the said notification:

**B. TAX INVOICES IN CASES OF SPECIAL SERVICES**

<b>Sl. No.</b>	<b>Class of supplier of taxable services</b>	<b>Nature of document</b>	<b>Optional</b>	<b>Mandatory</b>
1	Insurer, Banking Company, Financial Institution and NBFC	Tax Invoice or any other similar document	a. Serial no. b. Address of the recipient of services	All other particulars cited in clause A supra
2	Goods transport agency transporting goods by road	Tax Invoice or any other similar document	None	a. All other particulars cited in clause A supra b. Gross weight of consignment c. Consignor and Consignee name d. Regn. No. of Vehicle e. Details of goods transported f. Origin and destination details

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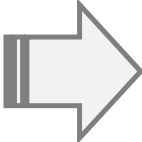
				g. GSTIN of person liable to pay tax whether as consignor / consignee or as GTA
3	Passenger transport agency	Tax invoice or ticket	a. Serial no. b. Address of the recipient of services	All other particulars cited in clause A supra

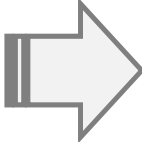
## Chapter 12

# Change in Tax Rates

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- Time of supply of services being determined by section 13 of the CGST Act, presents some difficulty where there is a change in the rate of tax while the key events – performance of service, issuance of invoice and receipt of payment – are taking place. To address this situation, section 14 is provided in the CGST Act with overriding effect on section 13. Without disturbing the principle of destination based tax, the effect of change in rate of tax is given effect in an expeditious manner.
- From a reading of section 14, the following position emerges considering the base fact of time of provision of service and the secondary fact of issuance of invoice and receipt of payment:

<b>Base fact (A)</b>	<b>Case</b>	<b>Service provided BEFORE change</b>		
Additional facts	1		<b>CHANGE IN TAX RATE</b> 	<b>Earlier of:</b> • Date of invoice; or • Date of receipt of payment
	2	✓ Date of invoice		× Date of payment
	3	✓ Date of payment		× Date of invoice

<b>Base fact (B)</b>	<b>Case</b>	<b>Service provided AFTER change</b>		
Additional facts	4	<b>Earlier of:</b> • Date of invoice or • Date of receipt of payment	<b>CHANGE IN TAX RATE</b> 	
	5	× Date of invoice		✓ Date of payment
	6	× Date of payment		✓ Date of invoice

## Chapter 13

# Valuation

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1. Consideration is the *quid pro quo* in a contract and price is the money value of that consideration. But, value is the price at which the transaction would take place under certain specified or controlled circumstances. 'Valuation' in tax laws is the study of those circumstances into which every transaction should pass through to determine whether the declared value is acceptable or not.
2. Section 15 states that it is the "*.....price actually paid or payable for the said supply of goods and / or services where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply*". Some of the important circumstances to be examined for the purpose of determination of valuation in GST laws are as follows:
  - Price – being money value of consideration;
  - Between unrelated parties – existence of relationship recognized under the GST Law ( Explanation to section 15 of the CGST Act, 2017) is a disqualification, bona fides notwithstanding;
  - Sole consideration – presence of extraneous consideration also a disqualification.
3. While arriving at the transaction value, the following shall be included:
  - (a) *any taxes, duties, cesses, fees and charges levied under any statute, other than the GST Laws;*
  - (b) *any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services;*
  - (c) *incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, supply of the services;*
  - (d) *interest or late fee or penalty for delayed payment of any consideration for any supply; and*
  - (e) *subsidies directly linked to the price excluding subsidies provided by the Central and State Governments.*
4. While arriving at the transaction value, deduction is allowed for any discount that is given:
  - (a) *before or at the time of the supply provided such discount has been duly recorded in the invoice issued in respect of such supply; and*



- (b) *after the supply has been effected, provided that:*
- (i) *such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and*
  - (ii) *input tax credit has been reversed by the recipient of the supply as is attributable to the discount on the basis of document issued by the supplier.*
5. In case the supply does not fulfill the conditions stipulated in sub-section (1), then the value will have to be determined based on valuation rules.
  6. Recourse to rules is a must in situations where value cannot be determined under section 15(1), i.e., when:
    1. Price is not the sole consideration;
    2. Supplier-recipient are related persons (i.e., whether supplier is related to the recipient, or vice versa).
  7. The following table broadly summarises the valuation rules to the extent applicable to services:

<b>Rule</b>	<b>Description of nature of services / situation</b>	<b>Priority</b>	<b>Determination of value</b>
<b>27</b>	Services where the consideration is not wholly in money	1	Open Market Value of such supply
		2	Consideration in money + Any further money equivalent of the non-monetary consideration (if such amount is known at the time of supply)
		3	Value of supply of services of like kind and quality;
		4	Consideration in money + Any further money equivalent of the non-monetary consideration determined as: (i) 110% of cost; or (ii) In a reasonable manner consistent with the principles of the Law [(i) or (ii) at the option of the service provider]
<b>28</b>	Value of supply of services between distinct	1	Open Market Value of such supply <b>Note:</b> Invoice value deemed to be open market value where recipient is entitled

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<b>Rule</b>	<b>Description of nature of services / situation</b>	<b>Priority</b>	<b>Determination of value</b>
	or related persons		<i>to full credit</i>
	Recourse to Rules even if the Supplier-Recipient relationship:	2	Value of supply of services of like kind and quality;
	<ul style="list-style-type: none"> <li>• Did not influence the price;</li> <li>• Precedes agreement to supply;</li> <li>• Has no bearing on pricing;</li> <li>• Has no bearing on Agreement to the Supply;</li> <li>• Has no relevance to supply;</li> <li>• Was to meet with different criteria or purpose.</li> </ul>	3	Consideration in money + Any further money equivalent of the non-monetary consideration determined as: (i) Cost + 10%; or (ii) In a reasonable manner consistent with the principles of the Law at the option of the service provider
<b>32</b>	<b>Special provisions for certain services - at the option of the service provider</b>		
(2)	In relation to the purchase or sale of foreign currency, including money changing:		
(a)	Where INR is exchanged from/to	No. of units of the foreign currency x (buying rate or selling rate - RBI Reference Rate)	
	Where two foreign currencies are exchanged	Lower of: <ul style="list-style-type: none"> <li>• 1% x Currency A x INR Exchange Rate</li> <li>• 1% x Currency B x INR Exchange Rate</li> </ul>	
(b)	<i>Alternatively, the following option is available – to be exercised for the entire financial year:</i>	<ul style="list-style-type: none"> <li>• INR 250 or [1% x Gross currency exchanged up to INR 1 lakh] – <i>higher of the two</i></li> <li>• INR 1,000 + 0.5% x Gross currency exchanged up to INR 10 lakh, exceeding 1 Lakh</li> <li>• INR 60,000 OR [INR 5,500 + 0.01% x Gross currency exchanged exceeding INR 10 Lakh] – <i>lower of the two</i></li> </ul>	

<b>Rule</b>	<b>Description of nature of services / situation</b>	<b>Priority</b>	<b>Determination of value</b>
(3)	Services in relation to booking of tickets for travel by air provided by an air travel agent		<ul style="list-style-type: none"> <li>• 5% of Basic Fare (Domestic)</li> <li>• 10% of Basic Fare (International)</li> </ul>
(4)	Services in relation to life insurance business (other than where the entire premium paid by the policy holder is towards the risk cover in life insurance)		<ul style="list-style-type: none"> <li>• Gross premium charged from a policy holder (-) Amount allocated for investment/ savings on his behalf, if intimated to him at the time of supply of service;</li> <li>• 10% of Single premium charged from the policy holder (for single premium annuity policies other than above);</li> <li>• In all other cases: (25% x Premium charged in Year I) + (12.5% of Premium charged in subsequent years).</li> </ul>
(7)	Services provided by notified class of service providers where the supply is taxable on account of Paragraph 2 to Schedule I (distinct/related persons)		Nil (where ITC is available to the recipient)

