

Intermediate Course

Study Material

(Modules 1 to 2)

PAPER 4

Taxation

Section – B: Indirect Taxes

**(Relevant for May, 2020 and
November, 2020 examinations)**

MODULE – 1



BOARD OF STUDIES

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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BEFORE WE BEGIN ...

The traditional role of a chartered accountant restricted to accounting and auditing, has now changed substantially and there has been a marked shift towards strategic decision making and entrepreneurial roles that add value beyond traditional financial reporting. The primary factors responsible for the change are the increasing business complexities on account of plethora of laws, borderless economies consequent to giant leap in e-commerce, emergence of new financial instruments, emphasis on corporate social responsibility, significant developments in information technology, to name a few. These factors necessitate an increase in the competence level of chartered accountants to take up the role of not merely an accountant or auditor, but a global solution provider. Towards this end, the scheme of education and training is being continuously reviewed so that it is in sync with the requisites of the dynamic global business environment; the competence requirements are being continuously reviewed to enable aspiring chartered accountants to acquire the requisite professional competence to take on new roles.

Skill requirements at Intermediate Level

Under the Revised Scheme of Education and Training, at the Intermediate Level, you are expected to not only acquire professional knowledge but also the ability to apply such knowledge in problem solving. The process of learning should also help you inculcate the requisite professional skills, i.e., the intellectual skills and communication skills, necessary for achieving the desired level of professional competence.

Goods and Services Tax: The game changer indirect tax

Taxation is one of the core competence areas of chartered accountants. The subject of "Taxation" at the Intermediate level is divided into two sections, namely, Section A: Income-tax law and Section B: Indirect Taxes. Indirect Taxes, at the Intermediate level, cover goods and services tax (GST), the path breaking indirect tax introduced in India from July 1, 2017.

With GST, there has been a paradigm shift in the indirect tax landscape of the country. GST aims to make India a common market with common tax rates and procedures and remove the economic barriers thus, paving the way for an integrated economy at the national level. By subsuming most of the Central (excise duty, service tax, central sales tax) and State taxes (State-Level VAT) into a

single tax and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it would mitigate the ill effects of cascading and improve competitiveness. It follows a multi-stage collection mechanism where tax is collected at every stage and the credit of tax paid at the previous stage is available as a set off at the next stage of transaction.

GST, at the Intermediate level, involves understanding and application of the select provisions of the GST laws. The nitty-gritties of this new tax law coupled with its inherent dynamism, makes the learning, understanding and application of the provisions of this law in problem solving very interesting and challenging.

Know your Syllabus – Read the same along with Study Guidelines

The syllabus of Section B: Indirect Taxes covers select provisions of the Central Goods and Services Tax Act, 2017 and Integrated Goods and Services Act, 2017. Further, a concept of Study Guidelines has been introduced in the Revised Scheme of Education and Training in this subject, in line with the international best practices, to specify topic-wise exclusions from the syllabus. The Study Guidelines for an examination is issued after the expiry of cut-off date for amendments relevant for that examination. The Study Guidelines for this subject are also applicable for the corresponding paper in the Old Course.

For understanding the coverage of syllabus, it is important to read the Study Material as the content therein has been developed keeping in mind the extent of coverage of various topics as envisaged in the syllabus. Therefore, the provisions which do not form part of the syllabus are not discussed or explained in the Study Material. However, while discussing the relevant applicable provisions, a reference may have been made to some of these excluded provisions at certain places, which has been highlighted either by way of a footnote or otherwise.

Further, the Study Material should also be read along with the Study Guidelines. It may be noted that the Study Material is issued prior to the issuance of Study Guidelines. Therefore, the Study Material may have discussion on certain provisions which, post issuance of Study Material, get excluded from the syllabus by way of Study Guidelines. Such provisions will, therefore, be not relevant from the examination point of view.

Know your Study Material

This Study Material on Indirect Taxes is based on the provisions of the Central Goods and Services Tax Act, 2017 and Integrated Goods and Services Act, 2017 as amended upto 30.04.2019. Thus, it includes the amendments made by the CGST (Amendment) Act, 2018 and IGST (Amendment) Act, 2018 made effective from 01.02.2019, and significant notifications and circulars issued upto 30.04.2019. The

Study Material is, therefore, relevant for May 2020 and November 2020 examinations. The amendments made by the Amendment Acts and latest notifications/circulars are indicated in ***bold italics*** in the Study Material.

Further, the Finance (No. 2) Act, 2019 has come into force from 01.08.2019 after receiving the assent of the President of India. However, the amendments made in the CGST Act and IGST Act vide the Finance (No. 2) Act, 2019 have not become effective till the time this Study Material is being released for printing. Therefore, the applicability or otherwise of the amendments made by the Finance (No. 2) Act, 2019 for May 2020 and/or November 2020 examinations shall be announced by the ICAI only after the same become effective.

In the Study Material the existing provisions¹ are compared with the provisions as amended by the Finance (No. 2) Act, 2019 at the end of each chapter, wherever relevant. Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions in place of the related provisions discussed in the Chapter.

Efforts have been made to present the complex law of GST in a lucid manner. Care has been taken to present the chapters in a logical sequence to facilitate easy understanding by the students. The Study Material has been divided into two modules for ease of handling by students. Module 1 covers Chapters 1-5 and Module 2 covers Chapters 6-10.

The various chapters/units of this subject have been structured uniformly and comprise of the following components:

	Components of each Chapter	About the component
1.	Learning Outcomes	Learning outcomes which you need to demonstrate after learning each topic have been detailed in the first page of each chapter/unit. Demonstration of these learning outcomes will help you to achieve the desired level of technical competence
2.	Chapter Overview	As the name suggests, the flow chart/table/diagram given at the beginning of each chapter will give a broad outline

¹ Provisions existing as on the date when the Study Material was released for printing

		of the contents covered in the chapter
3.	Content	<p>The GST law has been explained by following a systematic approach of first extracting the statutory provisions followed by their analysis. Going through the statutory provisions will develop a legal aptitude in you which is a pre-requisite to study any law. The analysis of the statutory provisions given thereafter will give you an idea as to how the law is interpreted to arrive at meaningful conclusions and find answers to problems. You should read statutory provisions and analysis conjointly to have a holistic and complete understanding of the provisions.</p> <p>The concepts and provisions of GST laws are explained in student-friendly manner with the aid of examples/illustrations/ diagrams/flow charts. Diagrams and flow charts will help you understand and retain the concept/provision learnt in a better manner. Examples and illustrations will help you understand the application of concepts/provisions. These value additions will, thus, help you develop conceptual clarity and get a good grasp of the topic.</p>
4.	Let Us Recapitulate	<p>A summary of the chapter, in the form of tables/diagrams/flow charts, is given at the end to help you revise what you have learnt. It will especially facilitate quick revision of the chapter the day before the examination. However, please note that such summaries are not a substitute for in-depth study. You should read the summaries only after you have finished reading the discussions in the chapter.</p>
5.	Test Your Knowledge	<p>This section comprises of variety of questions which will help you to apply what you have learnt in problem solving, and, thus, sharpen your application skills. In effect, it will test your understanding of concepts/ provisions as well as your ability to apply the concepts/provisions learnt in solving problems and addressing issues. Multiple choice questions in this section will test the breadth and depth of your understanding of the topic.</p>

6. Answers

After you work out the problems/questions given under the section "Test Your Knowledge", you can verify your answers with the answers given under this section. This way you can self-assess your level of understanding of the provisions or concepts of a chapter.

Students may make note of the following while reading the Study Material:

- ❑ For the sake of brevity, the " Goods and Services Tax", "Central Goods and Services Tax", "State Goods and Services Tax", "Union Territory Goods and Services Tax", "Integrated Goods and Services Tax", "Central Goods and Services Act, 2017", "Integrated Goods and Services Act, 2017" and "Union Territory Goods and Services Act, 2017", "Central Goods and Services Tax Rules, 2017" have been referred to as "GST", "CGST", "SGST", "UTGST", "IGST", "CGST Act", "IGST Act", "UTGST Act" and "CGST Rules" respectively in this Study Material.
- ❑ Unless otherwise specified, the section numbers and rules referred to in the chapters pertain to CGST Act and CGST Rules respectively.
- ❑ The illustrations, examples, questions and answers given under 'Test Your Knowledge' are solved/answered on the basis of the position of law as existing on 30.04.2019. The reference to years/months subsequent to such date in the examples, illustrations, questions and answers is only for the purpose of explaining the concepts and provisions as the position of law may change subsequently.

Though all efforts have been taken in developing this Study Material, the possibilities of errors/omissions cannot be ruled out. You may bring such errors/omissions, if any, to our notice so that the necessary corrective action can be taken.

We hope that the new student-friendly features in the Study Material makes your learning process more enjoyable, enriches your knowledge and sharpens your application skills.

Since the entire syllabus of subject of indirect taxes forming part of paper on Taxation is same for both New and Old Course, this Study Material is also relevant for IIPCC (Old) Paper 4 Taxation Section B: Indirect Taxes.

Happy Reading and Best Wishes!

SYLLABUS

PAPER – 4 : TAXATION

(One paper – Three hours – 100 Marks)

Objective:

To develop an understanding of the provisions of income-tax law and goods and services tax law and to acquire the ability to apply such knowledge to make computations and address application oriented issues.

SECTION A: INCOME TAX LAW (60 MARKS)

Contents:

1. Basic Concepts

- (i) Income-tax law: An introduction
- (ii) Important definitions in the Income-tax Act, 1961
- (iii) Concept of previous year and assessment year
- (iv) Basis of Charge and Rates of Tax

2. Residential status and scope of total income

- (i) Residential status
- (ii) Scope of total income

3. Incomes which do not form part of total income (other than charitable trusts and institutions, political parties and electoral trusts)

- (i) Incomes not included in total income
- (ii) Tax holiday for newly established units in Special Economic Zones

4. Heads of income and the provisions governing computation of income under different heads

- (i) Salaries
- (ii) Income from house property

- (iii) Profits and gains of business or profession
- (iv) Capital gains
- (v) Income from other sources

5. Income of other persons included in assessee's total income

- (i) Clubbing of income: An introduction
- (ii) Transfer of income without transfer of assets
- (iii) Income arising from revocable transfer of assets
- (iv) Clubbing of income of income arising to spouse, minor child and son's wife in certain cases
- (v) Conversion of self-acquired property into property of HUF

6. Aggregation of income; Set-off, or carry forward and set-off of losses

- (i) Aggregation of income
- (ii) Concept of set-off and carry forward and set-off of losses
- (iii) Provisions governing set-off and carry forward and set-off of losses under different heads of income
- (iv) Order of set-off of losses

7. Deductions from gross total income

- (i) General provisions
- (ii) Deductions in respect of certain payments
- (iii) Specific deductions in respect of certain income
- (iv) Deductions in respect of other income
- (v) Other deductions

8. Computation of total income and tax liability of individuals

- (i) Income to be considered while computing total income of individuals
- (ii) Procedure for computation of total income and tax liability of individuals

9. Advance tax, tax deduction at source and introduction to tax collection at source

- (i) Introduction
- (ii) Direct Payment
- (iii) Provisions concerning deduction of tax at source
- (iv) Advance payment of tax
- (v) Interest for defaults in payment of advance tax and deferment of advance tax
- (vi) Tax collection at source – Basic concept
- (vii) Tax deduction and collection account number

10. Provisions for filing return of income and self-assessment

- (i) Return of Income
- (ii) Compulsory filing of return of income
- (iii) Fee and Interest for default in furnishing return of income
- (iv) Return of loss
- (v) Provisions relating to belated return, revised return etc.
- (vi) Permanent account number
- (vii) Persons authorized to verify return of income
- (viii) Self-assessment

SECTION B – INDIRECT TAXES (40 MARKS)**Contents:****1. Concept of indirect taxes**

- (i) Concept and features of indirect taxes
- (ii) Principal indirect taxes

2. Goods and Services Tax (GST) Laws

- (i) GST Laws: An introduction including Constitutional aspects
- (ii) Levy and collection of CGST and IGST

- a) Application of CGST/IGST law
 - b) Concept of supply including composite and mixed supplies
 - c) Charge of tax including reverse charge
 - d) Exemption from tax
 - e) Composition levy
- (iii) Basic concepts of time and value of supply
 - (iv) Input tax credit
 - (v) Computation of GST liability
 - (vi) Registration
 - (vii) Tax invoice; Credit and Debit Notes; Electronic way bill
 - (viii) Returns
 - (ix) Payment of tax

Note – If any new legislation(s) is enacted in place of an existing legislation(s), the syllabus will accordingly include the corresponding provisions of such new legislation(s) in place of the existing legislation(s) with effect from the date to be notified by the Institute. Similarly, if any existing legislation ceases to have effect, the syllabus will accordingly exclude such legislation with effect from the date to be notified by the Institute. Students shall not be examined with reference to any particular State GST Law.

Consequential/corresponding amendments made in the provisions of the Income-tax law and Goods and Services Tax laws covered in the syllabus of this paper which arise out of the amendments made in the provisions not covered in the syllabus will not form part of the syllabus. Further, the specific inclusions/exclusions in the various topics covered in the syllabus will be effected every year by way of Study Guidelines. The specific inclusions/exclusions may also arise due to additions/deletions every year by the annual Finance Act.

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GST IN INDIA – AN INTRODUCTION

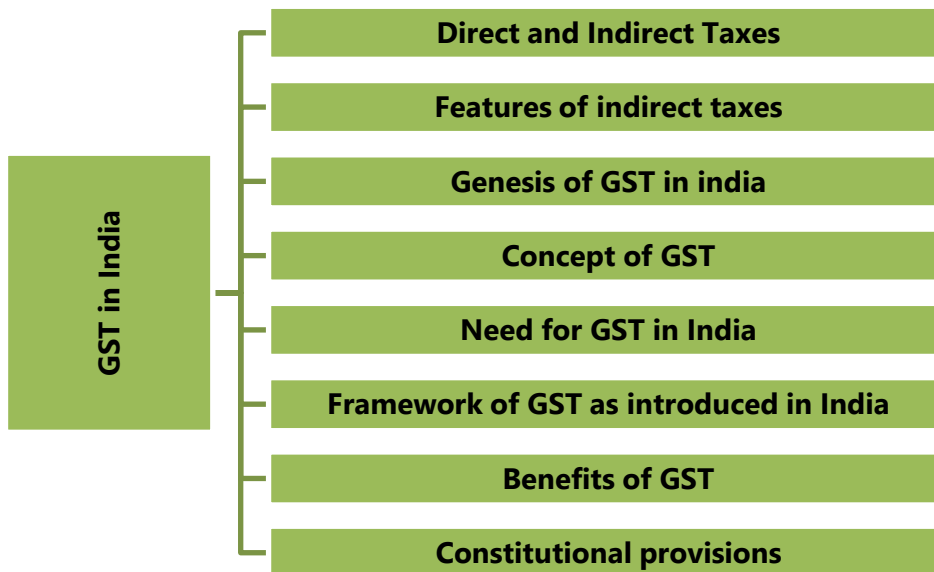


LEARNING OUTCOMES

After studying this Chapter, you will be able to:

- ❑ explain the concept of tax and the objective for its levy
- ❑ describe the concept of direct and indirect tax and the differences between the two types of taxes
- ❑ enumerate the basic features of indirect taxes and the principal indirect taxes in India
- ❑ explain the concept of GST and the need for GST in India.
- ❑ discuss the framework of GST as introduced in India and understand the various benefits to be accrued from implementation of GST.
- ❑ explain the constitutional provisions pertaining to levy of various taxes
- ❑ appreciate the need for constitutional amendment paving way for GST.
- ❑ discuss the significant amendments made by Constitution (101st Amendment) Act, 2016.

CHAPTER OVERVIEW



1. BACKGROUND

In any Welfare State, it is the prime responsibility of the Government to fulfill the increasing developmental needs of the country and its people by way of public expenditure. India, being a developing economy, has been striving to fulfill the obligations of a Welfare State with its limited resources; the primary source of revenue being the levy of taxes. Though the collection of tax is to augment as much revenue as possible to the Government to provide public services, over the years it has been used as an instrument of fiscal policy to stimulate economic growth. Thus, taxes are collected to fulfill the socio-economic objectives of the Government.

What is a tax? A tax may be defined as a "pecuniary burden laid upon individuals or property owners to support the Government, a payment exacted by legislative authority. A tax "is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority".

In simple words, tax is nothing but money that people have to pay to the Government, which is used to provide public services.

2. DIRECT AND INDIRECT TAXES

Taxes are broadly classified into direct and indirect taxes.

Direct Taxes: A direct tax is a kind of charge, which is imposed directly on the taxpayer and paid directly to the Government by the persons (juristic or natural) on whom it is imposed. A direct tax is one that cannot be shifted by the taxpayer to someone else. A significant direct tax imposed in India is income tax.

Indirect Taxes: If the taxpayer is just a conduit and at every stage the tax-incidence is passed on till it finally reaches the consumer, who really bears the brunt of it, such tax is indirect tax. An indirect tax is one that can be shifted by the taxpayer to someone else.

Its incidence is borne by the consumers who ultimately consume the product or the service, while the immediate liability to pay the tax may fall upon another person such as a manufacturer or provider of service or seller of goods.

Also called consumption taxes, they are regressive in nature because they are not based on the principle of ability to pay. All the consumers, including the economically challenged bear the brunt of the indirect taxes equally.

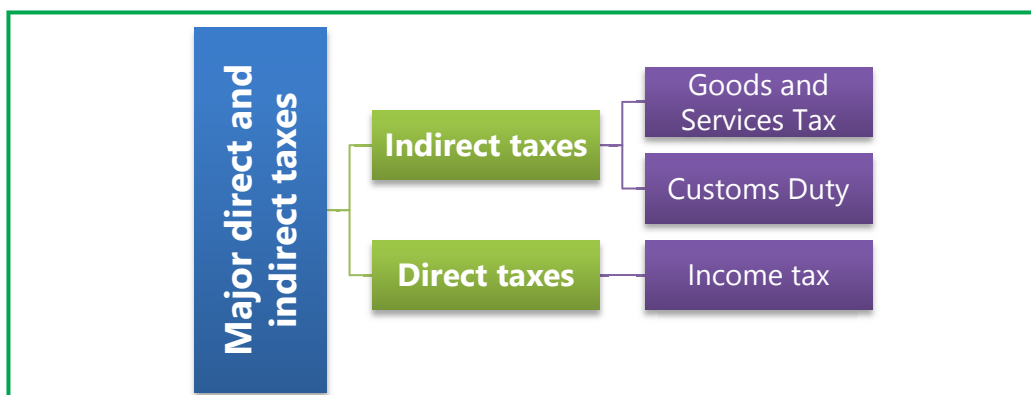
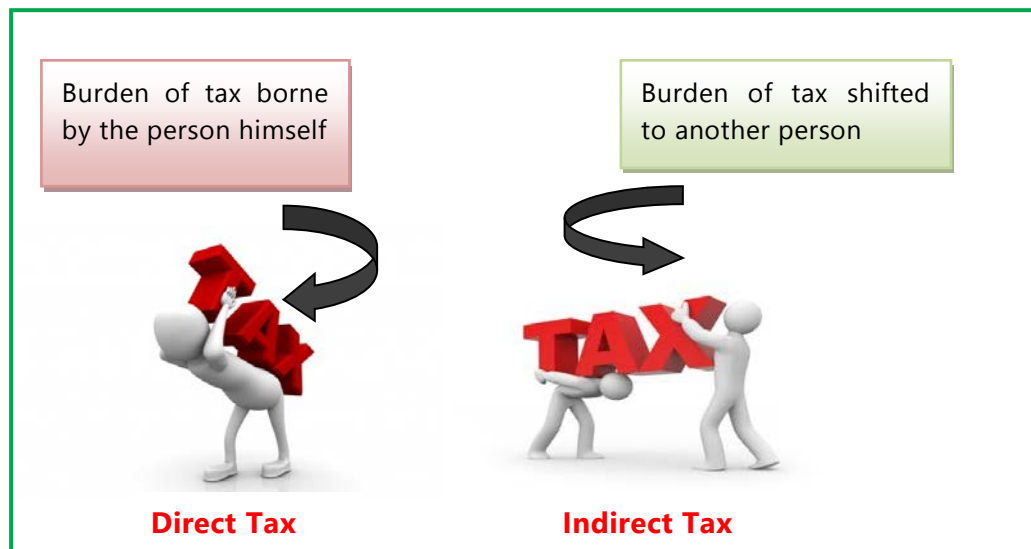
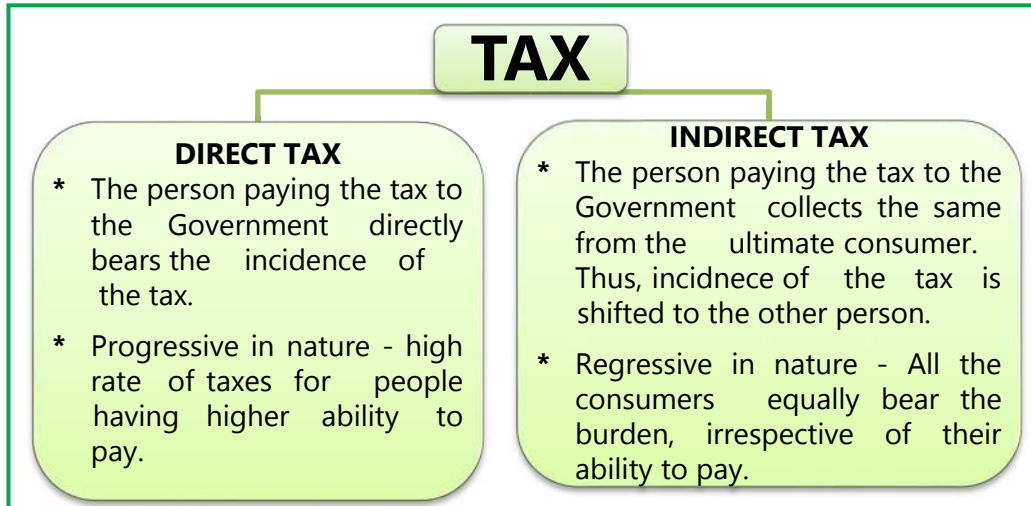
Indirect taxes are levied on consumption, expenditure, privilege, or right but not on income or property. Earlier, a number of indirect taxes were levied in India, namely, excise duty, customs duty, service tax, central sales tax (CST), value added tax (VAT), entry tax, purchase tax, entertainment tax, tax on lottery, betting and gambling, luxury tax, tax on advertisements, etc.

However, indirect taxation in India witnessed a paradigm shift on July 01, 2017 with usherance into a unified indirect tax regime wherein a large number of Central and State indirect taxes were amalgamated into a single tax – Goods and Services Tax (GST). The introduction of GST has been a very significant step in the field of indirect tax reforms in India. Customs duty continues in post-GST regime.

Economists world over agree that direct and indirect taxes are complementary and therefore, a rational tax structure should incorporate in itself both types of taxes.



At Intermediate level, we will study the basic concept of Goods and Services Tax (GST) - concept of supply, charge of GST, exemptions, basic concepts of time and value of supply, input tax credit, registration, tax invoice, credit and debit notes, returns and payment. Customs law will be discussed at the Final level





3. FEATURES OF INDIRECT TAXES

- (i) **An important source of revenue:** Indirect taxes are a major source of tax revenues for Governments worldwide and continue to grow as more countries move to consumption oriented tax regimes. In India, indirect taxes contribute more than 50% of the total tax revenues of Central and State Governments.
- (ii) **Tax on commodities and services:** It is levied on commodities at the time of manufacture or purchase or sale or import/export thereof. Hence, it is also known as commodity taxation. It is also levied on provision of services.
- (iii) **Shifting of burden:** There is a clear shifting of tax burden in respect of indirect taxes. For example, GST paid by the supplier of the goods is recovered from the buyer by including the tax in the cost of the commodity.
- (iv) **No perception of direct pinch:** Since, value of indirect taxes is generally inbuilt in the price of the commodity, most of the time the tax payer pays the same without actually knowing that he is paying tax to the Government. Thus, tax payer does not perceive a direct pinch while paying indirect taxes.
- (v) **Inflationary:** Tax imposed on commodities and services causes an all-round price spiral. In other words, indirect taxation directly affects the prices of commodities and services and leads to inflationary trend.
- (vi) **Wider tax base:** Unlike direct taxes, the indirect taxes have a wide tax base. Majority of the products or services are subject to indirect taxes with low thresholds.
- (vii) **Promotes social welfare:** High taxes are imposed on the consumption of harmful products (also known as 'sin goods') such as alcoholic products, tobacco products etc. This not only checks their consumption but also enables the State to collect substantial revenue.
- (viii) **Regressive in nature:** Generally, the indirect taxes are regressive in nature. The rich and the poor have to pay the same rate of indirect taxes on certain commodities of mass consumption. This may further increase the income disparities between the rich and the poor.



4. GENESIS OF GST IN INDIA



In the year 2000, the then Prime Minister mooted the concept of GST and set up a committee to design a Goods and Services Tax (GST) model for the country. In 2003, the Central Government formed a task force under Vijay Kelkar, which in 2004 strongly recommended fully integrated 'GST' on national basis.



Subsequently, the then Union Finance Minister, Shri P. Chidambaram, while presenting the Union Budget (2006-2007), announced that GST would be introduced from April 1, 2010. Since then, GST missed several deadlines and continued to be shrouded by the clouds of uncertainty.



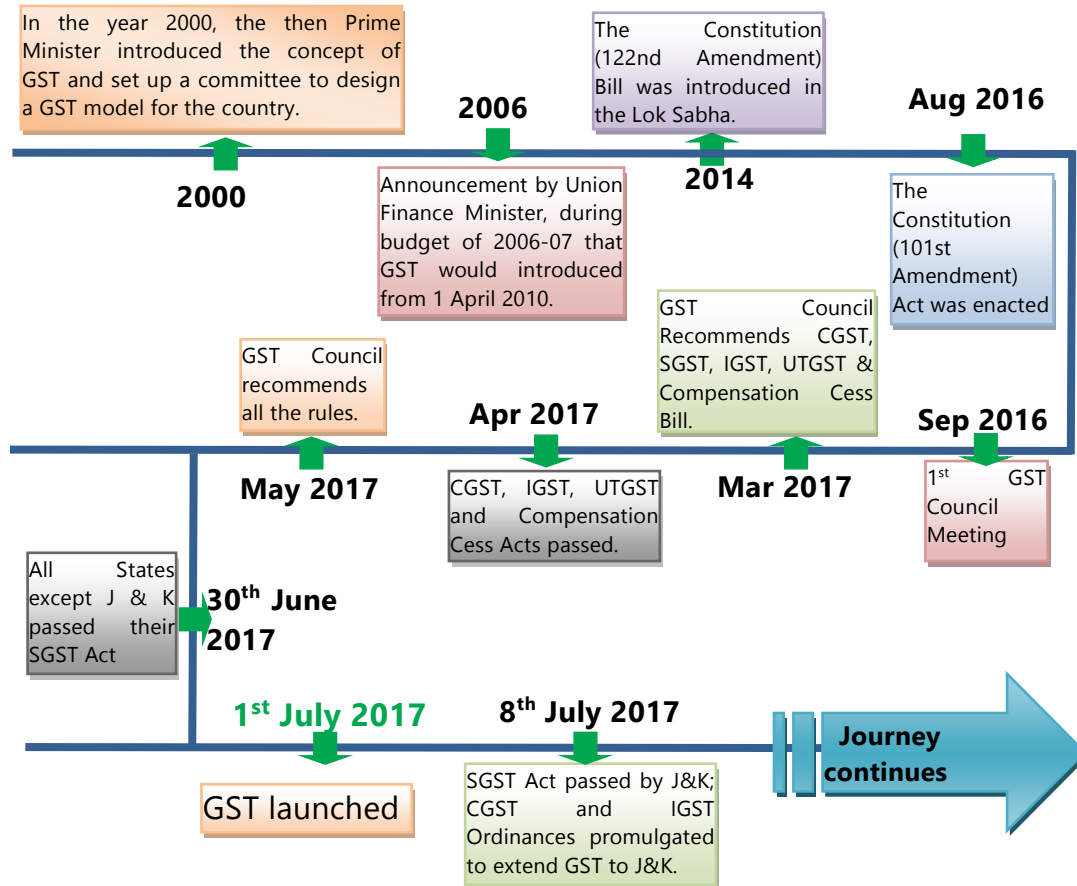
The talks of ushering in GST, however, gained momentum in the year 2014 when the NDA Government tabled the Constitution (122nd Amendment) Bill, 2014 on GST in the Parliament on 19th December, 2014. The Lok Sabha passed the Bill on 6th May, 2015 and Rajya Sabha on 3rd August, 2016. Subsequent to ratification of the Bill by more than 50% of the States, Constitution (122nd Amendment) Bill, 2014 received the assent of the President on 8th September, 2016 and became **Constitution (101st Amendment) Act, 2016**, which paved the way for introduction of GST in India.



In the following year, on 27th March, 2017, the Central GST legislations - Central Goods and Services Tax Bill, 2017, Integrated Goods and Services Tax Bill, 2017, Union Territory Goods and Services Tax Bill, 2017 and Goods and Services Tax (Compensation to States) Bill, 2017 were introduced in Lok Sabha. Lok Sabha passed these bills on 29th March, 2017 and with the receipt of the President's assent on 12th April, 2017, the Bills were enacted. The enactment of the Central Acts was followed by the enactment of the State GST laws by various State Legislatures. Telangana, Rajasthan, Chhattisgarh, Punjab, Goa and Bihar were among the first ones to pass their respective State GST laws. By 30th June, 2017, all States and Union Territories had passed their respective SGST and UTGST Acts except Jammu

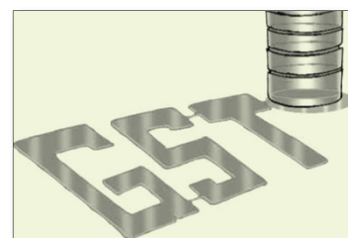


and Kashmir. With effect from 1st July, 2017, the historic indirect tax reform - GST was introduced. GST law was extended to Jammu and Kashmir on 8th July, 2017.



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

☑ VAT and GST are often used inter-changeably as the latter denotes comprehensiveness of VAT by coverage of goods and services. France was the first country to implement VAT/GST in 1954. Presently, more than 160 countries have implemented VAT/GST in some form or the other because this tax has the



capacity to raise revenue in the most transparent and neutral manner. Most of the countries follow unified GST i.e., a single tax applicable throughout the country. However, in federal polities like Brazil and Canada, a dual GST system is prevalent. Under dual system, GST is levied by both the federal and the State Governments. India, too, has adopted a dual GST.



5. CONCEPT OF GST



Before we proceed with the finer nuances of Indian GST, let us first understand the basic concept of GST.



GST is a value added tax levied on manufacture, sale and consumption of goods and services.

VALUE ADDED TAX



GST offers comprehensive and continuous chain of tax credits from the producer's point/service provider's point upto the retailer's level/consumer's level thereby taxing only the value added at each stage of supply chain.

CONTINUOUS CHAIN OF TAX CREDITS



The supplier at each stage is permitted to avail credit of GST paid on the purchase of goods and/or services and can set off this credit against the GST payable on the supply of goods and services to be made by him. Thus, only the final consumer bears the GST charged by the last supplier in the supply chain, with set-off benefits at all the previous stages.

BURDEN BORNE BY FINAL CONSUMER



Since, only the value added at each stage is taxed under GST, there is no tax on tax or cascading of taxes under GST system. GST does not differentiate between goods and services and thus, the two are taxed at a single rate.







NO CASCADING OF TAXES

6. NEED FOR GST IN INDIA



Deficiencies in the value added taxation system

Under the earlier indirect tax regime, despite the introduction of the principle of taxation of value added in India – at the Central level in the form of CENVAT and at the State level in the form of State VAT - its application always remained piecemeal and fragmented on account of the following reasons:

-  Double taxation of a transaction as both goods and services as the distinction between goods and services was often blurred, e.g. software was liable to both VAT and service tax.
-  CENVAT did not include chain of value addition in the distributive trade below the stage of production. Similarly, in the State-level VAT, CENVAT load on the goods was not removed leading to the cascading of taxes. To illustrate, when the goods were manufactured and sold, both central excise duty (CENVAT) and State-Level VAT were levied.
-  Though CENVAT and State-Level VAT were essentially value added taxes, set off of one against the credit of another was not possible as CENVAT was a central levy and State-Level VAT was a State levy.
-  There were several taxes in the States, such as, Luxury Tax, Entertainment Tax, etc. which were not subsumed in the VAT.
-  VAT on goods was not integrated with tax on services, at the State level, to remove the cascading effect of service tax. With service sector being the fastest growing sector in the economy, the exclusion of services from the tax base of the States potentially eroded their tax- buoyancy.
-  CST was another source of distortion in terms of its cascading nature since it was non-VATABLE. Being an origin based tax, CST was also against one of the basic principles of consumption taxes that tax should accrue to the jurisdiction where consumption takes place.

Non-inclusion of several local levies in State VAT such as luxury tax, entertainment tax, etc.

Cascading of taxes on account of (i) levy of Non-VATable CST and (ii) inclusion of CENVAT in the value for imposing VAT

No CENVAT after manufacturing stage

Non-integration of VAT & service tax

Double taxation of a transaction as both goods and services



GST - A cure for ills of existing indirect tax regime

GOODS AND SERVICES TAX (GST)
The crucial piece in India's development strategy

- Creating one Economic India
- Fillip to 'Make in India' initiative
- Unfettered flow of goods & services
- Increased economic activity to boost employment

NATION TAX MARKET



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



In the GST regime, the major indirect taxes have been subsumed in the ambit of GST. The erstwhile



concepts of manufacture or sale of goods or rendering of services are no longer applicable since the tax is now levied on “Supply of Goods and/or services”.



7. FRAMEWORK OF GST AS INTRODUCED IN INDIA

I. Dual GST:



India has adopted a **Dual GST model** in view of the federal structure of the country. Consequently, Centre and States simultaneously levy GST on taxable supply of goods or services or both, which takes place within a State or Union Territory. Thus, tax is imposed concurrently by the Centre and States, i.e. Centre and States simultaneously tax goods and services. Now, the Centre also has the power to tax intra-State sales & States are also empowered to tax services. GST extends to whole of India including the State of Jammu and Kashmir.

Dual GST



II. CGST/SGST/UTGST/IGST

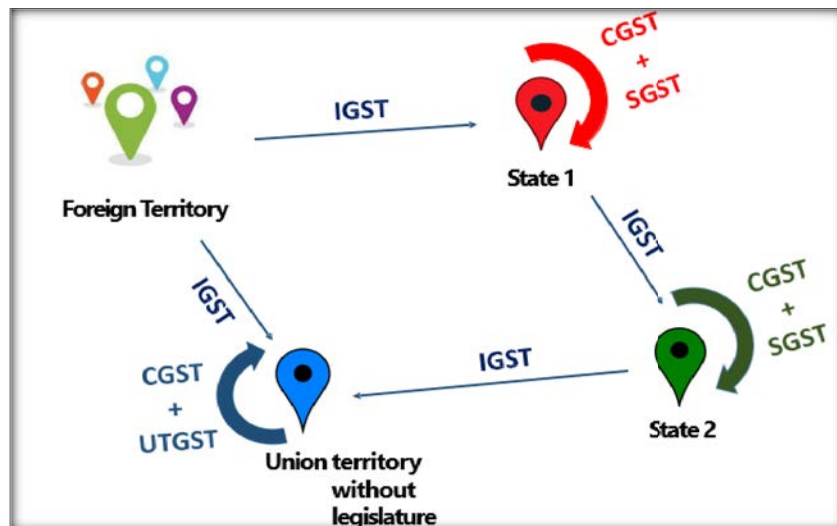


GST is a destination based tax applicable on all transactions involving supply of goods and services for a consideration subject to exceptions thereof. GST in India comprises of Central Goods and Services Tax (CGST) - levied and collected by Central Government, State Goods and

CGST/SGST/UTGST/IGST

Services Tax (SGST) - levied and collected by State Governments/Union Territories with Legislatures and Union Territory Goods and Services Tax (UTGST) - levied and collected by Union Territories without Legislatures, on intra-State supplies of taxable goods and/or services.

- ✎ Inter-State supplies of taxable goods and/or services are subject to Integrated Goods and Services Tax (IGST). IGST is the sum total of CGST and SGST/UTGST and is levied by Centre on all inter-State supplies.





III. Legislative Framework



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

uniform in all the SGST legislations, as far as feasible. This is necessary to preserve the essence of dual GST.


IV. Classification of goods and services

-  HSN (Harmonised System of Nomenclature) is used for classifying the goods under the GST. Chapters referred in the Rate Schedules for goods are the Chapters of the First Schedule to the Customs Tariff Act, 1975. **Classification of goods and services**
-  A new **Scheme of Classification of Services** has been devised wherein the services of various descriptions have been classified under various sections, headings and groups. Each group consists of various Service Codes (Tariff).

V. Composition Scheme

-  In GST regime, tax (i.e. CGST and SGST/UTGST for intra-State supplies and IGST for inter-State supplies) is payable by every taxable person and in this regard provisions have been prescribed in the law.
-  However, for providing relief to small businesses, primarily manufacturers, suppliers of food articles, traders, etc., making intra-State supplies, a simpler method of paying taxes is prescribed, known as Composition Levy. Further, for small service providers also, a scheme prescribing concessional rate of tax has been formulated. **Composition Scheme**

VI. Registration

-  Every supplier of goods and/ or services is required to obtain registration in the State/UT from where he makes the taxable supply if his aggregate turnover exceeds the threshold limit during a FY. **Registration**

States with threshold limit of ₹ 10 lakh for both goods and services	States with threshold limit of ₹ 20 lakh for both goods and services	States with threshold limit of ₹ 20 lakh for services and ₹ 40 lakh for goods**
<ul style="list-style-type: none"> • Manipur • Mizoram • Nagaland • Tripura 	<ul style="list-style-type: none"> • Arunachal Pradesh • Meghalaya • Sikkim • Uttarakhand • Puducherry • Telangana 	<ul style="list-style-type: none"> • Jammu and Kashmir • Assam • Himachal Pradesh • All other States

***persons engaged exclusively in intra-State supply of goods*

VII. Exemptions



Apart from providing relief to small-scale business, the law also contains provisions for granting exemption from payment of tax on essential goods and/or services.

Exemptions

VIII. Seamless flow of credit






Since GST is a destination based consumption tax, revenue of SGST ordinarily accrues to the consuming States. The inter-State supplier in the exporting State is allowed to set off the available credit of IGST, CGST and SGST/UTGST (in that order) against the IGST payable on inter-State supply made by him.

Seamless flow of credit



The buyer in the importing State is allowed to avail the credit of IGST paid on inter-State purchases made by him. Thus, unlike the earlier scenario where the credit chain used to break in case of inter-State sales on account of non-VATable CST, under GST

regime there is a seamless credit flow in case of inter-State supplies too.

-  The revenue of inter-State sale does not accrue to the exporting State and the exporting State transfers to the Centre the credit of SGST/UTGST used in payment of IGST.
-  The Centre transfers to the importing State the credit of IGST used in payment of SGST/UTGST.
-  The seamless flow of credit under GST, in case of intra-State and inter-State supplies, can be better understood with the help of the following illustrations:

Intra-State Supply

ILLUSTRATION

In case of local supply of goods/ services, the supplier would charge dual GST i.e., CGST and SGST at specified rates on the supply.

I. Supply of goods/ services by A to B

	Amount (in ₹)
Value charged for supply of goods/ services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	<u>900</u>
Total price charged by A from B for local supply of goods/ services	<u>11,800</u>

The CGST & SGST charged on B for supply of goods/services will be remitted by A to the appropriate account of the Central and State Government respectively.

A is the first stage supplier of goods/services and hence, does not have credit of CGST, SGST or IGST.

II. Supply of goods/services by B to C – Value addition @ 20%

B will avail credit of CGST and SGST paid by him on the purchase of goods/ services and will utilise such credit for being set off against the CGST and SGST payable on the supply of goods/services made by him to C.

	Amount (in ₹)
Value charged for supply of goods/ services (₹ 10,000 x 120%)	12,000
Add: CGST @ 9%	1080
Add: SGST @ 9%	<u>1080</u>
Total price charged by B from C for local supply of goods/ services	<u>14160</u>

Computation of CGST, SGST payable by B to Government

	Amount (in ₹)
CGST payable	1080
Less: Credit of CGST	<u>900</u>
CGST payable to Central Government	<u>180</u>
SGST payable	1080
Less: Credit of SGST	<u>900</u>
SGST payable to State Government	<u>180</u>

Note: Rates of CGST and SGST have been assumed to be 9% each for the sake of simplicity.

Statement of revenue earned by Central and State Government

Transaction	Revenue to Central Government (₹)	Revenue to State Government (₹)
Supply of goods/services by A to B	900	900
Supply of goods/services by B to C	180	180
Total	1080	1080

Inter-State Supply

ILLUSTRATION

In case of inter-State supply of goods/ services, the supplier would charge IGST at specified rates on the supply.

I. Supply of goods/services by X of State 1 to A of State 1

	Amount (in ₹)
Value charged for supply of goods/services	10,000
Add: CGST @ 9%	900
Add: SGST @ 9%	<u>900</u>
Total price charged by X from A for intra-State supply of goods/services	<u>11,800</u>

X is the first stage supplier of goods/services and hence, does not have any credit of CGST, SGST or IGST.

II. Supply of goods/services by A of State 1 to B of State 2 – Value addition @ 20%

	Amount (in ₹)
Value charged for supply of goods/services (₹ 10,000 x 120%)	12,000
Add: IGST @ 18%	<u>2,160</u>
Total price charged by A from B for inter-State supply of goods/services	<u>14,160</u>

Computation of IGST payable to Government

	Amount (in ₹)
IGST payable	2,160
Less: Credit of CGST	900
Less: Credit of SGST	<u>900</u>
IGST payable to Central Government	<u>360</u>

The IGST charged on B of State 2 for supply of goods/services will be remitted by A of State 1 to the appropriate account of the Central Government. State 1 (Exporting State) will transfer SGST credit of ₹ 900 utilised in the payment of IGST to the Central Government.

III. Supply of goods/services by B of State 2 to C of State 2 – Value addition @ 20%

B will avail credit of IGST paid by him on the purchase of goods/services and will utilise such credit for being set off against the CGST and SGST payable on the local supply of goods/services made by him to C.

	Amount (in ₹)
Value charged for supply of goods/ services (₹ 12,000 x 120%)	14,400
Add: CGST @ 9%	1,296
Add: SGST @ 9%	<u>1,296</u>
Total price charged by B from C for local supply of goods/services	<u>16,992</u>

Computation of CGST, SGST payable to Government

	Amount (in ₹)
CGST payable	1,296
Less: Credit of IGST	<u>1,296</u>
CGST payable to Central Government	<u>Nil</u>
SGST payable	1,296
Less: Credit of IGST (₹ 2,160 - ₹ 1,296)	<u>864</u>
SGST payable to State Government	<u>432</u>

Central Government will transfer IGST credit of ₹ 864 utilised in the payment of SGST to State 2 (Importing State).




Note: Rates of CGST, SGST and IGST have been assumed to be 9%, 9% and 18% respectively for the sake of simplicity.

Statement of revenue earned by Central and State Governments

Transaction	Revenue to Central Government (₹)	Revenue to Government of State 1 (₹)	Revenue to Government of State 2 (₹)
Supply of goods/services by	900	900	

X to A			
Supply of goods/services by A to B	360		
Transfer by State 1 to Centre	900	(900)	
Supply of goods/services by B to C			432
Transfer by Centre to State 2	(864)		864
Total	1,296	Nil	1,296

IX. GST Common Portal

-  Before GST, since, the Centre and State indirect tax administrations worked under different laws, regulations, procedures and formats, their IT infrastructure and systems were also independent of each other. Integrating them for GST implementation was complex since it required integrating the entire indirect tax ecosystem so as to bring all the tax administrations (Centre, State and Union Territories) to the same level of IT maturity with uniform formats and interfaces for taxpayers and other external stakeholders.
-  Besides, GST being a destination based tax, the inter-State trade of goods and services (IGST) needed a robust settlement mechanism amongst the States and the Centre. A Common Portal was needed which could act as a clearing house and verify the claims and inform the respective Governments to transfer the funds. This was possible only with the help of a strong IT Infrastructure.
-  Resultantly, Common GST Electronic Portal – www.gst.gov.in – a website managed by Goods and Services Network (GSTN) [a company incorporated under the provisions of section 8 of the Companies Act, 2013] is set by the Government to establish a uniform interface for the tax payer and a common and shared IT infrastructure between the Centre and States.

- ✎ The GST portal is accessible over Internet (by taxpayers and their CAs/Tax Advocates etc.) and Intranet by Tax Officials etc. The portal is one single common portal for all GST related services.
- ✎ A common GST system provides linkage to all State/ UT Commercial Tax Departments, Central Tax authorities, Taxpayers, Banks and other stakeholders. The eco-system consists of all stakeholders starting from taxpayer to tax professional to tax officials to GST portal to Banks to accounting authorities.


GST Common Portal




- ✎ The functions of the GSTN include facilitating registration; forwarding the returns to Central and State authorities; computation and settlement of IGST; matching of tax payment details with banking network; providing various MIS reports to the Central and the State Governments based on the taxpayer return information; providing analysis of taxpayers' profile.
- ✎ However, it is important to note that the Common GST Electronic Portal for furnishing electronic way bill is www.ewaybillgst.gov.in [managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India]. E-way bill is an electronic document generated on the GST portal evidencing movement of goods.



X. GSPs/ASPs

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

XI. Compensation Cess


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

XII. GST – A tax on goods and services


GST is levied on all goods and services, except alcoholic liquor for human consumption and petroleum crude, diesel, petrol, ATF and natural gas.


- ✎ **Alcoholic liquor for human consumption:** is outside the realm of GST. The manufacture/production of alcoholic liquor continues to be subjected to **State excise duty** and inter-State/intra-State sale of the same is subject to **CST/VAT** respectively.



 **Petroleum crude, diesel, petrol, ATF and natural gas:** As regards petroleum crude, diesel, petrol, ATF and natural gas are concerned, they are not presently leviable to GST. GST will be levied on these products from a date to be notified on the recommendations of the GST Council.

Till such date, **central excise duty** continues to be levied on manufacture/production of petroleum crude, diesel, petrol, ATF and natural gas and inter-State/intra-State sale of the same is subject to **CST/ VAT** respectively.

 **Tobacco:** Tobacco is within the purview of GST, i.e. GST is leviable on tobacco. However, Union Government has also retained the power to levy excise duties on tobacco and tobacco products manufactured in India. Resultantly, **tobacco is subject to GST as well as central excise duty.**

 Further, **real estate sector** has been kept out of ambit of GST, i.e. GST will not be levied on sale/purchase of immovable property.

Taxes subsumed in GST

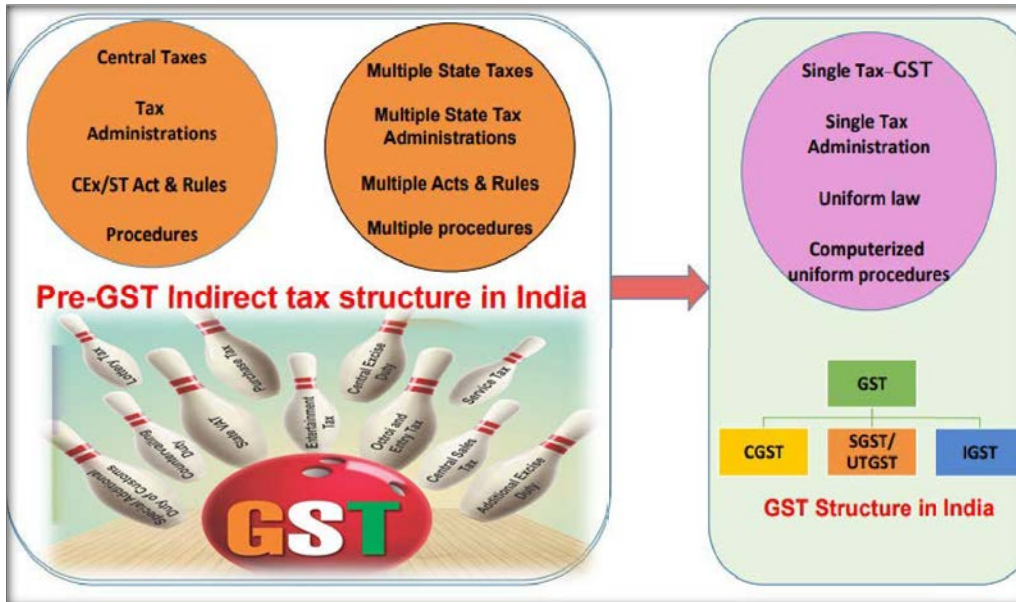
Central Taxes

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



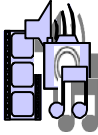

State Taxes

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





Within GST or outside GST?

	Alcohol for human consumption	Power to tax remains with the State
	Five petroleum products – crude oil, diesel, petrol, natural gas and ATF	GST Council to decide the date from which GST will be applicable
	Entertainment tax levied by local bodies	Power to tax remains with the local bodies
	Tobacco	Within the purview of GST. Power to levy excise duties, also retained.

8. BENEFITS OF GST

GST is a win-win situation for the entire country. It brings benefits to all the stakeholders of industry, Government and the consumer. The significant benefits of GST are discussed hereunder:

Benefits to economy



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



Boost to 'Make in India' initiative: GST gives a major boost to the 'Make in India' initiative of the Government of India by making goods and services produced in India competitive in the national as well as international market. This will create India as a — Manufacturing hub.



Enhanced investment and employment: The subsuming of major Central and State taxes in GST, complete and comprehensive setoff of input tax on goods and services and phasing out of Central Sales Tax (CST)



reduces the cost of locally manufactured goods and services and increases the competitiveness of Indian goods and services in the international market and thus, gives boost to investments and Indian exports. With a boost in exports and manufacturing activity, more employment is generated and GDP is increased.

Simplified tax structure



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

EASE OF DOING BUSINESS

- 📌 **Certainty in tax administration:** Common system of classification of goods and services ensures certainty in tax administration across India.

Easy tax compliance

- 📌 **Automated procedures with greater use of IT:** There are simplified and automated procedures for various processes such as registration, returns, refunds, tax payments. All interaction is through the common GSTN portal, therefore, less public interface between the taxpayer and the tax administration.



- 📌 **Reduction in compliance costs:** The compliance cost is lesser under GST as multiple record-keeping for a variety of taxes is not needed, therefore, there is lesser investment of resources and manpower in maintaining records. The uniformity in laws, procedures and tax rates across the country goes a long way in reducing the compliance cost.

Advantages for trade and industry

- 📌 **Benefits to agriculture and Industry:** GST has given more relief to



industry, trade and agriculture through a more comprehensive and wider coverage of input tax set-off and service tax set-off, subsuming of several Central and State taxes

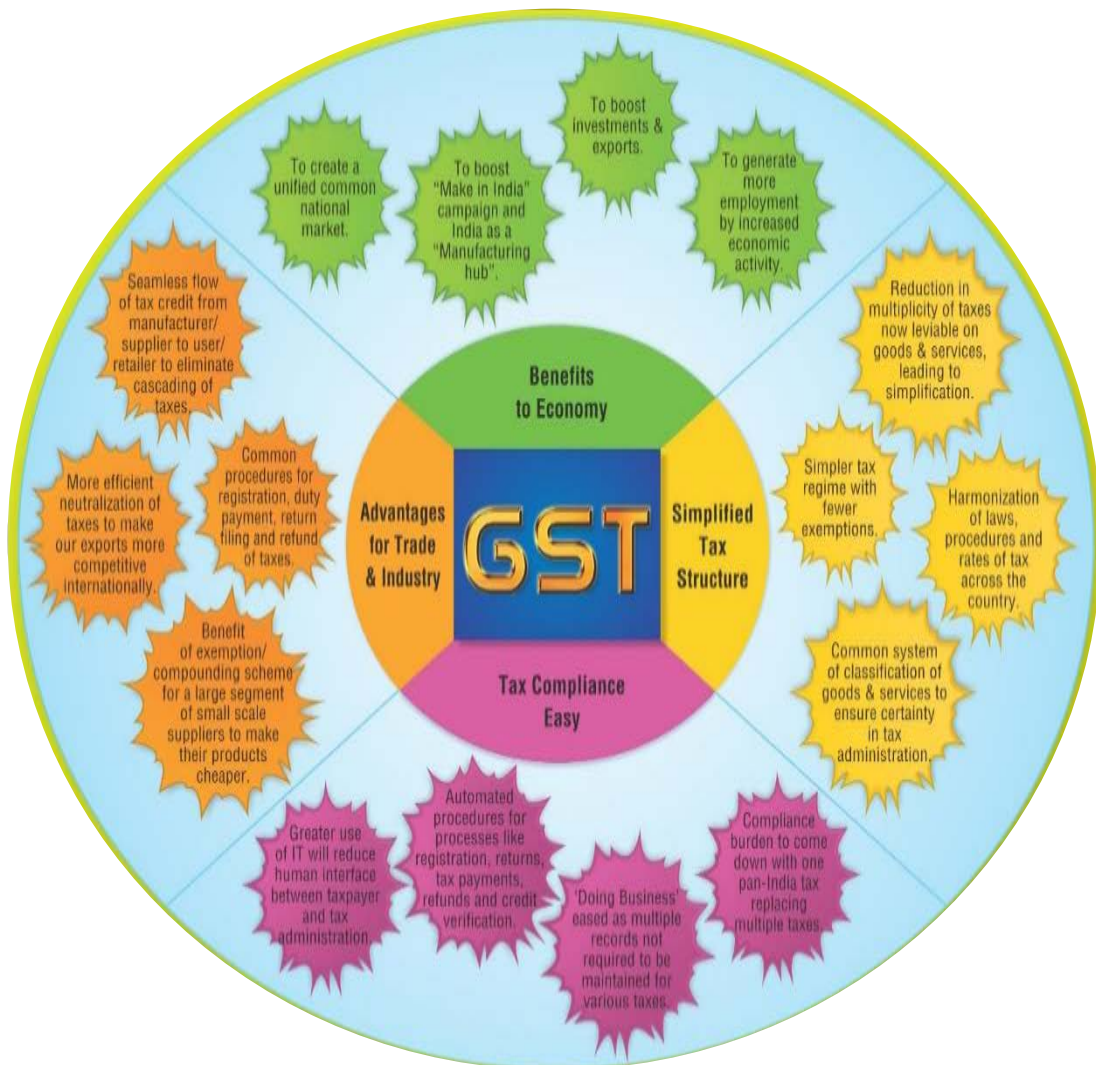


in the GST and phasing out of CST. The transparent and complete chain of set-offs which results in widening of tax base and better tax compliance also leads to lowering of tax burden on an average dealer in industry, trade and agriculture.

- 📌 **Mitigation of ill effects of cascading:** By subsuming most of the Central and State taxes into a single tax and by allowing a set-off of prior-stage taxes for the transactions across the entire value chain, it helps in mitigating the ill effects of cascading, improving competitiveness and improving liquidity of the businesses.



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



9. CONSTITUTIONAL PROVISIONS

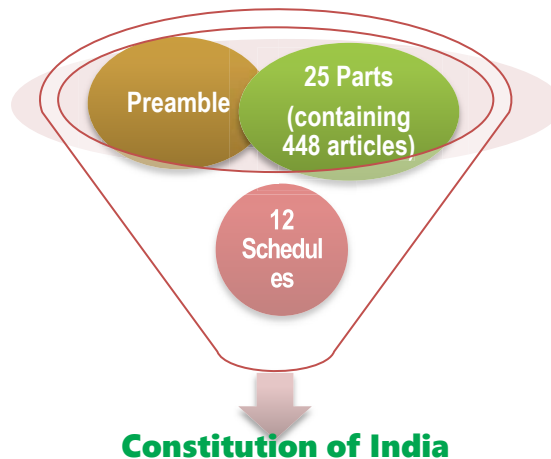
India has a three-tier federal structure, comprising the Union Government, the State Governments and the Local Government.

The power to levy taxes and duties is distributed among the three tiers of Governments, in accordance with the provisions of the Indian Constitution.

The Constitution of India is the supreme law of India. It consists of a Preamble, 25 parts containing 448 Articles and 12 Schedules.

Power to levy and collect taxes whether, direct or indirect emerges from the Constitution of India. In case any tax law, be it an act, rule, notification or order is not in conformity with the Constitution, it is called *ultra vires* the Constitution and is illegal and void.

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



The significant provisions of the Constitution relating to taxation are:

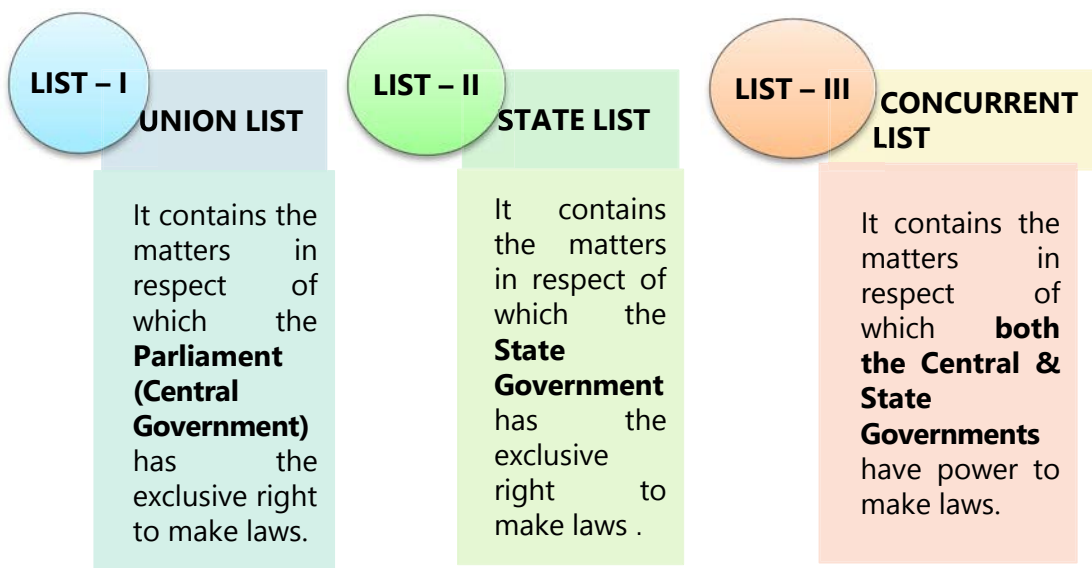
- I. **Article 265:** Article 265 of the Constitution of India prohibits arbitrary collection of tax. It states that **“no tax shall be levied or collected except by authority of law”**. The term “authority of law” means that tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax.
- II. **Article 245:** Part XI of the Constitution deals with relationship between the Union and States. The power for enacting the laws is conferred on the

Parliament and on the Legislature of a State by Article 245 of the Constitution. The said Article provides as under:

- ✍ Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State.
- ✍ No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

III. Article 246: It gives the respective authority to Union and State Governments for levying tax. Whereas Parliament may make laws for the whole of India or any part of the territory of India, the State Legislature may make laws for whole or part of the State.

IV. Seventh Schedule to Article 246: It contains three lists which enumerate the matters under which the Union and the State Governments have the authority to make laws.



Entries 82 to 91 of List I enumerate the subjects where the Central Government has power to levy taxes. Entries 45 to 63 of List II enumerate

the subjects where the State Governments have the power to levy taxes. Parliament has a further power to make any law for any part of India not comprised in a State even if such matter is included in the State List.

Income tax is levied by virtue of Entry 82 - Taxes on income other than agricultural income and customs duty vide Entry 83 - Duties of customs including export duties of the Union List.

Power to levy
Goods and
Services Tax (GST)

Constitution (101 Amendment) Act, 2016

has been conferred by Article 246A of the Constitution which was introduced by the Constitution (101st Amendment) Act, 2016. Before discussing the significant provisions of the Constitution (101st Amendment) Act, 2016, let us first understand why there arose a need for such constitutional amendment.

Need for constitutional amendment

The Constitutional provisions hitherto had delineated separate powers for the Centre and the States to impose various taxes. Whereas the Centre levied excise duty on all goods produced or manufactured in India, the States levied Value Added Tax once the goods entered the stream of trade upon completion of manufacture.

In the case of inter-State sales, the Centre had the power to levy a tax (the Central Sales Tax), but the tax was collected and retained entirely by the States. Services were exclusively taxed by the Centre together with applicable cesses, if any. Besides, there were State specific levies like entry tax, Octroi, luxury tax, entertainment tax, lottery and betting tax, local taxes levied by Panchayats etc.

With respect to goods imported from outside the country into India, Centre levied basic customs duty and additional duties of customs together with applicable cesses, if any.

Introduction of the GST required amendment in the Constitution so as to enable integration of the central excise duty, additional duties of customs, State VAT and certain State specific taxes and service tax into a comprehensive Goods and Services Tax and to empower both Centre and the States to levy and collect it.

Consequently, Constitution (101st Amendment Act), 2016 (hereinafter referred to as Constitution Amendment Act) was passed. It has 20 sections. Newly inserted Article 279A empowering President to constitute GST Council was notified on 12.09.2016. Remaining provisions were notified with effect from 16.09.2016.

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


Significant amendments made by Constitution Amendment Act are discussed below:

V. Article 246A: Power to make laws with respect to Goods and Services Tax


Newly inserted Article 246A


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

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

 This article grants power to Centre and State Governments to make laws with respect to GST imposed by Centre or such State.

Article 246A

 Centre has the exclusive power to make laws with respect to GST in case of inter-State supply of goods and/or services.

 However, in respect to the following goods, the aforesaid provisions shall apply from the date recommended by the GST Council:




- ✎ The provisions of Article 246A are notwithstanding anything contained in Articles 246 and 254. Article 254 deals with the supremacy of the laws made by Parliament.


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


- ✎ Article 269A stipulates that GST on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council. **Article 269A**
- ✎ In addition to above, import of goods or services or both into India will also be deemed to be supply of goods and/ or services in the course of Inter-State trade or Commerce.
- ✎ This will give power to Central Government to levy IGST on the import transactions which were earlier subject to Countervailing duty under the Customs Tariff Act, 1975.
- ✎ Where an amount collected as IGST has been used for payment of SGST or vice versa, such amount shall not form part of the Consolidated Fund of India. This is to facilitate transfer of funds between the Centre and the States.
- ✎ Parliament is empowered to formulate the principles regarding place of supply and when supply of goods, or of services, or both occurs in inter-State trade or commerce.


VII. Definitions of 'Goods and Services Tax', 'Services' and 'State' incorporated under Article 366

 The terms **Goods and Services Tax**, **services** and **State** have been defined under respective clauses of Article 366 as follows:


 **Goods and services tax** means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption. Consequently, GST can be levied on supply of all goods and services except alcoholic liquor for human consumption. **Article 366(12A)**


 **Services** means anything other than goods. **Article 366(26A)**


 **State**, with reference to articles 246A, 268, 269, 269A and article 279A, includes a Union territory with Legislature. **Article 366(26B)**

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





VIII. GST Council: Article 279A

 Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (**GST Council**).

 The provisions relating to GST Council came into force on 12th September, 2016. President constituted the GST Council on 15th September, 2016.

 The Union Finance Minister is the Chairman of this Council and Ministers in charge of Finance/Taxation or any other Minister nominated by each of the States & UTs with Legislatures are its members. Besides, the Union Minister of State in charge of Revenue or Finance is also its member.



-  The function of the Council is to make recommendations to the Union and the States on important issues like tax rates, exemptions, threshold limits, dispute resolution etc.
-  It shall recommend the special provisions with respect to the Special Category States. There are 11 **Special Category States**, namely, States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand. Special threshold limits for registration, composition, exemptions, etc. have been recommended for some or all of these States.
-  GST Council shall also recommend the date on which GST be levied on petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel.
-  Every decision of the GST Council is taken by a majority of not less than three-fourths of the weighted votes of the members present and voting. Vote of the Centre has a weightage of one-third of total votes cast and votes of all the State Governments taken together has a weightage of two-thirds of the total votes cast, in that meeting.



10. TEST YOUR KNOWLEDGE

1. Which of the following taxes have been subsumed in GST?
 - (a) Central Sales Tax
 - (b) Central Excise Duty
 - (c) VAT
 - (d) All of the above
2. List-I of the Constitution contains matters in respect of which _____ has the exclusive right to make laws.
 - (a) Central Government
 - (b) State
 - (c) Both Centre and State Governments
 - (d) None of the above
3. GST is levied on supply of all goods and services except:
 - (a) Alcoholic liquor for human consumption

- (b) Tobacco
 - (c) Health care services
 - (d) All of the above
4. On Petroleum Crude, High Speed Diesel, Motor Spirit (commonly known as Petrol), Natural Gas and Aviation Turbine Fuel:
- (a) GST will not be levied at all
 - (b) GST will be levied from a date to be notified on the recommendations of the GST Council
 - (c) GST is levied, but exempt
 - (d) None of the above
5. The functions of Goods and Services Network (GSTN) include:
- (a) facilitating registration
 - (b) forwarding the returns to Central and State authorities
 - (c) computation and settlement of IGST
 - (d) All of the above
6. Which article of the Constitution outlines the composition and functions of the GST Council?
- (a) 270
 - (b) 279A
 - (c) 246A
 - (d) 269A
7. Differentiate between direct and indirect taxes.
8. Enumerate different types of direct and indirect taxes.
9. Explain the salient features of indirect taxes.
10. Write a short note on various Lists provided under Seventh Schedule to the Constitution of India.
11. Discuss how GST resolved the double taxation dichotomy under previous indirect tax laws.
12. Enumerate the deficiencies of the existing indirect taxes which led to the need for ushering into GST regime.
13. Discuss the dual GST model as introduced in India.

14. List the Central and State levies which have been subsumed in GST in India.



11. ANSWERS/HINTS

1. (d) 2. (a) 3. (a) 4. (b) 5. (d) 6. (b)

7. Refer Para 2.

8. Refer Para 2.

9. Refer Para 3.

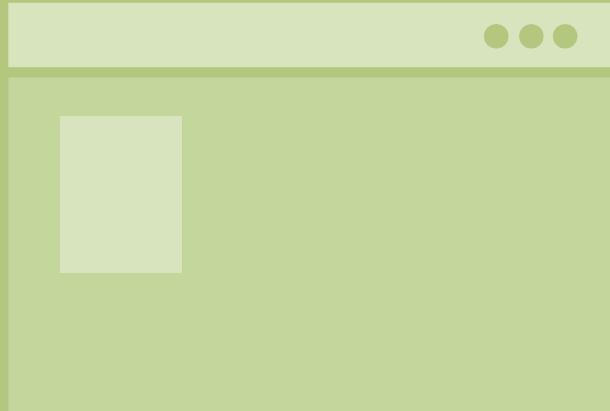
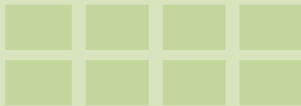
10. Refer Para 9.

11. Refer Para 6.

12. Refer Para 6.

13. Refer Para 7.

14. Refer Para 7.



SUPPLY UNDER GST



LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- ❑ understand and analyse the taxable event under GST – Supply – its meaning and scope.
- ❑ identify the transactions that will amount to supply even without any consideration.
- ❑ classify the transactions either as supply of goods or as supply of services.
- ❑ pinpoint the transactions which will be neither the supply of goods nor the supply of services.
- ❑ explain the composite and mixed supplies and their taxability under GST.

CHAPTER OVERVIEW



1. INTRODUCTION

A taxable event is any transaction or occurrence that results in a tax consequence. Before levying any tax, taxable event needs to be ascertained. It is the foundation stone of any taxation system; it determines the point at which tax would be levied.

Under the earlier indirect tax regime, the framework of taxable event in various statutes was prone to catena of interpretations resulting in litigation since decades. The controversies largely related to issues like whether a particular process amounted to manufacture or not, whether the sale was pre-determined sale, whether a particular transaction was a sale of goods or rendering of services etc.

The GST laws resolve these issues by laying down one comprehensive taxable event i.e. "Supply" - Supply of goods or services or both. Various taxable events namely manufacture, sale,



rendering of service, purchase, entry into a territory of State etc. have been done away with in favour of just one event i.e. **Supply**.

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

In the GST regime, the entire value of supply of goods and/or services is taxed in an integrated manner, unlike the earlier indirect taxes, which were charged independently either on the manufacture or sale of goods, or on the provisions of services.

2. RELEVANT DEFINITIONS



- ✔ **Goods:** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Sec. 2(52) of CGST Act].
- ✔ **Principal:** means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both [Section 2(88) of CGST Act].
- ✔ **Competent authority:** means such authority as may be notified by the Government [Section 2(29) of the CGST Act].
- ✔ **Family:** means, —
 - (i) the spouse and children of the person, and
 - (ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person [Section 2(49) of the CGST Act].



Business: includes –

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to (a) above;

(c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;

(f) admission, for a consideration, of persons to any premises; and

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) **activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club**

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities

[Section 2(17) of CGST Act].



Government: means the Central Government [Section 2(53) of the CGST Act].



Local authority: means —

(a) a “Panchayat” as defined in clause (d) of article 243 of the Constitution.

(b) a “Municipality” as defined in clause (e) of article 243P of the Constitution.

- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund.
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006.
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution.
- (f) a Development Board constituted under **article 371 and article 371J** of the Constitution.
- (g) a Regional Council constituted under article 371A of the Constitution [Section 2(69) of the CGST Act].



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

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

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



Actionable claim: means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent [Section 2(1) of CGST

Act read with section 3 of the Transfer of Property Act, 1882].

- ✔ **Manufacture:** means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly [Section 2(72) of CGST Act].
- ✔ **Money:** means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value [Section 2(75) of CGST Act].
- ✔ **Taxable supply:** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108) of CGST Act].
- ✔ **Taxable territory:** means the territory to which the provisions of this Act apply [Section 2(109) of CGST Act].
- ✔ **Services:** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.
Explanation: For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities [Section 2(102) of CGST Act].
- ✔ **Supplier:** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105) of CGST Act].
- ✔ **Recipient:** of supply of goods and/or services means-
 - (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration,
 - (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to

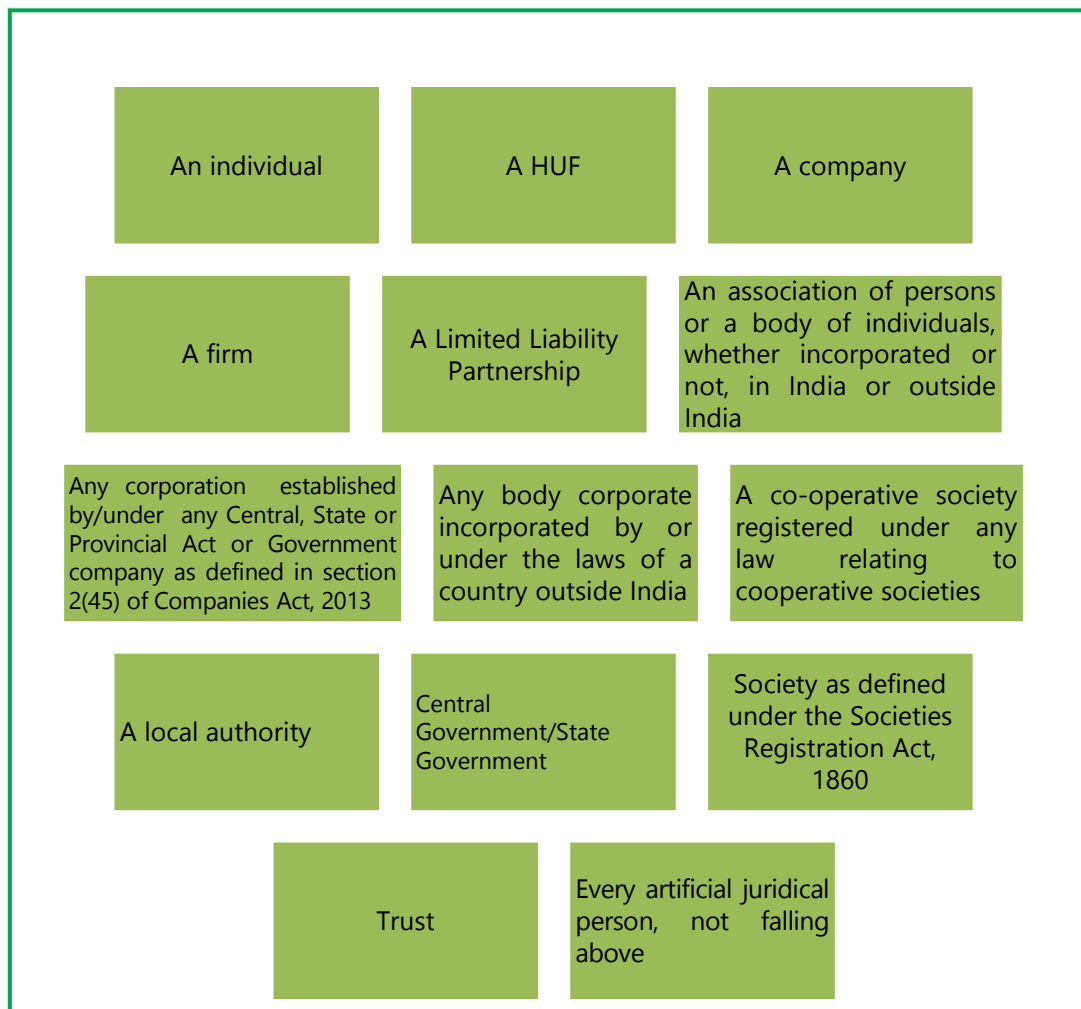
whom possession or use of the goods is given or made available, and

- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply

and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied. [Section 2(93) of CGST Act]

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



Our discussion in this Study Material will principally be confined to the provisions of CGST and IGST laws as the specific State GST laws¹ are outside the scope of syllabus.



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

The concept of 'supply' is the key stone of the GST architecture. The provisions relating to meaning and scope of supply are contained in Chapter III of the CGST Act read with various Schedules given under the said Act. Following sections and schedules shall be discussed in this chapter to understand the concept of supply:

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



STATUTORY PROVISIONS

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

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

	(b)	importation of services , for a consideration whether or not in the course or furtherance of business, and
	(c)	the activities specified in Schedule I , made or agreed to be made without a consideration ,
(1A)	where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.	
(2)	Notwithstanding anything contained in sub-section (1),	
	(a)	activities or transactions specified in Schedule III ; or
	(b)	such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council
shall be treated neither as a supply of goods nor a supply of services.		
(3)	Subject to sub-sections (1), (1A) & (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as —	
	(a)	a supply of goods and not as a supply of services; or
	(b)	a supply of services and not as a supply of goods.
Schedule-I	Activities to be treated as supply even if made without consideration	
S. No.	Particulars	
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.	

	<i>Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.</i>
3.	<i>Supply of goods — (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.</i>
4.	<i>Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.</i>



ANALYSIS



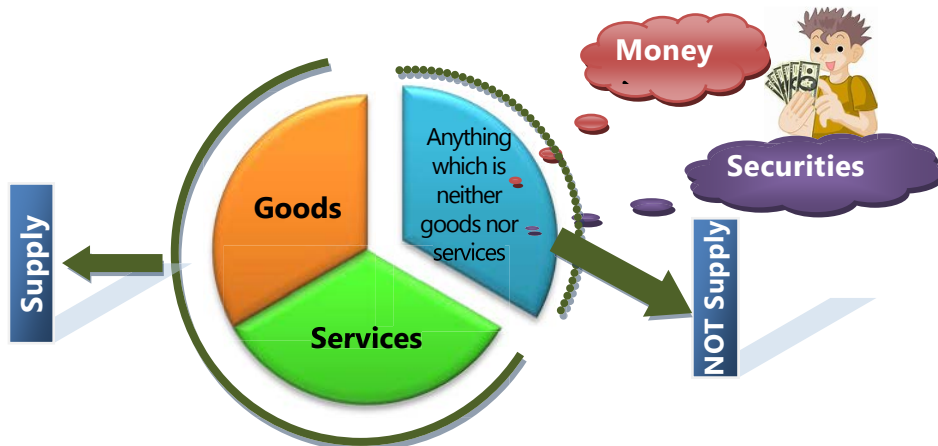
The definition of 'supply' as contained in section 7 of the CGST Act is an inclusive definition and does not define the term exhaustively. It defines the scope of supply in an inclusive manner. Clause (a) of sub-section (1) illustrates the forms of supply, but the list is not exhaustive. This is substantiated by the use of words '**such as**' in the definition.

Provisions of scope of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

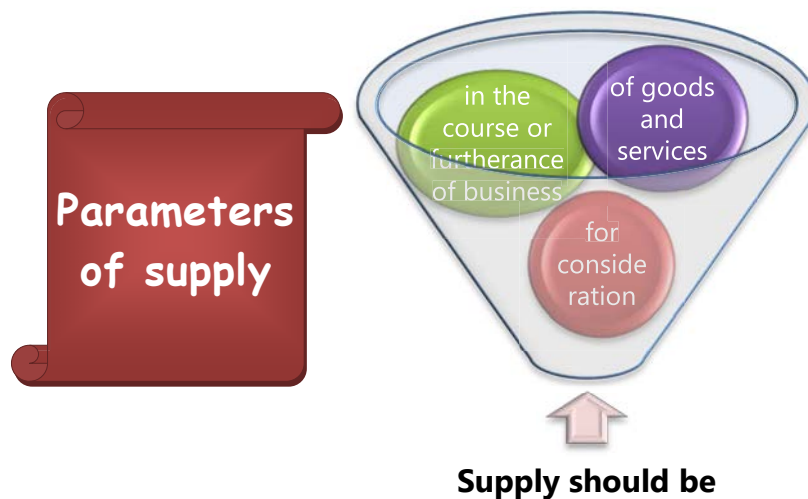


The meaning and scope of supply in terms of section 7 can be understood in terms of following **parameters**:

1. Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.



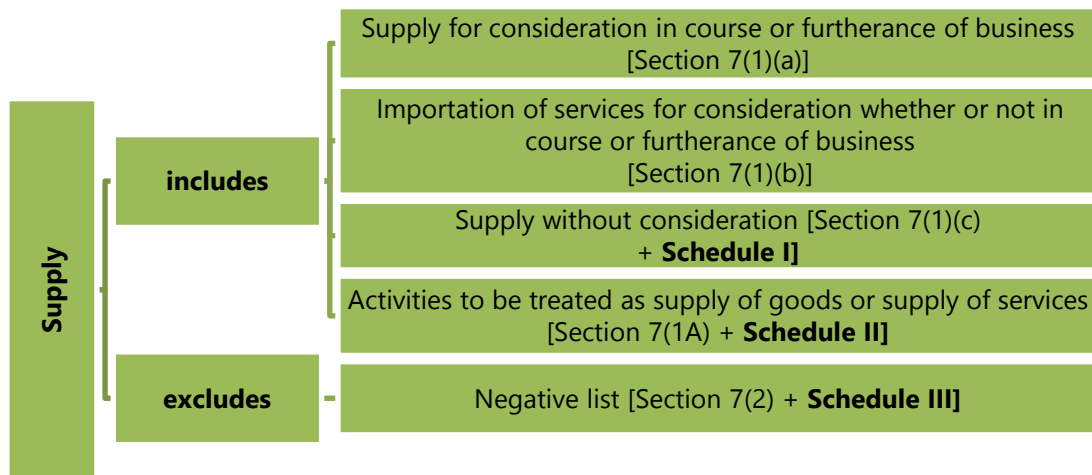
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.



Aforesaid parameters describe the concept of supply. However, there are a few exceptions to 2nd and 3rd parameters [the requirement of supply being made for a consideration and in the course or furtherance of business] in the GST law. Few exceptions have been carved out where a transaction is deemed to be a supply even **without consideration** [contained in Schedule I of the CGST Act – discussed later in this Chapter]. Similarly, the condition of supply to be made **in the course or furtherance of business** has been relaxed in case of import of services [Import of services for a consideration, whether or not in the course or furtherance of business, is treated as supply].

- Further, there are also cases **where a transaction is kept out of scope of supply despite the existence of the above parameters**, i.e. there is a list of activities which are treated neither as supply of goods nor as supply of services. In other words, they are outside the scope of GST.
- GST law has classified certain activities/transactions **either as supply of goods or as supply of services**. Government is also empowered to notify transactions that are to be treated as a supply of goods and not as a supply of services, or as a supply of services and not as a supply of goods.

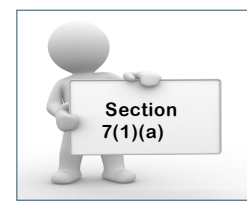
In the subsequent paras, the above aspects of supply have been extensively discussed. The discussion has been broadly categorised into following:

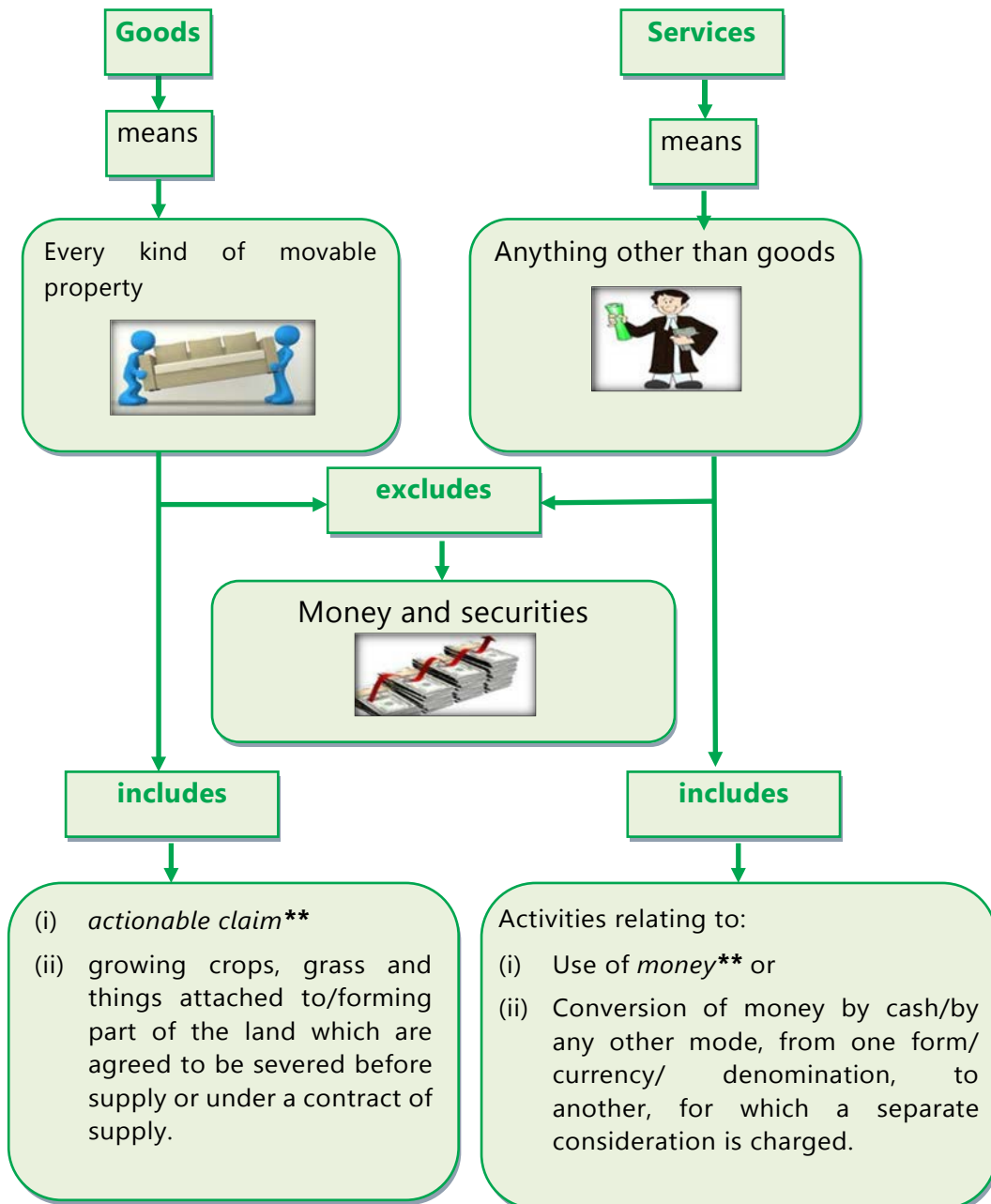


Supply for consideration in course or furtherance of business

The definition of supply begins with the term '**Supply includes**', thus making it clear that CGST Act intends to give an extensive meaning to the term 'supply'. Supply **includes** all forms of supply of goods or services or both. Supply of anything other than goods or services does not attract GST.

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





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

The first part of section 7 [Clause (a) of sub-section (1)] includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made **for consideration in the course or furtherance of business**.



Thus, the forms of supply as contemplated in this first part have two pre-requisites:

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

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

A. FORMS OF SUPPLY

Various forms of supply contemplated in section 7(1)(a) are sale, transfer, barter, exchange, licence, rental, lease or disposal. These forms of supply are only illustrative and not exhaustive. However, none of these terms have been defined under the Act. In order to understand their meaning, we have taken recourse to their dictionary meaning or otherwise and have explained them as follows:

- I. **Sale and Transfer:** The dictionary meaning of term 'sale' is the act of selling; specifically: the transfer of ownership of and title to property from one person to another for a price². As per the Sale of Goods Act, 1930, a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.

Further, the term 'transfer' has been defined in the Black's Law dictionary as to convey or remove from one place, person, etc., to another; pass or hand over from one to another; specifically, to make over the possession or control of.

² www.merriam-webster.com

- II. Barter and Exchange:** The dictionary meaning of term 'barter' is to exchange goods or services for other goods or services instead of using money³. Black's Law dictionary defines the term 'exchange' as an act of giving or taking one thing for another.

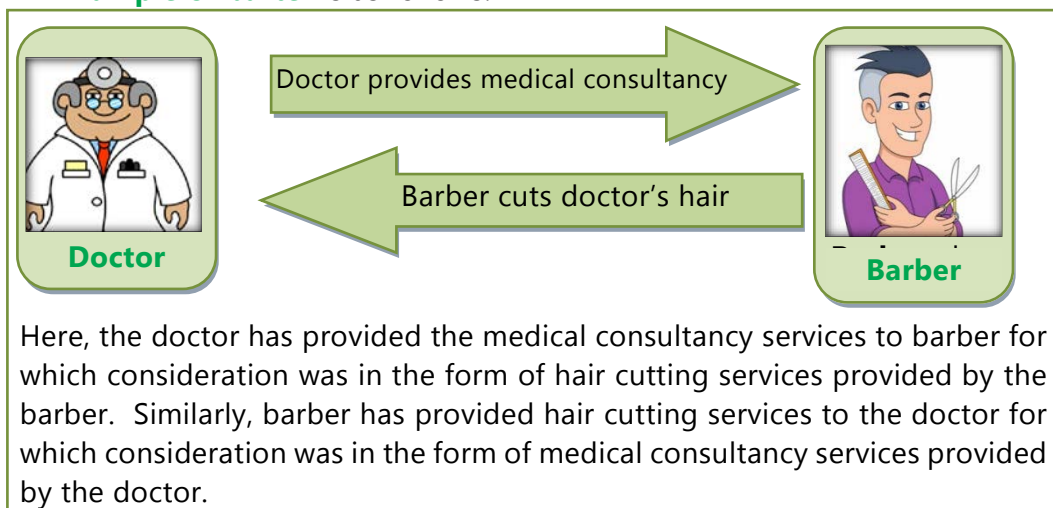
While barter deals with a transaction which only includes an exchange of goods/services, exchange may cover a situation where the goods are paid for partly in goods and partly in money. When there is a barter of goods or services, same activity constitutes supply as well as consideration.

Example of exchange



When a new car worth ₹ 5,00,000 is purchased in exchange of an old car alongwith the monetary consideration of ₹ 4,00,000 paid for the said purchase.

Example of barter is as follows:



Here, the doctor has provided the medical consultancy services to barber for which consideration was in the form of hair cutting services provided by the barber. Similarly, barber has provided hair cutting services to the doctor for which consideration was in the form of medical consultancy services provided by the doctor.

- III. Licence, lease, rental and disposal:** The dictionary meaning of the term 'licence' is a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful⁴. Black's law dictionary defines disposal as the sale, pledge, giving away, use, consumption or any other disposition of a thing.

³ www.macmillandictionary.com

⁴ www.merriam-webster.com

The dictionary meaning of 'rental' is an arrangement to rent something, or the amount of money that you pay to rent something⁵ and that of 'lease' is to make a legal agreement by which money is paid in order to use land, a building, a vehicle, or a piece of equipment for an agreed period of time⁶.

Under GST, such licenses, leases and rentals of goods with or without transfer of right to use are covered under the supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule-II of CGST Act [*Schedule-II has been discussed in detail in the subsequent paras*].

As discussed earlier, one of the parameters to qualify as a supply of goods and/or services is that a supply is made for a consideration. This parameter has been explicated in the following paras:

B. CONSIDERATION

Consideration does not always mean money. It can be in money or in kind. It covers anything which might be possibly done, given or made in exchange for something else. Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person.

However, any subsidy given by the Central Government or a State Government is not considered as consideration. A deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

The term consideration is defined under section 2(31) of the CGST Act [*Refer heading 'Relevant Definitions'*]. The said definition has been depicted in the form of a diagram on next page:

Art works sent by artists to galleries for exhibition is not a supply as no consideration flows from the gallery to the artists

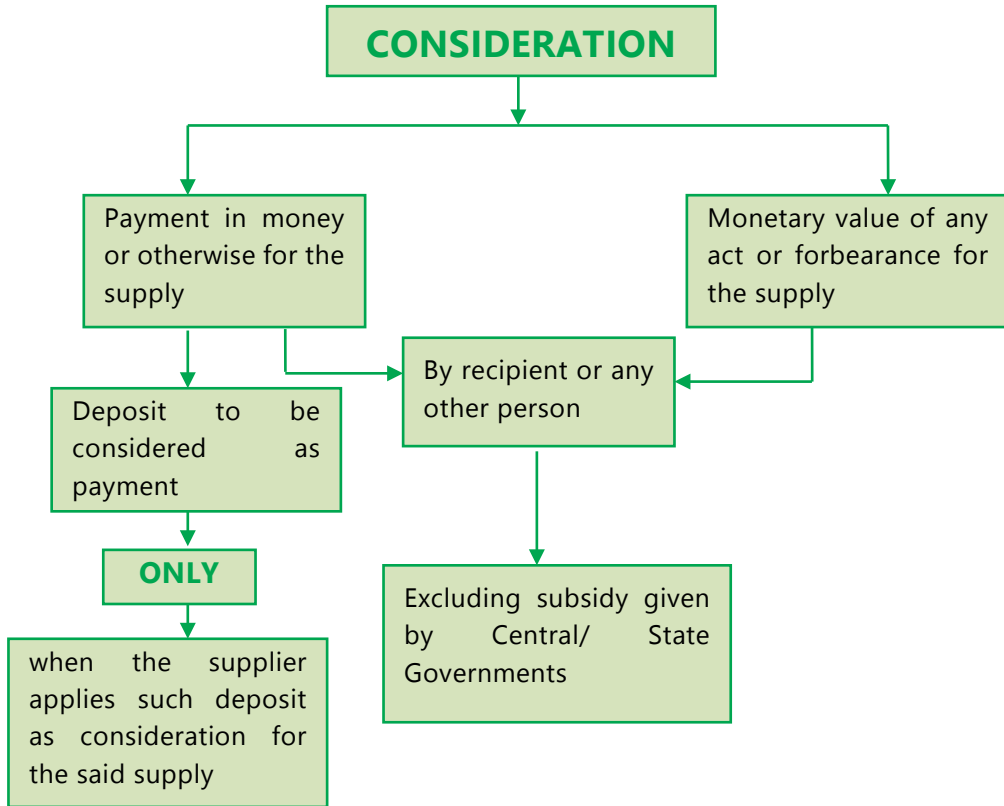
Artists give their work of art to galleries where it is exhibited for supply. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply.



⁵ www.dictionary.cambridge.org

⁶ www.dictionary.cambridge.org

It is only when a buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply [Circular No. 22/22/2017 GST dated 21.12.2017].



Any transaction involving supply of goods and/or services without consideration is not a supply unless it is deemed to be a supply under Schedule I of the CGST Act**.

**Provisions of Schedule I of the CGST Act have been discussed in detail later in this chapter.

Another parameter to qualify as supply of goods and/or services is that a supply is made in course or furtherance of business. This parameter has been expounded in the following paras:

C. IN COURSE OR FURTHERANCE OF BUSINESS

GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Resultantly, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of 'business'.

Meaning of supply made in the course or furtherance of business: Any activity



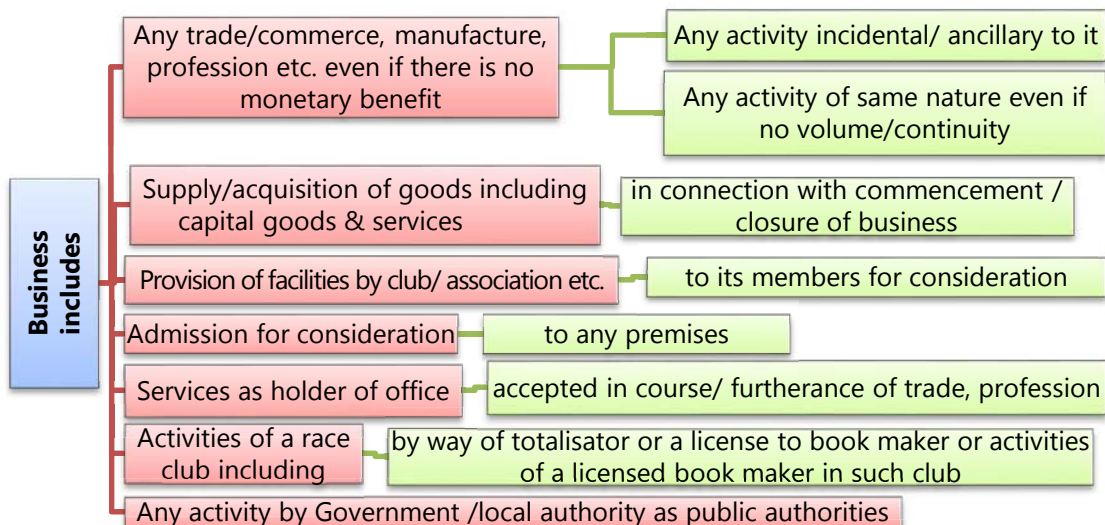
undertaken in course/ furtherance of business would constitute a supply. In order to understand the term



'in the course or furtherance of business', we need

to first understand the term 'business'. Business as defined under section 2(17) of the CGST Act, *inter alia*, includes any trade, commerce, manufacture, profession, vocation etc. whether or not undertaken for a monetary benefit.

The definition of business has been summarised in the diagram below:



Thus, business includes any activity/transaction which is incidental or ancillary to any trade, commerce, manufacture, profession, vocation, adventure, wager [bet] or any other similar activity. In addition, any activity undertaken by the Central Govt. or a State Govt. or any local authority in which they are engaged as public authority shall also be construed as business. For any trade, commerce, or any other similar activity to qualify as business, **frequency, volume, continuity or regularity of such transaction is not a pre-requisite.**

Some of the examples of 'in the course or furtherance of business' are as follows:



Rishabh buys a car for his personal use and after a year sells it to a car dealer. Sale of car by Rishabh to car dealer is not a supply under CGST Act because said supply is not made by Rishabh in the course or furtherance of business⁷.



Manikarnika sold her old gold bangles and earrings to 'Aabhushan Jewellers'. Sale of old gold jewellery by an individual to a jeweller will not constitute supply as the same cannot be said to be in the course or furtherance of business of the individual⁸.

*The view taken in above two examples is based on the view taken in the Departmental FAQs/ press release. However, as already seen, business includes trade, commerce, or any other similar activity, **whether or not there is frequency, volume, continuity or regularity** of such transaction.*

In view of this, it is also possible to take a view in the above examples that sale of car by Rishabh and sale of old gold jewellery by Manikarnika have been made in the course or furtherance of business and thus will constitute a supply.

Since 'business' includes vocation, therefore sale of goods or service **as a vocation** is also a supply under GST.



Sundaram Acharya, a famous actor, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust – 'Kind Human'. The sale of paintings by the actor qualifies as supply.

Services provided by the club/association to its members for consideration is a supply.

⁷ Clarified vide GST FAQs issued by CBIC

⁸ Clarified by CBIC vide press release dated 13.07.2017



A Resident Welfare Association provides the service of depositing the electricity bills of the residents in lieu of some nominal charges. Provision of service by a club or association or society to its members is treated as supply as this is included in the definition of 'business'.

Admission of persons to any premises for a consideration is also included in business.