#### 8. Concept of pure agent

The expenditure or costs incurred by a service provider as a *pure agent* of the recipient shall be excluded from the value of supply, subject to certain conditions. For this purpose, a "pure agent" means a person who:

- Enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- Neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- Does not use for his own interest such goods or services so procured; and
- Receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Where a service provider qualifies as a pure agent as above, the expenses claimed as a reimbursement from the recipient would not be included in the transaction value subject to the following conditions, to be satisfied cumulatively:

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

## Chapter 14

# Input Tax Credit

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1. It is important at this point to refer to certain significant differences in the two key terms 'input service' and 'input tax':
2. *Definitions*  
*In the CGST Act, 2017 unless the context otherwise requires,-*  
.....  
(60) "input service" means any service used or intended to be used by a supplier in the course or furtherance of business;  
.....  
(62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—
  - (a) the integrated goods and services tax charged on import of goods;
  - (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
  - (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
  - (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
  - (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,*but does not include the tax paid under the composition levy; ;*  
(63) "input tax credit" means the credit of input tax;
3. The sole test for claim of credit is "used, or are intended to be used, in the course or furtherance of his business". Therefore, in order to claim credit, a taxable person is required to demonstrate how the service (in respect of which applicable GST is paid) furthers his business.
4. But, if we note the definition of 'input service', it appears to make two exceptions to the above understanding. Firstly, it is understandable that there may be certain services which may be generally or in certain cases be categorised as 'ineligible'. It is a different matter that this is not desirable or that this causes cascading effect.

5. To explain this further, the sequence of steps to be examined before claiming eligibility to credit are:
  - Firstly, services are received along with valid invoice, the creditable tax having been deposited with the appropriate Government on the inward supplies by the supplier and a valid return has been filed;
  - Secondly, this service must pass the 'furtherance of his business' test by the claimant of credit;
6. Few ITC restrictions have been carried forward from the erstwhile laws like employee related services (viz., outdoor catering, beauty treatment, health services, life insurance, health insurance etc.) and goods and/or services in the execution of works contract.
7. Time restriction has been imposed for availing the ITC on both inputs and input services. The same must be availed before filing of returns for the month of September of the following year. Theoretically maximum and minimum period available to avail an ITC is 18 months and 6 months respectively.
8. In summary, among others, the following facts are crucial for availment of Input tax credit:
  - The services must be used "by him" in the course or furtherance "of his" business.
  - Possession of Output Invoice/Supplementary Invoice/ Debit or Credit note/ ISD invoice/ Bill of Entry and other related documents is a must.
  - The document must contain all the prescribed particulars specified in the Invoice Rules. It may be noted that Invoice or such other document can contain additional details other than those prescribed but NO LESS.
  - Supplier of services must upload the details of such documents in the GST common portal.
  - Vesting condition for clearing input tax credit is the return under section 39 and not the supply per se.
  - Input tax credit in case of supplies in instalment would be receipt of last instalment of goods.
  - The law casts an obligation on the recipient of services, who has availed credit, to effect payment to the supplier within a period of 180 days from the date of invoice. If such payment is not effected by the recipient to the supplier, he is obligated to reverse the input tax credit so availed leading to consequential levy of tax, interest and penalty.

## **Input Tax Credit**

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- Claim of income tax depreciation on the GST component disqualifies a recipient of capital goods from availment of input tax credit.
- ITC cannot be availed after the due date of filing the return for September month of the next financial year, or on furnishing the Annual Return whichever is earlier.
- No registered person is permitted to avail any input tax credit pursuant to an order of demand on account of fraud, willful misstatement, or suppression of fact.

## Chapter 15

# Important Issues

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In relation to supply of services, few important issues have been identified.

1. Stock transfer of services (or cross charge in respect of services) : As concluded earlier, implied supplies do not require the presence of two persons to attract the incidence of tax. Accordingly, tax incidence on stock transfer or branch transfer would arise not only with respect to goods but also with respect to services (services and goods treated as services). Tax incidence on implied supply of services (para 2 to schedule I) would arise in case of inter-State supply and intra-State supply involving two distinct business verticals of the same person. Further, such transactions will be valued based on section 15 of the CGST Act read with the Valuation Rules.
2. Barter of services – is an unfamiliar transaction that could emerge in GST, either involving two services that are bartered or a combination of goods and services. Firstly, there is very poor understanding about the distinction between barter and exchange and whether valuation of one leg of the transaction would automatically be accepted as the appropriate value for the other leg of such transactions is an issue. Concerns revolve around the definition and valuation particularly regarding adequacy of consideration.
3. Transactions covered by Schedule I require testing of transaction value and this would be critical. Having identified the transaction, applying valuation methods on those services would be a challenge. Comparing one service to another will be a Herculean task. If the Valuation Rules are not amended to ease the methods, then the taxable person supplying service will have a major task cut out to convince the GST officer the arms' length nature of the transaction.
4. Composite supply – is defined in section 2(30) of the CGST Act to mean a supply made by a taxable person to a recipient comprising two or more taxable supplies of goods or services, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. This is very similar to “Bundled Services” which are naturally bundled as defined under Service Tax Law.
5. Mixed Supply – is defined in section 2(74) of the CGST Act to mean 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. This is similar to bundled services which are not naturally bundled, as defined under Service Tax Law.
6. New tax payers – considering the wide scope of the word supply- there are various new tax payers from sectors like education, healthcare, betting-gambling, entertainment, etc.



Concerns are with respect to classification of these sectors as supply of goods or supply of services. Further concerns are with respect to the nature and extent of exemptions that may be available in this regard. And in case exemptions are allowed, then the need for clearly articulating the supply to be exempted and its extent is crucial.

Examples:

- (a) Non-sovereign functions by the sovereign – the government undertakes various activities that are commercial pursuits with perhaps the intention to develop by pioneering new industries, regulate competition or equitably distribute natural resources. Nevertheless, activities undertaken by the sovereign do not ipso facto become sovereign functions. Services performed by the sovereign which are non-sovereign in nature would be liable to GST.
  - (b) Commercial activities by non-commercial forms of organization – education and healthcare are two examples of activities that have now come to be undertaken in commercial proportions and at commercial levels of charges but these are undertaken by organisations which are established in the form of trust or other non-commercial forms. The law on trust may permit deployment of endowments received by them to undertake commercial activities in the course of service to the population of beneficiaries. However, the taxes charged on the costs incurred by in these commercial activities will result in cascading of taxes if exemption were to be given based on the form of the organisation. Accordingly, it is expected that commercial activities even if undertaken by non-commercial forms of organisations may be liable to GST. Exemptions however, would continue in respect of certain categories of services provided in these sectors based on the wisdom of the government and as mentioned in the RNR report.
  - (c) Betting and gambling – these activities are liable for a tax of a kind that they have so far been unfamiliar with.
7. Ensuring your supplier has paid the relevant taxes to the credit of the Government would be of utmost preference. It has direct bearing on the taxable persons' bottom line profits. The taxable person has to put systems in place or renegotiate the payment terms with the vendors considering all these concerns.
8. It is important to understand the term 'job work' as defined under section 2(68) which is as under:

*“job work means undertaking any treatment or process by a person on goods belonging to another registered taxable person and the expression “job worker” shall be construed accordingly”.*

It is pertinent to note here that the activity of working on another persons' goods alone tantamount to job work. What if the job worker adds his own materials during the treatment / process on goods belonging to the principal? Does that vitiate the nature of

activity of job work? It may not be so. The activity may still be construed to be one of job work as defined above. However, any goods where the title is transferred during the course of job work activity may be treated as supply of goods. It may be treated as a composite contract of goods and services.

9. Transactions involving goods particularly what is understood as deemed sales as per Article 366(29A) of the Constitution of India, will now be liable to tax as if they were services. This requires a major shift in the understanding and a departure from the experience is brought forward from the existing laws in respect of these transactions. Accordingly, it is required to leave behind past experience and look at transactions involving goods liable to tax as services afresh. Provisions regarding time and place of supply as applicable to goods will not apply to these transactions and provisions with respect to time and place of supply of services will now have to be applied to them. What, if any, is the effect of a transaction involving supply of goods (being tangible movable property) when treated as being supply of services? To answer this, we can take following transactions and compare the implications under both scenarios, namely:
  - Works contract;
  - Leasing; and
  - Supply of food and beverages.
10. Electronic commerce operator with the use of an internet technology company facilitates suppliers to offer goods and / or services to potential customers in an 'online market'. Responsibility accepted by the e-commerce operator may consist of providing IT-solution, acting as custodian of payment, assistance in product showcasing, assistance in logistics and warehouse support and even buy-stock-sell. Except in case of buy-stock-sell, customers know that the fulfilment is not by the e-commerce operator. Internet business involving an e-commerce operator is not only in respect of supply of goods but also supply of services. Here, the underlying supply (of goods or services) is fulfilled by a third party but the 'privity of contract' is between such third party and the customers. Even when the payment is made by the customer to the e-commerce operator, it is well understood to be in fiduciary capacity. E-commerce operator will be liable to collect tax at source at the rate of 1 per cent of the net value of taxable supplies made through it, where the consideration with respect to such supplies is to be collected by the operator.

## Chapter 16

# Returns and Due Dates

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1. Chapter IX of the CGST Act, 2017 relates to filing of returns and the following tabulation highlights some key conclusions:

<b>Provision</b>	<b>Return</b>	<b>Due Date</b>	<b>Applicability</b>	<b>Exclusions</b>
Section 37	GSTR-1: Return of outward supplies	10 <sup>th</sup> of the succeeding month	All registered persons	<ul style="list-style-type: none"> <li>Input service distributor ("ISD");</li> </ul>
Section 38	GSTR-2: Return of inward supplies	15 <sup>th</sup> of the succeeding month	All registered persons	<ul style="list-style-type: none"> <li>Non-resident taxable person. ("NRI")</li> </ul>
Section 39(1)	GSTR-3: Monthly returns	20 <sup>th</sup> of the succeeding month	All registered persons	<ul style="list-style-type: none"> <li>Person paying tax under section 10, 51 or 52 [i.e., Composition tax payer, tax deductor, tax collector-(here e-commerce Operator)]</li> <li>Supplier of Online information and database access or retrieval services ("OIDAR")</li> </ul>
Section 39(2)	GSTR-4 Quarterly returns	18 <sup>th</sup> of the succeeding month	Composition tax payers	-
Section 39 (3)	GSTR-7 Tax deduction at	10 <sup>th</sup> of the succeeding	Registration obtained for	-

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Provision		Return	Due Date	Applicability	Exclusions
		source (TDS)	month	TDS purposes	
Section 39(4)		GSTR-6 : Monthly returns	13 <sup>th</sup> of the succeeding month	ISD	-
Section 39(5)		GSTR-5	20 <sup>th</sup> of the succeeding month or within 7 days after expiry of registration, whichever is earlier	Registered NRI	
Section 40		GSTR-1 : First return of outward supply	As per section 37	-	-
		GSTR-2 : First return of inward supply	As per section 38	-	-
		GSTR-3 : First return	As per section 39	-	-
Section 44	Rule 80(1)	GSTR-9 : Annual return	31 <sup>st</sup> Dec of the succeeding financial year (i.e., for financial year ending March)	All registered persons	<ul style="list-style-type: none"> <li>• ISD;</li> <li>• Person paying tax under section 51 or 52</li> <li>• Casual taxable person;</li> <li>• NRI.</li> </ul>
	Proviso to Rule 80(1)	GSTR-9A : Annual return		Composition Tax Payer	
	Rule	GSTR-9C		Normal Tax	

**Returns and Due Dates**

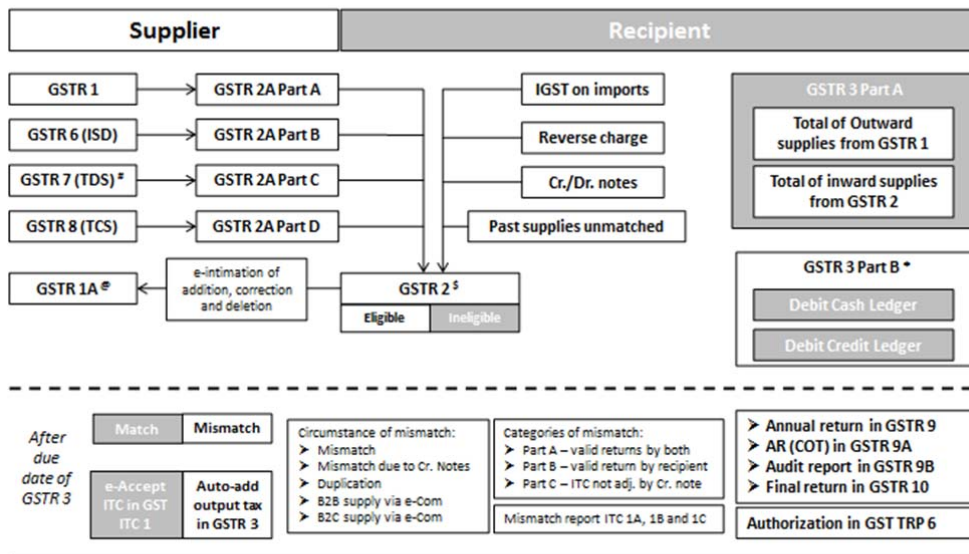
<b>Provision</b>		<b>Return</b>	<b>Due Date</b>	<b>Applicability</b>	<b>Exclusions</b>
	80(3)	Annual return		Payer having turnover more than "2 crore (Registered person who get his A/cs audited)	
Section 45		Final return *	Within 3 months from date of cancellation or date of order of cancellation of registration, whichever is later	All registered persons	<ul style="list-style-type: none"> <li>• ISD</li> <li>• NRI</li> <li>• Person paying tax under section 10, 51 or 52 (i.e., Composition tax payer, tax deductor, tax collector- here e.commerce Operator)</li> <li>• OIDAR</li> </ul>
Section 52(4)		GSTR-8 - Statement for Tax collected at source (TCS) (Outward supplies including return if any)	10 <sup>th</sup> of the succeeding month	Registration obtained for TCS purposes	-
Section 52(5)- Rule 80(2)		GSTR-9B Annual Statement by e.commerce Operator	31 <sup>st</sup> Dec of the succeeding financial year (i.e., for financial year ending March)	e.commerce Operator	

**Note:**

Returns in Form GSTR 3B is an interim return which is to be filled by 20th of every month.

- Further, Press Release dated October 6, 2017, inter alia provides that, to facilitate the ease of payment and return filing for small and medium businesses with annual aggregate turnover up to ₹ 1.5 crores, it has been decided that such taxpayers shall be required to file quarterly returns in FORM GSTR-1,2 & 3 and pay taxes only on a quarterly basis, starting from the third quarter of this financial year i.e. October-December, 2017. The registered buyers from such small taxpayers would be eligible to avail ITC on a monthly basis. The due dates for filing the quarterly returns for such taxpayers shall be announced in due course. Meanwhile, all taxpayers will be required to file FORM GSTR-3B on a monthly basis till December, 2017.

**Returns Rules**



\* TDS certificate in GSTR 7A after filing return

® e-intimation in GSTR 1A upon acceptance will modify the details in GSTR 1

§ UIN-holders to submit inward supplies in GSTR 11

\* GST PMT 3 for interest compensation

Quarterly returns(COT) in GSTR 4A and GSTR 4

NRTP returns in GSTR 5

ISD returns in GSTR 6A and GSTR 6

Non-filers notice in GSTR 3A u/s 32 r/w 46

## Chapter 17

# Tax Collection at Source

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1. While the concepts of forward charge and reverse charge are well-understood, the GST Law introduces yet another mechanism whereby neither the supplier nor the recipient is cast with the responsibility of remitting the tax applicable on a supply. Through the powers conferred by section 9(5) of the CGST Act, 2017, or section 5(5) of the IGST Act, 2017, e-commerce operators are responsible for remitting the entire amount of tax in respect of certain notified services. Consequently, the suppliers providing such services would not be liable for registration, if their turnover does not exceed the specified threshold limit.
2. "Electronic commerce operators" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Where taxable supplies are made through an electronic commerce operator, by other suppliers, and the consideration with respect to such supplies is to be collected by the e-commerce operator, such e-commerce operator is liable to collect tax at source at a rate to be notified (not exceeding 1% CGST plus 1% SGST). Due to this reason, all e-commerce operators are liable for registration, regardless of their turnover in a financial year.