Services by way of admission to circus, cinema halls, amusement parks including theme parks, water parks, etc. are considered as supply as these are services by way of admission of persons to any premises for a consideration.

Business includes activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club.



Royal Turf Race Club is engaged in facilitating the wagering (betting) transactions on horses placed through totalisator⁹. For providing the service of facilitating wagering transactions, Royal Turf Race Club gets commission which is deducted and retained by the club from the total bet value. Said services amount to supply as the activities of a race club are included in business.



There is one exception to this 'course or furtherance of business' rule i.e., import of services for a consideration.



From the above discussion, it can be inferred that if an activity or transaction satisfies all the above parameters, as discussed in points A., B. and C. above, said activity or transaction qualifies as Supply under GST.

⁹ Totalisator is a computerised device that pools the wagers/bets (after deduction of charges and statutory taxes) of various punters [person who places the bet] and also divides the total wager amount to be distributed to the winning punters.

Supply leviable to GST

Once an activity or transaction qualifies as supply, one needs to determine whether the same is leviable to GST or not. Though the provisions relating to levy and collection of GST have been discussed at length in Chapter 3 – Charge of GST, a brief idea of the same is provided hereunder. For a supply to attract GST, primarily two additional conditions need to be satisfied. These are – (i) supply must be made by a taxable person and (ii) supply must be a taxable supply. These two additional conditions have been discussed hereunder:

(i) Supply by a taxable person

A supply to attract GST should be made by a taxable person. Hence, a supply between two non-taxable persons does not constitute taxable supply under GST.



A supply attracting GST can be made **TO** a non-taxable person also.

The restriction of being a taxable person is only on the supplier whereas the recipient can be either taxable or non-taxable.

Meaning of taxable person: A "taxable person" is a person who is registered or liable to be registered under section 22 or section 24 [*The said sections and the concept of taxable person thereto have been discussed in detail in Chapter 7 – Registration*].

Hence, even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered, but has taken voluntary registration and got himself registered is also a taxable person.

(ii) Taxable supply

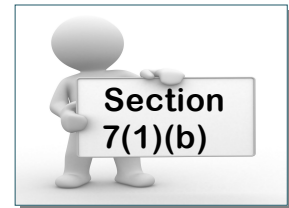
For a supply to attract GST, the supply must be taxable. Taxable supply has been broadly defined and means any supply of goods or services or both which, is leviable to tax under the GST Law [*Refer Chapter-3: Charge of GST for detailed discussion on leviability of GST*]. Exemptions may be provided to the specified goods or services or to a specified category of persons/ entities making supply [*Refer Chapter-4: Exemptions from GST for detailed discussion*].

In the subsequent paras, we have discussed the exceptions to the parameters of supply, *namely*, supply made for consideration but not in course or furtherance of business and supply made without consideration.



Importation of services for consideration whether or not in course or furtherance of business

The connotation of 'supply' gets expanded significantly through the second part of section 7 i.e. 7(1)(b) which brings within the ambit of 'supply', the importation of services for a consideration **whether or not in the course or furtherance of business**. This is the only exception to the condition of supply being made in course or furtherance of business.

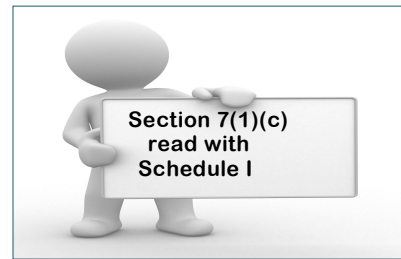


Ramaiyaa, a proprietor, has received the architect services for his house from an architect located in New York at an agreed consideration of \$ 5,000. The import of services by Ramaiyaa is supply under section 7(1)(b) though it is not in course or furtherance of business.



Activities without consideration - Deemed Supply

There are instances where an activity or transaction is treated as supply, **even if the same is made without consideration**. These are specifically mentioned in Schedule I appended to the CGST Act. The same has been discussed in the subsequent paras:



In the past regime, in every tax statute, "consideration" played the most important role for levying taxes. For instance, if any service was provided for free to a person, such service was not subject to service tax. However, under GST, the importance of consideration has been diluted in certain cases – this is an important departure from the earlier indirect tax regime.

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

- I. Permanent Transfer/Disposal of Business Assets [Para 1. of Schedule I]:** Any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration qualifies as

supply. However, it is important to note that this provision would apply only if input tax credit has been availed on such assets.

Therefore, in order to qualify as supply under this para, following conditions need to be satisfied:

- There must be a disposal or transfer of business assets**.
- Transfer/disposal must be permanent.
- ITC must have been availed on such business assets.

In view of the last condition stipulated above, permanent transfer/disposal of following business assets, without consideration, will not be covered within this para and thus will not be deemed as supply:

- (i) Business assets on which ITC is blocked/not available under GST¹⁰.
- (ii) Business assets though eligible for ITC, ITC has not been availed by the registered person.

***It is important to note that the term business assets has not been defined under the GST law.*



Dhruv gives old laptops being used in his business to his friend free of cost. This will qualify as supply provided input tax credit has been availed by Dhruv on such laptops.



A dealer of air-conditioners permanently transfers the motor vehicle free of cost. ITC on said motor vehicle is blocked. The transaction will not constitute a supply as the condition of availment of ITC on the business asset transferred is not fulfilled.

This clause is wide enough to cover transfer of business assets from holding to subsidiary company for nil consideration.

II. Supply between related person or distinct persons [Para 2. of Schedule I]: Supply of goods or services or both between 'related persons' or between 'distinct persons' as specified in section 25, will qualify as supply **provided it is made in the course or furtherance of business.**

Let us understand the terms 'related persons' and 'distinct persons'.

¹⁰ List of the goods in respect of which ITC is blocked has been elaborated in Chapter 6 – Input Tax Credit.

Related persons: A person who is under influence of another person is called a related person like members of the same family [See definition of family under 'Relevant Definitions'] or subsidiaries of a group company etc. Under GST law various categories of related persons have been specified. The term 'related person' has been defined in explanation to section 15. The said definition has been depicted by way of a diagram as follows:



Persons including legal person are deemed as related persons if

- Such persons are officers/directors of one another's business
- Such persons are legally recognised partners
- Such persons are employer & employee
- A third person controls/ owns/ holds (directly/ indirectly) $\geq 25\%$ voting stock/shares of both of them
- One of them controls (directly/indirectly) the other
- A third person controls (directly/indirectly) both of them
- Such persons together control (directly/indirectly) a third person
- Such persons are members of the same family
- One of them is the sole agent/sole distributor/sole concessionaire of the other



(i) Ms. Priya holds 30% shares of ABC Ltd. and 35% shares of XYZ Ltd. ABC Ltd. and XYZ Ltd. are related.

(ii) Q Ltd. has a deciding role in corporate policy, operations management and quality control of R Ltd. It can be said that Q Ltd. controls R Ltd. Thus, Q Ltd. and R Ltd. are related.

Distinct Persons specified under section 25: Before we go through the statutory provisions of 'distinct persons', let us first have an overview of the registration provisions for better understanding of the concept of distinct

persons. *Detailed and in-depth analysis of the registration provisions is contained in Chapter 7 – Registration.*

Under GST law, a supplier is required to obtain State-wise registration. He has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover exceeds a specified threshold limit. Thus, he is not required to obtain registration from a State/UT from where he makes a non-taxable supply.

Since registration in GST is PAN based, once a supplier is liable to register, he has to obtain registration in each of the States/UTs in which he operates [and makes a taxable supply] under the same PAN. Further, he is normally required to obtain single registration in a State/UT. However, where he has multiple places of business in a State/UT, he has the option either to get a single registration for said State/UT or to get separate registrations for each place of business in such State/UT.

In simpler terms, the concept of distinct persons can be understood as follows:

The establishments of a person with separate registrations whether within the same State/UT or in different States/UTs are considered as **distinct persons**. Where a person having one registered establishment in a State/UT has another establishment in a different State/UT [not necessarily registered], these establishments are considered as **establishments of distinct persons**.

Statutory provisions relating to 'distinct persons' are contained in sub-sections (4) and (5) of section 25. They have been discussed as follows:

A person who has obtained/is required to obtain more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as **distinct persons** [Section 25(4) of the CGST Act].



Mohan, a Chartered Accountant, has a registered head office in Delhi. He has also obtained registration in the State of West Bengal in respect of his newly opened branch office. Mohan shall be treated as distinct persons in respect of registrations in West Bengal and Delhi.



Further, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as **establishments of distinct persons** [Section 25(5) of the CGST Act].



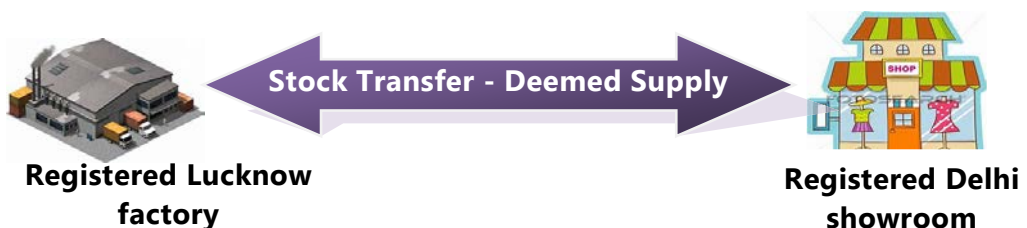
Rishabh Enterprises, a registered supplier, owns an air-conditioned restaurant in Virar, Maharashtra. It has opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption. Since supply of alcoholic liquor for human consumption in Uttarakhand is a non-taxable supply, Rishabh Enterprises is not required to obtain registration with respect to the same in Uttarakhand. In this case, air-conditioned restaurant in Maharashtra and liquor shop in Uttarakhand [though unregistered] shall be treated as establishments of distinct persons. Supply by Maharashtra office to Uttarakhand office, in course or furtherance of business even without consideration will qualify as supply.



Stock transfers or branch transfers qualify as supply: In view of the aforesaid discussion, transactions between different locations (with separate GST registrations) of same legal entity (eg., stock transfers or branch transfers) will qualify as 'supply' under GST as these are transactions between distinct persons.



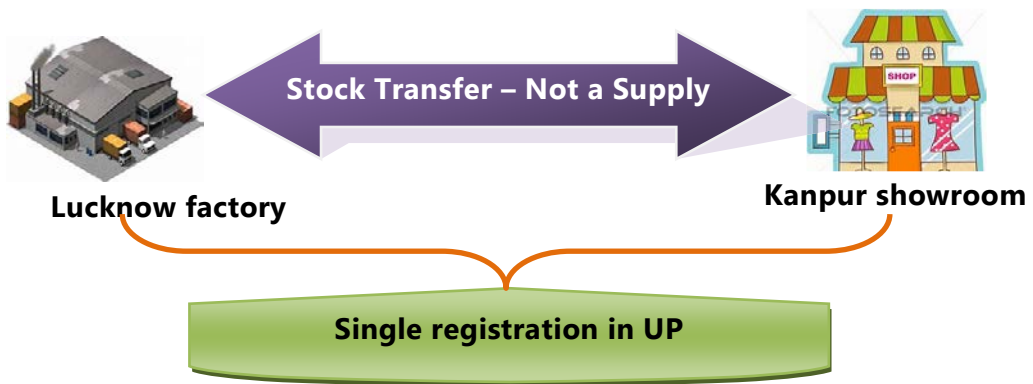
Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Raghubir Fabrics are registered in the States where they are located. Although no consideration is charged, supply of goods from factory to retail showroom constitutes supply.



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



Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Kanpur so that the same can be sold from there. It has taken one registration in the State of Uttar Pradesh declaring Lucknow factory as its principal place of business and Kanpur showroom as its additional place of business. Since no consideration is charged, supply of goods from factory to retail showroom in same State under single registration does not constitute supply.



However, in the above example, if Raghubir Fabrics obtains separate registrations for Lucknow factory and Kanpur showroom, stock transfer between the Lucknow factory and Kanpur showroom will constitute supply.

Supply of goods or services or both between an employer and employee: In terms of the definition of related person given above, employer and employee are related persons. However, services provided by an employee to the employer in the course of or in relation to his employment are not treated as supply [Schedule III of CGST Act (*discussed subsequently in this chapter*)].

Gifts by employer to employee

Further, proviso to Para 2. of Schedule I provides that gifts upto ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. However, gifts of value more than ₹ 50,000 made without consideration are supply and are subject to GST, when made in the course or furtherance of business.



The term 'gift' has not been defined in the GST law. In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift.

Perquisites by employer to employee

As already mentioned 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 payment made 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.

If services such as membership of a club, health and fitness centre etc. are provided free of charge to all the employees by the employer, the same will not be subjected to GST.

The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to company (C2C)¹¹.

¹¹ As clarified in a Press Release on 10.07.2017 by Ministry of Finance

III. Principal – Agent [Para 3. of Schedule I]: Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply.

Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is considered as supply.



Points which merit consideration, in this regard, are as follows:

- ② Only **supply of goods and not supply of services** is covered here.
- ② Supply of goods between principal and agent **without consideration** is also supply.

Thus, the **supply of services** between the principal and the agent and vice versa would therefore require “consideration” to be considered as supply and thus, to be liable to GST.

In order to determine whether a particular principal-agent relationship falls within the ambit of the Para 3. of Schedule I as discussed above or not, the deciding factor is **whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not?** In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.



❑ Where the **invoice for further supply is being issued by the agent in his name** then, any provision of goods from the principal to the agent would fall within the fold of Para 3. above.

❑ However, where the **invoice is issued by the agent to the customer in the name of the principal**, such agent shall not fall within the ambit of Para 3. above.

❑ Similarly, where the goods being procured by the agent on behalf of the principal are **invoiced in the name of the agent** then further



provision of the said goods by the agent to the principal would be covered by Para 3. above **[Circular No. 57/31/2018 GST dated 04.09.2018]**.

The above clarification can be understood with the help of following scenario based examples:



Anmol appoints Bholu to procure certain goods from the market. Bholu identifies various suppliers who can provide the goods as desired by Anmol, and asks the supplier (Golu) to send the goods and issue the invoice directly to Anmol.

In this scenario, Bholu is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Bholu is not an agent of Anmol for supply of goods in terms of Para 3. of Schedule I.



M/s Tintin, a banking company, appoints Mandaar (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders.

The highest bid is accepted and the goods are sold to the highest bidder by M/s Tintin. The invoice for the supply of the goods is issued by M/s Tintin to the successful bidder.

In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mandaar is not an agent of M/s Tintin for the supply of goods in terms of Para 3. of Schedule I.



Gautam, an artist, appoints Gambhir (auctioneer) to auction his painting. Gambhir arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder.

The invoice for the supply of the painting is issued by Gambhir on the behalf of Gautam but in his own name and the painting is delivered to the successful bidder.

In this scenario, Gambhir is not merely providing auctioneering services, but is also supplying the painting on behalf of Gautam to the bidder, and has the authority to transfer the title of the painting on behalf of Gautam. This scenario is covered under Para 3. of Schedule I.



A C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F commission agent is an agent of the principal for the supply of goods in terms of Para 3. of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.



Ravi sells agricultural produce by utilizing the services of Kavi who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Kavi identifies the buyers and sells the agricultural produce on behalf of Ravi for which he charges a commission from Ravi.

As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.

In cases where the invoice is issued by Kavi to the buyer, the former is an agent covered under Para 3. of Schedule I¹². However, in cases where the invoice is issued directly by Ravi to the buyer, the commission agent (Kavi) doesn't fall under the category of agent covered under Para 3.

Clarification of issues pertaining to Del-credere agent (DCA)

Let us first understand what is meant by a DCA? In commercial trade parlance, a DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the **DCA guarantees the payment to the supplier.**

Del-credere agent

In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of

¹² It is important to note that services provided by the commission agent for sale or purchase of agricultural produce are exempt from GST.

the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent.



In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer.

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

Sl. No.	Issue	Clarification
1	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?	<p>As already clarified vide Circular No. 57/31/2018 GST (discussed above), whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I of the CGST Act depends on the following possible scenarios:</p> <ul style="list-style-type: none"> <input type="checkbox"/> In case where the <u>invoice</u> for supply of goods is issued <u>by the supplier to the customer</u>, either himself or through DCA, the DCA <u>does not fall</u> under the ambit of agent. <input type="checkbox"/> In case where the <u>invoice</u> for supply of goods is issued <u>by the DCA in his own name</u>, the DCA <u>would fall</u> under the ambit of agent.
2	Whether the temporary short-term transaction	<p>In such a scenario, following activities are taking place:</p> <ol style="list-style-type: none"> 1. Supply of goods from supplier (principal)

	<p>based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?</p>	<p>to recipient;</p> <ol style="list-style-type: none"> 2. Supply of agency services from DCA to the supplier or the recipient or both; 3. Supply of extension of loan services by the DCA to the recipient. <p><i>It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply¹³.</i></p> <p><i>Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier.</i></p>
<p>3.</p>	<p>Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of</p>	<p>In such a scenario following activities are taking place:</p> <ol style="list-style-type: none"> 1. Supply of goods by the supplier (principal) to the DCA; 2. Further supply of goods by the DCA to the recipient; 3. Supply of agency services by the DCA to the supplier or the recipient or both; 4. Extension of credit by the DCA to the recipient. <p><i>It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I of the</i></p>

¹³ Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempt vide Entry 27 of Notification No. 12/2017 CT(R) dated 28.06.2017 [Discussed in detail in Chapter 4 – Exemptions under GST].

	<p>goods being supplied, whether the interest will form a part of the value of supply of goods also or not?</p>	<p>CGST Act, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient.</p> <p>It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per section 15(2)(d) of the CGST Act¹⁴.</p>
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IV. Importation of services [Para 4. of Schedule I]: Import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business shall be treated as “supply”.



Jhumroo Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such services free of cost to its branch office. Since Jhumroo Associates and the head office are related persons, services received by Jhumroo Associates will qualify as supply even though the head office has not charged anything from it.



Chakmak, a proprietor registered in Delhi, has sought architect services from his son located in US, with respect to his newly constructed house in Delhi. Although services have been received by Chakmak without consideration from his son - a related person, yet it will not qualify as supply since the same has not been received in course or furtherance of business.

¹⁴ Section 15 of the CGST Act, 2017 has been discussed in detail in Chapter 5 – Time and Value of Supply.

Clarification on Sales promotion schemes

A number of sales promotion schemes are commonly employed by the businesses to increase sales volume or to encourage the use or trial of a product or service so that new customers get attracted towards their products. For instance, certain sections of trade and industry, such as, pharmaceutical companies often provide drug samples to their stockists, dealers, medical practitioners, etc., or sometimes, companies announce offers like 'Buy One, Get One free' - buy one soap and get one soap free or get one tooth brush free along with the purchase of tooth paste.



As we have already seen that as per section 7(1)(a), the goods or services which are supplied free of cost (without any consideration) shall not be treated as "supply" except in case of activities mentioned in Schedule I of the CGST Act. In view of the same, few sales promotion schemes have been examined as under:

★ **Free samples and gifts:** Samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST¹⁵, except where the activity falls within the ambit of Schedule I of the CGST Act.



★ **Buy one get one free offer:** It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.



¹⁵ ITC on inputs, input services and capital goods to the extent they are used in relation to the gifts/free samples shall be available to the supplier only where the activity of distribution of gifts/free samples falls within the scope of supply - Discussed in detail Chapter 6 – Input Tax Credit.

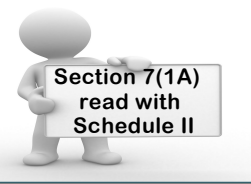
Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly – Concept of composite and mixed supply has been discussed subsequently in this chapter.

[Circular 92/11/2019 GST dated 07.03.2019]



Activities/transactions to be treated as Supply of goods or Supply of services

Section 7(1A) of the CGST Act classifies certain activities/ transactions constituting supply, either as supply of goods or supply of services. Schedule II to the CGST Act contains the list of activities or transactions which have been classified either as supply of goods or supply of service.



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







Under earlier laws, the restaurants used to charge both service tax and VAT on the value of food served. This so because both sale of goods and provision of service were involved and therefore taxable event under both the Statutes i.e. respective VAT law and service tax law got triggered.




Under GST, the supply by a restaurant is treated as composite supply [*concept of composite supply is discussed subsequently in this chapter*] since food and service is naturally bundled in ordinary course of business. Further, Entry 6(b) of Schedule II [*refer table below*] specifically provides that such composite supply shall be treated as supply of service. Hence, the entire value of invoice shall be treated as value of service and leviable to GST accordingly.





The matters listed out in Schedule II are primarily those which had been entangled in litigation in the earlier regime owing to their complex nature and susceptibility to double taxation.

These are as follows :-

S.No.	Activity/ Transaction	Type	Nature of Supply
1.	Transfer	Any transfer of title in goods.  Shivaji sells ready-made garments to its customers.	Supply of Goods
		Any transfer of right in goods/ undivided share in goods without transfer of title in goods.  Genius Equipments Ltd. gives a machinery on rent to Suhaasi Manufacturers.	Supply of Services
		Any transfer of title in goods under an agreement which stipulates that property shall pass at a future date upon payment of full consideration as agreed.  (i) Dhruva Capitals supplied goods on hire purchase basis to customers. (ii) Optima Manufacturers supplies toys to retailers on 'sale or return basis'.	Supply of Goods
2.	Land and Building	Any lease, tenancy, easement, licence to occupy land ¹⁶ .  Lease agreement for land.	Supply of Services

¹⁶ Refer Circular No.44/18/2018 CGST dated 02.05.2018 discussed subsequently.

		<p>Any lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or partly.</p> <p> A shop let out in a busy market area.</p>	Supply of Services
3.	Treatment or Process	<p>Any treatment or process which is applied to another person's goods</p> <p> Damani Dying House dyes the clothes given by Shubham Textiles Ltd. on job work basis.</p>	Supply of Services
4.	Transfer of Business Assets	<p>Goods forming part of business assets are transferred or disposed off by/under directions of person carrying on the business so as no longer to form part of those assets, whether or not for consideration.</p>	Supply of Goods
		<p>Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/ under directions of person carrying on the business, whether or not for consideration.</p> <p> Arunodhya, a sole proprietor, owns a laptop used for making office presentations. He transfers said laptop to his son for making school projects.</p>	Supply of Services
		<p>Goods forming part of assets of any business carried on by a person who ceases to be a taxable person,</p>	Supply of Goods

		<p>shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person.</p> <p> Arun, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him.</p> <p>Exceptions:</p> <p> Business is transferred as a going concern to another person¹⁷.</p>	
		<p> Business is carried on by a personal representative who is deemed to be a taxable person.</p>	
<p>5.</p>	<p>(a) Renting of immovable property</p> <p> (i) Renting of a commercial complex.</p> <p>(ii) Renting of precincts of a religious place.</p> <p>(iii) Renting of property to an educational institution.</p> <p>(iv) Permitting use of immovable property for placing vending/dispensing machines.</p>	<p>(b) Construction of complex, building, civil structure, etc.</p> <p>Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance</p>	<p>Supply of Services</p>

¹⁷ Services by way of transfer of a going concern, as a whole or an independent part thereof are exempt from GST [Discussed in detail in Chapter 4 – Exemptions from GST].

of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.



Rathi Builders has constructed individual residential units for agreed consideration of ₹ 1.2 crore per unit. ₹ 90 lakh per unit were received before issuance of completion certificate by the competent authority and balance after completion.

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

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.






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




Temporary transfer of patent.

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

Supply of Services

	<p> Suvidha Solutions develops an accounting software for a business.</p> <p>(e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.</p> <p> (i) Cable operator - Sakharam has entered into an agreement with Cable operator - Aatmaram that Sakharam will not provide cable connections in the specified areas where Aatmaram is providing the connections. Non-compete agreements constitute supply of service.</p> <p>(ii) Late delivery charges recovered from supplier for non-fulfilment of contract within stipulated time.</p> <p>(iii) Notice pay recovered from employee for leaving the job before agreed period of notice for leaving a job.</p> <p>(f) Transfer of right to use any goods for any purpose</p> <p> Machinery given on hire.</p>	<p>Supply of Services</p>
<p>6.</p>	<p>Following composite supplies :-</p> <p> Works contract services.</p> <p><i>Works contract: means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract [Section 2(119) of CGST Act].</i></p> <p> Supply by way of or as part of any service or in any other manner whatsoever, of goods, being</p>	<p>Supply of Services</p>

	food or any other article for human consumption or any drink.	
7.	Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.  Resident Welfare Association (RWA) of Sanskriti Society supplies air-conditioners to its members at a concessional price.	Supply of Goods

CBIC has clarified **Taxability of 'tenancy rights' under GST** as under:

Pagadi system, i.e. transfer of tenancy rights against tenancy premium, is prevalent in some States. In Pagadi system, the tenant acquires tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property, but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.



It has been clarified that the activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST.

It is a form of lease or renting of property and such activity is specifically declared to be a service in Para 2. of Schedule II as discussed in table above i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.

Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST. Merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST.



The transfer of tenancy rights cannot be treated as sale of land/ building in para 5. of Schedule III. Thus, it is not a negative list activity [this concept is discussed under

next heading] and consequently, a consideration for the said activity shall attract levy of GST.

To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable *per-se*. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable[!]. Further, services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST [Circular No.44/18/2018 CGST dated 02.05.2018].

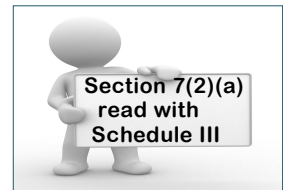


[!] It is important to note that grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt from tax [Entry 12 of Notification No. 12/2017 CT (R) dated 28.06.2017 – Discussed in Chapter 4 – Exemptions from GST].



Negative list under GST

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



S.No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	<p>Services by an employee to the employer in the course of or in relation to his employment.</p> <div style="display: flex; align-items: center;"> <div style="border: 1px solid black; border-radius: 50%; padding: 2px; margin-right: 10px;">example</div> <div style="flex-grow: 1;"> <p>(i) Amounts received by an employee from the employer on premature termination of contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment.</p> </div> <div style="border: 2px solid red; padding: 5px; transform: rotate(-5deg); margin-left: 10px; color: red; font-weight: bold;">FIRED!</div> </div>

(ii) Services provided by casual worker to employer who gives wages on daily basis to the worker are services provided by the worker in the course of employment.

(iii) Casual workers employed by a construction contractor for execution of a building contract for him are services in the course of employment. Similarly, casual workers employed by a security services agency for provision of security services to a client are also services in the course of employment.



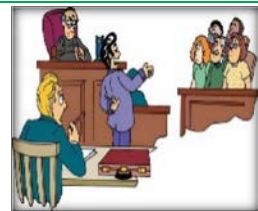
Only services that are provided by the employee to the employer in the course of employment are outside the realm of supply. However, services provided outside the ambit of employment for a consideration would qualify as supply.

For example, services provided on contract basis by a person to another i.e. principal-to-principal basis are not services provided in the course of employment¹⁸.

Any amount paid by employer to employee for not joining a competing business is paid for providing the service of forbearance to act and cannot be considered for providing services in the course of employment.

2. Services by any court or Tribunal established under any law for the time being in force.



Explanation – The term "**Court**" includes District Court, High Court and Supreme Court.



3. (a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats,

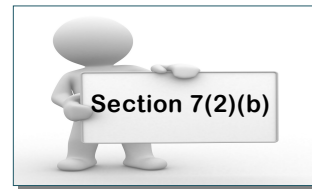


¹⁸ Discussion based on Service Tax Education Guide issued under erstwhile under service tax law.

	<p>Members of Municipalities and Members of other local authorities.</p> <p>(b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity.</p> <p> Duties performed by President of India, Vice President of India, Prime Minister of India, Chief Justice of India, Speaker of the Lok Sabha, Chief Election Commissioner, Comptroller and Auditor General of India, Chairman of Union Public Service Commission, Attorney General of India, in that capacity.</p> <p>(c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.</p>
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	<p>Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.</p> 
6.	<p>Actionable claims, other than lottery, betting and gambling.</p> <p>'Actionable claims' are specifically included in the definition of goods under section 2(52) of the CGST Act [<i>Refer the definitions of 'actionable claims' and 'goods' given under heading 'Relevant Definitions'.</i>]</p> <p>However, this para of Schedule III specifically excludes actionable claims, other than lottery, betting and gambling from the ambit of definition of supply. Co-joint reading of said provisions implies that only lottery, betting and gambling are treated as supply. All other actionable claims are outside the ambit of definition of supply.</p> <p>Some of the other examples of actionable claims are: Right to recover insurance money, claim for arrears of rent, claims for</p>

future rents (if these can be assigned), unsecured loans, unsecured debentures, bills of exchange, promissory notes, bank guarantee, Fixed Deposit Receipt, right to the benefit of a contract, etc.¹⁹

- II. Activities/transactions notified by the Government:** Government is empowered to notify the activities/ transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as the activities/transactions which shall be treated neither as a supply of goods nor a supply of services.



Notification No. 14/2017 CT (R) dated 28.06.2017/ Notification No. 11/2017 IT (R) dated 28.06.2017 as amended has notified the services by



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

Further, CBIC has clarified that following activities/transactions are neither supply of goods nor supply of services.

(i) Inter-State movement of various modes of conveyance

Inter-State movement of various modes of conveyance, between distinct persons including-

- Trains,
- Buses,



¹⁹ Schedule III has two more entries - Entry 7 and 8 [as enumerated below]. These entries are covered in the syllabus of Paper 8: Indirect Tax Laws at Final Level.

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8. (a) Supply of warehoused goods to any person before clearance for home consumption.
(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

- Trucks,
- Tankers,
- Trailers,
- Vessels,
- Containers,
- Aircrafts,



- (a) carrying goods or passengers or both; or
 (b) for repairs and maintenance,

[except in cases where such movement is for further supply of the same conveyance] was discussed in GST Council's meeting held on 11th June, 2017 and the Council recommended that such inter-State movement shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to IGST.

Thus, above activity may not be treated as supply and consequently IGST will not be payable on such supply. However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance [Circular No. 1/1/2017 IGST dated 07.07.2017**].

(ii) Inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes]

Above circular shall *mutatis mutandis* apply to **inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes], [except in cases where movement of such goods is for further supply of the same goods], such **inter-State movement shall be treated 'neither as a supply of goods or supply of service,' and consequently no IGST would be applicable on such movements**. In this context, it is also reiterated that applicable CGST/SGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods [Circular No. 21/21/2017-GST dated 22.11.2017].



4. COMPOSITE AND MIXED SUPPLIES [SECTION 8]



STATUTORY PROVISIONS

Section 8

Tax liability on composite and mixed supplies

<i>Clauses</i>	<i>Particulars</i>
	<i>The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-</i>
<i>(a)</i>	<i>a composite supply</i> comprising two or more supplies, one of which is a principal supply, shall be treated as a <i>supply of such principal supply</i> ; and
<i>(b)</i>	<i>a mixed supply</i> comprising of two or more supplies shall be treated as supply of that particular <i>supply that attracts highest rate of tax</i> .



ANALYSIS

GST is payable on individual goods or services or both at the notified rates. The application of rates poses no problem if the supply is of individual goods or individual services, which is clearly identifiable and such goods or services are subject to a particular rate of tax.

However, in certain cases, supplies are not such simple and clearly identifiable supplies. Some of the supplies are a combination of goods or combination of services or combination of goods and services both and each individual component of such supplies may attract a different rate of tax.

In such a case, the rate of tax to be levied on such supplies may be a challenge. It is for this reason, that the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies.

In order to determine whether the supplies are 'composite supplies' or 'mixed supplies', one needs to determine whether the supplies are naturally bundled or not naturally bundled in ordinary course of business.



Composite Supplies

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

- comprises two or more taxable supplies of goods or services or both, or any combination thereof.

- are naturally bundled and supplied in conjunction with each other, in the ordinary course of business
- one of which is a principal supply [Section 2(30) of the CGST Act].

This means that in a composite supply, goods or services or both are bundled owing to natural necessities. The elements in a composite supply are dependent on the 'principal supply'.



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

How to determine the tax liability on composite supplies?: A **composite supply** comprising of two or more supplies, one of which is a principal supply, shall be treated as a **supply of such principal supply**.



Poshaak Manufacturers entered into a contract with Cheeku Ltd. for supply of readymade shirts packed in designer boxes at Cheeku Ltd.'s outlet. Further, Poshagak Manufacturers would also get them insured during transit. In this case, supply of goods, packing materials, transport & insurance is a composite supply wherein supply of goods is principal supply.



When a consumer buys a television set and he also gets mandatory warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance services are ancillary.



A travel ticket from Mumbai to Delhi may include service of food being served on board, free insurance, and the use of airport lounge. In this case, the transportation of passenger, constitutes the pre-dominant element of the composite supply, and is treated as the principal supply and all other supplies are ancillary.

Works contract and restaurant services are classic examples of composite supplies. However, the GST law identifies both as supply of services and such services are chargeable to specific rate of tax mentioned against such services (works contract and restaurants).

How to determine whether the services are bundled in the ordinary course of business?

Whether the services are bundled in the ordinary course of business, would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below:

❑ **The perception of the consumer or the service recipient** - If large number of service recipient of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.

❑ **Majority of service providers in a particular area of business provide similar bundle of services.**


For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.


❑ The **nature of the various services in a bundle of services** will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service.


For example, service of stay in a hotel is often combined with provision of breakfast and dinner provided free of cost during the stay. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

❑ **Other illustrative indicators**, not determinative but indicative of bundling of services in the ordinary course of business are:

 The elements are normally advertised as a package.

 The different elements are not available separately.

 The different elements are integral to one overall supply. If one or more is removed, the nature of the supply would be affected.

 No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.

The above principles explained in the light of what constitutes a naturally bundled service can be gainfully adopted to determine whether a particular supply constitutes a composite supply under GST and if so what constitutes the principal supply so as to determine the right classification and rate of tax of such composite supply.

For instance, in case of **servicing of cars involving supply of both goods (spare parts) and services (labour) where the value of goods and services are shown separately**, CBIC has clarified that the goods and services would be liable to tax at the rates as applicable to such goods and services separately [Circular No. 47/21/2018 GST dated 08.06.2018].



Further, given below is the illustrative list determining what constitutes the principal supply in the **given composite supplies**:

Activity/ transaction	Principal supply
Supply of printed books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address	In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service .
	In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. by the printer using

or other contents supplied by the recipient of such printed goods	its physical inputs including paper to print the design, logo etc. supplied by the recipient of goods, predominant supply is supply of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods . [Circular No. 11/11/2017 GST dated 20.10.2017]
Activity of bus body building	The principal supply may be determined on the basis of facts and circumstances of each case [Circular No. 34/8/2018-GST dated 01.03.2018].
Retreading of tyres	Pre-dominant element is process of retreading which is a supply of service . Rubber used for retreading is an ancillary supply. Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods [Circular No. 34/8/2018-GST dated 01.03.2018].



Mixed Supplies

Mixed supply means:

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

The individual supplies are independent of each other and are not naturally bundled.



How to determine if a particular supply is a mixed supply?: In order to identify if the particular supply is a mixed supply, the first requisite is to rule out that the supply is a composite supply.

A supply can be a mixed supply only if it is not a composite supply. As a corollary, it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business then it would be a mixed supply.

Once the amenability of the transaction as a composite supply is ruled out, it would be a mixed supply, classified in terms of supply of goods or services attracting highest rate of tax.

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



A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.



A shopkeeper selling storage water bottles along with refrigerator. Bottles and the refrigerator can easily be priced and sold independently and are not naturally bundled. So, such supplies are mixed supplies.



A house is given on rent through a single rent deed - one floor of which is to be used as residence and the other for housing a printing press, at a lump sum rent amount. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Said supplies are mixed supply.



5. LET US RECAPITULATE



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

Supply should be of goods or services

Supply should be made for a consideration

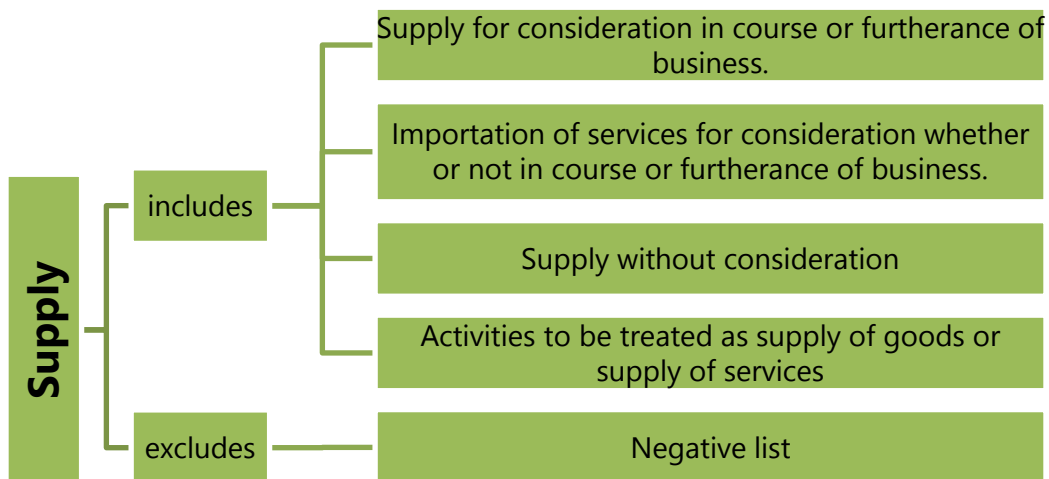
Supply should be made in the course or furtherance of business



While these parameters describe the concept of supply, under certain circumstances, transactions have been deemed as supply even when the supply is made without consideration or not in the course or furtherance of business. Activities specified in Schedule I are deemed to be a supply even

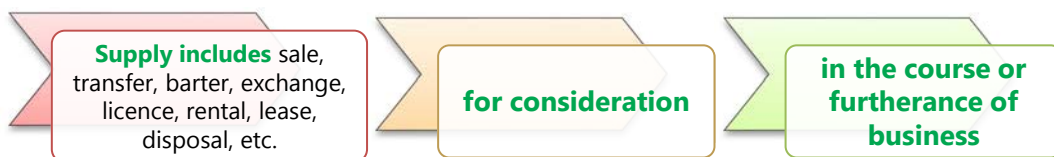
without consideration. Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.

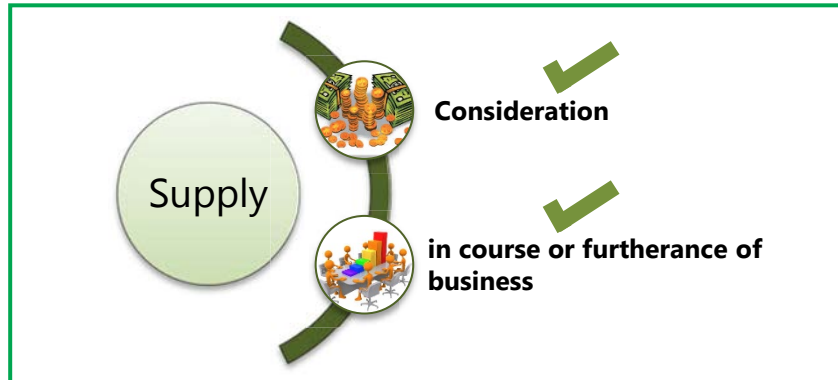
- 👉 Besides, some specified transactions/ activities are neither treated as supply of goods nor a supply of services. Furthermore, certain activities have been categorised as supply of goods or as supply of services.
- 👉 The discussion with respect to supply is broadly categorised into following:



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

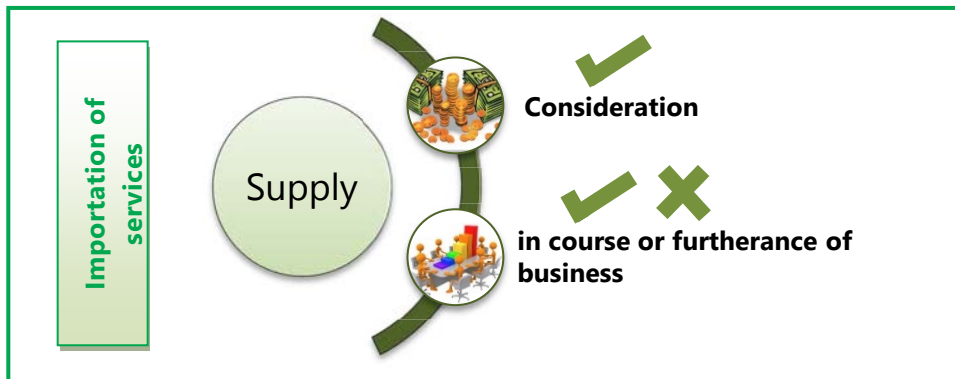
1. **Supply for consideration in course or furtherance of business [Section 7(1)(a)]**





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

Supply should be in course or furtherance of business. The exception to said rule is import of services is deemed as supply even if the same has been imported not in course/furtherance of business.

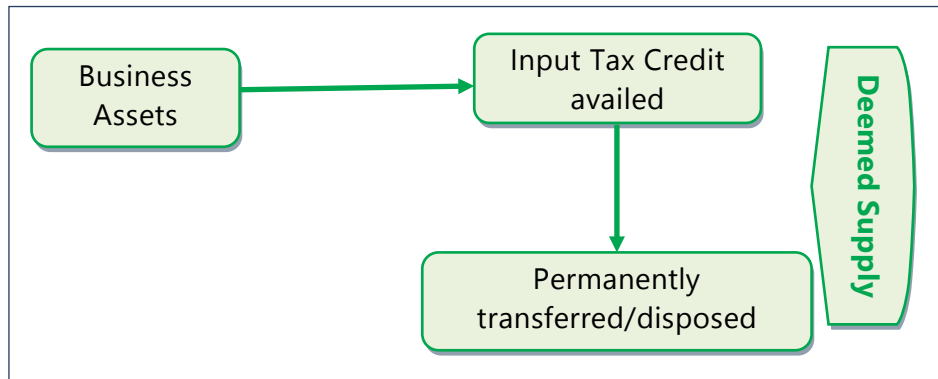


3. Supply without consideration - Deemed Supply [Section 7(1)(c) read with Schedule I]

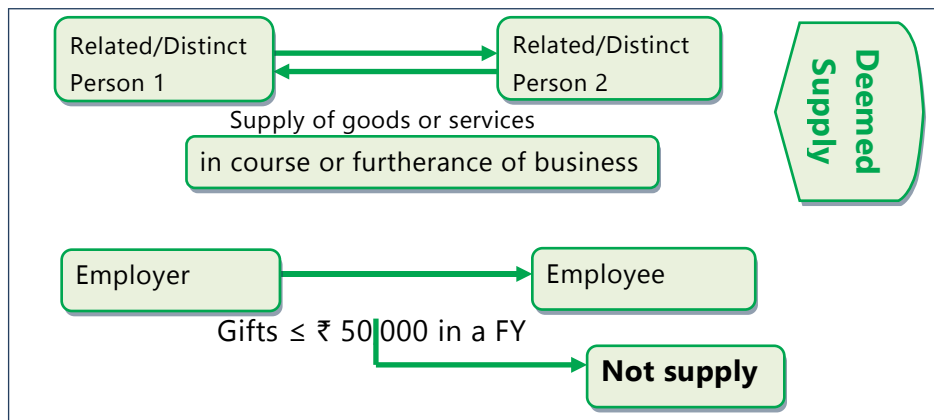
This includes all supplies made to a taxable or non-taxable person, even if the same is without consideration. These are specifically mentioned in Schedule I appended to the CGST Act.

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

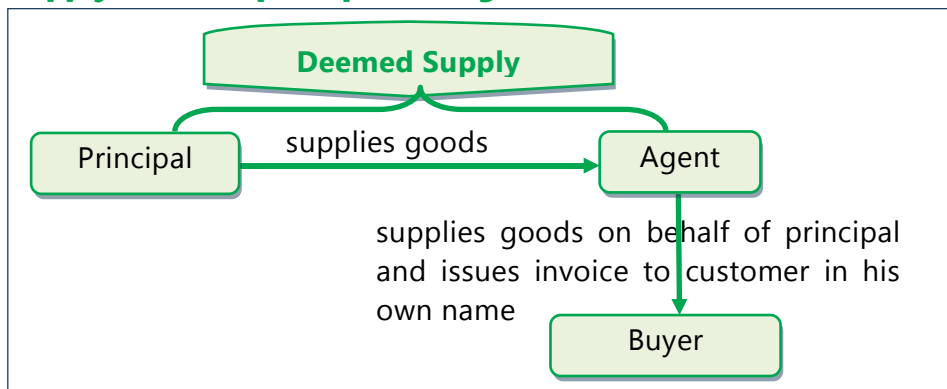
I. Permanent Transfer/Disposal of Business Assets

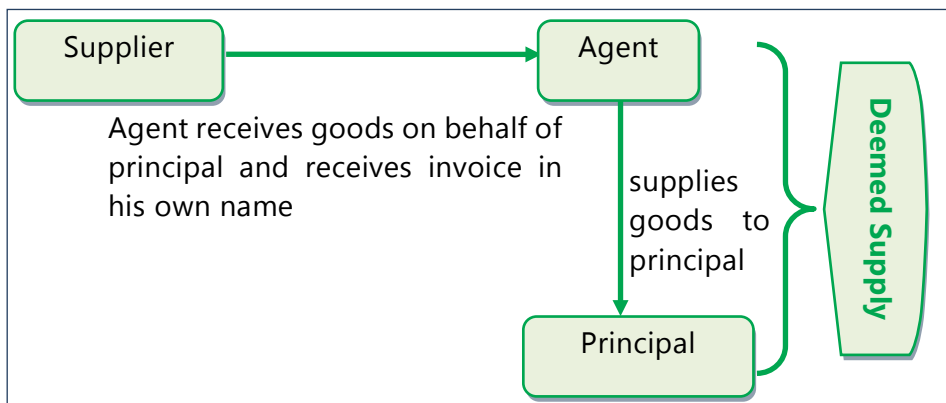


II. Supply between related persons or distinct persons

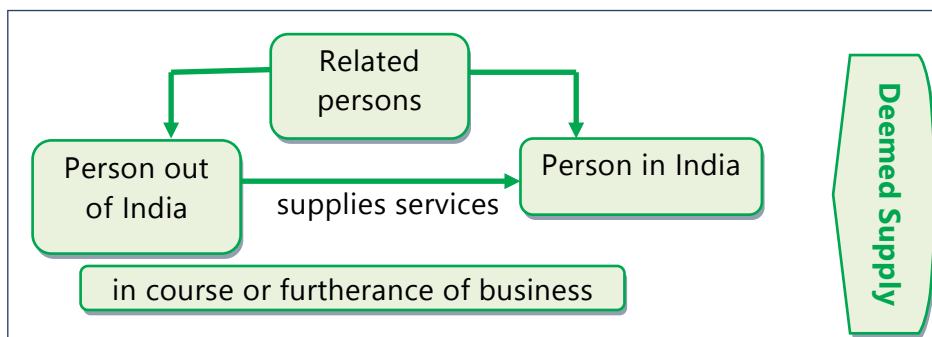


III. Supply between principal and agent



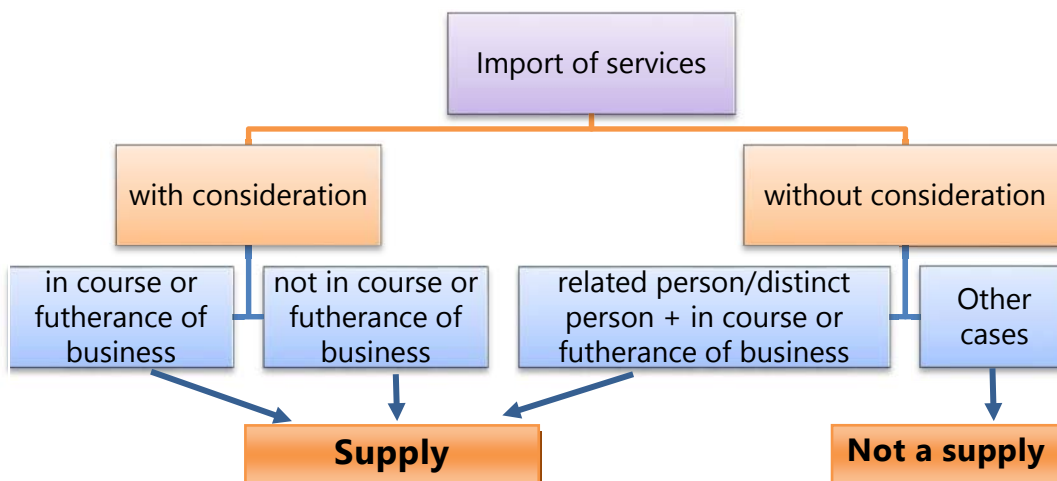


IV. Importation of services







The combined provisions of relating to import of services [as stipulated under under section 7(1)(b) and section 7(1)(c) read with Schedule I] have been depicted in the below mentioned diagram:

Import of services



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

S.No.	Activity/ Transaction	Type	Supply of goods/ services
1.	Transfer	(i) Title in goods (ii) Title in goods under an agreement that property shall pass at a future date.	Goods
		Right/undivided share in goods without transfer of title in them	Services
2.	Land and Building	Lease, tenancy, easement, licence to occupy land	Services
		Lease/letting out of building including a commercial/ industrial/ residential complex for business/ commerce, wholly/ partly.	Services
3.	Treatment or Process	Applied to another person's goods	Services
4.	Transfer of Business Assets	Goods forming part of business assets are transferred/disposed off by/under directions of person carrying on business so as no longer to form part of those assets, whether or not for consideration	Goods
		Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/under directions of person carrying on the business, whether or not for consideration	Services

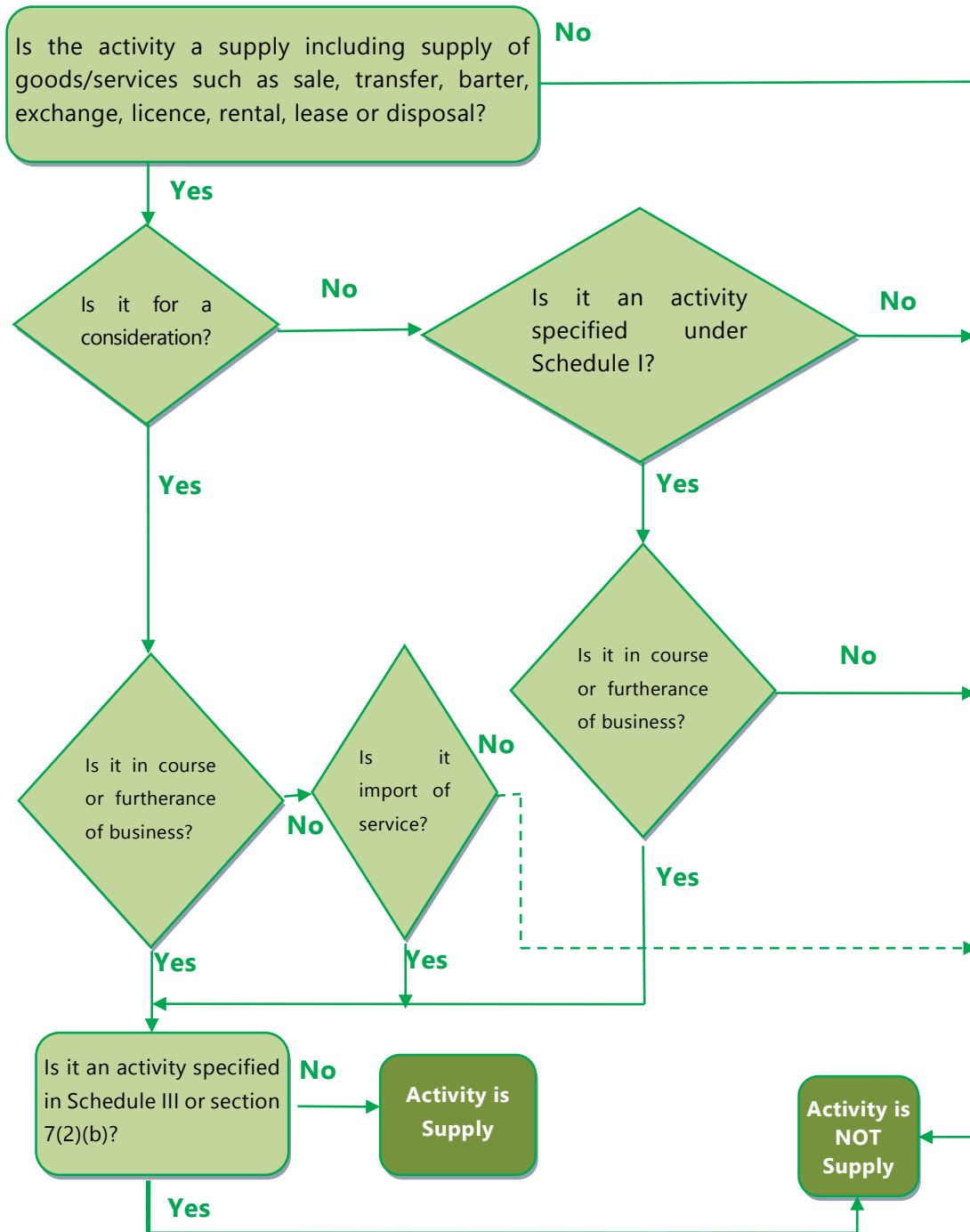
	<p>Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person.</p> <p>Exceptions:</p> <ul style="list-style-type: none">  Business transferred as a going concern.  Business carried on by a personal representative who is deemed to be a taxable person. 	Goods
5.	<p>Renting of immovable property</p> <p>Construction of complex, building, civil structure, etc.</p> <p>Temporary transfer or permitting use or enjoyment of any intellectual property right</p> <p>Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software</p> <p>Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.</p> <p>Transfer of right to use any goods for any purpose</p>	Services
6.	<p>Following composite supplies:-</p> <ul style="list-style-type: none">  Works contract services.  Supply of goods, being food or any other article for human consumption or any drink. 	Services
7.	Supply of goods by an unincorporated association or body of persons to a member thereof for cash,	Goods

	deferred payment or other valuable consideration.	
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5. Negative list under GST [Section 7(2)(a) read with Schedule III]

S. No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	Services by an employee to the employer in the course of or in relation to his employment.
2.	Services by any court or Tribunal established under any law for the time being in force.
3.	(a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities; (b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or (c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.
6.	Actionable claims, other than lottery, betting and gambling.

The diagram on the next page summarises the steps to determine whether an activity undertaken is Supply or not.



6. Composite and mixed supplies



Composite Supply

- Consist of two or more supplies
- **Naturally bundled**
- In conjunction with each other
- One of which is principal supply
- Tax liability shall be rate of principal supply
- **Example:** Charger supplied alongwith mobile phones.



Mixed Supply

- Consist of two or more supplies for a **single price**
- **Not naturally bundled**
- Though can be supplied independently, still supplied together
- Tax liability shall be the rate applicable to the supply that attracts highest rate of tax
- **Example:** A gift pack comprising of chocolates, candies, sweets and balloons.



6. TEST YOUR KNOWLEDGE

- Which of the following is not a supply as per section 7 of the CGST Act?
 - Management consultancy services not in course or furtherance of business
 - Import of service for consideration not in course or furtherance of business
 - Both (a) and (b)
 - None of the above
- _____ specifies the activities to be treated as supply even if made without consideration.

- (a) *Schedule I of CGST Act*
 - (b) *Schedule II of CGST Act*
 - (c) *Schedule III of CGST Act*
 - (d) *All of the above*
3. *Which of the following activity is outside the scope of supply and not taxable under GST?*
- (a) *Services by an employee to the employer in the course of or in relation to his employment*
 - (b) *Services of funeral*
 - (c) *Actionable claims, other than lottery, betting and gambling.*
 - (d) *All of the above*
4. *Which of the following supplies are naturally bundled?*
- (a) *Rent deed executed for renting of two different floors of a building-one for residential and another for commercial purpose to same person*
 - (b) *Pack of watch, tie and belt*
 - (c) *Package of canned food such as burger, chocolates, sweets, cake etc.*
 - (d) *None of the above*
5. *A _____ supply comprising of two or more supplies shall be treated as the supply of that particular supply that attracts highest rate of tax.*
- (a) *Composite*
 - (b) *Mixed*
 - (c) *Both (a) and (b)*
 - (d) *None of the above*
6. *Which of the following activities is a supply of services?*
- (a) *Transfer of right in goods/ undivided share in goods without transfer of title in goods*
 - (b) *Transfer of title in goods*
 - (c) *Transfer of title in goods under an agreement which stipulates that property shall pass at a future date.*
 - (d) *All of the above*
7. *What is the taxable event under GST?*

8. *What is the tax treatment of composite supply and mixed supply under GST?*
9. *Whether transfer of title and/or possession is necessary for a transaction to constitute supply of goods?*
10. *Examine whether the following activities would amount to supply under section 7 read with Schedule I of the CGST Act:*
 - (a) *Sulekha Manufacturers have a factory in Delhi and a depot in Mumbai. Both these establishments are registered in respective States. Finished goods are sent from factory in Delhi to the Mumbai depot without consideration so that the same can be sold.*
 - (b) *Raman is an architect in Chennai. His brother who is settled in London is a well-known lawyer. Raman has taken legal advice from him free of cost with regard to his family dispute.*
 - (c) *Would your answer be different if in the above case, Raman has taken advice in respect of his business unit in Chennai?*
11. *State whether the following supplies would be treated as supply of goods or supply of services as per Schedule II of the CGST Act:*
 - (a) *Renting of immovable property.*
 - (b) *Goods forming part of business assets are transferred or disposed of by/under directions of person carrying on the business, whether or not for consideration.*
 - (c) *Transfer of right in goods without transfer of title in goods.*
 - (d) *Transfer of title in goods under an agreement which stipulates that property shall pass at a future date.*
12. *Determine whether the following supplies amount to composite supplies:*
 - (a) *A hotel provides 4 days-3 nights package wherein the facility of breakfast and dinner is provided alongwith the room accommodation.*
 - (b) *A toothpaste company has offered the scheme of free toothbrush alongwith the toothpaste.*
13. *Whether goods supplied on hire purchase basis will be treated as supply of goods or supply of services? Give reason.*



7. ANSWERS/HINTS

1. (a) 2. (a) 3. (d) 4. (d) 5. (b) 6. (a)
7. Taxable event under GST is **supply of goods or services or both**. CGST and SGST/ UTGST will be levied on intra-State supplies. IGST will be levied on inter-State supplies.
8. Composite supply shall be treated as supply of the principal supply. Mixed supply would be treated as supply of that particular goods or services which attracts the highest rate of tax.
9. Title as well as possession both have to be transferred for a transaction to be considered as a supply of goods. In case title is not transferred, the transaction would be treated as supply of service in terms of Schedule II(1)(b) of the CGST Act. In some cases, possession may be transferred immediately but title may be transferred at a future date like in case of sale on approval basis or hire purchase arrangement. Such transactions will also be termed as supply of goods.
10. (a) Schedule I of CGST Act, *inter alia*, stipulates that supply of goods or services or both between related persons or between distinct persons as specified in section 25, is supply even without consideration provided it is made in the course or furtherance of business. Further, a person who has obtained more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as **distinct persons** [Section 25(4) of the CGST Act].
- In view of the same, factory and depot of Sulekha Manufacturers are establishments of two distinct persons. Therefore, supply of goods from Delhi factory of Sulekha Manufacturers to Mumbai Depot without consideration, but in course/furtherance of business, is supply under section 7 read with Schedule I of the CGST Act.
- (b) Schedule I of CGST Act, *inter alia*, stipulates that import of services by a taxable person from a **related person** located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business. Explanation to section 15, *inter alia*, provides that persons shall be deemed to be **“related persons”** if they are **members of the same family**. Further, as per section 2(49) of the CGST Act, 2017, family means, —

- (i) the spouse and children of the person, and
- (ii) the parents, grand-parents, brothers and sisters of the person **if they are wholly or mainly dependent on the said person.**

In the given case, Raman has received free of cost legal services from his brother. However, in view of section 2(49)(ii) above, Raman and his brother cannot be considered to be related as Raman's brother is a well-known lawyer and is not wholly/mainly dependent on Raman. Further, Raman has taken legal advice from him in personal matter and not in course or furtherance of business. Consequently, services provided by Raman's brother to him would not be treated as supply under section 7 read with Schedule I of the CGST Act.

- (c) In the above case, if Raman has taken advice with regard to his business unit, services provided by Raman's brother to him would still not be treated as supply under section 7 of the CGST Act read with Schedule I as although the same are provided in course or furtherance of business, such services have not been received from a related person.

11. (a) Supply of services
 (b) Supply of goods
 (c) Supply of services
 (d) Supply of goods
12. Under composite supply, two or more taxable supplies of goods or services or both, or any combination thereof, are naturally bundled and supplied in conjunction with each other, in the ordinary course of business, one of which is a principal supply [Section 2(30) of the CGST Act]. In view of the same,
- (a) since, supply of breakfast and dinner with the accommodation in the hotel are naturally bundled, said supplies qualify as 'composite supply'.
 - (b) since supply of toothbrush alongwith the toothpaste are not naturally bundled, said supplies do not qualify as 'composite supply'.
13. Supply of goods on hire purchase shall be treated as supply of goods as there is transfer of title, albeit at a future date.

CHARGE OF GST

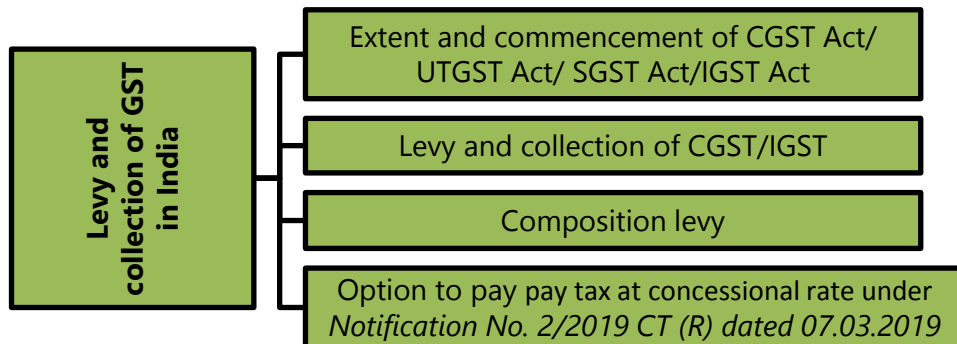


LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- ❑ explain the extent and commencement of CGST Act, IGST Act, SGST Act & UTGST Act.
- ❑ describe the provisions pertaining to levy and collection of CGST & IGST.
- ❑ identify and analyse the services on which tax is payable under reverse charge mechanism.
- ❑ understand and analyse the composition levy- eligibility for the same and conditions to be fulfilled.
- ❑ explain and analyse the option to pay tax at concessional rate under *Notification No. 2/2019 CT (R) dated 07.03.2019*

CHAPTER OVERVIEW



1. INTRODUCTION

Power to levy tax is drawn from the Constitution of India. To pave way for the introduction of Goods and Services Tax (“**GST**”), 101st Constitutional Amendment Act was passed. By virtue of this Act, central excise duty, additional duties of customs, State VAT and certain State specific taxes and service tax were subsumed into a comprehensive GST [Discussed in detail in Chapter-1: GST in India – An Introduction].

The very basis for the charge of tax in any taxing statute is the taxable event i.e. the occurrence of the event which triggers levy of tax. As discussed earlier, the taxable event under GST is **SUPPLY**. **CGST and SGST/UTGST** are levied on all **intra-State supplies** of goods and/or services while **IGST** is levied on all **inter-State supplies** of goods and/ or services.

The provisions relating to levy and collection of CGST and IGST are contained in section 9 of the CGST Act, 2017 and section 5 of the IGST Act, 2017, respectively. Let us now have a fundamental idea of intra-State supply and inter-State supply.

Intra-State supply

Generally, where the **location of the supplier** and the **place of supply** of goods or services are **in the same State/Union territory**, it is treated as **intra-State supply** of goods or services respectively.

 **Inter-State supply**

Where the location of the supplier and the place of supply of goods or services are in (i) two different States or (ii) two different Union Territories or (iii) a State and a Union territory, it is treated as **inter-State supply** of goods or services respectively.

 **2. RELEVANT DEFINITIONS**

- ✔ **Central tax:** means the central goods and services tax levied under section 9 [Section 2(21) of the CGST Act].
- ✔ **Integrated tax:** means the integrated goods and services tax levied under the Integrated Goods and Services Tax Act [Section 2(58) of the CGST Act].
- ✔ **State tax:** means the tax levied under any State Goods and Services Tax Act [Section 2(104) of the CGST Act].
- ✔ **Goods:** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Sec. 2(52) of CGST Act].
- ✔ **Exempt supply:** means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply [Section 2(47) of CGST Act].
- ✔ **Aggregate turnover:** means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess [Section 2(6) of CGST Act].

 **Business:** includes –

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to (a) above;

(c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;


(f) admission, for a consideration, of persons to any premises; and


(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;


(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club;

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities

[Section 2(17) of CGST Act].

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

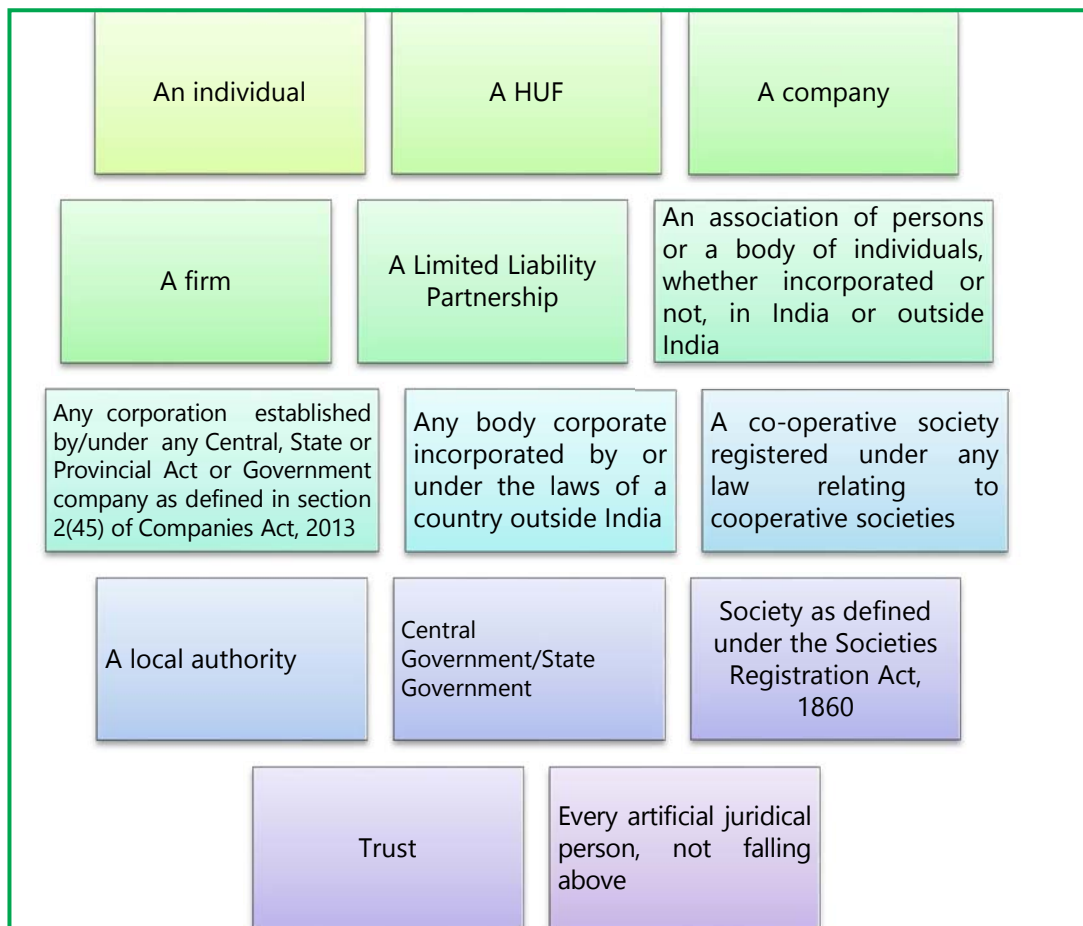
 any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government,

 the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person

but shall not include any subsidy given by the Central Government or a State Government.

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

📌 **Person:** includes [Section 2(84) of CGST Act]-



📌 **Recipient:** of supply of goods and/or services means-

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration,

- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied. [Section 2(93) of CGST Act]

❖ **Reverse charge:** means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under section 9(3)/9(4), or under section 5(3)/5(4) of the IGST Act [Section 2(98) of CGST Act].

❖ **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 [Section 2(102) of CGST Act].

Explanation.—For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities.

❖ **Supplier:** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied. [Section 2(105) of CGST Act]

❖ **Taxable supply:** means a supply of goods and/or services which is chargeable to tax under CGST Act. [Section 2(108) of CGST Act]

❖ **Non-taxable supply:** means a supply of goods or services or both which is not leviable to tax under CGST Act or under IGST Act. [Section 2(78) of CGST Act]

❖ **Taxable person:** means a person who is registered or liable to be registered under section 22 or section 24. [Section 2(107) of CGST Act]

It is important to note that even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered, but has taken voluntary registration and got himself registered is also a taxable person.

Section 22 enumerates the persons liable to be registered under CGST Act and section 24 lists the persons liable to be registered compulsorily under the said law. The said sections and the concept of taxable person thereto has been discussed in detail in Chapter 7 – Registration.

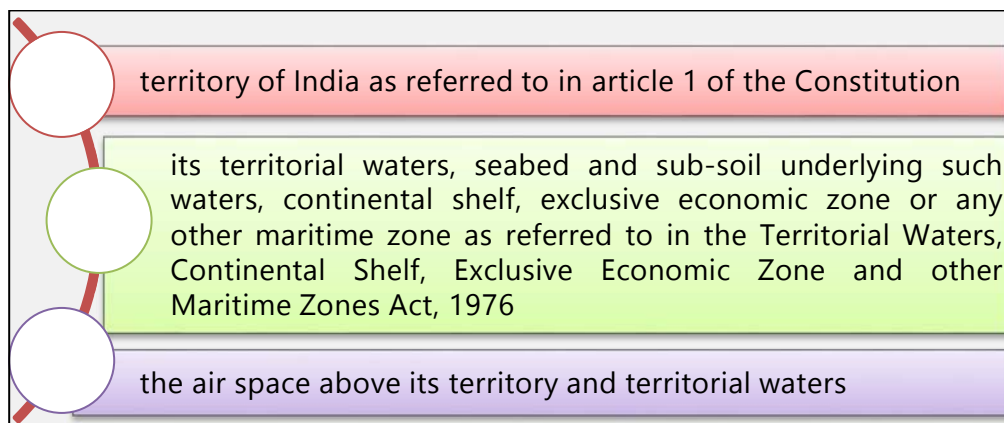


3. EXTENT & COMMENCEMENT OF GST LAW

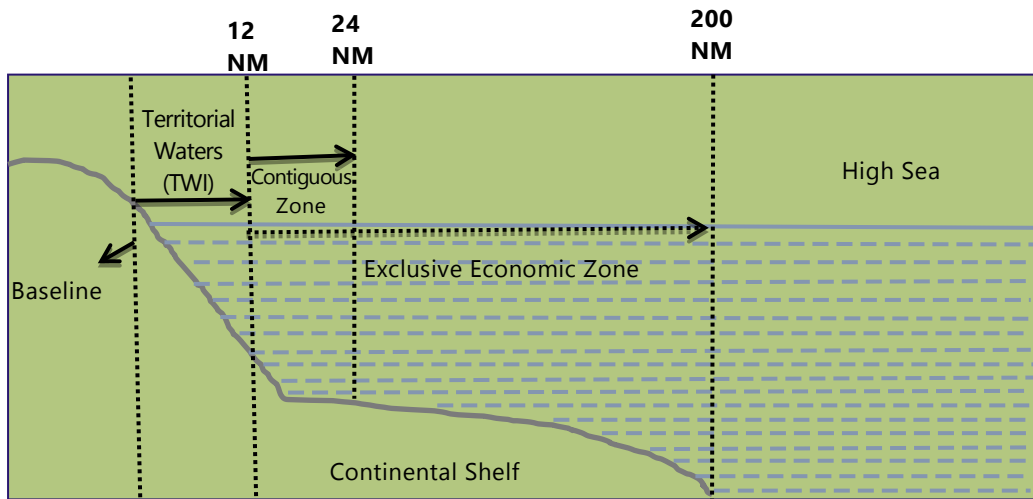
- (i) **Central Goods and Services Tax Act, 2017** extends to the whole of India including Jammu and Kashmir [Section 1 of the CGST Act].



India: "India" means-



[Section 2(56) of CGST Act].



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



Maharashtra GST Act, 2017 extends to whole of the State of the Maharashtra.

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

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

****Union territory:** means the territory of—

- the Andaman and Nicobar Islands;
- Lakshadweep;
- Dadra and Nagar Haveli;
- Daman and Diu;
- Chandigarh; and
- other territory.

Explanation—For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory [Section 2(114) of CGST Act].

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



4. LEVY & COLLECTION OF CGST & IGST [SECTION 9 OF THE CGST ACT & SECTION 5 OF THE IGST ACT]



STATUTORY PROVISIONS

Section 9 of the CGST Act	Levy and collection
Sub-section	Particulars
(1)	<i>Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.</i>
(2)	<i>The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.</i>
(3)	<i>The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both</i>


	<i>and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.</i>
(4)	<i>The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.</i>
(5)	<i>The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.</i> <i>Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:</i> <i>Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.</i>



ANALYSIS





Central Goods and Services Tax (CGST) shall be levied on all intra-State supplies of goods or services or both.






 The tax shall be **collected** in such manner as may be prescribed and shall be **paid by the taxable person**. However, intra-State supply of **alcoholic liquor for human consumption** is outside the purview of CGST.

Value for levy: Transaction value under section 15 of the CGST Act – *Discussed in detail in Chapter 5 – Time and Value of supply.*


Rates of CGST: Rates for CGST are rates as may be notified by the Government on the recommendations of the GST Council [**Rates presently notified are 0%, 0.125%, 1.5%, 2.5%, 6%, 9% and 14%**]. Maximum rate of CGST can be 20%.


 On **inter-State supplies** of goods and/or services, Integrated Goods and Services Tax (IGST) is **levied** on the **transaction value** under section 15 of the CGST Act¹. Since alcoholic liquor for human consumption is outside the purview of GST law, IGST is also not leviable on the same. IGST is the sum total of CGST and SGST/UTGST. Maximum rate of IGST can be 40%.

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

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

 **Tax payable on supply of goods or services or both under Reverse charge**

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

-  Supply of goods or services or both, **notified by the Government** on the recommendations of the GST Council.

¹ *Goods imported into India: For the goods imported into India, the IGST shall be levied and collected as per the section 3 of the Custom Tariff Act, 1975 i.e. the additional duty shall be as per the Custom Tariff Act, 1975 and the value shall also be determined as per the said Act. This aspect will be discussed in detail at the Final Level.*

- ✓ Supply of **specified categories of goods or services or both** by an unregistered supplier to **specified class of registered persons.**

- ❖ All the provisions of the CGST/IGST Act shall apply to the recipient in the aforesaid cases as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. **Let us first understand the concept of reverse charge mechanism:**

Reverse charge mechanism

- ❖ Generally, the supplier of goods or services is liable to pay GST. However, under the reverse charge mechanism, the liability to pay GST is cast on the recipient of the goods or services.
- ❖ **Reverse charge** means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply.
- ❖ However, the underlying principle of an indirect tax is that burden of such tax has to be ultimately passed on to the recipient. GST being an indirect tax, this principle holds good for GST. Therefore, under reverse charge mechanism, only the compliance requirements, [i.e. to obtain registration under GST, deposit the tax with the Government, filing returns, etc.] have been shifted from supplier to recipient. The burden to pay GST ultimately lies on the recipient only.
- ❖ There are **two type of reverse charge scenarios** provided in law.

- (i) First scenario occurs in case of supply of specified categories of goods or services, covered by section 9(3) of the CGST/SGST (UTGST) Act. *Similar provisions are contained under section 5(3) of the IGST Act.*
- (ii) Second scenario occurs in case of supply of specified categories of goods or services made by an unregistered supplier to specified class of registered recipients, covered by section 9(4) of the CGST Act. *Similar provisions are contained under section 5(4) of the IGST Act. Goods and services notified under this case have been elaborated subsequently in this chapter.*



Goods and services notified under reverse charge mechanism

under section 9(3) of the CGST Act/ section 5(3) of the IGST Act are as follows:

A. Supplies of goods taxable under reverse charge, i.e. the goods where tax is payable by the recipient:

Goods like cashewnuts [not shelled/peeled], bidi wrapper leaves, tobacco leaves, supply of lottery, silk yarn, used vehicles, seized and confiscated goods, old and used goods, waste and scrap, raw cotton, etc. are taxable under reverse charge².

B. Supply of services taxable under reverse charge under section 9(3) of the CGST Act, i.e. the services where tax is payable by the recipient:

Notification No. 13/2017 CT (R) dated 28.06.2017 as amended has notified the following categories of supply of services wherein whole of the tax shall be paid on reverse charge basis by the recipient of services:

S. No.	Category of supply of service	Supplier of service	Recipient of Service
1.	Supply of services by a Goods Transport Agency (GTA) in respect of transportation of goods by road to- (a) any factory registered under or governed by the Factories Act, 1948; or (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time	Goods Transport Agency (GTA) who has not paid CGST @ 6% [Please refer the analysis given subsequently.]	(a) Any factory registered under or governed by the Factories Act, 1948; or (b) any society registered under the Societies Registration Act, 1860 or

² Examples of goods on which tax is payable by the recipient under reverse charge have been given hereunder only for the knowledge of the students. These are not relevant for examination purposes.

	<p>being in force in any part of India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person.</p>		<p>under any other law for the time being in force in any part of India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person; located in the taxable territory.</p> <p>[Hereinafter</p>
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			referred as Specified recipients]
<p>However, reverse charge mechanism (RCM) shall not apply to services provided by a GTA, by way of transport of goods in a goods carriage by road to-</p> <p>(a) a Department/ establishment of the Central Government/ State Government/ Union territory; or</p> <p>(b) local authority; or</p> <p>(c) Governmental agencies,</p> <p>which has taken registration under the CGST Act only for the purpose of deducting tax under section 51³ and not for making a taxable supply of goods or services⁴.</p>			
2.	<p>Services supplied by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.</p> <p>"Legal service" means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.</p>	<p>An individual advocate including a senior advocate or firm of advocates.</p>	<p>Any business entity located in the taxable territory.</p>

³ Provisions relating to tax deducted at source contained in section 51 shall be discussed at the Final Level.

⁴ These services have been simultaneously exempted from payment of tax. Thus, there will be no tax liability in this case. [Refer Chapter 4: Exemptions from GST for discussion on this exemption]

3.	Services supplied by an arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in taxable territory.
4.	Services provided by way of sponsorship to any body corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.
5.	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and (2) services specified below- (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 Central Government, State Government or Union territory or local authority; (ii) services in	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory.

	relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.		
5A	Services supplied by Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under CGST Act, 2017	Central Government, State Government, Union territory or local authority	Any person registered under the CGST Act, 2017
5B	<i>Services supplied by any person by way of transfer of development rights (TDR) or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.</i>	<i>Any person</i>	<i>Promoter</i>
5C	<i>Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other</i>	<i>Any person</i>	<i>Promoter</i>

	name) and/or periodic rent for construction of a project by a promoter⁵		
6.	Services supplied by a director of a company/body corporate to the said company/body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.
7.	Services supplied by an insurance agent to any person carrying on insurance business.	An insurance agent	Any person carrying on insurance business, located in the taxable territory.
8.	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable

⁵ Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer are exempt subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.

Exemption of TDR, FSI, long term lease (premium) is withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. In such cases, the liability to pay tax on TDR, FSI, long term lease (premium) has been shifted from land owner to builder under the reverse charge mechanism (RCM) – as illustrated in table above.

			territory.
9.	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like.	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like, located in the taxable territory.
10.	Supply of services by the members of Overseeing Committee to Reserve Bank of India (RBI)	Members of Overseeing Committee constituted by the RBI	RBI
11.	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership (LLP) firm to bank or non-banking financial company (NBFCs).	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or LLP firm	A banking company or a NBFC, located in the taxable territory
12.	Services provided by business facilitator to a	Business facilitator	A banking company, located in the

	<i>banking company.</i>		<i>taxable territory</i>
13.	<i>Services provided by an agent of business correspondent to business correspondent.</i>	<i>An agent of business correspondent</i>	<i>A business correspondent, located in the taxable territory.</i>
14.	<p><i>Security services (services provided by way of supply of security personnel) provided to a registered person. However, nothing contained in this entry shall apply to:</i></p> <p><i>(i) (a) a Department or Establishment of the Central Government or State Government or Union territory; or</i></p> <p><i>(b) local authority; or</i></p> <p><i>(c) Governmental agencies; which has taken registration under the CGST Act, 2017 only for the purpose of deducting</i></p>	<i>Any person other than a body corporate</i>	<i>A registered person, located in the taxable territory.</i>

	<p>tax under section 51 of the said Act and not for making a taxable supply of goods or services; or</p> <p>(ii) a registered person paying tax under composition scheme.</p>		
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🔔 All the above services have also been notified for reverse charge under IGST Act. In addition to them, two additional services are also notified for reverse charge under IGST law. These services will be discussed at the Final level.

For purpose of this notification,-

- (a) The person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.
- (b) **Body Corporate:** has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.

As per section 2(11) of the Companies Act, 2013, body corporate or corporation includes a company incorporated outside India, but does not include—

- (i) a co-operative society registered under any law relating to co-operative societies; and
 - (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf.
- (c) the business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the

person who receives the legal services for the purpose of this notification.

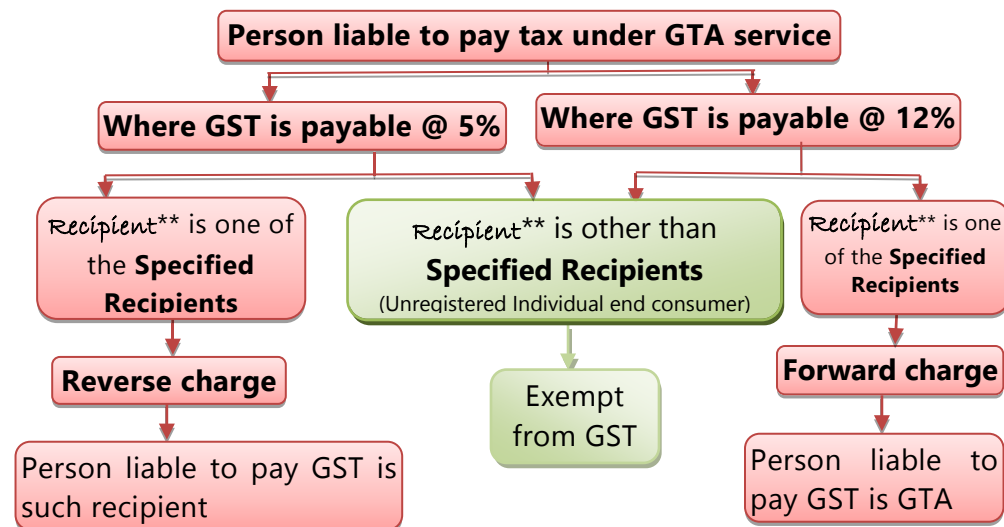
- (d) the words and expressions used and not defined in this notification but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, and the Union Territory Goods and Services Tax Act shall have the same meanings as assigned to them in those Acts.
- (e) Limited Liability Partnership formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a partnership firm or a firm.
- (f) Insurance agent means an insurance agent licensed under section 42 of the Insurance Act, 1938 who receives agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including business relating to the continuance, renewal or revival of policies of insurance [Section 2(10) of the Insurance Act, 1938].
- (g) Renting of immovable property means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.
- (h) ***the provisions of this notification, in so far as they apply to the Central Government, State Government, shall also apply to the Parliament and State Legislature.***

Person liable to pay GST on GTA service

GTA services are taxable at the following two rates:

- (i) **@ 5%** (2.5% CGST+2.5% SGST/UTGST or 5% IGST) provided GTA has not taken the Input Tax Credit (ITC) on goods and services used in supplying GTA service or
- (ii) **@ 12%** (6% CGST+6% SGST/UTGST or 12% IGST) where GTA opts to pay GST at said rate on all the services of GTA supplied by it. In this case, there is no restriction on availing ITC on goods and services used in supplying GTA service by GTA.

In the following paras, we have explained as to who is the person liable to pay tax in case of each of the above two rates:



*** Recipient of GTA service is the person who pays/is liable to pay freight for transportation of goods by road in goods carriage, located in the taxable territory.*

Tax payable by the ECO on notified services

Electronic Commerce Operator (ECO)⁶ is any person who owns/operates/manages an electronic platform for supply of goods/services/both.

Sometimes, ECO itself supplies the goods or services through its electronic portal. However, many a times, the products/services displayed on the electronic portal are actually supplied by some other person to the consumer. When a consumer places an order for a particular product/service on this electronic portal, the actual supplier supplies the selected product/ service to the consumer. The price/ consideration for the product/ service is collected by the ECO from the consumer and passed on to the actual supplier after the deduction of commission by the ECO.



⁶ Detailed provisions relating to Electronic Commerce Operator shall be discussed at Final level.

The Government may, on the recommendations of the GST Council, notify specific categories of services the tax [CGST/SGST/IGST] on supplies of which shall be paid by the **electronic commerce operator (ECO)** if such services are supplied through it. Few services have been so notified. For instance, service by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle, etc.

GST Rates prescribed for various goods

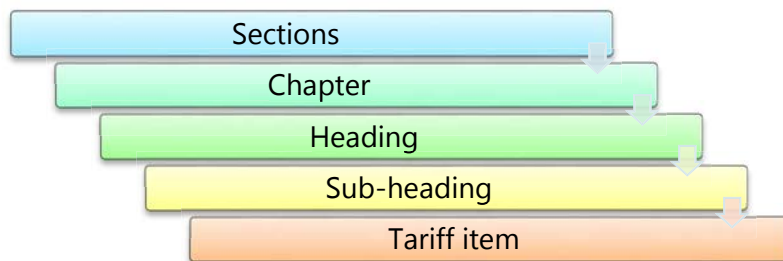
Broadly, six rates of CGST have been notified in six Schedules of rate notification for goods, viz., 0.125%, 1.5%, 2.5%, 6%, 9% and 14%. SGST/ UTGST at the equivalent rate is also leviable. With regard to IGST, broadly six rates have been notified in six Schedules of rate notification for goods, viz., 0.25%, 3%, 5%, 12%, 18% and 28%⁷. **For certain specified goods, nil rate of tax has been notified.**



In order to determine the rate applicable on a particular supply of goods or services, one needs to first determine the classification of such goods or services. Classification of goods and services assumes significance since there are different rates prescribed for supply of different goods and services. Therefore, classification is crucial for determining the rate of tax applicable on a particular product or service.

Classification of goods under GST

Classification of goods means identification of the tariff item, sub-heading, heading and chapter in which a particular product will be classified.



Tariff item, sub-heading, heading and chapters referred in the Schedules of rate notification for goods under GST are the Tariff item, sub-heading,

⁷ Students may refer the CBIC website for the complete Schedule of GST Rates for goods for knowledge purposes.

heading and chapters of the First Schedule to the Customs Tariff Act, 1975. Indian Customs Tariff is based on HSN. HSN stands for Harmonized System of Nomenclature. It is a multipurpose international product nomenclature developed by the World Customs Organization (WCO) for the purpose of classifying goods across the World in a systematic manner. It comprises of about 5,000 commodity groups; each identified by a 6 digit code [code can be extended], arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification. India has developed an 8-digit code of HSN.

Along the lines of HSN, the Indian Customs Tariff has a set of Rules of Interpretation of the First Schedule and General Explanatory notes. These rules and the general explanatory notes give clear direction as to how the nomenclature in the schedule is to be interpreted. These **Rules for Interpretation** including section and chapter notes and the General Explanatory Notes of the First Schedule⁸⁹ **apply to the interpretation of the rate notification for goods under GST also.**

Consequently, under GST, goods are classified on the basis of HSN in accordance with the **Rules for the Interpretation** of the Customs Tariff.

Once classification for a product has been determined on this basis, applicable rate has to be determined as per the rate prescribed in the rate notification issued under GST.

Classification of services under GST

A new **Scheme of Classification of Services** has been devised under GST. It is a modified version of the United Nations Central Product Classification. Under this scheme, the services of various descriptions have been classified

⁸ The provisions relating to Customs Act and Customs Tariff Act will be discussed at Final Level.

⁹ **Sections:** A group of Chapters representing a particular class of goods.

Chapters: Each section is divided into various chapters and sub-chapters. Each chapter contains goods of one class.

Chapter notes: They are mentioned at the beginning of each chapter. These notes are part of the statute and hence have the legal authority in determining the classification of goods.

Heading: Each chapter and sub-chapter is further divided into various headings.

Sub-heading: Each heading is further divided into various sub-headings.

under various sections, headings and groups. Chapter 99 has been assigned for services. This chapter has following sections:

Section 5 Construction Services

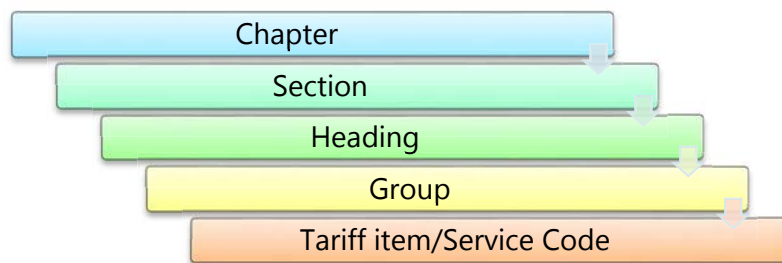
Section 6 Distributive Trade Services; Accommodation, Food and Beverage Service; Transport Services; Gas and Electricity Distribution Services

Section 7 Financial and related services; real estate services; and rental and leasing services

Section 8 Business and Production Services

Section 9 Community, social and personal services and other miscellaneous services

Each section is divided into various headings which is further divided into Groups. Its further division is made in the form of 'Tariff item'/ Service Codes.



Rate of tax is determined in accordance with the Service Code in which the service is classified.

GST Rates prescribed for various services

Broadly, four rates of CGST have been notified for services, viz., 2.5%, 6%, 9% and 14%¹⁰. Equivalent rate of SGST/ UTGST will also be levied. For IGST, four rates have been notified for services, viz., 5%, 12%, 18% and 28%^{11,12}. **For certain specified services, nil rate of tax has been notified.**



¹⁰ notified vide Notification No. 11/2017 CT (R) dated 28.06.2017

¹¹ notified vide Notification No. 8/2017 IT (R) dated 28.06.2017.

¹² Students may refer the CBIC website for the complete Schedule of GST Rates for services for knowledge purposes.

Services of gambling, services by way of admission to entertainment events/access to amusement facilities, any sporting event such as IPL and the like, services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet, attract the highest rate of 28% (CGST @ 14% and SGST @ 14% or IGST @ 28%).

A number of services are subject to the lowest rate of 5% (CGST @ 2.5% and SGST @ 2.5% or IGST @ 5%). For instance, GTA service is taxed @ 5% subject to the condition that credit of input tax charged on goods/services used in supplying said service has not been taken. Similarly, tax rate for restaurant service is 5% without any input tax credit.

Services not covered under any specific heading are taxed at the rate of 18% (CGST @ 9% and SGST @ 9% or IGST @ 18%).

In the following paras, applicability of GST in real estate sector has been briefly discussed:

GST rates in real estate sector



The effective rate of GST on real estate sector for the new projects by promoters are as follows:

- (i) 1% without ITC on construction of **affordable houses** (area 60 sqm in metros/ 90 sqm in non-metros and value upto ₹45 lakh).
- (ii) 5% without ITC is applicable on construction of:
 - (a) all houses other than affordable houses, and
 - (b) commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

Conditions:

Above tax rates shall be available subject to following conditions:

- (a) ITC shall not be available.

(b) 80% of inputs and input services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be purchased from registered persons¹³.

However, if value of inputs and input services purchased from registered supplier is less than 80%, promoter has to pay GST on reverse charge basis, under section 9(4) of the CGST Act [discussed earlier], at the rate of 18% on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).

Supply of services notified under section 9(4)

Further, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement on reverse charge basis, under section 9(4) of the CGST Act, at the applicable rate which is 28% (CGST 14% + SGST 14%) at present.

Moreover, GST on capital goods shall be paid by the promoter on reverse charge basis, under section 9(4) of the CGST Act at the applicable rates [Notification No. 07/2019 CT (R) dated 29.03.2019/ Notification No. 07/2019 IT (R) dated 29.03.2019].



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



STATUTORY PROVISIONS

Section 10	Composition levy
Sub-section	Particulars
(1)	Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding

¹³ Discussion in above paras highlighted in green is solely for the purpose of knowledge of the students and is not meant for examination purposes.

	<p>financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding,—</p>
a	one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer
b	two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and
c	half per cent. of the turnover in State or turnover in Union territory in case of other suppliers
	subject to such conditions and restrictions as may be prescribed.
	Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore and fifty lakh rupees , as may be recommended by the Council.
	Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten percent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.
(2)	The registered person shall be eligible to opt under sub-section (1), if—
(a)	save as provided in sub-section (1), he is not engaged in the supply of services
(b)	he is not engaged in making any supply of goods which are not leviable to tax under this Act
(c)	he is not engaged in making any inter-State outward supplies of goods

	(d)	<i>he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and</i>
	(e)	<i>he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council</i>
		<i>Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.</i>
(3)		<i>The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).</i>
(4)		<i>A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.</i>
(5)		<i>If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.</i>

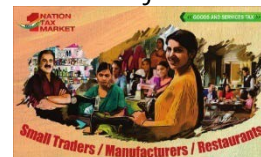


ANALYSIS



Overview of the Scheme

The composition levy is an alternative method of levy of tax designed for small taxpayers whose turnover is up to prescribed limit. The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers. Primarily, the composition scheme is available to the suppliers of goods and restaurant service, but composition suppliers are permitted to supply services upto a specified



marginal value in the year of opting for composition. Small taxpayers with an aggregate turnover in a preceding financial year up to **₹ 1.5 crore** shall be eligible for composition levy.

Suppliers opting for composition levy need not worry about the classification of their goods or services or both, the rate of GST applicable on their goods and/ or services, etc. They are not required to raise any tax invoice, but simply need to issue a Bill of Supply¹⁴ wherein no tax will be charged from the recipient.

An eligible person opting to pay tax under the composition scheme shall, instead of paying tax on every invoice at the specified rate, pay tax at a prescribed percentage of his turnover every quarter. At the end of a quarter, he would pay the tax, without availing the benefit of input tax credit. Return is to be filed annually by a composition supplier.

Persons making inter-State supplies of goods or persons making supplies of goods through e-commerce operators who are required to collect tax at source shall not be eligible for composition scheme.

The provisions relating to composition levy are contained in section 10 of CGST Act, 2017 and **Chapter-II [Composition Levy]** of Central Goods and Services Tax (CGST) Rules, 2017. The said rules have been incorporated in the discussion in the following paras at the relevant places.



Turnover limit for Composition Levy [Section 10(1)]

Section 10 of the CGST Act provides the turnover limit of ₹ 50 lakh for becoming eligible for composition levy. However, proviso to section 10(1) empowers the Government to increase the said limit of ₹ 50 lakh up to **₹ 1.5 crore**, on the recommendation of the Council.



In view of said power of the Government to increase the turnover limit for Composition Levy as granted by first proviso to section 10(1), the turnover limit for Composition Levy has been increased from ₹ 50 lakh to **₹ 1.5 crore** vide **Notification No. 14/2019 CT dated 07.03.2019**.

However, the said notification further stipulates that the turnover limit for composition levy shall be **₹ 75 lakh in respect of 8 of the Special**

¹⁴ Discussed in detail in Chapter-8: Tax Invoice, Credit and Debit Notes; E-way Bill

Category States namely:

Special Category States	
Arunachal Pradesh	Mizoram
Uttarakhand	Nagaland
Manipur	Sikkim
Meghalaya	Tripura


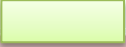
***In case of Assam, Himachal Pradesh and Jammu and Kashmir, the turnover limit will be ₹ 1.5 crore.**

In other words, if the aggregate turnover of a supplier in a State/UT other than Special Category States (except Assam, Himachal Pradesh and Jammu and Kashmir) is upto **₹ 1.5 crore** in the preceding financial year, said supplier is eligible for composition scheme.



A dealer 'Prithviraj' has offices in Maharashtra and Goa. He makes intra-State supply of goods from both these offices. In order to determine whether 'Prithviraj' is eligible to avail benefit of the composition scheme, turnover of both the offices would be taken into account and if the same does not exceed ₹ 1.5 crore, Prithviraj can opt to avail the composition levy scheme (subject to fulfilment of other prescribed conditions) for both the offices.