3. Such tax to be collected at source ("TCS") would be applicable on the net value of taxable supplies, that is, the aggregate value of taxable supplies of goods or services or both, other than services notified under section 9(5) of the CGST Act, 2017, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

It is pertinent to mention that in exercise of the powers conferred by Section 9(5) of the CGST Act/ Section 5(5) of the IGST Act, the Central Government *vide Notification No. 17/2017-Central Tax (Rate) dated June 28, 2017 / Notification No. 14/2017-Integrated Tax (Rate) dated June 28, 2017* has notified the following categories of services, tax on intra /inter State supplies of which shall be paid by e-commerce operator: -

- (i) Services by way of transportation of passengers by radio taxi, motorcab, maxicab & motor cycle;
  - (ii) Services by way of providing accommodation in hotels, inns, guest houses, clubs, camp-sites or other commercial places meant for residential or lodging purposes, except where the person supplying such service is liable to be registered under Section 22(1) of the CGST Act.
4. TCS provisions would stand attracted only where the e-commerce operator collects the consideration for and on behalf of the supplier, in respect of supplies made through it,

and would not include cases where the recipient of supply makes the payment directly to the supplier.

5. The TCS shall be deposited within 10 days from the end of the month in which such collection is made and the credit of such taxes will be made available in the electronic cash ledger of the supplier, since related monthly return is filed by E-Commerce Operator.
6. E-Commerce operator shall furnish details of outward supplies of goods or services or both made through it, including the supplies returned through it and the amount collected by it under section 52(1), in Form GSTR-8 within 10 days after end of the month in which supplies are made.
7. The details of TCS furnished by an e-commerce operator under section 52 in Form GSTR-8 shall be made available to the supplier in Part D of FORM GSTR - 2A electronically through the Common Portal and such taxable person may include the same in FORM GSTR-2.
8. Any mismatch between the data submitted by the e-commerce operator in his monthly returns and that of suppliers making supplies through him shall cause due 'mismatch enquiry' from the proper officer; and either party may rectify the erroneous data. If rectification is not carried out by supplier his offence gets confirmed. Short remittance, if any, identified thus will have to be paid by erring supplier (who under reported the turnover) with interest calculated as per Section 50.
9. Any authority, of the rank of Deputy Commissioner or above, can issue a notice during, or before a proceeding under this Act - to e-commerce Operator seeking information on –
  - (a) supplies of goods or services or both effected through such operator during any period; or
  - (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

This notice needs to be responded within 15 days from the date of receipt by the e-commerce Operator. Failure to submit the required details will attract penalty under Section 52 (14) of the Act which may extend to ₹ 25,000.

10. Section 52 (5) of the CGST Act, 2017, requires filing of Annual Statement by e-commerce operator on or before 31st December following the year end (31<sup>st</sup> March of relevant year).
11. In case e-commerce operator fails to collect to tax under section 52(1) or collects an amount which is less than the amount required to be collected under said sub-section or



where he fails to pay to the government the amount collected as tax under section 52(3), he shall be liable to penalty under section 122(1)(vi) of the CGST Act,. The penalty would be Rs .10,000 or the amount of TCS involved, whichever is higher.

12. UTGST Act 2017, subject to its own provisions, adopts the provisions in CGST Act in respect of Tax Collection at Source *mutatis mutandis* (Ref: Sec 21 of UTGST Act).
13. It is imperative to mention that section 52 of the CGST Act,2017 is yet to be notified by Government

Further, *vide Press Release of the 22nd GST meeting held on October 6, 2017*, it has been stated that after assessing the readiness of the trade, industry and Government departments, it has been decided that registration and operationalization of TDS/TCS provisions shall be postponed till March 31, 2018.

## Chapter 18

# Tax Deduction at Source

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1. Deduction of tax at source is provided in section 51 of the CGST Act and this is not the same as collection of tax at source under section 52 of the said Act. This section applies to the following four categories of persons when they are making payment in respect of supplies under a contract where the total value of supply of good or services (excluding the GST element in the invoice) exceeds ₹ 2.5 lakhs, namely:
  - A department or establishment of the appropriate Government – being a functioning arm of the Government;
  - Local authorities – the form in which a local authority may be organized or established may be less relevant compared to its functions being in relation to governance;
  - Governmental agencies – the functions of this agency are less relevant compared to the interests of the Sovereign that it represents;
  - Notified persons or category of persons – not only will certain persons be notified to comply with this section, but a further sub-sect may be carved out of the same kind of persons and required to comply with the requirements .
2. Considering that provisions similar to section 51 of the CGST are there in the SGST Acts, it would be interesting to note that deduction of tax at source will apply in respect of payment towards supplies by persons coming within the operation of this section under both the legislations, i.e., when section 51 is contained in two legislations, then reading it *mutatis mutandis* leads to the only conclusion that it would be 1% plus 1% and not 1% in total.
3. TDS provisions would stand attracted only where the location of the supplier, the place of supply as well as the registration location of the recipient are in the same State / Union Territory.
4. Taxes deducted are required to be deposited within 10 days from the end of the month to which the deduction relates and the tax deducted will be credited in the electronic cash ledger of the deductee. Additionally, a certificate is to be issued within five days of payment to the Government, failing which a late fee of ₹100/- per day would be payable (subject to a maximum of ₹ 5,000/-).
5. Central Government *vide* Notification No. 33/2017-Central Tax, *dated September 15,2017* has provided that section 51 of the CGST Act, 2017 will be effective from September 18, 2017 with respect to the persons specified below:
  - (a) an authority or a board or any other body, -

- (i) set up by an Act of Parliament or a State Legislature; or
  - (ii) established by any Government, with fifty-one percent or more participation by way of equity or control, to carry out any function;
- (b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);
- (c) public sector undertakings

However, the date from which the tax needs to be deducted from the payment made or credited to the supplier of taxable goods or services or both will be notified separately.

**Further, vide Press Release of the 22<sup>nd</sup> GST meeting on October 6, 2017, it has been stated that after assessing the readiness of the trade, industry and Government departments, it has been decided that registration and operationalization of TDS/TCS provisions shall be postponed till March 31, 2018.**

6. Supplies to a tax deductor by an unregistered supplier exempt- Section 51 of the CGST Act, 2017 requires a department or establishment of the Central Government or State Government, local authority, Governmental agencies or such persons or category of persons as may be notified by the Government on the recommendations of the Council to deduct tax @ 1% from the payment made or credited to the supplier of taxable goods or services or both, where the total value of such supply, under a contract, exceeds ₹ 2,50,000.

Further section 9(4) of the CGST Act, 2017 requires a registered person to pay taxes under reverse charge upon purchases made from unregistered suppliers. In this regard, Central Government vide *Notification No. 09/2017-Central Tax (Rate)*, dated June 28, 2017 has w.e.f 1<sup>st</sup> July 2017 exempted intra-State supplies of goods or services or both received by a tax deductor under section 51 from an unregistered supplier. This is subject to the condition that the tax deductor is not liable to be registered otherwise then by way of Compulsory registration under CGST Act, 2017.

## Chapter 19

# Job Work

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### Introduction

1. Under the erstwhile Central Excise Law, Job Work used to mean processing or carrying out manufacturing operations on the goods provided by others. When a job worker's activity results in the manufacture of a new product, it is a manufacture under Central Excise and accordingly job workers were liable for payment of Central Excise Duty. Certain exemptions were granted under the Central Excise Law *vide Notification No. 214/86 dated 25.03.1986*.
2. The activities of a Job worker relating to processing of goods which do not result in the manufacture of goods, shall constitute services under the Finance Act, 1994. Such activities were liable for payment of Service Tax. However certain exemptions were granted *vide Notification No. 25/2012 dated 20.06.2012*.
3. Section 2 (68) of the CGST Act, 2017 defines job work as under –  
*“job work” means undertaking any treatment or process by a person on goods belonging to another registered taxable person and the expression “job worker” shall be construed accordingly.*

Hence, for treating anything as job work there ought to be: -

- Two persons;
- The goods should belong to another registered person;
- Treatment or process to be undertaken on the said goods shall be by the job worker, whether registered or not.

The definition of job work also contemplates that the person i.e. principal should be a registered person. Thus, if some treatment or process is undertaken by a job worker on goods belonging to an unregistered person, it will not be considered as job work as per the above definition. Therefore, in a case where the principal is not a registered person the activity may not qualify as job work and may be classified as residual category of service which may attract higher rate of tax.

### Nature of activity of job worker and his GST liability

4. Schedule II clarifies as to which activity will amount to supply of goods and which other activity will amount to supply of services. With regard to job work, it clarifies that any treatment or process which has been applied to another person's goods or supply of services, shall amount to supply of services.

5. Section 22 of the CGST Act, 2017 provides for persons liable to be registered (and threshold limit for registration). It *inter alia* provides that every supplier is liable to be registered, from where he makes a taxable supply of goods/ services if his aggregate turnover in a financial year exceeds ₹ 20 Lakhs in the State or Union territory, other than special category States and ₹10 lakhs in case of special category States.
6. Explanation (ii) to Section 22 provides that the supply of goods by the job worker after completion of job work shall be treated as supply of goods by the principal and the value of such goods shall not be included in the aggregate turnover of the job worker. Therefore, for the purpose of obtaining registration as well as basic exemption, only job charges received by the job worker are to be considered.

However, if job worker is doing job work for a manufacturer who is located in different State, then being inter-State supply of service compulsory registration was required to be obtained pursuant to section 24 prior to September 14,2017.

Further, with effect from September 14, 2017 *vide Notification No. 07/2017-Integrated Tax, dated September 14, 2017*, job workers engaged in making inter-State supply of services to a registered person are exempted from obtaining registration except in cases where job-worker is:

- (a) Liable to be registered under section 22 (1) of the CGST Act,2017; or opts to take registration voluntarily under Section 25(3) of the CGST Act, 2017
- (b) Involved in making supply of services in relation to the goods mentioned against serial number 151 in the Annexure to rule 138 of the Central Goods and Services Tax Rules, 2017.

This means that this exemption will not be available to job work in relation to jewellery, goldsmiths' and silversmiths' wares as covered under Chapter 71 which do not require e-way bill

7. The Job worker would be liable for payment of tax as may be applicable to the services.

### **Certain Provisions relating to job work**

8. Sections 19, 141 & 143 of the Act deal with Job work under CGST Act, 2017
9. Section 143(1) read with section 19(1) of the CGST Act,2017 provides that a registered person may send any inputs/ capital goods without payment of tax to a job worker for job work (under the cover of delivery challan) and the principal shall subject to certain conditions and restrictions be allowed Input Tax Credit (ITC) on inputs sent to a job worker for job work.

It is pertinent to mention that in terms of Section 19(2) and 19(5) of CGST Act, 2017, the principal can also send goods directly to the place of job worker without receiving the said goods in his premises first and ITC can also be availed in such cases though the principal has not received the goods.

After job work, goods may be sent to another job worker or may be brought back to any of the place of business of the manufacturer (under delivery challan). The manufacturer is not required to reverse the credit or pay tax on supply of said inputs/ capital goods.

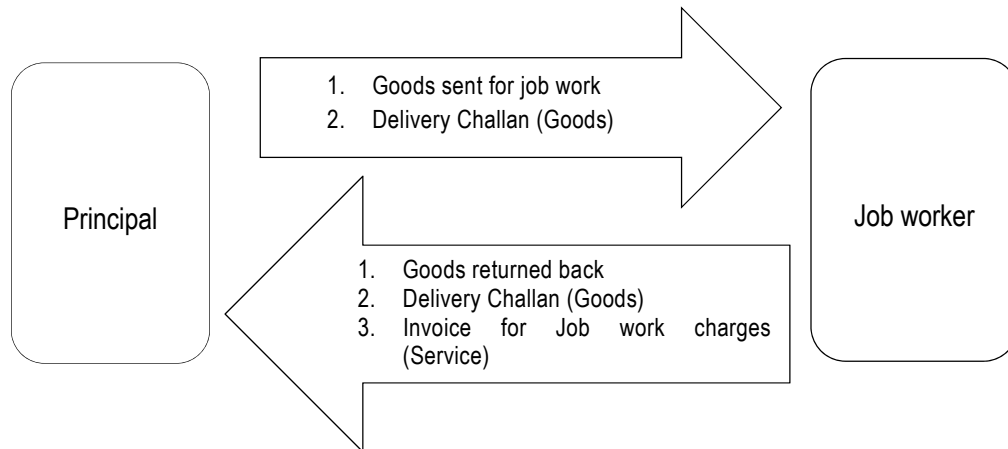
10. After completion of Job work, the goods may be directly supplied from job worker's premises to the customer within India on payment of tax or may be exported with or without payment, provided the principal declares the place of business of the job-worker as his additional place of business except:
  - (a) where the job worker is registered under section 25; or
  - (b) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.
11. On the job work charges, GST will be charged by the job worker if the job worker is registered. Credit of the same can be availed by the principal.

In case, the job worker is not registered, then prior to October 13,2017, GST would be payable by the principal as procurement of URD supply i.e, procurement from unregistered supplier in terms of Section 9(4) of the CGST Act, 2017.

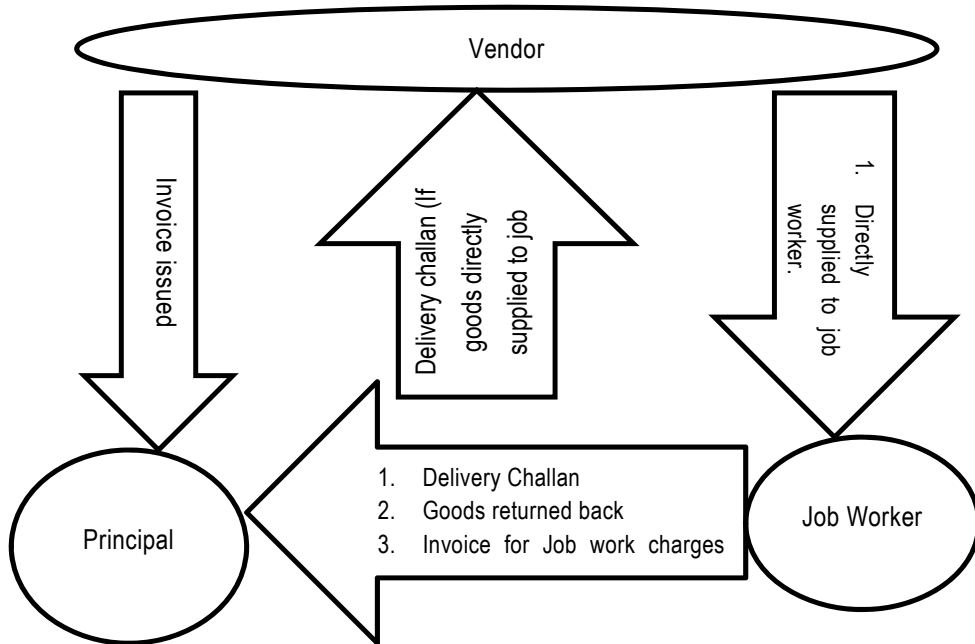
However, effective from October 13, 2017, the Central Government *vide Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017* read with *Notification No.8/2017-Central Tax (Rate)dated June28,2017* and *Notification No. 32/2017 – Integrated Tax (Rate) dated October 13, 2017*, has provided that any registered person procuring taxable goods or services or both from unregistered suppliers, shall not be required to pay CGST and IGST respectively under reverse charge mechanism under section 9(4) of CGST Act, 2017 till March 31, 2018