While computing the threshold limit of ₹ 1.5 crore, inclusions in and exclusions from 'aggregate turnover' are as follows

 Includes	 Excludes
<p>Value of all outward supplies</p> <ul style="list-style-type: none"> --Taxable supplies --Exempt supplies --Exports --Inter-State supplies <p>of persons having the same PAN be computed on all India basis.</p>	<ul style="list-style-type: none"> --CGST/ SGST/ UTGST/ IGST/ Cess --Value of inward supplies on which tax is payable under reverse charge.



Rates of tax under the composition levy scheme? [Section 10(1) read with rule 7]

A registered person, whose aggregate turnover in the preceding FY does not exceed ₹ 1.5 crore, **may opt to pay tax calculated at the prescribed rates** [mentioned in table below] during the current FY, in lieu of the tax payable by him under regular scheme.

S. No.	Category of registered persons	Rate of tax*
1	Manufacturers, other than manufacturers of such goods as may be notified by the Government, i.e. ice cream, pan masala and tobacco.	½ % ¹⁵ of the turnover in the State/Union territory**
2	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II [hereinafter referred to as " Restaurant service "]	2½ % ¹⁶ of the turnover in the State/Union territory**
3	Any other supplier eligible for composition levy under section 10 of CGST Act and Chapter-II [Composition Levy] of CGST Rules.	½ % ¹⁷ of the turnover of taxable supplies of goods and services in the State or Union territory**

****Turnover in State/ turnover in Union territory** means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess [Section 2(112) of the CGST Act, 2017].

¹⁵ Effective rate 1% (CGST+ SGST/UTGST)

¹⁶ Effective rate 5% (CGST+ SGST/UTGST)

¹⁷ Effective rate 1% (CGST+ SGST/UTGST)



Intimation of opting for composition levy [Rules 3 & 4]



(i) Intimation by person applying for registration:

Any person who is not registered and applies for registration may give an option to pay tax under composition levy **in Part B of the registration form, viz., FORM GST REG-01**. The same shall be considered as an intimation to pay tax under composition levy. Such intimation shall be considered only after the grant of registration to the applicant and his **option to pay tax under composition levy shall be effective from the date from which registration is effective**.

(ii) Intimation by a registered person: A registered person who opts to pay tax under composition levy scheme shall **electronically file an intimation** in prescribed form on the GST Common Portal [www.gst.gov.in], **prior to the commencement of the FY** for which said option is exercised. He shall also furnish the **statement in prescribed form** in accordance with the provisions of rule 44(4) of CGST Rules, 2017 [*Discussed in detail in Chapter 6 – Input Tax Credit*] **within 60 days** from the commencement of the relevant FY.

Any intimation in respect of any place of business in a State/UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

The option to pay tax under composition levy shall be effective from the beginning of the FY.

Thus, a person applying for registration can opt for composition at any time of the financial year and composition levy shall be effective from which registration is effective. A registered person can opt for composition scheme from the beginning of any FY and composition levy shall be effective from the beginning of said FY.



Conditions and restrictions for composition levy [Rule 5]

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

- ❑ he is neither a casual taxable person nor a non-resident taxable person [*Concept of casual taxable person and non-resident taxable person has been discussed in detail in Chapter 7: Registration*].

- ❑ the goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under reverse charge under section 9(4)¹⁸.
- ❑ he shall pay tax under section 9(3)/9(4)¹⁹ (reverse charge) on inward supply of goods or services or both.
- ❑ he was not engaged in the manufacture of goods as notified under section 10(2)(e), during the preceding FY. The following goods have been hereby notified vide **Notification No. 14/2019 CT dated 07.03.2019**:

Tariff item, subheading, heading or Chapter*	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan masala
24	All goods, i.e. Tobacco and manufactured tobacco substitutes

* as specified in the First Schedule to the Customs Tariff Act, 1975

- ❑ he shall mention the words **“composition taxable person, not eligible to collect tax on supplies”** at the top of the bill of supply issued by him; and

¹⁸ This condition applies in case where a builder/promoter opting for composition scheme has the stock of the goods on which he is required to pay GST on reverse charge basis under section 9(4) in one or more of the following cases:

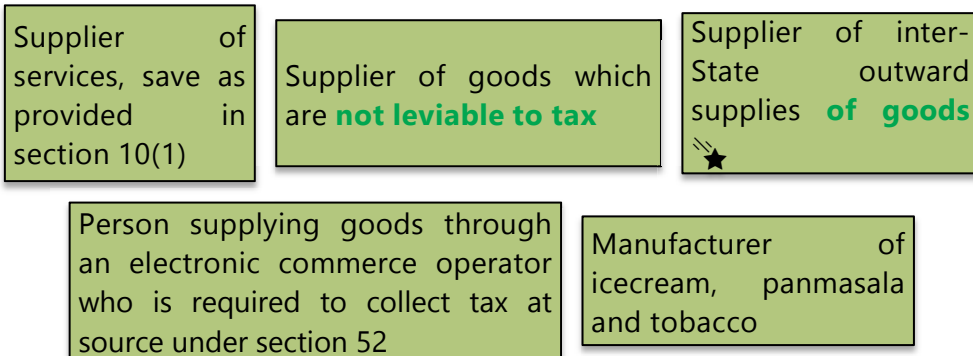
- (i) Builder/promoter must purchase at least 80% of inputs and input services used in supplying the service, from registered persons. In case of shortfall, he's required to pay tax under reverse charge on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).
- (ii) Where cement is received from an unregistered person, promoter/builder has to pay tax on supply of such cement under reverse charge and
- (iii) GST on capital goods is payable by the promoter on reverse charge basis.

¹⁹ wherever applicable

- he shall mention the words “**composition taxable person**” on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.



Who are not eligible to opt for composition scheme? [Section 10(2)]



There is no restriction on composition supplier to receive inter-State inward supplies of goods as also to make inter-State inward and outward supply of services.

A person engaged in marginal supply of services other than restaurant service along with the supply of goods or restaurant services [Second proviso to section 10(1) read with section 10(2)(a)]

Fundamentally, the composition scheme can be availed in respect of goods and only one service namely, restaurant service. However, there are cases where a manufacturer/ trader is also engaged in supply of services other than restaurant service though the percentage of such supply of services is very small as compared to the supplies of goods. There may also be cases where a restaurant service provider is also engaged in supplying a small percentage of other services.

With a view to enable such taxpayers to avail of the benefit of composition scheme, second proviso to section 10(1) permits marginal supply of services [other than restaurant services] for a specified value along with the supply of goods and/or restaurant service, as the case may be. This specified value is value not exceeding:

(a) 10% of the turnover in a State/Union territory in the preceding financial year

or

(b) ₹5 lakh,

whichever is higher.

Thus, it can be inferred that where the turnover of a registered person opting for composition scheme is upto ₹ 50 lakh in the preceding financial year, he can supply services [other than restaurant services] upto a maximum value of ₹5 lakh in the current financial year. Further, where the turnover of a registered person opting for composition scheme is more than ₹50 lakh and upto ₹1.5 crore in the preceding financial year, he can supply services [other than restaurant services] in the current financial year upto a maximum value of 10% of the turnover in a State/Union territory in the preceding financial year.



Ramsewak is engaged in supply of goods. His aggregate turnover in preceding FY is ₹ 60 lakh. Since his aggregate turnover in the preceding FY does not exceed ₹ 1.5 crore, he is eligible for composition scheme in current FY. Further, in current FY, he can supply services [other than restaurant services] upto a value of not exceeding:

(a) 10% of ₹ 60 lakh, i.e. ₹ 6 lakh

or

(b) ₹5 lakh,

whichever is higher. Thus, he can supply services upto a value of ₹ 6 lakh in current FY. If the value of services supplied exceeds ₹ 6 lakh, he becomes ineligible for the composition scheme and has to opt out of the composition scheme.

Interest income to be excluded while computing aggregate turnover for determining eligibility for composition scheme

Generally, businesses tend to save and invest money in the form of deposits, loans or advances. However, this way they get engaged in supply of service by way of extending deposits, loans or advances²⁰ – a service other than restaurant service. And where the income from such services cause the value of services²¹ supplied to exceed the value referred in second proviso to section 10(1) [10% of the turnover in the preceding FY in a State/Union territory or ₹ 5 lakh, whichever is higher], said business becomes ineligible for the composition scheme and one has to opt out of the composition scheme. This can cause a lot of hardship to small businesses.

In view of the above, Order No. 01/2019 CT dated 01.02.2019 has been issued to clarify that the value of supply of exempt 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 -

- i. for determining the eligibility for composition scheme under second proviso to section 10(1). Under this proviso, a registered person opting for composition scheme may supply services [other than restaurant services] of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or ₹ 5 lakh, whichever is higher.**

Thus, while computing value of services [other than restaurant services] as referred in second proviso to section 10(1), interest on loans/deposit/advances will not be taken into account.

- ii. in computing aggregate turnover in order to determine eligibility for composition scheme.**




²⁰ It is, however, pertinent to note that services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount are exempt from GST – Discussed in detail in Chapter 4 – Exemptions from GST.

²¹ other than restaurant services





Validity of composition levy [Section 10(3) read with rule 6]

I. Withdrawal from the composition scheme by a taxpayer who ceases to satisfy any of the prescribed conditions

-  The option exercised by a registered person to pay amount under composition levy shall remain valid so long as he satisfies all the conditions mentioned in the relevant section and rules. For instance, the option to pay tax under composition scheme lapses from the day on which aggregate turnover of a registered person exceeds the specified limit (₹ 1.5 crore/ ₹ 75 lakh) during the FY.
-  Such person is required to pay tax under regular scheme under section 9(1) from the day he ceases to satisfy any of the conditions prescribed for composition levy. He shall issue tax invoice for every taxable supply made thereafter. Further, he is required to file an intimation for withdrawal from the scheme in prescribed form within 7 days of the occurrence of such event.
-  ***The effective date from which withdrawal from the composition scheme shall take effect shall be the date indicated by him in his intimation, but such date may not be prior to the commencement of the financial year in which such intimation is being filed²².***

II. Withdrawal from the composition scheme by a taxpayer who intends to withdraw from the said scheme

-  The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in prescribed form.
-  ***The effective date from which withdrawal from the composition scheme shall take effect shall be the date indicated by him in his application but such date may not be prior to the commencement of the financial year in which such application for withdrawal is being filed²³.***

III. Denial of option to pay tax under the composition scheme by tax authorities

²² Circular No. 77/51/2018 GST dated 31.12.2018

²³ Circular No. 77/51/2018 GST dated 31.12.2018



Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under composition scheme or has contravened the provisions of the CGST Act or provisions of this Chapter, he may issue a show cause notice (SCN) to such person. Upon receipt of reply to SCN, he shall pass an order either accepting the reply, or denying the option to pay tax under composition scheme from the date of the option or from the date of the event concerning such contravention, as the case may be.



In case of denial of option to pay tax under composition levy by the tax authorities, the effective date of such denial shall be from a date, including any retrospective date, as may be determined by tax authorities. However, such effective date shall not be prior to the date of contravention of the provisions of the CGST Act/ CGST Rules²⁴.

In each of the above cases, such person may furnish a statement in prescribed form containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn/denied, within a period of 30 days from the date from which the option is withdrawn/ or from the date of the order denying composition scheme.



A person availing composition scheme during a financial year crosses the turnover of ₹ 1.5 crore on 9th of December. The option availed shall lapse from the day on which his aggregate turnover during the financial year exceeds ₹ 1.5 crore, i.e. on 9th December, in this case.



Composition scheme to be adopted uniformly by all the registered persons having the same PAN [Proviso to section 10(2)]

All registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one such registered person opts for normal scheme, others become ineligible for composition scheme.



A dealer 'Champaklal' has two offices in Delhi and is eligible for composition levy. If 'Champaklal' opts for the composition scheme, both the offices would pay taxes under composition

²⁴ Circular No. 77/51/2018 GST dated 31.12.2018


scheme and abide by all the conditions as may be prescribed for the composition scheme.

 **Composition scheme supplier cannot collect tax [Section 10(4)]**

Taxable person opting for the composition scheme shall not collect tax from the recipient on supplies made by him. It implies that a composition scheme supplier cannot issue a tax invoice.

 **Composition scheme supplier cannot enter into credit chain [Section 10(4)]**

Taxable person opting for the composition scheme is not entitled to any credit of input tax.

 **Imposition of penalty in case of irregular availment of the composition scheme [Section 10(5)]**

If a taxable person has paid tax under the composition scheme though he was not eligible for the scheme, the person would be liable to penalty and the provisions of section 73 or 74 of the CGST Act shall be applicable for determination of tax and penalty.

ILLUSTRATION

Taxpayer 'Tolaram' is a manufacturer having one unit – A1 in UP and another unit – A2 in MP. Total turnover of two units in last FY was ₹ 115 lakh (₹ 85 lakh + ₹ 30 lakh). Turnover of Unit A1 and A2 in the first quarter of this financial year was ₹ 5 lakh and ₹ 10 lakh respectively. Compute the amount payable under composition levy by Taxpayer 'Tolaram'.

ANSWER

Unit	Location	Turnover in previous FY	Turnover in 1st quarter of this FY	Total tax (@1%)
A1	U.P.	₹ 85 lakh	₹ 5 lakh	₹ 5,000
A2	M.P.	₹ 30 lakh	₹ 10 lakh	₹ 10,000
Aggregate turnover		₹ 115 lakh	₹ 15 lakh	



6. OPTION TO PAY TAX AT CONCESSIONAL RATE UNDER NOTIFICATION NO. 2/2019 CT (R) DATED 07.03.2019



Overview of the Scheme



As we have already seen that primarily, the composition scheme is available in respect of goods and only one service namely, restaurant service. Further, marginal supply of other services is permitted along with the supply of goods and/or restaurant service. However, a person engaged exclusively in supply of services other than restaurant service is not eligible for the composition scheme.



In order to provide benefit to such suppliers, a scheme to pay tax at the concessional rate has been formulated primarily for small service providers like salon stylist, tailors etc. who are not otherwise eligible for composition scheme. This scheme is contained in **Notification No. 2/2019 CT (R) dated 07.03.2019** as amended.

This notification provides an option to a registered person whose aggregate turnover in the preceding financial year is upto ₹ 50 lakh and who is not eligible to pay tax under composition scheme, to pay tax @ 3% [Effective rate 6% (CGST+ SGST/ UTGST)] on first supplies of goods and/or services upto an aggregate turnover of ₹ 50 lakh made on/after 1st April in any financial year, subject to specified conditions.



The scheme has been elucidated as under:



Who are the persons not eligible for composition scheme, but eligible for Notification No. 2/2019 CT (R)?



A registered person whose aggregate turnover in the preceding financial year does not exceed ₹ 50 lakh and who is exclusively engaged in supplying services other than restaurant services.





Conditions to be fulfilled

The conditions for availing the concessional rate of tax under Notification No. 2/2019 CT (R) are primarily same as the conditions for availing the composition scheme with few exceptions. The same have been elaborated as under:

1. *Supplies are made by a registered person who is:*
 - *not engaged in making **any supply** which is not leviable to tax under the said Act. Under composition scheme, restriction is only on supply of **goods** not leviable to tax.*
 - ***not engaged in making any inter-State outward supply – neither of goods nor of services.** This condition is a divergence from the composition scheme where the restriction is only on making inter-State outward supply of goods and not on inter-State outward supply of services.*
 - *neither a casual taxable person nor a non-resident taxable person.*
 - *not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52.*
 - *not engaged in **making supplies** of notified goods, namely, ice cream and other edible ice, whether or not containing cocoa [2105 00 00], Pan masala [2106 90 20] and all goods of Chapter 24, i.e. Tobacco and manufactured tobacco substitutes. Under composition scheme, condition is that the supplier should not be engaged in **manufacture** of notified goods.*
2. *The registered person shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.*
3. *The registered person shall issue a bill of supply** instead of tax invoice. Such bill of supply will have the following words at its top - 'taxable person paying tax in terms of Notification No. 2/2019 CT (R) dated 07.03.2019, not eligible to collect tax on supplies'.*

****Order No. 3/2019 CT dated 08.03.2019 has clarified that provisions of section 31(3)(c) of the CGST Act, 2017 [containing provisions relating to Bill of Supply] shall also apply to a person paying tax under this notification²⁵.**



Other significant points

1. **Where more than one registered persons are having the same PAN, tax on supplies by all such registered persons is paid at concessional rate under this notification.**
2. **The registered person opting to pay tax at concessional rate under this notification shall be liable to pay:**
 - **(CGST @ 3% + SGST/UTGST @ 3%) on all outward supplies - first supplies of goods or services or both upto an aggregate turnover of ₹50 lakh made on or after 1st April in any FY – regardless of any exemption from tax available to such supplies or any notification issued under section 9(1).**
 - **Tax on inward supplies on which he is liable to pay tax under section 9(3)/9(4) (reverse charge) at the applicable rates.**
3. **In computing aggregate turnover in order to determine eligibility of a registered person to pay tax at concessional rate under this notification, value of supply of exempt 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.**
4. **Where any registered person who has availed of ITC opts to pay tax under this notification, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger.**
Said amount shall be equivalent to the ITC in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as if the supply made under this notification attracts the provisions of section 18(4) of the CGST Act and the rules made thereunder.

²⁵ Since section 31(3)(c) is applicable only to a composition supplier. This section has been discussed in detail in Chapter 8 – Tax Invoice; Credit and Debit Notes; E-way Bill.

After payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse. Section 18(4) and related rules have been discussed in detail in Chapter 6 – Input Tax Credit.

5. **The CGST Rules, 2017, as applicable to a person paying tax under composition scheme shall, mutatis mutandis, apply to a person paying tax under this notification.**

First supplies of goods or services or both shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from 1st April of a FY to the date from which he becomes liable for registration under the said Act

but for the purpose of determination of tax payable under this notification, shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.



7. LET US RECAPITULATE

1. Extent & Commencement of CGST Act/ SGST Act/ UTGST Act/ IGST Act

Applicability	CGST	SGST	UTGST	IGST
	Intra-State supply			Inter-State supply
States of India	✓	✓		✓
Union Territories with Legislature	✓	✓		✓
Union Territories without Legislature	✓		✓	✓

2. Levy and collection of CGST/IGST

Particulars	CGST	IGST
Levied on	Intra-State supplies of goods/services/both	Inter-State supplies of goods/services/both
Collected and paid by	Taxable person	

Supply outside purview of GST	Alcoholic liquor for human consumption	
Value for levy	Transaction value under section 15 of the CGST Act	
Rates	Rates as notified by Government. Maximum rate of CGST can be 20%.	IGST rate= CGST rate + SGST rate (more or less) Maximum rate of IGST can be 40%.
Supplies on which tax would be levied w.e.f. a notified date	<ul style="list-style-type: none"> + petroleum crude + high speed diesel + motor spirit (commonly known as petrol) + natural gas and + aviation turbine fuel 	
Tax payable under reverse charge	<ul style="list-style-type: none"> ◆ Supply of goods or services or both, notified by the Government. ◆ Supply of <u>specified categories of goods or services or both</u> by an unregistered supplier to <u>specified class of registered persons.</u> 	
Tax payable by the electronic commerce operator	The Government may notify specific categories of services the tax on supplies of which shall be paid by electronic commerce operator (ECO) as if such services are supplied through it.	

3. Composition levy [Section 10]

Composition levy

- An option for specified categories of small taxpayers to pay GST at a very low rate on the basis of turnover.

Advantages

- Low rate of tax
- Hassel free simple procedures for such taxpayers
- Simple calculation of tax based on turnover
- A very simple annual return

Procedure for opting for the scheme

Category of persons	How to exercise option	Effective date of composition levy
New registration under GST	Intimation in the registration form	From the effective date of registration
Registered person opting for composition levy	Intimation in prescribed form	Beginning of the financial year

Turnover limit for opting for the scheme

For Special Category States except Assam, Himachal Pradesh and J&K

- ₹75 lakh

For remaining States

- ₹1.5 crore

Rates of tax

Category of registered persons	Rate
Manufacturer	1 % (½% CGST + ½% SGST/UTGST)
Suppliers of food	5 %
Others	1 %

Conditions and restrictions for composition levy

Person opting for composition:

is neither a casual taxable person nor a non-resident taxable person

shall pay tax under section 9(3)/9(4) on inward supply

was not engaged in the manufacture of notified goods

shall mention the words "**composition taxable person, not eligible to collect tax on supplies**" at the top of the bill of supply issued by him

shall mention the words "composition taxable person" at a prominent place at his place of business

Who are not eligible to opt for composition scheme?

Supplier of services other than restaurant services**

Supplier of goods not leviable to tax

Supplier of inter-State outward supplies of goods

Person supplying goods through an electronic commerce operator who is required to collect tax at source under section 52

Manufacturer of icecream, panmasala and tobacco

**A registered person opting for composition scheme is allowed to supply services [other than restaurant services] alongwith supply of goods or supply of restaurant services of value not exceeding 10% of the turnover²⁶ in the preceding financial year in a State/Union territory or ₹ 5 lakh, whichever is higher.

Other points

Bill of supply shall be issued instead of tax invoice.

Tax shall not be not collected from recipient of supply

Input tax credit shall not be availed

Composition Scheme if availed shall include all registered persons having same PAN

Penalty shall be imposed in case of irregular availment of the composition scheme

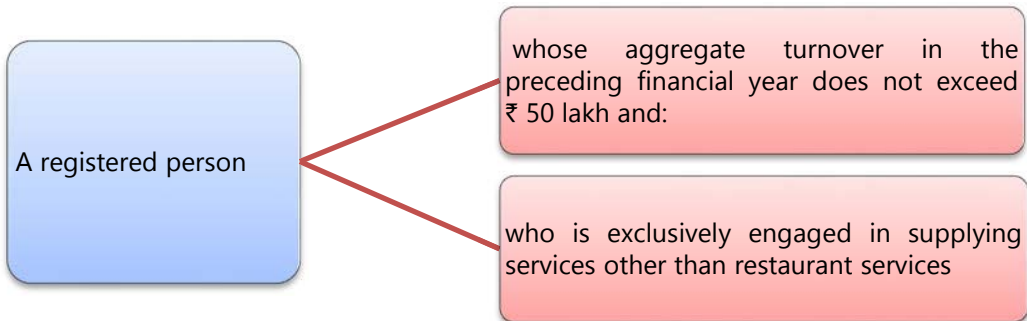
²⁶ While computing value of services, interest on loans/deposit/advances will not be taken into account.

4. Option to pay tax at the concessional rate under Notification No. 2/2019 CT (R) dated 07.03.2019

Option to pay concessional tax at concessional rate

- An option for small service providers with aggregate turnover upto ₹ 50 lakh in preceding FY who are not eligible for composition scheme
- to pay tax @ 3% [Effective rate 6% (CGST+ SGST/UTGST)]
- on first supplies of goods and/or services upto an aggregate turnover of ₹ 50 lakh made on/after 1st April in any FY, subject to specified conditions

Who are the persons not eligible for composition scheme, but eligible for Notification No. 2/2019 CT (R)?



Ineligible suppliers

Supplier is neither a casual taxable person nor a non-resident taxable person

Supplier making **supplies** not leviable to tax

Supplier of inter-State outward supplies neither **of goods nor of services**

Person supplying goods through an electronic commerce operator who is required to collect tax at source under section 52

Supplier of icecream, panmasala and tobacco

Other points

Bill of supply shall be issued instead of tax invoice.

Tax shall not be collected from recipient of supply

Input tax credit shall not be availed

All registered persons having same PAN shall pay tax at the concessional rate under this notification

Tax on inward supplies under section 9(3)/9(4) shall be paid at the applicable rates, by the registered person opting for concessional rate

In computing aggregate turnover in order for determining eligibility for this scheme, interest on loans/deposit/advances will not be taken into account.

**8. TEST YOUR KNOWLEDGE**

1. What is the maximum rate of CGST prescribed under CGST Act?
 - (a) 20%
 - (b) 28%
 - (c) 24%
 - (d) 40%
2. Which of the following taxes levied on intra-State supply?
 - (a) CGST
 - (b) SGST/UTGST
 - (c) Both (a) and (b)
 - (d) IGST
3. What is the threshold limit of turnover in the preceding financial year to be eligible for composition levy in Delhi?
 - (a) ₹ 50 lakh
 - (b) ₹ 75 lakh
 - (c) ₹ 80 lakh
 - (d) ₹ 1.5 crore

4. Which of the following is not included in aggregate turnover?
- (a) Exempt supplies of goods or services or both
 - (b) Export of goods or services or both
 - (c) Inter-State supply of goods or services or both
 - (d) Value of inward supplies on which tax is paid under reverse charge
5. IGST is levied on:
- (a) Inter-State supplies
 - (b) Intra-State Supplies
 - (c) Both (a) and (b)
 - (d) None of the above
6. _____ is levied on the import of goods and/or services.
- (a) IGST
 - (b) CGST and SGST
 - (c) CGST and UTGST
 - (d) None of the above
7. The maximum rate of IGST can be:
- (a) 20%
 - (b) 30%
 - (c) 40%
 - (d) None of the above
8. On supply of which of the following items, GST shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council:
- (a) Petroleum crude
 - (b) Alcoholic liquor for human consumption
 - (c) Both (a) and (b)
 - (d) None of the above
9. GST is payable by the recipient under reverse charge on:
- (a) Sponsorship services
 - (b) Transport of goods by rail

- (c) *Transport of passengers by air*
 (d) *All of the above*
10. *State person liable to pay GST in the following independent cases provided recipient is located in the taxable territory:*
- (a) *Services provided by an arbitral tribunal to any business entity.*
 (b) *Sponsorship services provided by a company to an individual.*
 (c) *Renting of immovable property service provided by the Central Government to a registered business entity.*
11. *A person availing composition scheme in Haryana during a financial year crosses the turnover of ₹ 1.5 crore during the course of the year i.e. he crosses the turnover of ₹ 1.5 crore in December? Will he be allowed to pay tax under composition scheme for the remainder of the year, i.e. till 31st March?*
12. *Determine whether the supplier in the following cases are eligible for composition levy provided their turnover in preceding year does not exceed ₹ 1.5 crore:*
- (i) *Mohan Enterprises is engaged in trading of pan masala in Rajasthan and is registered in the same State.*
 (ii) *Sugam Manufacturers has registered offices in Punjab and Haryana and supplies goods in neighbouring States.*
13. *Subramanian Enterprises has two registered places of business in Delhi. Its aggregate turnover for the preceding year for both the places of business was ₹ 120 lakh. It wishes to pay tax under composition levy for one of the place of business in the current year while under normal levy for other. You are required to advice Subramanian Enterprises whether he can do so?*

9. ANSWERS/HINTS

1. (a) 2. (c) 3. (d) 4. (d) 5. (a) 6. (a)
 7. (c) 8. (a) 9. (a)
10. (a) Since GST on services provided or agreed to be provided by an arbitral tribunal to any business entity located in the taxable territory is payable under reverse charge, in the given case, GST is payable by the recipient - business entity.

- (b) GST on sponsorship services provided by any person to any body corporate or partnership firm located in the taxable territory is payable under reverse charge. Since in the given case, services have been provided to an individual, reverse charge provisions will not be attracted. GST is payable under forward charge by the supplier – company.
- (c) GST on services supplied by Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under CGST Act, 2017 is payable under reverse charge. Therefore, in the given case, GST is payable under reverse charge by the recipient – registered business entity.
11. No. The option to pay tax under composition scheme lapses from the day on which the aggregate turnover of the person availing composition scheme during the financial year exceeds the specified limit (₹ 1.5 crore). Once he crosses the threshold, he is required to file an intimation for withdrawal from the scheme in prescribed form within 7 days of the occurrence of such event.
- Every person who has furnished such an intimation, may electronically furnish at the common portal, a statement in prescribed form containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn, within a period of 30 days from the date from which the option is withdrawn.
12. (i) A supplier engaged in the manufacture of goods as notified under section 10(2)(e), during the preceding FY is not eligible for composition scheme. Ice cream and other edible ice, whether or not containing cocoa, Pan masala and Tobacco and manufactured tobacco substitutes are hereby notified. However, in the given case, since Mohan Enterprises is engaged in trading of pan masala and not manufacture and his turnover does not exceed ₹ 1.5 crore, he is eligible for composition scheme subject to fulfilment of specified conditions.
- (ii) Since supplier of inter-State outward supplies of goods is not eligible for composition levy, Sugam Manufacturers is not eligible for composition levy.

13. A registered person with an aggregate turnover in a preceding financial year up to ₹ 1.5 crore is eligible for composition levy in Delhi. Since the aggregate turnover of Subramanian Enterprises does not exceed ₹ 1.5 crore, it is eligible for composition levy in the current year. However, all registered persons having the same Permanent Account Number (PAN) have to opt for composition scheme. If one such registered person opts for normal scheme, others become ineligible for composition scheme. Thus, Subramanian Enterprises either have to opt for composition levy for both the places of business or under normal levy for both the places of business.



AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has become effective from 01.08.2019. However, the amendments made in the CGST Act and IGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2020 and/or November 2020 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions²⁷ relating to section 10 are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
<p>Sub-section (1) "Notwithstanding anything to the contrary..... five lakh rupees, whichever is higher."</p>	<p>Sub-section (1) - Explanation inserted after second proviso "Notwithstanding anything to the contrary..... five lakh rupees, whichever is higher." Explanation - For the purposes of second proviso, the value of exempt supply of services provided 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 for determining the value of turnover in a State or Union territory.</p>	<p>Under the existing provisions, this point is clarified vide <i>Order No. 01/2019 CT dated 01.02.2019</i>. It is now being incorporated in the CGST Act vide the explanation proposed by the Finance (No. 2) Act, 2019 to section 10(1).</p>

²⁷ Provisions existing as on the date when the Study Material was released for printing

<p><u>Sub-section (2)</u> The registered person shall be..... recommendations of the Council.</p>	<p><u>Sub-section (2) – New clause (f) inserted</u> The registered person shall be..... recommendations of the Council. (f) he is neither a casual taxable person nor a non-resident taxable person.</p>	<p>Presently, this condition that a person opting for composition levy must not be a casual taxable person nor a non-resident taxable person, is contained in rule 5 of the CGST Rules, 2017. This is sought to be incorporated in the CGST Act by the Finance (No. 2) Act, 2019 as clause (f) in section 10(2).</p>
	<p><u>New sub-section (2A) inserted to section 10</u> Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of</p>	<p>Presently, the option available to the small service providers to pay tax at concessional rate is provided vide <i>Notification No. 2/2019 CT (R) dated 07.03.2019</i>. This option is being incorporated in the CGST Act by the Finance (No. 2) Act, 2019 by inserting new sub-section (2A) in section 10. It is important to note that one of the conditions to opt for benefit under</p>

the turnover in State or turnover in Union territory, if he is not—

(a) engaged in making any supply of goods or services which are not leviable to tax under this Act;

(b) engaged in making any inter-State outward supplies of goods or services;

(c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;

(d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and

(e) a casual taxable person or a non-resident taxable person:

Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.

Notification No. 2/2019 CT is that the registered person must not be a supplier of notified goods while under sub-section (2A), the condition for opting for the concessional rate under said sub-section is that the registered person must neither be a manufacturer of notified goods nor be a supplier of notified services.

Sub-section (3)

The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).

Sub-section (3)

The option availed of by a registered person under sub-section (1) **or sub-section (2A)** shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).

Sub-sections (3), (4) and (5) are being amended to make them applicable to the registered person opting for concessional rate of tax under sub-section (2A) also.

Sub-section (4)

A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

Sub-section (4)

A taxable person to whom the provisions of sub-section (1) **or, as the case may be, sub-section (2A)** apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

Sub-section (5)

If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of

Sub-section (5)

If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) **or sub-section (2A)** despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for

<p>section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.</p>	<p>determination of tax and penalty.</p>	
	<p>Explanations inserted after sub-section (5)</p> <p>“Explanation 1.— For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression “aggregate turnover” shall include the value of supplies made by such person from the 1st day of April of a financial year upto the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.</p> <p>Explanation 2.— For the purposes of determining the tax payable by a person under this section, the expression “turnover in State or turnover in Union territory” shall not include the value of following supplies, namely:—</p> <p>(i) supplies from the first day</p>	<p>Under the existing provisions, these points are clarified vide <i>Order No. 01/2019 CT dated 01.02.2019</i> and <i>Notification No. 2/2019 CT (R) dated 07.03.2019</i>.</p> <p>These are now being incorporated in the CGST Act vide the explanations proposed by the Finance (No. 2) Act, 2019 to section 10.</p>

of April of a financial year upto the date when such person becomes liable for registration under this Act; and

(ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.”

EXEMPTIONS FROM GST

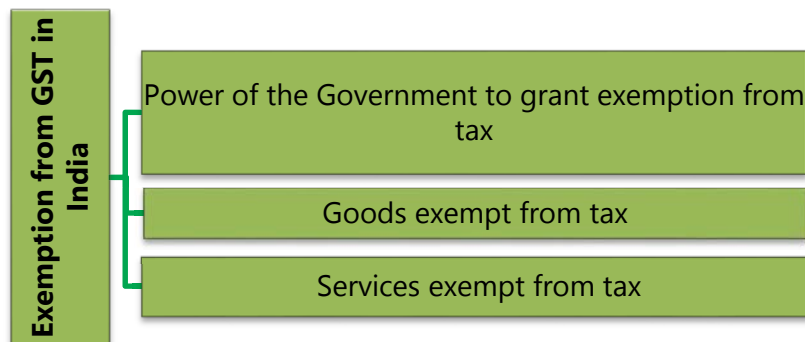


LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- ❑ describe the power of the Government to grant exemption from CGST/IGST.
- ❑ provide an overview of the goods exempt from GST.
- ❑ identify and analyse various services exempt from GST.

CHAPTER OVERVIEW



1. INTRODUCTION

When a supply of goods and/or services falls within the purview of charging section, such supply is chargeable to GST. However, for determining the liability to pay the tax, one needs to further check whether such supply of goods and/or services are exempt from tax.

Exempt supply has been defined as supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply [Section 2(47) of the CGST Act, 2017]. **Non-taxable supply** means a supply of goods or services or both which is **not leviable to tax** under CGST Act or under the IGST Act [Section 2(78) of the CGST Act, 2017]. Thus, under GST, a supply not leviable to tax is also included within the purview of 'exempt supply'.




Power to grant exemption from GST has been granted vide section 11 of the CGST Act and vide section 6 of the IGST Act. State GST laws also contain identical provisions granting power to exempt SGST. Under GST, **essential goods/services, i.e. public consumption products/services, have been exempted**. Items such as unbranded atta/maida/besan, unpacked food grains, milk, eggs, curd, lassi and fresh vegetables are among the items exempted from GST. Further, essential services like health care services, education services, etc. have also been exempted.

In this chapter, we shall discuss the power to grant exemption from tax under CGST Act/IGST Act, list of services exempt from GST in detail and an overview of the goods exempt from tax.



2. POWER TO GRANT EXEMPTION FROM TAX [SECTION 11 OF THE CGST ACT/SECTION 6 OF IGST ACT]

 STATUTORY PROVISIONS	
Section 11	Power to grant exemption from tax
Sub-section	Particulars
(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.



ANALYSIS

- (i) **Exemption from payment of tax:** GST law empowers the Central Government or State Government as the case may be to grant exemption from tax. The exemption is granted on recommendation of the GST Council.

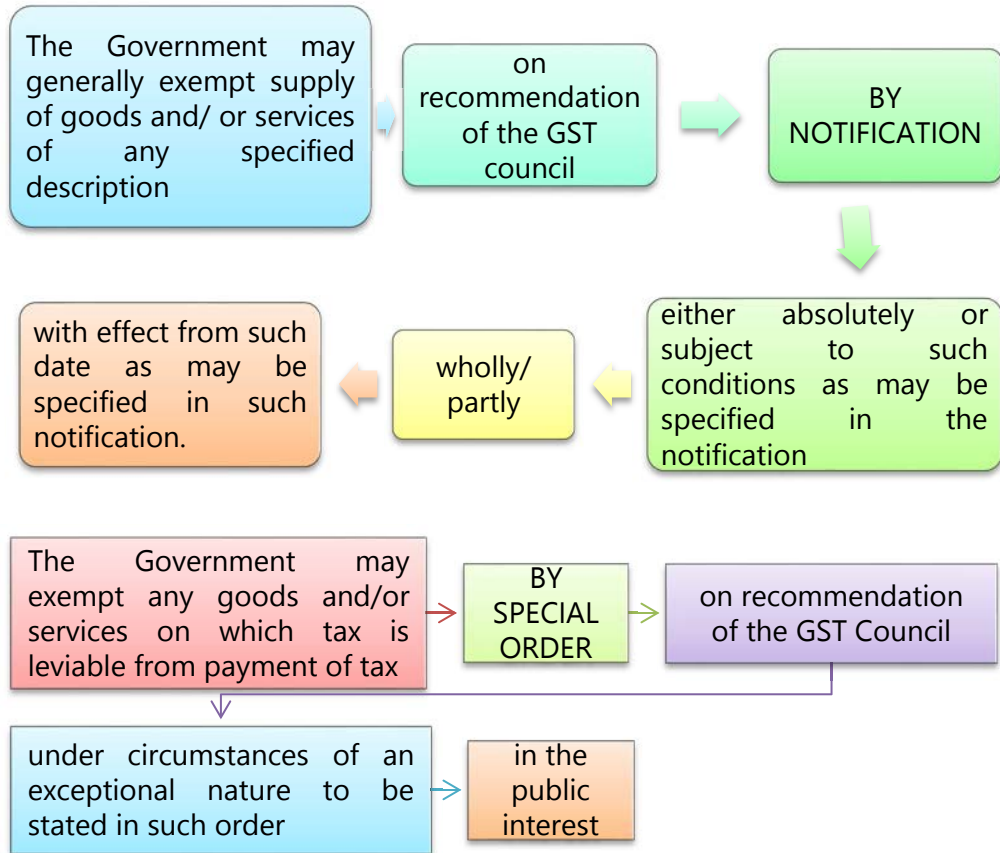
Exemption can be from whole of the tax or part of the tax. It should be granted in public interest.

Exemption can be granted to goods or services or both of any specified description, by way of issuance of notification generally, absolutely [i.e. unconditional exemption; exemption is not subject to any conditions] or conditionally [i.e. exemption is subject to specified conditions]. Exemption may be granted by a special order in case of the circumstances of an exceptional nature.

The absolute/ unconditional exemption is mandatory in nature. Where the supply of the goods or services or both are unconditionally exempted from *whole of the tax*, the registered person doesn't have option to collect and pay tax on such supply of goods or services or both. Where the supply of the goods or services or both are unconditionally exempted from *part of the tax*, the registered person doesn't have option to collect and pay the tax, in excess of the effective rate, on such supply of goods or services or both.

However, where the exemption is conditional, it is at the option of the registered person whether to avail the same or not.

The above provisions have been explained by way of a diagram as follows:



(ii) Explanation inserted within 1 year, for the purpose of clarifying the scope or applicability of any notification/order, to have retrospective effect:

Whenever the Government feels that there is a need to clarify the scope or applicability of any notification/order issued under this section, it can issue an explanation within 1 year of issue of said notification/ order. Such explanation shall have effect as if it was there when first such notification/ order was issued, i.e. explanation so inserted would be effective retrospectively.



Similar provisions granting power to exempt IGST have been provided under section 6 of the IGST Act.









3. GOODS EXEMPT FROM TAX

A list of items have been notified under section 11(1) of the CGST Act, 2017/ section 6(1) of the IGST Act, 2017. These items have been exempted from whole of the tax.

Under GST, everyday items used by the common man have been included in the list of exempted items. Items such as unbranded atta/ maida/ besan, unpacked food grains, milk, eggs, curd, lassi and fresh vegetables are among the items exempted from GST.



Some of the examples of the goods exempted from tax have been provided herein¹:

		
Live fish (0301)	Fresh Milk (0401)	Potatoes (0701)
		
Grapes (0806)	Indian National Flag (63)	Plastic Bangles (3926)

¹ Students may go through the complete list of goods exempt from GST on CBIC website – www.cbic.gov.in, for knowledge purposes.



4. LIST OF SERVICES EXEMPT FROM TAX

I. SPECIFIC SERVICES EXEMPT FROM CGST/IGST

Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017² (hereafter referred to as “the Notification”) unless otherwise specified, has exempted the various services wholly from CGST. Each of the entries of the exemption notification have been discussed below:

1. Services related to charitable and religious activities

Entry No. ³	Description of services
1	Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities .
13	<p>Services by a person by way of-</p> <p>(a) conduct of any religious ceremony;</p> <p>(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 or a trust or an institution registered under section 10(23C)(v) of the Income-tax Act or a body or an authority covered under section 10(23BBA) of the said Income-tax Act.</p> <p>However, nothing contained in entry (b) of this exemption shall apply to-</p> <p>(i) renting of rooms where charges are ₹ 1,000 or more per day;</p> <p>(ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ₹ 10,000 or more per day;</p>

² Exemption from IGST has been granted to various services vide Notification No. 9/2017 Integrated Tax (Rate) dated 28.06.2017. All the services exempted from CGST have also been exempted from IGST. Apart from these, there are few additional services which have been exempted only under IGST law. Such services will be discussed at the Final Level.

³ Entry Nos. mentioned herein correspond to entries in Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017. However, these entry no.s have been given only for reference purposes and are not relevant for examination purpose.

	(iii) renting of shops or other spaces for business or commerce where charges are ₹ 10,000 or more per month.
60	Services by a specified organisation in respect of a religious pilgrimage facilitated by the Government of India, under bilateral arrangement.
80	Services by way of training or coaching in recreational activities relating to- (a) arts or culture, or (b) sports by charitable entities registered under section 12AA of the Income-tax Act.



ANALYSIS

A. SERVICES PROVIDED BY CHARITABLE/RELIGIOUS TRUST

Entry 1 of the Notification exempts services provided by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities. Thus, in order to claim exemption under Entry 1 of the Notification, following two conditions must be satisfied:-

- (i) The entity should be **registered under section 12AA of the Income tax Act, 1961**, and
- (ii) The entity must carry out one or more of the specified charitable activities.

Before proceeding further, let us first understand the meaning of term '**charitable activities**'. The term 'charitable activities' mean **activities relating** to-

- (i) **PUBLIC HEALTH** by way of-

(A) care or counseling of

- (I) terminally ill persons or persons with severe physical or mental disability;
- (II) persons afflicted with HIV or AIDS;
- (III) persons addicted to a dependence-forming substance such as narcotics drugs or alcohol; or



- (B) public awareness of preventive health, family planning or prevention of HIV infection;
- (ii) **ADVANCEMENT OF RELIGION**, spirituality or yoga;
- (iii) **ADVANCEMENT OF EDUCATIONAL PROGRAMMES/SKILL DEVELOPMENT** relating to,-
 - (A) abandoned, orphaned or homeless children;
 - (B) physically or mentally abused and traumatized persons;
 - (C) prisoners; or
 - (D) persons over the age of 65 years residing in a rural area;
- (iv) **PRESERVATION OF ENVIRONMENT** including watershed, forests & wildlife.

Thus, only those services provided by a charitable and religious trusts [registered under section 12AA of the Income-tax Act] which fall within the above definition of charitable activities, are eligible for exemption from GST. There could be many other services provided by such charitable and religious trusts which are not covered by the definition of charitable activities and hence, such services would attract GST.

For instance, grant of advertising rights to a person on the premises of the charitable/religious trust or on publications of the trust, or granting admission to events, functions, celebrations, shows against admission tickets or fee etc. would attract GST. In the following paras, we have examined some of the services provided by the entities registered under section 12AA of the Income-tax Act:

Management of educational institutions by charitable trusts

- ❑ Activities of schools, colleges or any other educational institutions run by charitable trusts by way of education or skill development of abandoned, orphans, homeless children, physically or mentally abused persons, prisoners or persons over age of 65 years or above residing in a **rural area**, will be considered as charitable activities and income from such supplies will be wholly exempt from GST.
- ❑ The term **rural area** means the area comprised in a village as defined in land revenue records, excluding the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified

area committee; or any area that may be notified as an urban area by the Central Government or a State Government.

- ❑ Activities of a school, college or an institution run by a trust which do not come within the ambit of charitable activities will not be exempt under Entry 1 of the Notification. However, such activities may be exempt under Entry 66 of the Notification *[discussed later in this chapter]* provided the school, college or institution qualifies as an 'educational institution'.

Hostel accommodation provided by trusts

- ❑ Hostel accommodation services provided by trusts to students do not fall within the ambit of charitable activities as defined above.
- ❑ However, accommodation service in hostels including such services provided by trusts having ⁴ below ₹ 1,000 per day is exempt under Entry 14 of the Notification *[discussed later in this chapter]* *[Circular No. 32/06/2018-GST dated 12.02.2018]*.

Religious yatras or pilgrimage

- ❑ Religious Yatras/pilgrimage organised by any charitable or religious trust are not exempt. Further, services of transportation of passengers for a pilgrimage by the charitable trust are not exempt from GST.
- ❑ Only such services of religious pilgrimage as are provided by **specified organization** in respect of a religious pilgrimage facilitated by the Government of India (GoI), under bilateral arrangement, are exempt from GST. *[See Entry 60 in above table]*. The term **specified organization** as referred herein means-

- Kumaon Mandal Vikas Nigam Limited (KMVN), a Government of Uttarakhand Undertaking; or
- 'Haj Committee of India' or 'State Haj Committee including Joint State Committee'.



- ❑ Hence, as per **Entry 60**, the services provided **by the Haj Committee and KMVN** in relation to a **religious pilgrimage facilitated by GoI** are not liable to GST.

⁴ The words "declared tariff" have been substituted with words "value of supply" in said entry.

Arranging yoga and meditation camp by charitable trusts

- ❑ As discussed above, services provided by entity registered under section 12AA of the Income-tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt as such activities are covered in definition of charitable activities.
- ❑ Fee or consideration charged in any other form from the participants for participating in a religious, yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga shall be exempt.
- ❑ Residential programmes or camps where the fee charged includes cost of lodging and boarding shall also be exempt as long as the **primary and predominant activity, objective and purpose of such residential programmes or camps is advancement of religion, spirituality or yoga.**
- ❑ However, if charitable or religious trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation, such activities will be taxable. Similarly, activities such as holding of fitness camps or classes such as those in aerobics, dance, music etc. will be taxable.



Bhavyajyoti Foundation, a charitable trust registered under section 12AA of the Income-tax Act, 1961, has organized a 'Meditation Camp' for the old age people. GST would be exempt on the same as services provided by entity registered under section 12AA of the Income-tax Act, 1961 by way of advancement of religion, spirituality or yoga are exempt.

Hospitals managed by charitable trusts

Exemption available to health care services under Entry 74 of the Notification [discussed later in this chapter] is also applicable to the services provided by a **clinical establishment, an authorised medical practitioner or paramedics of a religious or charitable trust** also.

Training or coaching in recreational activities

Besides charitable activities, services provided by way of training or coaching in recreational activities relating to arts or culture or sports, by a charitable entity registered under section 12AA of Income-tax Act are also exempt under **Entry 80**.

The term '**recreational activities**' is very wide. However, under this entry, the scope of training or coaching in recreational activities is restricted to the area of:-

- (i) arts
- (ii) culture
- (iii) sports

Hence, the training or coaching in **recreational activities in the areas other than arts, culture or sports** is outside the purview of this entry.

Further, training or coaching relating to **all forms of arts, culture or sports** is covered under this entry, namely, dance, music, painting, sculpture making, literary activities, theatre, sports etc. of any school, tradition or language or any of the sports.

GST on services provided TO charitable trusts

Services provided to charitable or religious trusts are not outside the ambit of GST. *Unless specifically exempted*, all goods and services supplied to charitable or religious trusts are leviable to GST.

B. CONDUCT OF ANY RELIGIOUS CEREMONY

Going through Entry 13(a) of the Notification, it can be inferred that the amount charged, by whatever name called, for the conduct of any religious ceremony is exempt from GST. Religious ceremonies are life-cycle rituals including special religious poojas conducted in terms of religious texts by a person so authorized by such religious texts. Occasions like birth, marriage, and death involve elaborate religious ceremonies.




Raamanand Joshi, a priest, charges ₹ 12,000 for conducting a religious ceremony on the birthday of Mr. Ghanshyam's son. The amount charged for the conduct of any religious ceremony is exempt from GST.

C. RENTING OF PRECINCTS OF RELIGIOUS PLACE MEANT FOR GENERAL PUBLIC

- ❑ **Entry 13(b) of the Notification** exempts renting of precincts of a religious place meant for general public owned by an entity registered under any of the specified sections of the Income Tax Act provided the consideration charged for such renting does not exceed the prescribed ceiling limits as given in said entry. Thus, this exemption is determined on the basis of

amount of consideration charged for such renting. Let us understand the meaning of the terms 'religious place' and 'general public' referred herein.

- ❑ **Religious place** means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality. 
- ❑ **General public** means the body of people at large sufficiently defined by some common quality of public or impersonal nature.
- ❑ The word '**precincts**' is not to be interpreted in a restricted manner and **all immovable property of the religious place located within the outer boundary walls** of the complex (of buildings and facilities) in which the religious place is located, is to be considered as being located in the precincts of the religious place. The immovable property located in the immediate vicinity and surrounding of the religious place and owned by the religious place or under the same management as the religious place, may be considered as being located in the precincts of the religious place and extended the benefit of above exemption.
- ❑ Activities other than - conduct of religious ceremony and renting of precincts of religious place - will be taxable irrespective of the manner or the name in which the consideration is received. **For example**, if donation is received with specific instructions/mutual understanding between the donor and the receiver that religious place will host an advertisement promoting business of the donor, such donation will be subject to GST. However, if donation is received without such instructions or without a *quid pro quo* in the form of supply of any goods or services or both by the receiver to the donor, it shall not be subject to GST⁵.



Durgadevi Trust, a religious trust registered under section 12AA of the Income-tax Act, owns and manages a temple in their locality. It rents the commercial shops located in the precincts of the temple for a rent of ₹ 10,000 per month per shop. The consideration so received is liable to GST as the consideration is not less than ₹ 10,000.





Sarvshiksha Foundation, an educational institution registered under section 10(23C)(v) of the Income-tax Act, owns and manages a gurudwara.

⁵ Discussion is primarily based on CBIC GST Flyer – Chapter 39 - GST on Charitable and Religious Trusts and other clarifications

It rents the community hall located in the precincts of the gurudwara for a rent of ₹ 9,000 per day for a marriage function. The consideration so received is exempt from GST as the consideration is less than ₹ 10,000.

2. Agriculture related services





Entry No.	Description of services
24	Services by way of loading, unloading, packing, storage or warehousing of rice.
24A	Services by way of warehousing of minor forest produce.
53A	Services by way of fumigation in a warehouse of agricultural produce. 
54	<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>  <ol style="list-style-type: none"> agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing; supply of farm labour; 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; renting or leasing of agro machinery or vacant land with or without a structure incidental to its use; loading, unloading, packing, storage or warehousing of agricultural produce; agricultural extension services;

	(g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce. (h) services by way of fumigation in a warehouse of agricultural produce.
55	Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce.
55A	Services by way of artificial insemination of livestock (other than horses).



ANALYSIS

ENTRY 54

- ❑ The words **'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'** used in **Entry 54** include activities like breeding of fish (pisciculture), rearing of silk worms (sericulture), cultivation of ornamental flowers (floriculture) and horticulture, forestry, etc.
 
- ❑ Further, the term **'agricultural produce'** means any produce out of 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, **on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics, but makes it marketable for primary market.** It is important to note that agricultural produce is either subject to no further processing at all or if any processing is undertaken on the agricultural produce it should not alter its essential characteristics but may make it marketable for primary market.
 



Few instances of such processes are the processes carried out at an agricultural farm including tending, pruning, cutting, harvesting, drying, cleaning, trimming, etc.

Let us see what is exempt under Entry 54.

- Entry 54 exempts the agricultural operations directly related to production of any agricultural produce such as cultivation, harvesting, threshing, plant protection or testing. Further, 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** are also exempt. In view of the same, following processes are outside the purview of this entry and thus, are liable to GST:-

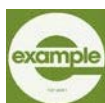
(a) **Process which alters the essential characteristics of the agricultural produce:** For instance, potato chips or tomato ketchup are manufactured through processes which alter the essential characteristic of farm produce (potatoes and tomatoes in this case).

(b) **Process which makes agricultural produce marketable in the retail market:** The processes of grinding, sterilizing, extraction packaging in retail packs of agricultural products, which make the agricultural products marketable in retail market, would NOT be covered in this entry. Only such processes are covered in this entry which makes agricultural produce marketable in the primary market.

- Apart from this, supply of farm labour is also exempt from GST.

Renting or leasing of agro machinery or vacant land

- Item (d) of the entry exempts **renting or leasing of agro machinery or vacant land** with or without a structure incidental to its use.



Moolchand has leased out to a farmer – Tulsidas - a vacant land for agriculture. The land has a green house and a storage shed which are incidental to its use for agriculture. Leasing of vacant land with a green house or a storage shed which is incidental to its use for agriculture is exempt from GST.

Agricultural extension services

- ❑ Item (f) of the entry exempts **Agricultural extension services (AES)**. Said services have been defined under the notification to mean the application of scientific research and knowledge to agricultural practices through farmer education or training.

The main objective of AES is to transmit latest technical know-how to farmers. It also focuses on enhancing farmers' knowledge about crop techniques and help them to increase productivity. This is done through training courses, kisan call centres, farm visits, on farm trials, kisan melas, kisan clubs, advisory bulletins and the like.

Agricultural Produce Marketing Committee services

- ❑ Services by any **Agricultural Produce Marketing Committee** or Board or services provided by a commission agent for sale or purchase of agricultural produce are not liable to GST. Agricultural Produce Marketing Committee or Board means any committee or board set up under a State Law for the time being in force for purpose of regulating the marketing of agricultural produce.
-
- ❑ Such marketing committees or boards have been set up in most of the States and provide a variety of support services for facilitating the marketing of agricultural produce by provision of facilities and amenities like, sheds, water, light, electricity, grading facilities etc. They also take measures for prevention of sale or purchase of agricultural produce below the minimum support price. APMCs collect market fees, license fees, rents etc.
 - ❑ Services provided by such Agricultural Produce Marketing Committee or Board are covered in item (g) of entry 54. However, any service provided by such bodies which is not directly related 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, will be liable to tax e.g. renting of shops or other property.

Warehousing of agriculture produce

- ❑ Item (e) of the entry exempts loading, unloading, packing, storage or

warehousing of agricultural produce. In this regard, following may be noted:

❑ Processed Tea and coffee



Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling, shaping, refining, oxidation, packing etc. on green leaf and is the processed output of the same. Thus, green tea leaves and not tea is the “agricultural produce” eligible for exemption available for loading, unloading, packing, storage or warehousing of agricultural produce. Same is the case with coffee obtained after processing of coffee beans.



❑ Jaggery



Similarly, processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce.



❑ Pulses

Pulses commonly known as dal are obtained after dehusking or splitting or both. The process of dehusking or splitting is usually not carried out by farmers or at farm level but by the pulse millers. Therefore pulses (dehusked or split) are also not agricultural produce. However, whole pulse grains such as whole gram, rajma etc. are covered in the definition of agricultural produce.



In view of the above, it is inferred that processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (dehusked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc. fall outside the definition of agricultural produce and therefore the exemption from GST is not available to their loading, packing, warehousing etc. [Circular No. 16/16/2017 GST dated 15.11.2017].

ENTRY 55

Custom milling of paddy into rice

Carrying out an intermediate production process as job work in relation to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce is exempt under GST.

Milling of paddy is not an intermediate production process in relation to cultivation of plants. It is a process carried out after the process of cultivation is over and paddy has been harvested. Further, processing of paddy into rice is not usually carried out by cultivators, but by rice millers. Milling of paddy into rice also changes its essential characteristics. Therefore, milling of paddy into rice cannot be considered as an intermediate production process in relation to cultivation of plants for food, fibre or other similar products or agricultural produce.



In view of the above, it is clarified that milling of paddy into rice is not eligible for exemption under Entry 55 [Circular No. 19/19/2017 GST dated 20.11.2017].



3. Education services

Entry No.	Description of services
66	<p>Services provided -</p> <ul style="list-style-type: none"> (a) by an educational institution to its students, faculty and staff; (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee; (b) to an educational institution, by way of,- <ul style="list-style-type: none"> (i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; (iii) security or cleaning or house-keeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution; (v) supply of online educational journals or periodicals. <p>However, nothing contained in sub-items (i), (ii) and (iii) of item (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to</p>

higher secondary school or equivalent.

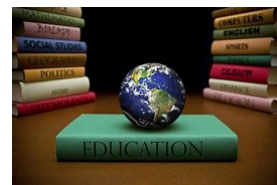
Further, nothing contained in sub-item (v) of item (b) shall apply to an institution providing services by way of,-

- (i) pre-school education and education up to higher secondary school or equivalent; or
- (ii) education as a part of an approved vocational education course.



ANALYSIS

Education is fundamental to the nation building process. The term "Education" is not defined in the CGST Act, 2017, but as per Apex Court decision in "*Loka Shikshana Trust v. CIT*", education is process of training and developing knowledge, skill and character of students by normal schooling.



Taxing the Education Sector has always been a sensitive issue, as education is seen more as a social activity than a business one. The Government has a constitutional obligation to provide free and compulsory elementary education to every child. Thus, to promote education, it would be beneficial if educational services are exempted from tax.

However, commercialization of education is also a reality. The distinction between core and ancillary education is blurring and education is now an organised industry with huge revenues. The GST law tries to maintain a fine balance whereby core educational services provided and received by educational institutions are exempt and other services are sought to be taxed.



Exemption from GST granted vide Entry 66 stated above can be discussed under two broad categories – education related output services and education related input services. The discussion in succeeding paras fundamentally revolves around these two areas:

Output services

- ❑ Services provided by an educational institution to its students, faculty and staff and by way of conduct of entrance examination against consideration in the



form of entrance fee are exempt from GST.

Since exemption with respect to said services is available only when these services are provided BY 'educational institution', it is important to analyse the term **EDUCATIONAL INSTITUTION** first:

Educational institution means an institution providing services by way of,-

- (i) **pre-school education** and education up to **higher secondary school** or equivalent;
 - (ii) education as a part of a curriculum for obtaining a **qualification recognised by any law** for the time being in force;
 - (iii) education as a part of an **approved vocational education** course.
- ❑ It is to be noted that only those institutions, whose operations conform to the specifics given in the definition of the term "educational institution", would be treated as one entitled to avail exemptions provided by the law.
- ❑ **Sub-clause (ii)**: The term '**education as a part of curriculum for obtaining a qualification recognised by any law for the time being in force**' means the education delivered as '**a part**' of the curriculum that has been prescribed for obtaining a qualification prescribed by law. Thus, in order to be covered under Entry 66, the education service should be delivered as part of curriculum. In view of same, it can be inferred that:



Education services provided	Covered in sub-clause (ii)	Reasons
Conduct of degree courses by colleges, universities or institutions	✓	These courses lead to grant of qualifications recognized by law
Training given by private coaching institutes	✗	Such training does not lead to grant of a recognized qualification.
Education as a part of a prescribed curriculum for obtaining a qualification recognized by a law of a foreign country	✗	Only a course recognized by an Indian law is covered herein.

- **Sub-clause (iii)** covers institutions providing services by way of education as a part of approved vocational education course. An **approved vocational education course** means, -



a **course run by an ITI/ ITC⁶** affiliated to the National Council for Vocational Training (NCVT) or State Council for Vocational Training (SCVT) **offering courses in designated trades notified under the Apprentices Act, 1961** or



a **Modular Employable Skill Course**, approved by the NCVT, run by a person registered with the Directorate General of Training, Ministry of Skill Development and Entrepreneurship. The Modular Employable Skills is the minimum skill set which is sufficient for gainful employment or self-employment in the world of work. This Scheme provides certification on vocational training from NCVT that is nationally and internationally recognized in world of work in the Government (Centre & State) as well as private sector. It provides employable skills to early school drop-outs, existing workers seeking skill upgradation, workers seeking certification of their skills acquired informally, ITI graduates, etc. to improve their employability and provides certification after completion of the course.



In view of the above definition, some of the institutions providing education services have been examined as under:

Private ITIs



- **Private ITIs** qualify as an educational institution if the education provided by these ITIs is approved as vocational educational course as defined above.



It implies that services provided by a private ITI only in respect of **designated**



trades notified under Apprenticeship Act, 1961⁷ are exempt from GST under Entry 66. Services in other than designated trades are liable to GST**.

⁶ Industrial Training Institute/ Industrial Training Centre

⁷ Some of the designated trades notified under Apprenticeship Act, 1961 are electrician, wireman, carpenter, plumber, mason, mechanic, tool and die maker, baker and confectioner, weaver, tailor, footwear maker, photographer, beautician, painter, desk top publishing operator, gardener, cable television operator, library assistant, etc.

Government ITIs

As far as **Government ITIs** are concerned, services provided by a Government ITI to individual trainees/ students, are exempt under Entry 6 as these are in the nature of services provided by the Central or State Government to individuals [Entry 6 is discussed in detail subsequently]. Such exemption in relation to services provided by Government ITI would cover both - vocational training and examinations conducted by these Government ITIs [Circular No. 55/29/2018 GST dated 09.08.2018].



***As regards the services **provided TO** private ITIs, only services relating to admission to or conduct of examination by a private ITI in respect of such designated trades are exempt. All other services provided to such institutions is liable to GST.*

It is important to note that the Central and State Educational Boards shall be treated as 'Educational Institution' for the limited purpose of providing services by way of conduct of examination to the students.

Unrecognized educational institutions

- ❑ Private coaching centres or other unrecognized institutions, though self-styled as educational institutions, would not be treated as educational institutions under GST and thus cannot avail exemptions available to an educational institution.

Educational institutions up to Higher secondary schools

- ❑ By virtue of Entry 66, educational institutions up to Higher Secondary School level do not suffer GST on output services and also on most of the important input services. However, some of the input services like canteen, repairs and maintenance etc. provided by private players to educational institutions are subject to GST.
- ❑ Output services of lodging/boarding in hostels provided by such educational institutions which are providing pre-school education and education up to higher secondary school or equivalent or education leading to a qualification recognised by law, are fully exempt from GST. Annual subscription/fees charged as lodging/boarding charges by such educational institutions from its students for hostel accommodation shall therefore, not



attract GST.

- ❑ **Boarding schools** provide service of education coupled with other services like providing dwelling units for residence and food. This may be a case of composite supply if the charges for education and lodging and boarding are inseparable. Their taxability will be determined in terms of the principles laid down in section 2(30) read with section 8 of the CGST Act, 2017.

Such services in the case of boarding schools are naturally bundled and supplied in the ordinary course of business. Therefore, the bundle of services will be treated as consisting entirely of the principal supply, which means the service which forms the predominant element of such a bundle.

In this case since the predominant nature is determined by the service of education, the other service of providing residential dwelling will not be considered for the purpose of determining the tax liability and in this case the entire consideration for the supply will be exempt.

Educational institutions providing qualification recognized by law


- ❑ We have already seen that the institutions providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force qualify as educational institutions. However, the question arises that in case where **a course in a college leads to dual qualification only one of which is recognized by law**, would service provided by the college by way of such education be covered by the exemption notification?
- ❑ Provision of dual qualifications is in the nature of two separate services as the curriculum and fees for each of such qualifications are prescribed separately. Service in respect of each qualification would, therefore, be assessed separately.

If an artificial bundle of service is created by clubbing two courses together, when only single fee is charged for both, only one of which leads to a qualification recognized by law, then by application of the rule of determination of taxability of a supply which is not bundled in the ordinary course of business, it shall be treated as a mixed supply as per provisions contained in section 2(74) read with section 8 of the CGST Act, 2017. The taxability will be determined by the supply which attracts highest rate of GST.

- ❑ However, **incidental auxiliary courses provided by way of hobby classes**

or extra-curricular activities in furtherance of overall well-being will be an example of naturally bundled course, and therefore treated as composite supply. One relevant consideration in such cases will be the amount of extra billing being done for the unrecognized component viz-a-viz the recognized course. If extra billing is being done, it may be a case of artificial bundling of two different supplies, not supplied together in the ordinary course of business, and therefore will be treated as a mixed supply, attracting the rate of the higher taxed component for the entire consideration⁸.

IIMs

- ❑ **With effect from 31.01.2018, Indian Institutes of Management Act, 2018 came into force. This Act has empowered IIMs to (i) grant degrees, diplomas, and other academic distinctions or titles, (ii) specify the criteria and process for admission to courses or programmes of study, and (iii) specify the academic content of programmes. Resultantly, all the IIMs are now "educational institutions" as they provide education as a part of a curriculum for obtaining a qualification recognized by law for the time being in force⁹.**
- 
- ❑ **IIMs provide various long duration programs (1 year or more) for which they award diploma/ degree certificate duly recommended by Board of Governors as per the power vested in them under the IIM Act, 2017. Therefore, it is clarified that services provided by Indian Institutes of Managements to their students- in all such long duration programs (one year or more) are exempt from levy of GST.**
 - ❑ **IIMs also provide various short duration/ short term programs (less**

⁸ The view taken in the preceding paras, that education coupled with other incidental services is a composite supply and is exempt since the principal supply [education service] is exempt, is based on the CBIC Flyer - Chapter 40 – 'GST on Education Services'. However, it is also possible to take a different view since as per the definition of composite supply under section 2(30) of the CGST Act, composite supply consists of two or more **taxable supplies**.

⁹ Earlier, IIMs were not covered by the definition of 'educational institutions' and were not entitled to exemption under Entry 66. However, there was a separate entry 67 granting exemption to three specified programs of IIMs. With effect from 31.01.2018, all IIMs have become eligible for exemption benefit under Entry 66. Therefore, Entry 67, which became redundant, was deleted.

*than 1 year) for which they award **participation certificate** to the executives/ professionals as they are considered as "participants" of the said programmes. These participation certificates are not any qualification recognized by law. Such participants are also not considered as students of IIM. Services provided by IIMs as an educational institution to such participants is not exempt from GST. Such short duration executive programs attract standard rate of GST @ 18% (CGST 9% + SGST 9%) [Circular No. 82/01/2019 GST dated 01.01.2019].*

Supply of food in a mess or canteen

- ❑ Educational institutions generally have mess facility for providing food to their students and staff. Such facility is (i) either run by the institution/ students themselves or (ii) is outsourced to a third person.
- ❑ **If the catering services is one of the services provided by an educational institution to its students, faculty and staff and the said educational institution is covered by the definition of 'educational institution' as given above**, then the same is exempt. [covered under item (a) of entry 66 of the Notification].
- ❑ **If the catering services, i.e., supply of food or drink in a mess or canteen, is provided by anyone other than the educational institution**, i.e. the institution outsources the catering activity to an outside contractor, then it is a supply of service to the concerned educational institution by such outside caterer and attracts GST **



****Note:** It may be noted that said services when provided to an educational institution providing pre-school education or education up to higher secondary school or equivalent are exempt from tax.

Fees charged from prospective employers

Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses/MNCs, who come to the institutes for recruiting candidates through campus interviews in relation to campus recruitments. Such services shall also be liable to tax

Input services

- ❑ Regarding, input services, it may be noted that where output services are exempted, the educational institutions may not be able to avail credit of tax paid on the input side. The auxiliary education services [services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person] specified in item (b) of entry 66 only have been exempted [Sub-items (i) to (v) of item (b) of Entry 66].
- ❑ However, the said exemption comes with a rider. Auxiliary services of (i) transportation of students, faculty, and staff, (ii) catering including any mid-day meals scheme sponsored by Government and (iii) security or cleaning or housekeeping services are exempt only if such auxiliary education services are provided to educational institutions providing services by way of education up to higher secondary or equivalent, (from pre-school to HSC). Thus, if such auxiliary education services are provided to educational institutions providing degree or higher education or institutions providing approved vocational education course, the same would not be exempt.
- ❑ Similarly, services of supply of online educational journals/periodicals are exempt only if they are provided to an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force¹⁰.



The exemptions available in respect of input and output services of an educational institution have been tabulated as follows:


	Type of educational institution		
	Educational institution providing pre-school education and education up to higher secondary school or equivalent	Educational institution providing education as a part of a curriculum for	Educational institution providing education as a part of

¹⁰ The discussion in the foregoing paras is primarily based on CBIC Flyer - Chapter 40 – 'GST on Education Services' unless otherwise specified.

		obtaining a recognised qualification	approved vocational education course
Exempt input services	(i) transportation of students, faculty and staff; (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory; (iii) security or cleaning or house-keeping services performed in such educational institution; (iv) services relating to admission to, or conduct of examination by, such institution	(i) services relating to admission to, or conduct of examination by, such institution (ii) supply of online educational journals or periodical	Services relating to admission to, or conduct of examination by, such institution.
Exempt output services	Services provided by an educational institution - (a) to its students, faculty and staff; (aa) by way of conduct of entrance examination against consideration in the form of entrance fee.		

4. Health care services

Entry No.	Description of services
46	Services by a veterinary clinic in relation to health care of animals or birds.

74	<p>Services by way of-</p> <p>(a) health care services by a clinical establishment, an authorised medical practitioner or para-medics;</p> <p>(b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.</p>	
73	<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>	



ANALYSIS

Entry 74 - Health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST [Entry 74(a) of the Notification]. The term 'health care services' is defined as follows:



Health care services

- ❑ means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in **any recognised system of medicines** in India and
- ❑ includes services by way of **transportation of the patient to and from** a clinical establishment, but
- ❑ does **not include hair transplant or cosmetic or plastic surgery**, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

Health care services

As it is apparent from the definition of health care services, only services in **recognized systems of medicines in India** are exempt under this entry. Following systems of medicines are the recognized systems of medicines in India¹¹:-

¹¹ Section 2(h) of the Clinical Establishments Act, 2010

- Allopathy
- Yoga
- Naturopathy
- Ayurveda
- Homeopathy
- Siddha
- Unani
- Any other system of medicine that may be recognized by Central Government

Recognized systems of medicines

Let us now understand the meaning of terms - 'clinical establishment', 'authorised medical practitioner' and 'paramedics'.

✔ **Clinical establishment:** means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases. Thus, diagnostic or investigative services of diseases provided by pathological labs are not liable to GST.



✔ **Authorised medical practitioner:** means a medical practitioner registered with any of the councils of recognised system of medicines established/recognised by law in India & includes a medical professional having requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force.



Further, **Paramedics** are trained health care professionals, for example, nursing staff, physiotherapists, technicians, lab assistants etc. Services by them in a clinical establishment would be in the capacity of employee and not provided in independent capacity and will thus be considered as services by such clinical establishment. Similar services in independent capacity are also exempted.



Rent of rooms provided to in-patients

- ❑ Rent of rooms provided to in-patients in hospitals is exempt [Circular No. 27/01/2018 GST dated 04.01.2018].

Services provided by senior doctors/ consultants/ technicians

- ❑ Hospitals hire senior doctors/ consultants/ technicians independently. Such persons do not have any contract with the patient. Hospitals pay them consultancy charges and there is no employer-employee relationship between them.
- ❑ It is clarified by CBIC that services provided by such senior doctors/ consultants/ technicians, whether employees or not, are healthcare services which are exempt from GST [Circular No. 32/06/2018 GST dated 12.02.2018].

Amount charged by hospitals from the patients

- ❑ In above cases, suppose hospitals charge the patients, say, ₹ 10,000/- and pay to the consultants/technicians only ₹ 7,500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc. Going through the definition of health care services [given above], it can be inferred that hospitals also provide healthcare services.
- ❑ The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt [Circular No. 32/06/2018 GST dated 12.02.2018].



Food supplied to the patients

- ❑ Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the hospitals from outdoor caterers.
- ❑ When outsourced, there is no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC.
- ❑ Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare



and not separately taxable.

- ❑ Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable [Circular No. 32/06/2018 GST dated 12.02.2018]¹².

Services other than health care services in clinical establishment's premises

- ❑ Supply of services other than healthcare services such as renting of shops, auditoriums in the premises of the clinical establishment, display of advertisements etc. will be subject to GST¹³.


5. Services provided by Government



Entry No.	Description of services
4	Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution are exempt.
5	Services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.
6	Services by the Central Government, State Government, Union territory or local authority excluding the following services— (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory ; (b) services in relation to an aircraft or a vessel , inside or outside the precincts of a port or an airport;

¹² The view taken in the preceding paras, that health care services coupled with other incidental services is a composite supply and is exempt since the principal supply [health care service] is exempt, is based on Circular No. 32/06/2018 GST dated 12.02.2018. However, it is also possible to take a different view since as per the definition of composite supply under section 2(30) of the CGST Act, composite supply consists of two or more **taxable supplies**.

¹³ As clarified by the CBIC GST Flyer – Chapter 39 - GST on Charitable and Religious Trusts

	<p>(c) transport of goods or passengers; or</p> <p>(d) any service, other than services covered under entries (a) to (c) above, provided to business entities.</p>
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 ₹ 20 lakh (₹ 10 lakh in case of a Special Category States) in the preceding FY.</p> <p>Explanation - For the purposes of this entry, it is hereby clarified that the provisions of this entry shall not be applicable to following services:-</p> <p>(i) item (a), (b) and (c) of Entry 6 above.</p> <p>(ii) services by way of renting of immovable property.</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><i>However, nothing contained in this entry shall apply to services referred in item (a), (b) and (c) of Entry 6 above.</i></p>
9	<p>Services provided by Central Government, State Government, Union territory or a local authority where the consideration for such services does not exceed ₹ 5,000.</p> <p><i>However, nothing contained in this entry shall apply to services referred in item (a), (b) and (c) of Entry 6 above</i></p> <p>Further, in case where continuous supply of service* is provided by the Central Government, State Government, Union territory or a local authority, the exemption shall apply only where the consideration charged for such service does not exceed ₹ 5,000 in a FY.</p> <p><i>*as defined in section 2(33) of the CGST Act, 2017</i></p>
9C	<p>Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants.</p>

<p>9D</p>	<p>Services by: an old age home run by:</p> <ul style="list-style-type: none"> ✓ Central Government, State Government or ✓ an entity registered under section 12AA of the Income-tax Act, 1961 <p>to its residents (aged 60 years or more) against consideration upto ₹ 25,000 per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.</p>	
<p>34A</p>	<p>Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings(PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions.</p>	
<p>47</p>	<p>Services provided by the Central Government, State Government, Union territory or local authority by way of-</p> <ul style="list-style-type: none"> (a) registration required under any law for the time being in force; (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force. 	
<p>61</p>	<p>Services provided by the Central Government, State Government, Union territory or local authority by way of issuance of passport, visa, driving license, birth certificate or death certificate.</p>	
<p>62</p>	<p>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.</p>	

63	Services provided by the Central Government, State Government, Union territory or local authority by way of assignment of right to use natural resources to an individual farmer for cultivation of plants and rearing of all life forms of animals , except the rearing of horses, for food, fibre, fuel, raw material or other similar products.
65	Services provided by the Central Government, State Government, Union territory by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import export cargo on payment of Merchant Overtime charges.
65B	<p>Services supplied by a State Government to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders.</p> <p>However, at the end of the contract period, ERCC shall submit an account to the State Government and certify that the amount of GST deposited by mining lease holders on royalty is more than the GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and where such amount of GST paid by mining lease holders is less than the amount of GST exempted, the exemption shall be restricted to such amount as is equal to the amount of GST paid by the mining lease holders and the ERCC shall pay the difference between GST exempted on the service provided by State Government to the ERCC of assignment of right to collect royalty and GST paid by the mining lease holders on royalty.</p> <p>Explanation- Mining lease holder means a person who has been granted mining lease, quarry lease or license or other mineral concession under the Mines and Minerals (Development and Regulation) Act, 1957, the rules made thereunder or the rules made by a State Government under section 15(1) of the Act.</p>
74A	<div style="display: flex; align-items: center;">  <div style="flex-grow: 1;"> <p>Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 by way of rehabilitation, therapy or counselling and such</p> </div>  </div>

other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA of the Income-tax Act, 1961.



ANALYSIS

Relevant definitions are as under:

✔ **Business entity:** means any person carrying out business.

✔ **Governmental authority:** means 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 90%, or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

✔ **Government Entity:** means an authority or a board or any other body including a society, trust, corporation,

- (i) set up by an Act of Parliament or State Legislature; or
- (ii) established by any Government,

with 90%, or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.





✔ **Aircraft:** means any machine which can derive support in the atmosphere from reactions of the air, other than reactions of the air against the earth's surface and includes balloons, whether fixed or free, airships, kites, gliders and flying machines [Section 2(1) of the Aircraft Act, 1934].

✔ **Airport:** means a landing and taking off area for aircrafts, usually with runways and aircraft maintenance and passenger facilities and includes aerodrome as defined in section 2(2) of the Aircraft Act, 1934 [Section 2(b) of the




Airports Authority of India Act, 1994].

Exemption to services provided by Government

- ❑ **Not all services provided by the Government or a local authority are exempt from tax.** As for instance, following services are not exempt:
 - (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 Government; 
 - (b) services in relation to an aircraft or a vessel, inside or outside the precincts of an airport or a port; 
 - (c) transport of goods or passengers; or 
 - (d) any service, other than services covered under (a) to (c) above, provided to business entities [with aggregate turnover exceeding ₹20 lakh (₹10 lakh in case of Special Category States) in the preceding FY]. 

Let us first understand what does 'Government' and 'local authority' mean?

Meaning of Government

- ❑ As per section 2(53) of the CGST Act, 2017, 'Government' means the Central Government. 
- ❑ Various State/ Union Territories (with Legislatures) GST Acts define 'Government' as Government of respective State Government/ Union Territory. For Union Territories (without State Legislatures), 'Government' means the Administrator or any Authority or officer authorized to act as Administrator by the Central Government.
- ❑ Regulatory bodies/agencies, for instance, Competition Commission of India, Press Council of India, Directorate General of Civil Aviation, Forward Market Commission, Inland Water Supply Authority of India, Central Pollution Control Board, Securities and Exchange Board of India, do not fall under the definition of Government.

Meaning of local authority

- ❑ Local authority is defined in section 2(69) of the CGST Act, 2017 and means

the following:

- ✓ a **“Panchayat”** as defined in clause (d) of article 243 of the Constitution;
- ✓ a **“Municipality”** as defined in clause (e) of article 243P of the Constitution;
- ✓ a **Municipal Committee, a Zilla Parishad, a District Board**, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- ✓ a **Cantonment Board** as defined in section 3 of the Cantonments Act, 2006;
- ✓ a **Regional Council or a District Council** constituted under the Sixth Schedule to the Constitution;
- ✓ a Development Board constituted under **article 371 and article 371J** of the Constitution
- ✓ a **Regional Council** constituted under article 371A of the Constitution.

Thus, 'local authority' includes only those bodies which are listed in the above definition. It would not include other body which is merely described as a 'local body' by virtue of a local law. For example, local developmental authorities - setup by State Governments to undertake developmental works - like Delhi Development Authority, Ahmedabad Development Authority, Bangalore Development Authority, etc. are not qualified as local authorities.

In the subsequent paras, we have examined some of the Government services:

Services provided to a business entity

- ❑ Entry 7 provides that services provided to a business entity located in a Special Category State¹⁴ with a turnover up to ₹ 10 lakh in preceding FY are exempt. In case the services are provided to a business entity located in a State other than Special Category State, such services are exempt if the

¹⁴ As per Article 279A(4)(g) of the Constitution, there are 11 Special Category States, namely, States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.

aggregate turnover of the business entity in preceding FY is upto ₹ 20 lakh.

- ❑ However, this exemption is not applicable to **specified services** and renting of immovable property services. **Renting in relation to immovable property** means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.
- ❑ GST on services supplied by the Central Government, State Government, Union territory or local authority to a business entity [whose turnover in preceding FY exceeds ₹ 20 lakh (₹ 10 lakh in case business entity is located in a Special Category State)] is payable under reverse charge by such business entity. However, reverse charge provisions are not applicable to renting of immovable property services provided to unregistered persons and to 'specified services' provided to such business entity [See the reverse charge provisions as discussed in Chapter – 3: Charge of GST].



A small business entity is carrying on a business relating to consulting engineer services in Delhi. The aggregate turnover of the entity in the preceding financial year does not exceed the limit of ₹ 20 lakh in a financial year. Thus, no tax is payable on the services received by it from Government or a local authority.

Services provided by the Department of Posts

- ❑ Entry 6 stipulates that the services by way of speed post, express parcel post, and life insurance, provided by the Department of Posts to a person other than the Government or Union territory are not exempt. The Department of Posts also provides services like distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills **on commission basis**. These services are in the nature of intermediary and generally called **agency services**. On agency services, the **Department of Posts is liable to pay tax** without the application of reverse charge.
- ❑ However, the following services provided by the **Department of Posts are not liable to tax**:
 - (a) **Basic mail services** known as postal services such as post card, inland letter, book post,



registered post provided exclusively by the Department of Posts to meet the universal postal obligations.

- (b) Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services.

Services provided by one department of the Government to another Department of the Government

- ❑ Services (except specified services) provided by one Department of the Central Government/ State Government to another Department of the Central Government/ State Government are exempt under Entry 8.

Services by governmental authority by way of any activity in relation to any function entrusted to Panchayat/ Municipality



Services provided by governmental authority by way of any activity in relation to any function entrusted to a municipality under Article 243W of the Constitution¹⁵ and services by a governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution¹⁶ are exempt vide Entry 4 and Entry 5 respectively.



Services provided by Police/security agencies of Government to PSUs/corporate entities/sports events held by private entities

- ❑ Services provided by Police or security agencies of Government to PSU/private business entities are not exempt from GST.

¹⁵ The functions entrusted to municipality under the Twelfth Schedule to Article 243W of the constitution include urban planning including town planning, roads and bridges, public health, sanitation conservancy and solid waste management, fire services, slum improvement and upgradation, promotion of cultural, educational and aesthetic aspects, provision of urban amenities and facilities such as parks, gardens, playgrounds, public amenities including street lighting, parking lots, bus stops and public conveniences, etc.

¹⁶ The functions entrusted to Panchayat under the Eleventh Schedule to Article 243G of the constitution include Agriculture, including agricultural extension, Animal husbandry, dairying and poultry, Fisheries, Small scale industries, including food processing industries, Drinking water, Fuel and fodder, Rural electrification, including distribution of electricity, Health and sanitation, including hospitals, primary health centres and dispensaries, Women and child development, Public distribution system, etc.

- Such services are taxable supplies and the recipients are required to pay the tax under reverse charge mechanism on the amount of consideration paid to Government for such supply of services [See the reverse charge provisions as discussed in Chapter – 3: Charge of GST].



The Karnataka Cricket Association, Bangalore requests the Commissioner of Police, Bangalore to provide security in and around the Cricket Stadium for the purpose of conducting the cricket match. The Commissioner of Police arranges the required security for an agreed consideration. In this case, services of providing security by the police personnel are not exempt. As the services are provided by Government, Karnataka Cricket Association is liable to pay the tax on the consideration paid, albeit under reverse charge mechanism.

Services provided by way of tolerating non-performance of a contract

- Non-performance of a contract or breach of contract is one of the conditions normally stipulated in the Government contracts for supply of goods or services. The agreement entered into between the parties stipulates that both the service provider and service recipient abide by the terms and conditions of the contract.
- In case any of the parties breach the contract for any reason including non-performance of the contract, then such person is liable to pay damages in the form of fines or penalty to the other party. **Tolerating non-performance of a contract is an activity or transaction which is treated as a supply of service** [as per Schedule II of CGST Act – as explained in Chapter 2 – Supply under GST] **and the person is deemed to have received the consideration in the form of fines or penalty and is, accordingly, required to pay tax on such amount.**
- However, **in case of supplies to Government, services [provided by Government] by way of tolerating the non-performance of contract by the supplier of service is covered under the exemption under Entry 62 of the Notification.** Thus, any consideration received by the Government from any person or supplier for non-performance of contract is exempted from tax.




Public Works Department of Karnataka entered into an agreement with M/s. ABC, a construction company, for construction of its office complex for an agreed consideration. In the agreement dated

10.07.20XX, it was agreed by both the parties that M/s. ABC shall complete the construction work and handover the project on or before 31.12.20XX.

It was further agreed that any breach of the terms of contract by either party would give right to the other party to claim for damages or penalty. M/s. ABC did not complete the construction and did not handover the project by the specified date i.e., on or before 31.12.20XX. As per the contract, the Department asked for damages/penalty from M/s. ABC and threatened to go to the court if not paid. Resultantly, M/s. ABC paid an amount of ₹ 10,00,000/- to the Department for non-performance of contract. Amount paid by M/s. ABC to Department is exempt from payment of tax.

6. Construction services

Entry No.	Description of services
10	Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana . 
10A	Services supplied by Electricity Distribution Utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturalist for agricultural use.
11	Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex .
41A and 41B	Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer are exempted subject to the condition that the constructed flats are sold before issuance of completion

certificate and tax is paid on them.

Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses¹⁷.



ANALYSIS

Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana (hereinafter referred to as PMAY) is a programme launched by the Ministry of Housing and Urban Poverty Alleviation (MoHUPA) which envisions provision of Housing for All by 2022 when the nation completes 75 years of its independence.

The mission seeks to address the housing requirement of urban poor including slum dwellers through following, *inter alia*, programme verticals:

- ❑ Slum rehabilitation of Slum Dwellers with participation of private developers using land as a resource.
- ❑ Promotion of Affordable Housing for weaker section through credit linked subsidy.
- ❑ Affordable Housing in Partnership with Public & Private sectors.
- ❑ Subsidy for beneficiary-led individual house construction/enhancement.

Last component of the mission is assistance to individual eligible families belonging to Economically Weaker Section (EWS) categories to either construct new houses or enhance existing houses on their own to cover the beneficiaries who are not able to take advantage of other components of the mission. Such families may avail specified amount of central assistance for construction of new houses or for enhancement of existing users under the mission.

Entry 10 of the Notification exempts the services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the PMAY from GST.

¹⁷ These entries have been stated in simplified form.

The term '**original works**' means- all new constructions;

- ❑ all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;
- ❑ erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise.



Entry 11 of the Notification exempts the 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 from GST.

The term '**residential complex**' means any complex comprising of a building or buildings, having more than one single residential unit. Further, '**single residential unit**' means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family.

7. Passenger transportation services

Entry No.	Description of services
15	Transport of passengers, with or without accompanied belongings, by – <ul style="list-style-type: none"> (a) air, embarking from or terminating in an airport located in the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal; (b) non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) stage carriage other than air- conditioned stage carriage.
16	Services provided to the Central Government, by way of transport of passengers with or without accompanied belongings, by air, embarking from or terminating at a RCS (Regional Connectivity

	<p>Scheme) airport, against consideration in the form of viability gap funding.</p> <p>However, nothing contained in this entry shall apply on or after the expiry of a period of 3 years from the date of commencement of operations of the RCS airport as notified by the Ministry of Civil Aviation.</p>
17	<p>Service of transportation of passengers, with or without accompanied belongings, by—</p> <p>(a) railways in a class other than—</p> <p style="padding-left: 20px;">(i) first class; or</p> <p style="padding-left: 20px;">(ii) an air-conditioned coach;</p> <p>(b) metro, monorail or tramway;</p> <p>(c) inland waterways;</p> <p>(d) public transport, other than predominantly for tourism purpose, in a vessel between places located in India; and</p> <p>(e) metered cabs or auto rickshaws (including e-rickshaws).</p>



ANALYSIS

Services of transportation of passengers are usually chargeable to GST. Entry 6 [*Services provided by Government - discussed earlier*] specifically excludes the transport of passengers' services provided by the Government or local authority from its purview, which implies that said services are liable to GST.

However, services of transportation of passengers specified in Entries 15, 16 and 17 mentioned above are exempt from GST (whether provided by Government or otherwise) with or without accompanied belongings.

As regards transportation of passengers by vessels in item (d) of Entry 17 [*See the table given above*], the words '**other than predominantly for tourism purpose**' qualify the preceding words "**public transport**". This implies that to qualify for exemption under this entry, the public transport by a vessel between places located in India should not be predominantly for tourism purposes.




Normal public ships or other vessels that sail between places located in India would be covered in this entry even if some of the passengers on board are using

the service for tourism because predominantly, such service is not for tourism purpose. However, services provided by leisure/charter vessels/a cruise ship, predominant purpose of which is tourism, would not be covered in here even if some of the passengers in such vessels are not tourists.



Services by way of transportation of passengers [not predominantly for tourism purpose] on a vessel, from Kolkata to Port Blair (mainland to island) or Port Blair to Rose Island (inter island) is covered in item (d) of Entry 17 since such transportation is between two places located in India.

Relevant definitions of these entries are as follows:

- 
Contract carriage: means a motor vehicle which carries a passenger or passenger or passengers for hire or reward and is engaged under a contract, whether expressed or implied, for the use of such vehicle as a whole for the carriage of passengers mentioned therein and entered into by a person with a holder of a permit in relation to such vehicle or any person authorised by him in this behalf on a fixed or an agreed rate or sum-
 - (a) on a time basis, whether or not with reference to any route or distance; or
 - (b) from one point to another, and in either case, without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes--
 - (i) a maxicab; and
 - (ii) a motor cab notwithstanding that separate fares are charged for its passengers [Section 2(7) of Motor Vehicles Act, 1988].
- 
Metered cab: means any contract carriage on which an automatic device, of the type and make approved under the relevant rules by the State Transport Authority, is fitted which indicates reading of the fare chargeable at any moment and that is charged accordingly under the conditions of its permit issued under the Motor Vehicles Act, 1988 and the rules made thereunder (but does not include radio taxi).
- 
Radio taxi: means a taxi including a radio cab, by whatever name called, which is in two-way radio communication with a central control office and is enabled for tracking using the Global Positioning System or General Packet Radio Service;



- ❖ **Stage carriage:** means a motor vehicle constructed or adapted to carry more than 6 passengers excluding the driver for hire or reward at separate fares paid by or for individual passengers, either for the whole journey or for stages of the journey [Section 2(40) of the Motor Vehicles Act, 1988].
- ❖ **State Transport Undertaking:** means any undertaking providing road transport service, where such undertaking is carried on by-
 - i. the Central Government or a State Government;
 - ii. any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950.
 - iii. any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments.

Explanation-For the purposes of this clause, road transport service means a service of motor vehicles carrying passengers or goods or both by road for hire or reward [Section 2(42) of the Motor Vehicles Act, 1988].

- ❖ **E-rickshaw:** means a special purpose battery powered vehicle of power not exceeding 4000 watts, having three wheels for carrying goods or passengers, as the case may be, for hire or reward, manufactured, constructed or adapted, equipped and maintained in accordance with such specifications, as may be prescribed in this behalf.



8. Goods transportation services

Entry No.	Description of services
18	Services by way of transportation of goods- <ol style="list-style-type: none"> (a) by road except the services of— <ol style="list-style-type: none"> (i) a goods transportation agency; (ii) a courier agency; (b) by inland waterways.

20

Services by way of **transportation by rail or a vessel** from one place in India to another of the following goods –

- (a) **relief materials** meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- (b) **defence or military equipments;**
- (c) **newspaper or magazines** registered with the Registrar of Newspapers;
- (d) **railway equipments** or materials;
- (e) **agricultural produce;**
- (f) milk, salt and food grain including flours, pulses and rice; and
- (g) organic manure.



Goods Transport Agency (GTA) Service

21

Services provided by a goods transport agency, by way of transport in a goods carriage of –

- (a) agricultural produce;
- (b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹1,500;
- (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹ 750;
- (d) milk, salt and food grain including flour, pulses and rice;
- (e) organic manure;
- (f) newspaper or magazines registered with the Registrar of Newspapers;
- (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or
- (h) defence or military equipments.



21A

Services provided **by a GTA to an unregistered person**, including an

	<p>unregistered casual taxable person, other than the following recipients, namely: -</p> <ul style="list-style-type: none"> (a) any factory registered under/governed by the Factories Act, 1948; or (b) any Society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any Co-operative Society established by or under any law for the time being in force; or (d) any body corporate established, by or under any law for the time being in force; or (e) any partnership firm whether registered or not under any law including association of persons; (f) any casual taxable person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.
<p>21B</p>	<p>Services provided by a GTA, by way of transport of goods in a goods carriage, to, -</p> <ul style="list-style-type: none"> (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies, which has taken registration under the Central Goods and Services Tax Act, 2017 only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.



ANALYSIS

Transportation of goods by road

- ❑ The services of transportation of goods by road are exempt from GST under **Entry 18**. Services of GTA and courier services are an exception to this exemption. However, GTA services provided to an unregistered person

[including unregistered casual taxable person¹⁸] are exempt from GST by virtue of **Entry 21A**.

- ❑ Further, GTA services provided to registered casual taxable person and following persons, even if unregistered under GST law, are liable to tax:
 - (i) a factory registered under Factories Act,
 - (ii) society registered under Societies Act,
 - (iii) Co-operative society,
 - (iv) body corporate and
 - (v) partnership firm including AOP.
- ❑ In other words, the GTA services provided to only an unregistered individual end consumer are exempt from GST.
- ❑ Thus, GTA services provided to:
 - ✓ person registered under GST law & registered casual taxable person, and
 - ✓ a factory registered under Factories Act, society registered under Societies Act, Co-operative society, body corporate and partnership firm including AOP – whether or not registered under GST law,

are liable to tax. Further, it is important to note that in such cases, if GTA opts to pay tax @ 5%, the tax liability falls on said recipients under the reverse charge mechanism. Before proceeding further, we shall now understand the meaning of GTA:



Who is a GTA – Goods Transport Agency?

Let us understand the meaning of Goods Transport agency (GTA). Goods transport agency has been defined in the Notification to mean any person who:

¹⁸ The concept of 'casual taxable person' has been discussed in detail in Chapter 7 - Registration

- ❖ provides service **in relation to transport of goods by road** and
 - ❖ issues **consignment note**, by whatever name called.
- Thus, it can be seen that **issuance of a consignment note is the *sine-qua-non* for a supplier of service to be considered as a GTA**. If such a consignment note is not issued by the transporter, the service provider will not come within the ambit of GTA.
- **If a consignment note is issued, it indicates that the lien on the goods has been transferred** (to the transporter) and the transporter becomes responsible for the goods till its safe delivery to the consignee. It is only the services of such GTA, who assumes agency functions, that has been brought into the GST net.
- **Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA**. As a result, the services provided by such individual transporters who do not issue a consignment note will be covered by the entry at Entry 18 of Notification, which are exempt from GST.



Hari Prasad owns a truck and operates it himself. He carries the goods booked for his truck without issuance of consignment note. Services provided by Hari Prasad by way of transportation of goods by road are exempt under Entry 18 of the Notification.



Nishant owns a truck which he has rented to Sindhu and Bansal Transport Agency - a GTA. Services by way of giving on hire a means of transportation [truck in the given case] of goods to a GTA [Sindhu and Bansal Transport Agency], are exempt from tax vide Entry 22 of the Notification (*discussed later in this chapter*) and not vide Entry 18.

- **Consignment note** means a document, issued by a GTA against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains:
- ✓ the name of the consignor and consignee,
 - ✓ registration number of the goods carriage in which the goods are transported,
 - ✓ details of the goods transported,



- ✓ details of the place of origin and destination,
- ✓ gross weight of the consignment;
- ✓ GSTIN of the person liable for paying tax whether consignor, consignee or GTA
- ✓ other particulars as prescribed for a tax invoice¹⁹.

Significance of the term 'in relation to' in the definition of GTA

The use of the phrase '**in relation to**' has extended the scope of the definition of GTA. It includes not only the actual transportation of goods, but also various intermediary and ancillary services, such as, loading/unloading, packing/ unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road. These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services.



In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service, being a composite supply, and would not be treated as a separate supply. However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies²⁰.

What is courier agency?

Courier agency has been defined in the Notification to mean any person engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles.



¹⁹ Meaning of GTA and consignment note elaborated in foregoing paras is primarily based on CBIC GST flyer - Chapter 38 – Goods Transport Agency in GST.

²⁰ As clarified in answer to question no. 6 of CBIC FAQs on Transport & Logistics.

Express cargo service: Some transporters undertake door-to-door transportation of goods or articles and they have made special arrangements for speedy transportation and timely delivery of such goods or articles.

Such services are known as 'Express Cargo Service' with assurance of timely delivery. The nature of service provided by 'Express Cargo Service' falls within the scope and definition of the courier agency. Hence, the said service relating to transportation of goods by road is exempt.