### **Job Work Flowchart**

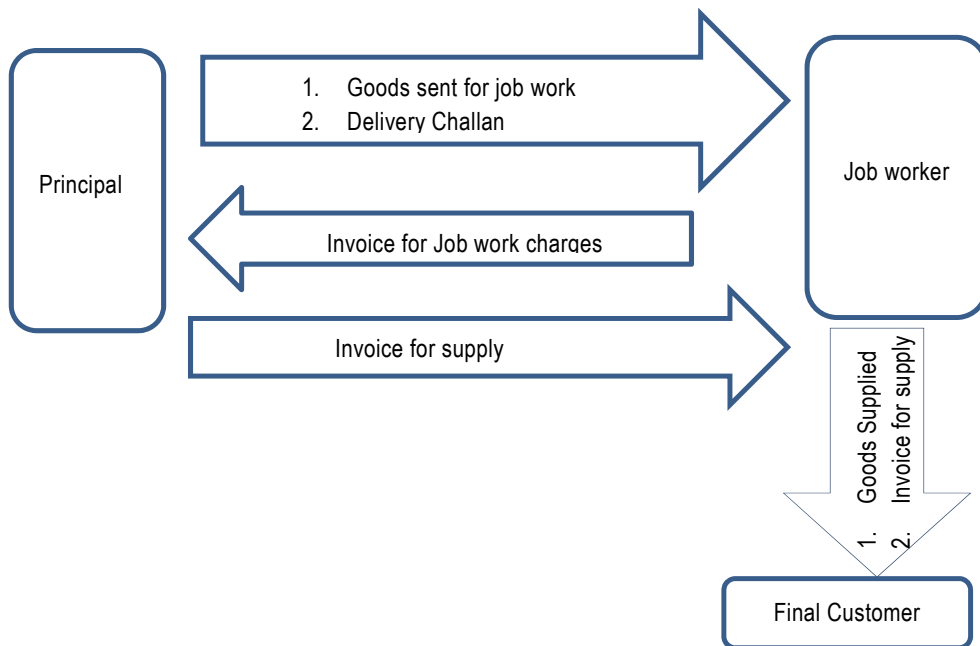
#### **Scenario 1: Goods sent for job work and returned back**



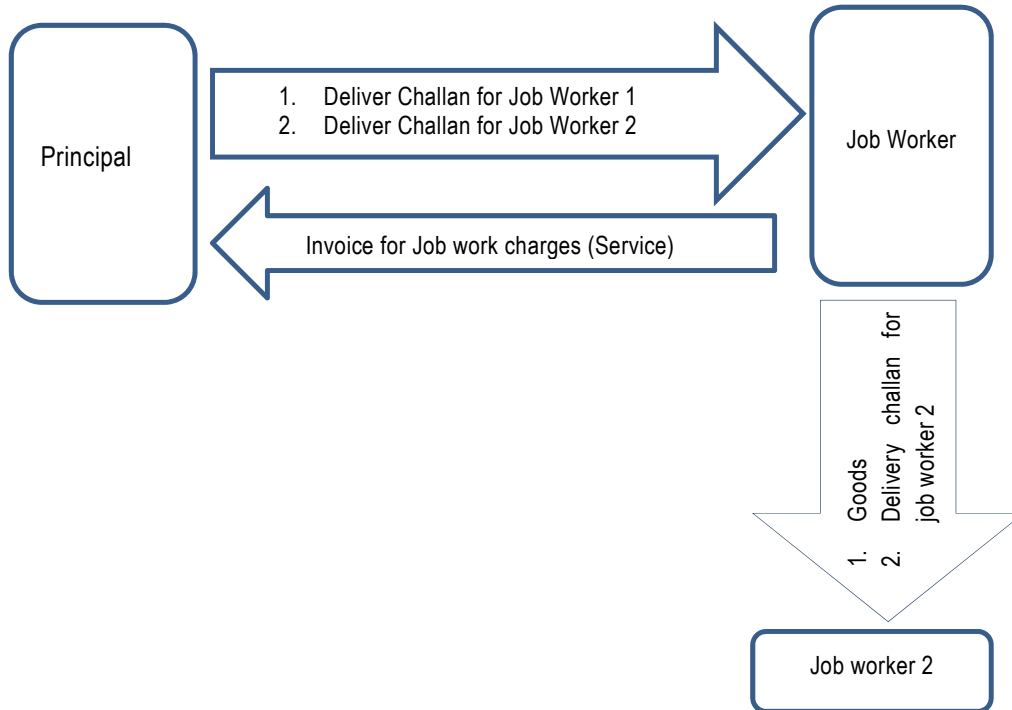
**Scenario 2: Goods directly supplied to the job worker**



**Scenario 3: Supply of goods to customer directly by job worker**



**Scenario 4: Goods sent from one job worker to another job worker**



**Conditions for availing ITC on goods sent to Job Worker**

12. The condition is that the inputs sent by registered person should be received back within 1 year of sending the inputs by the job worker. Inputs can be received back at any of the place of business of the principal. Therefore, inputs can be received back at the principal place of business or even at any of the place registered as an additional place of business.

In case inputs are sent directly to the job worker, the period of 1 year shall be counted from the date of receipt of input by the job worker. This period shall be 3 years in case of supply of capital goods to job worker.

13. The aforesaid time limit of 1 year or 3 years shall not apply to moulds and dies, jigs and fixtures or tools sent out to job worker for job work.

**Non-receipt of Inputs/ Capital Goods within the prescribed period**

14. If inputs/ capital goods are not received back by the manufacturer within the prescribed period of 1 year or 3 years, it is presumed that such inputs had been supplied by the principal to the job worker on the day when the said inputs are sent to job worker. Such supply shall have to be declared in FORM GSTR-1



15. The consequences of the aforesaid presumption and non-receipt of inputs/ capital goods within the prescribed period is that the principal/ manufacturer shall have to pay tax/ reverse credit along with interest.

### **Waste and Scrap**

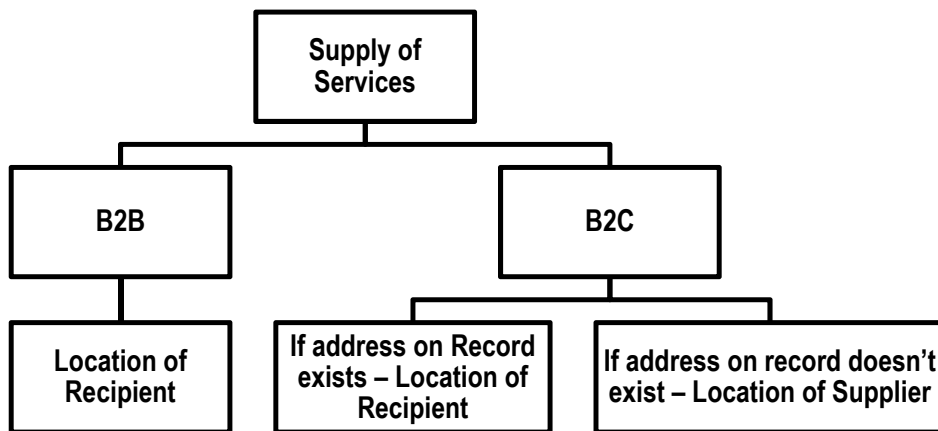
16. In every job work, some waste or scrap is likely to arise. Such waste and scrap should be returned to the principal/ manufacturer. However, Section 143(5) provides that job worker may supply such waste and scrap after payment of tax, if registered, or by principal, if not registered.

The principal should also maintain proper records of clearance of waste / scrap from the premises of the job worker.

### **Place of Supply in case location of Supplier and recipient of services is in India**

So far as job work is concerned supply for job work charges is governed by section 12 (2) of IGST Act, 2017, which states that in respect of:

- Services supplied to a recipient who is registered, POS will be the location of such person
- Services supplied to a recipient who is not registered, POS will be the address-on-record of such person and where such address is not available, it will be the location of supplier.



### **Nature of Supply**

When the registered job worker and the principal are in different States and goods are removed directly from the place of job worker:-

- i. If the principal (supplier of the goods) and recipient (buyer of the goods) are in the same State, then SGST and CGST shall be levied though the job worker is in different State.
- ii. If the principal and recipient are in different States, then IGST shall be levied even though the recipient is in the State where the job worker is situated.

### **Rate of tax under GST**

17. IGST/ (SGST + CGST) rates for job work is as follows:

- (i) 5% in case of services by way of job work relating to -:
  - (a) Printing of newspapers;
  - (b) Textiles and textile products falling under Chapter 50 to 63 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
  - (c) All products falling under Chapter 71 in the First Schedule to the Customs Tariff Act, 1975`
  - (d) Printing of all goods falling under Chapter 48 or 49, which attract CGST/SGST @ 2.5 per cent/ IGST @5%. or Nil
  - (e) Printing of books (including braille books), journals and periodicals;
  - (f) Processing of hides, skins and leather falling under Chapter 41 in the First Schedule to the Customs Tariff Act, 1975
  - (g) All food and food products falling under Chapters 1 to 22 in the First Schedule to the Customs Tariff Act, 1975;
  - (h) All products falling under Chapter 23 in the First Schedule to the Customs Tariff Act, 1975, except dog and cat food put up for retail sale falling under tariff item 23091000 of the said Chapter;
  - (i) Manufacture of clay bricks falling under tariff item 69010010 in the First Schedule to the Customs Tariff Act, 1975  
*{Entry No.26 of Notification No. 11/2017-Central Tax (Rate) dated June 28,2017 read with Notification No. 31/2017-Central Tax (Rate) dated October 13, 2017 (“N/N31-CGST”) and Entry No.26 of Notification No. 8/2017-Integrated Tax (Rate) dated June 28, 2017 read with Notification No. 39/2017-Integrated Tax (Rate) dated October 13, 2017(“N/N 39-IGST”)}*
- (ii) 5% in case Services by way of job work in relation to-
  - (a) manufacture of umbrella;
  - (b) printing of all goods falling under Chapter 48 or 49, which attract IGST @12%. [N/N31-CGST and N/N 39-IGST]

- (iii) 5% in case of Services by way of any treatment or process on goods belonging to another person, in relation to printing of newspapers, books (including Braille books), journals and periodicals

*[Notification No. 20/2017-Integrated Tax (Rate) dated August 22, 2017]*

- (iv) 12% in case of services by way of printing of newspapers, books (including Braille books), journals and periodicals, where only content is supplied by the publisher and the physical inputs including paper used for printing belongs to the printer.

*[Notification No. 20/2017-Integrated Tax (Rate) dated August 22, 2017]*

- (v) 18% in Manufacturing services on physical inputs (goods) owned by others, other than above. Other manufacturing services; publishing, printing and reproduction services; materials recovery services

### **Transitional Provisions**

18. Transitional provisions relating to job work are contained in Section 141 of the CGST Act, 2017. They are simultaneously applicable to inputs, semi-finished goods and finished goods.
19. These provisions relate to inputs, semi-finished goods and finished goods cleared to a job worker for further processing, testing, repair or any other purpose before the appointed day as per the provisions of earlier law and not received back until the appointed day.
20. Section 141 provides that if such inputs, semi-finished goods and finished goods are returned to the said factory after completion of job work after the appointed day, no tax shall be payable. The condition is that the goods should be received within 6 months from the appointed day. However, the competent authority may extend the period on sufficient cause being shown for a further period of 2 months.
21. The condition is that the manufacturer and job worker should declare (in the prescribed manner) the details of inputs, semi-finished goods and finished goods held in stock by the job worker on behalf of the manufacturer on the appointed day.
22. Similar provisions are there for SGST and IGST.
23. In case of semi-finished goods and finished goods, the manufacturer may transfer the goods to the premises of any registered taxable person for the purpose of supplying them from thereat by payment of tax in India or without payment of tax for export.

## Chapter 20

# Assessment and Audit

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1. All assessments of GST will be on 'self-assessment' basis. In specified circumstances, the officer of GST is authorized to carry out assessment.
2. Scrutiny of returns filed – where information will be called for with respect to disclosures contained in the returns filed. No visit to the premises of the taxable person is permitted.
3. Non-filer assessment – in the case of non-filers of returns, a form of protective assessment is permitted where based on information gathered, the officer may pass an order of assessment determining the tax payable. Before any such assessment is made, a notice is required to be issued which remains unattended to by the notice.
4. Assessment of unregistered persons – where persons found to have undertaken taxable supplies but remain unregistered may be assessed to tax by the officer within 5 years from due date of annual return.
5. Summary assessment – where any new information not available in the returns filed comes to the knowledge of the officer, then with the permission of the Commissioner, summary assessment is permitted in the interests of the Revenue.
6. GST permits audit of the books and records of the taxable persons at the business premises. Not only are the returns filed available but the entire books and records are at large before the audit officers. This audit is required to be completed in a time-bound manner by the officers and full-cooperation is expected from the taxable person. The audit will conclude with a report issued regarding the findings from this exercise.
7. A Chartered Accountant or Cost Accountant may be commissioned to carry out a special audit of the books and records of a taxable person at the directions of the officer of GST. This special audit can be directed when there is doubt about the value of taxable supplies reported or the credit availed.
8. Comptroller and Auditor General's office is also vested with powers to audit the books and records of a taxable person.

## Chapter 21

# Transition

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1. Service providers qualify for limited transition benefit. This is an important aspect to be borne in mind. Supplies involving goods that are treated as 'supply of services' in terms of Schedule II are eligible for transition benefits.
2. Credit available in the last returns filed under the old law will get transitioned under section 140 into GST. It is important to ensure that the closing balance of credit is properly sanitized to ensure that the right amount of credit is carried over. Under rule 14 of the CENVAT Credit Rules, there is no interest liability for improper availment of credit. As such, very often, credit may be generously availed but left unutilized. Under GST, improperly availed credit attracts interest liability.
3. Apart from improperly availed credit, large credit balance may even indicate improper compliance with Rule 6 of the CENVAT Credit Rules in respect of reversal of ineligible credit not on account of nexus with output supplies but output supplies being exempt. It needs to be noted that with effect from April 1, 2016 the definition of 'exempt services' has been broadened to even include transactions that are not only exempt from service tax but even those that are not included in the definition of service under section 65B(44).
4. Supplies involving goods even though treated as supply of services, namely, works contracts, are eligible for credit in respect of inputs lying in stock. The language of section 140 places a condition that works contractors who opt for payment of service tax under notification 26/2012-ST dated June 20, 2012 alone are eligible for such credit. With the amendment of rule 2A of the Service Tax (Determination of Value) Rules vide section 128 of Finance Act, 2017 payment of service tax either under rule 2A or under Notification No. 26/2012 have been unified. Care must be taken to ensure that the qualifying conditions are met. The ST-3 returns filed need to reflect that the works contractor has opted for Notification No. 26/2012 in order to meet the conditions of section 140 for claiming transition credit. Inputs in stock and those contained in semi-finished or finished goods in stock appears to limit the credit to 'unused' goods (for example, cement and steel) and not 'used but unsold' WIP (for example, unfinished apartment).
5. The facility of claiming credit under section 170 is important in respect of CENVAT credit that may have been reversed under rule 6 of the CENVAT Credit Rules on inputs held in stock subject to compliance with the requirements of section 140.
6. Inputs and input services 'in transit' are allowed transition credit under section 140 provided the invoice is accounted for within 30 days (extendable by a further period of 30 days).