Transportation of goods by rail/vessel/GTA in goods carriage

Exemptions granted to transport of specified goods through rail or a vessel or a by GTA in goods carriage are presented in the following table:**

Transportation of the following goods by rail / vessel is exempt	Transportation of the following goods by a GTA in a goods carriage is exempt
Railway equipments or materials	(i) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹1,500;
	(ii) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed ₹ 750.
Transportation of the following goods by rail / vessel / GTA in goods carriage is exempt	
<ul style="list-style-type: none"> (a) agricultural produce (b) milk, salt and food grain including flours, pulses and rice (c) organic manure (d) newspaper or magazines registered with the Registrar of Newspapers (e) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap 	

(f) defence or military equipments

****Goods carriage** means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

9. Banking and financial services

Entry No.	Description of services
26	Services by the Reserve Bank of India.
27	Services by way of— (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) <i>inter se</i> sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.
27A	Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).
34	Services by an acquiring bank, to any person in relation to settlement of an amount upto ₹ 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service. <i>Explanation.</i> — 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.
39A	Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees (INR).

Explanation.- For the purposes of this entry, the intermediary of financial services in IFSC is a person,-

- (i) who is permitted or recognised as such by the Government of India or any Regulator appointed for regulation of IFSC; or
- (ii) who is treated as a person resident outside India under the Foreign Exchange Management (International Financial Services Centre) Regulations, 2015; or
- (iii) who is registered under the Insurance Regulatory and Development Authority of India (International Financial Service Centre) Guidelines, 2015 as IFSC Insurance Office; or
- (iv) who is permitted as such by Securities and Exchange Board of India (SEBI) under the Securities and Exchange Board of India (International Financial Services Centres) Guidelines, 2015.



ANALYSIS

Banks and financial institutions provide a bouquet of financial services relating to lending or borrowing of money or investments in money.

Banking



All services **provided by** the Reserve Bank of India are covered under Entry 26 and are thus, exempt from GST. However, services **provided to** the Reserve Bank of India are not covered under said entry and would be taxable unless otherwise covered in any other entry of the Notification.

Specified banking services exempt from GST vide Entry 27 have been discussed below:

(A) Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount: This entry covers any such service wherein moneys due are allowed to be used or retained on payment of interest or on a discount. The words used are '**deposits, loans or advances**' and have to be taken in the generic sense.

They would cover any facility by which an amount of money is lent or allowed to be used or retained on payment of what is commonly called the time value of money which could be in the form of an interest or a discount. **This entry**



would not cover investments by way of equity or any other manner where the investor is entitled to a share of profit.

Interest: means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.



❑ **Illustrations of services exempt under Entry 27** are -

- ✓ Fixed deposits or saving deposits or any other such deposits in a bank or a financial institution for which return is received by way of interest.
- ✓ Providing a loan or overdraft facility or a credit limit facility in consideration for payment of interest.
- ✓ Mortgages or loans with a collateral security to the extent that the consideration for advancing such loans or advances are represented by way of interest.
- ✓ Corporate deposits to the extent that the consideration for advancing such loans or advances are represented by way of interest or discount.



❑ **Service charges/fees, documentation fees, broking charges, administrative charges, entry charges or such like fees or charges collected over and above interest** on loan, advance or a deposit are not exempt and thus, represent taxable consideration.

❑ **Invoice discounting/cheque discounting or any other similar form of discounting** is covered only to the extent consideration is represented by way of discount as such discounting is a manner of extending a credit facility or a loan.

❑ **Any interest/ delayed payment charges charged to clients for delay in payment of brokerage amount/ settlement obligations/ margin trading facility:** is exempt from GST since settlement obligations/ margin trading facilities are transactions which are in the nature of extending loans or advances and are covered by Entry 27²¹.

²¹ As clarified vide FAQs on Banking, Insurance and Stock Brokers Sector.

- ❑ **Charges for late payment of outstanding dues on credit card:**
Interest charged on outstanding credit card balances has been specifically excluded from Entry 27. Hence, the same is liable to GST.

(B) Services provided by banks or authorized dealers of foreign exchange by way of sale of foreign exchange:

The term 'authorised dealer of foreign exchange' means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under section 10(1) of FEMA, 1999 to deal in foreign exchange or foreign securities [Section 2(c) of the Foreign Exchange Management Act, 1999].



It is important to note that such services provided to general public will not be covered in this entry as this entry only covers sale and purchase of foreign exchange between banks and authorized dealers of foreign exchange or between banks and such dealers.

Services provided by banks to RBI would be taxable as these are not covered by any of the exemptions/exclusions under the GST law.




10. Life insurance business services



Entry No.	Description of services
28	Services of life insurance business provided by way of annuity under the National Pension System regulated by the Pension Fund Regulatory and Development Authority of India under the Pension Fund Regulatory and Development Authority Act, 2013.
29	Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government.
29A	Services of life insurance provided or agreed to be provided by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of the Central Government.
36	Services of life insurance business provided under following schemes- (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 ₹ 2,00,000;
- (d) Varishtha Pension BimaYojana;
- (e) Pradhan Mantri Jeevan Jyoti BimaYojana;
- (f) Pradhan Mantri Jan DhanYogana;
- (g) Pradhan Mantri Vaya Vandana Yojana.

****Life micro-insurance product** means any term insurance contract with/without return of premium, any endowment insurance contract or health insurance contract, with/without an accident benefit rider, either on individual/group basis, as per terms stated in Schedule-II appended to the regulations [Regulation 2(e) of the Insurance Regulatory and Development Authority (Micro-insurance) Regulations, 2005].

11. Services provided by specified bodies

Entry No.	Description of services
30	Services by the Employees' State Insurance Corporation to persons governed under the Employees' State Insurance Act, 1948. 
31	Services provided by the Employees Provident Fund Organisation to the persons governed under the Employees Provident Funds and the Miscellaneous Provisions Act, 1952. 
31A	Services by Coal Mines Provident Fund Organisation to persons governed by the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.
31B	Services by National Pension System (NPS) Trust to its members against consideration in the form of administrative fee. 

32	Services provided by the IRDAI (Insurance Regulatory and Development Authority of India) to insurers under IRDAI Act, 1999.	
33	Services provided by the SEBI (Securities and Exchange Board of India) set up under the SEBI Act, 1992 by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.	

12. General insurance business services

Entry No.	Description of services
35	<p>Services of general insurance business provided under following schemes –</p> <ul style="list-style-type: none"> (a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna²²; (c) Scheme for Insurance of Tribals; (d) Janata Personal Accident Policy and Gramin Accident Policy; (e) Group Personal Accident Policy for Self-Employed Women; (f) Agricultural Pumpset and Failed Well Insurance; (g) premia collected on export credit insurance; (h) Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture; (i) Jan Arogya Bima Policy; (j) Pradhan Mantri Fasal Bima Yojana (PMFBY); (k) Pilot Scheme on Seed Crop Insurance; (l) Central Sector Scheme on Cattle Insurance; (m) Universal Health Insurance Scheme;

²² earlier known as Integrated Rural Development Programme

	<p>(n) Rashtriya Swasthya Bima Yojana;</p> <p>(o) Coconut Palm Insurance Scheme;</p> <p>(p) Pradhan Mantri Suraksha BimaYojna;</p> <p>(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.</p>
36A	Services by way of reinsurance of the insurance schemes specified in serial number 35 or 36.

13. Pension schemes

Entry No.	Description of services
37	Services by way of collection of contribution under the Atal Pension Yojana.
38	Services by way of collection of contribution under any pension scheme of the State Governments.

14. Business facilitator/correspondent

Entry 39: Services by the following persons in respective capacities –

- business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;
- any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
- business facilitator or a business correspondent to an insurance company in a rural area.



ANALYSIS

It is still a big challenge for India to make the financial services accessible in rural areas. In many rural areas, either there are no banks or number of banks is insufficient. In order to counter this problem and ensure greater financial inclusion, the Reserve Bank of India (RBI) introduced the Business Correspondents and Business Facilitator Model through guidelines in 2006 allowing banks to employ two categories of intermediaries – known as Business facilitators (BFs) and Business correspondents (BCs).

BCs/BFs help villagers to open bank accounts and provide other banking services to them. They act as an intermediary between the bank and its customers. Banks, in turn, pay commission/ fee to the BCs/BFs.

According to the RBI guidelines, while the BCs are permitted to carry out transactions on behalf of the bank as agents, the BFs can refer clients, pursue the clients' proposal and facilitate the bank to carry out its transactions, but cannot transact on behalf of the bank²³.

Entry 39 exempts the services provided by BF/BC to a banking company **with respect to accounts in its rural area branch** and services provided by any person as an intermediary to a BF/BC with respect to said services are exempt from GST. It is important to note that for the purpose of availing exemption from GST under this Entry, services provided by a BF/BC to a banking company in their respective individual capacities should be with respect to accounts in a branch located in the rural area of the banking company.

Wherever the services provided by BF/BC to banking company and services provided by intermediary of BF/BC to BF/BC do not fall within the scope of this entry, GST is payable on such services.

However, the banking company is the person liable to pay GST under reverse charge in respect of commission/fees charged for the taxable services provided by BF to a banking company. Similarly, GST on taxable services provided by an agent of BC to BC is payable under reverse charge by the BC.

²³ BFs provide a wide range of services including identification of borrowers and fitment of activities, collection and preliminary processing of loan applications, processing and submission of applications to banks, follow-up for recovery, etc. In addition to these, BCs also undertake disbursement of small value credit, recovery of principal / collection of interest, collection of small value deposits, sale of micro insurance/ mutual fund products/ pension products/ other third party products, receipt and delivery of small value remittances/ other payment instruments, etc.

Further, as seen above, as per RBI's guidelines, banks may pay reasonable commission/fee to the BC. The agreement of banks with the BC specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank. On the other hand, banks (and not BCs) are permitted to collect reasonable service charges from the customers for such service in a transparent manner.

The arrangements of banks with the BCs specify the requirement that the transactions are accounted for and reflected in the bank's books by end of the day or the next working day, and all agreements/contracts with the customer shall clearly specify that the bank is responsible to the customer for acts of omission and commission of the BF/BC.


Hence, banking company is the service provider to the ultimate customer in the BF model/BC model. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via BF/BC.

[Circular No. 86/05/2019 GST dated 01.01.2019]

Other relevant definitions under this entry are as follows:

- ❖ **Insurance company:** means a company carrying on life insurance business or general insurance business.
- ❖ **Intermediary** means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account [Section 2(13) of the IGST Act, 2017].
- ❖ **Rural area:** means the area comprised in a village as defined in land revenue records, excluding the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee; or any area that may be notified as an urban area by the Central Government or a State Government.
- ❖ Exemption Notification defines BF/BC as an intermediary appointed under the BF model or BC model by a banking company or an insurance company under the guidelines issued by the RBI.

15. Services provided to Government

Entry No.	Description of services
3	<p>Pure services provided TO Government:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Pure services (excluding works contract service or other composite supplies involving supply of any goods) <input type="checkbox"/> provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity <input type="checkbox"/> by way of any activity: <ul style="list-style-type: none"> ✓ 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.
3A	<p>Composite supply of goods and services TO Government:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply <input type="checkbox"/> provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity <input type="checkbox"/> by way of any activity: <ul style="list-style-type: none"> ✓ 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.
11A	<p>Service provided by Fair Price Shops to Central Government, State Government or Union territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin.</p> 

40	Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory.
72	Services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.
51	Services provided by the GSTN (Goods and Services Tax Network) to the Central Government or State Governments or Union territories for implementation of Goods and Services Tax.



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Entry 3 exempts the **supply of 'pure services'** to Government. Supply of **'pure services'** means supply of services without involving any supply of goods.

Further, **'composite supply of goods and services'*** to Government is exempted vide **Entry 3A**.

**in which value of supply of goods constitutes not more than 25% of value of such composite supply.*

For example, supply of man power for cleanliness of roads, public places, architect services, consulting engineer services, advisory services, and like services provided by business entities not involving any supply of goods would be treated as supply of pure services.

On the other hand, let us take the example of a governmental authority awarding the work of maintenance of street lights in a Municipal area to an agency which involves apart from maintenance, replacement of defunct lights and other spares. In this case, the scope of the service involves maintenance work and supply of goods²⁴.

²⁴ As clarified vide question 25 of CBIC FAQs on Government Services

16. Leasing services

Entry No.	Description of services
41	<p>Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of 30 years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50% or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area.</p> <p>Explanation - For the purpose of this exemption, the Central Government, State Government or Union territory shall have 50 % or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.</p> <p><i>Aforesaid exemption is admissible irrespective of whether such upfront amount is payable/paid in one/more instalments, provided the amount is determined upfront²⁵.</i></p>
43	<p>Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways.</p>

17. Legal services

Entry 45: Services provided by-

- (a) an arbitral tribunal to –
 - (i) any person other than a business entity; or
 - (ii) a business entity with an aggregate turnover up to ₹ 20 lakh (₹10 lakh in the case of Special Category States) in the preceding financial year;





²⁵ As clarified vide Circular No. 101/20/2019-GST, dated 30.04.2019

- (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.
- (b) a partnership firm of advocates or an individual as an advocate other than a senior advocate, by way of legal services to-
 - (i) an advocate or partnership firm of advocates providing legal services;
 - (ii) any person other than a business entity; or
 - (iii) a business entity with an aggregate turnover up to ₹ 20 lakh (₹10 lakh in the case of Special Category States) in the preceding financial year;
 - (iv) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.
- (c) a senior advocate by way of legal services to-
 - (i) any person other than a business entity; or
 - (ii) a business entity with an aggregate turnover up to ₹ 20 lakh (₹10 lakh in the case of Special Category States) in the preceding financial year.
 - (iii) the Central Government, State Government, Union territory, local authority, Governmental Authority or Government Entity.



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Relevant definitions are as under:

- 
Legal service: means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.
- 
Advocate means an advocate entered in any roll under the provisions of the Advocates Act, 1961 [Section 2(1)(a) of the Advocates Act, 1961].
- 
Arbitral tribunal means a sole arbitrator or a panel of arbitrators [Section 2(d) of the Arbitration and Conciliation Act, 1996].
- 
Senior advocate: An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability standing at the Bar or special knowledge or experience in law he is deserving of such distinction. Senior advocates shall, in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.

Under Entry 45, following services are exempt from GST

Legal services provided by

- Arbitral tribunal
- Partnership firm of advocates or an individual as an advocate other than a senior advocate by way of legal services
- Senior advocate by way of legal services

provided to

- any person other than BE
- Business Entity with an aggregate turnover up to ₹ 20 lakh (₹10 lakh in Special Category States) in the preceding FY
- CG/SG/UT/LA/GA/GE

Legal services provided by a partnership firm of advocates/ individual as an advocate other than a senior advocate to another advocate/ partnership firm of advocates providing legal services.

Thus, legal services provided to a business entity with an aggregate turnover exceeding ₹ 20 lakh (₹10 lakh in Special Category States) in the preceding FY are liable to GST. Further, tax is payable by the business entity on such services under reverse charge.

18. Sponsorship of sports events

Entry 53: Services by way of sponsorship of sporting events organised -

- (a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;
- (b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
- (c) by the Central Civil Services Cultural and Sports Board;
- (d) as part of national games, by the Indian Olympic Association; or
- (e) under the Panchayat Yuva Kreedha Aur Khel Abhiyaan Scheme.

19. Skill Development services

Entry No.	Description of services
69	<p>Any services provided by, _</p> <ul style="list-style-type: none"> (a) the National Skill Development Corporation set up by the Government of India; (b) a Sector Skill Council approved by the National Skill Development Corporation; (c) an assessment agency approved by the Sector Skill Council or the National Skill Development Corporation; (d) a training partner approved by the National Skill Development Corporation or the Sector Skill Council, <p>in relation to-</p> <ul style="list-style-type: none"> (i) the National Skill Development Programme implemented by the National Skill Development Corporation; or (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or (iii) any other Scheme implemented by the National Skill Development Corporation.
70	<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>
71	<p>Services provided by training providers (Project implementation agencies) under Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDUGKY) implemented by the Ministry of Rural Development, Government of India by way of offering skill or vocational training courses certified by the National Council for Vocational Training.</p>

20. Performance by an artist

Entry 78: Services by an artist by way of a performance in folk or classical art forms of-

- (a) music, or

(b) dance, or

(c) theatre,

if the consideration charged for such performance is not more than ₹ 1,50,000 are exempt from GST.

The activities by a performing artist in folk or classical art forms of music, dance, or theatre are exempt if **consideration** does not exceed ₹ 1,50,000. However, if consideration from such activities exceeds ₹ 1,50,000, entire consideration is subject to GST.

Further, all other activities by an artist in **other art forms** e.g. western music or dance, modern theatres, performance of actors in films or television serials would be taxable. Similarly activities of artists in **still art forms** e.g. painting, sculpture making etc. are **taxable**.

However, the exemption shall not apply to service provided by such artist as a brand ambassador. '**Brand ambassador**' means a person engaged for promotion or marketing of a brand of goods, service, property or actionable claim, event or endorsement of name, including a trade name, logo or house mark of any person.

21. Right to admission to various events

Entry No.	Description of services
79	Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo **. ** Zoo means an establishment, whether stationary or mobile, where captive animals are kept for exhibition to the public but does not include a circus and an establishment of a licensed dealer in captive animals [Section 2(39) of the Wild Life (Protection) Act, 1972].
79A	Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites & Remains Act 1958 or any of the State Acts, for the time being in force.
81	Services by way of right to admission to- (a) circus, dance, or theatrical performance including drama or ballet; (b) award function, concert, pageant, musical performance or any

sporting event other than a recognised sporting event;

- (c) recognised sporting event;
- (d) planetarium,

where the consideration for right to admission to the events or places as referred to in items (a), (b), (c) or (d) above is not more than ₹ 500 per person.

Recognised sporting event means any sporting event,-

- (i) organised by a **recognised sports body**** where the participating team or individual represent any district, state, zone or country;
- (ii) organized
 - (A) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State or zone;
 - (B) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;
 - (C) by Central Civil Services Cultural and Sports Board;
 - (D) as part of national games, by Indian Olympic Association; or
 - (E) under Panchayat Yuva Kreedha Aur Khel Abhiyaan (PYKKA) Scheme.

****Recognised sports body** means –

- (i) the Indian Olympic Association;
- (ii) Sports Authority of India;
- (iii) a national sports federation recognised by the Ministry of Sports and Youth Affairs of the Central Government, and its affiliate federations;
- (iv) national sports promotion organisations recognised by the Ministry of Sports and Youth Affairs of the Central Government;
- (v) the International Olympic Association or a federation recognised by the International Olympic Association; or
- (vi) a federation or a body which regulates a sport at international level and its affiliated federations or bodies regulating a sport in India.

22. Services by an unincorporated body or a non- profit entity

Entry No.	Description of services
77	Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution – <ul style="list-style-type: none"> (a) as a trade union (b) for the provision of carrying out any activity which is exempt from the levy of Goods and Services Tax; or (c) up to an amount of ₹ 7,500 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.
77A	Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,- <ul style="list-style-type: none"> (i) activities relating to the welfare of industrial or agricultural labour or farmers; or (ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee upto an amount of ₹ 1000/- per member per year.



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Co-operative Housing Society

Co-operative Housing Societies are entities registered under the co-operative laws of the respective States. These are a collective body of persons, who stay in a residential society and as a collective body, they supply certain services to its members, like collecting statutory dues from its members and remitting to statutory authorities, maintenance of the building, security etc.

A Co-operative Housing Society is akin to a club, which is composed of its members. Service provided by a Housing Society to its members is treated as service provided by one person to another. The activities of the housing society

would attract the levy of GST and the housing society would be required to register and comply with the GST Law.

GST on services provided by a Co-operative Housing Society

If the turnover of housing society is above the applicable threshold limit for registration, it needs to take registration under GST in terms of section 22 of the CGST Act, 2017 [Refer Chapter-7: Registration for detailed discussion on registration]. However, taking registration does not mean that the housing society has to compulsorily charge GST in the monthly maintenance bills raised on its members. If the services provided by it are exempt under exemption notification, then it is not required to charge GST on the said services.

For instance, in view of entry 77(c) above, a society may be registered under GST, but if the monthly contribution received from the members is less than ₹ 7,500/- (and the amount is for the purpose of sourcing of goods and services from a third person for the common use of its members), no GST is to be charged by the housing society on the monthly bill raised by the society. However, if the monthly contribution exceeds ₹ 7,500/-, entire contribution is taxable.

For example, if the maintenance charges are ₹ 9000 per month per member, GST @18% shall be payable on the entire amount of ₹ 9000 and not on [₹ 9000 - ₹ 7500] = ₹ 1500²⁶.

Further, if the turnover of the society is less than the applicable threshold limit for registration or even if the turnover is beyond the said threshold limit, but the monthly contribution of all the individual members towards maintenance is less than ₹ 7,500/- (such services being exempt) and the society is providing no other taxable service to its members or outsiders, then the society (essentially exclusively providing wholly exempt services) need not take registration under GST.



Monthly limit of ₹ 7,500 referred in Entry 77

- ❑ Statutory dues such as property tax, electricity charges etc. forming part of the monthly maintenance bill raised by the society on its members would be excluded while computing the aforesaid monthly limit of ₹ 7,500²⁷.

²⁶ This view has been clarified by Circular No. 109/28/2019 GST dated 22.07.2019.

²⁷ Discussion under this heading is primarily based on the CBIC GST Flyer 'GST on Co-Operative Housing Societies' and CBIC FAQs on levy of GST on Supply of Services to Co-operative Society, unless otherwise mentioned. The flyer and FAQs were based on the monthly limit of ₹ 5,000

23. Other exempt services

Entry No.	Description of services
2	<p>Services by way of transfer of a going concern, as a whole or an independent part thereof.</p> <p>Transfer of a going concern means transfer of a running business which is capable of being carried on by the purchaser as an independent business, but shall not cover mere or predominant transfer of an activity comprising a service. Transfer of business for a lump sum consideration commonly referred to as slump sale is covered under this entry.</p> <p>Such sale of business as a whole will comprise comprehensive sale of immovable property, goods and transfer of unexecuted orders, employees, goodwill etc. Since the transfer in title is not merely a transfer in title of either the immovable property or goods or even both it may amount to service and has thus been exempted.</p> <p> Royal Hotel Group is in the business of running a chain of restaurants. It intends to sell its business as a going concern. It would not be required to pay GST on such sale of its business.</p>
9B	Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries).
12	Services by way of renting of residential dwelling for use as residence.
14	<p>Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having Value of Supply of a unit of accommodation below ₹ 1,000 per day or equivalent.</p> 
22	<p>Services by way of giving on hire –</p> <p>(a) to a state transport undertaking (STU), a motor vehicle meant to carry more than 12 passengers**; or</p>

which was subsequently increased to ₹ 7,500. Therefore, increased monthly limit has been considered in the above discussion.

	<p>(b) to a goods transport agency, a means of transportation of goods.</p> <p>(c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.</p> <p>**Exemption under item (a) of the above entry is applicable to services provided to State Transport Undertaking and not to other departments of Government or local authority.</p> <p>Generally, such State Transport Undertakings/ Corporations are established with a view to providing public transport facility to the commuters. If transport undertakings hire the buses on lease basis from private persons on payment of consideration, the services by way of supply of motor vehicles to such STU are exempt from payment of tax. However, supplies of motor vehicles to Government Departments other than the STUs are taxable²⁸.</p>
23	Service by way of access to a road or a bridge on payment of toll charges .
23A	Service by way of access to a road or a bridge on payment of annuity.
25	<p>Transmission/distribution of electricity by an electricity transmission/ distribution utility.</p> <p>However, in this regard CBIC has clarified that the other services provided by DISCOMS (distribution companies) to consumer against charges are liable to GST such as,-</p> <ol style="list-style-type: none"> Application fee for releasing connection of electricity; Rental Charges against metering equipment; Testing fee for meters/transformers, capacitors etc.; Labour charges from customers for shifting of meters or shifting of service lines; charges for duplicate bill [<i>Circular No. 34/8/2018 GST dated 01.03.2018</i>].
44	Services provided by an incubatee up to a total turnover of ₹ 50 lakh in



²⁸ As clarified vide question 26 of CBIC FAQs on Government Services

	<p>a financial year subject to the following conditions, namely:-</p> <p>(a) the total turnover had not exceeded ₹ 50 lakh during the preceding financial year; and</p> <p>(b) a period of 3 years has not elapsed from the date of entering into an agreement as an incubatee.</p> <p>Incubatee: means an entrepreneur located within the premises of a Technology Business Incubator (TBI)/ Science and Technology Entrepreneurship Park (STEP) recognised by the National Science and Technology Entrepreneurship Development Board of the Department of Science and Technology, Government of India (NSTEDB) and who has entered into an agreement with the TBI/STEP to enable himself to develop and produce hi-tech and innovative products.</p>
47A	Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators.
48	Taxable services, provided or to be provided, by a TBI/STEP recognised by NSTEDB or bio- incubators recognised by the Biotechnology Industry Research Assistance Council, under the Department of Biotechnology, Government of India (BIRAC).
49	Services by way of collecting or providing news by an independent journalist, Press Trust of India or United News of India.
50	Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.
52	Services by an organiser to any person in respect of a business exhibition held outside India.
56	Services by way of slaughtering of animals .
57	Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.
58	Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination .

59	Services by a foreign diplomatic mission located in India.
65A	Services by way of providing information under the RTI Act (Right to Information Act, 2005).
68	<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>However, services by individuals such as selectors, commentators, curators, technical experts are taxable. The service of a player to a franchisee which is not a recognized sports body is also taxable. <i>The term 'recognised sports body' has been defined earlier in this chapter.</i></p>
75	Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.
76	Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.

Note: For the purpose of this exemption notification, a "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a partnership firm or a firm.

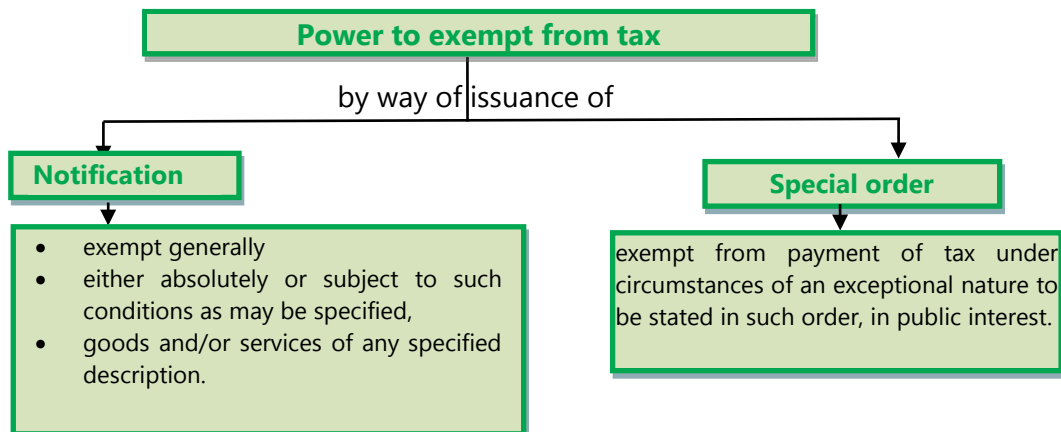
Students may note that some of the entries granting exemption from GST are similar to the negative list entry/entry granting exemption under the erstwhile service tax law.

Therefore, clarification pertaining to said negative list entry/exemption provided in the 'Service Tax Education Guide' – an educational aid released for facilitating the stakeholders to obtain preliminary understanding of the provisions, wherever it seems relevant under the GST law, have been incorporated at relevant places.



5. LET US RECAPITULATE

1. Power to exempt from tax [Section 11 of the CGST Act/ section 6 of IGST Act]



2. List of services exempt from GST

Services	Exempt Services
Services related to charitable and religious activities	Charitable activities BY an entity registered under section 12AA of Income-tax Act.
	Services by a person by way of- <ol style="list-style-type: none"> (a) conduct of any religious ceremony; (b) renting of precincts of a religious place meant for general public, owned/managed by institutions/entities/trusts, registered under section 12AA/10(23C)(v) of the Income tax Act or body/authority covered under section 10(23BBA) of the said Act, except where- <ol style="list-style-type: none"> (i) charges for renting of rooms \geq ₹ 1,000 per day; (ii) charges for renting of premises, community halls, kalyanmandapam, open area, etc. are \geq ₹ 10,000 per day; (iii) charges for renting of shops/spaces for business/commerce are \geq ₹ 10,000 per month.
	Services by a specified organisation [KMVN/Haj Committee] in respect of a religious pilgrimage [Haj and Kailash Mansarovar Yatra].

	Training/coaching in recreational activities relating to (a) arts/culture, or (b) sports by charitable entities registered under section 12AA of the Income-tax Act.
Agriculture related services	Loading, unloading, packing, storage or warehousing of rice.
	Warehousing of minor forest produce.
	Fumigation in a warehouse of agricultural produce.
	Artificial insemination of livestock (other than horses).
	Carrying out an intermediate production process as job work in relation to cultivation of plants & rearing of animals [except horses], for food, fibre, fuel, raw material or other similar products or agricultural produce.
	Services relating to cultivation of plants & rearing of animals [except horses], for food, fibre, fuel, raw material or other similar products or agricultural produce by way of – <ul style="list-style-type: none"> (a) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or testing; (b) supply of farm labour; (c) processes carried out at an agricultural farm including tending, pruning, etc. and such like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market; (d) renting or leasing of agro machinery or vacant land with/without a structure incidental to its use; (e) loading, unloading, packing, storage or warehousing of agricultural produce; (f) agricultural extension services; (g) services by any Agricultural Produce Marketing Committee or Board or services provided by a commission agent for sale/purchase of agricultural produce. (h) services by way of fumigation in a warehouse of agricultural produce.

Education services	Services provided BY an educational institution (EI) :	
	<ul style="list-style-type: none"> to its students, faculty and staff; by way of conduct of entrance examination against consideration in form of entrance fee 	
	Services provided TO an EI , by way of,-	These exemptions are only applicable to an institution providing services by way of pre-school education & education up to higher secondary school or equivalent.
	(i) transportation of students, faculty and staff;	
	(ii) catering, including any mid-day meals scheme sponsored by the Central Government (CG), State Government (SG) or Union Territory (UT);	
(iii) security or cleaning or house-keeping services performed in such EI ;		
(iv) services relating to admission to, or conduct of examination by, such EI ;		
(v) supply of online educational journals or periodicals. This exemption is only applicable to an institution providing services by way of education as part of a curriculum for obtaining qualification recognised by any law for time being in force.		
Health care services	<ul style="list-style-type: none"> Health care services BY a clinical establishment/ authorized medical practitioner/ para-medics Transportation of a patient in an ambulance BY any person other than specified above. 	
	Stem cells preservation BY Cord Blood Banks or any other service in relation to such preservation	
	Service BY a veterinary clinic in relation to Health care of animals/birds	
Services provided by	Services by Governmental Authority (GA) by way of any activity in relation to any function entrusted to a Municipality /Panchayat under article 243W/ 243G of Constitution	

Governme nt	<p>Services by the CG/SG/UT/Local Authority (LA) excluding following services—</p> <p>(a) services by Department of Posts by way of speed post, express parcel post, life insurance, & agency services provided to a person other than CG, SG, UT;</p> <p>(b) services in relation to an aircraft/a vessel, inside/outside precincts of a port/airport;</p> <p>(c) transport of goods/passengers; or</p> <p>(d) any service, other than 'specified services' above, provided to business entities.</p>
	<p>Services provided by CG/SG/UT/LA to a business entity (BE) with an aggregate turnover of up to ₹ 20 lakh [₹ 10 lakh in case of a Special Category States (SCS)] in preceding FY. This exemption is not applicable to specified services and renting of immovable property service.</p>
	<p>Services provided by CG/SG/UT/LA to another CG/SG/UT/LA. This exemption is not applicable to specified services.</p>
	<p>Services provided by CG/SG/UT/LA** where consideration for such services does not exceed ₹ 5,000. This exemption is not applicable to specified services.</p> <p>**In case of continuous supply of service*, the exemption shall apply only where the consideration charged for such service does not exceed ₹ 5,000 in a FY.</p>
	<p>Supply of service by a Government Entity (GE) to CG/SG/UT/LA/any person specified by CG/SG/UT/LA against consideration received from CG/SG/UT/LA, in the form of grants.</p>
	<p>Services by an old age home run by CGS/SG/an entity registered under section 12AA of Income-tax Act to its residents (aged ≥60 years) against consideration upto ₹ 25,000 per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.</p>

(a) to (c) hereinafter referred as 'specified services'

Services supplied by CG/SG/UT to their undertakings or PSUs by way of guaranteeing the loans taken by such undertakings or PSUs from the **banking companies and** financial institutions.

Services provided by CG/SG/UT/LA by way of-

- (a) registration required under any law for the time being in force;
- (b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.

Services provided by CG/SG/UT/LA **by way of issuance of passport, visa, driving license, birth certificate or death certificate.**

Services provided by CG/SG/UT/LA **by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable** to CG/SG/UT/LA under such contract.

Services provided by CG/SG/UT/LA by way of **assignment of right to use natural resources to an individual farmer for cultivation of plants & rearing of all life forms of animals** [except horses], for food, fibre, fuel, raw material or other similar products.

Services provided by CG/SG/UT 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.

Services supplied by a SG to Excess Royalty Collection Contractor (ERCC) by way of assigning the right to collect royalty on behalf of SG on the mineral dispatched by the mining lease holders subject to specified conditions.

Services provided by rehabilitation professionals recognised under the RCI Act, 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions,

	rehabilitation centers established by CG/SG/UT/an entity registered under section 12AA of the Income-tax Act, 1961.
Constructi on services	Pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana.
	Services supplied by Electricity Distribution Utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer/agriculturalist for agricultural use.
	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.
	Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer are exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.
Services of transport of passengers (with/without accompanied belongings)	Such services provided by – (a) air , embarking from or terminating in an airport located in North Eastern States of India or at Bagdogra in West Bengal; (b) non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; or (c) stage carriage other than air- conditioned stage carriage.
	Such services provided to CG by air, embarking from or terminating at a Regional Connectivity Scheme (RCS) airport , against

<p>)</p>	<p>consideration in the form of viability gap funding. This exemption shall apply only till expiry of a period of 3 years from date of commencement of operations of the RCS airport as notified by the Ministry of Civil Aviation.</p>	
<p>Goods transportation services</p>	<p>Services by way of transportation of goods-</p> <p>(a) by road except the services of—</p> <p>(i) a goods transportation agency (GTA);</p> <p>(ii) a courier agency;</p> <p>(b) by inland waterways.</p>	
<p>Railway equipments/ materials exempt when transported by rail/vessel</p>	<p>Transportation of goods exempt when transported by goods carriage</p>	
<p>Exempt transportation of goods by rail/ vessel/ by GTA in a goods carriage</p>	<p>where consideration charged for the transportation of goods on a consignment transported in a single carriage \leq ₹1,500</p>	<p>where consideration charged for transportation of all such goods for a single consignee \leq ₹ 750</p>
<p>Exempt transportation of goods by rail/ vessel/ by GTA in a goods carriage</p>	<ul style="list-style-type: none"> • Agricultural produce • milk, salt and food grain including flours, pulses and rice • organic manure • newspaper <p>or</p>	<ul style="list-style-type: none"> • Defence/ military equipments • relief materials meant for victims of natural or

		magazines registered with the Registrar of Newspapers	man-made disasters, calamities, accidents or mishap
	<p>Services provided by a GTA to an unregistered person, including an unregistered casual taxable person, except following recipients, namely: -</p> <p>(a) a factory registered under Factories Act, (b) society registered under Societies Act, (c) Co-operative society, (d) body corporate and (e) partnership firm including AOP; (f) registered casual taxable person.</p>		
	<p>Services provided by a GTA, by way of transport of goods in a goods carriage, to, -</p> <p>(a) a Department or Establishment of the CG/SG/UT; or (b) local authority; or (c) Governmental agencies, which has taken registration only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services.</p>		
Banking and financial	Services by RBI		
	<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); (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>Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).</p>		
	Services by an acquiring bank, to any person in relation to		

	<p>settlement of an amount upto ₹ 2,000 in a single transaction transacted through credit card, debit card, charge card or other payment card service.</p> <p>Services by an intermediary of financial services located in a multi services SEZ with International Financial Services Centre (IFSC) status to a customer located outside India for international financial services in currencies other than Indian rupees.</p>
Services of Life insurance business	Such services by way of annuity under the National Pension System by Pension Fund Regulatory and Development Authority of India (PFRDA) under PFRDA Act, 2013.
	Such services 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 CG.
	Such services by the Naval Group Insurance Fund to the personnel of Coast Guard under the Group Insurance Schemes of CG.
	Such services under following schemes- (A) <ul style="list-style-type: none"> (a) Janashree Bima Yojana; (b) Aam Aadmi Bima Yojana; (c) Life micro-insurance product** as approved by the Insurance Regulatory and Development Authority (IRDA), having maximum amount of cover of ₹ 2,00,000; (d) Varishtha Pension BimaYojana; (e) Pradhan Mantri Jeevan Jyoti BimaYojana; (f) Pradhan Mantri Jan DhanYogana; (g) Pradhan Mantri Vaya Vandan Yojana.
General insurance business	Such services under following schemes – (B) <ul style="list-style-type: none"> (a) Hut Insurance Scheme; (b) Cattle Insurance under Swarnajaynti Gram Swarozgar Yojna²⁹; (c) Scheme for Insurance of Tribals;

²⁹ earlier known as Integrated Rural Development Programme

- (d) Janata Personal Accident Policy and Gramin Accident Policy;
- (e) Group Personal Accident Policy for Self-Employed Women;
- (f) Agricultural Pumpset and Failed Well Insurance;
- (g) premia collected on export credit insurance;
- (h) Restructured Weather Based Crop Insurance Scheme (RWCIS), approved by the Government of India and implemented by the Ministry of Agriculture;
- (i) Jan Arogya Bima Policy;
- (j) Pradhan Mantri Fasal Bima Yojana (PMFBY);
- (k) Pilot Scheme on Seed Crop Insurance;
- (l) Central Sector Scheme on Cattle Insurance;
- (m) Universal Health Insurance Scheme;
- (n) Rashtriya Swasthya Bima Yojana;
- (o) Coconut Palm Insurance Scheme;
- (p) Pradhan Mantri Suraksha BimaYojna;
- (q) Niramaya Health Insurance Scheme implemented by the Trust constituted under the provisions of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999.

Services by way of reinsurance of the insurance schemes specified in (A) and (B) above.

Services provided by specified bodies

Services by the **Employees' State Insurance (ESI) Corporation** to persons governed under the ESI Act, 1948.

Services provided by the **EPFO** to the persons governed under the Employees Provident Funds (EPF) & Miscellaneous Provisions Act, 1952.

Services by **CMPFO** to persons governed by Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948.

Services by **NPS Trust** to its members against consideration in the form of administrative fee.

	<p>Services provided by the IRDAI to insurers under IRDAI Act, 1999.</p> <p>Services provided by the SEBI by way of protecting the interests of investors in securities and to promote the development of, and to regulate, the securities market.</p>
Pension schemes	<p>Services by way of collection of contribution under:</p> <ul style="list-style-type: none"> • Atal Pension Yojana • any pension scheme of SG
Business facilitator/correspondent	<p>Services by the following persons in respective capacities –</p> <p>(a) business facilitator/business correspondent to a Banking Co. with respect to accounts in its rural area branch;</p> <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/business correspondent to an insurance company in rural area.</p>
Services provided to Government	<p>Following services provided to the CG/SG/UT/LA/GA/GE by way of any activity in relation to any function entrusted to a Panchayat/Municipality under articles 243G/243W of the Constitution:</p> <ul style="list-style-type: none"> • Pure services • Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply. <p>Service provided by Fair Price Shops to CG/SG/UT by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System (PDS) against commission/margin.</p> <p>Services provided to CG/SG/UT under any insurance scheme for which total premium is paid by CG/SG/UT.</p> <p>Services provided to CG/SG/UT administration under any training programme for which total expenditure is borne by CG/SG/UT administration.</p>

	Services provided by GSTN to CG/SG/UT for implementation of GST.	
Leasing services	Upfront amount payable in respect of service by way of granting of long term lease of 30 years, or more of industrial plots/plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 50% or more ownership of CGS/SG/UT to the industrial units/developers in any industrial/financial business area.	
	Services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways.	
Legal services	Service provided by	To
	<ul style="list-style-type: none"> • Arbitral tribunal • Partnership firm of advocates or an individual as an advocate other than a senior advocate by way of legal services • Senior advocate by way of legal services 	any person other than BE
		BE with an aggregate turnover up to ₹ 20 lakh (₹10 lakh in SCS) in the preceding FY
		CG/SG/UT/LA/GA/GE
Legal services provided by a partnership firm of advocates/individual as an advocate other than a senior advocate to another advocate/ partnership firm of advocates providing legal services		
Sponsorship of sports events	Sponsorship of sporting events organised -	
	(a) by a national sports federation, or its affiliated federations, where the participating teams or individuals represent any district, State, zone or Country;	
	(b) by Association of Indian Universities, Inter-University Sports Board, School Games Federation of India, All India Sports Council for the Deaf, Paralympic Committee of India or Special Olympics Bharat;	
	(c) by the Central Civil Services Cultural and Sports Board;	

	<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>
Skill Development services	<p>Services provided by, _</p> <p>(a) National Skill Development Corporation (NSDC) set up by GoI;</p> <p>(b) Sector Skill Council (SSC) approved by NSDC;</p> <p>(c) assessment agency approved by SSC/NSDC</p> <p>(d) a training partner approved by SSC/NSDC</p> <p>in relation to-</p> <p>(i) the National Skill Development Programme implemented by NSDC; or</p> <p>(ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or</p> <p>(iii) any other Scheme implemented by NSDC.</p>
	<p>Services of assessing bodies empanelled centrally by DGT, Ministry of Skill Development and Entrepreneurship by way of assessments under the SDI Scheme.</p>
	<p>Services provided by training providers (Project implementation agencies) under DDUGKY implemented by Ministry of Rural Development, GoI by way of offering skill or vocational training courses certified by the National Council for Vocational Training (NCVT).</p>
Performance by an artist	<p>Services by an artist by way of a performance in folk or classical art forms of music/ dance/ theatre, if the consideration charged for such performance is not more than ₹ 1,50,000. This exemption shall not apply to service provided by such artists as a brand ambassador.</p>
Right to admission to various events	<p>Services by way of admission to:</p> <p>(i) museum, national park, wildlife sanctuary, tiger reserve or zoo</p> <p>(ii) protected monument declared under the Ancient Monuments and Archaeological Sites & Remains Act</p>

	<p>1958/any of the State Acts, for the time being in force.</p> <p>(iii) following events/places where the consideration for right to admission is not more than ₹ 500 per person:</p> <p>(a) circus, dance, or theatrical performance including drama or ballet;</p> <p>(b) award function, concert, pageant, musical performance or any sporting event other than a recognised sporting event;</p> <p>(c) recognised sporting event;</p> <p>(d) planetarium.</p>
Services by an unincorporated body or a non-profit entity registered under any law for the time being in force	Services by unincorporated body/ non- profit entity to its own members as reimbursement/share of contribution:
	(i) As a trade union
	(ii) for providing exempt activity
	(iii) up to an amount of ₹ 7,500 per month per member for sourcing of goods/services from a third person for the common use of its members in a housing society/residential complex
	<p>Services provided by such entity/body engaged in-</p> <p>(i) activities relating to the welfare of industrial/agricultural labour or farmers; or</p> <p>(ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment,</p> <p>to its own members against membership fee upto ₹ 1000/- per member per year.</p>
Other exempt services	Transfer of a going concern , as a whole or an independent part thereof.
	Services associated with transit cargo to Nepal and Bhutan (landlocked countries).
	Services by way of renting of residential dwelling for use as residence.
	Services by a hotel, inn, guest house, club or campsite, by whatever

name called, for residential or lodging purposes, having value of supply of a unit of accommodation below ₹ 1,000 per day or equivalent.

Services by way of giving on hire –

- (a) to a state transport undertaking (STU), a motor vehicle meant to carry more than 12 passengers; or
- (b) to a GTA, a means of transportation of goods.
- (c) motor vehicle for transport of students, faculty and staff, to a person providing services of transportation of students, faculty and staff to an educational institution providing services by way of pre-school education and education upto higher secondary school or equivalent.

Service by way of access to a road or a bridge on payment of **toll charges/annuity**.

Transmission/distribution of electricity by an electricity transmission/ distribution utility.

Services provided by an incubatee up to a total turnover of ₹ 50 lakh in a FY provided:-

- (a) total turnover had not exceeded ₹ 50 lakh during the preceding FY; and
- (b) a period of 3 years has not elapsed from the date of entering into an agreement as an incubate.

Services by way of licensing, registration and analysis or testing of food samples supplied by the FSSAI to Food Business Operators.

Taxable services, provided or to be provided, by a Technology Business Incubator/ Science and Technology Entrepreneurship Par (TBI/STEP) recognised by NSTEDB or bio- incubators recognised by BIRAC.

Services by way of **collecting or providing news** by an independent journalist, Press Trust of India or United News of India.

Services of **public libraries** by way of lending of books, publications or any other knowledge-enhancing content or material.

Services by an organiser to any person in respect of a **business exhibition** held outside India.

Services by way of **slaughtering of animals**.

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.

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**.

Services by a **foreign diplomatic mission** located in India.

Services by way of providing information under the RTI Act.

Services provided to a recognised sports body (RSB) by-

- (a) an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a RSB;
- (b) another RSB.

Services provided by **operators of the common bio-medical waste treatment facility** to a clinical establishment by way of treatment/disposal of bio-medical waste/ incidental processes.

Services by way of **public conveniences** such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.

7. TEST YOUR KNOWLEDGE

1. Transportation of passengers by _____ are exempt from GST.
(a) Railway in first class
(b) Railway in an air-conditioned coach
(c) Metro
(d) All of the above
2. Transportation of _____ by a GTA in a goods carriage is exempt from GST.
(a) Agricultural produce
(b) Organic manure
(c) Milk
(d) All of the above
3. What of the following services provided to an educational institution – Debo Public School- are exempt from GST?
(a) Transportation of staff of the school
(b) Cleaning of the school
(c) Services relating to conduct of higher secondary exams
(d) All of the above
4. Transportation of passengers by _____ are exempt from GST.
(a) air conditioned stage carriage
(b) radio taxi
(c) air, terminating in Nagaland airport
(d) All of the above
5. Which of the following services provided by Department of Posts are exempt from GST?
(a) Speed posts
(b) Life Insurance
(c) Express parcel posts

- (d) None of the above
6. An individual acts as a referee in a football match organized by Sports Authority of India. He has also acted as a referee in another charity football match organized by a local sports club, in lieu of a lump sum payment. Discuss whether he is required to pay any GST?
 7. RXL Pvt. Ltd. manufactures beauty soap with the brand name 'Forever Young'. RXL Pvt. Ltd. has organized a concert to promote its brand. Ms. Ahana Kapoor, its brand ambassador, who is a leading film actress, has given a classical dance performance in the said concert. The proceeds of the concert worth ₹ 1,20,000 will be donated to a charitable organization.
...
Whether Ms. Ahana Kapoor will be required to pay any GST?
 8. Determine taxable value of supply under GST law with respect to each of the following independent services provided by the registered persons:

Particulars	Gross amount charged (₹)
Fees charged for yoga camp conducted by a charitable trust registered under section 12AA of the Income-tax Act, 1961	50,000
Amount charged by business correspondent from banking company for the services provided to the rural branch of a bank with respect to Savings Bank Accounts	1,00,000
Amount charged by cord blood bank for preservation of stem cells	5,00,000
Amount charged for service provided by commentator to a recognized sports body	5,20,000

9. Examine whether GST is exempted on the following independent supplies of services:

- (i) Service provided by a private transport operator to Scholar Boys Higher Secondary School in relation to transportation of students to and from the school.
- (ii) Services provided by way of vehicle parking to general public in a shopping mall.
10. Discuss whether GST is payable in respect of transportation services provided by Raghav Goods Transport Agency in each of the following independent cases:

Customer	Nature of services provided	Amount charged
A	Transportation of milk	₹ 20,000
B	Transportation of books on a consignment transported in a single goods carriage	₹ 3,000
C	Transportation of chairs for a single consignee in the goods carriage	₹ 600



7. ANSWERS/HINTS

1. (c) 2. (d) 3. (d) 4. (c) 5. (d)
6. Services provided to a recognized sports body by an individual *inter alia* as a referee in a sporting event organized by a recognized sports body is exempt from GST.
- Since in the first case, the football match is organized by Sports Authority of India, which is a recognized sports body, services provided by the individual as a referee in such football match will be exempt.
- However, when he acts as a referee in a charity football match organized by a local sports club, he would not be entitled to afore-mentioned exemption as a local sports club is not a recognized sports body and thus, GST will be payable in this case.
7. Services by an artist by way of a performance in folk or classical art forms of (i) music, or (ii) dance, or (iii) theatre are exempt from GST, if the consideration charged for such performance is not more than ₹ 1,50,000.

However, such exemption is not available in respect of service provided by such artist as a brand ambassador.

Since Ms. Ahana Kapoor is the brand ambassador of 'Forever Young' soap manufactured by RXL Pvt. Ltd., the services rendered by her by way of a classical dance performance in the concert organized by RXL Pvt. Ltd. to promote its brand will not be eligible for the above-mentioned exemption and thus, be liable to GST. The fact that the proceeds of the concert will be donated to a charitable organization will not have any bearing on the eligibility or otherwise to the above-mentioned exemption.

8. Computation of value of taxable supply

Particulars	(₹)
<i>Fees charged for yoga camp conducted by a charitable trust registered under section 12AA of the Income-tax Act, 1961 [Note-1]</i>	<i>Nil</i>
<i>Amount charged by business correspondent for the services provided to the rural branch of a bank with respect to Savings Bank Accounts [Note-2]</i>	<i>Nil</i>
<i>Amount charged by cord blood bank for preservation of stem cells [Note-3]</i>	<i>Nil</i>
<i>Service provided by commentator to a recognized sports body [Note-4]</i>	<i>5,20,000</i>

Notes:

- Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from GST. The activities relating to advancement of yoga are included in the definition of charitable activities. So, such activities are exempt from GST.
- Services by business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch have been exempted from GST.
- Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation are exempt from GST.

4. Services provided to a recognized sports body only by an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST. Thus, services provided by commentators are liable to GST.
9. (i) Yes. Services provided TO an educational institution by way of transportation of students are exempted from GST.
- (ii) No. Services provided by way of vehicle parking to general public are not exempted from GST. Therefore, GST is payable on the same.
- 10.

Customer	Nature of services provided	Amount charged	Taxability
A	Transportation of milk	₹ 20,000	Exempt. Transportation of milk by goods transport agency is exempt.
B	Transportation of books on a consignment transported in a single goods carriage	₹ 3,000	GST is payable. Exemption is available for transportation of goods only where the consideration for transportation of goods on a consignment transported in a single goods carriage does not exceed ₹ 1,500.
C	Transportation of chairs for a single consignee in the goods carriage	₹ 600	Exempt. Transportation of goods where consideration for transportation of all goods for a single consignee does not exceed ₹ 750 is exempt.

TIME AND VALUE OF SUPPLY



The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified.

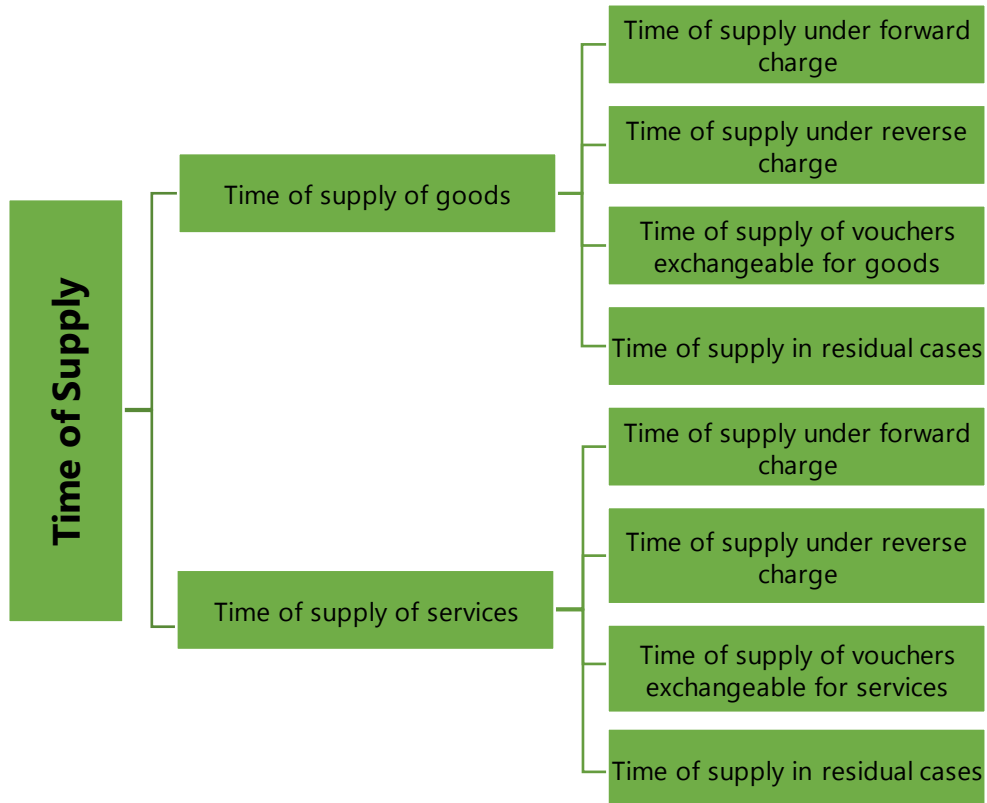
UNIT - I : Time of Supply

LEARNING OUTCOMES

After studying this Unit, you will be able to identify the point in time when the liability to pay GST arises -

- on supply of goods or services where GST is payable under forward charge
- on supply of goods or services where GST is payable under reverse charge
- on supply of vouchers exchangeable for goods and services
- on supply of goods and services in residual cases
- in case of enhancement of value of supply by way of interest, late fee/penalty paid for delay in payment of consideration
- apply the concepts relating to time of supply of goods and/or services in problem solving

UNIT OVERVIEW



1. INTRODUCTION

GST is payable on supply of goods or services. A supply consists of elements that can be separated in time, like purchase order / agreement, despatch (of goods), delivery (of goods) or provision or performance of service, entry in the records, payment, and entry of the payment in the records or deposit in the bank.

So, at which of these points of time does GST become payable? Does it become payable when an agreement to supply goods or services is made, or when the goods are shipped or the services are provided, or when the invoice is issued or when payment is made? What if the goods are shipped

**Point in time
when the
liability
to pay tax arises**

over a period of time? What if the service is provided over a period of time? Provisions relating to 'time of supply' provide answer to all such and other questions that arise on the timing of the liability to pay CGST and SGST/UTGST (intra-State supply) and IGST (inter-State supply) as time of supply fixes the point in time when the liability to pay tax arises.


The CGST Act provides separate provisions for time of supply for goods and services vide sections 12 and 13. Section 14 provides for the method of determining the time of supply in case there is a change in the rate of tax on supply of goods or services.¹ Sections 12 and 13 make use of the provisions of section 31 relating to issue of tax invoice as a reference point, hence it will be advantageous to refer to *Chapter 8: Tax Invoice, Credit and Debit Notes; E-Way Bill* in conjunction with this Unit.

Events like issuing of invoices, receipt of payment, provision of service, receipt of services in books of account need to be analysed to determine the time of supply when the tax on supply is payable under forward charge. When the tax on supply is payable under reverse charge, events like date of receipt of goods, date of making payment etc. need to be analysed to determine the time of supply. The provisions relating to time of supply essentially push the tax collection event to the earliest possible time.

In the subsequent pages of this Unit, sections 12 and 13 are extracted, followed by their analysis, to understand how to determine the time of supply of goods and services respectively. When studying the statutory provisions, the definitions (extracted first) must also be referred to simultaneously, so as to understand the precise meaning of the terms used.

Provisions of time of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

2. RELEVANT DEFINITIONS

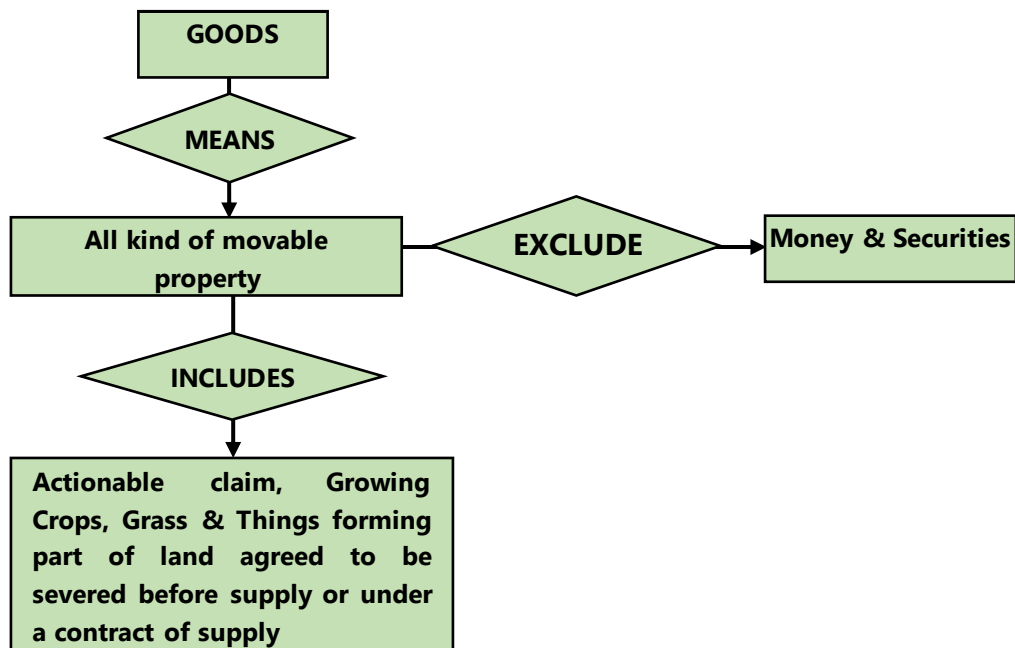
 **Associated enterprises** shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961 [Section 2(12)].

Broadly, an associated enterprise in relation to another enterprise, means an

¹ Provisions of section 14 relating to determination of time of supply in case of change in rate of tax in respect of supply of goods or services will be discussed at the Final level.

enterprise which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

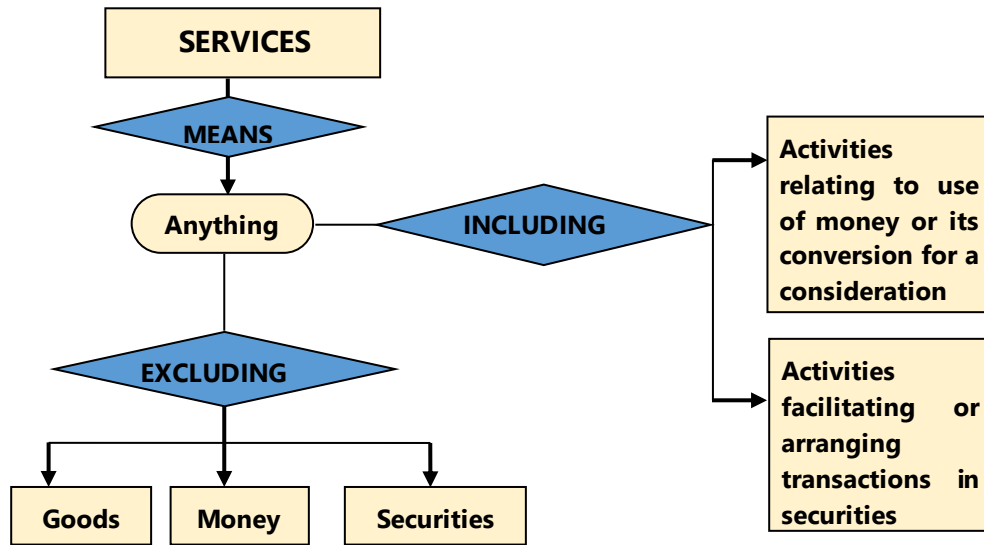
- ✔ **Document** includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000 [Section 2(41)].
- ✔ **Goods** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply [Section 2(52)].



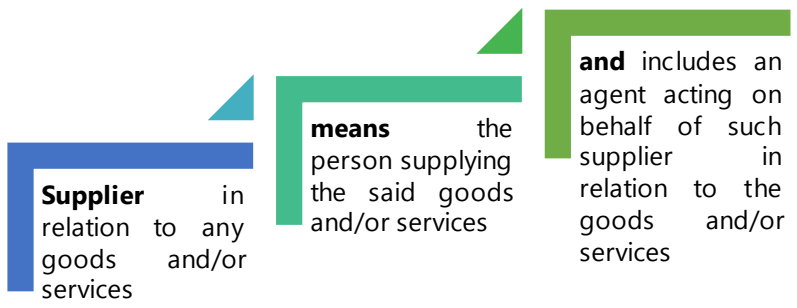
- ✔ **Prescribed** means prescribed by rules made under this Act on the recommendations of the Council [Section 2(87)].
- ✔ **Reverse charge** means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act [Section 2(98)].
- ✔ **Services** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any

other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation.—For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities [Section 2(102)].



◆ **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].

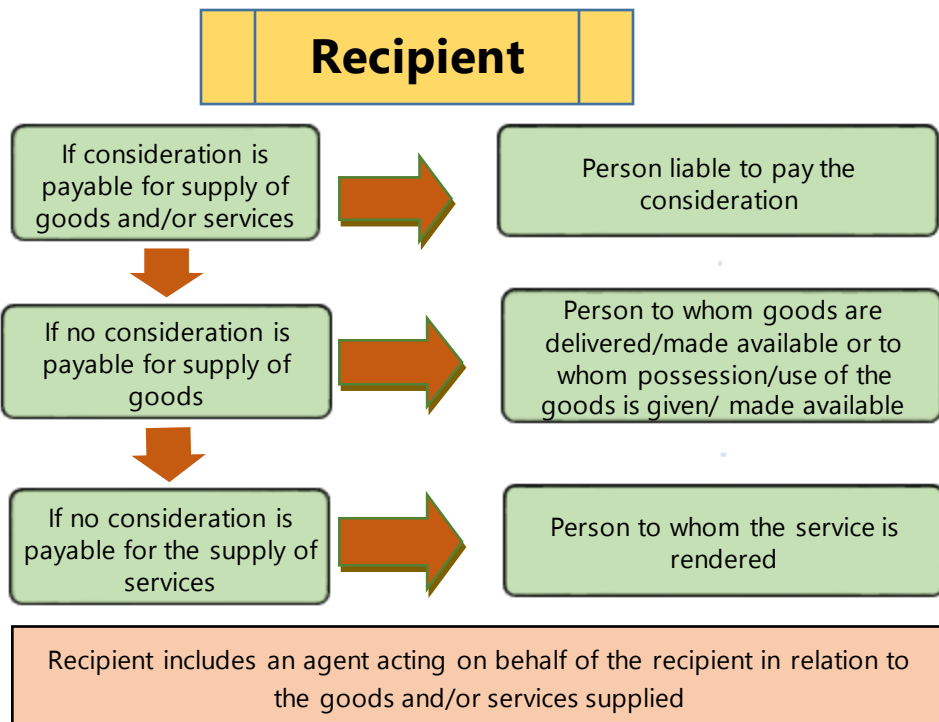


◆ **Recipient** of supply of goods or services or both, means—

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,


and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].



❖ **Voucher** means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument [Section 2(118)].



3. TIME OF SUPPLY OF GOODS [SECTION 12]

 STATUTORY PROVISIONS	
Section 12	<i>Time of supply of goods</i>
Sub-section	Clause Particulars
(1)	<i>The liability to pay tax on goods shall arise at the time of supply as determined in terms of the provisions of this section.</i>
(2)	<i>The time of supply of goods shall be the earlier of the following dates, namely:-</i>
	(a) <i>the date of issue of invoice by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or</i>
	(b) <i>The date on which the supplier receives the payment with respect to the supply:</i>
	<i>Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.</i>
	<i>Explanation 1. For the purposes of clauses (a) and (b), the "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.</i>
	<i>Explanation 2. For the purpose of clause (b), "the date on which the supplier receives the payment" shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.</i>
(3)	<i>In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:</i>

	(a)	<i>the date of the receipt of the goods, or</i>
	(b)	<i>the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier, or</i>
	(c)	<i>the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:</i>
	<i>Provided that where it is not possible to determine the time of supply under clause (a), (b), or (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.</i>	
(4)	<i>In case of supply of vouchers by a supplier, the time of supply shall be</i>	
	(a)	<i>the date of issue of voucher, if the supply is identifiable at that point; or</i>
	(b)	<i>the date of redemption of voucher, in all other cases.</i>
(5)	<i>Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—</i>	
	(a)	<i>in a case where a periodical return has to be filed, be the date on which such return is to be filed; or</i>
	(b)	<i>in any other case, be the date on which the tax is paid.</i>
(6)	<i>The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.</i>	
Section 31	<i>Tax invoice (to the extent relevant to time of supply)</i>	
(1)	<i>A registered person supplying taxable goods shall, before or at the time of,—</i>	
	(a)	<i>removal of goods for supply to the recipient, where the</i>

		<i>supply involves movement of goods; or</i>
	(b)	<i>delivery of goods or making available thereof to the recipient, in any other case,</i>
		<i>issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:</i>
		<i>Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.</i>
(4)		<i>In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.</i>
(7)		<i>Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.</i>



Section 12 must be read with section 31, which prescribes in detail the date on which tax invoice for a supply of goods must be issued in various situations.



ANALYSIS

Section 12 provides for the determination of time of supply in the following situations:

- ➔ Supply of goods where supplier is liable to pay tax;
- ➔ Supply of goods that are taxable under reverse charge;
- ➔ Supply of vouchers that can be used to pay for goods;

- Residual cases
- Addition to value of supply of goods by way of interest or late fee or penalty for delayed payment.

We consider below how the time of supply is determined in each of these situations.

**(i) Supply of goods where supplier is liable to pay tax (forward charge)
[Section 12(2) read with section 31]**

As per section 12(2), the time of supply of goods that are taxable under forward charge, is the earlier of the following two dates:

- Date of issue of invoice by the supplier or the last date on which the invoice ought to have been issued in terms of section 31, to the extent the invoice covers the supply of goods; or
- Date of receipt of payment by the supplier, to the extent the payment covers the supply of goods.

Exemption from payment of tax on advances received for supply of goods – Special procedure for payment of tax in case of supply of goods

Time of supply is linked with payment of tax. Liability to pay tax arises at the time of supply and the same can be paid by the prescribed due date.

In exercise of the powers conferred by section 148², the Central Government, on the recommendation of the GST Council, has issued *Notification No. 66/2017 CT dated 15.11.2017* to specify that a registered person (excluding composition supplier) should pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

In simple words, all taxpayers (except composition suppliers) are exempted from paying GST at the time of receipt of advance in relation to supply of

² Provisions of section 148 will be discussed at the Final level. Section 148 provides that the Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.

goods. The entire GST shall be payable only when the invoice for the supply of such goods is issued or ought to have been issued.

A composition supplier has to pay, in lieu of tax payable by him, an amount calculated at the prescribed rate applied on his 'turnover in the State/Union Territory' for a quarter. Therefore, the composition supplier is not required to pay any tax on advance received as the same does not form part of taxable supplies and, in turn, also does not form part of the 'turnover in a State/Union Territory' at the end of the quarter.³

Meaning of "Date of receipt of payment"

"Date of receipt of payment" in the above situation refers to the date on which the payment is recorded in the books of account of the entity (supplier of goods) that receives the payment, or the date on which the payment is credited to the entity's bank account, whichever is earlier.

Significance of "to the extent the invoice or payment covers the supply of goods"

Suppose, a part of the consideration is paid in advance or invoice is issued for part payment, the time of supply will not cover the full supply. The supply is deemed to have been made to the extent it is covered by the invoice or the part advance payment.



A Ltd. enters into an agreement with B Ltd. to supply 100 kg of raw material. However, A Ltd. supplies only 80 kg of raw material and issues the invoice for the same. Here, the supply would be deemed to have been made in respect of 80 kg of raw material, i.e. to the extent covered by the invoice. Therefore, the provisions relating to time of supply will also be applicable to supply of 80 kg of raw material and not for entire 100 kg of raw material.

However, it may be noted that in case of goods (except for composition supplier), tax is payable only on the issuance of invoice/last date of issuance of invoice even if any advance or part payment has been received before the issuance of invoice/last date of issuance of invoice.

³ Based on CBIC GST Flyer Chapter 6 - GST on Advances Received for Future Supplies

Time limit for issuance of invoice for supply of goods

- As per section 31(1), the invoice needs to be issued either **before** or **at the time** of removal of goods (where supply involves movement of goods) or delivery of goods/ making goods available to recipient (in any other case).
- In case of continuous supply of goods, the invoice should be issued **before** or **at the time** of issuance of periodical statement/receipt of periodical payment [Section 31(4)].
- In case of goods sent or taken on approval for sale or return, invoice should be issued before or at the time of supply or 6 months from the date of removal, whichever is earlier [Section 31(7)].

The provisions relating to time of supply of goods as contained in section 12 in case of forward charge read with *Notification No. 66/2017 CT dated 15.11.2017*, have been depicted by way of a diagram given at next page.

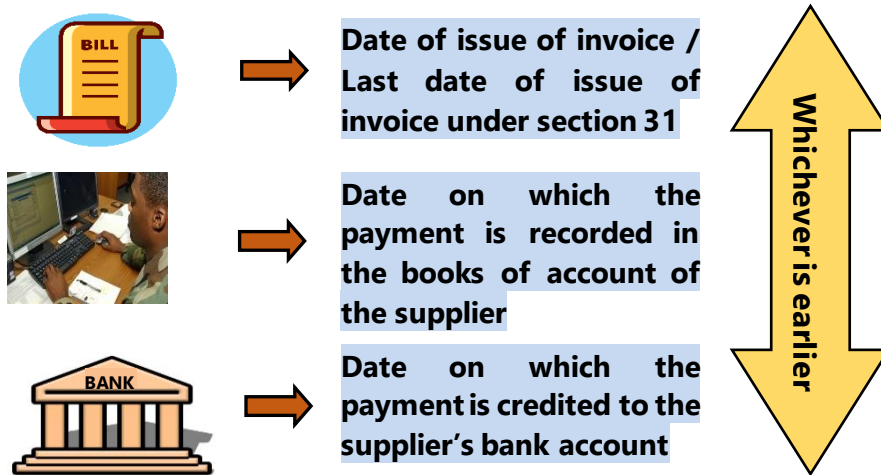
ILLUSTRATION 1

A machine has to be supplied at site. It is done by sourcing various components from vendors and assembling the machine at site. The details of the various events are:

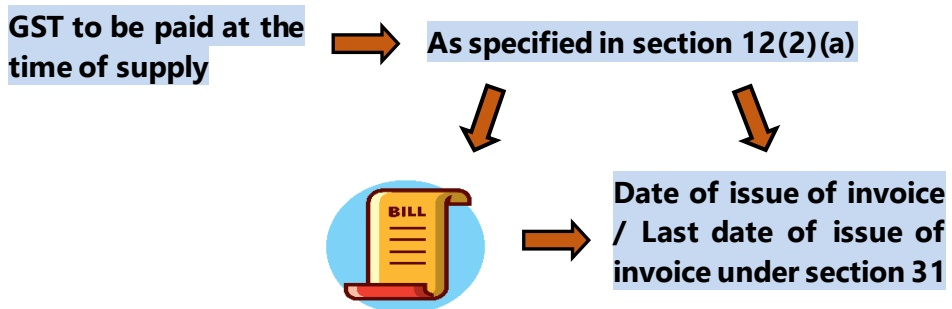
<i>17th September</i>	<i>Purchase order with advance of ₹ 50,000 is received for machine worth ₹ 12 lakh and entry duly made in the seller's books of account</i>
<i>20th October</i>	<i>The machine is assembled, tested at site, and accepted by buyer</i>
<i>23rd October</i>	<i>Invoice raised</i>
<i>4th November</i>	<i>Balance payment of ₹ 11,50,000 received</i>

Determine the time of supply(ies) in the above scenario for the purpose of payment of tax.

TIME OF SUPPLY OF GOODS UNDER FORWARD CHARGE AS PER SECTION 12



SPECIAL PROCEDURE UNDER SECTION 148 FOR PAYMENT OF TAX IN CASE OF GOODS



Effectively, in case of goods, no GST will be payable on advances received for supply of goods.

ANSWER

As per *Notification No. 66/2017 CT dated 15.11.2017*, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a) i.e., date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

Therefore, the time of supply for the purpose of payment of tax for the entire amount of ₹ 12,00,000 is 20th October which is the date on which the goods were made available to the recipient as per section 31(1)(b), and the invoice should have been issued on this date [Section 12(2)(a)].

ILLUSTRATION 2

Gas is supplied by a pipeline. Monthly payments are made by the recipient as per contract. Every quarter, invoice is issued by the supplier supported by a statement of the goods dispatched and payments made, and the recipient has to pay the differential amount, if any. The details of the various events are:

<i>August 5, September 5, October 6</i>	<i>Payments of ₹ 2 lakh made in each month</i>
<i>October 3</i>	<i>Statement of accounts issued by supplier, with invoice for the quarter July – September</i>
<i>October 17</i>	<i>Differential payment of ₹ 56,000 received by supplier for the quarter July – September as per statement of accounts</i>

Determine the time of supply for the purpose of payment of tax.

ANSWER

As per *Notification No. 66/2017 CT dated 15.11.2017*, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.


As per section 31(4), in case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice is issued before or at the time of each such statement is issued or, as the case may be, each such payment is received. Therefore, invoice should be issued on August 5, September 5 and October 6 when monthly payments of ₹ 2 lakh are received.

Thus, the time of supply for the purpose of payment of tax will be August 5, September 5 and October 6 respectively for goods valued at ₹ 2 lakh each. For goods valued at ₹ 56,000, the time of supply for the purpose of payment of tax will be October 3, the date of issuance of invoice.

Excess payment upto ₹ 1000: Option of taking invoice date as time of supply

In terms of the proviso to sub-section (2) of section 12, for a payment of up to ₹ 1,000 received in excess of the value of the goods invoiced, the supplier can choose to take the date of invoice issued with respect to such excess amount as the time of supply of goods for such excess value.

Since, w.e.f. 15.11.2017, GST on supply of goods is payable only on the basis of issuance of invoice, this provision is practically irrelevant for supply of goods.

 **If neither the date of invoice nor the date of payment is available, the time of supply is determined in terms of the residual provisions under sub-section (5) of section 12 [discussed under point (iv)].**

(ii) Supply of goods that are taxable under reverse charge [Section 12(3)]

The time of supply of goods on which GST is payable on reverse charge basis under sub-sections (3) and (4) of section 9 of CGST Act is determined in terms of section 12(3)(a), (b) and (c), as follows:

The time of supply for such goods will be the earliest of the following dates:

- Date on which the goods are received, or
- Date on which payment is recorded in the books of account of the recipient, or the date on which the same is debited in his bank account, whichever is earlier, or
- Date immediately following 30 days from the date of issue of invoice (or document by some other name in lieu of invoice) by the supplier.

If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of goods in the books of account of the recipient of supply.

The provisions relating to time of supply of goods in case of reverse charge are depicted by way of a diagram given at next page.

ILLUSTRATION 3

Determine the time of supply from the given information.

May 4	Supplier invoices goods taxable on reverse charge basis to Bridge & Co. (30 days from the date of issuance of invoice elapse on June 3)
May 12	Bridge & Co receives the goods
May 30	Bridge & Co makes the payment

ANSWER

Here, May 12 will be the time of supply, being the earliest of the three stipulated dates namely, receipt of goods, date of payment and date immediately following 30 days of issuance of invoice [Section 12(3)]. (Here, date of invoice is relevant only for calculating thirty days from that date.)

ILLUSTRATION 4

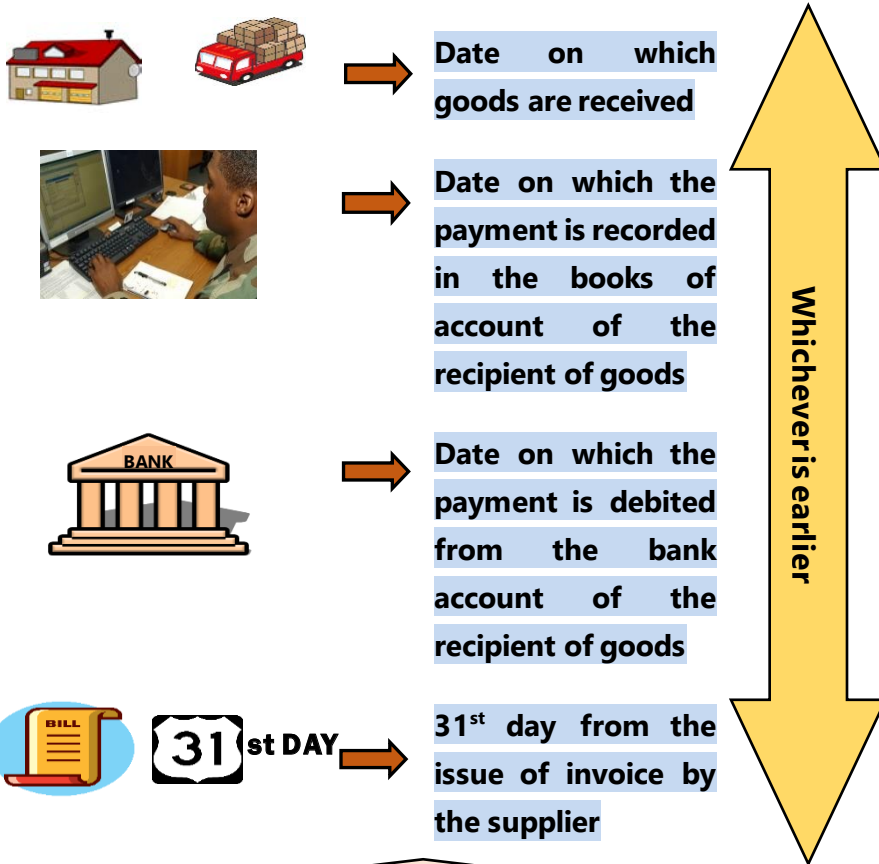
Determine the time of supply from the given information.

May 4	Supplier invoices goods taxable on reverse charge basis to Pillar & Co. (30 days from the date of issuance of invoice elapse on June 3)
June 12	Pillar & Co receives the goods, which were held up in transit
July 3	Payment made for the goods

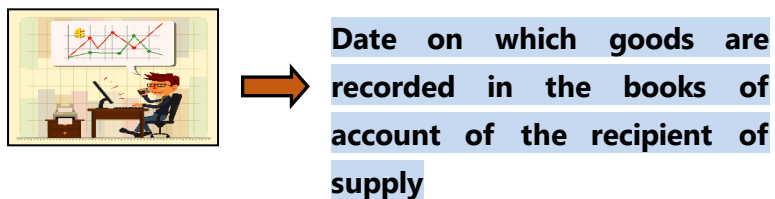
ANSWER

Here, June 4, 31st day from the date of supplier's invoice, will be the time of supply, being the earliest of the three stipulated dates namely, receipt of goods, date of payment and date immediately following 30 days of issuance of invoice [Section 12(3)].

TIME OF SUPPLY OF GOODS UNDER REVERSE CHARGE



If it is not possible to determine the time of supply through above parameters,
 THEN
 TIME OF SUPPLY WILL BE



(iii) Vouchers [Section 12(4)]

As commonly understood, vouchers are instruments that can be exchanged as payment for goods or services of the designated value. As per the definition, they are instruments, that certain persons (potential suppliers) are obliged to accept as consideration, part or full, for goods and/or services. The instrument or its related documentation sets out the terms and conditions of use, the goods and/or services covered, and the identity of the potential suppliers of such goods and/or services.

As per section 12(4), the time of supply of vouchers exchangeable for goods is-

- Date of issue of the voucher, if the supply that it covers is identifiable at that point, or
- Date of redemption of the voucher in other cases.



Acmesales Limited sells food coupons to a company. The company gives these coupons to its employees as part of the agreed perquisites. The coupons can be redeemed for purchase of any item of food /provisions in the outlets that are part of the program.

As the supply against which the coupon will be redeemed is not known on the date of the sale of the coupon, the time of supply of the coupon will be the date on which the employee redeems it against food / provision items of his choice.



With each purchase of a large pizza during the Christmas week from Perfect Pizza, one can buy a voucher for ₹ 20 which will be redeemable till 5th Jan for a small pizza. As the supply against which the voucher will be redeemed is known on the date of issue of the vouchers, the time of supply is the date of issue of the voucher.

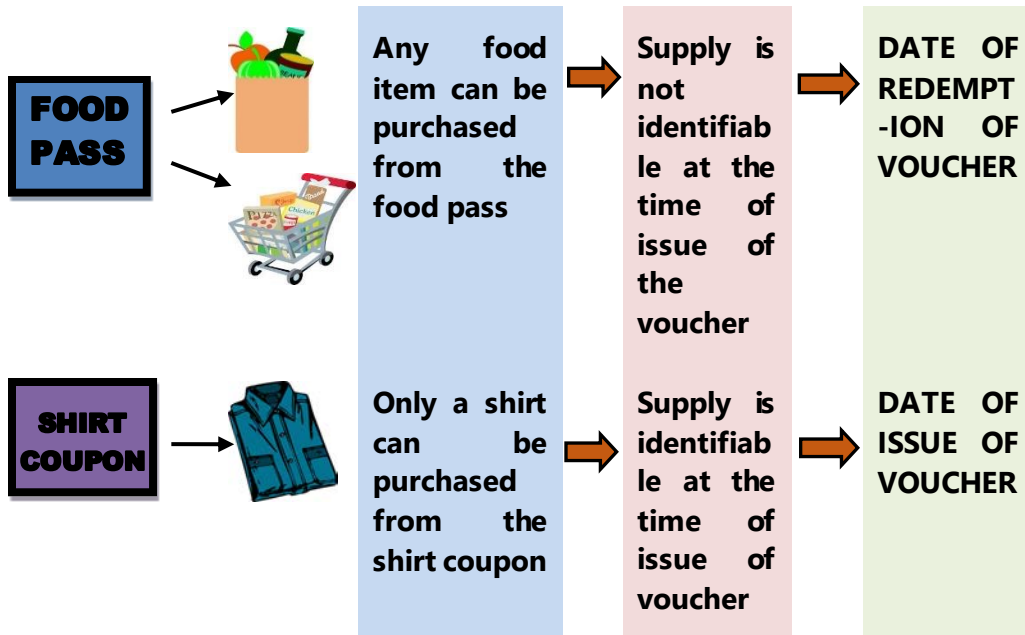
(iv) Residual case [Section 12(5)]

If the situation is not covered by any of the provisions discussed above, the time of supply is fixed under sub-section (5) of section 12, in the following manner:

- Due date for filing of the periodical return, or
- In any other case, date on which GST is paid.

The provisions relating to time of supply of vouchers exchangeable for goods and time of supply in residual cases are depicted by way of diagrams given at next page.

TIME OF SUPPLY OF VOUCHERS EXCHANGEABLE FOR GOODS



TIME OF SUPPLY OF GOODS UNDER RESIDUAL CASE

Where a periodical return is to be filed



→ DATE ON WHICH RETURN IS REQUIRED TO BE FILED

OTHER CASES

→ DATE ON WHICH GST IS PAID

(v) Enhancement in value on account of interest/late fee etc. for delayed payment of consideration [Section 12(6)]

Commercially, all the contract of supplies stipulate payment of interest/late fee/penalty etc. in case of payment of consideration beyond the agreed time period. Such interest/late fee/penalty etc. is includible in value of taxable supply *[This concept has been discussed in detail in Unit II: Value of Supply in the subsequent pages of this Chapter]*. So, the point to consider here is that when the liability to pay GST would arise in such cases of addition in value.

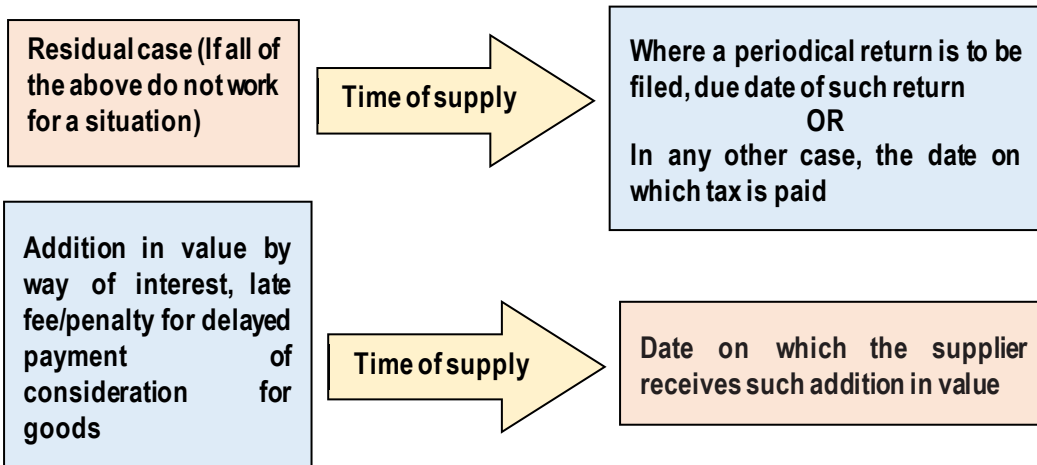
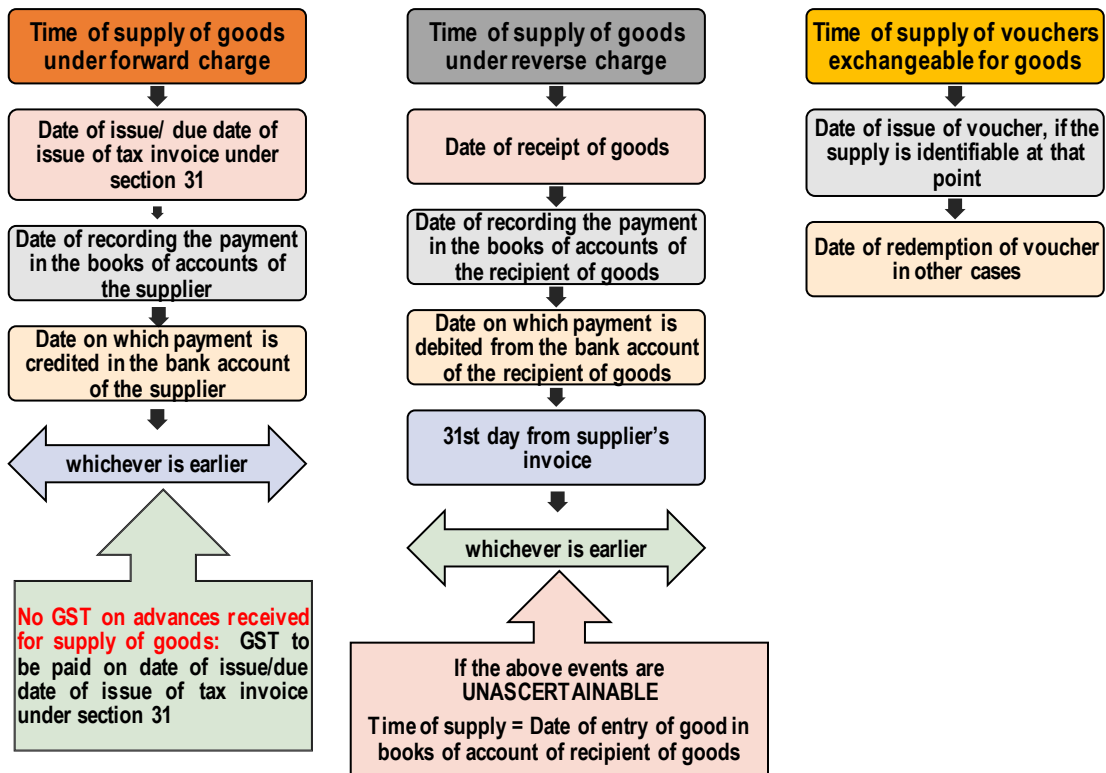
Section 12(6) prescribes that time of supply in case of addition in value by way of interest/ late fee/penalty for delayed payment of consideration for goods is the date on which the supplier receives such addition in value.



Radha Traders sold goods to Shyam Sales on 6th June with a condition that interest @ 2% per month will be charged if Shyam Sales failed to make payment within 15 days of the delivery of the goods. Goods were delivered as also the invoice was issued on 6th June. Shyam Sales paid the consideration for the goods on 6th July along with applicable interest.


Time of supply for the goods sold is the date of issue of invoice i.e., 6th June and the time of supply for addition in value by way of interest is the date when such addition in value is received by Radha Traders i.e., 6th July.

★ The provisions relating to time of supply of goods as contained in section 12 are summarised in the diagram given below





4. TIME OF SUPPLY OF SERVICES [SECTION 13]

 STATUTORY PROVISIONS		
Section 13	Time of supply of services	
Sub-section	Clause	Particulars
(1)		The liability to pay tax on services shall arise at the time of supply, as determined in terms of the provisions of this section.
(2)		The time of supply of services shall be the earliest of the following dates, namely:-
	(a)	the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
	(b)	the date of provision of service, if the invoice is not issued within the period prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
	(c)	the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:
		Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.
		Explanation - For the purposes of clauses (a) and (b) -
	(i)	the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.
	(ii)	"the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or

		<i>the date on which the payment is credited to his bank account, whichever is earlier.</i>
(3)	<i>In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely-</i>	
	<i>(a)</i>	<i>the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or</i>
	<i>(b)</i>	<i>the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:</i>
	<i>Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:</i>	
	<i>Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.</i>	
(4)	<i>In case of supply of vouchers by a supplier, the time of supply shall be-</i>	
	<i>(a)</i>	<i>the date of issue of voucher, if the supply is identifiable at that point; or</i>
	<i>(b)</i>	<i>the date of redemption of voucher, in all other cases;</i>
(5)	<i>Where it is not possible to determine the time of supply of services under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall</i>	
	<i>(a)</i>	<i>in a case where a periodical return has to be filed, be the date on which such return is to be filed; or</i>
	<i>(b)</i>	<i>in any other case, be the date on which the tax is paid.</i>

(6)	<i>The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.</i>						
Section 31	<i>Tax invoice (to the extent relevant to time of supply)</i>						
(2)	<p><i>A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:</i></p> <p><i>Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which—</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; vertical-align: middle;"><i>(a)</i></td> <td><i>any other document issued in relation to the supply shall be deemed to be a tax invoice; or</i></td> </tr> <tr> <td style="text-align: center; vertical-align: middle;"><i>(b)</i></td> <td><i>tax invoice may not be issued.</i></td> </tr> </table>	<i>(a)</i>	<i>any other document issued in relation to the supply shall be deemed to be a tax invoice; or</i>	<i>(b)</i>	<i>tax invoice may not be issued.</i>		
<i>(a)</i>	<i>any other document issued in relation to the supply shall be deemed to be a tax invoice; or</i>						
<i>(b)</i>	<i>tax invoice may not be issued.</i>						
(5)	<p><i>Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—</i></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; vertical-align: middle;"><i>(a)</i></td> <td><i>where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;</i></td> </tr> <tr> <td style="text-align: center; vertical-align: middle;"><i>(b)</i></td> <td><i>where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;</i></td> </tr> <tr> <td style="text-align: center; vertical-align: middle;"><i>(c)</i></td> <td><i>where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.</i></td> </tr> </table>	<i>(a)</i>	<i>where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;</i>	<i>(b)</i>	<i>where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;</i>	<i>(c)</i>	<i>where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.</i>
<i>(a)</i>	<i>where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;</i>						
<i>(b)</i>	<i>where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;</i>						
<i>(c)</i>	<i>where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.</i>						
(6)	<i>In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.</i>						

Chapter VI: Tax Invoice, Credit and Debit Notes of CGST Rules**Time limit for issuing tax invoice**

The invoice referred to in rule 46, in case of taxable supply of services, shall be issued within a period of thirty days from the date of supply of service:

Provided that where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be forty five days from the date of supply of service:

Provided further that an insurer or a banking company or a financial institution, including a non- banking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.

Rule 47

Section 13 must be read with section 31 and rule 47 of CGST Rules, which prescribe in detail the date on which tax invoice for a supply of service must be issued in various situations.

**ANALYSIS**

Section 13 provides for the determination of the time of supply in the following situations:

- ➔ Supply of service on which the supplier is liable to pay tax,
- ➔ Supply of service that is taxable under reverse charge basis,
- ➔ Supply of vouchers that can be used to pay for services,

- Residual cases,
- Addition to value of supply of services by way of interest or late fee or penalty for delayed payment.

Below we shall consider these in detail.

**(i) Supply of service where supplier is liable to pay tax (forward charge)
[Section 13(2) read with section 31 and rule 47 of CGST Rules]**

For supply of service on which the supplier is liable to pay tax, the time of supply will be the earlier of the dates arrived at by methods (A) and (B), as follows:

- (A) Date of invoice or date of receipt of payment (to the extent the invoice or payment covers the supply of services), whichever is earlier, if the invoice is issued within the time prescribed under section 31;
- (B) Date of provision of service or date of receipt of payment (to the extent the payment covers the supply of services), whichever is earlier, if the invoice is not issued within the time prescribed under section 31,

If the above two methods [(A) and (B)] are not applicable, the time of supply will be the date on which the recipient of service shows receipt of the service in his books of account.

Meaning of “date of receipt of payment”

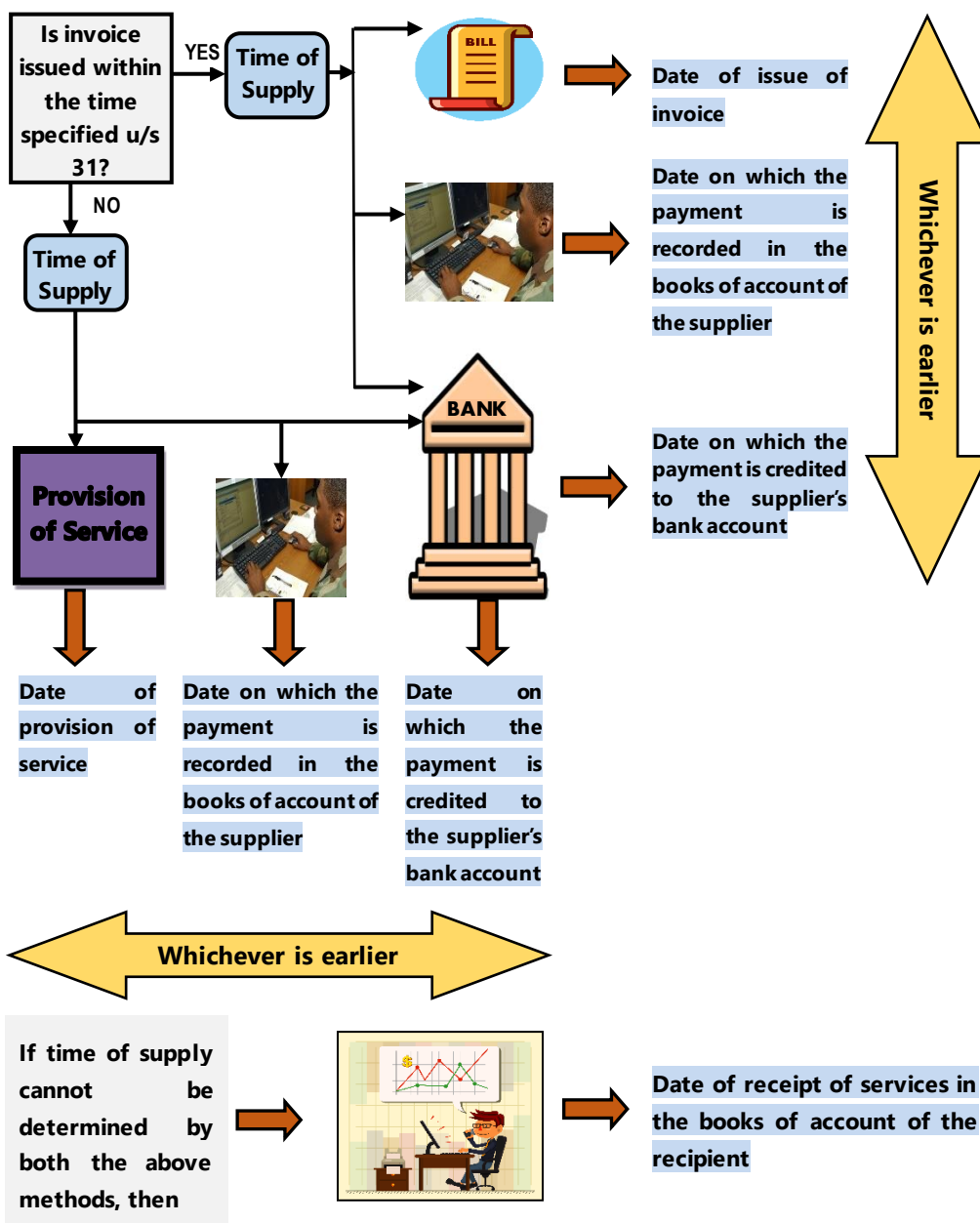
“Date of receipt of payment” in the above situation refers to the date on which the payment is recorded in the books of account of the entity (supplier of service) that receives the payment, or the date on which the payment is credited to the entity’s bank account, whichever is earlier.