7. Composition tax payers under the current law (for example, opting abatement under Notification No 26/2012 or under the Valuation Rules) are also entitled to avail credit but only in respect of inputs held in stock.
8. Contracts entered into prior to introduction of GST but supplies made after its introduction may be taxed based on the GST law in force on the date of actual supply. However, if the current tax applicable has been paid before the introduction of GST, then no further tax is payable under GST even if the actual supply is undertaken later. This facility provided by section 142 must be utilized particularly in contracts that are nearly complete and renegotiating tax reimbursements can prove onerous.
9. Services whose supply is taxable based on Point of Taxation Rules and accordingly subject to service tax will not again be subject to GST even if any of the events taking place is enabled in section 142.
10. ISD credit, under CENVAT Credit Rules, is permitted to be distributed even after the introduction of GST if the services are received prior to its introduction as per section 142.
11. Persons enjoying centralized registration may allocate and distribute closing balance of credit to any of their locations that become liable to GST as distinct persons subject to eligibility to credit in such locations as provided by section 142.

## Annexure A

### SCHEDULE-I

[See Section 7]

#### ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:  
Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. *Supply of goods—*
  - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
  - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

**SCHEDULE-II**

**[See Section 7]**

**ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

1. **Transfer**
  - (a) any transfer of the title in goods is a supply of goods;
  - (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a 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, is a supply of goods.
2. **Land and Building**
  - (a) any lease, tenancy, easement, licence to occupy land is a 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, is a supply of services.
3. **Treatment or process**

Any treatment or process which is applied to another person's goods is a supply of services.
4. **Transfer of business assets**
  - (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, 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, whether or not for a consideration, 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) the business is transferred as a going concern to another person; or
    - (ii) the business is carried on by a personal representative who is deemed to be a taxable person.



**5. Supply of services**

The following shall be treated as supply of service, namely: —

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

*Explanation* - For the purposes of this clause—

- (1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely: —
  - (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
  - (ii) a chartered engineer registered with the Institution of Engineers (India); or
  - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and
- (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 supply**

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

- (a) works contract as defined in clause (119) of section 2; and
- (b) 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.

**7. Supply of Goods**

The following shall be treated as supply of goods, namely: —

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

**SCHEDULE-III**

[See Section 7]

**ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY  
OF GOODS NOR A SUPPLY OF SERVICES**

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
  - (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
  - (b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
  - (c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
6. Actionable claims, other than lottery, betting and gambling.

*Explanation* - For the purposes of paragraph 2, the term "**Court**" includes District Court, High Court and Supreme Court.

## Annexure B

# Notifications

<b>CGST Rate Notifications (read with corresponding notifications issued under the State GST / UTGST Laws)</b>	<b>IGST Rate Notifications</b>	<b>Subject matter of the Notification</b>
08/2017-Central Tax (Rate), dt. 28-06-2017	-NA-	Goods & services received from unregistered suppliers - Exemption from reverse charge if aggregate value does not exceed ₹ 5,000 per day.
11/2017-Central Tax (Rate), dt. 28-06-2017	08/2017-Integrated Tax (Rate), dt. 28-06-2017 Corrigendum 1 Corrigendum 2	To notify the rates of tax for supply of various services.
Annexure	-NA-	Scheme of classification of services to identify the rates of tax / exemption from tax.
12/2017-Central Tax (Rate), dt. 28-06-2017	09/2017-Integrated Tax (Rate), dt. 28-06-2017	To notify the exemptions on supply of various services.
13/2017-Central Tax (Rate), dt. 28-06-2017 Corrigendum	10/2017-Integrated Tax (Rate), dt. 28-06-2017 Corrigendum	To notify the categories of services on which tax will be payable under reverse charge mechanism.
14/2017-Central Tax (Rate), dt. 28-06-2017	11/2017-Integrated Tax (Rate), dt. 28-06-2017	To notify that "Services by way of any activity in relation to a function entrusted to a Panchayat under Article 243G of the Constitution." would neither be a supply of goods nor a supply of services.
15/2017-Central Tax (Rate), dt. 28-06-2017	12/2017-Integrated Tax (Rate), dt. 28-06-2017	To notify that refund of unutilised ITC under Section 54(3) would not be available in case of supply of services specified in Schedule II 5(b).

**Annexure E : Notifications**

<b>CGST Rate Notifications (read with corresponding notifications issued under the State GST / UTGST Laws)</b>	<b>IGST Rate Notifications</b>	<b>Subject matter of the Notification</b>
17/2017-Central Tax (Rate), dt. 28-06-2017	14/2017-Integrated Tax (Rate), dt. 28-06-2017	To notify categories of services where the tax on intra-State supplies shall be paid by the electronic commerce operator.
-NA-	18/2017-Integrated Tax (Rate), dt. 05-07-2017	To exempt services imported by a SEZ unit or a developer (for authorised operations) from payment of IGST.
20/2017-Central Tax (Rate), dt. 22-08-2017	20/2017-Integrated Tax (Rate), dt. 22-08-2017	To amend the services rate notification to reduce the tax rate on specified supplies of Works Contract Services, job work for textile & textile products, printing service of books, newspapers etc, admission to planetarium, and, also to provide option to GTA & transport of passengers by motor-cab service providers to avail full ITC & discharge tax @ 12%.
21/2017-Central Tax (Rate), dt. 22-08-2017	21/2017-Integrated Tax (Rate), dt. 22-08-2017	To amend the services exemption notification to exempt services provided by Fair Price Shops to Government and those provided by and to FIFA for FIFA U-17, and also to substitute RWCIS & PMFBY for MNAIS & NAIS, and insert explanation for LLP.
22/2017-Central Tax (Rate), dt. 22-08-2017	22/2017-Integrated Tax (Rate), dt. 22-08-2017	To amend RCM provisions for GTA and to insert explanation for LLP.
23/2017-Central Tax (Rate), dt. 22-08-2017	23/2017-Integrated Tax (Rate), dt. 22-08-2017	To amend notification specifying categories of services where the tax shall be paid by the electronic commerce operator to include services provided by way of house-keeping such as plumbing, carpentering etc.
24/2017-Central Tax (Rate), dt. 21-09-2017	24/2017-Integrated Tax (Rate), dt. 21-09-2017	To amend the services rate notification to reduce the tax rate on specified supplies of Works Contract Services.

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<b>CGST Rate Notifications (read with corresponding notifications issued under the State GST / UTGST Laws)</b>	<b>IGST Rate Notifications</b>	<b>Subject matter of the Notification</b>
25/2017-Central Tax (Rate), dt. 21-09-2017	25/2017-Integrated Tax (Rate), dt. 21-09-2017	To amend the services exemption notification to exempt right to admission to the events organised under FIFA U-17 World Cup 2017.
30/2017-Central Tax (Rate), dt. 29-09-2017	31/2017-Integrated Tax (Rate), dt. 29-09-2017	To exempt supply of services associated with transit cargo to Nepal and Bhutan.
31/2017-Central Tax (Rate) ,dt. 13-10-2017	39/2017-Integrated Tax (Rate) ,dt. 13-10-2017	Seeks to amend notification No. 11/2017-CT(R). Seeks to amend notification No. 8/2017-Integrated Tax (Rate).
32/2017-Central Tax (Rate) ,dt. 13-10-2017	33/2017-Integrated Tax (Rate) ,dt. 13-10-2017	Seeks to amend notification No. 12/2017-CT(R). Seeks to amend notification No. 9/2017-IT(R) .
33/2017-Central Tax (Rate) ,dt. 13-10-2017	34/2017-Integrated Tax (Rate) ,dt. 13-10-2017	Seeks to amend notification No. 13/2017-CT(R) regarding services provided by Overseeing Committee members to RBI under RCM.
38/2017-Central Tax (Rate) ,dt. 13-10-2017	32/2017-Integrated Tax (Rate) ,dt. 13-10-2017	Seeks to exempt payment of tax under section 9(4) of the CGST Act, 2017 till 31.03.2018 Seeks to exempt payment of tax under section 5(4) of the IGST Act, 2017 till 31.03.2018.
39/2017-Central Tax (Rate) ,dt. 18-10-2017	40/2017-Integrated Tax (Rate) ,dt. 18-10-2017	Seeks to reduce GST rate on Food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government.