Significance of “to the extent the invoice or payment covers the supply of services”

Suppose, a part of the consideration is paid in advance or invoice is issued for part payment, the time of supply will not cover the full supply. The supply shall be deemed to have been made to the extent it is covered by the invoice or the part payment.

The provisions relating to time of supply of services in case of forward charge can be depicted by way of a diagram given at next page.

TIME OF SUPPLY OF SERVICES UNDER FORWARD CHARGE



Time limit for issuance of invoice for supply of services

- As per section 31(2) read with rule 47 of CGST Rules, the tax invoice needs to be issued either before the provision of service or within 30 days (45 days in case of insurance companies/ banking companies/ financial institutions including NBFCs) from the date of supply of service.
- In case of insurance companies/ banking companies/ financial institutions including NBFCs/ telecom companies/ notified supplier of services making taxable supplies between distinct persons as specified in section 25⁴, invoice may be issued before or at the time of recording such supply in the books of account or before the expiry of the quarter during which the supply was made [Second proviso to rule 47].
- In case of continuous supply of services, the invoice should be issued either (i) on/ before the due date of payment or (ii) before/ at the time when the supplier of service receives the payment, if the due date of payment is not known (iii) on/ before the date of completion of the milestone event when the payment is linked to completion of an event [Section 31(5)].
- In case of cessation of supply of services before completion of supply, the invoice (to the extent of the supply made before such cessation) should be issued at the time when the supply ceases [Section 31(6)].

ILLUSTRATION 5

Determine the time of supply from the following particulars:

6 th May	Booking of convention hall, sum agreed ₹15000, advance of ₹3000 received
15 th September	Function held in convention hall
27 th October	Invoice issued for ₹15000, indicating balance of ₹12000 payable
3 rd November	Balance payment of ₹12000 received

⁴ Concept of distinct persons has been discussed in Chapter 7: Registration

ANSWER

As per section 31(2) read with rule 47 of CGST Rules, the tax invoice is to be issued within 30 days of supply of service. In the given case, the invoice is not issued within the prescribed time limit. As per section 13(2)(b), in a case where the invoice is not issued within the prescribed time, the time of supply of service is the date of provision of service or receipt of payment, whichever is earlier.

Therefore, the time of supply of service to the extent of ₹ 3,000 is 6th May as the date of payment of ₹ 3000 is earlier than the date of provision of service. The time of supply of service to the extent of the balance ₹ 12,000 is 15th September which is the date of provision of service.

ILLUSTRATION 6

Investigation shows that ABC & Co carried out service of cleaning and repairs of tanks in an apartment complex, for which the Apartment Owners' Association showed a payment in cash on 4th April to them against work of this description. The dates of the work are not clear from the records of ABC & Co. ABC & Co have not issued invoice or entered the payment in their books of account.

ANSWER

The time of supply cannot be determined vide the provisions of clauses (a) and (b) of section 13(2) as neither the invoice has been issued nor the date of provision of service is available as also the date of receipt of payment in the books of the supplier is also not available. Therefore, the time of supply will be determined vide clause (c) of section 13(2) i.e., the date on which the recipient of service shows receipt of the service in his books of account.

Thus, time of supply will be 4th April, the date on which the Apartment Owners' Association records the receipt of service in its books of account.

Excess payment upto ₹ 1000: Option of taking invoice date as time of supply

In terms of the proviso to sub-section (2) of section 13, for a payment of up to ₹ 1,000 received in excess of the invoice value, the supplier can choose to take the date of invoice issued with respect to such excess amount as the time of supply of services in relation to this excess value.

This provision facilitates the supplier to defer payment of tax on small amounts typically received by him in excess of the invoice amount.



A telephone company receives ₹ 5000 against an invoice of ₹ 4800. The excess amount of ₹ 200 can be adjusted against next invoice. The company has the option to take date of next invoice as the time of supply of service in relation to the amount of ₹ 200 received in excess against earlier invoice.

(ii) Receipt of services that are taxable under reverse charge [Section 13(3)]

The time of supply of service on which GST is payable on reverse charge basis (except on services received from associated enterprises located outside India) under sub-sections (3) and (4) of section 9 is determined in terms of section 13(3)(a) and (b) as follows:

The time of supply for such service will be the earlier of the following:

- Date of payment, or
- Date immediately following 60 days since issue of invoice (or any other document in lieu of invoice) by the supplier.

If it is not possible to determine the time of supply by using these parameters, then the time of supply will be the date of entry of the service in the books of account of the recipient of supply.

Meaning of “Date of payment”

“Date of payment” in the above situation refers to the date on which the payment is recorded in the books of account of the entity that receives the service (recipient of service), or the date on which the payment is debited from the entity's bank account, whichever is earlier.

Import of services between associated enterprises

In the case of service received from an associated enterprise located outside India, the time of supply will be the date of payment for the service, or the date of entry of the service in the books of account of the recipient, whichever is earlier. The provisions relating to time of supply of services in case of reverse charge can be depicted by way of a diagram given at the next page.

TIME OF SUPPLY OF SERVICES UNDER REVERSE CHARGE

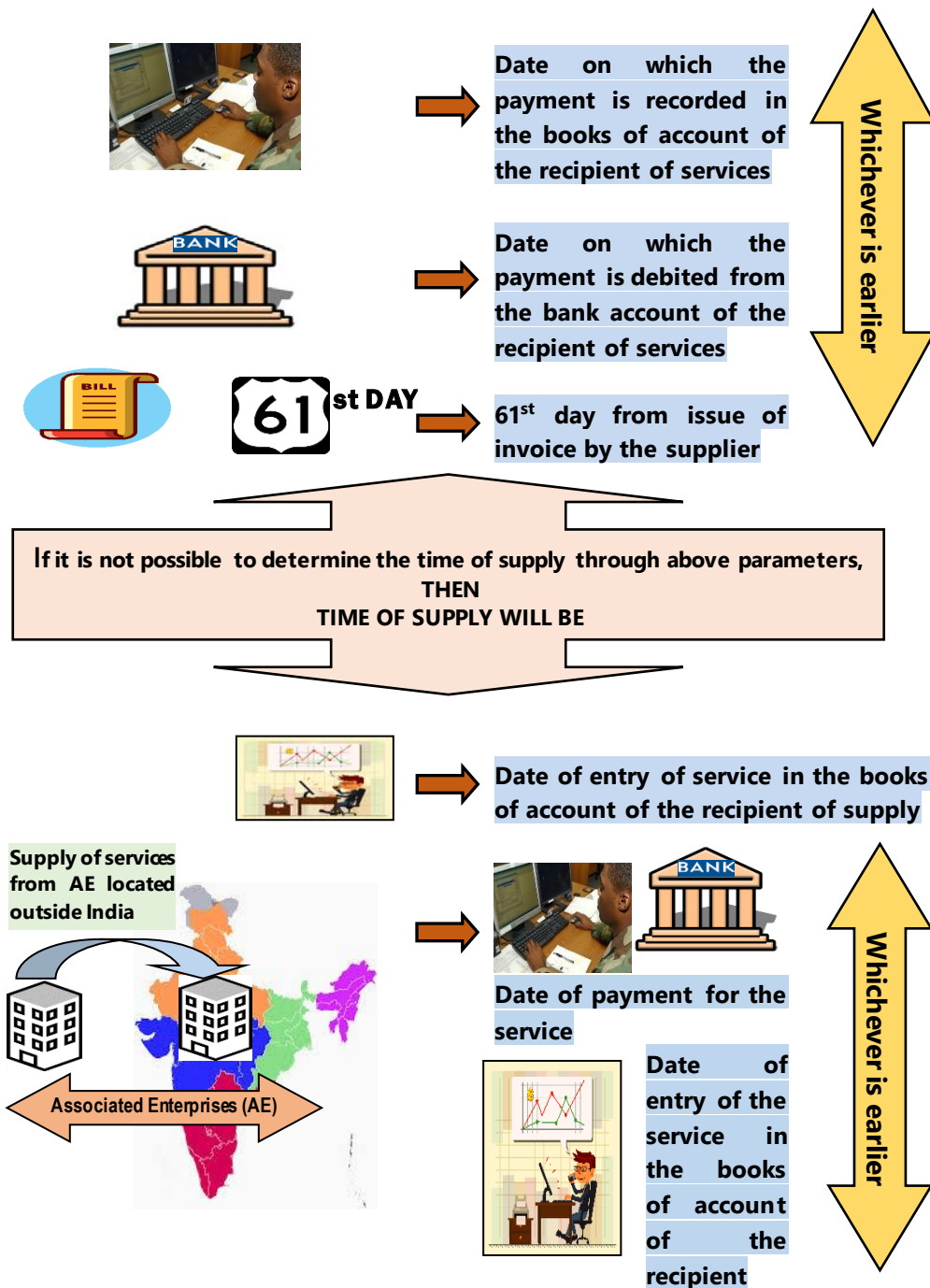


ILLUSTRATION 7

Determine the time of supply from the given information. (Assume that service being supplied is taxable under reverse charge)

<i>May 4</i>	<i>The supplier of service issues invoice for service provided. There is a dispute about amount payable, and payment is delayed.</i>
<i>August 21</i>	<i>Payment made to the supplier of service</i>

ANSWER

Here, July 4 will be the time of supply, being the earliest of the two stipulated dates namely, date of payment and date immediately following 60 days since issue of invoice.

ILLUSTRATION 8

Determine the time of supply from the given information.

<i>May 4</i>	<i>A German company issues email informing its associated company ABC Ltd. of the cost of technical services provided to it.</i>
<i>July 2</i>	<i>ABC Ltd transfers the amount to the account of the German company</i>

ANSWER

As there is no prior entry of the amount in the books of account of ABC Ltd., July 2 will be the time of supply, being the date of payment in terms of second proviso to section 13(3).

(iii) Vouchers [Section 13(4)]

The term voucher has already been explained under the Heading "Time of Supply of Goods". The time of supply of vouchers that are exchangeable for services is stipulated as the date of issue of the voucher if the supply is identifiable at that point, or the date of redemption of the voucher in other cases.



Best Hospitality Services enters into agreement with Drive Marketing Ltd by which Drive Marketing Ltd. markets Best Hospitality Services' hotel rooms and sells coupons / vouchers redeemable for a discount against stay in the hotel.

As the supply against which the voucher will be redeemed is identifiable, the time of supply of the voucher will be its date of issue.

(iv) Residual case [Section 13(5)]

If the situation is not covered by any of the provisions discussed above, the time of supply is fixed under sub-section (5) of section 13, in the following manner:

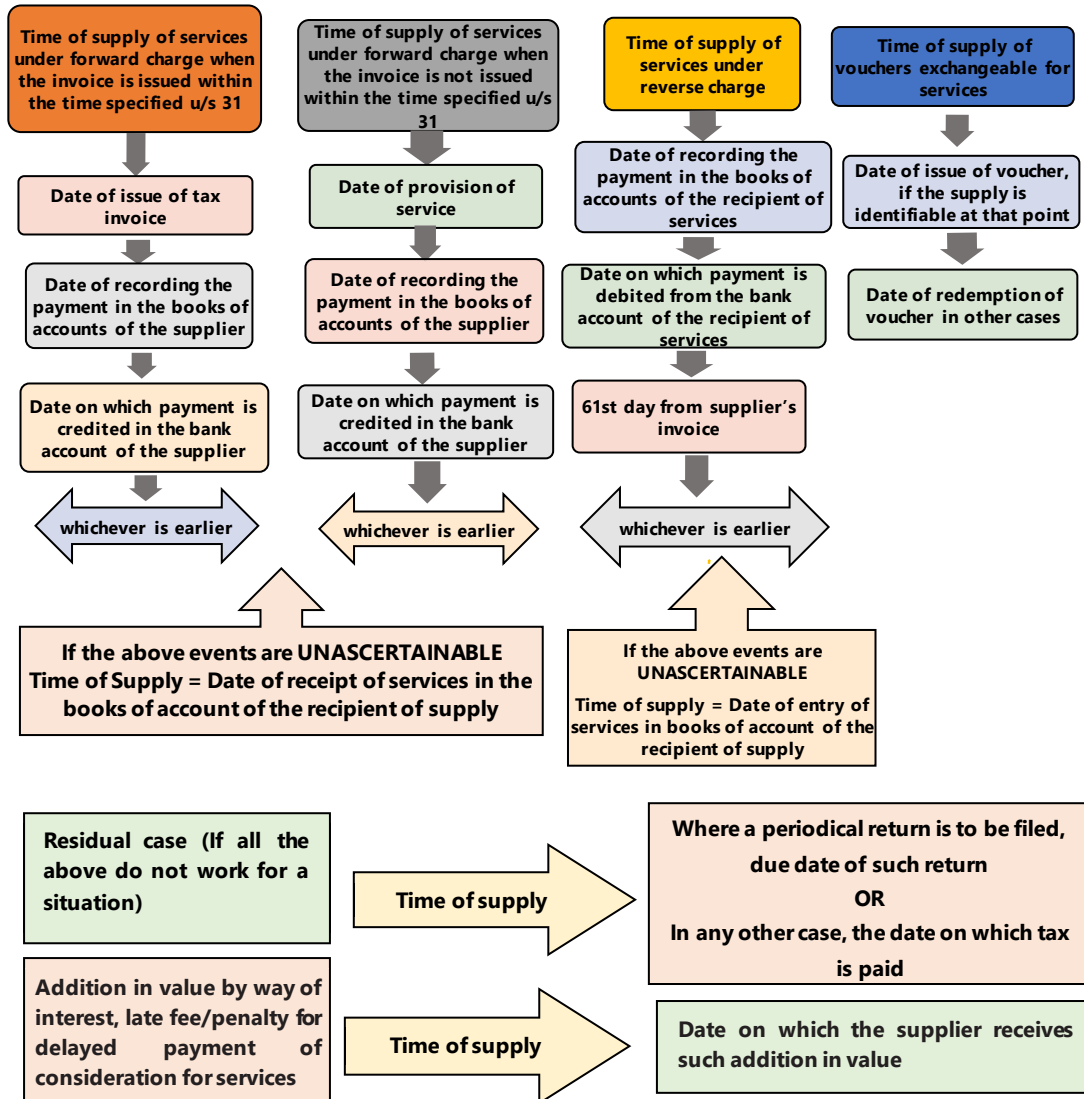
- Date on which periodical return for the period is required to be filed, or
- In any other case, date on which GST is paid.

(v) Enhancement of value on account of interest/late fee etc. for delayed payment of consideration [Section 13(6)]

The provisions for time of supply in case of addition in value by way of interest, late fee/penalty for delayed payment of consideration are the same for goods and services.

Section 13(6) prescribes that time of supply in case of addition in value by way of interest/ late fee/penalty for delayed payment of consideration for a service is the date on which the supplier receives such addition in value.

★ The provisions relating to time of supply of services as contained in section 13 are summarised in the diagram given below



 **5. LET US RECAPITULATE**

The provisions relating to time of supply of goods and services can be better understood if the same are studied simultaneously appreciating the similarities and differences between the two. Therefore, such provisions have been summarised by way of a comparison table to help students remember and retain the provisions in a better and effective manner:

TIME OF SUPPLY WHERE TAX IS PAYABLE UNDER FORWARD CHARGE

Time of supply of goods [Section 12(2)]	Time of supply of services [Section 13(2)]
<p><u>Earliest of the following:</u></p> <p>(a) Date of issue of invoice by the supplier or the last date on which he is required under section 31, to issue the invoice with respect to the supply</p> <p>(b) Date on which the supplier receives the payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier) with respect to the supply</p> <p><u>No GST on advances received for supply of goods:</u> In case of supply of goods by a registered person (excluding composition supplier), GST is to be paid on the outward supply of goods on the date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31 [Notification No. 66/2017 CT dated 15.11.2017].</p>	<p>(a) Invoice issued within the time period prescribed under section 31</p> <p><u>Earliest of the following:</u></p> <ul style="list-style-type: none"> → Date of issue of invoice by the supplier → Date of receipt of payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier) <p>(b) Invoice not issued within the time period prescribed under section 31</p> <p><u>Earliest of the following:</u></p> <ul style="list-style-type: none"> → Date of provision of service → Date of receipt of payment (entering the payment in books of account or crediting of payment in bank account, whichever is earlier)

	<p>(c) When the above events are unascertainable</p> <p>→ Date on which the recipient shows the receipt of services in his books of account</p>
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GENERAL TIME LIMIT FOR RAISING INVOICES

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

TIME OF SUPPLY WHERE TAX IS PAYABLE UNDER REVERSE CHARGE

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

-	<p><u>Import of service from associated enterprise</u> Date of entry in the books of account of the recipient or the date of payment, whichever is earlier</p>
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TIME OF SUPPLY OF VOUCHERS EXCHANGEABLE FOR GOODS AND SERVICES

Supply of vouchers exchangeable for goods and services [Sections 12(4) and 13(4)]

- (a) Supply of goods or services is identifiable at the time of issue of voucher
 - Date of issue of the voucher
- (b) Other cases
 - Date of redemption of the voucher

TIME OF SUPPLY OF GOODS AND SERVICES IN RESIDUAL CASES

Supply of goods and services in residual cases [Sections 12(5) and 13(5)]

- (a) Where a periodical return is required to be filed
 - Due date of filing such return
- (b) Other cases
 - Date of payment of tax

TIME OF SUPPLY FOR ADDITION IN VALUE BY WAY OF INTEREST/ LATE FEE/PENALTY FOR DELAYED PAYMENT OF CONSIDERATION

Addition in value by way of interest, late fee/penalty for delayed payment of consideration

Time of Supply → Date on which the supplier receives such addition in value



The provisions relating to time of supply of vouchers that are exchangeable for goods are same as that of the vouchers that are exchangeable for services. Similarly, the provisions relating to time of supply of goods falling in the residual category are same as that of the time of supply of services falling in the residual category. Also, provisions relating to time of supply for addition in value by way of interest, late fee/penalty for delayed payment of consideration are same for goods and services.

Furthermore, concepts like option of taking invoice date as time of supply in case of receipt of excess payment upto ₹ 1000, meaning of "Date of receipt of payment", significance of words "to the extent the invoice or payment covers the supply" are also same for goods and services.

Students may make a note of the above points as it will help them in understanding and remembering the provisions in a better manner.



6. TEST YOUR KNOWLEDGE

- Date on which the supplier receives the payment as per section 12 of CGST Act is
 - Date entered in books of accounts
 - Date of credit in bank account
 - Date entered in books of accounts or date of credit in bank account, whichever is earlier
 - Date on which receipt voucher is issued by supplier
- What is the time of supply of goods liable to tax under reverse charge mechanism?
 - Date of receipt of goods
 - Date on which the payment is made
 - Date immediately following 30 days from the date of issue of invoice by the supplier
 - Earlier of (a) or (b) or (c)

3. What is the time of supply of vouchers when the supply with respect to the voucher is identifiable?
- (a) Date of issue of voucher
 - (b) Date of redemption of voucher
 - (c) Date of entry in books of accounts
 - (d) Earlier of (a) or (b) or (c)
4. What is the time of supply of vouchers when the supply with respect to the voucher is not identifiable?
- (a) Date of issue of voucher
 - (b) Date of redemption of voucher
 - (c) Date of entry in books of accounts
 - (d) Earlier of (a) or (b) or (c)
5. What is the time of supply of service if the invoice is issued within 30 days from the date of provision of service?
- (a) Date of issue of invoice
 - (b) Date on which the supplier receives payment
 - (c) Date of provision of service
 - (d) Earlier of (a) & (b)
6. What is the time of supply of service if the invoice is not issued within 30 days from the date of provision of service?
- (a) Date of issue of invoice
 - (b) Date on which the supplier receives payment
 - (c) Date of provision of service
 - (d) Earlier of (b) & (c)
7. What is the time of supply of service in case of reverse charge mechanism?
- (a) Date on which payment is made to the supplier
 - (b) Date immediately following 60 days from the date of issue of invoice
 - (c) Date of invoice

- (d) Earlier of (a) and (b)
8. What is the time of supply of service where services are received from an associated enterprise located outside India?
- (a) Date of entry of services in the books of account of recipient of service
- (b) Date of payment
- (c) Earlier of (a) & (b)
- (d) Date of entry of services in the books of the supplier of service
9. Determine the time of supply in the following cases assuming that GST is payable under reverse charge:

S. No.	Date of receipt of goods	Date of payment by the recipient of goods	Date of issue of invoice by the supplier of goods
	(1)	(2)	(3)
(i)	July 1	August 10	June 29
(ii)	July 1	June 25	June 29
(iii)	July 1	Part payment made on June 30 and balance amount paid on July 20	June 29
(iv)	July 5	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1
(v)	July 1	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29
(vi)	August 1	August 10	June 29

10. Determine the time of supply in the following cases assuming that GST is payable under reverse charge:

S. No.	Date of payment by the recipient for supply of services	Date of issue of invoice by the supplier of services
	(1)	(2)
(i)	August 10	June 29
(ii)	August 10	June 1
(iii)	Part payment made on June 30 and balance amount paid on September 1	June 29
(iv)	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1
(v)	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29

11. Kabira Industries Ltd engaged the services of a transporter for road transport of a consignment on 17th June and made advance payment for the transport on the same date, i.e. 17th June. However, the consignment could not be sent immediately on account of a strike in the factory, and instead was sent on 20th July. Invoice was received from the transporter on 22nd July.

What is the time of supply of the transporter's service?

Note: Transporter's service is taxed on reverse charge basis.

12. Raju Pvt Ltd. receives the order and advance payment on 5th January for carrying out an architectural design job. It delivers the designs on 23rd April. By oversight, no invoice is issued at that time, and it is issued much later, after the expiry of prescribed period for issue of invoice.

When is the time of supply of service?

13. Investigation shows that 150 cartons of ceramic capacitors were dispatched on 2nd August but no invoice was raised and the transaction (dispatch of cartons) were not entered in the accounts. There was no evidence of receipt of payment.

What is the time of supply of 150 cartons for the purpose of payment of tax?

14. An order is placed on Ram & Co. on 18th August for supply of a consignment of customized shoes. Ram & Co. gets the consignment ready and informs the customer and issues the invoice on 2nd December. The customer collects the

consignment from the premises of Ram & Co. on 7th December and electronically transfers the payment on the same date, which is entered in the accounts on the next day, 8th December.

What is the time of supply of the shoes for the purpose of payment of tax?

15. Sodexo meal coupons are sold to a company on 9th August for being distributed to the employees of the said company. The coupons are valid for six months and can be used against purchase of food items. The employees use them in various stores for purchases of various edible items on different dates throughout the six months.

What is the date of supply of the coupons?

16. A firm of advocates issues invoice for services to ABC Ltd. on 17th Feb. The payment is contested by ABC Ltd. on the ground that on account of negligence of the firm, the company's case was dismissed by the Court for non-appearance, which necessitated further appearance for which the firm is billing the company. The dispute drags on and finally payment is made on 3rd November.

Identify the time of supply of the legal services.

Note: Legal services are taxable on reverse charge basis.

17. Modern Security Co. provides service of testing of electronic devices. In one case, it tested a batch of devices on 4th and 5th September but could not raise invoice till 19th November because of some dispute about the condition of the devices on return. The payment was made in December.

What is the method to fix the time of supply of the service?

7. ANSWERS/HINTS

1. (c) 2. (d) 3. (a) 4. (b) 5. (d) 6. (d) 7. (d)
8. (c)

9.

S. No.	Date of receipt of goods	Date of payment by the recipient of goods	Date of issue of invoice by the supplier of goods	Date immediately following 30 days from the date of invoice	Time of supply of goods [Earlier of (1), (2) & (4)]
	(1)	(2)	(3)	(4)	(5)
(i)	July 1	August 10	June 29	July 30	July 1
(ii)	July 1	June 25	June 29	July 30	June 25
(iii)	July 1	Part payment made on June 30 and balance amount paid on July 20	June 29	July 30	June 30 for part payment made and July 1 for balance amount
(iv)	July 5	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1	July 2	June 28 (i.e., when payment is entered in the books of account of the recipient)
(v)	July 1	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29	July 30	June 26 (i.e., when payment is debited in the recipient's bank account)
(vi)	August 1	August 10	June 29	July 30	July 30 (i.e., 31 st day from issuance of invoice)

10.

S. No.	Date of payment by the recipient for supply of services	Date of issue of invoice by the supplier of services	Date immediately following 60 days from invoice	Time of supply of goods [Earlier of (1) & (3)]
	(1)	(2)	(3)	
(i)	August 10	June 29	August 29	August 10
(ii)	August 10	June 1	August 1	August 1
(iii)	Part payment made on June 30 and balance amount paid on September 1	June 29	August 29	June 30 for part payment and August 29 for balance amount
(iv)	Payment is entered in the books of account on June 28 and debited in recipient's bank account on June 30	June 1	August 1	June 28 (i.e. when payment is entered in the books of account of the recipient)
(v)	Payment is entered in the books of account on June 30 and debited in recipient's bank account on June 26	June 29	August 29	June 26 (i.e. when payment is debited in the recipient's bank account)

11. Time of supply of service taxable under reverse charge is the earlier of the following two dates in terms of section 13(3):

- Date of payment
- 61st day from the date of issue of invoice

In this case, the date of payment precedes 61st day from the date of issue of invoice by the supplier of service. Hence, the date of payment, i.e. 17th June, will be treated as the time of supply of service [Section 13(3)(a)].

12. Since the invoice has not been issued within the prescribed time period, time of supply of service will be the earlier of the following two dates in terms of section 13(2)(b):

- Date of provision of service
- Date of receipt of payment

The payment was received on 5th January and the service was provided on 23rd April. Therefore, the date of payment, i.e. 5th January is the time of supply of the service in this case.

13. As per *Notification No. 66/2017 CT dated 15.11.2017*, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

In this case since the invoice has not been issued, the time of supply for the purpose of payment of tax will be the last date on which the invoice is required to be issued.

The invoice for supply of goods must be issued on or before the dispatch of goods, i.e. on 2nd August. Therefore, the time of supply for the purpose of payment of tax for the goods will be 2nd August, the date when the invoice should have been issued.

14. As per *Notification No. 66/2017 CT dated 15.11.2017*, a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a), i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

In this case, the invoice is issued before the removal of the goods and is thus, within the time limit prescribed under section 31(1). Therefore, the time of supply for the purpose of payment of tax is the date of issue of invoice, which is 2nd December.

15. As the coupons can be used for a variety of food items, which are taxed at different rates, the supply cannot be identified at the time of purchase of the coupons. Therefore, the time of supply of the coupons is the date of their redemption in terms of section 12(4).
16. Time of supply of services that are taxable under reverse charge is earliest of the following two dates in terms of section 13(3):
 - Date of payment [3rd November]
 - 61st day from the date of issue of invoice [19th April]

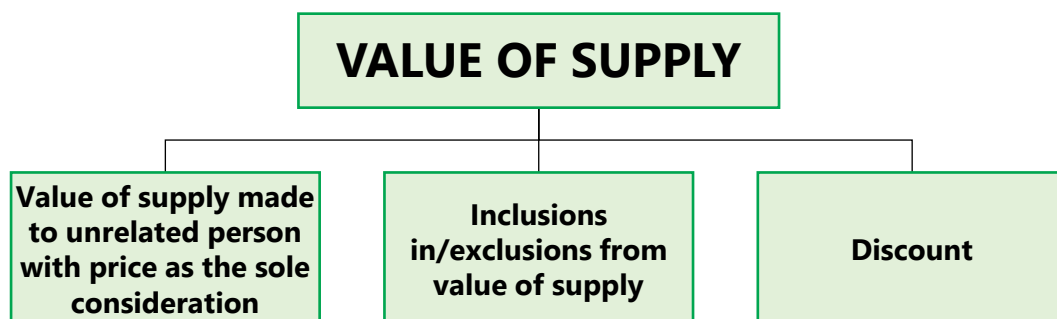
The date of payment comes subsequent to the 61st day from the issue of invoice by the supplier of service. Therefore, the 61st day from the date of supplier's invoice has to be taken as the time of supply. This fixes 19th April as the time of supply.

17. The time of supply of services, if the invoice is not issued in time, is the date of payment or the date of provision of service, whichever is earlier [Section 13(2)(b)]. In this case, the service is provided on 5th September but not invoiced within the prescribed time limit. Therefore, 5th September, the date of provision of service, being earlier than the date of payment, will be the time of supply.

UNIT - II : Value of Supply**LEARNING OUTCOMES**

After studying this Unit, you will be able to-

- ❑ understand what constitutes the value of a taxable supply of goods / services when the supply is made to an unrelated person and price is the sole consideration for the supply
- ❑ identify the various inclusions in/exclusions from the value of supply
- ❑ pinpoint the situations when the discount will be included /not included in the value of supply
- ❑ ascertain who are related persons
- ❑ compute the value of taxable supply when price is the sole consideration for the supply and the supplier and recipient are not related

UNIT OVERVIEW

1. INTRODUCTION

GST is payable (i) on supply of goods and / or services for a consideration in the course of or furtherance of business; (ii) on certain supplies made without a consideration as specified in Schedule I to the CGST Act.

As GST is an *ad valorem* levy, i.e. it is levied as a percentage of the value of supply of goods and/or services, it becomes important to know how to arrive at the value on which tax is to be paid. Provisions relating to 'value of supply' set out the mechanism to compute such value basis which CGST and SGST/UTGST (intra-State supply) and IGST (inter-State supply) should be paid.




Section 15 of the CGST Act supplemented with the Chapter IV: Determination of Value of Supply of CGST Rules¹ prescribes the provisions for determining the value of supply of goods and services.

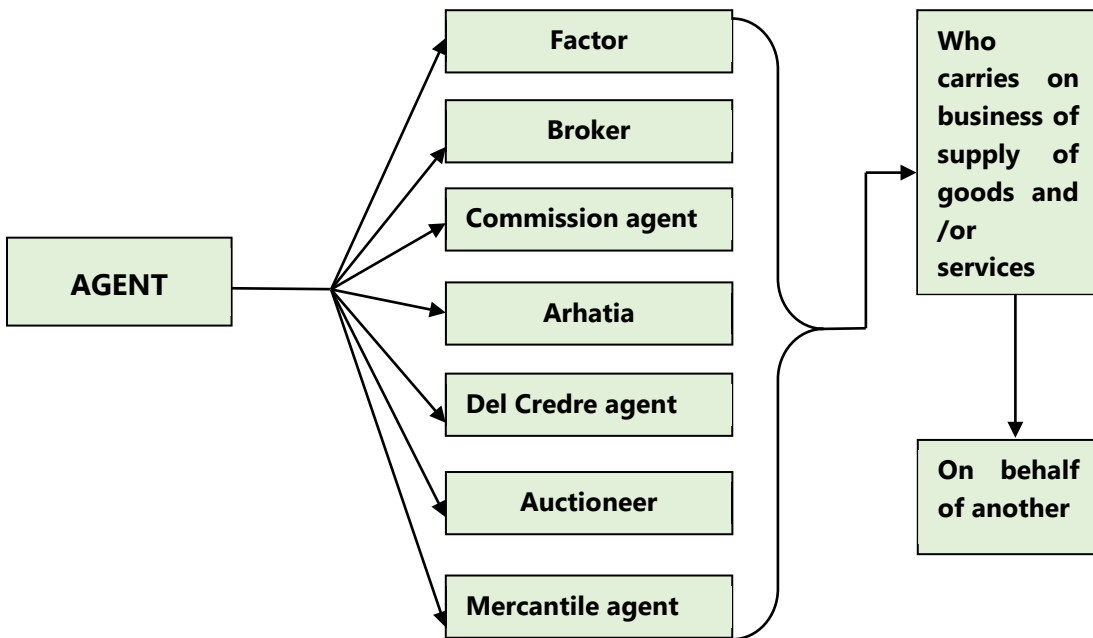
Section 15 of the CGST Act provides common provisions for determining the value of supply of goods and services. It provides the mechanism for determining the value of a supply which is made between unrelated persons and when price and only the price is the sole consideration for the supply. When value cannot be determined under section 15 as also in certain specific cases, the same is determined using Chapter IV: Determination of Value of Supply of CGST Rules.

Provisions of value of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

2. RELEVANT DEFINITIONS

-  **Agent** means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].

¹ Chapter IV: Determination of Value of Supply of CGST Rules will be discussed at the Final level.

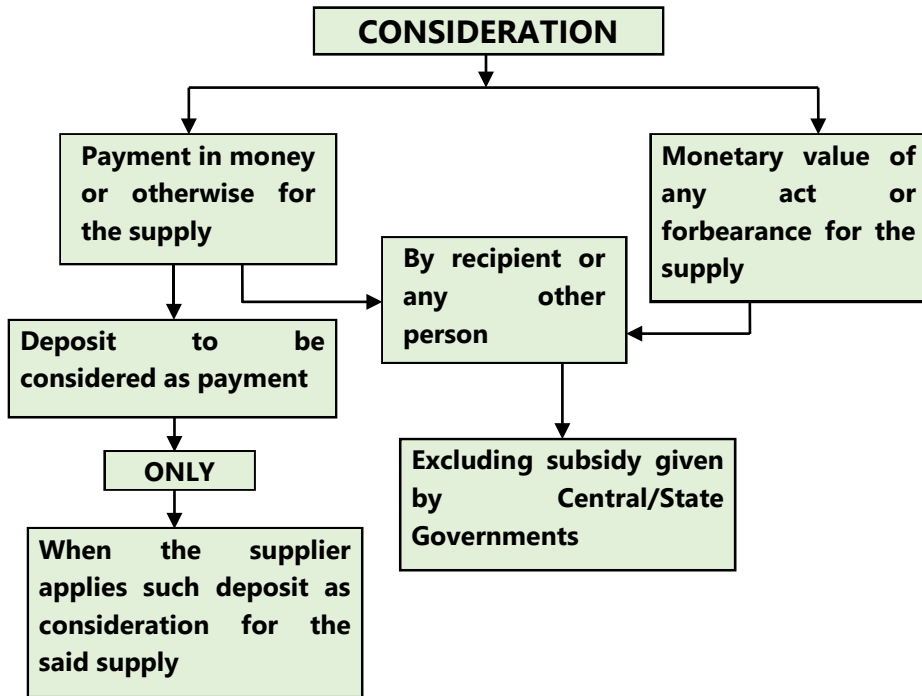


✔ **Cess** shall have the same meaning as assigned to it in the Goods and Services Tax (Compensation to States) Act [Section 2(22)].

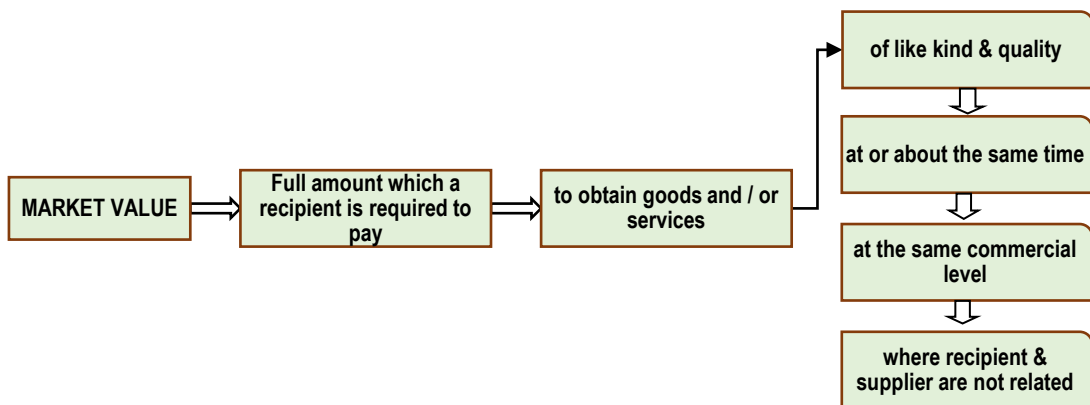
✔ **Consideration** in relation to the supply of goods or services or both includes –

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

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

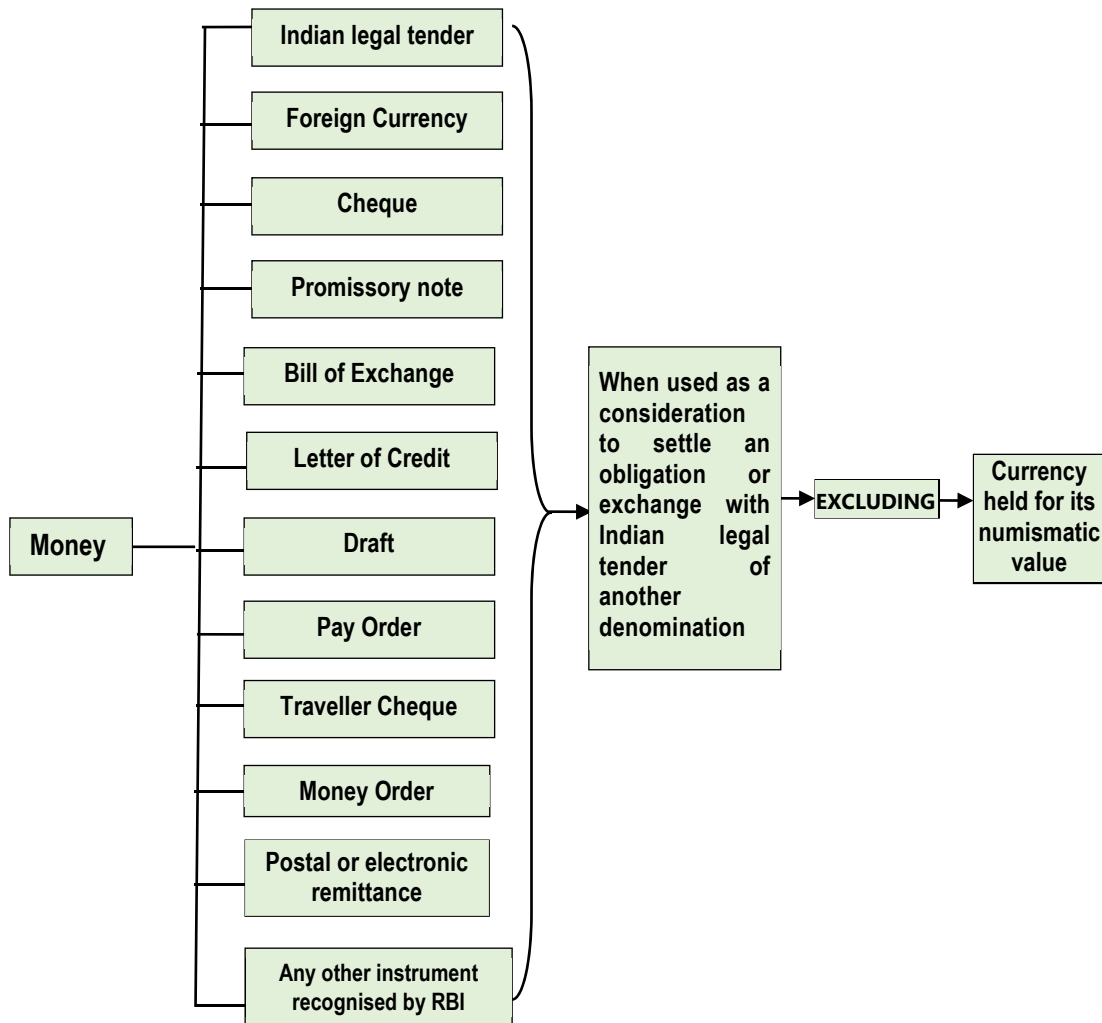


- 📌 **Market value** shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods or services or both of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related [Section 2(73)].



- 📌 **Money** means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle

an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value [Section 2(75)].



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 section 2(45) 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 cooperative 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 [Section 2(84)].

Other relevant definitions like that of recipient, supplier etc. may be referred from the definitions given in Unit-I of this chapter.



3. VALUE OF SUPPLY [SECTION 15]



STATUTORY PROVISIONS

Section 15		Value of taxable supply
Sub-section	Clause	Particulars
(1)		The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2)	<i>The value of supply shall include-</i>	
	(a)	<i>any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;</i>
	(b)	<i>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 or services or both;</i>
	(c)	<i>incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;</i>
	(d)	<i>interest or late fee or penalty for delayed payment of any consideration for any supply; and</i>
	(e)	<i>subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.</i>
	<i>Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.</i>	
(3)	<i>The value of the supply shall not include any discount which is given</i>	
	(a)	<i>before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and</i>
	(b)	<i>after the supply has been effected, if—</i>

		(i)	<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</i>
		(ii)	<i>input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.</i>
(4)	<i>Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.</i>		
(5)	<i>Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.</i>		
Explanation—For the purposes of this Act,—			
(a)	<i>persons shall be deemed to be “related persons” if—</i>		
	(i)	<i>such persons are officers or directors of one another's businesses;</i>	
	(ii)	<i>such persons are legally recognised partners in business;</i>	
	(iii)	<i>such persons are employer and employee;</i>	
	(iv)	<i>any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;</i>	
	(v)	<i>one of them directly or indirectly controls the other;</i>	
	(vi)	<i>both of them are directly or indirectly controlled by a third person;</i>	
	(vii)	<i>together they directly or indirectly control a third person; or</i>	

	(viii)	<i>they are members of the same family;</i>
(b)		<i>the term "person" also includes legal persons;</i>
(c)		<i>persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related</i>



ANALYSIS

The CGST law has different provisions for determining the value of a supply of goods / services in the following situations:

- ➔ Supplies made solely for a price in money (monetary consideration), to unrelated persons → Sub-section (1) of section 15;
- ➔ Supplies made solely for non-monetary consideration, or for part monetary consideration and part non-monetary consideration, or involving additional consideration, or to related persons, or for specific classes of supply → Sub-sections (4) and (5) of section 15 read with the Chapter IV: Determination of Value of Supply of CGST Rules.

The definition of 'related person' under the explanation to section 15 covers various situations of control, including sole agent, sole distributor and sole concessionaire. The concept of related person has been presented in diagram at page no. 5.58.

A. Supplies to unrelated persons where price is the sole consideration

(i) Transaction value [Section 15(1)]

When a transaction of supply of goods / services is made

- between two persons (see definition of "person") who are not related to each other (see definition of "related person" in 'Explanation' to section 15), and
- price is the sole consideration (see definition of consideration) for the supply,

the value of supply is the **"transaction value"**.



Under section 15(1), the transaction value which is applicable between unrelated persons where price is the sole consideration for the supply is -

the price actually paid or payable for the said supply of goods or services

or both.

This is the price for the specific supply that is being valued. It includes the amount already paid at the time the supply is being valued for tax, as well as the amount payable and not yet paid at that time. The word 'payable' refers to price that is agreed to be paid for the goods / services.



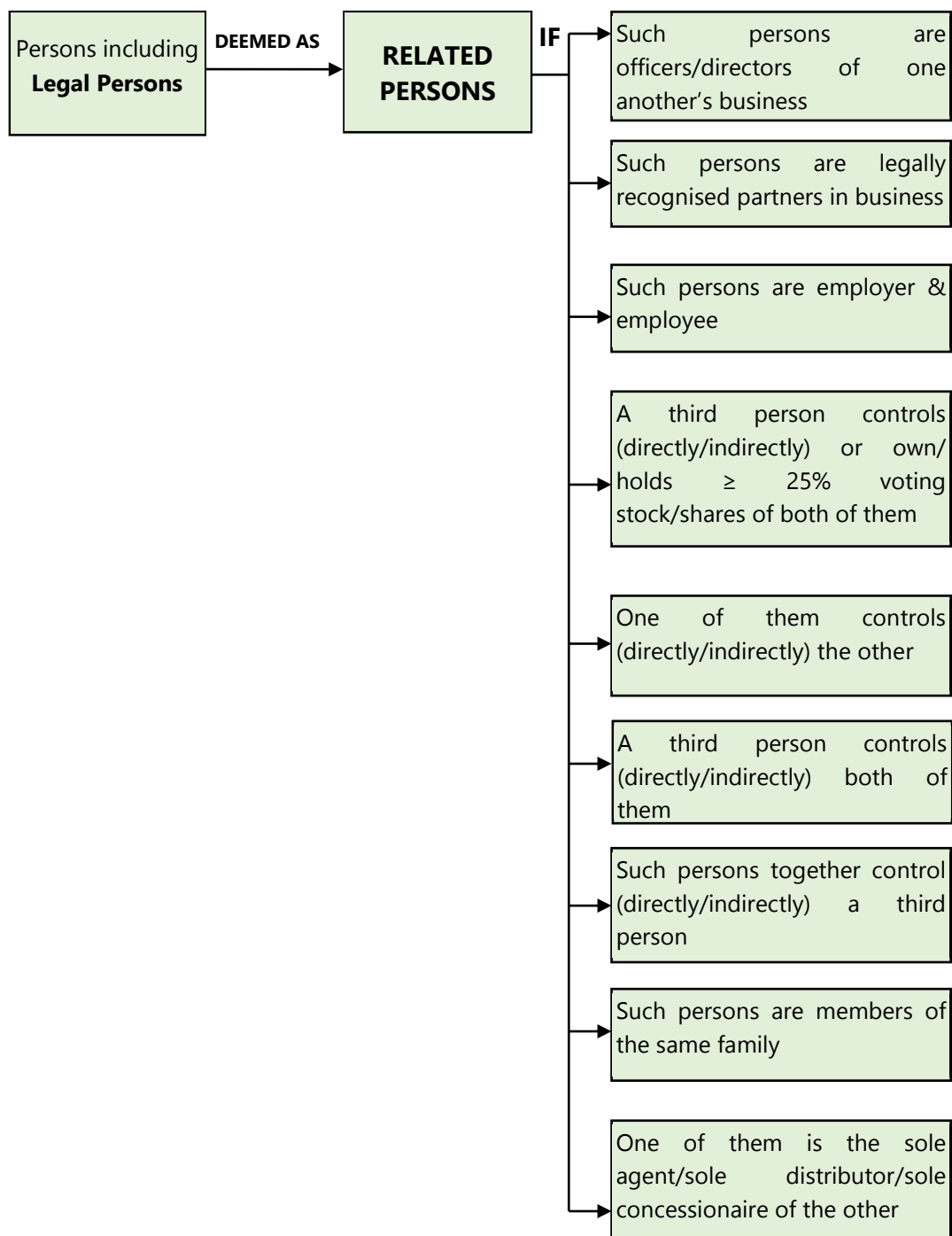
Wholesale price for 1 MT of cement sold by X Ltd. in the ordinary course of business : ₹ 7,000.

Price of 1 MT of cement sold by X Ltd. to un related customer Y : ₹ 6,700.

Value of supply made by X Ltd. to Y is ₹ 6,700 which is the price actually paid or payable and not the wholesale price.



The value of taxable supply of goods and services shall ordinarily be 'the transaction value' which is the price paid or payable, when the parties are not related and price is the sole consideration. Section 15 of the CGST Act further elaborates various inclusions and exclusions from the ambit of transaction value. For example, the transaction value shall not include discount allowed subject to certain conditions.

Related persons [Explanation to section 15]

(ii) Inclusions in value [Section 15(2)]

The value of supply includes certain elements which are enumerated and discussed below.

- ❑ Taxes, duties, cesses, fees and charges other than CGST, SGST, UTGST, GST Compensation Cess, if charged separately
- ❑ Payments to third parties → Any amount that the supplier is liable to pay in relation to supply but which has been incurred by the recipient of the supply and not already included in the price.
- ❑ Incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply
- ❑ 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 goods /supply of services
- ❑ Interest or late fee or penalty for delayed payment of consideration
- ❑ Subsidies, directly linked to the price, other than subsidies given by the State or Central Governments

The above ingredients are discussed below.

Taxes other than GST & GST Compensation Cess [Section 15(2)(a)]

Any taxes, duties, cesses, fees and charges levied under any law for the time being in force except the CGST Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier, are includible in the value of supply. In case of inter-State sale liable to IGST, the value of supply will include taxes other than IGST and the GST Compensation Cess in terms of third proviso to section 20 of IGST Act. In effect, all the taxes, duties etc. which are not subsumed in GST form part of the taxable value for the purpose of levying GST.

For instance, if a supplier of goods pays a municipal tax in relation to the goods being supplied, such tax will form part of the value of supply.

TCS under Income-Tax Act, 1961 not includible in the taxable value for the purpose of GST: The CBIC vide Circular No. 76/50/2018 GST dated 31.12.2018 (amended vide corrigendum dated 7.03.2019) has clarified that for the purpose of determination of value of supply under GST, tax collected at source (TCS) under the provisions of the Income Tax Act,

1961 would not be includible as it is an interim levy not having the character of tax.

Payments made to third parties by the recipient on behalf of the supplier in relation to the supply [Section 15(2)(b)]

A supplier may need to incur various expenses in order to make a particular supply of goods / services. In the normal course, he would pay these amounts and they would form part of the value that he charges from the customer (recipient of supply). However, even if the customer makes direct payment of some of such liabilities (of the supplier) to the third parties, and the supplier does not include this amount in his bill, it would still form part of the value of the supply.

A point to note here is that amount paid by the recipient to third parties will be added to the value under this clause only when the supplier is under contractual liability to make payment to such third parties and the said payment is in relation to such supply.



Grand Biz contracts with ABC Co. to conduct a dealers' meet. In furtherance of this, Grand Biz contracts with vendors to deliver goods / services, like water, soft drinks, audio system, projector, catering, flowers etc. at the venue on the stipulated dates at the stipulated prices. Grand Biz is liable to make these payments as contracted.

The soft drinks supplier wants payment upon delivery; ABC Co. agrees to pay the bill raised by the soft drinks vendor on Grand Biz on receiving the crates of soft drinks. This amount is not billed by Grand Biz to ABC Co. However, it would be added to the value of service provided by Grand Biz to ABC Co. for payment of GST.

Incidental expenses [Section 15(2)(c)]

Incidental expenses, such as, commission and packing charged by the supplier or anything else done by the supplier in relation to the supply at the time of or before delivery of goods or supply of services must be added to value.



Commission: This may be paid to an agent and recovered from the buyer of the goods / services; this is part of the value of the supply.

Packing, if charged by the supplier to the recipient, is similarly part of the value of the supply.

Inspection or certification charges is another element that may be added to the value, if billed to the recipient of supply.

Installation and testing charges at the recipient's site will also be added, being an amount charged for something done by the supplier in respect of the supply at the time of making the supply.

Weighment charges, loading & designing charges incurred before supply

Outward freight, transit insurance

Where the supplier agrees to deliver the goods at the buyer's premises and arranges for transport and insurance the contract of supply becomes a composite supply, the principal supply being the supply of goods. Therefore, outward freight and transit insurance become part of the value of the composite supply and GST is payable thereon at the same rate as applicable for the relevant goods. However, if the contract for supply is on ex-factory basis where buyer pays the outward freight and insurance, the same will not be included in the value of supply of goods.

Interest, late fee or penalty for delayed payment [Section 15(2)(d)]

The value for a supply will include not only the base price but also the charges for delay in payment.



A supply priced at ₹ 2,000 is made, with a credit period of 1 month for payment. Thereafter, interest of 12% is chargeable. The payment is received after the lapse of two months from the date of supply. The amount of 12% p.a. (i.e. 1% per month) on ₹ 2,000 for one month after the free credit period is ₹ 20. Such interest will be added to the value and thus, the value of supply will work out to be ₹ 2,020, assuming the interest to be exclusive of GST.



Time of supply for such interest/ late fee/ penalty is the date when such amount is received by the supplier. Further, since such charges are an addition in the value of supply, same rate of tax as applicable on the main supply of goods / service are applicable on such charges as well.

Subsidies [Section 15(2)(e)]

Subsidy is a sum of money given to keep the price of a service or commodity low. If the subsidy is given by the State or Central Government; the lower

price, after adjusting the subsidy, is the value. If the subsidy is given by a person or entity other than the State or Central Government, it does not lower the value. The subsidy is added to the value of supply of the supplier who receives the subsidy. It must be noted that only subsidies directly linked to the price of goods/services are added to the value. Blanket subsidy/donation received are not includible in the price.



The selling price of a notebook is ₹ 50. For notebooks sold to students in Government schools, a company uses its CSR funds to pay the seller ₹ 30, so that the students pay only ₹ 20 per notebook. The value of the notebook will be ₹ 50, as this is a non-government subsidy. If the same subsidy is paid by the Central Government or State Government, the value of the notebook would be ₹ 20.

(iii) Exclusion of discounts from value [Section 15(3)]

Discounts are a common phenomenon for businesses. Numerous kinds of discounts are given by the suppliers to their customers namely, trade discounts, cash discounts, quantity/volume/performance discounts etc. Such discounts are reduced from the sale price of the supply. Since, the value of a taxable supply is the transaction value, GST is leviable on the value after deducting the discounts.

However, not all discounts offered by the supplier to their customers are allowed as a deduction from the value. Only such discounts which satisfy the conditions prescribed in section 15(3), are allowed as deduction from the value. The essence of the conditions prescribed in section 15(3) is that the price as established at the time of supply should form the basis of value. The discounts which do not fulfill the conditions specified in section 15(3) are not deductible from the value, i.e. GST in such a case is levied on the gross value of the supply without considering the discount.

Discounts that are allowed as deduction from the value are as follows:

- (a) **Discounts given before or at the time of supply and shown in the invoice** – Example for such discount can be discounts that are allowed for making the payment at the time of supply itself. Such discounts are thus, recoded in the invoice and thus, GST is charged on the gross value less discount recorded in the invoice.
- (b) **Post supply discounts-** It is not always commercially feasible to determine all discounts before or at the time of supply or record them

in the invoice. For instance, cash discount given for making the payment within a stipulated time. Even though the discount is established before/at the time of supply, the supplier cannot record such discount in the invoice as he does not know if the buyer will make the payment within the stipulated time. Likewise, in case of quantity/volume/performance discount also, the supplier is not aware before/at the time of supply as to whether the buyer would purchase the requisite quantity within the stipulated time. Therefore, in this case also, the discount cannot be recorded in the invoice. In such cases, initially the GST is paid on the gross value indicated in the invoice without considering the discount. The supplier, however, passes the discount to the buyers subsequently by issuing credit notes.

Post supply discounts, i.e. the discounts that are allowed after supply is made are allowed as a deduction from the value of supply if the following two conditions are satisfied:

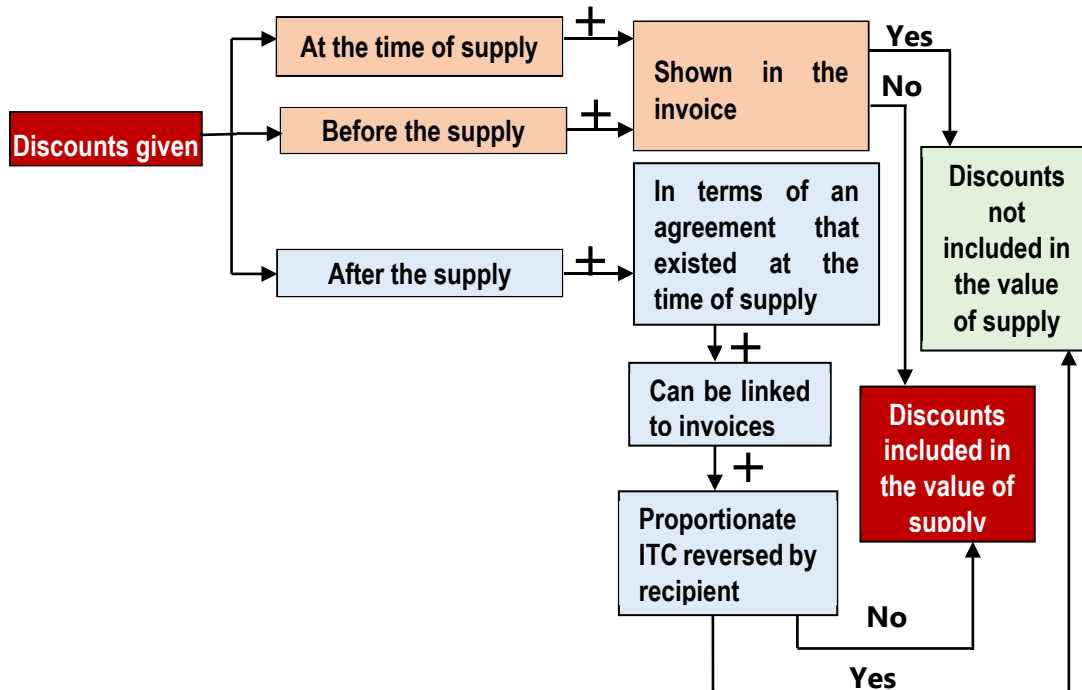
- ✓ Discount is in terms of an agreement that existed at the time of supply and can be worked out invoice-wise; and
- ✓ Proportionate input tax credit is reversed by the recipient - The buyer would have paid GST on the gross value specified in the invoice. Thus, when a credit note² is issued to him by the supplier for the discount, the buyer will reverse the proportionate credit; consequent to which, the supplier's output tax liability will be reduced by the same amount.

If the any of the above conditions are not satisfied, the GST liability of supplier cannot be reduced. The supplier, however, can issue a commercial credit note³ for the value of discount. In such a scenario, the buyer will not be required to reverse any input tax credit.

The provisions relating to allowability of discount as a deduction from the value have been depicted by way of a diagram given in the next page.

² Credit notes governed under GST law are issued under section 34. Provisions of section 34 are discussed in Chapter 8: Tax Invoice; Credit & Debit Notes; E-Way Bill

³ A commercial credit note is not governed under GST law and is issued only for the value of discount/reduction in value of the supply, without any GST.



Allowability of certain specific types of discounts offered by the suppliers as clarified vide Circular No. 92/11/2019 GST dated 07.03.2019

- (i) **Staggered discounts ('Buy more, Save more' offers):** In case of staggered discounts, rate of discount increases with increase in purchase volume. For example - Get 10 % discount for purchases above ₹ 5,000/-, 20% discount for purchases above ₹ 10,000/- and 30% discount for purchases above ₹ 20,000/-. Such discounts are shown on the invoice itself.

Such discounts are excluded to determine the value of supply.

- (ii) **Periodic / year ending discounts/volume discounts:** These discounts are offered by the suppliers to their stockists, etc. For example- Get additional discount of 1% if you purchase 10,000 pieces in a year, get additional discount of 2% if you purchase 15,000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the

year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.

Such discounts are excluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15 of the CGST Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

- (iii) **Secondary discounts:** *These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10,000 packets of biscuits to M/s B at ₹ 10/- per packet. Afterwards, M/s A re-values it at ₹ 9/- per packet. Subsequently, M/s A issues credit note to M/s B for ₹ 1/- per packet.*

Such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in clause (b) of sub-section (3) of section 15 of the CGST Act are not satisfied.

It may be noted that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in clause (b) of sub-section (3) of section 15 of the CGST Act are not satisfied.



Examples of discount deductible from value of supply

(i) Royal Biscuit Co. gives a discount of 30% on the list price to its distributors. Thus, for a carton of Spicebisk, in the invoice the list price is mentioned as ₹ 200, on which a discount of 30% is given to arrive at the final price of ₹ 140. The value is ₹ 140, as the discount is allowed at the time of supply and shown in the invoice.

Post supply discounts

(ii) The agreement of Raju Electrical Appliances with its dealers is that purchase of rice cookers over 1000 pieces in the Diwali month will entitle them to discount of 5% per cooker. Therefore, the quantum of discount can be determined only at the end of Diwali month. However, since the agreement relating to discount was in existence at the time of supply, and the discount can be worked out for each invoice, such post supply discount

will be allowed as a deduction from the value of supply of rice cookers.

Raju Electrical Appliances can issue credit note for 5% of the value of goods along with GST and claim adjustment of excess tax paid. The dealer must reverse the proportionate input tax credit on the relevant stock to bring it in line with the reduced tax.

(iii) Pink and Blue Pvt. Ltd. (PBPL) sold goods to Orange Pvt. Ltd. (OPL) on 15th January at ₹ 50,000 (exclusive of taxes and discounts) and charged ₹ 9,000 as IGST @ 18%. The terms of supply stipulated that discount @ 2% will be given to OPL if it makes the payment within one month of the supply. OPL avails the input tax credit of ₹ 9,000 in the month of January and makes the payment for the goods on 10th February. PBPL issues credit note for ₹ 1180 [₹ 1,000 for value of discount and ₹ 180 for proportionate IGST leviable thereon] to OPL on 11th February. After receiving credit note, OPL reverses the input tax credit of ₹ 180 attributable to the discount given by the PBPL. PBPL can reduce its GST liability of the month of February by ₹ 180. OPL would have paid ₹ 57,820 (₹ 50,000 + ₹ 9,000 - ₹ 1,000 - ₹ 180) to PBPL on 10th February.



Examples of non-deductible discount

(i) In the above example, if the terms of supply did not provide for discount @ 2% for payment within one month but PBPL offers such discount to OPL at the time of payment after negotiation, the discount will not be allowed as a deduction from the value. PBPL will issue a commercial credit note for only the value of discount, i.e. for ₹ 1,000. OPL will not reverse any input tax credit and PBPL will also not be able to reduce its GST liability for the month of February. In this case, OPL would pay ₹ 58,000 (₹ 50,000 + ₹ 9,000 - ₹ 1,000) to PBPL on 10th February.

(ii) A company announces turnover discounts after reviewing dealer performance during the year. The discounts are based on performance slabs and are given as cash-back. As these discounts were not known at the time of supply of the goods, they will not be deducted from value of those goods. Hence, the company will not be able to adjust excess tax paid from its tax liability.

B. Supplies where value cannot be determined u/s 15(1) and notified supplies [Sub-sections (4) and (5) of section 15]

Section 15(4) lays down that where sub-section (1) is not applicable, that is, if the transaction is with a related party, and/or price is not the sole consideration for the supply of goods / services, then the value will be determined in the manner as prescribed, which means as stipulated in the rules for valuation [See the definition of 'prescribed']. Further, section 15(5) lays down that in respect of certain notified supplies also, the value will be determined in the manner as stipulated in the rules for valuation. As stated earlier, these rules will be discussed at the Final level.

ILLUSTRATION 1

Black and White Pvt. Ltd. has provided the following particulars relating to goods sold by it to Colourful Pvt. Ltd.

Particulars	₹
List price of the goods (exclusive of taxes and discounts)	50,000
Tax levied by Municipal Authority on the sale of such goods	5,000
Packing charges (not included in price above)	1,000

Black and White Pvt. Ltd. received ₹ 2000 as a subsidy from a NGO on sale of such goods. The price of ₹ 50,000 of the goods is after considering such subsidy. Black and White Ltd. offers 2% discount on the list price of the goods which is recorded in the invoice for the goods.

Determine the value of taxable supply made by Black and White Pvt. Ltd.

ANSWER

Computation of value of taxable supply

Particulars	₹
List price of the goods (exclusive of taxes and discounts)	50,000
Tax levied by Municipal Authority on the sale of such goods [Includible in the value as per section 15(2)(a)]	5,000

Packing charges [Includible in the value as per section 15(2)(c)]	1,000
Subsidy received from a non-Government body [Since subsidy is received from a non-Government body, the same is included in the value in terms of section 15(2)(e)]	<u>2,000</u>
Total	58,000
Less: Discount @ 2% on ₹ 50,000 [Since discount is known at the time of supply and recorded in invoice, it is deductible from the value in terms of section 15(3)(a)]	<u>1,000</u>
Value of taxable supply	57,000

ILLUSTRATION 2

Samridhi Advertisers conceptualised and designed the advertising campaign for a new product launched by New Moon Pvt Ltd. for a consideration of ₹ 5,00,000. Samridhi Advertisers owed ₹ 20,000 to one of its vendors in relation to the advertising service provided by it to New Moon Pvt Ltd. Such liability of Samridhi Advertisers was discharged by New Moon Pvt Ltd. New Moon Pvt Ltd. delayed the payment of consideration and thus, paid ₹ 15,000 as interest. Assume the rate of GST to be 18%.

Determine the value of taxable supply made by Samridhi Advertisers.

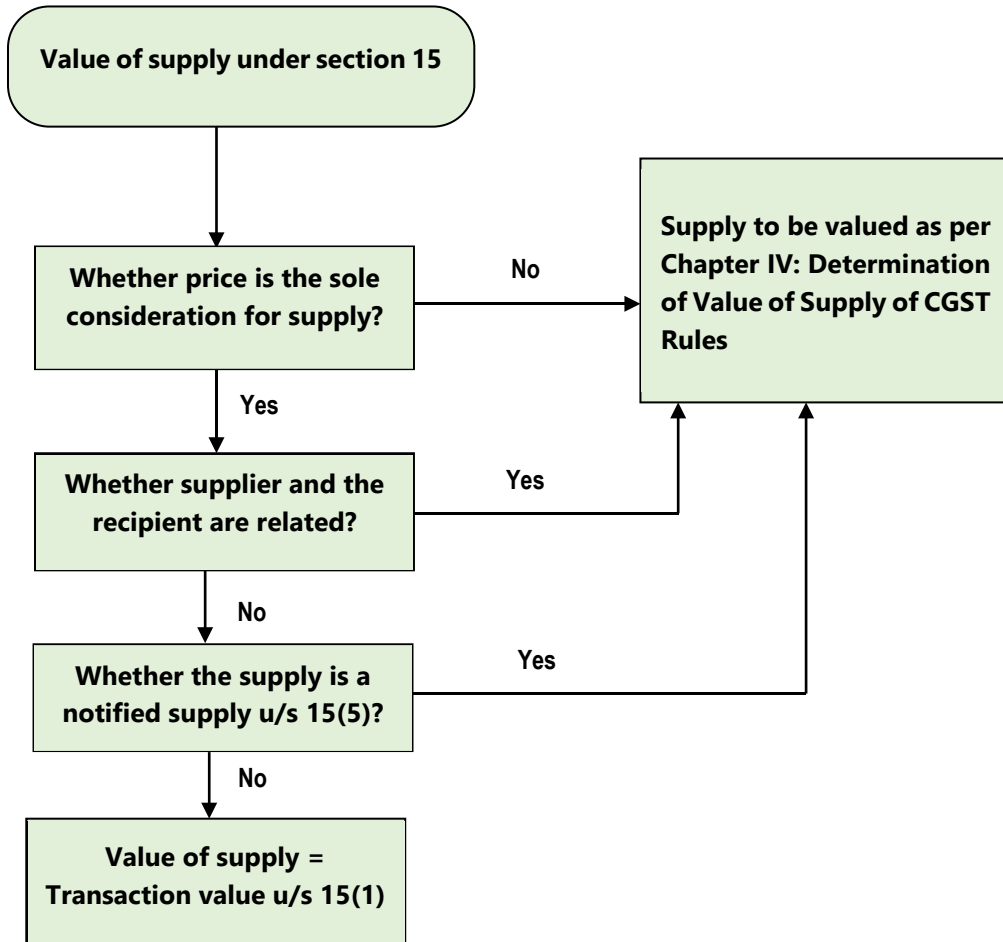
ANSWER**Computation of value of taxable supply**

Particulars	₹
Service charges	5,00,000
Payment made by New Moon Pvt. Ltd to vendor of Samridhi Advertisers [Liability of the supplier being discharged by the recipient, is includible in the value in terms of section 15(2)(b)]	20,000
Interest for delay in payment of consideration [Includible in the value in terms of section 15(2)(d) – Refer note below] (rounded off)	12,712
Value of taxable supply	5,32,712

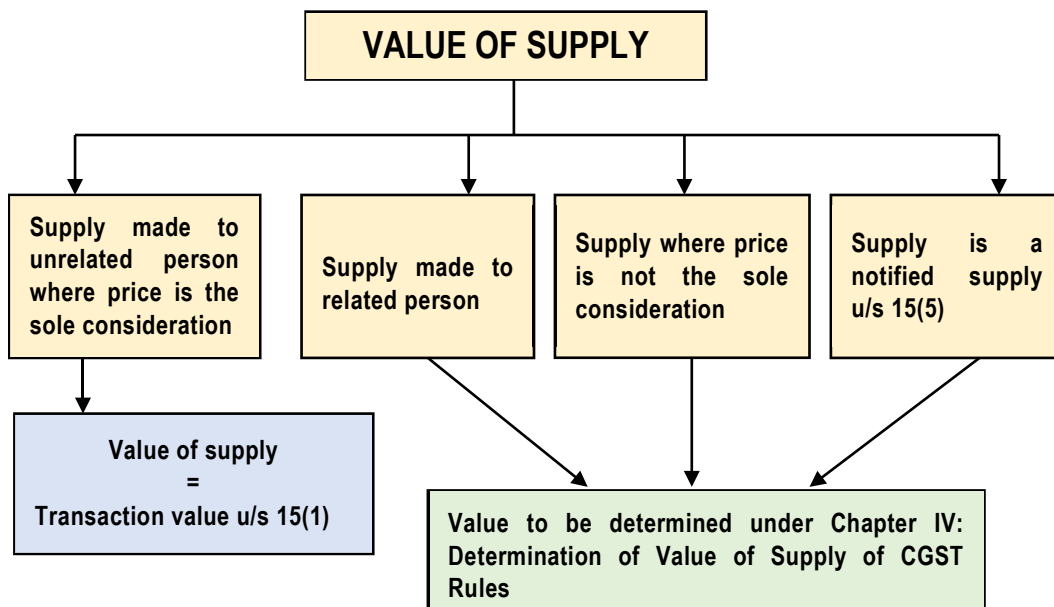
Note: The interest for delay in payment of consideration will be includible in the value of supply but the time of supply of such interest will be the date when such interest is received in terms of section 13(6). Such interest has been assumed to be inclusive of GST and thus, the value has been computed by making back calculations

$$\left[\frac{\text{Interest}}{100 + \text{tax rate}} \times 100 \right].$$

The scheme of valuation as provided under section 15 is depicted by way of a diagram given below:



4. LET US RECAPITULATE



Inclusions in value u/s 15(2)

- ⇒ Taxes other than GST
- ⇒ Third party payments made by recipient in relation to supply, which supplier was liable to pay and were not included in the price
- ⇒ Incidental expenses including anything done by the supplier in respect of the supply till delivery of goods/ supply of services, if charged to recipient
- ⇒ Subsidies directly linked to price of supply other than the ones given by Central/State Governments
- ⇒ Interest/late fee/penalty for delay in payment of consideration

Exclusions from value u/s 15(2)

- ⇒ Discounts given before or at the time of supply and recorded in the invoice
- ⇒ Post supply discount/incentive, if known in advance & linked with invoices and proportionate input tax credit reversed by the recipient



5. TEST YOUR KNOWLEDGE

1. Value of supply under section 15(1) is :
 - (a) Wholesale price
 - (b) Market value
 - (c) Maximum retail price
 - (d) Transaction value
2. The value of supply should include:
 - (a) Any non-GST taxes, duties, cesses, fees charged separately by supplier
 - (b) Interest, late fee or penalty for delayed payment of any consideration for any supply
 - (c) Subsidies directly linked to the price except subsidies provided by the Central and State Governments
 - (d) All of the above
3. Which of the following shall not be included in value of supply?
 - (a) GST
 - (b) Interest
 - (c) Late fee
 - (d) Commission
4. When can the transaction value be rejected for computation of value of supply?
 - (a) When the buyer and seller are related and price is not the sole consideration
 - (b) When the buyer and seller are related or price is not the sole consideration
 - (c) It can never be rejected
 - (d) When the goods are sold at very low margins
5. Which of the following statement(s) is/are correct?
 - (a) Section 15 of CGST Act prescribes different provisions for valuation of goods and services

- (b) CGST Act and IGST Act have different provisions for valuation of supply
- (c) Section 15 of CGST Act prescribes same set of provisions for valuation of goods and services
- (d) (a) and (b)
6. Discount given after the supply is deducted from the value of supply, if –
- (a) such discount is given as per the agreement entered into at/or before the supply
- (b) such discount is linked to the relevant invoices
- (c) proportionate input tax credit is reversed by the recipient of supply
- (d) all of the above
7. AKJ Foods Pvt. Ltd. gets an order for supply of processed food from a customer. The customer wants the consignment tested for gluten or specified chemical residues. AKJ Foods Pvt. Ltd. does the testing and charges a testing fee for the same from the customer. AKJ Foods Pvt. Ltd. argues that such testing fees should not form part of the consideration for the sale as it is a separate activity. Is his argument correct in the light of section 15?
8. A philanthropic association makes a substantial donation each year to a reputed private management institution to subsidise the education of low income group students who have gained admission there. The fee for these individuals is reduced thereby coming to ₹3 lakh a year compared to ₹5 lakh a year for other students. What would be the value of the service of coaching and instruction provided by the institution to the low income group students?
9. Mezda Banners, an advertising firm, gives an interest-free credit period of 30 days for payment by the customer. Its customer ABC paid for the supply 32 days after the supply of service. Mezda Banners waived the interest payable for delay of two days. The Department wants to add interest for two days as per contract. Should notional interest be added to the value?
10. Crunch Bakery Products Ltd sells biscuits and cakes through its dealers, to whom it charges the list price minus standard discount and pays GST

succordingly. When goods remain unsold with the dealers, it offered additional discounts on the stock as an incentive to push the sales.

Can this additional discount be reduced from the price at which the goods were sold and concomitant tax adjustments made?



6. ANSWERS/HINTS

1. (d) 2. (d) 3. (a) 4. (a) & (b) 5. (c) 6. (d)
7. Section 15(2) mandates the addition of certain elements in the value of supply. Clause (c) of section 15(2) specifies that amount charged for anything done by the supplier in respect of the supply at the time of or before delivery of goods or supply of services shall be included in the value of supply.
 Since AKJ Foods Pvt. Ltd. does the testing before the delivery of goods, the charges therefor will be included in the value of the consignment. Therefore, AKJ Foods Pvt. Ltd.'s argument is not correct. The testing fee should be added to the price to arrive at value of the consignment.
8. As per section 15(2)(e), the value of a supply includes subsidies directly linked to the price, excluding State Government and Central Government subsidies. In this case, the subsidy is not from the Government but is from a philanthropic association. Therefore, the subsidy is to be added back to the price to arrive at the value, which comes to ₹ 5 lakh a year.
9. This is a supply that is valued as per transaction value under section 15(1) as the price is the sole consideration for the supply and the supply is made to unrelated person. The value of a supply includes certain elements like interest which are actually payable. Once waived, the interest is not payable and is therefore, not to be added to the value.
10. The discounts were not known or agreed for at the time of supply of goods to the dealers. Therefore, in terms of section 15(3), such discounts cannot be reduced from the price on which tax had been paid.

Intermediate Course

Study Material

(Modules 1 to 2)

PAPER 4

Taxation

Section – B: Indirect Taxes

**(Relevant for May, 2020 and
November, 2020 examinations)**

MODULE – 2



BOARD OF STUDIES

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

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INPUT TAX CREDIT

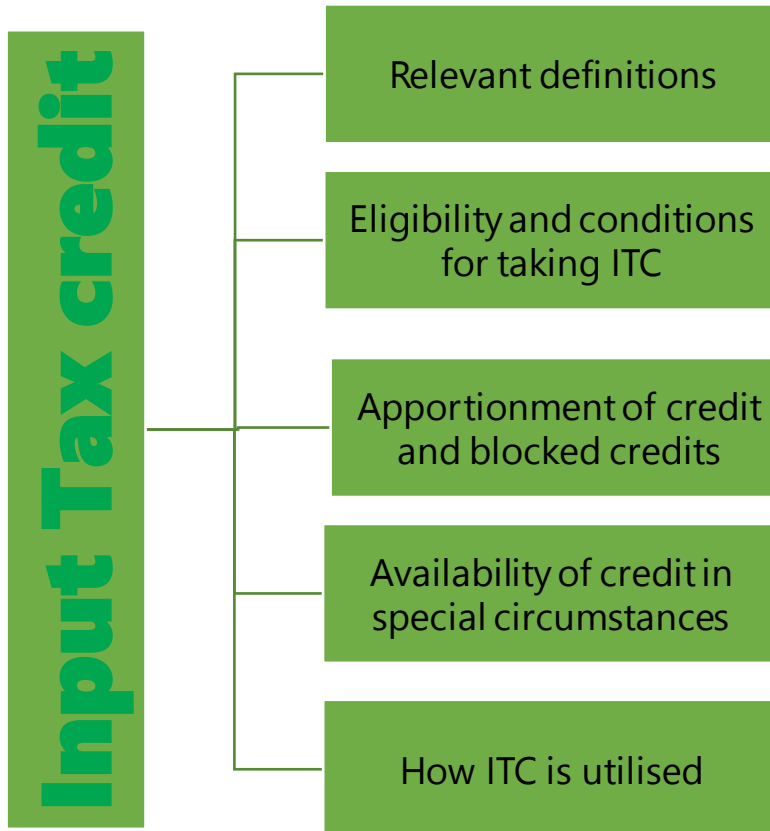


For the sake of brevity, input tax credit has been referred to as ITC in this Chapter. The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified.

LEARNING OUTCOMES

After studying this Chapter, you will be able to:

- ❑ describe what are inputs, input services, capital goods and other relevant terms in relation to ITC.
- ❑ explain the various conditions, time-lines, restrictions and processes for taking ITC on goods and services in general and special circumstances.
- ❑ identify the items on which ITC is available as also the blocked items on which ITC is not available.
- ❑ explain the concept relating to availing of proportionate ITC when common inputs or input service or capital goods are used or intended to be used for exempted and taxable supplies or business and non-business activities.
- ❑ comprehend and apply the above provisions as also the provisions relating to utilization of ITC to compute the GST liability of a registered person payable in cash.

CHAPTER OVERVIEW  **1. INTRODUCTION**

In earlier indirect tax regime, the credit mechanism for indirect taxes levied by the Union Government,

TAX CREDITS

(central excise duty and service tax) was governed by the CENVAT Credit Rules, 2004; and the credit mechanism for state-level VAT on sale of goods was governed by the States under their respective VAT laws. The VAT legislations allowed ITC of VAT on inputs and capital goods in transactions within the state, but not on inputs and capital goods coming in the State from outside the state, on which central sales tax was paid. CENVAT Credit Rules, 2004 allowed availing and utilization of credit of duty/tax paid on both goods (capital goods and inputs) and services by the manufacturers and the service providers across the country.

The credit across goods and services was integrated vide the CENVAT Credit Rules, 2004 in the year 2004 to mitigate the cascading effects of central levies namely, central excise duty and service tax. However, the credit chain remained fragmented on account of State-Level VAT as the credit of central taxes could not be set off against a State levy and *vice versa*. The chain further got distorted as ITC was not available on inter-State purchases. This resulted in cascading of taxes leading to increase in costs of goods and services.


The GST regime promises seamless credit on goods and services across the entire supply chain with some exceptions like supplies charged to tax under composition scheme and supply of exempted goods and/or services. ITC is considered to be the lifeline of the GST regime. In fact, it is the provisions of ITC, which essentially make GST a value added tax i.e., collection of tax at all points of supply chain after allowing credit of tax paid at earlier points.

Chapter V of the CGST Act [Sections 16 to 21] & Chapter V: Input Tax Credit of the CGST Rules [Rules 36-45] prescribe the provisions relating to ITC. State GST laws also prescribe identical provisions in relation to ITC. In this Chapter, provisions of sections 16, 17 and 18 have been discussed;¹ first the statutory provisions of these sections together with the relevant rules have been extracted followed by their analysis.

Provisions of ITC under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Before proceeding to understand the provisions of section 16, 17, 18 and the relevant rules let us first go through few relevant definitions.

2. RELEVANT DEFINITIONS

 **Agent** means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].

 **Business** includes

(a) any trade, commerce, manufacture, profession, vocation, adventure,

¹ Provisions of ITC relating to job work and input service distributor [Sections 19, 20 and 21] will be discussed at the Final level.

- wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
 - (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
 - (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
 - (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
 - (f) admission, for a consideration, of persons to any premises;
 - (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
 - (h) **activities of a race club including by way of totalisator or a licence to book maker or activities of a licenced book maker in such club; and**
 - (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities [Section 2(17)].

- ✔ **Capital goods** means goods, the value of which is capitalized in the books of account of the person claiming the ITC and which are used or intended to be used in the course or furtherance of business [Section 2(19)].
- ✔ **Conveyance** includes a vessel, an aircraft and a vehicle [Section 2(34)].
- ✔ **Exempt supply** means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the IGST Act, and includes non-taxable supply [Section 2(47)].
- ✔ **Input** means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business [Section 2(59)].
- ✔ **Input service** means any service used or intended to be used by a supplier in the course or furtherance of business [Section 2(60)].

- ❖ **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-section (3) and (4) of section 5 of the IGST Act;
 - (d) the tax payable under the provisions of sub-section (3) and sub-section (4) of section 9 of the respective State Goods and Services Tax Act; or
 - (e) the tax payable under the provisions of sub-section (3) and sub-section (4) of section 7 of the Union Territory Goods and Services Tax Act,but does not include the tax paid under the composition levy [Section 2(62)].
- ❖ **Input tax credit** means the credit of input tax [Section 2(63)].
- ❖ **Inward supply** in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration [Section 2(67)].
- ❖ **Motor vehicle** shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 [Section 2(76)].

Motor vehicle or vehicle under the Motor Vehicles Act, 1988 means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty five cubic centimetres. [Section 2(28) of Motor Vehicles Act, 1988].
- ❖ **Non-resident taxable person** means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India [Section 2(77)].
- ❖ **Principal** means a person on whose behalf an agent carries on the business

of supply or receipt of goods or services or both [Section 2(88)].



Recipient of supply of goods or services or both, means—

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].



Supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].



Taxable supply means a supply of goods or services or both which is leviable to tax under CGST Act [Section 2(108)].



Works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract [Section 2(108)].




Zero-rated supply² means any of the following supplies of goods or services or both, namely:—

- (a) export of goods or services or both; or
- (b) supply of goods or services or both to a Special Economic Zone (SEZ) developer or a Special Economic Zone unit [Section 16(1) of the IGST Act].

² Zero rated supply will be dealt in detail at the Final level.



3. ELIGIBILITY AND CONDITIONS FOR TAKING INPUT TAX CREDIT [SECTION 16]

		STATUTORY PROVISIONS
Section 16	<i>Eligibility and conditions for taking input tax credit</i>	
Sub-section	Clause	Particulars
(1)	<p><i>Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.</i></p>	
(2)	<p><i>Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—</i></p>	
	(a)	<i>he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;</i>
	(b)	<i>he has received the goods or services or both.</i>
	<p>Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—</p>	
	(i)	<i>where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of</i>

			transfer of documents of title to goods or otherwise;
		(ii)	where the services are provided by the supplier to any person on the direction of and on account of such registered person.
	(c)		subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
	(d)		he has furnished the return under section 39:
			<i>Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:</i>
			<i>Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:</i>
			<i>Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.</i>
	(3)		Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.
	(4)		A registered person shall not be entitled to take input tax credit in

	<i>respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.</i>										
Chapter V: Input Tax Credit of the CGST Rules											
Rule 36	Documentary requirements and conditions for claiming input tax credit										
(1)	<p><i>The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely:-</i></p> <table border="1"> <tr> <td><i>(a)</i></td> <td><i>an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;</i></td> </tr> <tr> <td><i>(b)</i></td> <td><i>an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;</i></td> </tr> <tr> <td><i>(c)</i></td> <td><i>a debit note issued by a supplier in accordance with the provisions of section 34;</i></td> </tr> <tr> <td><i>(d)</i></td> <td><i>a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;</i></td> </tr> <tr> <td><i>(e)</i></td> <td><i>an input service distributor invoice or input service distributor credit note or any document issued by an input service distributor in accordance with the provisions of sub-rule (1) of rule 54.</i></td> </tr> </table>	<i>(a)</i>	<i>an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;</i>	<i>(b)</i>	<i>an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;</i>	<i>(c)</i>	<i>a debit note issued by a supplier in accordance with the provisions of section 34;</i>	<i>(d)</i>	<i>a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;</i>	<i>(e)</i>	<i>an input service distributor invoice or input service distributor credit note or any document issued by an input service distributor in accordance with the provisions of sub-rule (1) of rule 54.</i>
<i>(a)</i>	<i>an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;</i>										
<i>(b)</i>	<i>an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;</i>										
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<i>(d)</i>	<i>a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;</i>										
<i>(e)</i>	<i>an input service distributor invoice or input service distributor credit note or any document issued by an input service distributor in accordance with the provisions of sub-rule (1) of rule 54.</i>										
(2)	<i>Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in</i>										

	<p>FORM GSTR-2³ by such person.</p> <p><i>Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.</i></p>
(3)	<p><i>No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.</i></p>
Rule 37	<p>Reversal of input tax credit in the case of non-payment of consideration</p>
(1)	<p><i>A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof the value of such supply along with the tax payable thereon within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice.</i></p> <p><i>Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.</i></p> <p><i>Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.</i></p>

³ Filing of GSTR-2 has been deferred till March 2019.

(2)	<i>The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.</i>
(3)	<i>The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.</i>
(4)	<i>The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re- availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.</i>



ANALYSIS

(i) Eligibility for taking ITC [Section 16(1)]

(a) Registration under GST

Every registered person shall be entitled to ITC of GST charged on inward supply of goods and / or services. This is subject to the provisions relating to use of ITC under section 49 and the conditions and restrictions in the rules. [Section 49 prescribes provisions relating to payment of tax, interest, penalty & other amounts. The same has been discussed in detail in Chapter 9: Payment of Tax.]

(b) Goods/services to be used for business purposes

ITC of GST will be available on goods and/or services which are used in the course or furtherance of the business [See definition of business]. The "intention to use" the goods and/or services in the course or furtherance of business would also suffice for availing ITC on such goods and/or services. Thus, tax paid on goods and or/services which are used or intended to be used for non-business purposes cannot be availed as credit. ITC will be credited in electronic credit ledger.

(ii) Conditions for taking ITC [Section 16(2)]

The registered person will be entitled to ITC on a supply only if **ALL** the following four conditions are fulfilled:

(a) Possession of tax paying document [Section 16(2)(a) read with rule 36 of the CGST Rules]

ITC can be availed on the basis of any of the following documents:

- i) Invoice issued by the supplier of goods and/or services
- ii) Invoice issued by the recipient receiving goods and/or services from unregistered supplier along with proof of payment of tax, in case of reverse charge
- iii) Debit note issued by the supplier
- iv) Bill of entry or similar document prescribed under the Customs Act
- v) Revised invoice
- vi) Document issued by input service distributor⁴

The documents basis which ITC is being taken should contain at least the following details:

- Amount of tax charged
- Description of goods or services
- Total value of supply of goods and/or services
- GSTIN of the supplier and recipient
- Place of supply in case of inter-State supply

Note: Section 16 and the CGST Rules do not specify that a particular copy of the invoice alone will form the basis of taking ITC. However, rule 48 of the CGST Rules specifies that the original copy is for the recipient of goods. The original copy may preferably be kept for record to support the credit entry. *[Rule 48 has been discussed in detail in Chapter 8: Tax Invoice; Credit and Debit Notes; E-way Bill.]*

No ITC of tax paid towards demands involving fraud [Rule 36(3)]: Tax paid in pursuance of any order where any demand has

⁴ Concept of Input Service Distributor will be dealt with at the Final level.

been confirmed on account of any fraud, willful misstatement or suppression of facts cannot be availed as ITC.

(b) Receipt of the goods and / or services [Section 16(2)(b)]

The registered person taking the ITC must have received the goods and / or services.

“Bill to Ship to” Model: Under this model, the goods are delivered to a third party - ‘Ç’ on the direction of the customer (registered person) – ‘B’ who purchases the goods from the vendor (supplier) – ‘A’. In other words, ‘A’ bills to ‘B’ but ships the goods to ‘Ç’ on direction of ‘B’. In effect, two supplies take place in this scenario viz., from ‘A’ to ‘B’ and from ‘B’ to ‘Ç’. Thus, under this model, the customer (registered person) who purchases such goods does not receive the said goods.

For such cases, by virtue of explanation to section 16(2)(b), it is deemed that the registered person (customer) has received the goods. In other words, goods delivered to another person on the direction of the registered person by way of transfer of documents of title or otherwise, either before or during the movement, are deemed to have been received by such registered person. So, ITC will be available to the registered person, on whose order the goods are delivered to a third person.

Similarly, services may also be provided to a third party by the service provider (supplier) on the direction of the service recipient (registered person). In this case also, though the service recipient (registered person) does not receive the service, by virtue of explanation to section 16(2)(b) it is deemed that the registered person (service recipient) has received the service. In other words, service provided to any person on the direction of and on account of the registered person, is deemed to have been received by such registered person. So, ITC will be available to the registered person, on whose direction the services are provided to a third person.



A is a trader who places an order on B for a consignment of soda ash. A receives a buying order from C for the same quantity of soda ash. A instructs B to deliver the goods to C, and in turn he raises an invoice on C. Though the goods are not physically received at the premises of A, section 16(2)(b) allows ITC of such goods to A.



The registered head office (New Delhi) of ABC Pvt. Ltd. enters into a contract with DEF Pvt. Ltd. of New Delhi for repair and maintenance of computers systems installed at its registered branch office in Bengaluru, Karnataka. DEF Pvt. Ltd. issues an invoice on ABC Pvt. Ltd., New Delhi for the services provided by it. Though the actual services are received by the branch office and not by the head office, section 16(2)(b) allows ITC of such repair and maintenance services to head office.

(c) Tax leviable on supply actually paid to Government [Section 16(2)(c)]

Subject to section 41, tax should actually have been paid, by cash or through utilization of ITC, on the goods and / or services for which ITC is being taken. Section 41 allows taking ITC in electronic credit ledger on self-assessment basis.

(d) Filing of return [Section 16(2)(d)]

The registered person taking the ITC must have filed his return under section 39.

(iii) Goods received in lots: ITC available only on receipt of last lot [First proviso to section 16(2)]

In case the goods covered under an invoice are not received in a single consignment but are received in lots / instalments, ITC can be taken only upon receipt of the last lot / instalment.



XYZ enters in to a contract with ABC for supply of 10 MT of a chemical for ₹ 1,18,000 (inclusive of GST of ₹ 18,000) in August, 20XX. The chemical is to be delivered in lots over a period of three months. ABC raises the invoice for the entire amount in August and XYZ also makes the payment in the same month but the supply is completed in November. Though XYZ paid the full tax as early as August, it can take the ITC of the same only on receipt of last instalment of the chemical in the month of November.

(iv) Payment for the invoice to be made within 180 days [Second proviso to section 16(2) read with rule 37 of CGST Rules]

The registered person must pay to the supplier, the value of the goods and/or services along with the tax within 180 days from the date of issue of invoice. In the event of failure to do so, the corresponding credits availed by the registered person would be added to his output tax liability, with interest. Interest will be

paid @ 18% from the date of availing credit till the date when the amount added to the output tax liability is paid.

However, once the recipient makes the payment of value of goods and/or services along with tax, he will be entitled to avail the credit again without any time limit [See discussion on time limit for availing credit under point (vi)]. In case part-payment has been made, proportionate credit would be allowed.

Exceptions

This condition of payment of value of supply plus tax within 180 days does not apply in the following situations:

- a. Supplies on which tax is payable under reverse charge
- b. Deemed supplies without consideration
- c. Additions made to the value of supplies on account of supplier's liability, in relation to such supplies, being incurred by the recipient of the supply

Under situations given in points (b) & (c), the value of supply is deemed to have been paid.



Due to a quality dispute, PZP Ltd withheld payment on a machine supplied by a vendor till it could be rectified. Over 180 days went by in this dispute. The credit taken by PZP on the invoice got added to the output tax liability of PZP and thus, it had to pay back the credit. Only after the vendor rectified the machine and PZP released the payment, could PZP take the credit again.

(v) If depreciation claimed on tax component, ITC not allowed [Section 16(3)]

If the person taking the ITC on capital goods and plant and machinery has claimed depreciation on the tax component of the cost of the said items under the Income-tax Act 1961, the ITC on the said tax component shall not be allowed. Thus, in respect of the tax paid on such items, dual benefit cannot be claimed under Income-tax Act, 1961 and GST laws simultaneously. In other words, either depreciation on the tax component can be claimed under Income Tax Act or ITC of such tax paid can be availed under GST laws.

(vi) Time limit for availing ITC: Due date of filing of return for the month of September of succeeding financial year or date of filing of annual return, whichever is earlier [Section 16(4)]

ITC on invoices pertaining to a financial year or debit notes relating to

invoices pertaining to a financial year can be availed any time till the due date of filing of the return for the month of September of the succeeding financial year or the date of filing of the relevant annual return, whichever is earlier.

It may be noted that the return for the month of September is to be filed by 20th October and annual return of a financial year is to be filed by 31st December of the succeeding financial year.

So, the upper time limit for taking ITC is 20th October of the next financial year or the date of filing of annual return, whichever is earlier. The underlying reasoning for this restriction is that no change in return is permitted after September of next financial year. If annual return is filed before the month of September, then no change can be made after filing of annual return.

Exception

The time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.



Hercules Machinery delivered a machine to XYZ in January 2018 under Invoice no. 49 dated 28th January, 2018 for ₹ 4,15,000 plus GST, and undertook trial runs and calibration of the machine as per the requirements of XYZ. The amount chargeable for the post-delivery activities was covered in a debit note raised in April 2018 for ₹ 50,000 plus GST. XYZ did not file its annual return till October, 2018.

Though the debit note was received in the next financial year, it relates to an invoice received in the financial year ending March 2018. Therefore, the time limit for taking ITC available on ₹ 50,000 as well as on ₹ 4,15,000 is 20th October, 2018; earlier of the date of filing the annual return for 2017-18 or the return for September 2018.

(vii) Restriction of ITC in proportion of (i) taxable supplies (ii) business purposes [Sub-sections (1) and (2) of section 17]


ITC is restricted in proportion of the use of the goods and/or services (i) in the taxable and / or zero-rated part of the supply (ii) for business purposes. This is elaborated in heading (4) below.

(viii) ITC not allowed on certain supplies [Section 17(5)]

ITC has been blocked for specified goods and services. This is elaborated in heading (4) below.



4. APPORTIONMENT OF CREDIT & BLOCKED CREDITS [SECTION 17]

		STATUTORY PROVISIONS
Section 17		
Sub-section	Clause	Apportionment of credit and blocked credits
(1)	Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.	
(2)	Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.	
(3)	<p>The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.</p> <p>Explanation.— For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.</p>	
(4)	A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:	

	<p><i>Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:</i></p> <p><i>Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.</i></p>																		
(5)	<p><i>Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—</i></p> <p>(a) <i>motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—</i></p> <table border="1"> <tr> <td>(A)</td> <td><i>further supply of such motor vehicles; or</i></td> </tr> <tr> <td>(B)</td> <td><i>transportation of passengers; or</i></td> </tr> <tr> <td>(C)</td> <td><i>imparting training on driving such motor vehicles;</i></td> </tr> </table> <p>(aa) <i>vessels and aircraft except when they are used—</i></p> <table border="1"> <tr> <td>(i)</td> <td><i>for making the following taxable supplies, namely:—</i></td> </tr> <tr> <td>(A)</td> <td><i>further supply of such vessels or aircraft; or</i></td> </tr> <tr> <td>(B)</td> <td><i>transportation of passengers; or</i></td> </tr> <tr> <td>(C)</td> <td><i>imparting training on navigating such vessels; or</i></td> </tr> <tr> <td>(D)</td> <td><i>imparting training on flying such aircraft;</i></td> </tr> <tr> <td>(ii)</td> <td><i>for transportation of goods;</i></td> </tr> </table> <p>(ab) <i>services of general insurance, servicing, repair and maintenance in so far as they relate to motor</i></p>	(A)	<i>further supply of such motor vehicles; or</i>	(B)	<i>transportation of passengers; or</i>	(C)	<i>imparting training on driving such motor vehicles;</i>	(i)	<i>for making the following taxable supplies, namely:—</i>	(A)	<i>further supply of such vessels or aircraft; or</i>	(B)	<i>transportation of passengers; or</i>	(C)	<i>imparting training on navigating such vessels; or</i>	(D)	<i>imparting training on flying such aircraft;</i>	(ii)	<i>for transportation of goods;</i>
(A)	<i>further supply of such motor vehicles; or</i>																		
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(C)	<i>imparting training on navigating such vessels; or</i>																		
(D)	<i>imparting training on flying such aircraft;</i>																		
(ii)	<i>for transportation of goods;</i>																		

		<p>vehicles, vessels or aircraft referred to in clause (a) or clause (aa):</p> <p>Provided that the input tax credit in respect of such services shall be available—</p>
	(i)	<p>where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;</p>
	(ii)	<p>where received by a taxable person engaged—</p>
		<p>(I) in the manufacture of such motor vehicles, vessels or aircraft; or</p>
		<p>(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;</p>
	(b)	<p>the following supply of goods or services or both—</p>
	(i)	<p>food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:</p> <p>Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;</p>
	(ii)	<p>membership of a club, health and fitness centre; and</p>

		(iii)	travel benefits extended to employees on vacation such as leave or home travel concession:
			Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.
	(c)		works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
	(d)		goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business
			<i>Explanation.—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property</i>
	(e)		goods or services or both on which tax has been paid under section 10;
	(f)		goods or services or both received by a non-resident taxable person except on goods imported by him;
	(g)		goods or services or both used for personal consumption;
	(h)		goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
	(i)		any tax paid in accordance with the provisions of sections 74, 129 and 130.
(6)			The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation.— For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) *land, building or any other civil structures;*

(ii) *telecommunication towers; and*

(iii) *pipelines laid outside the factory premises.*

Chapter V: Input Tax Credit of the CGST Rules

Rule 38

Claim of credit by a banking company or a financial institution

A banking company or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the following procedure, namely,-

(a) *the said company or institution shall not avail the credit of,-*

(i) *the tax paid on inputs and input services that are used for non-business purposes; and*

(ii) *the credit attributable to the supplies specified in sub-section (5) of section 17, in **FORM GSTR-2**;*

(b) *the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause (a);*

(c) *fifty per cent. of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution and shall be furnished in **FORM GSTR-2**;*

	(d)	the amount referred to in clauses (b) and (c) shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.
Rule 42	Manner of determination of input tax credit in respect of inputs or input services and reversal thereof	
(1)	The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-	
	(a)	the total input tax involved on inputs and input services in a tax period, be denoted as 'T';
	(b)	the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as 'T ₁ ';
	(c)	the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as 'T ₂ ';
	(d)	the amount of input tax, out of 'T', in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as 'T ₃ ';
	(e)	the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as 'C ₁ ' and calculated as- $C_1 = T - (T_1 + T_2 + T_3);$
	(f)	the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as 'T ₄ ';
	(g)	'T ₁ ', 'T ₂ ', 'T ₃ ' and 'T ₄ ' shall be determined and declared by the registered person at the invoice level in FORM GSTR-2 and at summary level in FORM GSTR-3B;

	<p>(h) input tax credit left after attribution of input tax credit under clause (f) shall be called common credit, be denoted as 'C₂' and calculated as-</p> $C_2 = C_1 - T_4;$
	<p>(i) the amount of input tax credit attributable towards exempt supplies, be denoted as 'D₁' and calculated as-</p> $D_1 = (E \div F) \times C_2$ <p>where, 'E' is the aggregate value of exempt supplies during the tax period, and 'F' is the total turnover in the State of the registered person during the tax period:</p>
	<p>Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;</p>
	<p>Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;</p>
	<p>(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D₂', and shall be equal to five per cent. of C₂; and</p>
	<p>(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C₃', where,-</p> $C_3 = C_2 - (D_1 + D_2);$

	<p>(l) the amount 'C₃', 'D₁' and 'D₂' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03;</p>
	<p>(m) the amount equal to aggregate of 'D₁' and 'D₂' shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03;</p>
	<p>Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in 'T₁' and 'T₂' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T₄'.</p>
(2)	<p>The input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and,-</p>
	<p>(a) where the aggregate of the amounts calculated finally in respect of 'D₁' and 'D₂' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D₁' and 'D₂', such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or</p>
	<p>(b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D₁' and 'D₂' exceeds the aggregate of the amounts calculated finally in respect of 'D₁' and 'D₂', such excess amount shall be claimed as credit by the registered person in his return for a month not later than</p>

		<i>the month of September following the end of the financial year to which such credit relates.</i>
Rule 43	Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases	
(1)	<p><i>Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-</i></p>	
	(a)	<i>the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-2 and FORM GSTR-3B and shall not be credited to his electronic credit ledger;</i>
	(b)	<i>the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in FORM GSTR-2 and FORM GSTR-3B and shall be credited to the electronic credit ledger;</i>
	(c)	<p><i>the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', shall be credited to the electronic credit ledger and the useful life of such goods shall be taken as five years from the date of the invoice for such goods:</i></p> <p><i>Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, the value of 'A' shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof and the amount 'A' shall be credited to the electronic credit ledger;</i></p>

	<p><i>Explanation: An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18 if it is subsequently covered under this clause.</i></p>
(d)	<p><i>the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c), to be denoted as 'T_c', shall be the common credit in respect of capital goods for a tax period:</i></p>
	<p><i>Provided that where any capital goods earlier covered under clause (b) is subsequently covered under clause (c), the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof shall be added to the aggregate value 'T_c';</i></p>
(e)	<p><i>the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'T_m' and calculated as:-</i></p> $T_m = T_c \div 60$
(f)	<p><i>the amount of input tax credit, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'T_r' and shall be the aggregate of 'T_m' for all such capital goods.</i></p>
(g)	<p><i>the amount of common credit attributable towards exempted supplies, be denoted as 'T_e', and calculated as:</i></p> $T_e = (E \div F) \times T_r$ <p><i>where,</i> <i>'E' is the aggregate value of exempt supplies, made, during the tax period, and</i> <i>'F' is the total turnover in the State of the registered person during the tax period:</i></p>
	<p><i>Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;</i></p>

	<p><i>Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;</i></p>
(h)	<p><i>the amount T_e along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.</i></p>
(i)	<p><i>The amount T_e shall be computed separately for central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B.</i></p>
<p><i>Explanation:-For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude:-</i></p>	
(b)	<p><i>the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and</i></p>
(c)	<p><i>the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.</i></p>



ANALYSIS

Section 17 requires apportionment and concomitant restriction of ITC in two situations as also blocking of ITC on specified inward supplies.

A. Apportionment of ITC [Sub-sections (1) and (2) of section 17 read with rule 42 and rule 43 of CGST Rules]

The situations requiring apportionment are as follows:

- (a) when the goods and / or services are used by the registered person partly for the purpose of business (see the definition of business) and partly for other purposes [Section 17(1)]; and
- (b) when the goods and / or services are used by the registered person partly for making taxable supplies including zero-rated supplies and partly for making exempt supplies (see the definition of exempt supplies) [Section 17(2)].

In both the above situations, full ITC on inward supplies cannot be taken; only proportionate ITC is allowed in such scenarios. Where goods and/or services are used partly for non-business purposes and partly for business purposes, ITC attributable only to business purposes can be taken by the registered person. Similarly, where goods and/or services are partly used for making exempt supplies including zero rated supplies and partly for taxable supplies, ITC attributable to taxable supplies and zero rated supplies can be taken by the registered person.



Section 16(2) of the IGST Act specifies that ITC may be availed on inward supplies for making zero-rated supply, notwithstanding the exempt nature of the zero-rated supply. Zero-rated supply is an expression that covers two kinds of supplies: (i) exports, and (ii) supplies to a SEZ unit or SEZ developer. Therefore, ITC is available on goods and / or services used for supplies made in the course of export or to an SEZ unit or SEZ developer.



A registered person is in the business of manufacturing shoes. He gave 50 pairs of shoes for his friends free of cost. ITC on inputs and input services attributable to such 50 pair of shoes being used for non-business purposes will not be available.



A registered person manufactures a product 'X' chargeable to 18% GST, a product 'Y' chargeable to NIL rate of tax and a product 'Z' which is exported without payment of tax under bond. All the three products are manufactured from common inputs and input services. ITC on inputs and input services attributable to product 'Y' being an exempt supply, will not be available.

(i) Methodology of apportionment of credit on inputs and input services and reversal thereof [Rule 42 of the CGST Rules]

In many situations, the amount of input tax involved in exempt /non-business use is not easily discernible, as common goods and/or services are used for (i) making taxable supplies including zero rated supplies and exempt supplies and (ii) business and non-business purposes.

Rule 42 of the CGST Rules provides the methodology for apportionment of ITC on inputs and input services and reversal of ineligible credit as follows:

Step 1 – Compute common credit

Total input tax involved on inputs & input services in a tax period	T
Less: Input tax on inputs & input services that are intended to be used exclusively for non-business purposes	(T ₁)
Less: Input tax on inputs & input services that are intended to be used exclusively for exempt supplies	(T ₂)
Less: Input tax on inputs & input services which are ineligible for credit [blocked credits- see discussion under point (B)]	(T ₃)
ITC credited to Electronic Credit Ledger	C ₁
Less: ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies	(T ₄)
Common ITC available for apportionment	C ₂

- ✓ T₁, T₂, T₃ and T₄ will be determined and declared by the registered person at the invoice level in GSTR 2 **and summary level in GSTR-3B.**

- ✓ Where ITC on inputs and input services used partly for non-business purposes and exempt supplies can be segregated at invoice level, the same will be added to T_1 and T_2 respectively and the balance credit will be added in T_4 .
- ✓ The portion identified as pertaining to taxable supplies in C_2 will be allowed as ITC.

Example on how to arrive at the amount of common credit C_2

Making an assumption that Hawaii slippers are exempted, take a case of Eezee Footwear, manufacturer of two varieties of Hawaii slippers and five varieties of other sandals and shoes. Dyes are used in the manufacture of all footwear. However, bright pink is used only for one of the Hawaii varieties, and black is used only for the sandals and shoes. Blue and yellow are used for all the varieties. Brown is used for non-business purposes.

In inward supplies during the month -

Input tax on brown dye: ₹ 10,000 (This is T_1)

Input tax on bright pink dye: ₹ 90,000. (This is T_2)

Input tax on black dye: ₹ 40,000. (This is T_4)

Input tax on blue dye: ₹ 1,00,000

Input tax on yellow dye: ₹ 15,000

Total input tax: ₹ 2,55,000 (This is T)

Total input tax reduced by ($T_1 + T_2 + T_4$, i.e., by ₹ 1,40,000) is ₹ 1,15,000.

Amount of common credit (C_2) is ₹ 1,15,000. This has to be apportioned as given below in Step 2.

Step 2 – Compute credit attributable to exempt supplies (ineligible credit) by apportionment of common credit

- ✓ Apportion C_2 into credit attributable to exempt supplies D_1 as under:

$$D_1 = (E/F) \times C_2$$

Where

E = Aggregate value of exempt supplies during the tax period

F = Total turnover in the State during the tax period

Notes:

- (i) *If the registered person does not have any turnover during the said tax period, or the above information is not available, the values for the last tax period may be used.*
- (ii) *Here, exempt supplies include reverse charge supplies, transactions in securities, sale of land and sale of building when entire consideration is received either after issuance of completion certificate by the competent authority or its first occupation, whichever is earlier. Thus, ITC attributable to such supplies will need to be reversed.*
- (iii) *Here, exempt supplies exclude-*
 - (a) **transactions/activities specified in Schedule III except sale of land and sale of building as specified in point (ii) above.**
 - (b) *supply of services by way of accepting deposits, extending loans or advances where the consideration is either interest or discount. However, value of such services is included in the exempt supply when the same are provided by a banking company or a financial institution including a NBFC.*
 - (c) *transportation of goods by a vessel from the customs station of clearance in India to a place outside India.*
Thus, ITC attributable to such supplies need not be reversed.
- (iv) *Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty, **central sales tax** and VAT.*
- (v) *The value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security.*

Presently, (i) central excise duty is leviable on manufacture/production of tobacco, petroleum crude, diesel, petrol, ATF and natural gas (ii) State excise duty is leviable on manufacture/production of alcoholic liquor, opium, Indian hemp and narcotics, and (iii) VAT/CST is leviable on intra-State/inter-State sale of petroleum crude, diesel, petrol, ATF, natural gas and alcoholic liquor. Petroleum crude, diesel, petrol, ATF, natural

gas are presently not taxable under GST and alcoholic liquor is outside the ambit of GST. Thus, supply of both these products (petrol/petroleum products and alcoholic liquor) being non-taxable under GST, will be exempt supplies u/s 2(47) and taxes/duties (as mentioned above) leviable thereon will be excluded from the value thereof for the purpose of apportionment of credit.

Example on how to apportion common credit into credit attributable to exempt supplies

Ezee Footwear, which manufactures two varieties of exempt Hawaii slippers and five varieties of taxable sandals and shoes, has the following turnover in October and has ₹ 1,15,000 common credit that has to be apportioned:

Turnover of Hawaii 1 plus Hawaii 2: ₹ 3 crores (This is 'E')

Turnover of all varieties of taxable shoes and sandals: ₹ 2 crore

Total turnover of all footwear during the month: ₹ 5 crores (This is 'F')

No inputs/input services are used for non-business purposes.

$(3,00,00,000 / 5,00,00,000) \times 1,15,000 = ₹ 69,000$ is the input tax that pertains to exempt supply (D_1).

✓ Compute credit attributable to non-business purposes D_2 as under

$$D_2 = 5\% \text{ of } C_2 \text{ (common credit)}$$

Step 3 – Compute eligible credits

Compute C_3 attributable to business purposes and taxable supplies including zero rated supplies as under:

$$C_3 = C_2 - (D_1 + D_2)$$

Step 4 – Restrict ineligible credits

Reverse $D_1 + D_2$

- ❖ Compute C_3 separately for ITC of CGST, SGST/ UTGST and IGST.
- ❖ Compute $\sum (D_1 + D_2)$ for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year, before the due date for filing the return for September in the following financial year.

- ❖ If $\sum (D_1 + D_2) >$ the amount already **reversed** every month, the differential amount has to be **reversed** in any month till September in the following financial year and interest @ rate 18% should be paid on such differential amount from 1st April of succeeding year till the date of payment.
- ❖ If the amount **reversed** every month $> \sum (D_1 + D_2)$, the additional amount paid has to be claimed back as credit in the return of the month not later than September in the next financial year.

(ii) Methodology of apportionment of credit of capital goods and reversal thereof [Rule 43 of the CGST Rules]

Rule 43 of the CGST Rules provides the methodology for apportionment of ITC on capital goods and reversal of ineligible credit as follows:

Step 1 - Determine common credit 'T_c' on capital goods as under:

- (i) Identify input tax on capital goods used/ intended to be used exclusively for non-business purposes or making exempt supplies and declare the same in GSTR 2. Such amount will not be credited to electronic credit ledger [ECrL].
- (ii) Identify input tax on capital goods used/ intended to be used exclusively for making taxable supplies including zero rated supplies and declare the same in GSTR 2 **and GSTR-3B**. Such amount will be credited to ECrL.
- (iii) Identify input tax on capital goods not covered under (i) and (ii) above (i.e., the capital goods which are used/intended to be used commonly for making taxable as well as exempt supplies & business & non-business purposes] and denote the same as 'A'. Such amount will be credited to ECrL. The useful life of such capital goods will be taken as 5 years from the date of invoice.
- (iv) *Change from exclusive use for non-business purpose/exempt supplies to common use:* Where capital goods which were initially covered under (i) above get subsequently covered under clause (iii), compute 'A' by reducing ITC @ 5% per quarter or part thereof. Such reduced amount will be credited to ECrL.
- (v) Add together the amounts of 'A' credited to ECrL to arrive at common credit 'T_c'.

- (vi) *Change from exclusive use for taxable including zero rated supplies to common use:* Where capital goods which were initially covered under (ii) above get subsequently covered under clause (iii), compute 'A' by reducing ITC @ 5% per quarter or part thereof and add such value to T_c .

Step 2 - Determine common credit during the useful life of capital goods for a tax period as under and denote the same as ' T_m ':

$$T_m = T_c \div 60$$

Step 3 - Determine common credit at the beginning of a tax period for all capital goods whose useful life remains during the tax period as under:

$$T_r = T_m \text{ for such capital goods}$$

Step 4 - Apportion common credit attributable to exempt supplies as under:

$$T_e = (E \div F) \times T_r$$

Where

E = Aggregate value of exempt supplies made during the tax period

F = Total turnover **in the State** during the tax period

Notes:

- (i) *If the registered person does not have any turnover during the said tax period, or the above information is not available, the values for the last tax period may be used.*
- (ii) *Here, exempt supplies include reverse charge supplies, transactions in securities, sale of land and sale of building when entire consideration is received either after issuance of completion certificate by the competent authority or its first occupation, whichever is earlier. Thus, ITC attributable to such supplies will need to be reversed.*
- (iii) *Here, exempt supplies exclude-*
- (a) transactions/activities specified in Schedule III except sale of land and sale of building as specified in point (ii) above.**

(b) supply of services by way of accepting deposits, extending loans or advances where the consideration is either interest or discount. However, value of such services is included in the exempt supply when the same are provided by a banking company or a financial institution including a NBFC.

(b) transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

Thus, ITC attributable to such supplies need not be reversed.

(iv) Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty, **central sales tax** and VAT.

(v) Amount of T_e has to be computed separately for CGST, SGST/UTGST and IGST **and declared in GSTR 3B**.

(vi) The value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security.

Step 5: Restrict ineligible credit

Add T_e to the output tax liability along with applicable interest during every tax period of the useful life of the capital goods concerned.

(iii) Optional method for banks etc. [Section 17(4) read with rule 38]

- ❖ As an alternative to the above method, a banking company or a financial institution including a NBFC, which accepts deposits, or extends loans or advances, has the option to limit its availment of ITC to 50% of the eligible ITC on inputs, capital goods and input services each month and the remaining ITC shall lapse.
- ❖ Credit of tax paid on inputs and input services that are used for non-business purposes and items mentioned u/s section 17(5) [blocked credits] cannot be availed.
- ❖ The restriction of availing 50% ITC shall not apply to the tax paid on supplies procured from another registration within the same entity i.e., 100% credit of such tax can be availed.
- ❖ The option once exercised cannot be changed during the remaining part of the financial year.

B. Blocked credits [Section 17(5)]

ITC of tax paid on almost every inputs and input services used for supply of taxable goods and/or services is allowed under GST except a small list of items provided u/s 17(5). Thus, ITC on such items is not allowed even though the same may qualify as inputs, input services or capital goods and are used in the course or furtherance of business.

The negative list covers mainly items of personal consumption, inputs and input services use of which results into formation of an immovable property (except plant and machinery), telecommunication towers, pipelines laid outside the factory premises, etc. and taxes paid as a result of detection of evasion of taxes.

The various goods and/or services on which credit is blocked are discussed hereunder:

(i) Motor vehicles and other conveyances and related services (insurance, servicing and repair and maintenance)

Motor vehicles and conveyances have been defined in the CGST Act [See definition under the heading *Relevant Definitions*]. Motor vehicles exclude –

- vehicle running upon fixed rails
- special purpose vehicles for being used in a factory or any enclosed premises
- vehicle with less than 4 wheels fitted with engine capacity of upto 25cc – (Thus, railways, two/three wheelers with engine capacity of upto 25cc, bicycle etc. do not fall in the definition of motor vehicle.)

Broadly, ITC is blocked on motor vehicles, vessels and aircrafts used for passenger transportation with certain exceptions. Further, ITC is also blocked on certain services relating to motor vehicles, vessels and aircrafts namely, insurance, servicing and repair and maintenance. The basic principle here is that the motor vehicles, aircrafts and vessels on which ITC is blocked, the ITC on services of insurance, servicing and repair and maintenance pertaining to such motor vehicles, vessels and aircrafts is also blocked.

The blocked credits relating to motor vehicles, vessels, aircrafts and related services are discussed hereunder:

S. No.	Goods and/or services on which credit is blocked	Exceptions to goods and/or services mentioned in column (2) on which credit is allowed	Remarks
(1)	(2)	(3)	(4)
(i)	<p>Motor vehicles* for transportation of persons with seating capacity ≤ 13 persons (including the driver) – <u>Referred to as ineligible motor vehicle in this table</u></p>	<p>Ineligible motor vehicles when used for any of the following eligible purposes -</p> <ul style="list-style-type: none"> • making further taxable supply of such motor vehicles; • making taxable supply of transportation of passengers; • making taxable supply of imparting training on driving such motor vehicles. 	<ul style="list-style-type: none"> • ITC on ineligible motor vehicles used for any purpose other than the eligible purposes is not allowed. • ITC on motor vehicles for transportation of persons with seating capacity > 13 persons (including the driver) used for any purpose is allowed. • ITC on motor vehicles other than ineligible motor vehicles (e.g. motor vehicle used for transportation of goods, dumpers, tippers etc.) used for any purpose is allowed.

(ii)	Vessels and aircrafts	<p>Vessels and aircraft when used for any of the following eligible purposes-</p> <ul style="list-style-type: none"> • making further taxable supply of such vessels or aircraft; • making taxable supply of transportation of passengers; • making taxable supply of imparting training on navigating such vessels; • making taxable supply of imparting training on flying such aircrafts; • transportation of goods. 	ITC on vessels and aircrafts used for any purpose other than the eligible purposes
(iii)	<p>General insurance, servicing, repair and maintenance relating to:</p> <ul style="list-style-type: none"> • Ineligible motor vehicles 	<ul style="list-style-type: none"> • Such services relating to ineligible motor vehicles, vessels or aircraft when used for eligible purposes • Such services when received by- 	<ul style="list-style-type: none"> • ITC is not allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on

	<ul style="list-style-type: none"> • Vessels • Aircraft 	<ul style="list-style-type: none"> ○ Manufacturer of ineligible motor vehicles, vessels or aircraft; or ○ Supplier of general insurance services in respect of ineligible motor vehicles, vessels or aircraft insured by him 	<p><i>which is not allowed.</i></p> <ul style="list-style-type: none"> • ITC is allowed on services of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels or aircraft, ITC on which is allowed.
(iv)	<p>Leasing, renting or hiring of motor vehicles, vessels or aircraft on which ITC is not allowed</p>	<ul style="list-style-type: none"> • Such services when used for making an outward taxable supply of the same category of services or as an element of a taxable composite or mixed supply • Such services when provided by an employer to its employees under a statutory obligation 	<ul style="list-style-type: none"> • ITC on leasing, renting or hiring of motor vehicles, vessels or aircraft on which ITC is allowed, is also allowed. • ITC on such services is allowed in the case of sub-contracting, i.e. when such services are used by the taxpayer who is in the same line of business.



(1) ITC on cars purchased by a manufacturing company for official use of its employees is blocked.

(2) ITC on cars purchased by a car dealer for sale to customers is allowed.

(3) ITC on cars purchased by a company engaged in renting out cars for transportation of passengers, is allowed.

(4) ITC on cars purchased by a car driving school is allowed.

(5) ITC on buses (seating capacity for 24 persons) purchased by a company for transportation of its employees from their residence to office and back, is allowed.

(6) ITC on trucks purchased by a company for transportation of its finished goods is allowed.

(7) ITC on aircraft purchased by a manufacturing company for official use of its CEO is blocked.

(8) ITC on aircraft purchased by an Aviation School providing training on flying aircrafts, is allowed.

(9) ITC on general insurance taken on a car used by employees of a manufacturing company for official purposes, is blocked.

(10) ITC on maintenance & repair services availed by a company for a truck used for transporting its finished goods, is allowed.

(11) ITC on general insurance services taken on cars manufactured by a car manufacturing company is allowed.

(ii) Food & beverages, outdoor catering, health services and other services

S. No.	Goods and/or services on which credit is blocked	Exceptions to goods and/or services mentioned in column (2) on which credit is allowed	Remarks
(1)	(2)	(3)	(4)
(i)	• Food and beverages	• Such goods and/or services	• ITC on such goods and/or services is

	<ul style="list-style-type: none"> • Outdoor catering • Beauty treatment • Health services • Cosmetic and plastic surgery • Life insurance and health insurance 	<p><i>when used by a registered person for making an outward taxable supply of the same category of goods and/or services or as an element of a taxable composite or mixed supply</i></p> <ul style="list-style-type: none"> • <i>Such goods and/or services when provided by an employer to its employees under a statutory obligation</i> 	<p><i>allowed in the case of sub-contracting, i.e. when such goods and/or services are used by the taxpayer who is in the same line of business, e.g. outdoor catering service availed by another outdoor caterer.</i></p> <ul style="list-style-type: none"> • <i>When such goods and/or services are provided by the employer to its employees without any statutory obligation, ITC thereon is blocked.</i>
(ii)	Membership of a club, health and fitness centre	<i>Such services when provided by an employer to its employees under a statutory obligation</i>	<i>When such goods and/or services are provided by the employer to its employees without any statutory obligation, ITC thereon is blocked.</i>
(iii)	Travel benefits extended to employees on vacation such as leave or	<i>Such services when provided by an employer to its employees under a statutory obligation</i>	<i>When such goods and/or services are provided by the employer to its employees without any statutory</i>

	<i>home travel concession</i>		<i>obligation, ITC thereon is blocked.</i>
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(1) A manufacturing company purchases food items for being served to its customers, free of cost. ITC on such goods is blocked.

(2) AB & Co., a caterer of Amritsar, has been awarded a contract for catering in a marriage to be held at Ludhiana. The firm has given the contract for supply of snacks, to be served in the marriage, to CD & Sons, a local caterer of Ludhiana. ITC on such outdoor catering services availed by AB & Co., is allowed.

(3) ITC on outdoor catering services availed by a garment exporter for a marketing event organised for its prospective customers, is blocked.

(4) Outdoor catering service is availed by a company to run a free canteen in its factory. The Factories Act, 1948 requires the company to set up a canteen in its factory. ITC on such outdoor catering is allowed.

(5) The Managing Director of a company has taken membership of a club, the fees for which is paid by the company. ITC on such service is blocked.

(6) A company avails services of a travel agency for organizing a free vacation for its top performing employees. ITC on such services is blocked.

(iii) Works contract services for construction of immovable property [Clause (c) of section 17(5)]

Works contract has been defined in the CGST Act [See definition under the heading *Relevant Definitions*]. Essentially works contract is a composite supply involving both goods and services. Under the erstwhile laws, definition of works contract included work in relation to both movable and immovable properties. However, under GST law, the ambit of works contract has been **confined only to immovable property**.

Meaning of immovable property

Immovable property has not been defined under the GST law. Therefore, we will have to look for the definition of immovable property in other laws. Section 3(26) of the General Clauses Act, 1897, defines the term immovable property to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

The term "attached to the earth" is defined in section 3 of the Transfer of Property Act, 1882 to mean:

- (a) rooted in the earth, as in the case of trees and shrubs; [However, the term "immovable property" under the Transfer of Property Act does not cover standing timber, growing crops or grass.]*
- (b) embedded in the earth, as in the case of walls or buildings.*
- (c) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.*

Under GST law, a composite supply of works contract is treated as supply of services in terms of para 6(a) of Schedule II to the CGST Act.

ITC on works contract services for construction of an immovable property is blocked **EXCEPT WHEN**

- It is an input service for further supply of works contract service (sub-contracting);
[ITC on works contract services can be availed only by that taxpayer who is in the same line of business, i.e. only a works contractor can avail ITC on works contract services received by him.]
- Immovable property is plant and machinery
[Plant and machinery affixed permanently to the earth constitutes an immovable property. However, ITC on works contract services used for construction of such plant and machinery is allowed as an exception.]

Meaning of construction

"Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Thus, if re-construction, renovation, additions or alterations or repairs are not capitalized, it would not tantamount to construction under GST law. Consequently, ITC on works contract services availed for such construction (which is not capitalized) whether for any immovable property or for any plant and machinery, would be allowed to all the recipients irrespective of their line of business.

Meaning of plant and machinery

“Plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural supports that are used for making outward supply of goods and/or services **and includes such foundation or structural support**

but **excludes**

land, building or other civil structures, telecommunication towers, and pipelines laid outside the factory premises.

Thus, ITC on works contract services availed for construction of eligible plant and machinery is allowed to the recipient irrespective of the line of business of such recipient.

For instance, ITC on works contract services for construction of machinery fixed to earth by a foundation, would be allowed. However, ITC on works contract services for construction of telecommunication towers, would be blocked.



ITC on works contract services for construction of immovable property is available only in the following three situations:

- (i) When the works contract service is availed by a works contractor for being used in providing the works contract service.**
- (ii) For construction of plant and machinery. In this case, ITC is allowed to all recipients irrespective of their line of business.**
- (iii) When the value of works contract service is not capitalized. In this case, ITC is allowed to all recipients irrespective of their line of business.**



- (1) ITC on works contracts services availed by a software company for construction of its office, is blocked.
- (2) CD & Co., a works contractor of Noida, has been awarded a contract for construction of a commercial complex in Lucknow. The firm avails services of EF & Co., a local works contractor of Lucknow, for the construction of complex. ITC on such works contract services availed by CD & Co., is allowed.
- (3) ITC on works contract services availed by an automobile company for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently, is allowed.
- (4) ITC on works contract services availed by a manufacturing company for construction of pipelines to be laid outside its factory, is blocked.
- (5) A consulting firm has availed services of a works contractor for repair of its office building. The company has booked such expenditure in its profit and loss account. ITC on such services is allowed.
- (6) A telecommunication company has availed services of a works contractor for repair of its office building. The company has capitalized such expenditure. ITC on such services is blocked.

(iv) Self-construction of immovable property [Clause (d) of section 17(5)]

So now we know that ITC on works contract services availed by a taxpayer, other than a works contractor, for construction of immovable property (other than plant and machinery) is not available. But what happens if a taxpayer procures goods and services and constructs an immovable property, for being used in the course or furtherance of business, without availing services of a works contractor? Will ITC be allowed in such a case?

The answer is No. ITC is not allowed on goods and/or services received by a taxable person for construction of an immovable property (other than plant and machinery) **on his own account** even though such goods and/or services are used in the course or furtherance of business. Thus, ITC on goods and/or services used in the construction of an immovable property is blocked only in those cases where the taxable person constructs the immovable property for his own use even if the

immovable property being constructed is used in the course or furtherance of his business.

The discussion on terms, 'construction' and 'plant and machinery' for works contract services [Elaborated in point (iii) above] applies to construction on own account also.



ITC on goods and/or services used in construction of immovable property is available only in the following three situations:

- (i) For construction of plant and machinery**
- (ii) When the value of goods and/or services is not capitalized**
- (iii) When the construction is not on own account**



(1) A company buys cement, tiles etc. and avails the services of an architect for construction of its office building. ITC on such goods and services is blocked.

(2) MN & Constructions procures cement, paint, iron rods and services of architects and interior designers for construction of a commercial complex for one of its clients. ITC on such goods and services is allowed to MN & Co.

(3) A company buys cement, tiles etc. and avails the services of an architect for renovation of its office building. The company has booked such expenditure in its profit and loss account. ITC on such goods and services is allowed.

(4) ITC on goods and/or services used by an automobile company for construction of a foundation on which a machinery (to be used in the production process) is to be mounted permanently, is allowed.

(v) Inward supplies charged to tax under composition levy [Clause (e) of section 17(5)]

A supplier registered under composition scheme cannot collect tax from its customers. Thus, such supplier issues bill of supply and not a tax invoice. A composition supplier pays a lumpsum tax at a specified rate on its quarterly turnover.

Tax paid on goods and/or services under composition scheme is not available as ITC.

Since a composition supplier cannot collect any tax on its supplies, from the recipient of its supplies, it is obvious that no ITC can be availed in respect of such supplies by the recipients. Nevertheless, section 17(5)(e) specifically blocks the ITC on inward supplies received by a taxable person from a composition supplier.

(vi) Inward supplies received by a non-resident taxable person [Clause (f) of section 17(5)]

Non-resident taxable person has been defined in the CGST Act [See the definition under the heading *Relevant Definitions*]. Essentially, a non-resident taxable person has no fixed place of business in India but he sporadically supplies goods or services in India.

Tax paid on goods and/or services received by such non-resident taxable person, is not available as ITC. However, tax paid by him on **imported goods** is allowed as ITC.



(vii) Inward supplies used for personal consumption [Clause (g) of section 17(5)]

One of the foremost conditions laid down in section 16 for availing ITC on goods and/or services is that such goods and/or services should be used in the course or furtherance of business. Further, where goods and/or services are used partly for the purpose of any business and partly for other purposes, section 17(1) restricts the credit to so much of the ITC as is attributable to business purposes.

Furthermore, section 17(5)(g) also specifically blocks the ITC on goods and/or service used for personal consumption.

The term 'personal consumption' has not been defined in the GST law. Thus, it may be understood in the general sense which would mean non-business use.



Mr. X owns a grocery store. He procures rice, wheat and biscuits for being sold in its store. Out of the inventory so purchased, he gives 10 kgs each of rice and wheat to his wife for household use. Being used for personal consumption, ITC on 10 kg of rice and 10 kg of wheat is blocked.

(viii) Free samples, gifts, goods lost/stolen etc. [Clause (h) of section 17(5)]



Meaning of 'gift'

The terms gift has not been defined in the GST law. Therefore, we will have to look for the definition of gift in other laws. Section 122 of the Transfer of Property Act, 1882, defines gift as transfer of certain existing moveable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right.

Meaning of 'sample'

Sample is also not defined in the GST law. The dictionary meaning of sample is "a small part or quantity intended to show what the whole is like". In commercial parlance, samples are given to prospective customers to enable them to test the quality of the item before making a decision to buy the same.

ITC in the hands of the supplier in respect of sales promotional schemes

Circular No. 92/11/2019 GST dated 28.03.2019 has clarified the entitlement of ITC in the hands of supplier in respect of various sales promotional schemes as under [Taxability of such schemes has been discussed at relevant places in Chapter 2: Supply Under GST and Unit II : Value of Supply of Chapter 5 : Time and Value of Supply]:

A. Samples and free gifts

Samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the CGST Act.

ITC shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail the ITC.

B. Buy one get one free offer

This is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8.

ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

C. Discounts including 'Buy more, save more' offers

Discounts offered by the suppliers to customers (including staggered discount under "Buy more, save more" scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in sub-section (3) of section 15, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

However, the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

D. Secondary discounts

These are the discounts which are not known at the time of supply or are offered after the supply is already over. Such discounts shall not be excluded while determining the value of supply. There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

ITC reversal when return of time expired medicines/drugs are treated as fresh supply

The common trade practice in the pharmaceutical sector is that the drugs or medicines (hereinafter referred to as "goods") are sold by the manufacturer to the wholesaler and by the wholesaler to the retailer on the basis of an invoice/bill of supply as case may be. Such goods have a defined life term which is normally referred to as the date of expiry. Such goods which have crossed their date of expiry are colloquially referred to as time expired goods and are returned back to the manufacturer, on account of expiry, through the supply chain.

Circular No. 72/46/2018 GST dated 26.10.2018 has clarified that the retailer/ wholesaler can return the time expired goods, either by treating the same as fresh supply or by issuing credit notes⁵.

Return of time expired goods by treating the same as fresh supply

In case the person returning the time expired goods is a registered person (other than a composition taxpayer), he may, at his option, return the said goods by treating it is as a fresh supply and thereby issuing an invoice for the same (hereinafter referred to as the, "return supply"). The value of the said goods as shown in the invoice on the basis of which the goods were supplied earlier may be taken as the value of such return supply. The wholesaler or manufacturer, as the case may be, who is the recipient of such return supply, shall be eligible to avail ITC of the tax levied on the said return supply subject to the fulfilment of the conditions specified in section 16.

In case the person returning the time expired goods is a composition taxpayer, he may return the said goods by issuing a bill of supply and pay tax at the rate applicable to a composition taxpayer. In this scenario there will not be any availability of ITC to the recipient of return supply. In case the person returning the time expired goods is an unregistered person, he may return the said goods by issuing any commercial document without charging any tax on the same.

Where the goods returned by the retailer/wholesaler as a fresh supply, are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply in terms of section 17(5)(h). It is pertinent to mention here that the ITC which is required to be reversed in such scenario is the ITC availed on the return supply and not the ITC that is attributable to the manufacture of such time expired goods.

The clarification may also be applicable to return of goods for reasons other than being time expired.

⁵ The procedure for return of time expired drugs or medicines by issuing credit note is covered in Chapter 8: Tax Invoice; Credit and Debit Notes; E-Way Bill.




If a manufacturer has availed ITC of Rs. 10/- at the time of manufacture of medicines valued at Rs. 100/-. At the time of return of such medicine on the account of expiry, the ITC available to the manufacturer on the basis of fresh invoice issued by wholesaler is Rs. 15/-. So, when the time expired goods are destroyed by the manufacturer, he would be required to reverse ITC of Rs. 15/- and not of Rs. 10/.

(ix) Tax paid in fraud cases, detention, confiscation etc. [Clause (i) of section 17(5)]

Tax paid under sections 74, 129 and 130⁶ is not available as ITC. These sections prescribe the provisions relating to tax paid as a result of evasion of taxes, or upon detention of goods or conveyances in transit, or towards redemption of confiscated goods/conveyances.



5. CREDIT IN SPECIAL CIRCUMSTANCES [SECTION 18]

		STATUTORY PROVISIONS
Section 18		Availability of credit in special circumstances
Sub-section	Clause	Particulars
(1)	<i>Subject to such conditions and restrictions as may be prescribed—</i>	
	(a)	<i>a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take 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 from which he becomes liable to pay tax under the provisions of this Act;</i>
	(b)	<i>a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in</i>

⁶ These provisions will be discussed at the Final level.

		<p><i>semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;</i></p>
	(c)	<p><i>where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:</i></p> <p><i>Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;</i></p>
	(d)	<p><i>where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:</i></p> <p><i>Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.</i></p>
(2)	<p><i>A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.</i></p>	
(3)	<p><i>Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.</i></p>	
(4)	<p><i>Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or</i></p>	

	<p>both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, 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 and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:</p> <p>Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.</p>
(5)	The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.
(6)	<p>In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:</p> <p>Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.</p>
Chapter V: Input Tax Credit of CGST Rules	
Rule 40	Manner of claiming credit in special circumstances
(1)	<p>The input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely -</p> <p>(a) the input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be</p>

	<p><i>claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.</i></p>
(b)	<p><i>the registered person shall within a period of thirty days from the date of becoming eligible to avail the input tax credit under sub-section (1) of section 18, or within such further period as may be extended by the Commissioner by a notification in this behalf, shall make a declaration, electronically, on the common portal in FORM GST ITC-01 to the effect that he is eligible to avail the input tax credit as aforesaid:</i></p> <p><i>Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.</i></p>
(c)	<p><i>the declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods—</i></p> <p>(i) <i>on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub-section (1) of section 18;</i></p> <p>(ii) <i>on the day immediately preceding the date of the grant of registration, in the case of a claim under clause (b) of sub-section (1) of section 18;</i></p> <p>(iii) <i>on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of section 18;</i></p>

	(iv)	on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub-section (1) of section 18;
	(d)	the details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds two lakh rupees;
	(e)	the input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in FORM GSTR-1 or as the case may be, in FORM GSTR-4 , on the common portal.
(2)		The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.
Rule 41		Transfer of credit on sale, merger, amalgamation, lease or transfer of a business
(1)		A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02 , electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee: Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

	Explanation: - For the purpose of this sub-rule, it is hereby clarified that the “value of assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.
(2)	<i>The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.</i>
(3)	<i>The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the unutilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.</i>
(4)	<i>The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.</i>
Rule 41A	Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory
(1)	A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 and who intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of thirty days from obtaining such separate registrations, the details in FORM GST ITC-02A electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner:
	Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.
	Explanation.- For the purposes of this sub-rule, it is hereby clarified that the ‘value of assets’ means the value of the

	<i>entire assets of the business whether or not input tax credit has been availed thereon.</i>				
(2)	<i>The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilised input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.</i>				
Rule 44	<i>Manner of reversal of credit under special circumstances</i>				
(1)	<i>The amount of input tax credit relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, for the purposes of sub-section (4) of section 18 or sub-section (5) of section 29, be determined in the following manner, namely,-</i>				
	<table border="1"> <tr> <td>(a)</td> <td><i>for inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;</i></td> </tr> <tr> <td>(b)</td> <td><i>for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.</i></td> </tr> </table>	(a)	<i>for inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;</i>	(b)	<i>for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.</i>
(a)	<i>for inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;</i>				
(b)	<i>for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.</i>				
(2)	<i>The amount, as specified in sub-rule (1) shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.</i>				
(3)	<i>Where the tax invoices related to the inputs held in stock are not available, the registered person shall estimate the amount under sub-rule (1) based on the prevailing market price of the goods on the effective date of the occurrence of any of the events specified in sub-section (4) of section 18 or, as the case may be, sub-section (5) of section 29.</i>				
(4)	<i>The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the</i>				

	<i>amount shall be furnished in FORM GST ITC-03, where such amount relates to any event specified in sub-section (4) of section 18 and in FORM GSTR-10, where such amount relates to the cancellation of registration.</i>
(5)	<i>The details furnished in accordance with sub-rule (3) shall be duly certified by a practicing chartered accountant or cost accountant.</i>
(6)	<i>The amount of input tax credit for the purposes of sub-section (6) of section 18 relating to capital goods shall be determined in the same manner as specified in clause (b) of sub-rule (1) and the amount shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax:</i> <i>Provided that where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in FORM GSTR-1.</i>



ANALYSIS

Section 18 provides for

- (1) entitlement of ITC on inputs in stock and contained in finished goods or work-in-progress and capital goods (i) at the time of registration/voluntary registration, (ii) on coming into regular tax-paying status by exiting composition levy, (iii) on coming into tax-paying status on account of exempt supply becoming taxable supply
- (2) reversal of ITC on inputs in stock and contained in finished goods or work-in-progress and capital goods (i) at the time of exit from regular tax-paying status by opting for composition levy, (ii) at the time of exit from tax-paying status on account of taxable supply becoming exempt supply
- (3) amount payable on supply of capital goods or plant and machinery on which ITC has been taken
- (4) transfer of ITC on account of change in constitution of the registered person

(i) Entitlement of ITC at the time of registration/voluntary registration or switching to regular tax paying status or coming into tax-paying status [Sub-sections (1) and (2) of section 18 read with rule 40 of CGST Rules]

The credit on inputs held in stock and contained in semi-finished goods or finished goods held in stock and capital goods at the time of registration/voluntary registration or coming into regular tax/tax-paying status is available in the following manner:

S. No.	Persons eligible to take credit	Goods entitled to ITC		Restriction/conditions
		Inputs held in stock/capital goods	As on	
(1)	(2)	(3)	(4)	(5)
1.	Person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date from which he becomes liable to pay tax	→ ITC to be availed within 1 year from the date of the issue of the tax invoice by the supplier.
2.	Person who is not required to register, but obtains	Inputs held in stock and inputs contained in semi-finished	The day immediately preceding the date of registration	

	voluntary registration	or finished goods held in stock		
3.	Registered person who ceases to pay composition tax and switches to regular scheme	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods	The day immediately preceding the date from which he becomes liable to pay tax under regular scheme	<p>→ ITC on capital goods will be reduced by 5% per quarter of a year or part of the year from the date of invoice.</p> <p>→ ITC claimed shall be verified with the corresponding details furnished by the corresponding supplier.</p>
4.	Registered person whose exempt supplies become taxable supplies	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and capital goods exclusively used for such exempt supply	The day immediately preceding the date from which such supply becomes taxable	<p>→ ITC to be availed within 1 year from the date of the issue of the tax invoice by the supplier.</p>

In all the above cases, the registered person has to make an electronic declaration in the prescribed form on the common portal, clearly specifying the details relating to the inputs held in stock, inputs contained in semi-finished or finished goods held in stock and capital goods on the days mentioned in column (4) of table above. The declaration is to be filed within

30 days (extendable by Commissioner/Commissioner of State GST/Commissioner of UTGST) from the date when the registered person becomes eligible to avail ITC. If the claim of ITC pertaining to CGST, SGST/UTGST, IGST put together exceeds ₹ 2,00,000, the declaration needs to be certified by a practicing Chartered Accountant/Cost Accountant.



Mr. Z becomes liable to pay tax on 1st August and has obtained registration on 15th August. Mr. Z is eligible for ITC on inputs held in stock and as part of semi-finished goods or finished goods held in stock as on 31st July. Mr. Z cannot take ITC on capital goods.



Mr. A applies for voluntary registration on 5th June and obtains registration on 22th June. Mr. A is eligible for ITC on inputs held in stock and as part of semi-finished goods or finished goods held in stock as on 21st June. Mr. A cannot take ITC on capital goods.



Mr. B, a registered taxable person, was paying tax under composition scheme upto 30th July. However, w.e.f. 31st July, Mr. B becomes liable to pay tax under regular scheme. Mr. B will be eligible for ITC on inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as on 30th July. ITC on capital goods will be reduced by 5% per quarter from the date of the invoice.

(ii) Reversal of ITC on switching to composition levy or exit from tax-paying status [Section 18(4) read with rule 44 of CGST Rules]

- ❖ Section 18(4) requires reversal of ITC when a registered person who has availed ITC switches to composition levy or when his supplies get wholly exempted from tax.
- ❖ ITC on inputs should be reversed proportionately on the basis of corresponding invoices on which credit had been availed on such inputs. If invoices are not available, ITC can be reversed on the basis of the prevailing market price of such goods on the date of switch over/exemption. The details furnished on the basis of prevailing market value need to be duly certified by a practicing Chartered Accountant/Cost Accountant.
- ❖ ITC involved in the remaining useful life (in months) of the capital goods should be reversed on *pro-rata* basis, taking the useful life as 5 years.



Capital goods have been in use for 4 years, 6 month and 15 days. The useful remaining life in months = 5 months ignoring a part of the month.

ITC taken on such capital goods = C

ITC attributable to remaining useful life = $C \times 5/60$

- ❖ The registered person has to debit the electronic credit or cash ledger by the reversal amount in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods on the day immediately preceding the date of switch over/ date of exemption.
- ❖ Balance of ITC, if any, lying in the electronic credit ledger lapses.
- ❖ Cancellation of registration also requires reversal of ITC on inputs held in stock/ contained in semi-finished goods or finished goods held in stock, capital goods or plant and machinery on the day immediately preceding the cancellation date. The amount to be reversed on inputs and capital goods is computed in the manner as applicable for sub-sections (4) and (6) of section 18 (discussed above). Such amount is then compared with the output tax payable on such goods, and the higher of the two amounts is finally paid by the registered person.
- ❖ ITC to be reversed on inputs and capital goods is calculated separately for ITC of CGST, SGST/UTGST and IGST.
- ❖ The reversal amount is added to the output tax liability of the registered person.

(iii) Amount payable on supply of capital goods or plant and machinery on which ITC has been taken [Section 18(6) read with rule 40(2) & rule 44(6) of CGST Rules]

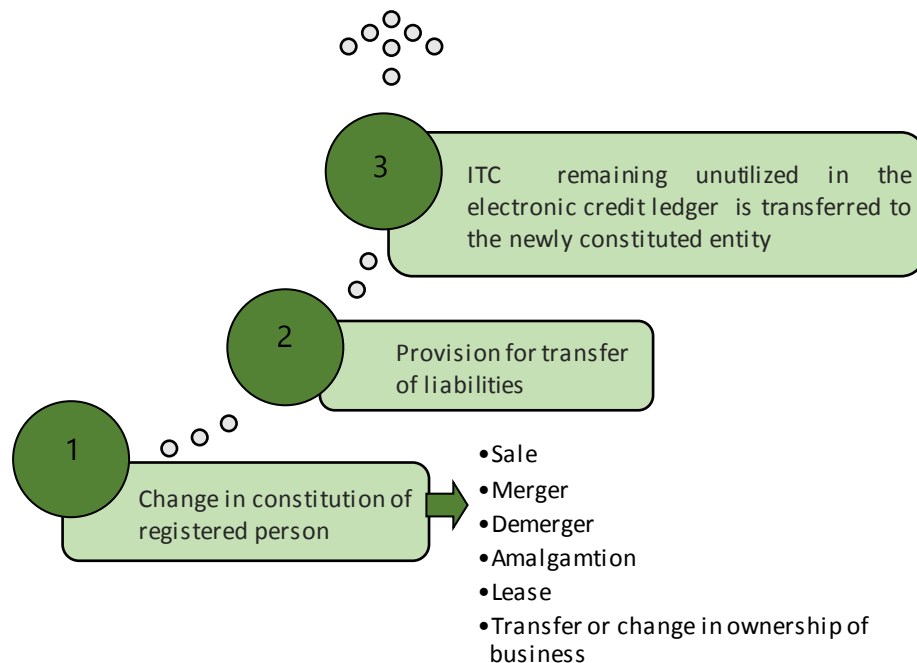
- ❖ If capital goods or plant and machinery on which ITC has been taken are supplied outward by the registered person, he must pay an amount that is the **higher of the following**:
 - ✓ ITC taken on such goods reduced by 5% per quarter of a year or part thereof from the date of issue of invoice for such goods (i.e., ITC pertaining to remaining useful life of the capital goods), or
 - ✓ tax on transaction value

- ❖ ITC pertaining to remaining useful life of the capital goods should be computed separately for ITC of CGST, SGST/UTGST and IGST.
- ❖ Where the amount so determined exceeds the tax payable on the transaction value of the capital goods, such amount need to be paid and thus, should be added to the output tax liability.
- ❖ If refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value.

(iv) Transfer of ITC on account of change in constitution of registered person [Section 18(3) read with rule 41 of CGST Rules]

In case of sale, merger, demerger, amalgamation, transfer or change in ownership of business etc., the ITC that remains unutilized in the electronic credit ledger of the registered person can be transferred to the new entity, provided there is a specific provision for transfer of liabilities in such change of constitution. ***Circular No. 96/15/2019 GST dated 28.03.2019 has clarified that transfer or change in the ownership of business includes transfer or change in the ownership due to death of the sole proprietor.***

The above provisions have been explained with the help of the following diagram:



In the case of demerger, ITC will be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. **Here, “value of assets” means the value of the entire assets of the business irrespective of whether ITC has been availed thereon or not.**

The registered person should furnish the details of change in constitution on the common portal and submit a certificate from practicing Chartered Account/Cost Accountant certifying that the change in constitution has been done with a specific provision for transfer of liabilities. Upon acceptance of such details by the transferee on the common portal, the unutilized ITC gets credited to his electronic credit ledger. The transferee should record the inputs and capital goods so transferred in his books of account.

(v) Transfer of ITC on obtaining separate registrations for multiple places of business within a State/ Union Territory [Rule 41A of CGST Rules]

Section 25 enables a taxpayer to obtain separate registrations for multiple places of business in a State/ Union territory [Provisions of section 25 are discussed under Chapter 7: Registration]. The registered person (transferor), having separate registrations for multiple places of business within a State/Union Territory, can transfer the unutilised ITC (wholly or partly) lying in his electronic credit ledger to any or all of the newly registered place(s) of business in the ratio of the value of assets held by them at the time of registration. Here, the ‘value of assets’ means the value of the entire assets of the business irrespective of whether ITC has been availed thereon or not.

The registered person should furnish the prescribed details on the common portal within a period of 30 days from obtaining such separate registrations. Upon acceptance of such details by the newly registered person (transferee) on the common portal, the unutilised ITC gets credited to his electronic credit ledger.

6. HOW ITC IS UTILISED



STATUTORY PROVISIONS

Section 49

**Payment of tax, interest, penalty and other amounts
(Relevant extract)**

Sub-section

Clause

Particulars

(5)

The amount of input tax credit available in the electronic credit ledger of the registered person on account of—

(a) *integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;*

(b) *the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;*

(c) *the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;*

Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

(d) *the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;*

Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance

		of the input tax credit on account of central tax is not available for payment of integrated tax;
	(e)	<i>the central tax shall not be utilised towards payment of State tax or Union territory tax; and</i>
	(f)	<i>the State tax or Union territory tax shall not be utilised towards payment of central tax.</i>
Section 49A	Utilisation of input tax credit subject to certain conditions	
	Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.	
Section 49B	Order of utilisation of input tax credit	
	Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.	
Chapter IX: Payment of Tax of the CGST Rules		
Rule 88A	Order of utilization of input tax credit	
	Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order.	

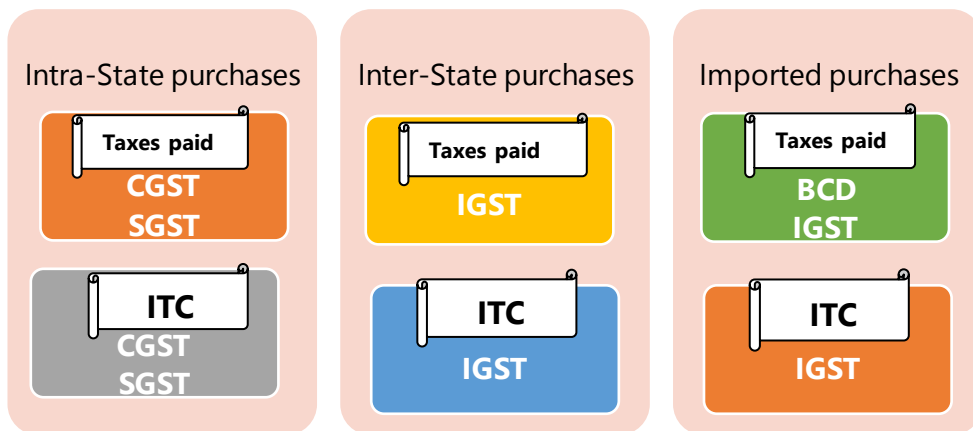
Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.



ANALYSIS

ITC is credited to a registered person's electronic credit ledger. A taxable person is entitled for ITC of CGST, SGST/UTGST and IGST depending upon the nature of supplies received by him.

To illustrate, a supplier making intra-State, inter-State and imported purchases is eligible for ITC as under:



The person may use the ITC to pay his output tax liability. Since the GST law comprises of multiple taxes viz, CGST, SGST/UTGST and IGST, one many wonder if ITC of one tax can be used to pay any kind of output tax, i.e. if ITC of CGST can be used to pay IGST liability and *vice versa* or ITC of CGST can be used to pay SGST liability and *vice versa*. **One needs to read the provisions of section 49(5), section 49A, section 49B, rule 88A and Circular No. 98/17/2019 GST dated 23.04.2019, to find the answer to such questions.**

A combined reading of the above shows that the order of utilization of ITC is as per the order (of numerals) given below:

ITC of	Output IGST liability	Output CGST liability	Output SGST/UTGST liability
IGST	(I)	(II) – <u>In any order and in any proportion</u>	
<i>(III) ITC of IGST to be completely exhausted mandatorily</i>			
CGST	(V)	(IV)	Not permitted
SGST/UTGST	(VII) <i>Only after the ITC of CGST has been utilized fully</i>	Not permitted	(VI)

The numerals given in above table can be further explained in the following manner:

- (I)** *IGST credit should first be utilized towards payment of IGST.*
- (II)** *Remaining IGST credit, if any, can be utilized towards payment of CGST and SGST/UTGST in any order and in any proportion, i.e. remaining ITC of IGST can be utilized –*
- *first towards payment of CGST and then towards payment of SGST; or*
 - *first towards payment of SGST and then towards payment of CGST; or*
 - *towards payment of CGST and SGST simultaneously in any proportion e.g. 50: 50, 30: 70, 40: 60 and so on.*
- (III)** *Entire ITC of IGST should be fully utilized before utilizing the ITC of CGST or SGST/UTGST.*
- (IV) & (V)** ITC of CGST should be utilized for payment of CGST and IGST in that order. ITC of CGST cannot be utilized for payment of SGST/UTGST
- (VI) & (VII)** ITC of SGST /UTGST should be utilized for payment of SGST/UTGST and IGST in that order. However, ITC of SGST/UTGST should be utilized for payment of IGST, ***only after ITC of CGST has been utilized fully***. ITC of SGST/UTGST cannot be utilized for payment of CGST.

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

of CGST. Further, ITC of IGST need to be exhausted fully before proceeding to utilize the ITC of CGST and SGST in that order.



Amount of ITC available and output tax liability under different tax heads

Head	Output tax liability	ITC
IGST	1000	1300
CGST	300	200
SGST/UTGST	300	200
Total	1600	1700

Option 1

ITC of	Discharge of output IGST liability	Discharge of output CGST liability	Discharge of output SGST/UTGST liability	Balance of ITC
IGST	1000	200	100	0
ITC of IGST has been completely exhausted				
CGST	0	100	-	100
SGST/UTGST	0	-	200	0
Total	1000	300	300	100

Option 2

ITC of	Discharge of output IGST liability	Discharge of output CGST liability	Discharge of output SGST/UTGST liability	Balance of ITC
IGST	1000	100	200	0
ITC of IGST has been completely exhausted				
CGST	0	200	-	0
SGST/UTGST	0	-	100	100
Total	1000	300	300	100

There can be other options also for utilization of ITC of IGST against CGST and SGST liabilities. In this example, two options for utilizing ITC of IGST against CGST and SGST liabilities are shown.

ILLUSTRATION 1

ABC Co. Ltd., registered under GST, is engaged in the manufacture of heavy machinery. It procured the following items during the month of July.

S. No.	Items	GST paid (₹)
(i)	Electrical transformers to be used in the manufacturing process	5,20,000
(ii)	Trucks used for the transport of raw material	1,00,000
(iii)	Raw material	2,00,000
(iv)	Confectionery items. These items were supplied free of cost to the customers in a customer meet organized by the company	25,000

Determine the amount of ITC available with ABC Co. Ltd., for the month of July by giving necessary explanations for treatment of various items. Assume all the conditions necessary for availing the ITC have been fulfilled.

ANSWER**Computation of ITC available with ABC Co. Ltd. for the month of July**

S. No.	Items	ITC (₹)
(i)	Electrical transformers [Being goods used in the course or furtherance of business, ITC thereon is available in terms of section 16(1)]	5,20,000
(ii)	Trucks used for the transport of raw material [ITC on motor vehicles used for transportation of goods is not blocked under section 17(5)(a)]	1,00,000
(iii)	Raw material [Being goods used in the course or furtherance of business, ITC thereon is available in terms of section 16(1)]	2,00,000

(iv)	Confectionery items for consumption of customers at customers meet [ITC on food or beverages is specifically disallowed unless the same is used for making outward taxable supply of the same category or as an element of the taxable composite or mixed supply-Section 17(5)(b)(i)]	Nil
Total ITC		8,20,000

ILLUSTRATION 2

XYZ Ltd., registered under GST, is engaged in manufacture of taxable goods. Compute the ITC available with XYZ Ltd. for the month of October, 20XX from the following particulars:-

S. No.	Inward supplies	GST (₹)	Remarks
(i)	Inputs 'A'	1,00,000	One invoice on which GST payable was ₹ 10,000, is missing
(ii)	Inputs 'B'	50,000	Inputs are to be received in two instalments. First instalment has been received in October, 20XX.
(iii)	Capital goods	1,20,000	XYZ Ltd. has capitalised the capital goods at full invoice value inclusive of GST as it will avail depreciation on the full invoice value.
(iv)	Input services	2,25,000	One invoice dated 20.01.20XX on which GST payable was ₹ 50,000 has been received in October, 20XX.

Note:

- (i) All the conditions necessary for availing the ITC have been fulfilled.
- (ii) The annual return for the financial year ending 31st March 20XX was filed on 15th September, 20XX.

ANSWER**Computation of ITC available with XYZ Ltd. for the month of October, 20XX**

S. No.	Inward supplies	GST (₹)
(i)	Inputs 'A' [ITC cannot be taken on missing invoice. The registered person should have the invoice in its possession to claim ITC-Section 16(2)(a)]	90,000
(ii)	Inputs 'B' [When inputs are received in instalments, ITC can be availed only on receipt of last instalment-First proviso to section 16(2)]	Nil
(iii)	Capital goods [Input tax paid on capital goods cannot be availed as ITC, if depreciation has been claimed on such tax component – Section 16(3)]	Nil
(iv)	Input services [As per section 16(4), ITC on an invoice cannot be availed after the due date of furnishing of the return for the month of September following the end of financial year to which such invoice pertains or the date of filing annual return, whichever is earlier. Since the annual return for the FY ending 31 st March 20XX has been filed on 15 th September, 20XX (prior to due date of filing the return for September, 20XX i.e., 20 th October, 20XX), ITC on the invoice pertaining to FY ending 31 st March 20XX cannot be availed after 15 th September, 20XX.	1,75,000
	Total	2,65,000

ILLUSTRATION 3

Mr. X, a supplier of goods, pays GST under regular scheme. He has made the following outward taxable supplies in a tax period:

Particulars	(₹)
Intra-State supply of goods	8,00,000
Inter-State supply of goods	3,00,000

He has also furnished the following information in respect of purchases made by him in that tax period:

Particulars	(₹)
Intra-State purchases of goods	2,00,000
Inter-State purchases of goods	50,000

Mr. X has following ITCs with him at the beginning of the tax period:

Particulars	(₹)
CGST	57,000
SGST	Nil
IGST	70,000

Note:

- (i) Rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively.
- (ii) Both inward and outward supplies are exclusive of taxes, wherever applicable.
- (iii) All the conditions necessary for availing the ITC have been fulfilled.

Compute the minimum GST, payable in cash, by Mr. X during the tax period. Make suitable assumptions as required.

ANSWER

Computation of minimum GST payable in cash by Mr. X on outward supplies

S.No.	Particulars	(₹)	GST (₹)
(i)	Intra-State supply of goods		
	CGST @ 9% on ₹ 8,00,000	72,000	

	SGST @ 9% on ₹ 8,00,000	72,000	1,44,000
(ii)	Inter-State supply of goods		
	IGST @ 18% on ₹ 3,00,000		54,000
	Total GST payable		1,98,000

Computation of total ITC

Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
Opening ITC	57,000	Nil	70,000
Add: ITC on Intra-State purchases of goods valuing ₹ 2,00,000	18,000	18,000	Nil
Add: ITC on Inter-State purchases of goods valuing ₹ 50,000	Nil	Nil	9,000
Total ITC	75,000	18,000	79,000

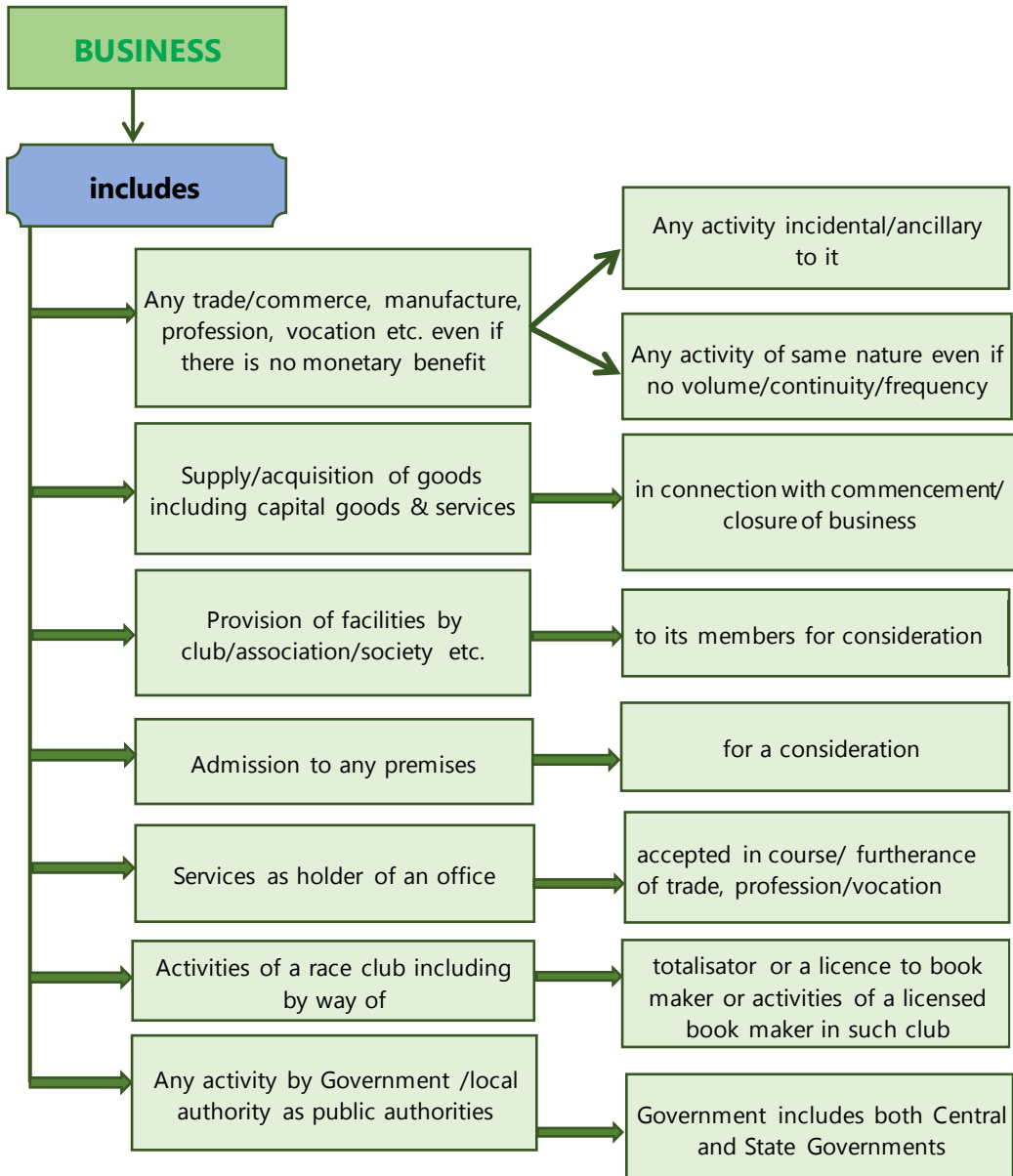
Computation of minimum GST payable from cash ledger

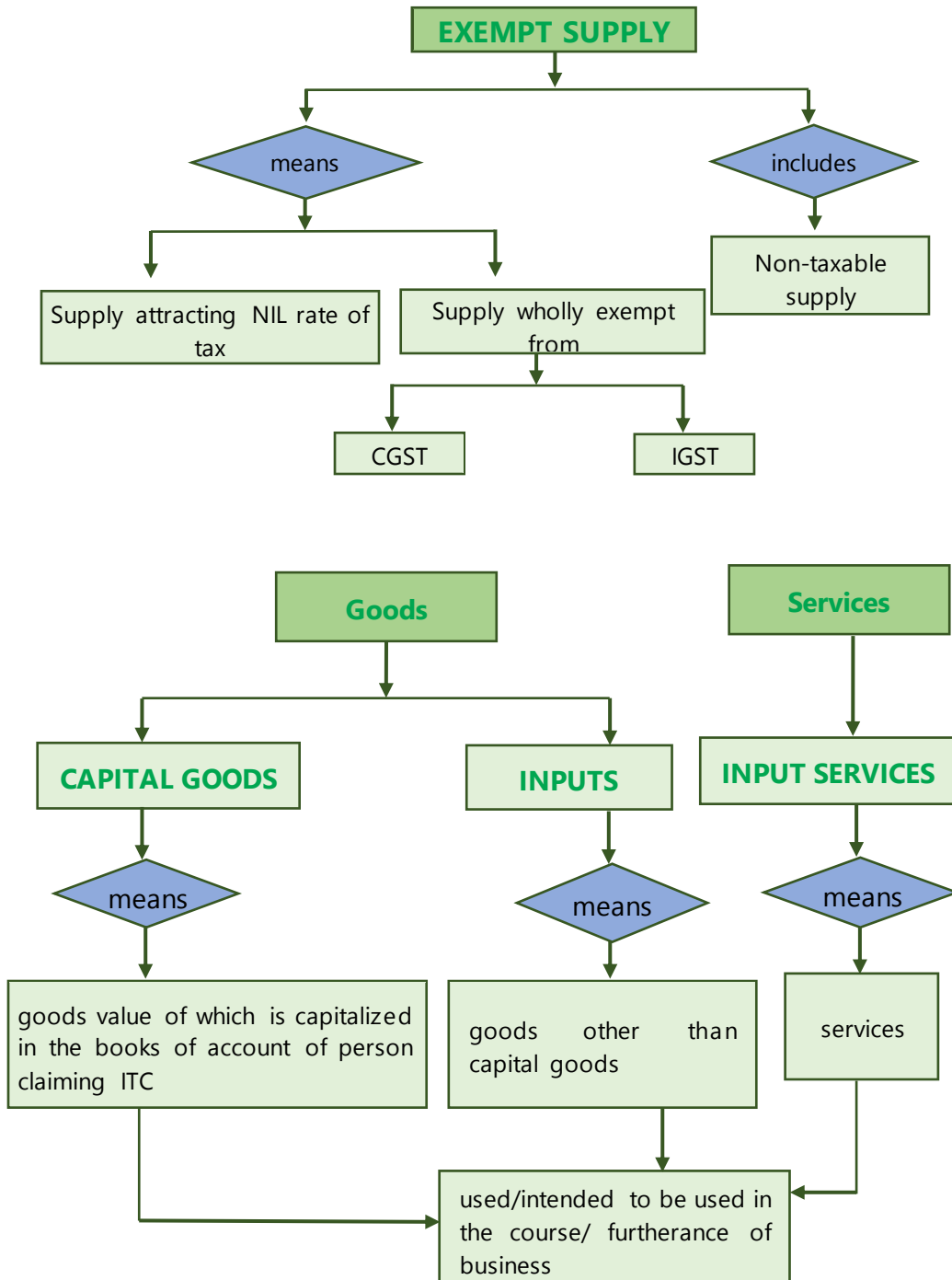
Particulars	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
GST payable	72,000	72,000	54,000
Less: ITC	(Nil)-IGST	(25,000)-IGST	(54,000)-IGST
	(72,000)-CGST	(18,000) – SGST	
Minimum GST payable in cash	Nil	29,000	Nil

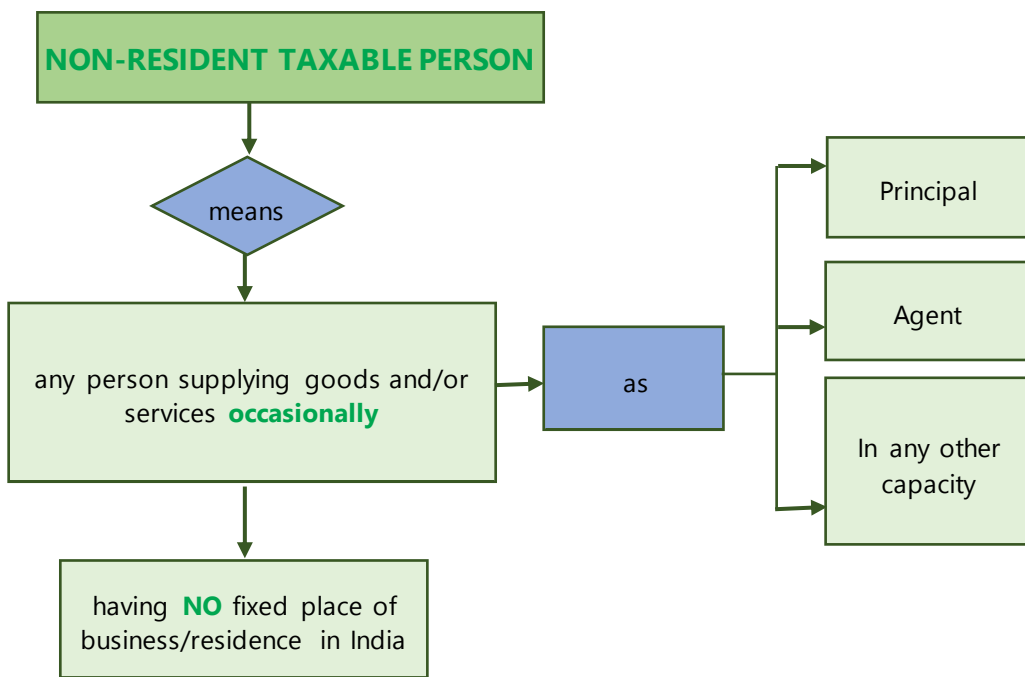
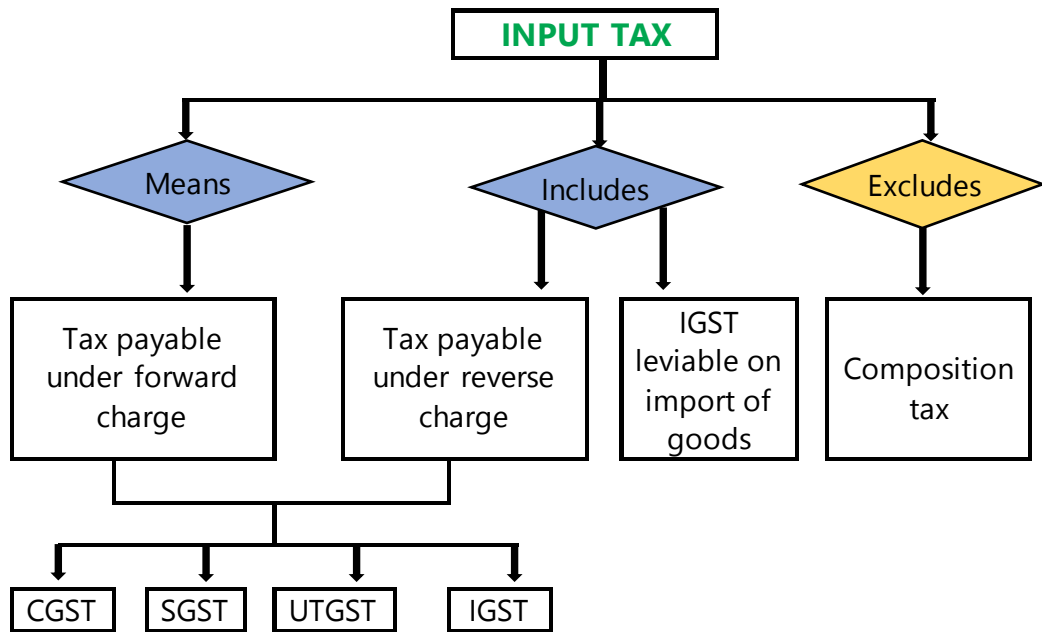
Note : Since sufficient balance of ITC of CGST is available for paying CGST liability and cross utilization of ITC of CGST and SGST is not allowed, ITC of IGST has been used to pay SGST (after paying IGST liability) to minimize cash outflow.

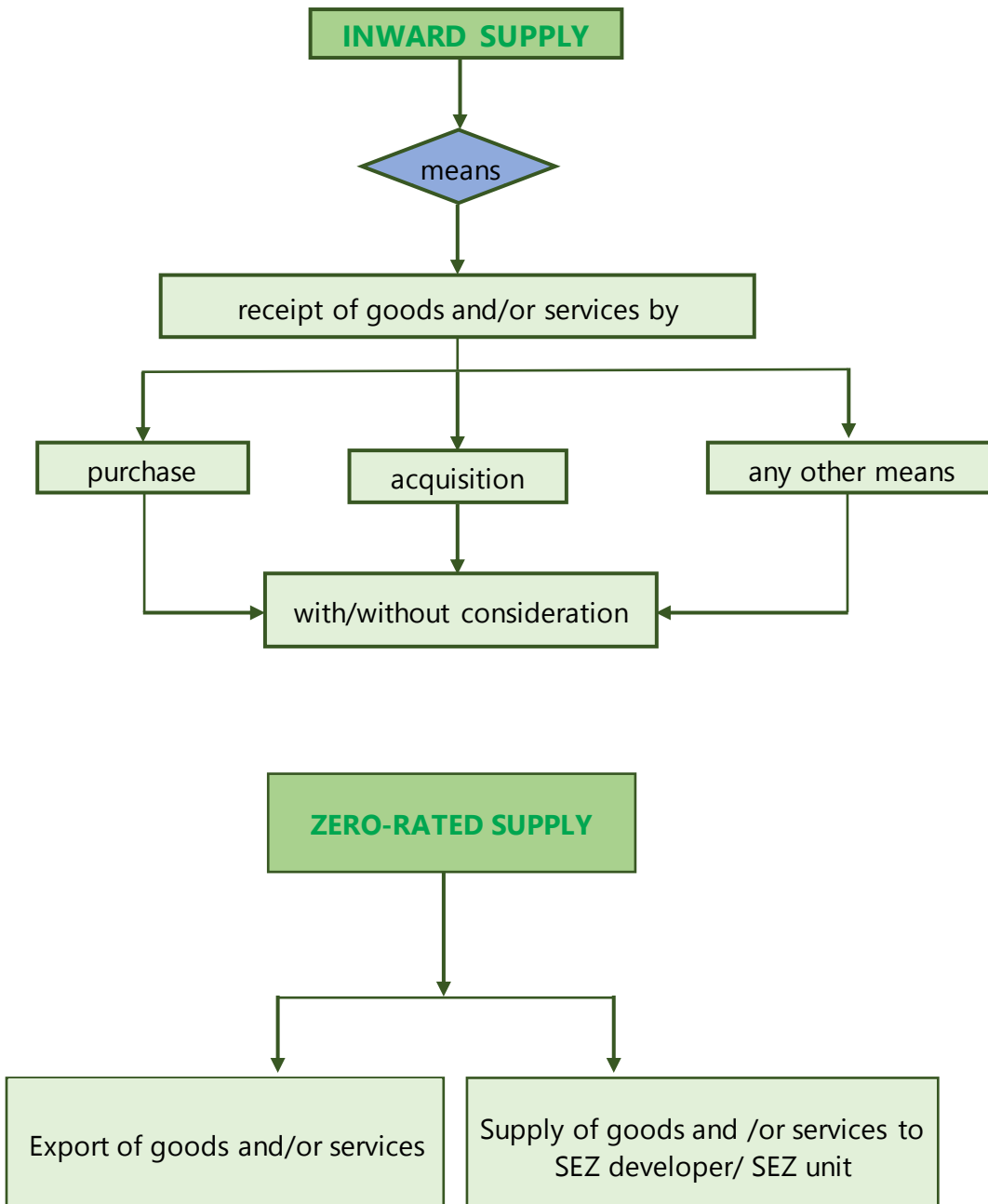
7. LET US RECAPITULATE

I. Definitions of certain key terms are summarized by way of diagrams as under:

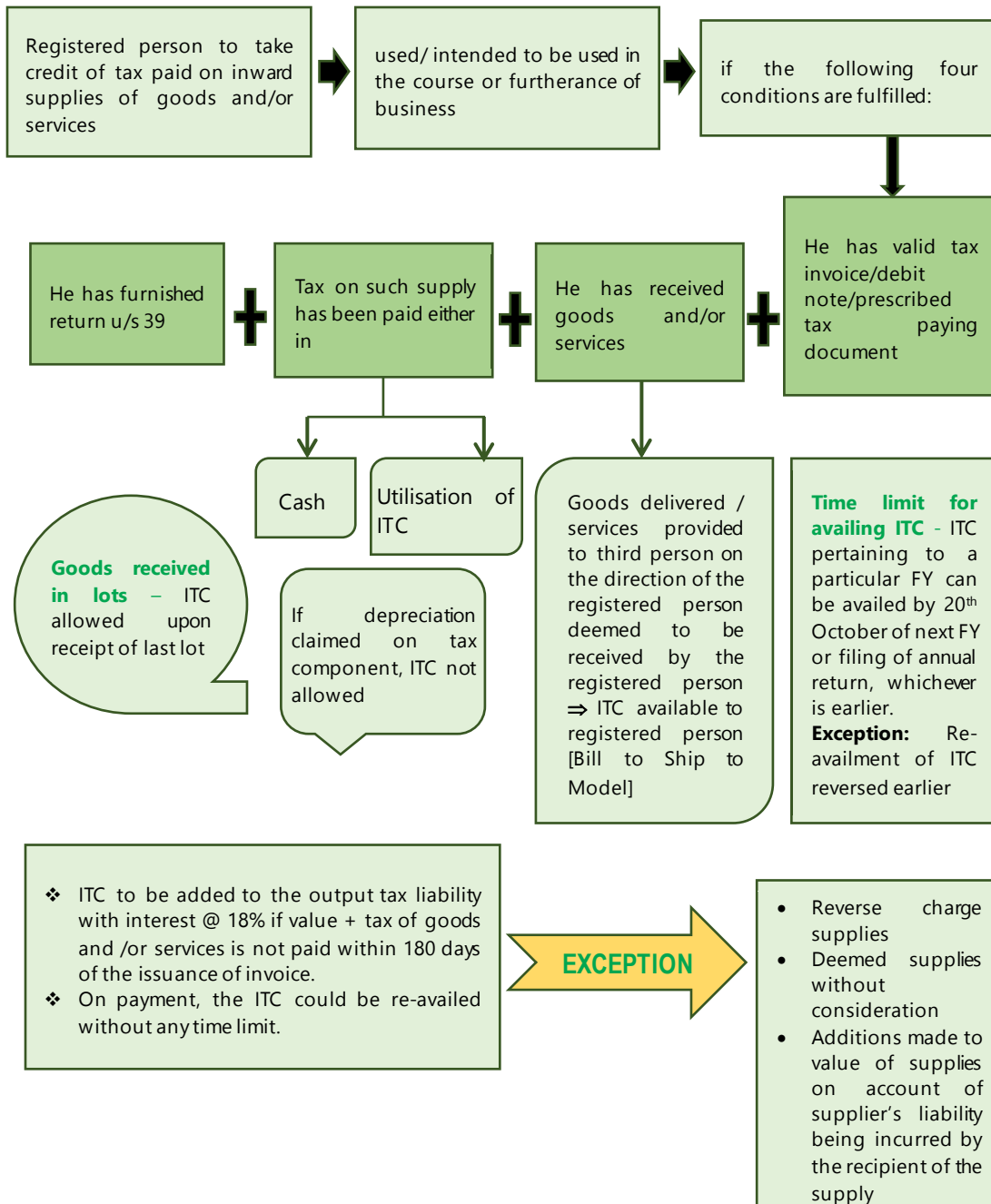






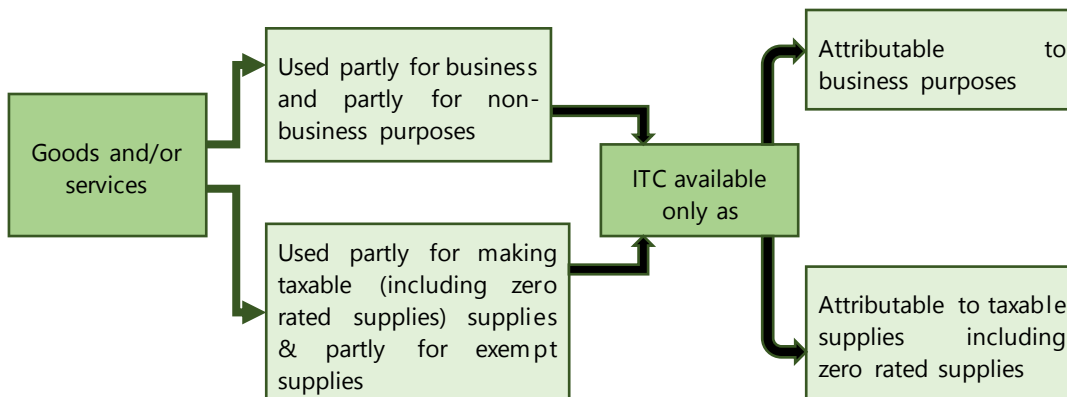


II. Provisions of section 16 relating to eligibility and conditions for taking ITC read with relevant rules are summarized below:



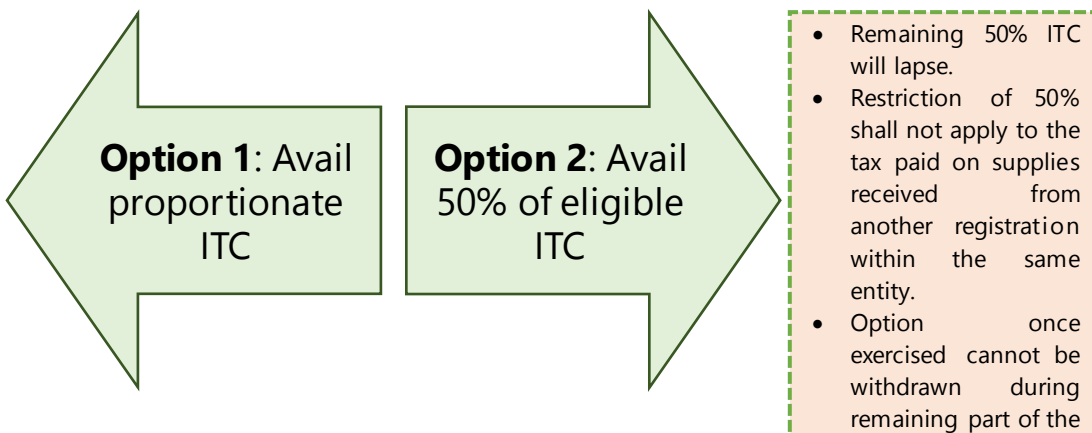
III. Provisions of section 17 relating to apportionment of credit and blocked credits read with relevant rules are summarized as under:

A. Apportionment of credit

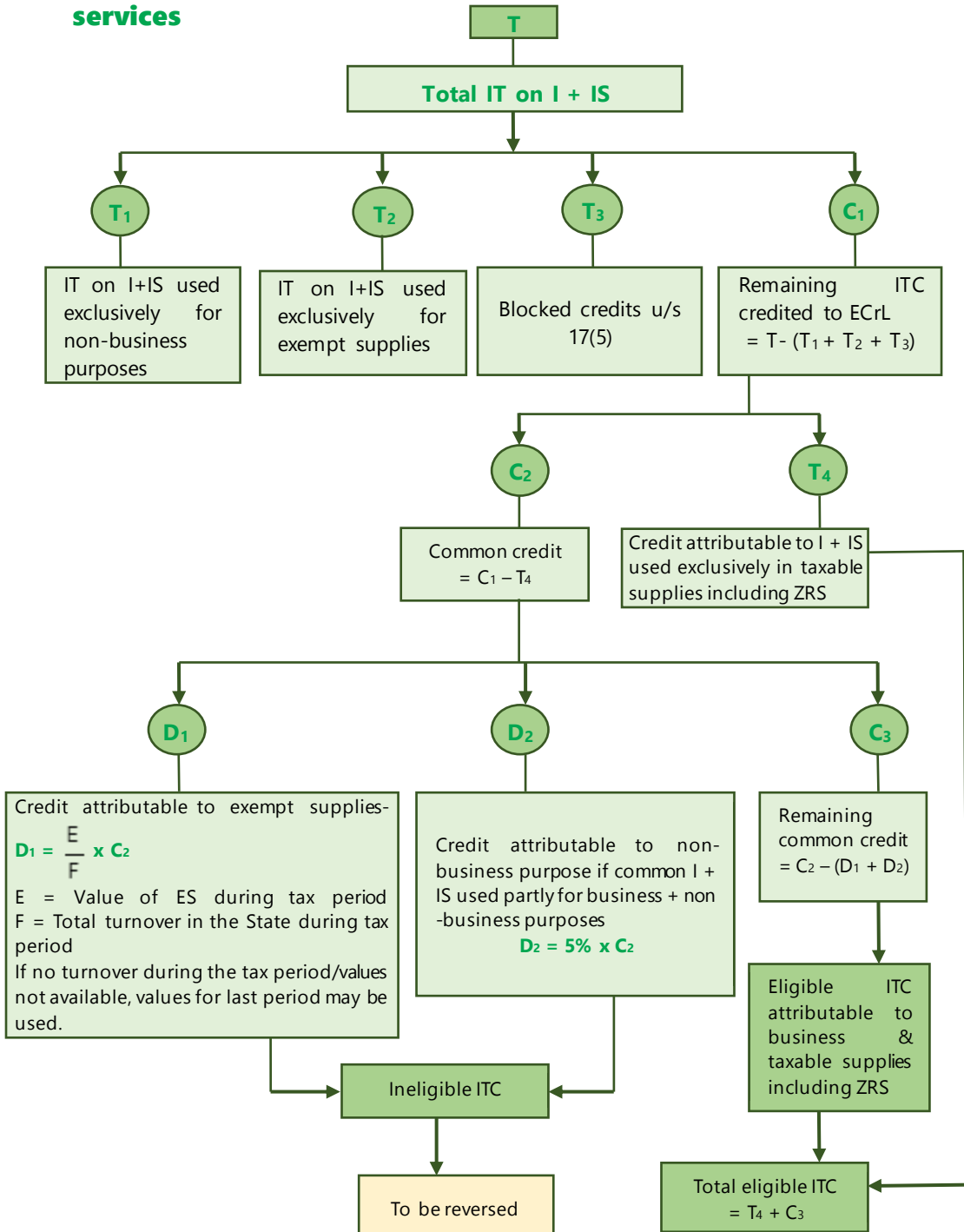


Exempt supplies include reverse charge supplies & transactions in securities and exclude activities specified in Schedule III except sale of land and sale of building when entire consideration is received post completion certificate/first occupation, whichever is earlier.

B. Special provisions for banking companies and NBFCs



C. Apportionment of common credit in case of inputs and input services

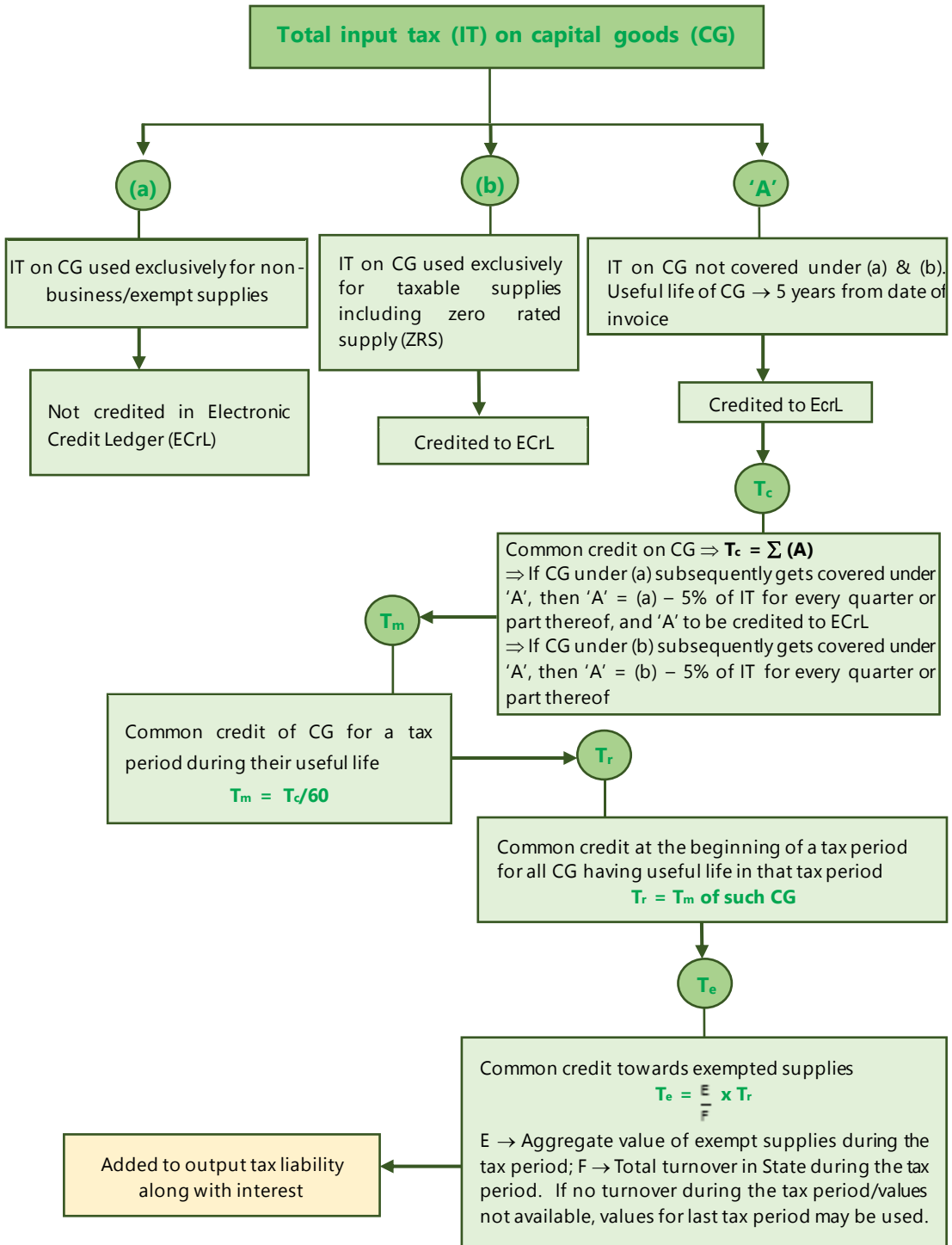


- C_3 will be computed separately for ITC of CGST, SGST/ UTGST and IGST.
- $\sum (D_1 + D_2)$ will be computed for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year. If this amount is more than the amount already reversed every month, the differential amount will be reversed in any of the month till September of succeeding year along with interest @ 18% from 1st April of succeeding year till the date of payment.
- If this amount is less than the amount reversed every month, the additional amount paid has to be claimed back as credit in the return of any month till September of the succeeding year.

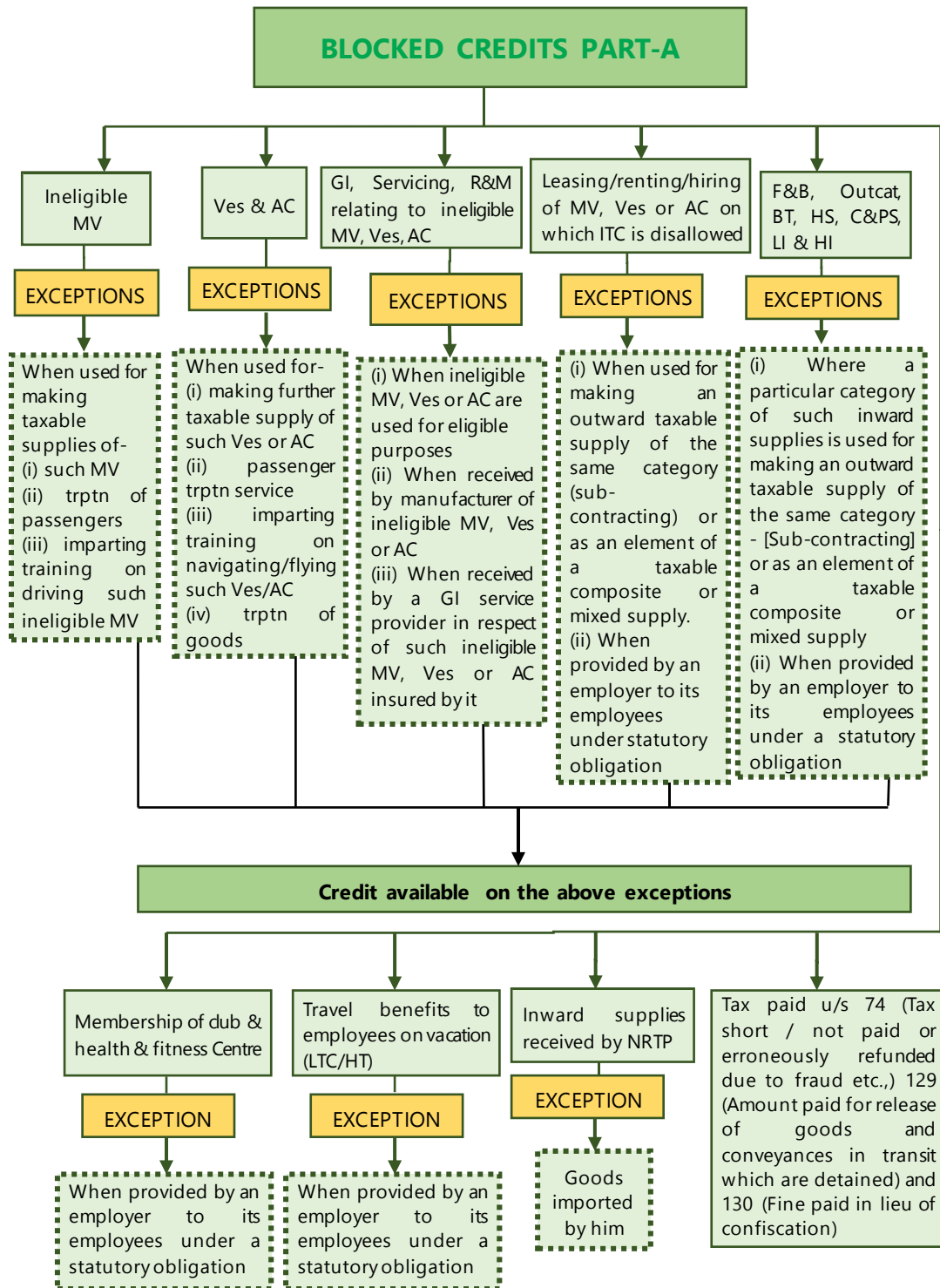
- Exempt supplies include reverse charge supplies & transactions in securities.
- Exempt supplies exclude (i) activities specified in Schedule III except sale of land and sale of building when entire consideration is received post completion certificate/first occupation, whichever is earlier, (ii) services of accepting deposits, extending loans/advances where the consideration is interest/discount and the same are provided by persons other than banking company/financial institution including NBFC, and (iii) outbound (overseas) transportation of goods by a vessel.
- Aggregate value of exempt supplies and total turnover exclude central excise duty, state excise duty, central sales tax and VAT.
- Value of exempt supply in respect of land and building is the stamp duty value and for security is 1% of the sale value of such security.

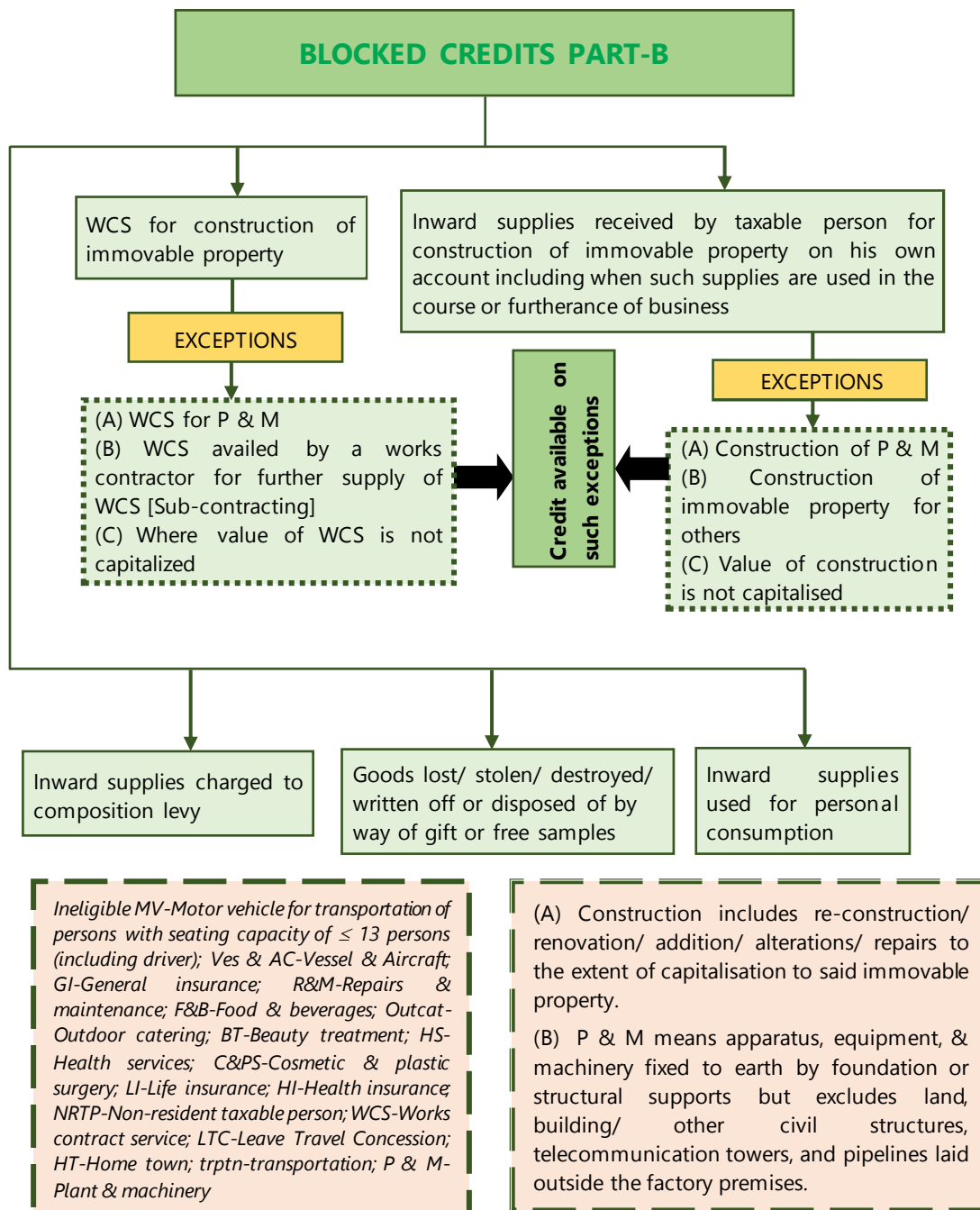
IT	=	Input tax
I	=	Inputs
IS	=	Input services
ECrI	=	Electronic Credit Ledger
ZRS	=	Zero rated supply
ES	=	Exempt supplies

D. Apportionment of common credit on capital goods



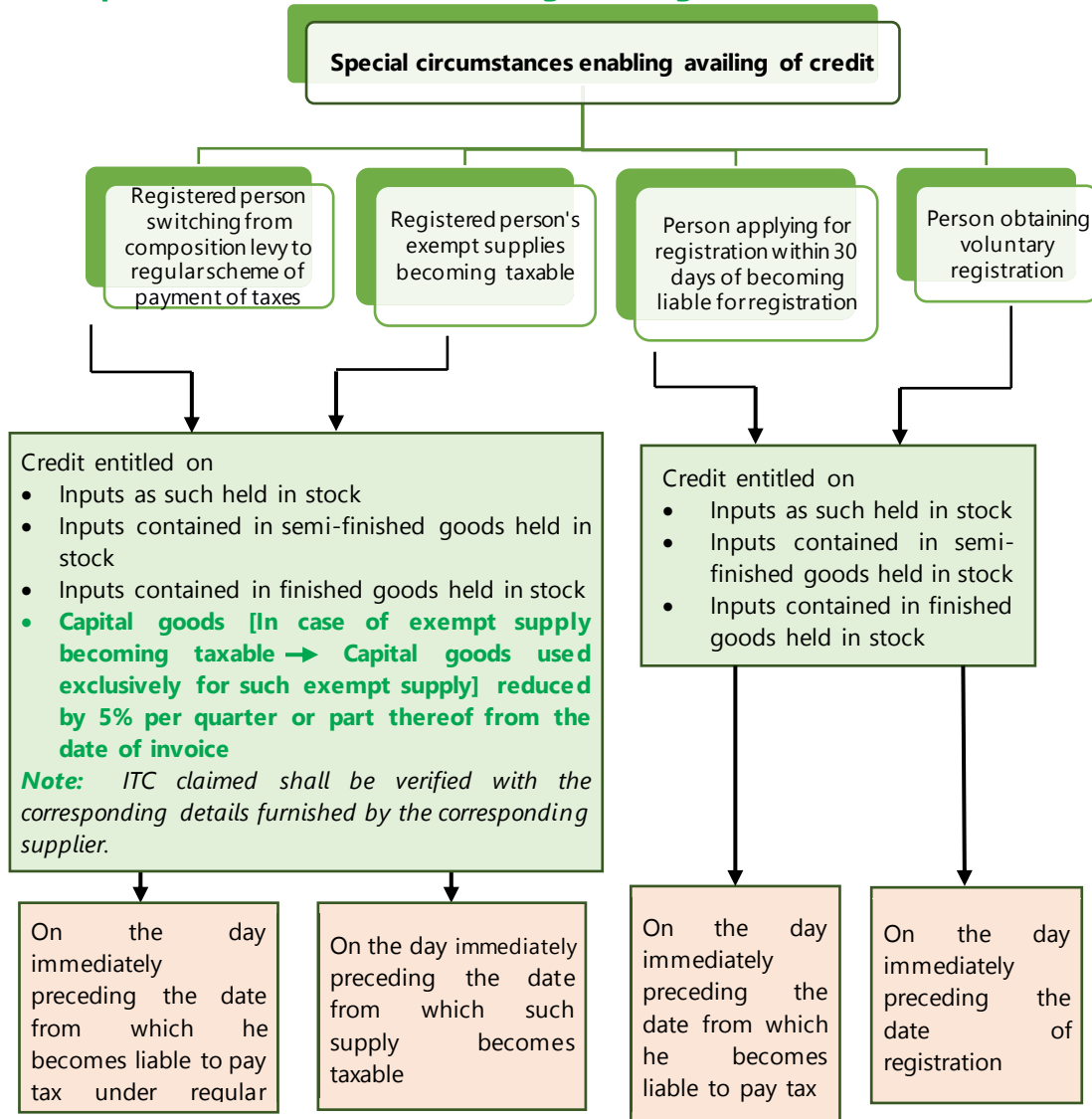
- It will be computed separately for ITC of CGST, SGST/ UTGST and IGST.
- Exempt supplies include reverse charge supplies & transactions in securities.
- Exempt supplies exclude (i) activities specified in Schedule III except sale of land and sale of building when entire consideration is received post completion certificate/first occupation, whichever is earlier, (ii) services of accepting deposits, extending loans/advances where the consideration is interest/discount and the same are provided by persons other than banking company/financial institution including NBFC, and (iii) outbound (overseas) transportation of goods by a vessel.
- Aggregate value of exempt supplies and total turnover exclude central excise duty, state excise duty, central sales tax and VAT.
- Value of exempt supply in respect of land and building is the stamp duty value and for security is 1% of the sale value of such security.





III. Provisions of section 18 read with relevant rules are summarized as under:

A. Special circumstances enabling availing of credit

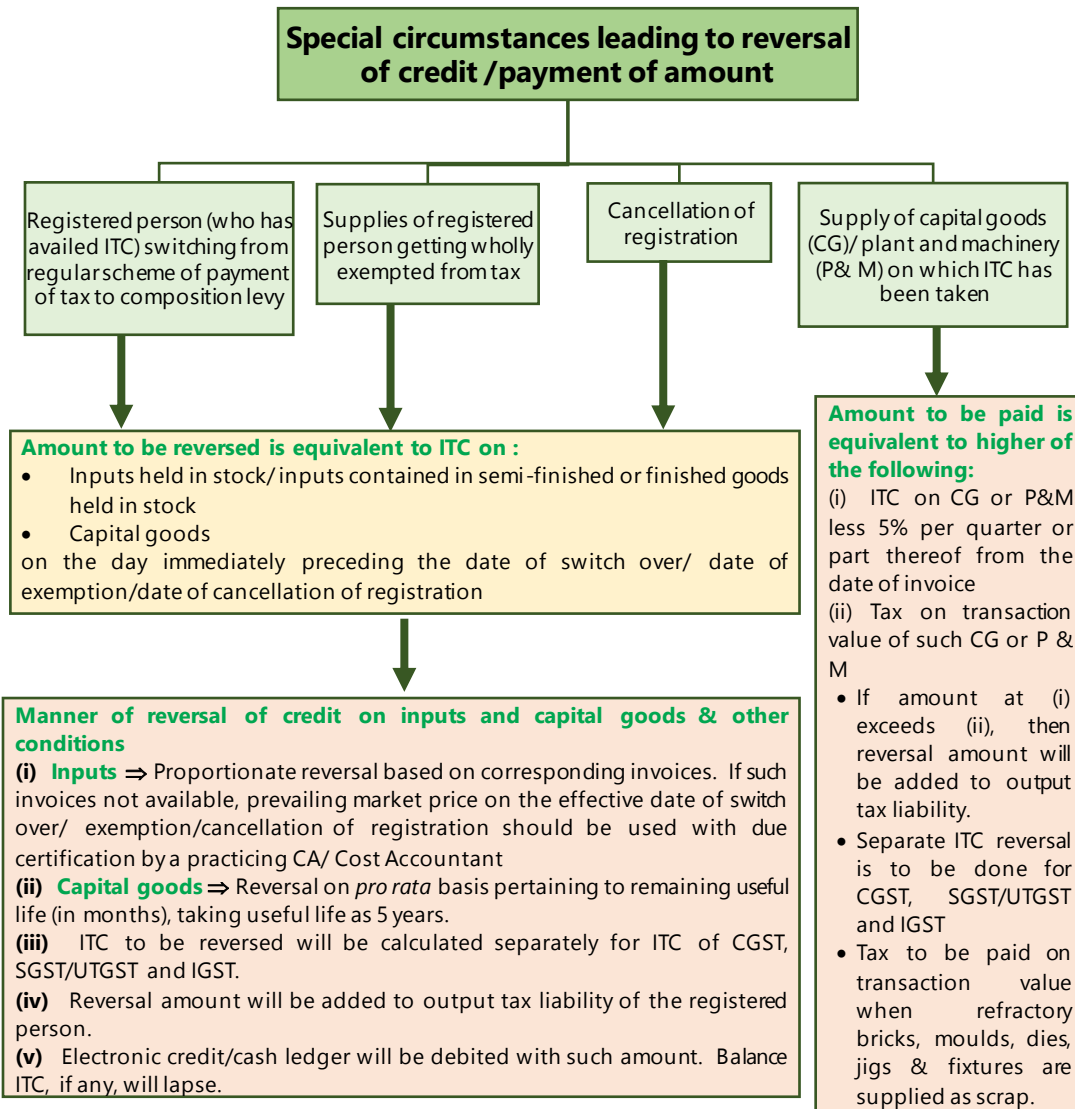


ITC, in all the above cases, is to be availed within 1 year from the date of issue of invoice by the supplier.

Conditions for availing above credit:

- (i) Filing of electronic declaration giving details of inputs held in stock/contained in semi-finished goods and finished goods held in stock and capital goods on the days immediately preceding the day on which credit becomes eligible.
- (ii) Declaration has to be filed within 30 days from becoming eligible to avail credit.
- (iii) Details in (i) above to be certified by a CA/ Cost Accountant if aggregate claim of CGST, SGST/ IGST credit is more than ₹ 2,00,000.

B. Special circumstances leading to reversal of credit/payment of amount



Transfer of unutilised ITC on account of change in constitution of registered person

In case of sale, merger, amalgamation, lease or transfer of business, unutilised ITC can be transferred to the new entity if there is a specific provision for transfer of liabilities to the new entity. The inputs and capital goods so transferred should be duly accounted for by the transferee in his books of accounts.

In case of demerger, ITC is apportioned in the ratio of value of entire assets (including assets on which ITC has not been taken) of the new units as per the demerger scheme.

Details of change in constitution are to be furnished on common portal along with request to transfer unutilised ITC. CA/Cost Accountant certificate is to be submitted certifying that change in constitution has been done with specific provision for transfer of liabilities.

Upon acceptance of such details by the transferee on the common portal, the unutilized ITC is credited to his Electronic Credit Ledger.

Transfer of unutilised ITC on obtaining separate registrations for multiple places of business within a State/UT

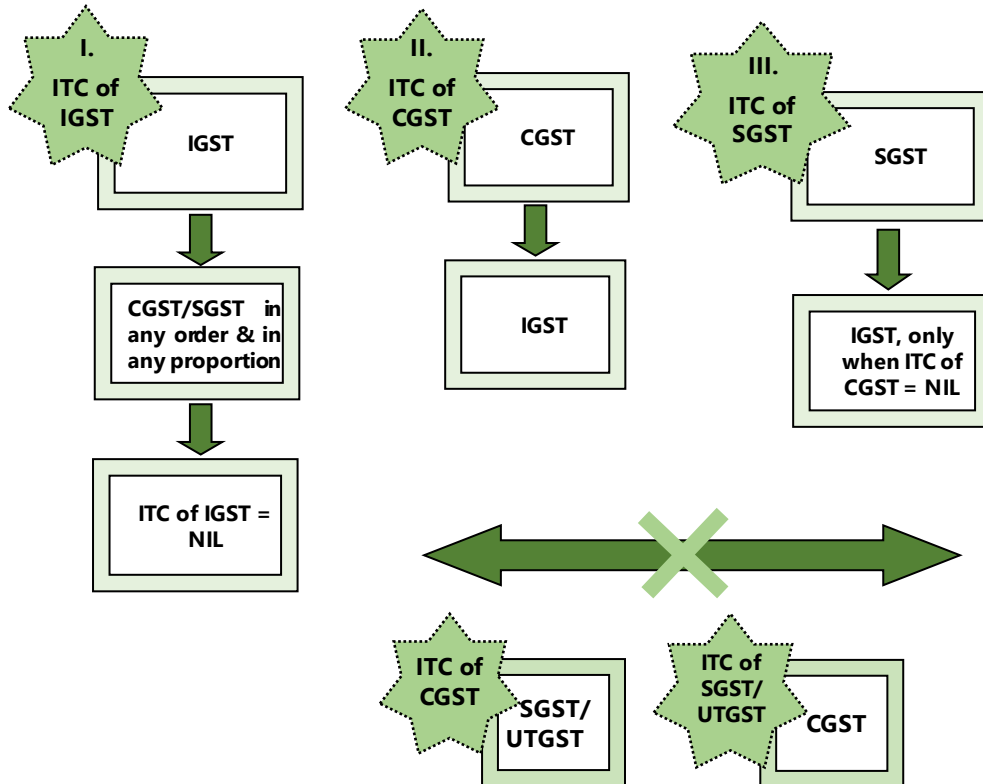
Registered person having separate registrations for multiple places of business can transfer the unutilised ITC to any or all of the newly registered place(s) of business in the ratio of the value of assets held by them at the time of registration.

Value of assets means the value of the entire assets of the business irrespective of whether ITC has been availed thereon or not.

The registered person should furnish the prescribed details on the common portal within a period of 30 days from obtaining such separate registrations.

Upon acceptance of such details by the newly registered person (transferee) on the common portal, the unutilised ITC is credited to his electronic credit ledger.

IV. Provisions relating to utilization of ITC are summarized as under:



8. TEST YOUR KNOWLEDGE

- In which of the following situations, taxpayer needs to reverse the credit already taken?
 - If payment is not made to the supplier within 45 days from the date of invoice
 - If payment is not made to the supplier within 90 days from the date of invoice
 - If payment is not made to the supplier within 180 days from the date of invoice

- (d) None of the above
2. What is the time limit for taking ITC on invoices pertaining to a financial year?
- (a) 180 days
- (b) 1 year
- (c) Due date of filing return for the month of September of the next financial year or the date of filing annual return, whichever is earlier
- (d) No limit
3. If the goods are received in lots/installment, -----
- (a) 50% ITC can be taken on receipt of 1st installment and balance 50% on receipt of last installment.
- (b) ITC can be availed upon receipt of last installment.
- (c) 100% ITC can be taken on receipt of 1st installment.
- (d) Proportionate ITC can be availed on receipt of each lot/installment.
4. For banking companies using inputs and input services partly for taxable supplies and partly for exempt supplies, which of the statement is true?
- (a) ITC shall be compulsorily restricted to credit attributable to taxable supplies including zero rated supplies
- (b) 50% of eligible ITC on inputs, capital goods, and input service shall be mandatorily availed in a month and the rest shall lapse.
- (c) Banking company can choose to exercise either option (a) or option (b)
- (d) None of the above
5. A supplier takes deduction of depreciation on the GST component of the cost of capital goods as per Income- tax Act, 1961. The supplier can-
- (a) avail only 50% of the said tax component as ITC
- (b) not avail ITC on the said tax component
- (c) avail 100% ITC of the said tax component
- (d) avail only 25% of the said tax component as ITC
6. Which of the following inward supplies are not eligible for ITC in case of a company manufacturing shoes?
- (a) Food and beverages

- (b) *Outdoor catering*
 - (c) *Health services*
 - (d) *All of the above*
7. *Which of the following statement is true for a composition tax payer?*
- (a) *A composition tax payer can avail only 50% of ITC on capital goods.*
 - (b) *A composition tax payer can avail 100% ITC on inputs.*
 - (c) *ITC is not available on inward supplies made by a composition tax payer.*
 - (d) *Composition tax will be available as ITC to the recipient only if the tax is mentioned separately in the invoice raised by the composition tax payer.*
8. *What is input tax?*
9. *What are the conditions necessary for obtaining ITC?*
10. *Can a person take ITC without payment of consideration for the supply along with tax?*
11. *What is the time limit for taking ITC and reasons therefor?*
12. *What is the ITC entitlement of a newly registered person?*
13. *What is the tax implication of supply of capital goods by a registered person who had taken ITC on such capital goods?*
14. *A taxable person is in the business of information technology. He buys a car (maximum seating capacity – 5 persons) for use of his Executive Directors. Can he avail the ITC in respect of GST paid on purchase of such car?*
15. *A technical testing agency tests and certifies each batch of machine tools before dispatch by BMT Ltd. Some of these tools are dispatched to a unit in a SEZ without payment of GST as these supplies are not taxable. The finance personnel of BMT Ltd. want to know whether they need to carry out reversal of ITC on the testing agency's services to the extent attributable to the SEZ supplies. Give your comments.*
16. *A garment factory receives a Government order for making uniforms for a commando unit. This supply is exempt from tax under a special notification. The fabric is separately procured for the supply, but thread and lining material for the collars are the ones which are used for other taxable products of the factory.*

The turnover of the other products of the factory and exempted uniforms in July is ₹ 4 crore and ₹ 1 crore respectively, the ITC on thread and lining material procured in July is ₹ 5000 and ₹ 15000 respectively.

Calculate the eligible ITC on thread and lining material.

17. Mr. A, a registered person was paying tax under Composition Scheme up to 30th July. However, w.e.f. 31st July, Mr. A becomes liable to pay tax under regular scheme. Is he eligible for any ITC?

9. ANSWERS/HINTS

1. (c) 2. (c) 3. (b) 4. (c) 5. (b) 6. (d) 7. (c)
8. Input tax means the central tax (CGST), State tax (SGST), integrated tax (IGST) or Union territory tax (UTGST) charged on supply of goods or services or both made to a registered person. It also includes tax paid on reverse charge basis and integrated goods and services tax charged on import of goods. It does not include tax paid under composition levy.
9. Following four conditions are to be satisfied by the registered taxable person for obtaining ITC:
 - (a) he is in possession of tax invoice or debit note or such other tax paying documents as may be prescribed;
 - (b) he has received the goods or services or both;
 - (c) subject to section 41, the supplier has actually paid the tax charged in respect of the supply to the Government; and
 - (d) he has furnished the return under section 39.
10. Yes, the recipient can take ITC. However, he is required to pay the consideration along with tax within 180 days from the date of issue of invoice. This condition is not applicable where tax is payable on reverse charge basis.
11. Refer point (vi) "Time limit for availing ITC: Due date of filing return for the month of September of succeeding financial year or date of filing of annual return, whichever is earlier" under Heading No. 3 "Eligibility and Conditions for Taking Input Tax Credit [Section 16]".
12. A person applying for registration can take input tax credit 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 grant of registration. If the

person was liable to take registration and he has applied for registration within thirty days from the date on which he became liable to registration, then ITC of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date on which he became liable to pay tax can be taken.

In case of voluntary registration, ITC of such goods held in stock on the day immediately preceding the date of registration can be taken.

13. In case of supply of capital goods or plant and machinery on which ITC has been taken, the registered person shall pay an amount equal to the ITC taken on the said capital goods or plant and machinery reduced by 5% per quarter or part thereof from the date of invoice or the tax on the transaction value of such capital goods, whichever is higher.

However, in case of refractory bricks, moulds and dies, jigs and fixtures when these are supplied as scrap, the person can pay tax on the transaction value.

14. No. As per section 17(5)(a), ITC on motor vehicles for transportation of persons with seating capacity of up to 13 persons (including driver), can be availed only if the taxable person is in the business of transport of passengers or is providing the services of imparting training on driving such motor vehicles or is in the business of supply of such motor vehicles.
15. Under section 16(2) of the IGST Act, credit of input tax is allowed to be taken for inward supplies used to make zero rated supplies. Under section 17 of the CGST Act also, ITC is disallowed only to the extent it pertains to supplies used for non-business purposes or supplies other than taxable and zero-rated supplies. Supplies to SEZ units are zero rated supplies in terms of section 16(1) of IGST Act. Thus, full ITC is allowed on inward supplies of BMT Ltd. used for effecting supplies to the unit in the SEZ.
16. Thread and lining material are inputs which are used for making taxable as well as exempt supplies. Therefore, credit on such items will be apportioned and credit attributable to exempt supplies will be reversed in terms of rule 42 of the CGST Rules.

Credit attributable to exempt supplies = $\text{Common credit} \times \left(\frac{\text{Exempt turnover}}{\text{Total turnover}} \right)$

Common credit = ₹ 15,000 + ₹ 5,000 = ₹ 20,000

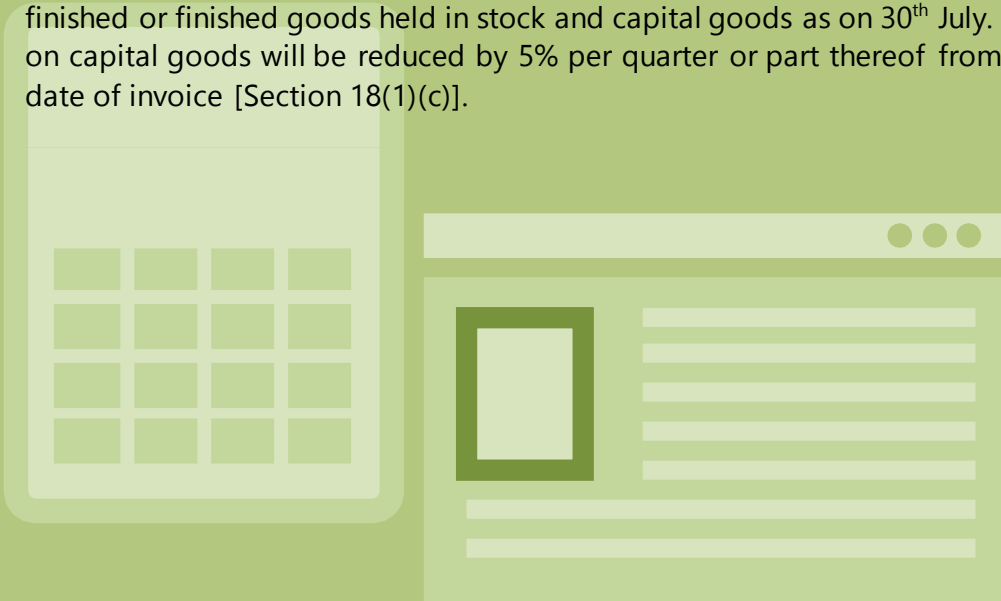
Exempt turnover = ₹ 1 crore

Total turnover = ₹ 5 crore [₹ 1 crore + ₹ 4 crore]

Credit attributable to exempt supplies = (₹ 1 crore / ₹ 5 crore) x ₹ 20,000 = ₹ 4,000.

Ineligible credit of ₹ 4,000 will be reversed. Credit of ₹ 16,000 will be eligible credit for the month of July.

17. Mr. A is eligible for ITC on inputs held in stock and inputs contained in semi-finished or finished goods held in stock and capital goods as on 30th July. ITC on capital goods will be reduced by 5% per quarter or part thereof from the date of invoice [Section 18(1)(c)].



REGISTRATION

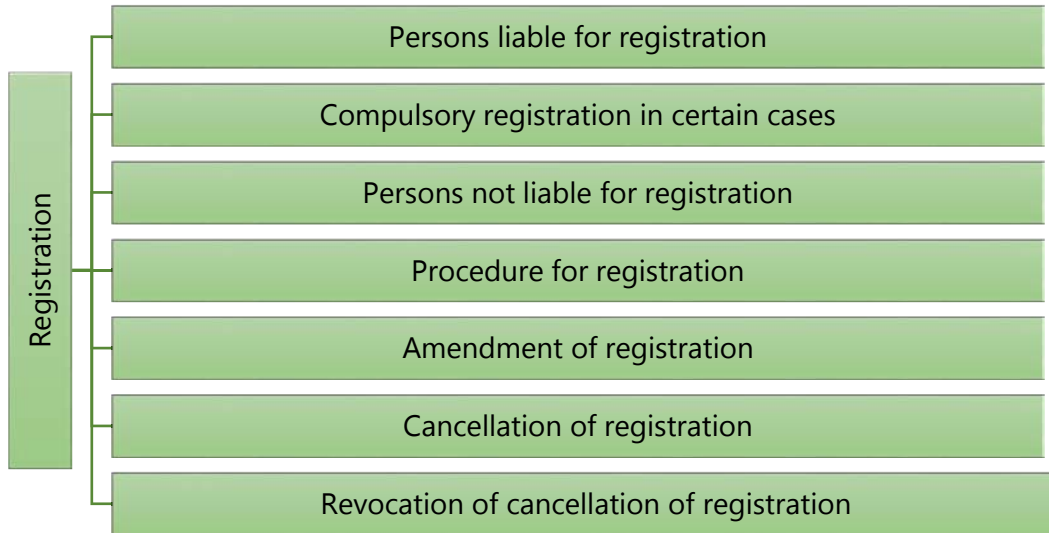


LEARNING OUTCOMES

This Chapter will equip you to –

- ❑ understand the concept of the taxable person
- ❑ explain when a person becomes liable to get registered under GST.
- ❑ identify the scenarios where registration is compulsory.
- ❑ identify the persons who are not liable for registration.
- ❑ describe the procedure for obtaining registration under GST.
- ❑ explain the procedure for amendment of registration.
- ❑ describe the cancellation of registration and revocation of cancellation of registration in specified circumstances.

CHAPTER OVERVIEW



1. INTRODUCTION

Under any taxation law, registration is the most fundamental requirement for identification of tax payers ensuring tax compliance in the economy. It is the first step towards becoming GST compliant. Under indirect tax regime, without registration, a person can neither



collect tax from his

customers nor claim any credit of tax paid by him. Registration legally recognizes a person as supplier of goods or services or both and legally authorizes him to collect taxes from his customers and pass on the credit of the taxes paid on the goods or services supplied to the purchasers/recipients. He can claim the input tax credit of taxes paid and can utilize the same for payment of taxes due on supply of goods or services. Registration ensures the seamless flow of input tax credit from suppliers to recipients at the national level.

Register Now



Under GST law, a supplier is required to obtain State-wise registration. There is no concept of a centralized registration under GST like the erstwhile service tax regime. A supplier has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover

exceeds a specified threshold limit. Thus, he is not required to obtain registration from a State/UT from where he makes a non-taxable supply.

Since registration in GST is PAN based, once a supplier is liable to register, he has to obtain registration in each of the States/UTs in which he operates under the same PAN. Further, he is normally required to obtain single registration in a State/UT. However, where he has multiple places of business in a State/UT, he has the option either to get a single registration for said State/UT [wherein it can declare one place as principal place of business (PPoB) and other branches as additional place(s) of business (APoB)] or to get separate registrations for each place of business in such State/UT.

Registration under GST is not tax specific, which means that there is single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and GST compensation cess.


Chapter VI - Registration [Sections 22 to 30] of the CGST Act and Chapter III – Registration [Rules 8 to 26] of the CGST Rules contain the provisions relating to registration. State GST laws also prescribe identical provisions in relation to Registration.

Provisions of registration under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Before proceeding to understand the registration provisions, let us first go through few relevant definitions.

2. RELEVANT DEFINITIONS



-  **Agent:** means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].

- ❖ **Common portal:** means the common goods and services tax electronic portal referred to in section 146 [Section 2(26)].
- ❖ **Taxable supply:** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].
- ❖ **Taxable territory:** means the territory to which the provisions of this Act apply [Section 2(109)].
- ❖ **Place of business:** includes [Section 2(85)]:
 - a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
 - a place where a taxable person maintains his books of account; or
 - a place where a taxable person is engaged in business through an agent, by whatever name called.
- ❖ **Appellate Authority:** means an authority appointed or authorised to hear appeals as referred to in section 107¹ [Section 2(8)].
- ❖ **Fixed establishment:** means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs [Section 2(50)].
- ❖ **Principal place of business:** means the place of business specified as the principal place of business in the certificate of registration [Section 2(89)].
- ❖ **Proper officer:** in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board [Section 2(91)].
- ❖ **Registered person:** means a person who is registered under section 25, but does not include a person having a Unique Identity Number [Section 2(94)].
- ❖ **Tax period:** means the period for which the return is required to be furnished [Section 2(106)].
- ❖ **Business:** includes [Section 2(17)]–

¹ Section 107 contains the provisions relating to 'Appeals to Appellate Authority'. The same shall be discussed in detail at final level.

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to (a) above;

(c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;

(f) admission, for a consideration, of persons to any premises; and

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.



3. CONCEPT OF TAXABLE PERSON [SECTION 2(107)]



Under GST law, the concept of taxable person is significant since tax on supplies of goods and/services, is to be paid by a taxable person. So, let us understand the concept of taxable person. As per section 2(107) of the CGST Act, taxable person means a person who is registered



Taxable person

or liable to be registered under section 22 or section 24 [These sections have been discussed in detail subsequently in this Chapter].

Thus, even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered, but has taken voluntary

registration and got himself registered is also a taxable person.

In the subsequent paras, we will see when does a person becomes liable to get registered, what is the procedure for getting registered under GST and how to get the registration application amended, when can registration be cancelled and when the cancellation of the registration by the Department be revoked.

Following sections of Chapter VI – Registration of the CGST Act shall be discussed in this chapter to understand the registration provisions:

Section 22	Persons liable for registration.
Section 23	Persons not liable for registration
Section 24	Compulsory registration in certain cases
Section 25	Procedure for registration.
Section 26	Deemed registration
Section 27	Special provisions relating to casual taxable person and non-resident taxable person
Section 28	Amendment of registration
Section 29	Cancellation or surrender of registration
Section 30	Revocation of cancellation of registration



4. PERSONS LIABLE FOR REGISTRATION [SECTION 22]



STATUTORY PROVISIONS

Section 22	<i>Persons liable for registration</i>
Sub-section	<i>Particulars</i>
(1)	<i>Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his</i>

	<p>aggregate turnover in a financial year exceeds twenty lakh rupees. <i>Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.</i></p> <p><i>Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified.</i></p>		
(2)	<p>Every person who, on the day immediately preceding the appointed day, is registered or holds a license under an existing law, shall be liable to be registered under this Act with effect from the appointed day.</p>		
(3)	<p>Where a business carried on by a taxable person registered under this Act is transferred, whether 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.</p>		
(4)	<p>Notwithstanding anything contained in sub-sections (1) and (3), in a 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 pursuant to an order of a High Court, Tribunal or otherwise, 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 or Tribunal.</p>		
	<p>Explanation—For the purposes of this section, —</p>		
	<table border="1"> <tr> <td>(i)</td> <td>the expression “aggregate turnover” shall include all</td> </tr> </table>	(i)	the expression “aggregate turnover” shall include all
(i)	the expression “aggregate turnover” shall include all		

		<i>supplies made by the taxable person, whether on his own account or made on behalf of all his principals</i>
	(iii)	<i>the expression "special category States" shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution except the State of Jammu and Kashmir and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.</i>



ANALYSIS

(i) Threshold limit for registration

- Every supplier of goods or services or both is required to obtain registration
- in the State or the Union territory from where he makes the taxable supply
- if his **aggregate turnover** exceeds specified threshold limit in a FY.

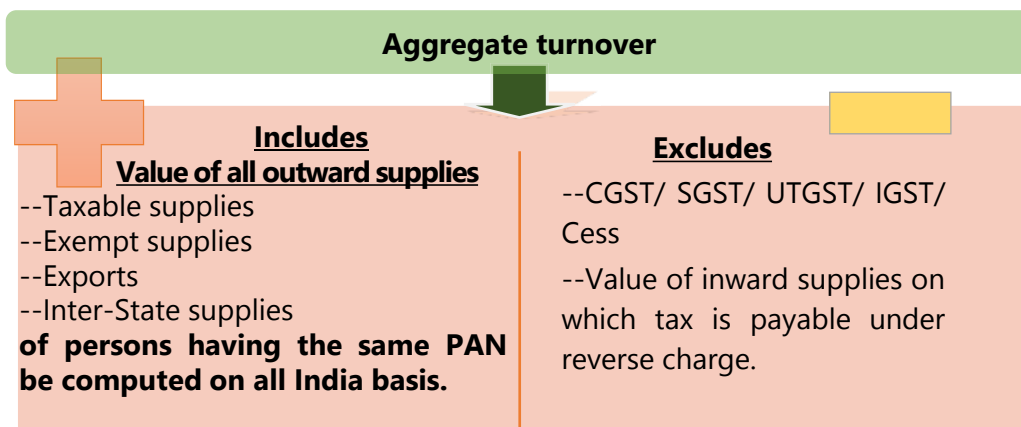
Aggregate Turnover

Before, we study what is the applicable threshold limit for various States/ UTs, let us first understand the concept of **aggregate turnover**.

Aggregate turnover is a crucial parameter for deciding the eligibility of a supplier to avail the benefit of threshold exemption from registration, eligibility for composition scheme as well as for option to pay tax at concessional rate under *Notification No. 2/2019 CT (R) dated 07.03.2019 [Discussed in Chapter 3 – Charge of GST]*.



'Turnover' in common parlance is the total volume of business. The term 'aggregate turnover' as defined under section 2(6) of the CGST Act has been presented in the diagrammatic form as follows:



Section 2(6) [definition of 'aggregate turnover' as given above] read with explanation (i) to section 22 has been analysed as follows:

- (A) Aggregate turnover to exclude inward supplies on which tax is payable under reverse charge:** It may be noted that the inward supplies on which recipient is required to pay tax under Reverse Charge Mechanism (RCM) do not form part of the 'aggregate turnover'. The law stipulates certain supplies like, Goods Transport Agency services, legal services, to name a few, where the recipient of service is made to pay the tax – *Discussed in detail in Chapter 3 – Charge of tax*. The value of such supplies would not form part of the 'aggregate turnover' of recipient of such supplies.



Outward Supplies taxable under reverse charge would continue to be part of the 'aggregate turnover' of the supplier of such supplies



Raghubir Private Ltd. pays GST on sitting fees paid to its directors for the services rendered by them, under reverse charge. Value of services provided by the directors to Raghubir Private Ltd. will form part of the aggregate turnover of the directors and not of Raghubir Private Ltd.

- (B) Aggregate turnover excludes the element of CGST, SGST, UTGST, and IGST and compensation cess.**

(C) Aggregate turnover to include total turnover of all branches under same PAN

Aggregate turnover is calculated by taking together the value in respect of the activities carried out on all-India basis.



A dealer 'X' has two offices – one in Delhi and another in Haryana. In order to determine whether 'X' is liable for registration, turnover of both the offices would be taken into account and only if the same exceeds the applicable threshold limit, X is liable for registration.

(D) Value of exported goods/services, exempted goods/services, inter-State supplies between distinct persons having same PAN, to be included in aggregate turnover.



Madhur Oils, Punjab, is engaged in supplying machine oil as well as petrol. Supply of petrol is not leviable to GST, but supply of machine oil is taxable. In order to determine whether Madhur Oils is liable for registration, turnover of both non-taxable as well as taxable supplies would be taken into account and if the same exceeds the applicable threshold limit, Madhur Oils is liable for registration.

(E) Aggregate turnover to include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals.



Mohini Enterprises has appointed M/s Bestfords & Associates as its agent. M/s Bestfords & Associates makes supply of goods on its own account as well as on behalf of Mohini Enterprises.

All the supplies of goods made by M/s Bestfords & Associates as agent of Mohini Enterprises as well as on its own account will be included in the aggregate turnover of M/s Bestfords & Associates.

(F) 'Aggregate turnover' Vs. 'Turnover in a State': The aggregate turnover is different from turnover in a State. The former is used for determining the threshold limit for registration and eligibility for composition scheme as well as for option to pay tax at concessional rate under *Notification No. 2/2019 CT (R) dated 07.03.2019 [Discussed in Chapter 3 – Charge of GST]*. However, once a person is eligible for composition levy, the amount payable under composition levy would be calculated on the basis of 'turnover in the State/UT'.

Applicable threshold limit

The threshold limit prescribed under section 22(1) is ₹ 20 lakh in a FY, i.e. every supplier, whose aggregate turnover in a financial year exceeds ₹ 20 lakh, is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods and/or services.

However, the limit of ₹ 20 lakh will be reduced to ₹ 10 lakh if the person is carrying out business in **Special Category States**. As per Article 279A(4)(g) of the Constitution, there are 11 Special Category States, namely, States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand. **However, as per the explanation (iii) to section 22, for the purposes of registration, only Mizoram, Tripura, Manipur and Nagaland are Special Category States. Therefore, the threshold limit ₹ 10 lakh is applicable for Mizoram, Tripura, Manipur and Nagaland.**



If a person with places of business in different States across India has one branch in a Special Category State, the threshold limit for GST registration will be reduced to ₹ 10 lakh.

Further, Notification No. 10/2019 CT dated 07.03.2019 exempts any person who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed ₹ 40 lakh, from registration requirement.

Exceptions to this exemption are as follows:

- (a) **persons required to take compulsory registration under section 24 of the CGST Act.**
- (b) **persons engaged in making supplies of ice cream and other edible ice, whether or not containing cocoa [2105 00 00], Pan masala [2106 90 20] and all goods of Chapter 24, i.e. Tobacco and manufactured tobacco substitutes.**
- (c) **Persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Uttarakhand, Meghalaya, Sikkim, Telangana,**

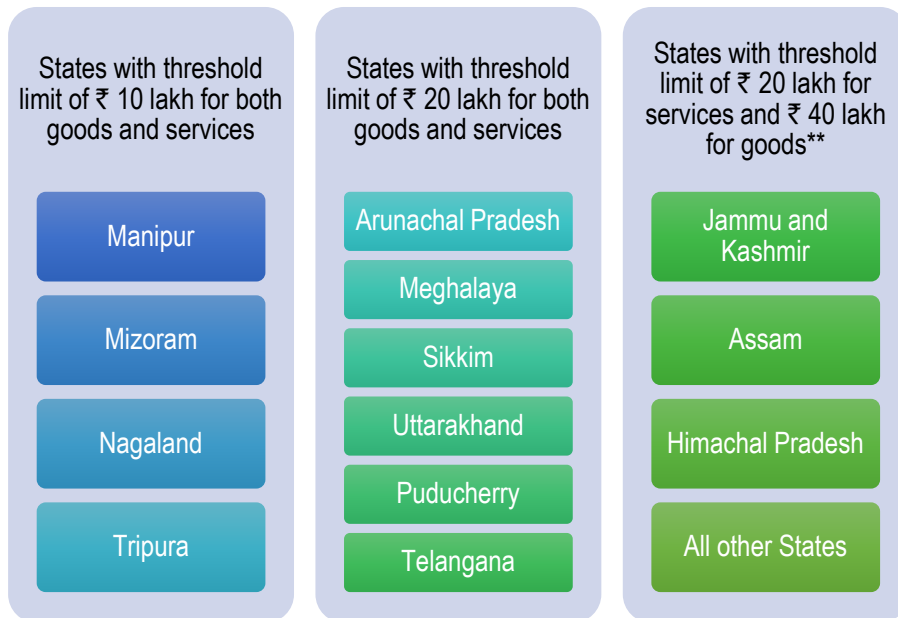
Puducherry and Special Category States as per section 22 [Nagaland, Mizoram, Manipur, Tripura]. Inter-State supplies of goods are nevertheless liable to compulsory registration and are already covered in exception (a) above.

- (d) Person who has opted for voluntary registration or such registered persons who intend to continue with their registration under the CGST Act.**

In view the above discussion, the registration requirements under GST can be summarised as follows:

			Threshold limit for persons engaged	
			exclusively in supply of goods	in supply of services/ both goods & services
States other than Special Category States		Puducherry	₹ 20 lakh	₹ 20 Lakh
		Telangana	₹ 20 lakh	₹ 20 Lakh
		Others	₹ 40 lakh	₹ 20 Lakh
Special Category States as per Constitution	Special Category States as per section 22	Manipur	₹ 10 lakh	₹ 10 Lakh
		Mizoram	₹ 10 lakh	₹ 10 Lakh
		Nagaland	₹ 10 lakh	₹ 10 Lakh
		Tripura	₹ 10 lakh	₹ 10 Lakh
	Others	Jammu and Kashmir	₹ 40 lakh	₹ 20 Lakh
		Assam	₹ 40 lakh	₹ 20 Lakh
		Himachal Pradesh	₹ 40 lakh	₹ 20 Lakh
		Arunachal Pradesh	₹ 20 Lakh	₹ 20 Lakh

		Meghalaya	₹ 20 Lakh	₹ 20 Lakh
		Sikkim	₹ 20 Lakh	₹ 20 Lakh
		Uttarakhand	₹ 20 Lakh	₹ 20 Lakh



****persons engaged exclusively in intra-State supply of goods**



Prithviraj of Assam is exclusively engaged in intra-State supply of shoes. His aggregate turnover in the current financial year is ₹ 22 lakh. In view of the discussion in the above paras, the applicable threshold limit for registration for Prithviraj in the given case is ₹ 40 lakh. Thus, he is not liable to get registered under GST.

If in above example, all other things remaining the same, Prithviraj is exclusively engaged in supply of pan masala instead of shoes, he will not be eligible for higher threshold limit of ₹ 40 lakh and the applicable threshold limit for registration in that given case will be ₹ 20 lakh. Thus, Prithviraj will be liable to get registered under GST.

If instead of pan masala, Prithviraj is exclusively engaged in supply of taxable services, the applicable threshold limit for registration will still be ₹ 20 lakh. Thus, Prithviraj will be liable to get registered under GST.

Further, if Prithviraj is engaged in supply of both taxable goods and services, the applicable threshold limit for registration will be ₹ 20 lakh. Thus, Prithviraj will be liable to get registered under GST.



Shivaji of Telangana is exclusively engaged in intra-State supply of toys. Its aggregate turnover in the current financial year is ₹ 22 lakh. Since Shivaji is making taxable supplies from Telangana, he will not be eligible for higher threshold limit available in case of exclusive supply of goods. The applicable threshold limit for registration for Shivaji in the given case is ₹ 20 lakh. Thus, he is liable to get registered under GST.

If in above example, all other things remaining the same, Shivaji is exclusively engaged in supply of taxable services instead of toys, the applicable threshold limit for registration will still be ₹ 20 lakh. Thus, Shivaji will be liable to get registered under GST.

Further, if Shivaji is engaged in supply of both taxable goods and services, the applicable threshold limit for registration will be ₹ 20 lakh only. Thus, Shivaji will be liable to get registered under GST.



Ashoka of Manipur is exclusively engaged in intra-State supply of paper. Its aggregate turnover in the current financial year is ₹ 12 lakh. Since Ashoka is making taxable supplies from Manipur which is a Special Category State, the applicable threshold limit for registration for Ashoka in the given case is ₹ 10 lakh. Thus, he is liable to get registered under GST.

If in above example, all other things remaining the same, Ashoka is exclusively engaged in supply of taxable services instead of toys, the applicable threshold limit for registration will still be ₹ 10 lakh. Thus, Ashoka will be liable to get registered under GST.

Further, if Ashoka is engaged in supply of both taxable goods and services, the applicable threshold limit for registration in that given case will be ₹ 10 lakh only. Thus, Ashoka will be liable to get registered under GST.



Raghav of Assam is exclusively engaged in intra-State supply of readymade garments. Its turnover in the current FY from Assam showroom is ₹ 28 lakh. It has another showroom in Tripura with a turnover of ₹ 11 lakh in the current FY. Since Raghav is engaged in supplying garments from a Special Category State, the applicable threshold limit for him

gets reduced to ₹ 10 lakh. Further, Raghav is liable to get registered under GST in both Assam and Tripura on his aggregate turnover crossing the threshold limit of ₹ 10 lakh.

(ii) **Registration required only for a place of business from where taxable supply takes place**

A person is required to obtain registration with respect to his each place of business in India from where a taxable supply has taken place. However, a supplier is not liable to obtain registration in a State/UT from where he makes an exempt/non-taxable supply.



Uday Enterprises is engaged in supply of taxable goods in Maharashtra. It also supplies alcoholic liquor for human consumption from Nagaland. Its turnover in the current financial year is ₹ 34 lakh in Maharashtra and ₹ 8 lakh in Nagaland.

Since Uday Enterprises is exclusively engaged in making taxable supplies of goods from Maharashtra, the applicable threshold limit for obtaining registration is ₹ 40 lakh. However, the threshold limit will not be reduced to ₹ 10 lakh in this case, as supply of alcoholic liquor for human consumption from Nagaland (one of the Special Category States) are non-taxable supplies².

In the given case, since the aggregate turnover of Uday Enterprises exceeds the applicable threshold limit of ₹ 40 lakh, it is liable to obtain registration. It will obtain registration in Maharashtra, but is not required to obtain registration in Nagaland as he is not making any taxable supplies from said State.

(iii) **Person liable for registration in case of transfer of business**

Where a business is transferred, whether on account of succession/any other reason ***[including transfer/change in the ownership of business due to death of the sole proprietor³]***, to another person as a going concern, the transferee/successor, is to be registered with effect from the date of such transfer/succession. Where the business is transferred, pursuant to sanction of a scheme/ arrangement for amalgamation/ de-merger of two or more companies, pursuant to an order of a High Court/Tribunal, the transferee is to be registered with effect from the date



² in terms of section 9(1) of CGST Act, 2017

³ clarified vide Circular No. 96/15/2019 GST dated 28.03.2019

on which the Registrar of Companies issues a certificate of incorporation giving effect to such order.



5. COMPULSORY REGISTRATION IN CERTAIN CASES [SECTION 24]

As we have seen above that a supplier is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods and/or services only if his aggregate turnover in a financial year exceeds the applicable threshold limit. However, there are certain cases wherein a supplier is mandatorily required to obtain registration irrespective of his aggregate turnover. In other words, these are the cases wherein a supplier is compulsorily required to obtain registration even though his aggregate turnover does not exceed the applicable threshold limit.

However, certain exemptions from registration have also been provided under section 23. These exceptions have been incorporated briefly at the relevant places in the discussion under this heading for a holistic discussion. The same have also been explained in detail in the next *heading 6. Persons Not liable for Registration.*

The category of persons requiring compulsory registration under GST have been enlisted below:

- (1) **Persons making any inter-State taxable supply.** However, threshold limit of ₹ 20 lakh (**₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland**) is available in case of inter-State supply of **taxable services** and of notified handicraft goods.
- (2) **Casual taxable persons (CTP) making taxable supply.** However, threshold limit of ₹ 20 lakh (**₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland**) is available in case of CTP who is making inter-State taxable supplies of notified handicraft goods and availing the benefit of exemption from registration as mentioned in point (i) above.
- (3) **Persons who are required to pay tax under reverse charge.** However, persons engaged exclusively in making supplies, tax on which is liable to be paid on reverse charge basis are exempt from registration.
- (4) **Non-resident taxable persons (N RTP) making taxable supply.**

- (5) **E-commerce:** (i) Every ECO (Electronic Commerce Operator) **who is required to collect tax at source under section 52**, (ii) persons who supply goods and/or services, other than supplies specified under section 9(5), through such ECO who is required to collect tax at source under section 52, but threshold limit of ₹ 20 lakh (**₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland**) is available in case of suppliers supplying **services** through ECO.
- (6) persons who are required to deduct tax under section 51, whether or not separately registered under this Act.
- (7) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise.
- (8) Input Service Distributor, whether or not separately registered under this Act.
- (9) every person supplying online information and data base access or retrieval (OIDAR) services from a place outside India to a person in India, other than a registered person⁴;
- (10) persons who are required to pay tax under reverse charge under section 9(5) and
- (11) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

Note: Concept of CTP and NRTP is explained subsequently in this chapter.



6. PERSONS NOT LIABLE FOR REGISTRATION [SECTION 23]

(i) Persons not liable to registration

Section 23 lists the persons who are not liable to registration. Thus, the persons so listed will not be the 'taxable persons'.

(A) Person engaged exclusively in the business of supplying goods and/or services not liable to tax/wholly exempt from tax: As section 23, 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

⁴ The provisions relating to tax deduction at source under section 51, collection of tax at source under section 52, Input Service Distributor, electronic commerce operators and OIDAR services will be discussed in detail at the Final Level.

under CGST Act/IGST Act shall not be liable to registration. This provision can be understood with the help of following examples:



Madhur Oils, Punjab, is exclusively engaged in supplying petrol. Supply of petrol is not leviable to GST. Thus, Madhur Oils is not liable for registration as it is engaged exclusively in supplying goods wholly exempt from tax.



Bhavyajyoti Foundation, a charitable trust registered under section 12AA of the Income-tax Act, 1961, is exclusively engaged in supply of services by way of charitable activities. Services by an entity registered under section 12AA of the Income-tax Act, 1961 by way of charitable activities are exempt from GST. Thus, Bhavyajyoti Foundation is not liable for registration as it is engaged exclusively in supplying services exempt from tax.

(B) An agriculturist, to the extent of supply of produce out of cultivation of land: An agriculturist to the extent of supply of produce out of cultivation of land is also not liable to registration. The term agriculturist has been defined under section 2(7) of the CGST Act as an individual/HUF who undertakes **cultivation of land**—

- (a) by own labour, or
- (b) by the labour of family, or
- (c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family.



From the above definition, it is clear that the benefit of not being liable to registration is only restricted to the agriculturists who are individuals or HUFs. Further, if an agriculturist is also engaged in making any supply other than supply of produce out of cultivation of land, he shall be liable to registration based on applicable threshold limit.



Deshbandhu is an agriculturist engaged in cultivation of wheat in his field in the State of Punjab. He was exclusively engaged in supply of wheat cultivated in his field in the previous year. Thus, he was not liable to registration as he was exclusively engaged in supply of produce out of cultivation of land.

In the current year, he decides to start trading in rice apart from supplying his wheat produce. His turnover in the current year is ₹ 32 lakh from supply of wheat produced and ₹ 9 lakh from trading of rice.

Since he is engaged in trading of rice also, he is not covered under section 23 above. The threshold limit for registration applicable to a person exclusively engaged in supply of goods in the State of Punjab is ₹ 40 lakh. The aggregate turnover of Deshbandhu in the current year is ₹ 41 lakh [₹ 32 lakh + ₹ 9 lakh] which exceeds the threshold limit. Thus, he will be liable to registration.

(ii) Specified category of persons notified by the Government exempted from obtaining registration

Following category of persons have been notified as being exempted from obtaining registration under GST law:

A. Persons making only reverse charge supplies

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) have been exempted from obtaining registration ***[Notification No. 5/2017 CT dated 19.06.2017]***.



Manikaran Transporters is a Goods Transport Agency (GTA) engaged exclusively in supplying GTA services liable to tax under reverse charge [since tax is payable on GTA services @ 5% in the given case]. Thus, it is exempt from registration as it is engaged exclusively in making supplies, tax on which is liable to be paid on reverse charge basis.

Further, Manikaran Transporters supplies said service to Diwakar Manufacturing Pvt. Ltd. whose aggregate turnover does not exceed the applicable threshold limit. Since Diwakar Manufacturing Pvt. Ltd. has to pay tax on GTA services [@ 5%] under reverse charge, it is required to obtain registration mandatorily irrespective of its aggregate turnover.

B. Persons making inter-State supplies of taxable services up to ₹ 20 lakh

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 lakh in a financial year have been exempted from obtaining compulsory registration. However, the aggregate value of such supplies, to be computed on all India basis, should not exceed an amount of **₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland** ***[Notification No. 10/2017 IT dated 13.10.2017]***.



Dhola & Co., located in Delhi, is engaged in supply of taxable goods⁵ in the neighbouring States of Punjab and Haryana. Its aggregate turnover in current FY is ₹ 10 lakh. Since it is engaged in making inter-State taxable supply of goods, it is required to register mandatorily under GST irrespective of its aggregate turnover.

However, if in the above case, Dhola & Co. is engaged in inter- State supply of taxable services instead of goods, it will be eligible for exemption from registration till its aggregate turnover does not exceed ₹ 20 lakh.

C. Persons making inter-State taxable supplies of notified handicraft goods up to ₹ 20,00,000

As we have seen earlier that as per section 24 read with Notification No. 10/2017 IT, a person making inter-State supplies of goods is liable to be registered compulsorily under GST irrespective of the threshold limit.

However, in the following cases, persons making inter-State supplies of goods have been exempted from obtaining registration:

- (a) ***Persons making inter-State taxable supplies of notified⁶ handicraft goods****



⁵ other than notified handicraft goods

⁶ Handicraft goods referred herein are goods as defined and notified in Notification No. 21/2018 CT (R) dated 26.07.2018. This notification notifies the handicraft items which are eligible for concessional rate of tax, for instance, handcrafted candles, articles made of paper mache, coir articles, handbags including pouches and purses; jewellery box, hand embroidered articles, art ware of iron/aluminium, etc. These examples are only for the purpose of knowledge and are not relevant for examination purposes.

Handicraft goods are defined under said notification as goods predominantly made by hand even though some tools or machinery may also have been used in the process; such goods are graced with visual appeal in the nature of ornamentation or in-lay work or some similar work of a substantial nature; possess distinctive features, which can be aesthetic, artistic, ethnic or culturally attached and are amply different from mechanically produced goods of similar utility.

- (b) **Persons making inter-State taxable supplies of notified products⁷, when made by craftsmen predominantly by hand even though some machinery may also be used in the process.**

Conditions to be fulfilled:

1. **The aggregate value of such supplies, to be computed on all India basis, does not exceed an amount of ₹ 20 lakh [₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland] in a FY.**
2. **Such persons have obtained a PAN and have generated an e-way bill [Notification No. 3/2018 IT dated 22.10.2018].**



Ariza Pvt. Ltd., located in Madhya Pradesh, is a supplier of taxable and notified handicraft goods. It supplies these goods in the neighbouring States of Uttar Pradesh and Orissa. Its aggregate turnover in the month of April is ₹ 15 lakh. Although Ariza Pvt. Ltd. is engaged in making inter-State supplies of taxable goods, it is not liable to obtain registration till its aggregate turnover does not exceed ₹ 20 lakh as it has availed the exemption from registration under Notification No. 03/2018 IT⁸.

D. Casual Taxable Persons making inter-State taxable supplies of notified handicraft goods up to ₹ 20 lakh

As we have seen earlier that as per section 24, a CTP is liable to be registered compulsorily under GST irrespective of the threshold limit.

However, following categories of CTPs have been exempted from obtaining registration:

- (a) **CTPs making inter-State taxable supplies of notified handicraft goods, [as referred in Point C. above] or**

⁷ Some of the notified products are leather articles, carved wood products, wood turning and lacquer ware, bamboo products, textiles hand printing, theatre costumes, musical instruments, dolls and toys, etc. These examples are only for the purpose of knowledge and are not relevant for examination purpose.

⁸ Subject to fulfilment of other conditions prescribed under said notification.

- (b) **CTPs making inter-State taxable supplies of notified products** [as referred in Point C. above], when made by the craftsmen predominantly by hand even though some machinery may also be used in the process.

Conditions to be fulfilled:

1. CTPs are availing benefit of Notification No. 03/2018 IT dated 22.10.2018 [discussed above].
2. The aggregate value of such supplies, to be computed on all India basis, does not exceed an amount of ₹ 20 lakh [₹ 10 lakh in case of Special Category States of Mizoram, Tripura, Manipur and Nagaland] in a FY.
3. Such persons have obtained a PAN and have generated an e-way bill [Notification No. 56/2018 CT dated 23.10.2018].

Liability to register in respect of services provided by the commission agent for sale/ purchase of agricultural produce

Circular No. 57/31/2018 GST dated 04.09.2018, inter alia, clarifies as follows:

Mr. A sells agricultural produce by utilizing the services of Mr. B who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State⁹. Mr. B identifies the buyers and



sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr. A. In cases where the invoice is issued by Mr. B to the buyer, Mr. B is an agent as covered under Para 3. of Schedule I. Hence, services



supplied by commission agent Mr. B on behalf of the principal without consideration shall be deemed to be a supply – Concept of Deemed Supply under Schedule-I has been discussed in detail in Chapter 2 – Supply under GST.

The registration requirements of the commission agents in such cases have been clarified as follows:

- (i) **Since the services provided by the commission agent for sale or purchase of agricultural produce are exempt from GST vide Notification No.**

⁹ As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.

12/2017 CT (R) dated 28.06.2017 [Discussed in Chapter 4 – Exemptions from GST], such commission agents (even when they qualify as agent under Schedule I) are not liable to be registered in accordance with provisions of section 23(1)(a) [as discussed above].

- (ii) **As we have already seen, a person is liable for mandatory registration if he makes taxable supply of goods or services or both on behalf of other taxable persons.**

Accordingly, a commission agent will be liable to get mandatorily registered under this provision only when both the following conditions are satisfied:

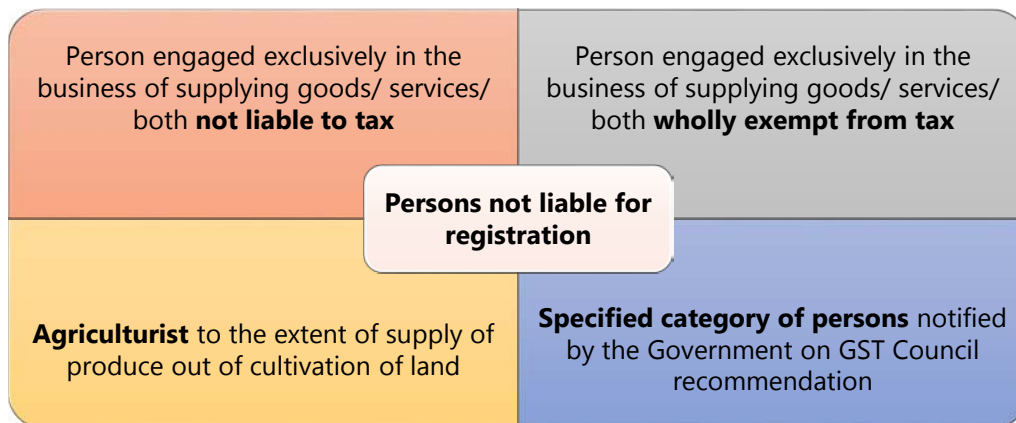
- (a) **the principal should be a taxable person; and**
 (b) **the supplies made by the commission agent should be taxable.**

However, generally, a commission agent under APMC Act makes supplies on behalf of an agriculturist who is not a taxable person if he supplies produce out of cultivation of land [as seen above].

Thus, a commission agent, who is making supplies on behalf of non-taxable person [viz. agriculturist], is not liable for compulsory registration under this provision.

- (iii) **However, where a commission agent is liable to pay tax under reverse charge, such an agent will be required to get registered compulsorily (We have already seen under previous heading that persons liable to pay tax under reverse charge are required to obtain registration mandatorily).**

The provisions of section 23 can be summarized in the following diagram:





7. PROCEDURE FOR REGISTRATION [SECTIONS 25, 26 & 27]



STATUTORY PROVISIONS

Section 25	Procedure for registration
Sub-section	Particulars
(1)	<p>Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed.</p> <p><i>Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.</i></p> <p>Provided further that a person having a unit, as defined in the Special Economic Zones Act, 2005, in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory.</p>
(2)	<p>A person seeking registration under this Act shall be granted a single registration in a State or Union territory.</p> <p>Provided that a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.</p>
(3)	<p>A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.</p>
(4)	<p>A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration,</p>

	<i>be treated as distinct persons for the purposes of this Act</i>
(5)	<i>Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.</i>
(6)	<i>Every person shall have a Permanent Account Number issued under the Income- tax Act, 1961 in order to be eligible for grant of registration: Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.</i>
(7)	<i>Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed</i>
(8)	<i>Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed</i>
(9)	<i>Notwithstanding anything contained in sub-section (1),—</i>
	<i>(a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries ; and</i>
	<i>(b) any other person or class of persons, as may be notified by the Commissioner,</i>
	<i>shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.</i>

(10)	<i>The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed</i>
(11)	<i>A certificate of registration shall be issued in such form and with effect from such date as may be prescribed</i>
(12)	<i>A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period</i>
Section 26	Deemed registration
(1)	<i>The grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity Number under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the time specified in sub-section (10) of section 25.</i>
(2)	<i>Notwithstanding anything contained in sub-section (10) of section 25, any rejection of application for registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a rejection of application for registration under this Act.</i>
Section 27	Special provisions relating to casual taxable person and non-resident taxable person
(1)	<i>The certificate of registration issued to a casual taxable person or a non- resident taxable person shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier and such person shall make taxable supplies only after the issuance of the certificate of registration. Provided that the proper officer may, on sufficient cause being shown by the said taxable person, extend the said period of ninety days by a further period not exceeding ninety days.</i>

(2)	<i>A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (1) of section 25, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought. Provided that where any extension of time is sought under sub-section (1), such taxable person shall deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.</i>
(3)	<i>The amount deposited under sub-section (2) shall be credited to the electronic cash ledger of such person and shall be utilised in the manner provided under section 49.</i>



ANALYSIS

Procedure for registration is governed by section 25 of the CGST Act read with relevant CGST Rules, 2017. Relevant provisions of CGST Rules, 2017 have been incorporated at the relevant places. Further, special provisions have been provided for registration of casual taxable person and non-resident taxable person under section 27. Concept of deemed registration has been elaborated under section 26.

Under GST, the application for registration has to be submitted electronically at the GST Common Portal – www.gst.gov.in, duly signed or verified through Electronic Verification Code (EVC) [Aadhar OTP].

Around 30 forms/formats have been prescribed in the CGST Rules, 2017. For every process in the registration chain such as application for registration, acknowledgment, query, rejection, registration certificate, show cause notice for cancellation, reply, cancellation, amendment, field visit report etc., there are standard formats¹⁰. This makes the process uniform all over the country. The decision-making process has also been expedited. Strict time lines have been stipulated for completion of different stages of registration process.

¹⁰ Students are advised to go through various forms/formats relating to registration at <http://www.gst.gov.in> for knowledge purposes.

(i) Where and by when to apply for registration? [Section 25(1)]

Particulars	Where	When
Person who is liable to be registered under section 22 or section 24	in every such State/UT in which he is so liable	within 30 days from the date on which he becomes liable to registration
A casual taxable person or a non-resident taxable person		at least 5 days prior to commencement of business



Sugam Services Ltd. is engaged in taxable supply of services in Delhi. The turnover of Sugam Services Ltd. exceeded ₹ 20 lakh on 1st November. It is liable to get registered by 1st December in Delhi.

(ii) State-wise registration [Section 25(2) read with rule 11](A) One registration per State

- ❑ Registration needs to be taken State-wise, i.e. there are no centralized registrations under GST. A business entity having its branches in multiple States will have to take separate State-wise registration for the branches in different States.
- ❑ Further, within a State, an entity with different branches shall be granted single registration wherein it can declare one place as principal place of business (PPOB) and other branches as additional place of business (APOB).

(B) Separate registration for different places of business within a State/UT may be granted

- ❑ **Although a taxpayer having multiple places of business in one State is not mandatorily required to obtain separate registration for each such place of business in the State, he has an option to obtain independent registrations with respect to each such separate place of business.**
- ❑ **However, separate registration for each place of business shall be granted provided all separately registered places of business of such person pay tax on supply of goods/services/both made to another registered place of business, of such person and issue a tax invoice/bill of**

supply, for such supply. Separate registration application needs to be filed for each place of business.

- ❑ *A registered person opting to obtain separate registration for a place of business shall submit a separate application in Form GST REG 01 in respect of such place of business.*
- ❑ *The provisions of rules 9 and 10 [Discussed in subsequent paras] relating to verification and grant of registration shall mutatis mutandis apply to an application submitted under this rule.*



Meethalal & Sons - a supplier in Maharashtra - has three branches in Mumbai, Pune and Mahabaleshwar. Mumbai and Pune branches are engaged in supply of garments and Mahabaleshwar branch engaged in supply of shoes. Either it can obtain single registration for Maharashtra declaring one of the branches as PPOB (let's say Mumbai) and other two branches (Pune and Mahabaleshwar) as APOB or it can obtain separate GST registration for each of the three branches in Mumbai, Pune and Mahabaleshwar as separate places of business.

In case Meethalal & Sons opts to have separate registrations for its all three branches and Mumbai branch sends some garments [subject to GST] for sale to Pune branch, Mumbai branch must raise a tax invoice and pay tax on such transfer of garments to Pune branch.

(C) Composition levy in case of separate registration for multiple places of business within a State/UT

- ❑ *If a person is paying tax for one of his places of business under normal scheme, he shall not pay tax under composition levy for any other place of business.*
- ❑ *If one of the places of business [separately registered] of a registered person becomes ineligible to pay tax under composition levy, all other registered places of business of said person would also become ineligible to pay tax under composition levy.*
- ❑ *The provisions of rules 9 and 10 [Discussed in subsequent paras] relating to verification and grant of registration shall mutatis mutandis apply to an application submitted under this rule.*

(iii) Voluntary registration [Section 25(3)]

A person who is not liable to be registered under section 22 or section 24 may get himself registered voluntarily. In case of voluntary registration, all provisions of this Act, as are applicable to a registered person, shall apply to voluntarily registered person. However, once a person obtains voluntary registration, he has to pay tax even though his aggregate turnover does not exceed ₹ 20 lakh/₹ 10 lakh.

Voluntary registration is usually obtained by the business for ensuring seamless flow of credit to their customers.

(iv) Distinct Persons/ establishments of distinct persons [Section 25(4) & (5)]

A person who has obtained/ is required to obtain more than one registration, whether in one State/ Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as **distinct persons**.

Further, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as **establishments of distinct persons**. *These concepts have already been discussed in detail in Chapter 2– Supply under GST.*

(v) PAN must for obtaining registration [Section 25(6) & (7)]

Permanent Account Number is mandatory to be eligible for grant of registration.

★ A Non-Resident Taxable Person (NRTP) may be granted registration on the basis of other prescribed documents *[Elaborated in subsequent paras]*.

(vi) Unique Identity Number (UIN) [Section 25(9) & (10) read with rule 17]

Any specialized agency of the United Nations Organization or any Multilateral Financial institution and organization as notified under the United Nations (Privileges and Immunities) Act, 1947, consulate or embassy of foreign countries and any other person notified by the Commissioner, is required to obtain a UIN from the GSTN portal.



This UIN is needed for claiming refund of taxes paid on notified supplies of goods and/or services received by them, and for such other purpose as may be notified. UIN granted is a



centralized UIN i.e. it shall be applicable to the territory of India. A person having UIN is not registered person and thus, is not a taxable person.

The proper officer may, upon submission of an application in prescribed form or after filling up the said form or after receiving a recommendation from the Ministry of External Affairs, Government of India, assign a UIN to the said person and issue registration certificate within **3 working days** from the date of submission of application.

(vii) Suo-motu registration by the proper officer [Section 25(8) read with rule 16]

Where, pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act, the proper officer finds that a person liable to registration under the Act** has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in prescribed form.

***Such person shall either:*

- (i) submit an application for registration in prescribed form within 90 days from the date of grant of temporary registration, or
- (ii) file an appeal against such temporary registration.



In case (ii), if the Appellate Authority upholds the liability to registration, application for registration shall be submitted within 30 days from the date of issuance of such order of the Appellate Tribunal.

Provisions relating to verification and issue of registration certificate [as contained in rules 9 and 10] [discussed in subsequent paras] shall, *mutatis mutandis*, apply to such application submitted by the person granted temporary registration. GSTIN thereafter granted shall be effective from the date of order of proper officer granting temporary registration.

(viii) Procedure for registration [Section 25 read with rules 8, 9 & 10]

Provisions relating to procedure for application for registration, verification of the application and approval & issue of registration certificate are contained in the rules 8, 9 and 10 of the CGST Rules, 2017 respectively. The same have to be read in conjunction with section 25 provisions. However, procedure so laid down will not apply to:

-  Non-resident taxable person

- ❖ A person required to deduct tax at source under section 51
- ❖ A person required to collect tax at source under section 52
- ❖ A person supplying OIDAR services from a place outside India to a non-taxable online recipient referred to in section 14 of IGST Act.

Thus, procedure for registration prescribed under rules 8, 9 and 10 are also applicable to a person paying tax under composition levy, every person seeking voluntary registration as well as a casual taxable person.

Such persons shall apply for registration in **Form GST REG 01**. The application for registration in GST Form REG 01 is divided into two parts – Part A and Part B.

In order to cater to the needs of tax payers who are not IT savvy, Facilitation centres have been established which help the taxpayer in submitting the application for registration, amending the registration certificate, submitting application for cancellation of registration, revocation of cancellation of registration, etc. Facilitation Centre shall be responsible for the digitization and/or uploading of the forms and documents.

Application for registration by Special Economic Zone (SEZ) [Second proviso to section 25(1):

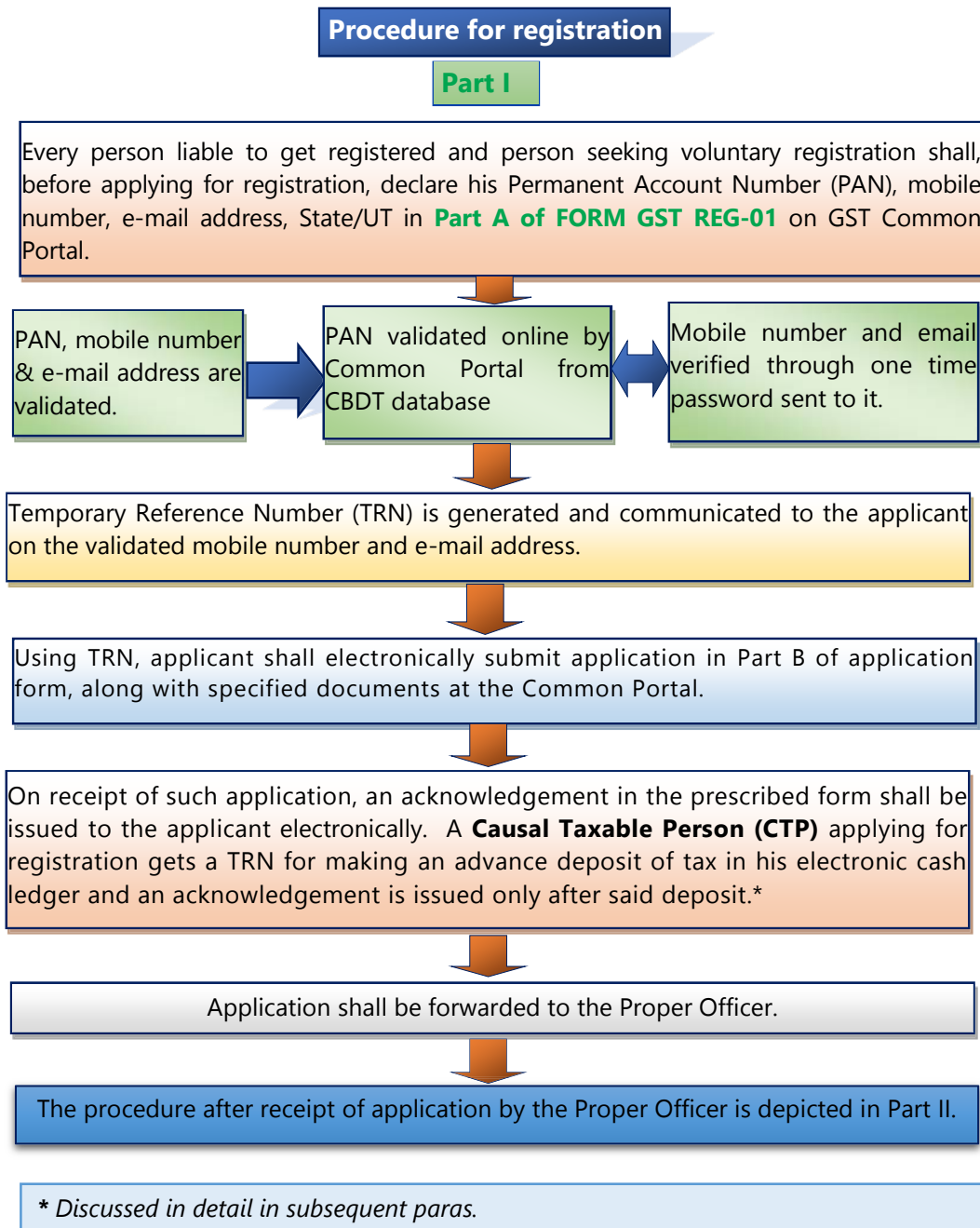
A person having unit in SEZ/an SEZ developer will have to make a separate application for registration as distinct from his place of business located outside SEZ in the same State/UT. Thus, there may be a case where two units of a tax payer are located in same State/UT - one in SEZ and another outside SEZ. In that case, separate registrations have to be obtained for each of the two units as separate places of business.

SEZ is a geographically bound zone where the economic laws relating to export and import are more liberal as compared to other parts of the country. SEZ is considered to be a place outside India for all tax purposes.

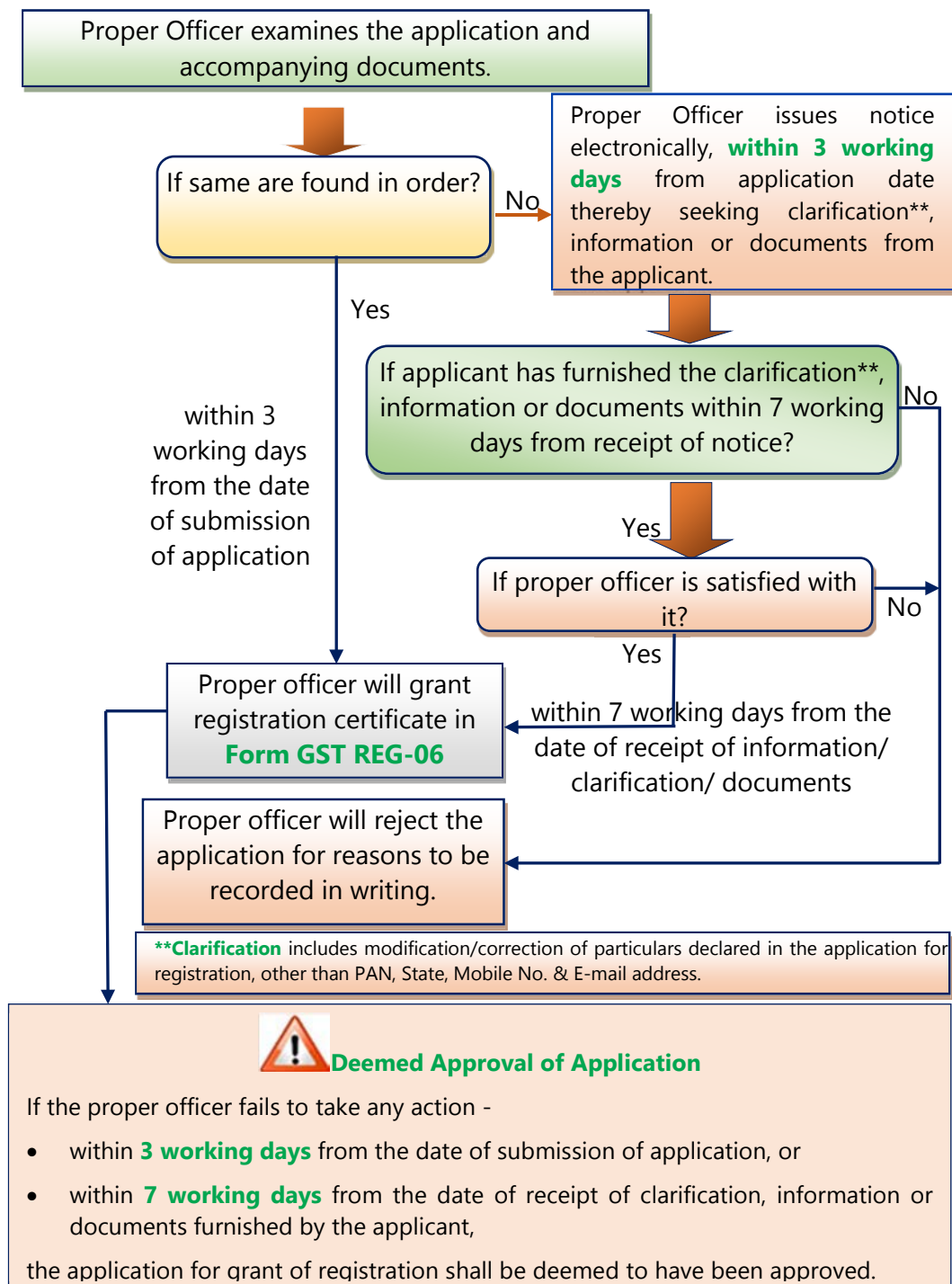


Suvarna Industries is engaged in manufacturing activities in Uttar Pradesh. It has two manufacturing units in UP - one in SEZ and another outside SEZ. Under GST, one registration per State is required. However, since in this case, one of the two units of Suvarna Industries is located in SEZ, it will have to compulsorily make a separate application for registration as a place of business distinct from unit located outside SEZ.

Procedure for registration has been depicted by way of a diagram below:



Part II



Physical verification of business premises in certain cases after grant of registration [Rule 25]

Where the proper officer is satisfied that the physical verification of the place of business of a registered person is required after grant of registration, he may get such verification done and the verification report along with other documents, including photographs, shall be uploaded in the prescribed form on the GST Common Portal, within 15 working days following the date of such verification.

Issuance of registration certificate [Rule 10]

Where the application for grant of registration has been approved, a certificate of registration [duly signed or verified through EVC by the proper officer] in **FORM GST REG-06** showing the principal place of business (PPoB) and additional place(s) of business (APoB) is made available to the applicant on the Common Portal and a Goods and Services Tax Identification Number (hereinafter referred to as "GSTIN") i.e. the GST registration no. is communicated to applicant, within 3 days after the grant of registration.

GSTIN format

State Code	PAN										Entity Code	Check character	sum	

Display of registration certificate and GSTIN on the name board [Rule 18]

Every registered person shall display his registration certificate in a prominent location at his PPoB and at every APoB. Further, his GSTIN also has to be displayed on the name board exhibited at the entry of his PPoB and at every APoB.

(ix) Effective date of registration [Rule 10]

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



Sugam Services Ltd. is engaged in taxable supply of services in Madhya Pradesh. The turnover of Sugam Services Ltd. exceeded ₹ 20 lakh on 1st November. It is liable to get registered by 1st December [30 days] in the State of Madhya Pradesh. It applies for registration on 28th November and is granted registration certificate on 5th December. The effective date of registration of Sugam Services Ltd. is 1st November.



In above example, if Sugam Services Ltd. applies for registration on 3rd December and is granted registration certificate on 10th December. The effective date of registration of Sugam Services Ltd. is 10th December.

(x) **Special provisions for grant of registration in case of Non-Resident Taxable Person (N RTP) and Casual Taxable Person (CTP) [Sections 25 & 27 read with rules 13 & 15]**

(A) **Meaning of casual taxable person and non-resident taxable person**

Before going into nuances of the registration provisions of CTP and N RTP, let us first understand the meaning of casual taxable person and non-resident taxable person:

Casual Taxable Person

There may be case where a person has a registered business in some State in India, but wants to effect supplies from some other State in which he does not have any fixed place of business. Such person needs to register in the State from where he seeks to supply as a 'casual taxable person'.



CGST Act defines a **casual person** as a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in **a State/UT where he has no fixed place of business** [Section 2(20)]. He cannot exercise the option to pay tax under composition levy.



Krishnadev & Co., engaged in supplying taxable goods, is registered in Rajasthan. It wishes to participate in a business exhibition being held in Delhi. However, it does not have a fixed place of business in Delhi. In this case, Krishnadev & Co. has to obtain registration as a casual taxable person in Delhi.

Non-Resident Taxable Person

A person who is a foreigner and occasionally wants to effect taxable supplies from any State in India needs GST registration for the same. Such person needs to register in the State from where he seeks to supply as a non-resident taxable person. CGST Act defines **non-resident taxable person** as any person who occasionally



undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has **no fixed place of business or residence in India** [Section 2(77)]. He cannot exercise the option to pay tax under composition levy.

Based on the aforesaid definitions, following points merit consideration:

- A CTP does not have a fixed place of business in the State/UT where he undertakes supply though he might be registered with regard to his fixed place of business in some other State/UT, while a NRTP does not have fixed place of business/residence in India at all.
- A CTP has to undertake transactions in the course or furtherance of business whereas the business test is absent in the definition of NRTP.

(B) Special registration provisions of casual taxable person and non-resident taxable person

GST law prescribes special procedure for registration, as also for extension of the operation period of such casual or non-resident taxable persons. They have to apply for registration at least 5 days in advance before making any supply. Also, registration is granted to them or period of operation is extended, only after they make advance deposit of the

estimated tax liability. The **special registration procedure** pertaining to CTP and NRTP are as follows:

- (A) Both CTP¹¹ and NRTP have to compulsorily get registered under GST irrespective of the threshold limit, at least 5 days prior to commencement of business.
- (B) As per section 25(6), every person must have a PAN to be eligible for registration. Since NRTP will generally not have a PAN of India, he may be granted registration on the basis of other prescribed documents.


He has to submit a self-attested copy of his **valid passport** along with the application signed by his authorized signatory who is an Indian Resident having valid PAN. However, in case of a business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its PAN, if available.

Application will be submitted by NRTP in a different prescribed form whereas CTP will submit the application for registration in the normal form for application for registration i.e. Form GST REG 01 and his registration of CTP will be a PAN based registration.

(C) **Period of validity of registration certificate granted to CTP/NRTP**

Registration Certificate granted to CTP/NRTP will be valid for:

- (i) ***Period specified in the registration application, or***
 - (ii) ***90 days from the effective date of registration [can be extended further by a period not exceeding 90 days by making an application before the end of the validity of registration granted to him**]***
- whichever is earlier.***



CTP and NRTP will make taxable supplies only after the issuance of the certificate of registration.

¹¹ Subject to exemption from registration under Notification No. 56/2018 CT dated 23.10.2018

Provisions relating to verification of application and grant of registration [under rules 9 and 10] will apply *mutatis mutandis*, to an application for registration filed by NRTP.

(D) Advance deposit of tax

At the time of submitting the registration application, CTP/NRTP are required to make an **advance deposit of tax** in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought.

Such person will get a TRN for making an advance deposit of tax which shall be credited to his electronic cash ledger. An acknowledgement of receipt of application for registration is issued only after said deposit.

***Where extension of time is sought, such registered taxable person will deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.*

(xi) Deemed registration [Section 26]

Registration under GST is not tax specific, which means that there is single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and cesses.

Grant of registration/UIN under any SGST Act/ UTGST Act is deemed to be registration/UIN granted under CGST Act provided application for registration has not been rejected under CGST Act.

Further, rejection of application for registration/UIN under SGST Act/UTGST Act is deemed to be rejection of application for registration under CGST Act.

8. AMENDMENT OF REGISTRATION [SECTION 28]

A registered person may need to make some changes/amendments in the registration application. There are two categories of details in registration application – core and non-core fields.

Core fields are name of the business, (legal name) if there is no change in pan, addition / deletion of stakeholders, principal place of business (other than change in State) or additional place of business (other than change in State).

All other fields are **non-core fields** like name of day to day functionaries, e-mail ids, mobile numbers etc.

In case the change is in **core information** in the registration application, the taxable person will apply for amendment within 15 days of the event necessitating the change. The proper officer, then, will approve the amendment within next 15 days.

For other changes – **non-core information**, no approval of the proper officer is required, and the amendment can be affected by the taxable person on his own on the common portal.

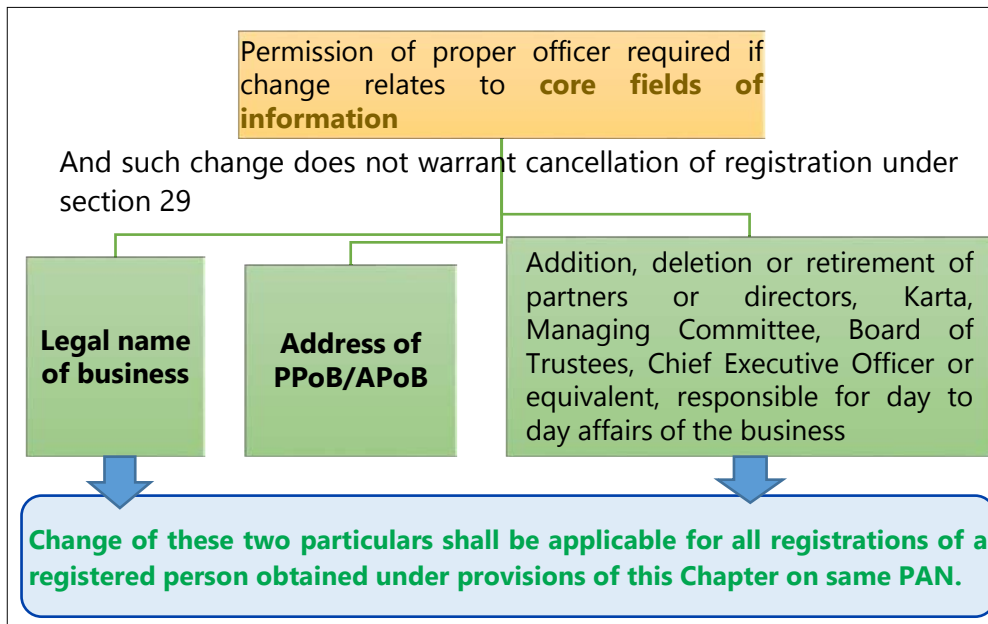
The provisions relating to amendment of registration are contained in section 28 read with rule 19 of CGST Rules, 2017.

The significant aspects of the same are discussed hereunder:

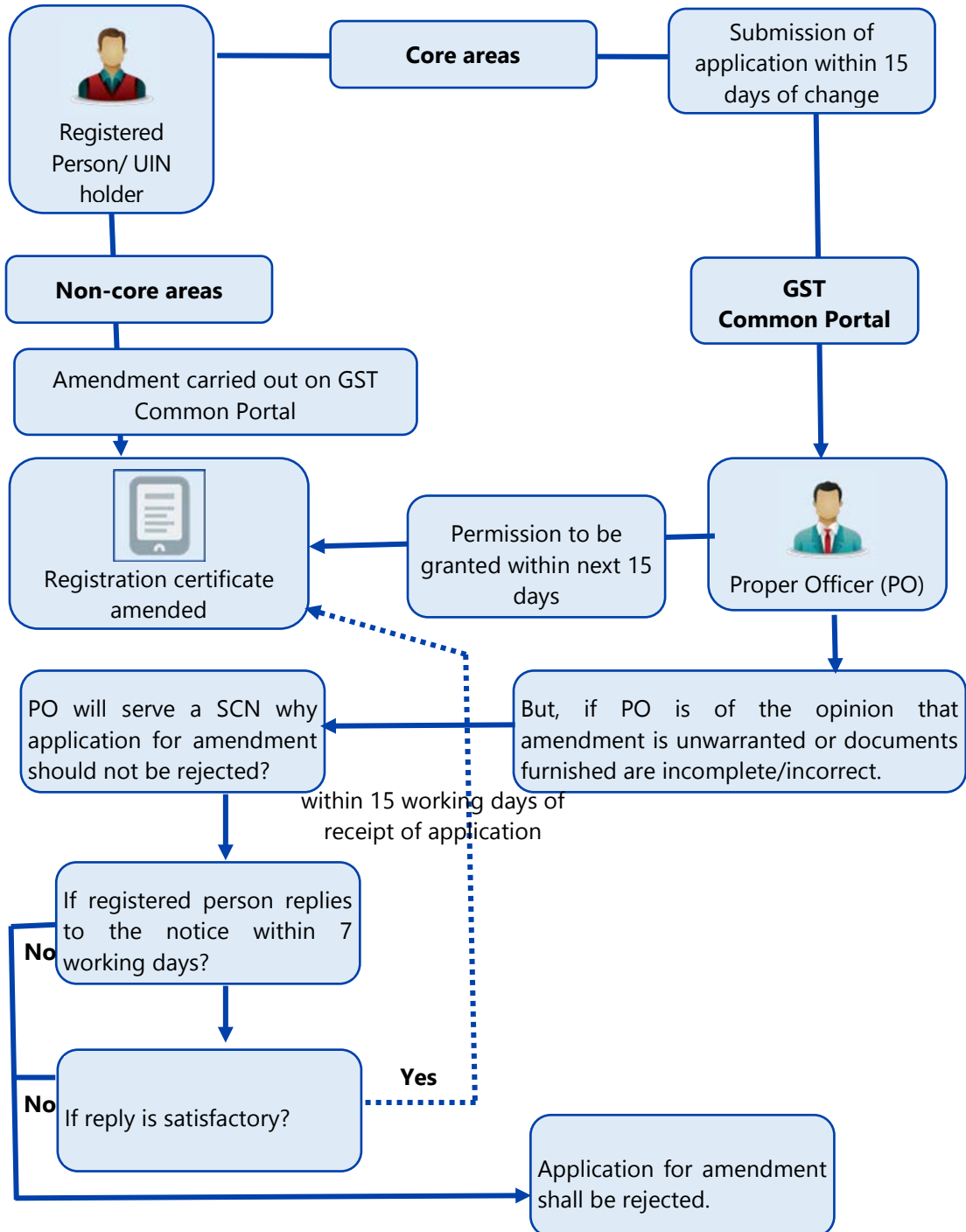
- ❑ Where there is any change in the particulars furnished in registration application/UIN application, registered person shall submit an application in prescribed manner, either at the time of obtaining registration or Unique Identity Number or as amended from time to time, **within 15 days** of such change, along with documents relating to such change at the Common Portal.
- ❑ **In case of amendment of core fields of information**, the proper officer may, on the basis of information furnished or as ascertained by him, approve or reject amendments in the registration particulars in the prescribed manner. Such amendment shall take effect from the date of occurrence of event warranting such amendment.
- ❑ However, **where change relates to non-core fields of information**, registration certificate shall stand amended upon submission of the application for amendment on the Common Portal.
- ❑ The proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.
- ❑ Any rejection or approval of amendments under the SGST/UTGST Act shall be deemed to be a rejection or approval under this Act.
- ❑ Any particular of the application for registration shall not stand amended with effect from a date earlier than date of submission of application for amendment on common portal except with order of Commissioner for reasons to be recorded in writing and subject to conditions specified by Commissioner in the said order.

- ❑ Application for amendment of registration cannot be filed for change in PAN because GST registration is PAN-based. One needs to make fresh application for registration in case there is change in PAN. Thus, where a change in the constitution of any business results in change of PAN of a registered person, the said person shall apply for fresh registration.
- ❑ Similarly, application for amendment of registration form cannot be filled if there is change in place of business from one State to the other because GST registrations are State-specific. If one wishes to relocate his business to another State, he must voluntarily cancel his current registration and apply for a fresh registration in the State he is relocating his business.

Core fields of information



Mobile no./e-mail address of authorised signatory can be amended only after online verification through GST Portal.



If the proper officer fails to take any action,-

- (a) within a period of 15 working days from the date of submission of the application, or
- (b) within a period of 7 working days from the date of the receipt of the reply to the show cause notice,

the certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the common portal.



9. CANCELLATION OR SUSPENSION OF REGISTRATION AND REVOCATION OF CANCELLATION [SECTIONS 29 & 30]



STATUTORY PROVISIONS

Section 29	Particulars
Sub-section	Cancellation or suspension of registration
(1)	<p>The proper officer may, 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, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where:</p>
	<p>(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of</p>
	<p>(b) there is any change in the constitution of the business</p>
	<p>(c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24</p>

	<p>Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.</p>										
(2)	<p>The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,—</p> <table border="1" style="width: 100%;"> <tr> <td data-bbox="394 562 468 668" style="text-align: center; vertical-align: top;">(a)</td> <td data-bbox="476 562 1267 668">a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed</td> </tr> <tr> <td data-bbox="394 678 468 784" style="text-align: center; vertical-align: top;">(b)</td> <td data-bbox="476 678 1267 784">a person paying tax under section 10 has not furnished returns for three consecutive tax periods</td> </tr> <tr> <td data-bbox="394 794 468 938" style="text-align: center; vertical-align: top;">(c)</td> <td data-bbox="476 794 1267 938">any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months</td> </tr> <tr> <td data-bbox="394 948 468 1093" style="text-align: center; vertical-align: top;">(d)</td> <td data-bbox="476 948 1267 1093">any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration</td> </tr> <tr> <td data-bbox="394 1103 468 1209" style="text-align: center; vertical-align: top;">(e)</td> <td data-bbox="476 1103 1267 1209">registration has been obtained by means of fraud, wilful misstatement or suppression of facts</td> </tr> </table> <p>Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.</p> <p>Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.</p>	(a)	a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed	(b)	a person paying tax under section 10 has not furnished returns for three consecutive tax periods	(c)	any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months	(d)	any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration	(e)	registration has been obtained by means of fraud, wilful misstatement or suppression of facts
(a)	a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed										
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(d)	any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration										
(e)	registration has been obtained by means of fraud, wilful misstatement or suppression of facts										
(3)	<p>The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or</p>										

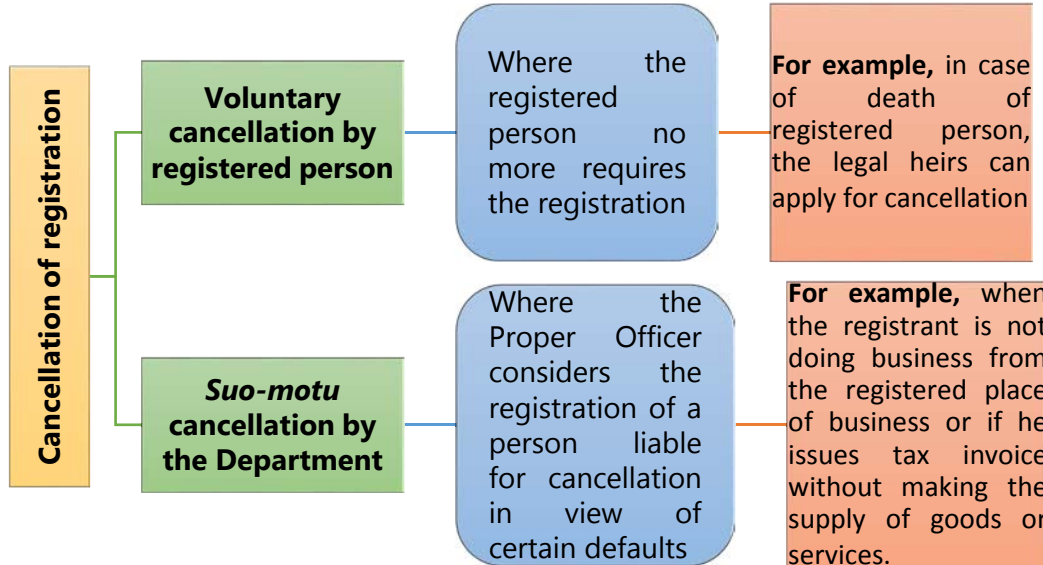
	<i>after the date of cancellation.</i>
(4)	<i>The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.</i>
(5)	<p><i>Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, 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 or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed.</i></p> <p><i>Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.</i></p>
(6)	<i>The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.</i>
Section 30	<i>Revocation of cancellation of registration</i>
(1)	<i>Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.</i>
(2)	<p><i>The proper officer may, in such manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application.</i></p> <p><i>Provided that the application for revocation of cancellation of</i></p>

	<i>registration shall not be rejected unless the applicant has been given an opportunity of being heard.</i>
(3)	<i>The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.</i>



ANALYSIS

The provisions relating to cancellation of registration and its revocation are contained in sections 29 & 30 respectively read with rules 20 to 23 of the CGST Rules, 2017. The registration granted under GST can be cancelled for specified reasons. The cancellation can either be initiated by the Department on their own motion or the registered person can apply for cancellation of their registration.



(i) Circumstances where registration is liable to be cancelled [Section 29(1) & (2)]

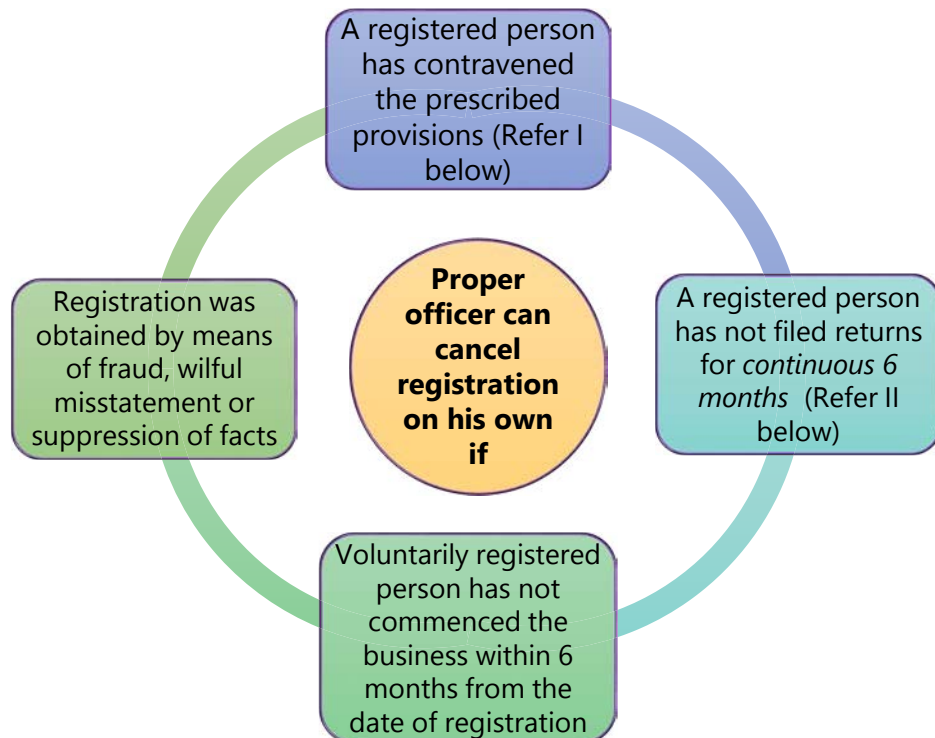
- A. Circumstances when the registration can be cancelled either *suo motu* by proper officer or on an application of the registered person or his legal heirs (in case death of such person)

Cancellation by the registered person on its own or by the Department

<ul style="list-style-type: none"> --Business discontinued --Transferred fully for any reason <i>including death of the proprietor</i> --Amalgamated with other legal entity --Demerged or --Otherwise disposed of 	<p>Change in the constitution of the business</p>	<p>Taxable person (other than voluntarily registered person) who is no longer liable to be registered under section 22 or section 24.</p>
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B. Circumstances when the proper officer can cancel registration on his own

In the following cases, registration can be cancelled by the proper officer from such date, including any retrospective date, as he may deem fit:



- (I) **Prescribed contraventions which make a registered person liable to cancellation of registration [Rule 21]:** The registered person-
- (a) does not conduct any business from the declared place of business, or
 - (b) issues invoice/bill without supply of goods/services in violation of the provisions of this Act, or the rules made thereunder.
 - (c) violates the provisions of section 171 of the CGST Act. *Section 171 of the CGST Act, 2017 contains provisions relating to anti-profiteering measure¹².*
- (II) 3 consecutive tax periods in case of a person who opted for composition levy.

C. Suspension of registration [First proviso to section 29(1) and second proviso to section 29(2) read with rule 21A]

Once a registered person has applied for cancellation of registration or the proper officer seeks to cancel his registration, the proper officer may suspend his registration during pendency of the proceedings relating to cancellation of registration filed. In this way, a taxpayer is freed from the routine compliances, including filing returns, under GST law during the pendency of the proceedings related to cancellation of registration.



The period and manner of suspension of registration is as follows:

1. *Where registered person has applied for cancellation of registration:* *Where a registered person has applied for cancellation of registration, the registration shall be deemed to be suspended from:*
 - (a) *the date of submission of the application*
 - or*
 - (b) *the date from which the cancellation is sought, whichever is later,*

pending the completion of proceedings for cancellation of registration.

¹² *Anti-profiteering measure shall be discussed at Final Level.*

2. Where cancellation of the registration has been initiated by the Department on its own motion: *Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled, he may, after affording the said person a reasonable opportunity of being heard, suspend the registration of such person **with effect from a date to be determined by him**, pending the completion of the proceedings for cancellation of registration.*
3. *A registered person, whose registration has been suspended as above:*
 - *shall not make any taxable supply during the period of suspension and*
 - *shall not be required to furnish any return under section 39.*
4. *The suspension of registration shall be deemed to be revoked upon completion of the cancellation proceedings by the proper officer. Such revocation shall be effective from the date on which the suspension had come into effect.*

(ii) Procedure for cancellation of registration [Rules 20 and 22]

(a) Voluntary cancellation by registered person

Application

- A registered person seeking cancellation of registration¹³ shall electronically submit the application for cancellation of registration in prescribed form within 30 days of occurrence of the event warranting cancellation.
- He is required to furnish in the application the details of inputs held in stock or inputs contained in semi-finished/finished goods held in stock and of capital goods **held in stock on the date from which cancellation of registration is sought**, liability thereon, details of the payment, if any, made against such liability and may furnish relevant documents thereof.

¹³ under section 29(1)

Order

- ❑ Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered, proper officer shall issue the order of cancellation of registration within 30 days from the date of submission of application for cancellation.

(b) Suo-motu cancellation by the Department

- ❑ Where the proper officer cancels the registration *suo-motu*, he shall not cancel the same without giving a show cause notice and without giving a reasonable opportunity of being heard, to the registered person. The reply to such show cause notice (SCN) has to be submitted within 7 days of service of notice.
- ❑ If reply to SCN is satisfactory, proper officer shall drop the proceedings and pass an order in prescribed form. However, where the person instead of replying to the SCN served for failure to furnish returns for a continuous period of 6 months (3 months in case of composition scheme supplier)¹⁴ furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order.

Where registration of a person is liable to be cancelled, proper officer shall issue the order of cancellation of registration within 30 days from the date of reply to SCN.

(c) Effective date of cancellation

- ❑ The cancellation of registration shall be effective from a date to be determined by the proper officer and mentioned in the cancellation order. He will direct the taxable person to pay arrears of any tax, interest or penalty including the amount liable to be paid under section 29(5).

(iii) Amount payable on cancellation of registration [Section 29(5) & (6)]

A registered person whose registration is cancelled will have to debit the electronic credit or cash ledger by **an amount equivalent to:**

- (i) input tax credit (ITC) in respect of:

¹⁴ viz. contravention of the provisions contained in section 29(2)(b)/(c) of the CGST Act.

- stock of inputs and inputs contained in semi-finished/finished goods' stock or
- capital goods or plant and machinery

on the day immediately preceding the date of cancellation, or

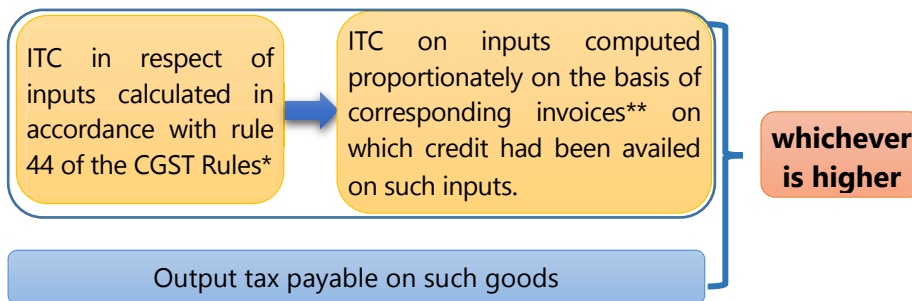
(ii) the output tax payable on such goods

whichever is higher, calculated in such manner as may be prescribed.

However, **in case of capital goods or plant and machinery**, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

The manner of determination of amount of credit to be reversed is prescribed under rule 44 of the CGST Rules, 2017. On conjoint reading of section 29(5) and rule 44, it can be inferred as follows:

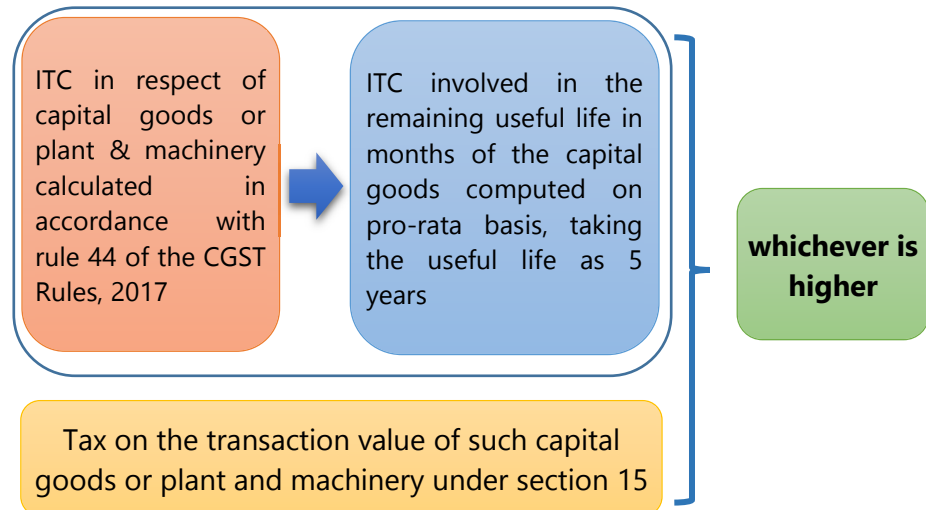
Amount of credit to be reversed in respect of INPUTS:



* Discussed in detail in Chapter-6: Input Tax Credit

**If tax invoices are not available, the ITC to be reversed will be based on the prevailing market price (MP) of such goods on the date of cancellation.

❑ **Amount of credit to be reversed in respect of CAPITAL GOODS OR PLANT & MACHINERY:**



Capital goods have been in use for 4 years, 6 month and 15 days. The useful remaining life in months = 5 months ignoring a part of the month.

ITC taken on such capital goods = C

ITC attributable to remaining useful life = $C \times 5/60$

(iv) Other points about cancellation

- ❑ A person to whom a UIN has been granted under rule 17 cannot apply for cancellation of registration [Rule 20]
- ❑ The cancellation of registration will not affect liability of registered person to pay tax and other dues under the Act for any period prior to the date of cancellation¹⁵ [Section 29(3)]
- ❑ The cancellation of registration under either SGST Act/UTGST Act shall be deemed to be a cancellation of registration under CGST Act [Section 29(4)].
- ❑ Once registration is cancelled by the tax authority, the taxpayer will be intimated about the same via sms and email. Order for cancellation of registration will be issued and intimated to the primary authorized signatory by email and sms.

¹⁵ whether or not such tax and other dues are determined before or after the date of cancellation.

- ❑ Taxpayer would not be allowed to file return for the period after date of cancellation mentioned in the cancellation order. However, he can submit returns of the earlier period (i.e. for the period before date of cancellation mentioned in the cancellation order for which registration was active).

(v) Revocation of cancellation of registration [Section 30 read with rule 23]

(A) Procedure for revocation of cancellation

- ❑ Where the registration of a person is cancelled *suo-motu* by the proper officer, such registered person may apply for revocation of the cancellation to such proper officer, **within 30 days** from the date of service of the order of cancellation of registration.
- ❑ If the proper officer is satisfied that there are sufficient grounds for revocation of cancellation, he may revoke the cancellation of registration, by an order **within 30 days** of receipt of application and communicate the same to applicant.
- ❑ Otherwise, he may reject the revocation application. However, before rejecting the application, he has to first issue SCN to the applicant who shall furnish the clarification within 7 working days of service of SCN. The proper officer shall dispose the application (accept/reject the same) within 30 days of receipt of clarification.

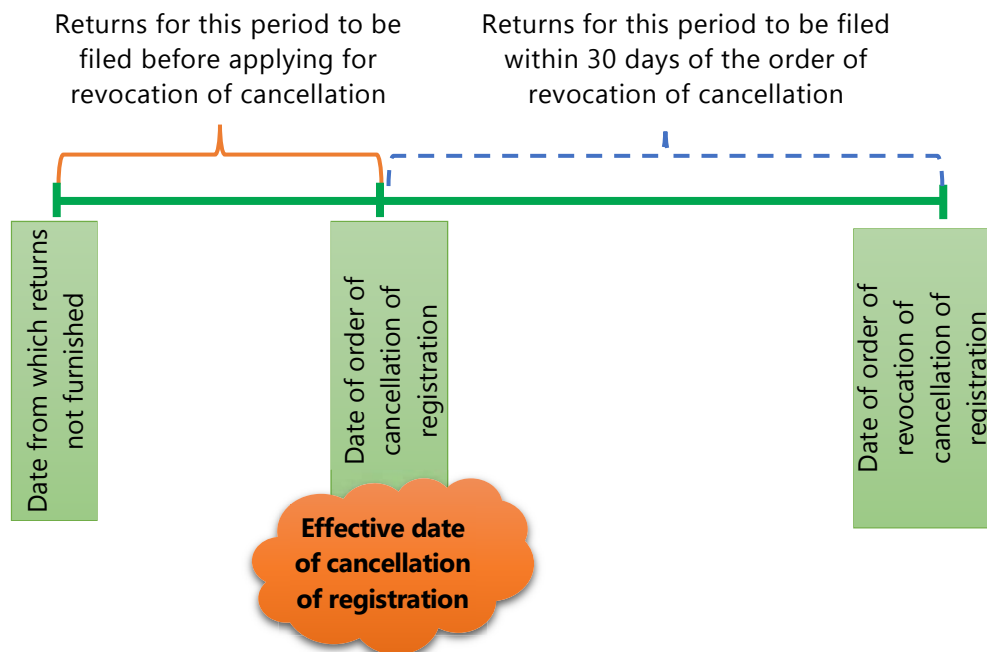
(B) Where registration was cancelled for failure of registered person to furnish returns

Where registration was cancelled for failure of registered person to furnish returns, before applying for revocation, the person has to make good the defaults, i.e. the person needs to file such returns. However, the registration may have been cancelled by the proper officer either from the date of order of cancellation of registration or from a retrospective date.

(1) Where the registration has been cancelled with effect from the date of order of cancellation of registration

As we have already seen that the common portal does not allow furnishing of returns after the effective date of cancellation, but returns for the earlier period (i.e. for the period before date of cancellation mentioned in the cancellation order) can be furnished after cancellation.

Where the registration is cancelled with effect from the date of order of cancellation of registration, person applying for revocation of cancellation has to furnish all returns due till the date of such cancellation before the application for revocation can be filed and has to pay any amount due as tax, in terms of such returns along with any amount payable towards interest, penalties or late fee payable in respect of the said returns. However, since the portal does not allow to furnish returns after the date of cancellation of registration, all returns due for the period from the date of order of cancellation till the date of order of revocation of cancellation of registration have to be furnished *within a period of 30 days from the date of the order of revocation*.

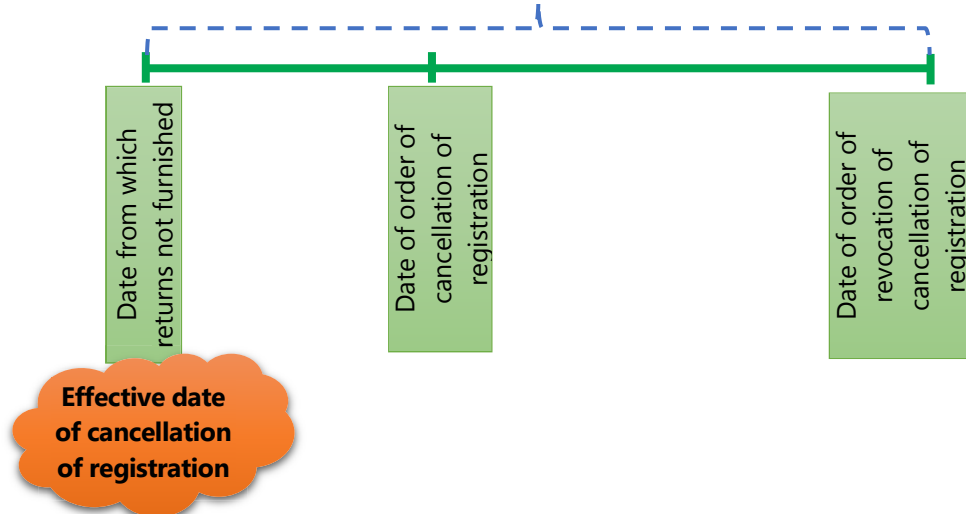


(2) Where the registration has been cancelled with retrospective effect

Where the registration has been cancelled with retrospective effect, it is not possible to furnish the returns before filing the application for revocation of cancellation of registration. In that case, the application for revocation of cancellation of registration is allowed to be filed, subject to the condition that all returns relating to the period from the effective date of

cancellation of registration till the date of order of revocation of cancellation of registration *shall be filed within a period of 30 days from the date of order of such revocation of cancellation of registration.*

Returns for this period to be filed within 30 days of the order of revocation of cancellation



Points to be noted

- ★ UIN Holders (i.e. UN Bodies, Embassies and Other Notified Persons), GST Practitioner cannot apply for revocation of cancelled registration. In case the registration is cancelled on the request of the taxpayer or his legal heir, one cannot apply for revocation of cancelled registration.
- ★ The revocation of cancellation of registration under the SGST Act/ UTGST Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under CGST Act

10. LET US RECAPITULATE

1. Nature of registration

The registration in GST is PAN based and State specific.

One registration per State/UT.

However, a business entity having separate **places of business** in a State may obtain separate registration for each of its **places of business**.

GST identification number called "GSTIN" - a 15-digit number and a certificate of registration incorporating therein this GSTIN is made available to the applicant on the GSTN common portal.

Registration under GST is not tax specific, i.e. single registration for all the taxes i.e. CGST, SGST/UTGST, IGST and cesses.

2. Persons liable to registration

Those who exceed threshold limit

• Threshold limit elaborated separately in the diagram below.

In case of transfer of business on account of succession, etc.

• **transferee** liable to be registered from the date of succession of business

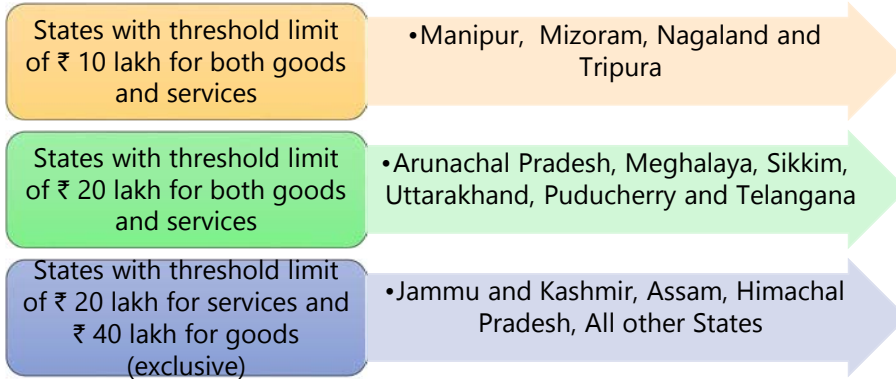
In case of amalgamation/demerger by an order of High Court etc.

• **transferee** liable to be registered from the date on which Registrar of Companies issues incorporation certificate giving effect to order of High Court etc.

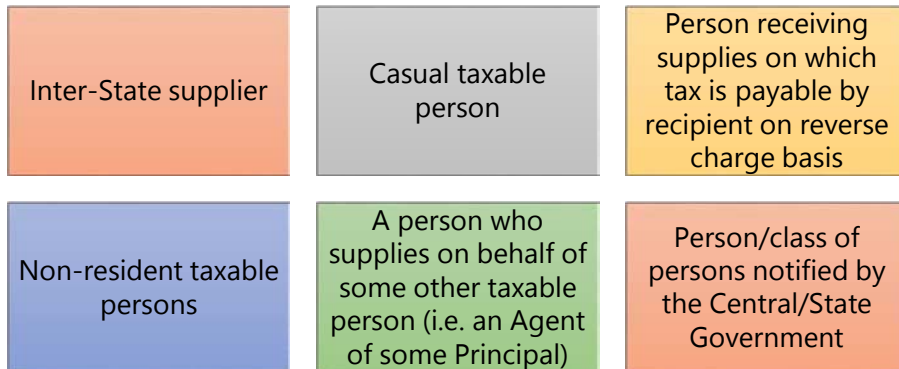


Aggregate Turnover will be computed on All-India basis for same PAN

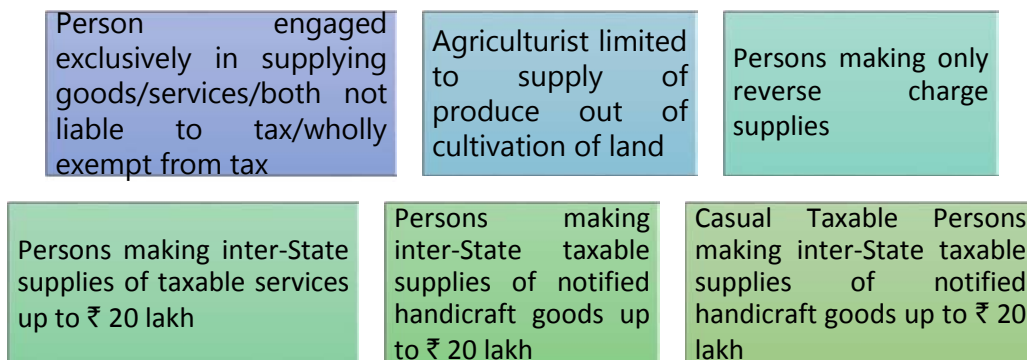
Applicable threshold limit



3. Compulsory registration in certain cases



4. Persons not liable for registration



5. Where and by when to apply for registration?

Person who is liable to be registered under section 22 or section 24

- in every such State/UT in which he is so liable
- within 30 days from the date on which he becomes liable to registration

A casual taxable person or a non-resident taxable person

- in every such State/UT in which he is so liable
- at least 5 days prior to the commencement of business

6. Voluntary Registration and UIN

Voluntary Registration

- Person not liable to be registered under sections 22/24 may get himself registered voluntarily.

Unique Identification Number (UIN)

- In respect of supplies to some notified agencies of United Nations organisation, multinational financial institutions and other organisations, a UIN is issued.

7. Effective date of registration

Application submitted **within 30 days** of the applicant becoming liable to registration

- Effective date is the date on which he becomes liable to registration

Application submitted **after 30 days** of the applicant becoming liable to registration

- Effective date is date of grant of registration

8. Procedure for registration

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

Part I

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

PAN, mobile number & e-mail address are validated.

PAN validated online by Common Portal from CBDT database

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

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

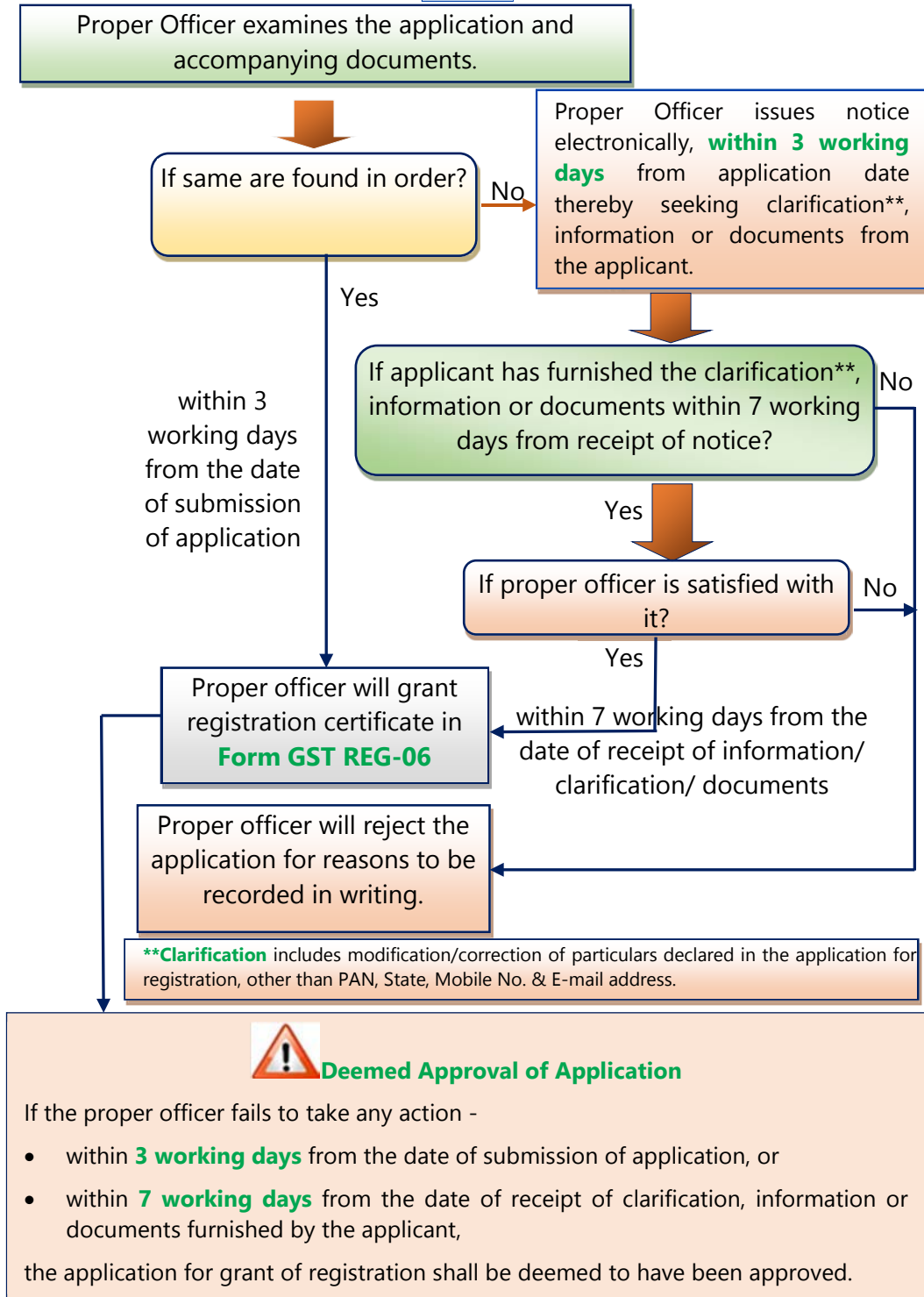
Using TRN, applicant shall electronically submit application in Part B of application form, along with specified documents at the Common Portal.

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

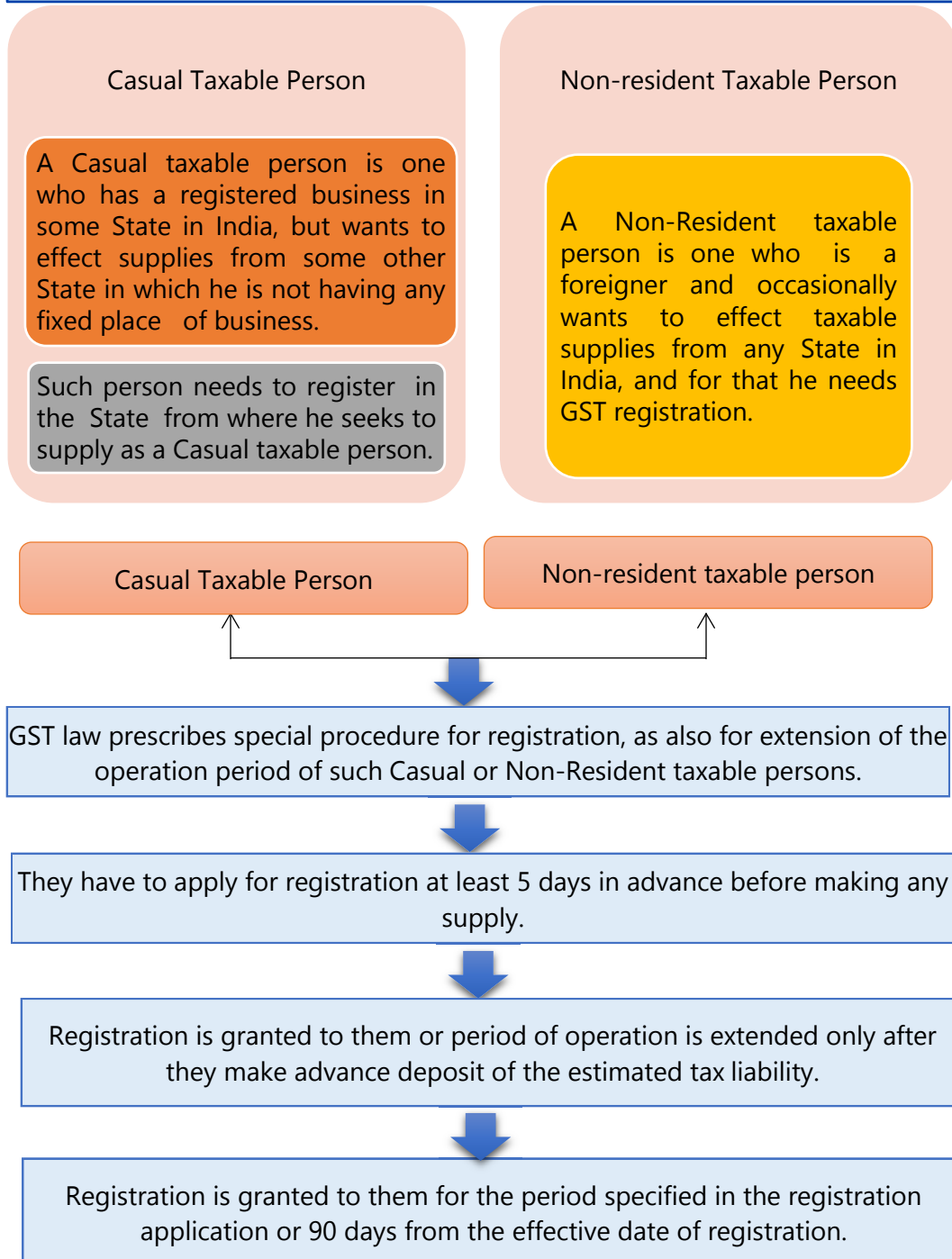
Application shall be forwarded to the Proper Officer.

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

Part II



10. Special procedure for registration of CTD and NRTD



11. Amendment of Registration

Except for the changes in some core information in the registration application, a taxable person shall be able to make amendments without requiring any specific approval from the tax authority.

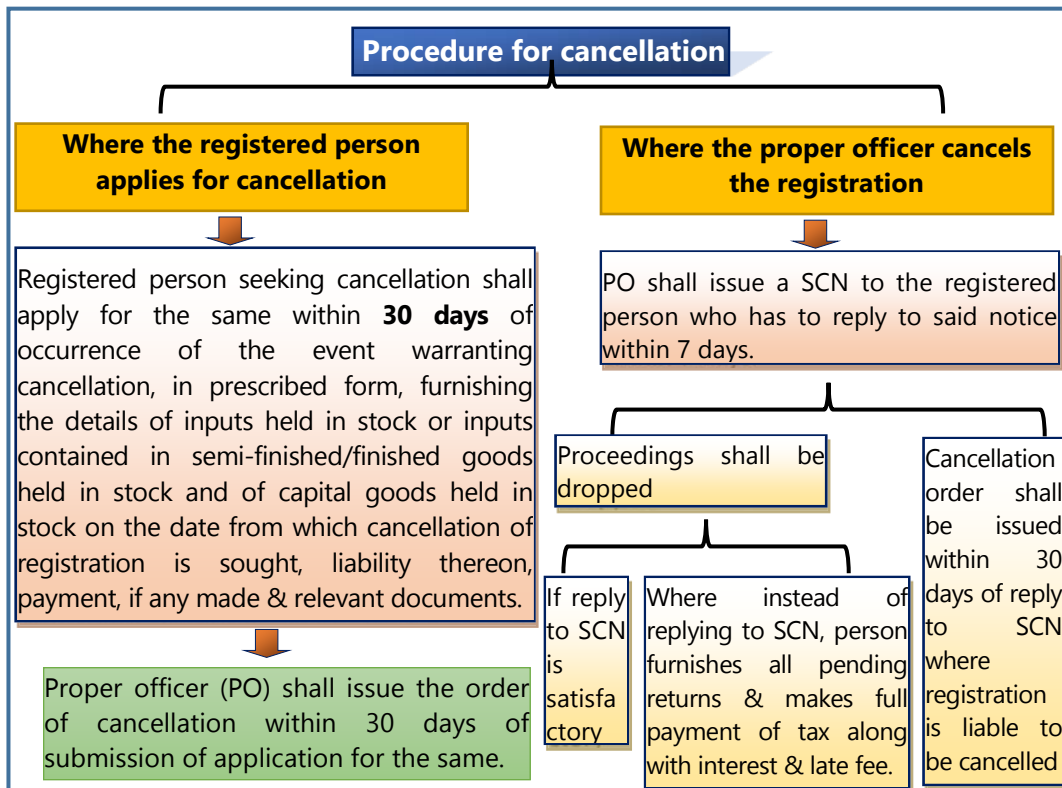
In case the change is core fields of information, the taxable person will apply for amendment within 15 days of the event necessitating the change. The Proper Officer, then, will approve the amendment within the next 15 days.

For changes in non-core fields, no approval of the Proper Officer is required, and the amendment can be affected by the taxable person on his own on the common portal.

11. Cancellation or suspension of registration and revocation of cancellation of registration

Registration can be cancelled either by proper officer on application of the registered person or by an other legal entity/	--Business discontinued/ Transferred/ Amalgamated with Demerged or Otherwise disposed of	Registration can be cancelled by the proper officer on his own	A registered person has contravened the prescribed provisions
	Change in the constitution of the business		A registered person has not filed returns for <i>continuous 6 months</i> (3 months for composition supplier)
	Taxable person no longer liable to be registered		Voluntarily registered person has not commenced the business within 6 months from the date of registration
			Registration was obtained by means of fraud, wilful misstatement or suppression of facts

Once a registered person has applied for cancellation of registration or the proper officer seeks to cancel his registration, proper officer may suspend his registration during pendency of proceedings relating to cancellation of registration filed by such registered person.



Revocation of cancellation

In case where registration is cancelled *suo-motu* by the proper officer, the taxable person can apply within 30 days of service of cancellation order, requesting the officer for revoking the cancellation ordered by him.

However, before so applying, the person has to make good the defaults (by filing all pending returns, making payment of all dues and so) for which the registration was cancelled by the officer.

If satisfied, the proper officer will revoke the cancellation earlier ordered by him.

However, if the officer concludes to reject the request for revocation of cancellation, he will first observe the principle of natural justice by way of issuing notice to the person and hearing him on the issue.



11. TEST YOUR KNOWLEDGE

1. Mr. A has started intra-State supply of goods from Delhi. He is required to obtain registration if his aggregate turnover exceeds _____ during a financial year.
 - (a) ₹ 10 lakh
 - (b) ₹ 20 lakh
 - (c) ₹ 30 lakh
 - (d) ₹ 40 lakh
2. Aggregate turnover includes:
 - (a) Taxable supplies
 - (b) Exempt supplies
 - (c) Exports
 - (d) All of the above
3. Which of the statements is correct?
 - (a) Person making any inter-State taxable supply of goods is required to obtain registration compulsorily.
 - (b) A person to whom a UIN has been granted cannot apply for cancellation of registration.
 - (c) The cancellation of registration under either SGST Act/UTGST Act shall be deemed to be a cancellation of registration under CGST Act
 - (d) All of the above
4. Which of the following persons are not liable for registration?
 - (a) Any person engaged exclusively in supplying services wholly exempt from tax.
 - (b) Persons making any inter-State taxable supply of goods
 - (c) Both (a) and (b)
 - (d) None of the above

5. Determine the effective date of registration in following cases:
 - (a) The aggregate turnover of Dhampur Footwear Industries of Delhi has exceeded the applicable threshold limit of ₹40 lakh on 1st September. It submits the application for registration on 20th September. Registration certificate is granted to it on 25th September.
 - (b) Mehta Teleservices is an architect in Lucknow. Its aggregate turnover exceeds ₹ 20 lakh on 25th October. It submits the application for registration on 27th November. Registration certificate is granted to it on 5th December.
6. In order to be eligible for grant of registration, a person must have a Permanent Account Number issued under the Income- tax Act, 1961. State one exception to it.
7. State which of the following suppliers are liable to be registered:
 - (a) Agent supplying goods on behalf of some other taxable person and its aggregate turnover does not exceed the applicable threshold limit during the financial year.
 - (b) An agriculturist who is only engaged in supply of produce out of cultivation of land and its aggregate turnover does not exceed the applicable threshold limit during the financial year.
8. What are the advantage of taking registration in GST?
9. Can a person without GST registration collect GST and claim ITC?
10. If a person is making taxable supplies from different States, with the same PAN number, can he operate with a single registration?
11. Can a person having multiple places of business in a State obtain separate registrations for each place of business?
12. Is there a provision for a person to get himself voluntarily registered though he may not be liable to pay GST?
13. Can the Department, through the proper officer, suo-moto proceed to register a person under GST?
14. Whether the registration granted to any person is permanent?
15. Is it necessary for the UN bodies to get registration under GST?
16. What is the responsibility of the taxable person making supplies to UN bodies?

17. *What is the validity period of the registration certificate issued to a casual taxable person and non-resident taxable person?*
18. *What happens when the registration is obtained by means of willful mis-statement, fraud or suppression of facts?*
19. *Is there an option to take centralized registration for services under GST Law?*
20. *What could be the liabilities (in so far as registration is concerned) on transfer of a business?*
21. *At the time of registration, will the assessee have to declare all his places of business?*
22. *Does cancellation of registration impose any tax obligations on the person whose registration is so cancelled?*



12. ANSWERS/HINTS

1. (d) 2. (d) 3. (d) 4. (a)
5. (a) Every supplier becomes liable to registration if his turnover exceeds the applicable threshold limit [₹ 40 lakh in this case] in a financial year [Section 22 read with *Notification No. 10/2019 CT dated 07.03.2019*]. Since in the given case, the turnover of Dhampur Industries exceeded ₹ 40 lakh on 1st September, it becomes liable to registration on said date.

Further, since the application for registration has been submitted within 30 days from such date, the registration shall be effective from the date on which the person becomes liable to registration [Section 25 read with rule 10 of the CGST Rules, 2017]. Therefore, the effective date of registration is 1st September.

- (b) Since in the given case, the turnover of Mehta Teleservices exceeds the applicable threshold limit [₹ 20 lakh] on 25th October, it becomes liable to registration on said date.

Further, since the application for registration has been submitted after 30 days from the date such person becomes liable to registration, the registration shall be effective from the date of grant of registration. Therefore, the effective date of registration is 5th December.

6. A Permanent Account Number is mandatory to be eligible for grant of registration. One exception to this is a non-resident taxable person. A non-

resident taxable person may be granted registration on the basis of other prescribed documents instead of PAN. He has to submit a self-attested copy of his valid passport along with the application signed by his authorized signatory who is an Indian Resident having valid PAN and application will be submitted in a different prescribed form [Section 25(6) & (7)].

7. (a) Section 22 stipulates that every supplier becomes liable to registration if his turnover exceeds the applicable threshold limit in a financial year. However, as per section 24, a person supplying goods/services or both on behalf of other taxable persons whether as an agent or not is liable to be compulsorily registered even if its aggregate turnover does not exceed the applicable threshold limit during the financial year.
- (b) As per section 23, an agriculturist who is only engaged in supply of produce out of cultivation of land is not required to obtain registration.
8. Registration will confer following advantages to the business:
 - Legally recognized as supplier of goods or services.
 - Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.
 - Legally authorized to collect tax from his purchasers and pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients.
 - Become eligible to avail various other benefits and privileges rendered under the GST laws.
9. No, a person without GST registration can neither collect GST from his customers nor can claim any input tax credit of GST paid by him.
10. No. Every person who is liable to take a registration will have to get registered separately for each of the States where he has a business operation (and making taxable supplies) provided his aggregate turnover exceeds applicable threshold limit.
11. Yes. In terms of the proviso to sub-section (2) of section 25, a person having multiple places of business in a State may obtain a separate registration for each place of business, subject to such conditions as may be prescribed.

12. Yes. In terms of sub-section (3) of section 25, a person, though not liable to be registered under sections 22 or 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.
13. Yes. In terms of sub-section (8) of section 25, where a person who is liable to be registered under GST law fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under CGST Act, or under any other law for the time being in force, proceed to register such person in the manner as is prescribed in the CGST Rules, 2017.
14. Yes, the registration certificate once granted is permanent unless surrendered, cancelled, suspended or revoked.
15. In terms of section 25(9) of the CGST Act, all notified UN bodies, Consulate or Embassy of foreign countries and any other class of persons so notified would be required to obtain a unique identification number (UIN) from the GST portal.

The structure of the said ID would be uniform across the States in conformity with GSTIN structure and the same will be common for the Centre and the States. This UIN will be needed for claiming refund of taxes paid on notified supplies of goods and services received by them, and for any other purpose as may be notified.
16. The taxable supplier making supplies to UN bodies is expected to mention the UIN on the invoices and treat such supplies as supplies to another registered person (B2B).
17. In terms of section 27(1) read with proviso thereto, 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. However, the proper officer, at the request of the said taxable person, may extend the validity of the aforesaid period of 90 days by a further period not exceeding 90 days.
18. In such cases, the registration may be cancelled with retrospective effect by the proper officer [Section 29(2)(e)].
19. No, the tax payer has to take separate registration in every State from where he makes taxable supply of services.

20. The transferee or the successor shall be liable to be registered with effect from such transfer or succession and he will have to obtain a fresh registration with effect from the date of such transfer or succession [Section 22(3)].
21. Yes. The principal place of business and place of business have been separately defined under section 2(89) & 2(85) of the CGST Act respectively. The taxpayer will have to declare the principal place of business as well as the details of additional places of business in the registration form.
22. Yes, as per section 29(5) of the CGST Act, every registered taxable person whose registration is cancelled shall pay an amount, by way of debit in the electronic cash ledger, 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 or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher.

AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has become effective from 01.08.2019. However, the amendments made in the CGST Act and IGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2020 and/or November 2020 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions¹⁶ relating to registration are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
<p><u>Sub-section (1) of section 22</u></p> <p>“Every supplier shall be liable and limitations, as may be so notified.”</p>	<p><u>Sub-section (1) of section 22- Second proviso and explanation inserted</u></p> <p>“Every supplier shall be liable and limitations, as may be so notified.”</p> <p>Provided also that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of supplier who is engaged exclusively in the supply of goods, subject to such conditions and limitations, as may be notified.</p>	<p>Second proviso is being inserted to section 22(1) empowering Government to enhance the threshold limit for registration from ₹ 20 lakh to ₹ 40 lakh at the request of a State & on the recommendations of the GST Council, in case of a supplier who is engaged exclusively in the supply of goods, subject to specified conditions.</p> <p>Presently, the enhanced threshold limit has been made effective for some States by way of</p>

¹⁶ Provisions existing as on the date when the Study Material was released for printing

	<p>Explanation—For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.</p>	<p>exemption <i>Notification No. 10/2019 CT dated 07.03.2019.</i></p> <p>One major relaxation proposed to be extended is that a person shall be considered to be engaged exclusively in the supply of goods even if he engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount. Presently, this relaxation is not available under <i>Notification No. 10/2019 CT.</i></p>
	<p><u>New sub-sections (6A) o (6D) inserted in section 25</u></p> <p><u>Sub-section (6A)</u></p> <p>Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed.</p> <p>Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe.</p>	<p>New sub-sections are being inserted in section 25 of the CGST Act to make Aadhaar authentication mandatory for specified class of new taxpayers and to prescribe the manner in which certain class of registered taxpayers are required to undergo Aadhaar authentication.</p>

Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.

Sub-section (6B)

On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

Sub-section (6C)

On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners,

Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendation of the Council, specify in the said notification

Provided that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

Sub-section (6D)

The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.

Explanation—For the purposes of this section, the expression “Aadhaar number” shall have the same meaning as assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

TAX INVOICE; CREDIT AND DEBIT NOTES; E-WAY BILL

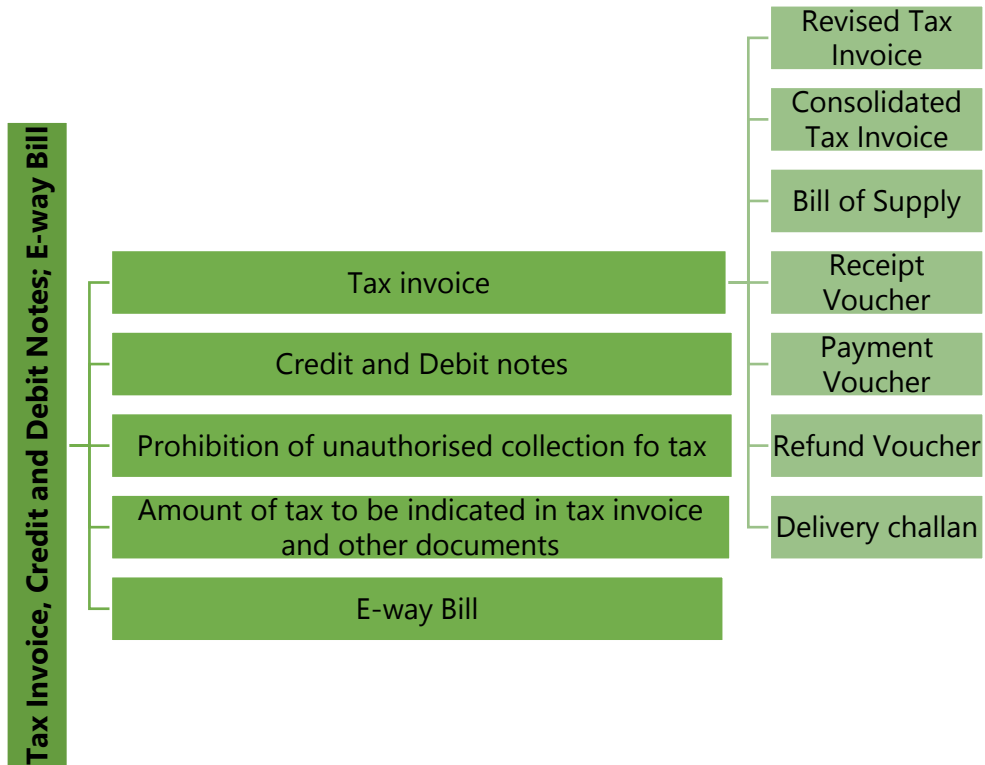


LEARNING OUTCOMES

This Chapter will equip you to –

- describe and analyse the provisions relating to tax invoice in case of taxable supply of goods and in case of taxable supply of services - time-limit and manner of issuing the same
- enumerate the particulars of a tax invoice
- explain the provisions relating to revised tax invoice, bill of supply, receipt voucher, refund voucher, payment voucher, etc.
- identify the cases where no tax invoice is required to be issued and identify the suppliers of taxable service who are permitted to issue any document other than tax invoice
- explain the provisions relating to transportation of goods without issuance of invoice
- explain the provisions of e-way bill
- describe the provisions relating to issuance of credit and debit notes
- explain the provisions relating to prohibition of unauthorised collection of tax
- describe the provisions relating to amount of tax to be indicated in tax invoice and other documents.

CHAPTER OVERVIEW



1. INTRODUCTION

An invoice is a commercial instrument issued by a supplier of goods/services to a recipient. It identifies both the parties



involved, and lists, describes the items sold/services supplied, quantifies the items sold, shows the date of shipment and mode of transport, prices and discounts, if any, and the delivery and payment terms (in case of supply of goods).



Invoicing is very crucial aspect for ensuring tax compliance under any indirect taxation system. In order to ensure transparency, issuance of invoice for every taxable transaction is a pre-requisite. In case of supply of goods or provision of services, an invoice is raised by the supplier of such goods or services to the recipient of the same. Tax invoice acts as a document evidencing the payment of the value of the goods or services or both as also the tax portion in the same. In certain cases, an invoice serves as a demand for payment and becomes a document of title when paid in full.

Under the GST regime, an "invoice" or "tax invoice" means the tax invoice referred to in section 31 of the CGST Act, 2017. This section mandates the issuance of an invoice or a bill of supply for every supply of goods or services.

Under GST, a tax invoice is an important document. It not only evidences supply of goods or services, but is also an essential document for the recipient to avail Input Tax Credit (ITC). A registered person cannot avail input tax credit unless he is in possession of a tax invoice or a debit note.

The provisions relating to tax invoices, debit and credit notes are contained in Chapter VI - Tax Invoice, Credit and Debit Notes [Sections 31 to 34] of the CGST Act and Chapter-VI: Tax Invoice, Credit and Debit Notes [Rules 46 to 55A] of Central Goods and Services (CGST) Rules, 2017. Further, E-way Bill provisions discussed in this chapter are contained in section 68 read with rules 138, 138A, 138B, 138C & 138D [Chapter XVI] of the CGST Rules, 2017. State GST laws also prescribe identical provisions in relation to Tax Invoice; Credit and Debit Notes; E-way Bill.

Provisions of Tax invoice; Credit and Debit Notes; E-way Bill under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Before proceeding to understand the provisions of Tax Invoice, Credit and Debit Notes, E-way Bill, let us first go through few relevant definitions.



2. RELEVANT DEFINITIONS



- ✔ **Credit note:** means a document issued by a registered person under sub-section (1) of section 34 [Section 2(37)].
- ✔ **Debit note:** means a document issued by a registered person under sub-section (3) of section 34 [Section 2(38)].
- ✔ **Continuous supply of goods:** means [Section 2(32):

a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis

under a contract

whether or not by means of a wire, cable, pipeline or other conduit, and

for which the supplier invoices the recipient on a regular or periodic basis and

includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify

- ✔ **Continuous supply of services:** means [Section 2(33)]:

supply of services which is provided, or agreed to be provided, continuously or on recurrent basis

under a contract

for a period exceeding 3 months with periodic payment obligations and

includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify

- ✔ **Document:** includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000 [Section 2(41)].

- ❖ **Exempt supply:** means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply [Section 2(47)].
- ❖ **Invoice or tax invoice:** means the tax invoice referred to in section 31 [Section 2(66)].
- ❖ **Quarter:** shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year [Section 2(92)].
- ❖ **Return:** means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder [Section 2(97)].



3. TAX INVOICE [SECTION 31]



STATUTORY PROVISIONS

Section 31	Tax invoice
Sub-section	Particulars
(1)	<p><i>A registered person supplying taxable goods shall, before or at the time of,—</i></p> <p><i>(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or</i></p> <p><i>(b) delivery of goods or making available thereof to the recipient, in any other case</i></p> <p><i>issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:</i></p> <p><i>Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.</i></p>

(2)	<p><i>A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:</i></p> <p><i>Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which—</i></p> <p><i>(a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or</i></p> <p><i>(b) tax invoice may not be issued.</i></p>
(3)	<p><i>Notwithstanding anything contained in sub-sections (1) and (2)—</i></p> <p><i>(a) a registered person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;</i></p> <p><i>(b) a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;</i></p> <p><i>(c) a registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed:</i></p> <p><i>Provided that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;</i></p> <p><i>(d) a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;</i></p>

	<p>(e) where, on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment;</p> <p>(f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;</p> <p>(g) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.</p>
(4)	<p>In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.</p>
(5)	<p>(5) Subject to the provisions of clause (d) of sub-section (3), in case of continuous supply of services,—</p> <p>(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;</p> <p>(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;</p> <p>(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.</p>
(6)	<p>In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.</p>

(7)

Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Explanation.—For the purposes of this section, the expression “tax invoice” shall include any revised invoice issued by the supplier in respect of a supply made earlier.



ANALYSIS

The provisions relating to Tax Invoice are provided under section 31 of the CGST Act as well as Chapter-VI: Tax Invoice, Credit and Debit Notes of Central Goods and Services (CGST) Rules, 2017. The provisions contained in these rules have been incorporated at the relevant places.



There is no format prescribed for the Tax Invoice. Only certain fields have been prescribed as mandatory fields. Further, invoices may be issued manually or electronically. Issuance of electronic invoices is not mandatory.

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

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

(i) Time limit for issuance of invoice [Sections 31(1), (2), (4) & (5) read with rule 47]

The time for issuing an invoice would depend on the nature of supply viz. whether it is a supply of goods or supply of services.

A registered person supplying taxable goods shall issue a tax invoice, before or at the time of removal of goods (where supply involves movement of goods) or in any other case, before or at the time of delivery or making available thereof to the recipient.



The Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.



In case of supply of taxable services, tax invoice may be issued before or after the provision of services, but within the specified period. Government may notify the categories of services in respect of which any other document issued in relation to supply shall be deemed to be a tax invoice or tax invoice may not be issued.

In case of taxable supply of goods	In case of taxable supply of services
Invoice shall be issued before or at the time of —	Invoice shall be issued before or after the provision of service, but within a period of 30 days* from the date of supply of service.
(a) removal of goods for supply to the recipient, where the supply involves movement of goods ; or	*45 days in case of an insurer or banking company or financial institution, including a non-banking financial company (NBFC)
(b) delivery of goods or making available thereof to the recipient, in any other case.	<p>An insurer or a banking company or a financial institution, including NBFC, or a telecom operator, or any other class of supplier of services as may be notified by the Government, making taxable supplies of services between distinct persons as specified in section 25</p> <p style="text-align: center;">↓ may issue the invoice</p> <p>before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made</p>

In case of continuous supply of goods	In case of continuous supply of services	
Where successive statements of accounts/successive payments are involved, the invoice shall be issued before/at the time each such statement is issued or each such payment is received.	Where	the invoice shall be issued
	(a) due date of payment is ascertainable from the contract	on or before the due date of payment
	(b) due date of payment is not ascertainable from the contract	before or at the time when the supplier of service receives the payment
	(c) payment is linked to the completion of an event	on or before the date of completion of that event.



Ritu Manufacturers, Delhi supplies goods to Prakhar Electronics, Haryana. The goods were removed from its factory in Delhi on 23rd September. Ritu Manufacturers needs to issue a tax invoice on or before 23rd September.



Katyani Security Services Ltd. provides security services to Royal Jewellers for their Jewellery Exhibition to be organized on 5th October. Katyani Security Services Ltd. needs to issue a tax invoice within 30 days of supply of security services, i.e. on or before 4th November.

(ii) Where supply of services ceases before its completion [Section 31(6)]



In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.



(iii) Goods sent on sale or return basis [Section 31(7)]

Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued:

- (i) before/at the time of supply
or
- (ii) 6 months from the date of removal
whichever is earlier.



(iv) Particulars of a tax invoice [Sections 31(1) & (2) read with rule 46]

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

Name, address and GSTIN of the supplier;	
A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets/numerals/special characters hyphen or dash and slash, and any combination thereof, unique for a FY;	
Date of its issue;	
If recipient is registered - Name, address and GSTIN or UIN of recipient	
If recipient is unregistered and value of supply is	Particulars of invoice
₹ 50,000 or more	Name and address of the recipient and the address of delivery, along with the name of State and its code
less than ₹ 50,000	unregistered recipient may still request the aforesaid details to be recorded in the tax invoice

HSN code for goods or services;
Description of goods or services;
Quantity in case of goods and unit or Unique Quantity Code thereof;
Total value of supply of goods or services or both;
Taxable value of supply of goods or services or both taking into account discount or abatement, if any;
Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
Amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
Place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;
Address of delivery where the same is different from the place of supply;
Whether the tax is payable on reverse charge basis; and
Signature or digital signature of the supplier or his authorized representative <i>However, the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an <u>electronic invoice</u> in accordance with the provisions of the Information Technology Act, 2000</i>

(v) Number of HSN digits required on tax invoice and class of registered person not required to mention HSN [Rule 46]

Board may, on the recommendations of the Council, by notification, specify -

- (i) the number of digits of HSN code for goods or services, that a class of registered persons shall be required to mention, for such period as may be specified in the said notification.





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

This provision is also applicable to Bill of Supply [The concept of Bill of Supply is discussed in subsequent paras].

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

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

(vi) Manner of issuing the invoice [Sections 31(1) & (2) read with rule 48]

In case of taxable supply of goods	In case of taxable supply of services
Invoice shall be prepared in TRIPLICATE	Invoice shall be prepared in DUPLICATE
 <p>Triplicate</p>	 <p>Duplicate</p>
<p>Original copy → ORIGINAL FOR RECIPIENT</p> <p>Duplicate copy → DUPLICATE FOR TRANSPORTER</p> <p>Triplicate copy → TRIPLICATE FOR SUPPLIER</p>	<p>Original copy → ORIGINAL FOR RECIPIENT</p> <p>Duplicate copy → DUPLICATE FOR SUPPLIER</p>

The serial number of invoices issued during a tax period shall be furnished electronically [through the Common Portal – www.gst.gov.in], in FORM GSTR-1 [Details of outward Supplies of goods or services].



Key points from aforesaid discussion have been summarized as follows:

1. All GST taxpayers are free to design their own Tax Invoice Format.
2. The law requires that only certain fields as mandatory fields in the Tax Invoice. The same have been listed under heading (iv) above. The mandatory fields have also been circled in the following Sample Tax Invoice.
3. The time period for issuance of invoice is different for goods and services. For goods, it is any time before or at its delivery and for services, it is within 30 days from the date of supply of services.
4. In order to keep the compliance burden low for the small tax payers, taxpayers with annual turnover of ₹1.5 crores need not mention the HSN code of the goods in the invoices.

Sample Tax Invoice

ABC Enterprises Pvt. Ltd.		Total ₹ 6500.00							
GSTIN	22AAAAA0000A1Z5	Invoice Date	10/05/2017						
Branch	Karnataka (22)	Invoice No.	CLR-00054						
PAN	AAAAA0000A	Reference No.	PO-9987						
TAX INVOICE									
Customer Name	Kantech Solutions Private Ltd.	Billing Address	Kantech Solutions Private Ltd. Ground Floor, Building 2A, 23 & 24 AMR Tech Park Internal Road Hongasandra, Bengaluru Karnataka 560068						
Customer GSTIN	22BBBBB0007A1Z5	Shipping Address	Kantech Solutions Private Ltd. Ground Floor, Building 2A, 23 & 24 AMR Tech Park Internal Road Hongasandra, Bengaluru Karnataka 560068						
Payment Terms	Net 15	Due Date	19/06/2016						
		Place of Supply	Karnataka (22)						
Item	HSN	Qty.	Rate/Item(₹)	Discount/Item(₹)	Taxable Value(₹)	SGST	CGST	CESS	Total
1. Himalaya Herbal Cream Neem Edition	440003	10 kg	1000.00	30.00	9700.00	970.00 @10%	970.00 @10%	00.00 @0%	11640.00
2. Himalaya Herbal Cream Neem Edition	440003	10 kg	1000.00	30.00	9700.00	970.00 @10%	970.00 @10%	00.00 @0%	11640.00
3. Himalaya Herbal Cream Neem Edition	440003	10 kg	1000.00	30.00	9700.00	970.00 @10%	970.00 @10%	00.00 @0%	11640.00
4. Freight Charges	—	1 no	1000.00	—	1000.00	50.00 @5%	50.00 @5%	00.00 @0%	1100.00
Total (₹)					30100.00	2960.00	2960.00	00.00	36020.00
Taxable amount									₹ 30100.00
Total Tax*									₹ 5920.00
Invoice Total									₹ 36020.00
Invoice Total (In words)									Thirty Six Thousand Twenty Only
*Tax to be paid on Reverse Charge									
Notes All payments to be made in cash. Contact us for queries on these quotations.									
DUPLICATE For Transporter						ABC Enterprises Pvt. Ltd. (Signature)			
Thank you for your business.									
Powered by clearTax									
ABC Enterprises Pvt. Ltd., Ground Floor, Building 2A, 23 & 24, AMR Tech Park Internal Road, Hongasandra, Bengaluru, Karnataka 560068 +91-9876543210, +91-9876543210, contact@abc enterprises.in									

B. SPECIAL CASES**(i) Revised Tax Invoice [Section 31(3)(a) read with rule 53]****When issued?**

Every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue Revised Tax Invoices. Such invoices shall be issued against the invoices already issued during said period.

*For the purposes of section 31, the expression "tax invoice" shall include any **revised invoice** issued by the supplier in respect of a supply made earlier [Explanation to section 31].*

Revised Tax Invoices shall be issued within 1 month from the date of issuance of certificate of registration. The words "Revised Invoice" shall be indicated prominently on such invoices.

This provision is necessary, as a person who becomes liable for registration has to apply for registration within 30 days of becoming liable for registration. When such an application is made within the stipulated time period and registration is granted, the effective date of registration is the date on which the person became liable for registration.



Thus, there would be a time lag between the date of grant of certificate of registration and the effective date of registration. For supplies made by such person during this intervening period, the law enables the issuance of a revised invoice, so that ITC can be availed by the recipient on such supplies.

Revised Tax Invoices to be issued in respect of taxable supplies effected during this period



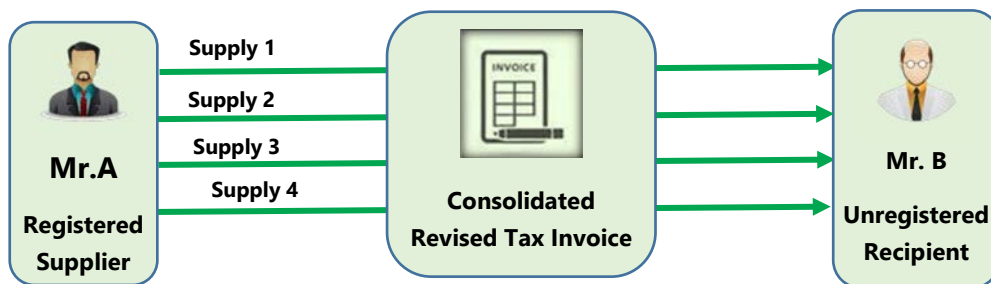
Sarabhai Private Ltd. commenced business of supply of goods on 1st April in Delhi. Its turnover exceeded the applicable threshold limit on 3rd September. Thus, it became liable to registration on 3rd

September. It applied for registration on 29th September and was granted registration certificate on 5th October. Since it applied for registration within 30 days of becoming liable to registration, registration granted is effective from 3rd September.

Sarabhai Private Ltd. may issue Revised Tax Invoices in respect of taxable supplies effected between 3rd September and 5th October.

Consolidated Revised Tax Invoices in certain cases

A registered person may issue a Consolidated Revised Tax Invoice in respect of all taxable supplies made to an unregistered recipient **during such period**.



Supplies between date of grant of certificate of registration & effective date of registration

However, **in case of inter-State supplies**, a consolidated Revised Tax Invoice cannot be issued in respect of all unregistered recipients if the value of a supply exceeds ₹ 2,50,000.

Particulars of Revised Tax Invoice

Name, address and GSTIN of the supplier;

A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash and any combination thereof, unique for a FY;

Date of issue of the document;

Name, address and GSTIN or UIN, if registered, of the recipient;

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;

Serial number and date of the corresponding tax invoice or, as the case may be, bill of supply;

Signature/digital signature of the supplier/his authorized representative.

(ii) No Tax Invoice required to be issued if value < ₹ 200 – A consolidated Tax Invoice can be issued [Section 31(3)(b) read with fourth proviso to rule 46]



A registered person may not issue a Tax Invoice if:

- (i) Value of the goods/services/both supplied < ₹200,
- (ii) the recipient is unregistered; and
- (iii) the recipient does not require such invoice.

Instead such registered person shall issue a **Consolidated Tax Invoice** for such supplies at the close of each day in respect of all such supplies.

Thus, small taxpayers, like small retailers, doing a large number of small transactions for upto a value of ₹ 200 per transaction to unregistered customers need not issue invoice for every such transaction. They can issue one consolidated invoice at the end of each day for all transactions done during the day. However, they need to issue an invoice when the customer demands.

Above provision is also applicable to Bill of Supply.

ILLUSTRATION

Jain & Sons is a trader dealing in stationery items. It is registered under GST and has undertaken following sales during the day:

S. No.	Recipient of supply	Amount (₹)
1.	Raghav Traders - a registered retail dealer	190
2.	Dhruv Enterprises – an unregistered trader	358
3.	Gaurav – a Painter [unregistered]	500
4.	Oberoi Orphanage – an unregistered entity	188
5.	Aaradhya – a Student [unregistered]	158

None of the recipients require a tax invoice [Raghav Traders being a composition dealer].

Determine in respect of which of the above supplies, Jain & Sons may issue a Consolidated Tax Invoice instead of Tax Invoice, at the end of the day?

SOLUTION

In the given illustration, Jain & Sons can issue a Consolidated Tax Invoice only with respect to supplies made to Oberoi Orphanage [worth ₹ 188] and Aaradhya [worth ₹ 158] as the value of goods supplied to these recipients is less than ₹ 200 as also these recipients are unregistered and don't require a tax invoice.

As regards the supply made to Raghav Traders, although the value of goods supplied to it is less than ₹ 200, Raghav Traders is registered under GST. So, Consolidated Tax Invoice cannot be issued.

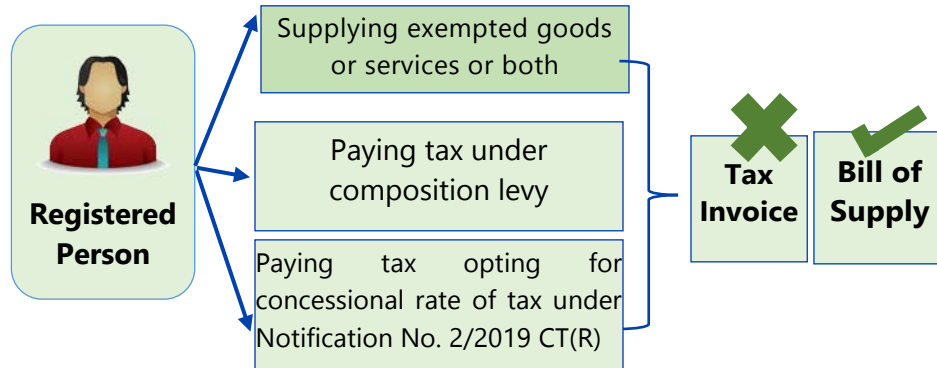
Consolidated Tax Invoice can also not be issued for supplies of goods made to Dhruv Enterprises and Gaurav although both of them are unregistered. The reason for the same is that the value of goods supplied is not less than ₹ 200.

(iii) Bill of Supply [Section 31(3)(c) read with rule 49]

Section 31(3)(c) stipulates that a registered person supplying exempted goods or services or both or a registered person paying tax under composition levy, shall issue a bill of supply instead of a tax invoice. ***These provisions have also been made applicable¹ to a person paying tax at concessional rate under Notification No. 2/2019 CT (R) dated 07.03.2019.***

Person opting for composition levy shall mention the words **“composition taxable person, not eligible to collect tax on supplies”** at the top of the bill of supply issued by him. ***Similarly, a person opting for paying tax at concessional rate under Notification No. 2/2019 CT (R) will have the following words at its top - ‘taxable person paying tax in terms of Notification No. 2/2019 CT (R) dated 07.03.2019, not eligible to collect tax on supplies’.***

¹ vide **Order No. 3/2019 CT dated 08.03.2019**



Particulars of Bill of Supply

A registered person opting for the composition levy as also **person paying tax at concessional rate under Notification No. 2/2019** do not collect tax from the recipient on outward supplies made by him. Similarly, in case of a registered person supplying exempted goods and/or services, no tax implications are there. Recipients should not expect Tax Invoice from such suppliers as they cannot issue tax invoice.



Since no tax is collected from the recipient by a registered person opting for the composition levy, **person paying tax at concessional rate under Notification No. 2/2019** and a registered person supplying exempted goods and/or services, Bill of Supply issued by such persons does not contain the details pertaining to rate of tax and amount of tax. Further, value to be mentioned in the Bill of Supply is not also taxable value.

Name, address and GSTIN of the supplier;

A consecutive serial number not exceeding 16 characters, in one or more multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash and any combination thereof, unique for a FY;

Date of its issue;

Name, address and GSTIN or UIN, if registered, of the recipient;

HSN Code for goods or services;

Description of goods or services or both;

Value of supply of goods or services or both taking into account discount/ abatement, if any; and

Signature/ digital signature of supplier/his authorized representative.

However, signature or digital signature of the supplier or his authorized representative shall not be required in the case of issuance of an electronic bill of supply in accordance with the provisions of the Information Technology Act, 2000.

Note: Any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as bill of supply for the purposes of the Act.



Patel & Sons is a manufacturer of goods who has opted for composition levy under section 10. It will issue a Bill of Supply to the buyers of goods and not the tax invoice.

Invoice-cum-bill of supply [Rule 46A]

Where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice-cum-bill of supply" may be issued for all such supplies. Rule 46A is notwithstanding anything contained in rule 46 or rule 49 or rule 54 of CGST Rules.

(iv) Receipt Voucher [Section 31(3)(d) read with rule 50]

A registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a Receipt Voucher evidencing receipt of such payment.



Particulars of Receipt Voucher

Name, address and GSTIN of the supplier;

A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters - hyphen or dash and slash and any combination thereof, unique for a FY

Date of its issue;

Name, address and GSTIN or UIN, if registered, of the recipient;

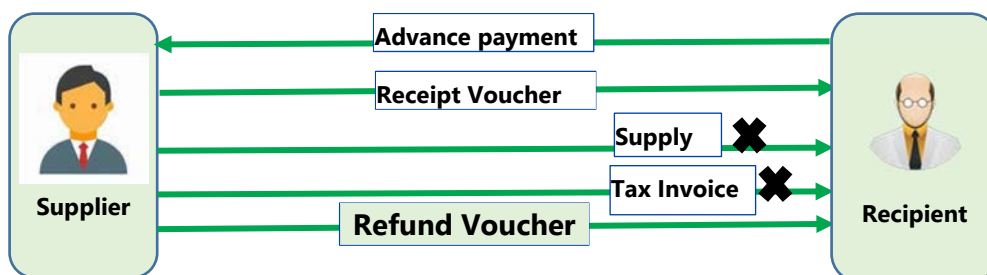
Description of goods or services;
Amount of advance taken;
Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
Amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
Place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce;
Whether the tax is payable on reverse charge basis; and
Signature/digital signature of supplier/his authorized representative

Where at the time of receipt of advance, rate of tax and/or nature of supply is not determinable

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

(v) Refund Voucher [Section 31(3)(e) read with rule 51]

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



Particulars of Refund Voucher

Name, address and GSTIN of the supplier;
A consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash and any combination thereof, unique for a FY;
Date of its issue;
Name, address and GSTIN or UIN, if registered, of the recipient;
Number and date of Receipt Voucher issued
Description of goods/services in respect of which refund is made
Amount of refund made
Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess)
Amount of tax paid in respect of such goods or services (central tax, State tax, integrated tax, Union territory tax or cess)
Whether the tax is payable on reverse charge basis; and
Signature/digital signature of supplier/his authorized representative

(vi) Invoice and Payment Voucher [Section 31(3)(f) & (g) read with second proviso to rule 46 and rule 52]

The recipient is liable to pay tax on reverse charge basis where he receives supply of such goods/services/both which are notified for reverse charge purposes. Such supplies can be received from a registered or an unregistered supplier [Section 9(3)].



Further, a builder/promoter is required to pay GST on reverse charge basis under section 9(4) in one or more of the following cases:

- (i) A builder/promoter must purchase 80% of inputs and input services used in supplying the service from registered persons. In case of shortfall, he's required to pay tax under reverse charge on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).**
- (ii) Where cement is received from an unregistered person, promoter/builder has to pay tax on supply of such cement on reverse charge basis and**
- (iii) GST on capital goods is payable by the promoter on reverse charge basis.**

Invoice to be issued by recipient if he is liable to pay tax under section 9(3)/(4) and receives supplies from an unregistered person

A registered person who is liable to pay tax under reverse charge [under section 9(3)/9(4) of the CGST Act] shall issue an **Invoice** in respect of goods or services or both **received by him from the supplier who is not registered on the date of receipt of goods or services or both.** Thus, a recipient liable to pay tax by virtue of section 9(3) has to issue invoice only when supplies have been received from an unregistered supplier.

Payment voucher to be issued by recipient at the time of making payment if he is liable to pay tax under section 9(3)/(4)

Besides, a registered person who is liable to pay tax under reverse charge [under section 9(3)/9(4) of the CGST Act] shall issue a **Payment Voucher** at the time of making payment to the supplier.



Particulars of Payment Voucher

Name, address and GSTIN of the supplier if registered;

A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and any combination thereof, unique for a FY

Date of its issue;
Name, address and GSTIN of the recipient;
Description of goods or services;
Amount paid;
Rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
Amount of tax payable in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
Place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce; and
Signature/digital signature of supplier/his authorized representative

(vii) Supplier permitted to issue any document other than tax invoice [Section 31(2) and proviso to section 31(1) read with rules 54 and 55]

Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which—

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



Further, Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

Following suppliers may issue a tax invoice, but they are also permitted to issue any other document in lieu of tax invoice, by whatever name called:

Supplier of taxable service	Document in lieu of the tax invoice	
	Optional information	Mandatory information
Insurer/Banking company/Financial institution, including NBFC	<ul style="list-style-type: none"> Serial number (It is not mandatory for a bank/ insurance company to serially number the invoices/ document). Address of the recipient of taxable service. 	<p>Other information (other than serial no. and address of recipient) as prescribed for a Tax Invoice, under rule 46.</p> <p>A customer may avail numerous services from the bank / insurer in a given tax period. Such entities may issue a consolidated tax invoice/ statement/ advice, any other document in lieu thereof, by whatever name called may be issued/ made available, physically/ electronically, for supply of services made during a month at the end of the month.</p> <p><i>However, the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of a consolidated tax invoice or any other document in lieu thereof in accordance with the provisions of the Information Technology Act, 2000.</i></p>

<p>Goods Transport Agency (GTA) supplying services in relation to transportation of goods by road in a goods carriage</p>		<p>Gross weight of the consignment</p> <p>Name of the consignor and the consignee</p> <p>Registration number of goods carriage in which the goods are transported</p> <p>Details of goods transported</p> <p>Details of place of origin and destination</p> <p>GSTIN of the person liable for paying tax whether as consignor, consignee or GTA</p> <p>Other information as prescribed for a tax invoice, under rule 46</p>
<p>Supplier of passenger transportation service</p>	<ul style="list-style-type: none"> • Serial number • Address of the recipient of taxable service 	<p>Tax invoice shall include ticket in any form, by whatever name called.</p> <p>Other information (other than serial no. and address of recipient) as prescribed for a tax invoice, under rule 46.</p> <p><i>However, signature or digital signature of the supplier or his authorized representative shall not be required in the case of issuance of ticket in accordance with the provisions of the Information Technology Act, 2000.</i></p>

★ It is important to note here that keeping in view the large number of transactions in banking, insurance and passenger transportation sector, taxpayers need not mention the address of the customer and the serial number in their invoices.

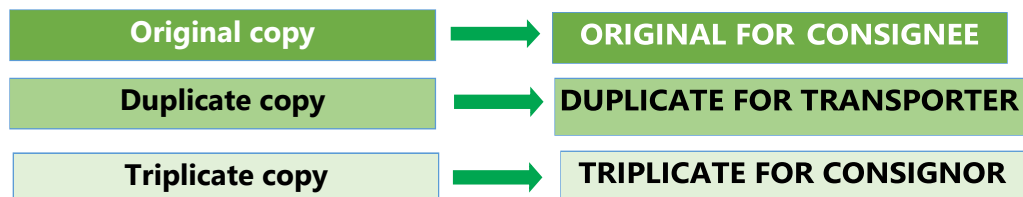
Delivery challan

Rule 55 specifies the cases where at the time of removal of goods, goods may be removed on delivery challan and invoice may be issued after delivery. These are provided in the following table:

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

A. Delivery challan in Triplicate

The delivery challan shall be prepared in TRIPLICATE, in case of supply of goods, in the following manner:



B. Declaration in E-way Bill

Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared in E-Way Bill.

C. Tax invoice to be issued after delivery of goods

Where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.

D. Goods transported in SKD/CKD condition or in batches or lots

Where the goods are being transported in a semi knocked down or completely knocked down condition or in batches or lots,

- the supplier shall issue the complete invoice before dispatch of the first consignment;
- the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
- Copies of the corresponding delivery challan shall accompany each consignment along with a duly certified copy of the invoice; and
- the original copy of the invoice shall be sent along with the last consignment.

Goods moved within the State or from the State of registration to another State for supply on approval basis and art works sent by artists to galleries for exhibition

Suppliers of jewellery etc. who are registered in one State may have to visit other States (other than their State of registration) and need to carry the


goods (such as jewellery) along for approval. In such cases if jewellery etc. is approved by the buyer, then the supplier issues a tax invoice only at the time of supply. Since the suppliers are not able to ascertain their actual supplies beforehand and while ascertainment of tax liability in advance is a mandatory requirement for registration as a casual taxable person, the supplier is not able to register as a casual taxable person. Such goods are also carried within the same State for the purposes of supply.

In view of relevant provisions of rule 55, it is clarified that the goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of delivery of goods. For this purpose, the person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified **[Circular No. 10/10/2017 GST dated 18.10.2017]**.

Likewise, in case where artists supply art works in different States - other than the State in which they are registered as a taxable person and if the art work is selected by the buyer, then the supplier issues a tax invoice only at the time of supply, it is clarified that the art work for supply on approval basis can be moved from the place of business of the registered person (artist) to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of actual supply of art work **[Circular No. 22/22/2017 GST dated 21.12.2017]**.



4. CREDIT AND DEBIT NOTES [SECTION 34]

 STATUTORY PROVISIONS	
Section 34	Credit and Debit Notes
Sub-section	Particulars
(1)	Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are

	<p>returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed</p>
(2)	<p>Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:</p> <p>Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.</p>
(3)	<p>Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient one or more debit notes for supplies made in a financial year containing such particulars as may be prescribed.</p>
(4)	<p>Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.</p>
	<p>Explanation.—For the purposes of this Act, the expression “debit note” shall include a supplementary invoice.</p>



ANALYSIS

- (i) **Issuance of Credit Note:** During the course of trade or commerce, after the invoice has been issued, there can be situations like:
- ❑ The supplier has erroneously declared a value which is more than the actual value of the goods or services provided.
 - ❑ The supplier has erroneously declared a higher tax rate than what is applicable for the kind of the goods or services or both supplied.
 - ❑ The quantity received by the recipient is less than what has been declared in the tax invoice.
 - ❑ The quality of the goods or services or both supplied is not to the satisfaction of the recipient thereby necessitating a partial or total reimbursement on the invoice value
 - ❑ Any other similar reasons.

In order to regularize these kinds of situations, the supplier is allowed to issue a document called as **credit note** to the recipient. Once the credit note has been issued, the tax liability of the supplier will reduce.

The credit note is a convenient and legal method by which the value of the goods or services in the original tax invoice can be amended or revised. The issuance of the credit note easily allows the supplier to decrease his tax liability in his returns without requiring him to undertake any tedious process of refunds.

Section 34(1) provides that where **one or more tax invoices have been** issued for supply of any goods or services or both and the taxable value or tax charged in that/those tax invoice(s) is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient **one or more credit notes for supplies made in a financial year** containing the prescribed particulars.

It is important to note that credit note(s) are not permitted to be issued in case secondary discounts² are allowed by the supplier since the tax liability of the supplier does not get reduced in such case. However, supplier can issue financial/ commercial credit note(s) to reduce the value of supply payable by the recipient to the supplier [Circular 92/11/2019 GST dated 07.03.2019].

Secondary discounts

(ii) **Issuance of Debit Note:** There can be situations when after the invoice has been issued:

- The supplier has erroneously declared a value which is less than the actual value of the goods or services or both provided.
- The supplier has erroneously declared a lower tax rate than what is applicable for the kind of the goods or services or both supplied.
- The quantity received by the recipient is more than what has been declared in the tax invoice.
- Any other similar reasons.

In order to regularize these kinds of situations, the supplier is allowed to issue a document called as **debit note** to the recipient.

Section 34(3) provides that where **one or more tax invoices have been** issued for supply of any goods or services or both and the taxable value or tax charged in

Debit note shall include a supplementary invoice.

that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient **one or more debit notes for supplies made in a financial year** containing the prescribed particulars.


The issuance of a debit note/supplementary invoice creates additional tax liability. The treatment of a debit note/supplementary invoice is identical to the treatment of a tax invoice as far as returns and payment are concerned.

² *Secondary discounts are the discounts which are not known at the time of supply/are offered after the supply is already over. These discounts are not excluded from the value of supply since conditions laid down in section 15(3)(b) of the CGST Act are not satisfied. Refer Chapter 5-Time and Value of Supply for detailed discussion on the same.*

The debit note/supplementary invoice is a convenient and legal method by which the value of the goods and/or services in the original tax invoice can be enhanced. The issuance of the debit note allows the supplier to pay his enhanced tax liability in his returns without requiring him to undertake any other tedious process.

(iii) Details of Debit Note/Credit Note to be declared in Return

I. Credit Note:


 Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than:




(i) September following the end of the financial year in which such supply was made,

or


(ii) the date of furnishing of the relevant annual return, whichever is earlier.

 The tax liability shall be adjusted in such manner as may be prescribed. However, no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

II. Debit Note:

 Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued. The tax liability shall be adjusted in such manner as may be prescribed.

III. Particulars of the Debit and Credit Notes [Rule 53(1A)]

 ***There is no prescribed format, but credit and debit note issued by a supplier must contain the following particulars, namely:-***

Name, address and GSTIN of the supplier.

Nature of the document.

A consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash and any combination thereof, unique for a FY.

Date of issue of the document.

Name, address and GSTIN or UIN, if registered, of the recipient.

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.

Serial number(s) and date(s) of the corresponding tax invoice(s) or, as the case may be, bill(s) of supply.

Value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient

Signature/digital signature of the supplier/his authorized representative.



5. PROHIBITION OF UNAUTHORISED COLLECTION OF TAX [SECTION 32]

A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.

No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.



6. AMOUNT OF TAX TO BE INDICATED IN TAX INVOICE AND OTHER DOCUMENTS [SECTION 33]

Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who

is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.



7. E-WAY BILL [SECTION 68 READ WITH RELEVANT CGST RULES, 2017]

Under GST regime, for quick and easy movement of goods across India without any hindrance, all the check posts across the country are abolished. However, in order to monitor the movement of goods for controlling any tax evasion, e-way bill system has been introduced. Under this system, a taxpayer - prior to movement of goods via a conveyance - would inform each transaction's details to the tax department, obtain an acknowledgement number for having thus informed, and then use this acknowledgement number as a valid document accompanying the conveyance carrying goods. The idea is that the taxpayer be made to upload the details of each transaction to a common portal through the Internet, and once uploaded, the common portal would automatically generate a document which can be tracked and verified easily by any stakeholder.

Statutory requirement

Section 68 of the CGST Act stipulates that the Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed. Rule 138 of CGST Rules, 2017 prescribes e-way bill as the document to be carried for the consignment of goods in certain prescribed cases.

What is e-way bill?

A **waybill** is a receipt or a document issued by a carrier giving details and instructions relating to the shipment of a consignment of goods and the details include name of consignor, consignee, the point of origin of the consignment, its destination, and route. Electronic Way Bill (E-Way Bill) is a compliance mechanism wherein by way of a digital interface the person causing the movement of goods uploads the relevant information prior to the commencement of movement of goods and generates e-way bill on the GST portal. In other words, **E-way bill is an electronic document generated on the GST portal evidencing movement of goods.**

What are the benefits of e-way bill?

Following benefits are expected from e-way bill mechanism:

- (i) Physical interface to pave way for digital interface resulting in elimination of state boundary check-posts
- (ii) It will facilitate faster movement of goods
- (iii) It will improve the turnaround time of trucks and help the logistics industry by increasing the average distances travelled, reducing the travel time as well as costs.

E-way Bill is generated **electronically** in **Form GST EWB 01** on the common portal (www.ewaybillgst.gov.in). The facility of generation, cancellation, updation and assignment of e-way bill is available to the supplier, recipient and the transporter, as the case may be. E-way Bill can be generated through various modes like Web (Online), Android App, SMS, using Bulk Upload Tool and API (Application Program Interface) based site to site integration etc.

The pre-requisite for generation of e-way bill is that the person who generates e-way bill should be a registered person on GST portal and he should register on the e-way bill portal. If the transporter is not registered person under GST it is mandatory for him to get enrolled on e-waybill portal (<https://ewaybillgst.gov.in>) before generation of the e-way bill.

E-way Bill provisions [as contained in rules 138, 138A, 138B, 138C and 138D – Chapter XVI of the CGST Rules, 2017] are elaborated as under:

(1) When is e-way bill required to be generated? [Rule 138(1)]

Whenever there is a movement of goods of consignment value exceeding ₹ 50,000:

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

the registered person who causes such movement of goods shall furnish the information relating to the said goods as specified in Part A of Form GST EWB-01 before commencement of such movement.

It is important to note that “information is to be furnished prior to the commencement of movement of goods” and “is to be issued whether

the movement is in relation to a supply or for reasons other than supply”.

Who causes movement of goods?

If supplier is registered and undertakes to transport the goods, movement of goods is caused by the supplier. If recipient arranges transport, movement is caused by him. If goods are supplied by an unregistered supplier to a registered known recipient, movement shall said to be caused by such recipient.

Meaning of consignment value of goods

Consignment value of goods shall be the value:

- ✓ determined in accordance with the provisions of section 15,
- ✓ declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and
- ✓ also includes the Central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and
- ✓ shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

As discussed earlier in this chapter, in case of movement of goods for reasons other than supply, the movement is occasioned by means of a delivery challan which has to necessarily contain the value of goods. The value given in the delivery challan should be adopted in the e-way bill³.

Special situations where e-way bill needs to be issued even if the value of the consignment is less than ₹ 50,000:

(i) Inter-State transfer of goods by principal to job-worker

Where goods are sent by a principal located in one State or Union territory to a job worker located in any other State or Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment [Third proviso to rule 138(1)].

³ As clarified by CBIC FAQs on E-way Bill.

(ii) Inter-State transfer of handicraft goods by a person exempted from obtaining registration

Where handicraft goods* are transported from one State or Union territory to another State or Union territory by a person who has been exempted from the requirement of obtaining registration [under clauses (i) and (ii) of section 24], the e-way bill shall be generated by the said person irrespective of the value of the consignment [Fourth proviso to rule 138].

***Handicraft goods** are the goods specified in **Notification No. 56/2018 CT dated 23.10.2018** which exempts the casual taxable persons making inter-State taxable supplies of such handicraft goods from obtaining registration upto specified turnover limit [Refer Chapter 7 – Registration].

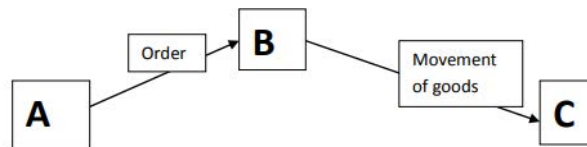
E-way Bill in case of 'Bill To Ship To' Model

In a "Bill To Ship To" model of supply, there are three persons involved in a transaction, namely:

'A' is the person who has ordered 'B' to send goods directly to 'C'.

'B' is the person who is sending goods directly to 'C' on behalf of 'A'.

'C' is the recipient of goods.



In this complete scenario, two supplies are involved and accordingly two tax invoices are required to be issued:

Invoice -1: which would be issued by 'B' to 'A'.

Invoice -2: which would be issued by 'A' to 'C'.

It is clarified that as per the CGST Rules, 2017, either A or B can generate the e-Way Bill but it may be noted that **only one e-Way Bill** is required to be generated [Press Release dated 23.04.2018]

(2) Information to be furnished in e-way bill:

An e-way bill Form GST EWB-01 contains two parts:

- (I) Part A** [comprising of details of GSTIN of supplier & recipient, place of delivery (indicating PIN Code also), document (Tax invoice, Bill of Supply, Delivery Challan or Bill of Entry) number and date, value of goods, HSN code, and reasons for transportation, etc.]: to be furnished by the **registered person** who is causing movement of goods** of consignment value exceeding ₹ 50,000/- and
- (II) Part B** (transport details) [Transporter document number (Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number) and Vehicle number, in case of transport by road]: to be furnished by the **person who is transporting the goods**.

**However, information in Part-A may be furnished:

- ✓ by the transporter, on an authorization received from such registered person [First proviso to rule 138(1)] or
- ✓ by the e-commerce operator or courier agency, where the goods to be transported are supplied through such an e-commerce operator or a courier agency, on an authorization received from the consignor [Second proviso to rule 138(1)].

(3) Who is mandatorily required to generate e-way bill?

- Where the goods are transported by a registered person - whether as consignor or recipient as the consignee** (whether in his own conveyance or a hired one or a public conveyance, by road), the said person shall have to generate the e-way bill (by furnishing information in part B on the common portal) [Rule 138(2)].
- Where the e-way bill is not generated by the registered person and the goods are handed over to the transporter, for transportation of goods by road**, the registered person shall furnish the information relating to the transporter in Part B on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A [Rule 138(3)].
- Where the goods are transported by railways or by air or vessel**, the e-way bill shall be generated by the registered person, being the

supplier or the recipient, who shall, either before or after the commencement of movement, furnish, information in part B [viz transport document number (Goods Receipt Number or Railway Receipt Number or Airway Bill Number or Bill of Lading Number)] on the common portal [Rule 138(2A)].

Other important points:

- ❖ **Where the goods are transported by railways:** there is no requirement to carry e-way bill along with the goods, but railways has to carry invoice or delivery challan or bill of supply as the case may be along with goods. Further, e-way bill generated for the movement is required to be produced at the time of delivery of the goods. Railways shall not deliver goods unless the e-way bill required under rules is produced at the time of delivery [Proviso to rule 138(2A)].
- ❖ The registered person or, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than ₹ 50,000 [First proviso to rule 138(3)].
- ❖ **Where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter,** he or the transporter may, at their option, generate the e-way bill [Second proviso to rule 138(3)].
- ❖ **Where the goods are supplied by an unregistered supplier to a recipient who is registered,** the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods [Explanation 1 to rule 138(3)].

(4) When is it not mandatory to furnish the details of conveyance in Part-B?

Explanation 2 to rule 138(3) stipulates that e-way bill is valid for movement of goods by road only when the information in Part-B is furnished. However, details of conveyance may not be furnished in Part-B of the e-way bill where the goods are transported **for a distance of upto 50 km** within the State/Union territory:

- ❖ from the place of business of the consignor to the place of business of the transporter for further transportation [Third proviso to rule 138(3)]
or

- ❖ from the place of business of the transporter finally to the place of business of the consignee [Proviso to rule 138(5)].

(5) Unique e-way bill number (EBN)

Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal [Rule 138(4)].

(6) Transfer of goods from one conveyance to another

Where the goods are transferred from one conveyance to another, the consignor or the recipient, who has provided information in **Part A**, or the transporter shall, before such transfer and further movement of goods, update the details of conveyance in **Part B** of the e-way bill on the common portal [Rule 138(5)].

The consignor/recipient, who has furnished the information in **Part A**, or the transporter, may assign the e-way bill number to another registered/enrolled transporter for updating the information in **Part B** for further movement of the consignment [Rule 138(5A)]. However, once the details of the conveyance have been updated by the transporter in **Part B**, the consignor or recipient, as the case may be, who has furnished the information in **Part A** shall not be allowed to assign the e-way bill number to another transporter [Proviso to rule 138(5A)].



A consignor is required to move goods from City X to City Z. He appoints Transporter A for movement of his goods. Transporter A moves the goods from City X to City Y. For completing the movement of goods i.e., from City Y to City Z, Transporter A now hands over the goods to Transporter B. Thereafter, the goods are moved to the destination i.e. from City Y to City Z by Transporter B.

In such a scenario, only one e-way bill would be required. Part A can be filled by the consignor and then the e-way bill will be assigned by the consignor to Transporter A. Transporter A will fill the vehicle details, etc. in Part B and will move the goods from City X to City Y.

On reaching City Y, Transporter A will assign the said e-way bill to the Transporter B. Thereafter, Transporter B will be able to update the details of Part B. Transporter B will fill the details of his vehicle and move the goods from City Y to City Z [Press Release No. 144/2018 dated 31.03.2018].

(7) Consolidated E-way bill

After e-way bill has been generated, where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in **Form GST EWB-02** may be generated by him on the said common portal prior to the movement of goods [Rule 138(6)].

Consolidated e-way bill is a document containing the multiple e-way bills for multiple consignments being carried in one conveyance (goods vehicle). That is, the transporter carrying multiple consignments of various consignors and consignees in a single vehicle can generate and carry a single document - consolidated e-way bill instead of carrying separate document for each consignment in a conveyance.

Consolidated EWB is like a trip sheet and it contains details of different e-way bills in respect of various consignments being transported in one vehicle and these e-way bills will have different validity periods.

Hence, Consolidated EWB does not have any independent validity period. Further, individual consignment specified in the Consolidated EWB should reach the destination as per the validity period of the individual EWB.

Further, where the consignor/consignee has not generated the e-way bill in Form GST EWB-01 and the aggregate of the consignment value of goods carried in the conveyance is more than ₹ 50,000, the transporter, except in case of transportation of goods by railways, air and vessel, shall, in respect of inter-State supply, generate the e-way bill in Form GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in **Form GST EWB-02** on the common portal prior to the movement of goods [Rule 138(7)]. **Provisions of rule 138(7) have not yet been made effective.**

However, where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of Form GST EWB-01 may be furnished by such e-commerce operator or courier agency [Proviso to rule 138(7)].

(8) Information submitted for e-way bill can be used for filing GST Returns

The information furnished in **Part A** of the e-way bill shall be made available to the registered supplier on the common portal who may utilize the same for furnishing the details in **Form GSTR-1** [Rule 138(8)].

However, when the information has been furnished by an unregistered supplier/unregistered recipient, he shall be informed electronically, if the mobile number or the e-mail is available [Proviso to rule 138(8)].

(9) Cancellation of e-way bill

Where an e-way bill has been generated, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal within **24 hours** of generation of the e-way bill [Rule 138(9)].

However, an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B [First proviso to rule 138(9)].

Further, unique EWB number generated is valid for a period of 15 days for updation of Part B [Second proviso to rule 138(9)].

(10) Validity period of e-way bill/consolidated e-way bill [Rule 138(10)]

Sl. No.	Distance within country	Validity period from relevant date*
1.	Upto 100 km	One day in cases other than Over Dimensional Cargo**
2.	For every 100 km or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo
3.	Upto 20 km	One day in case of Over Dimensional Cargo
4.	For every 20 km or part thereof thereafter	One additional day in case of Over Dimensional Cargo

***Relevant date** means the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as the period expiring

at midnight of the day immediately following the date of generation of e-way bill.

This can be explained by following examples –

- (i) Suppose an e-way bill is generated at 00:04 hrs. on 14th March. Then first day would end on 12:00 midnight of 15 -16 March. Second day will end on 12:00 midnight of 16 -17 March and so on.
- (ii) Suppose an e-way bill is generated at 23:58 hrs. on 14th March. Then first day would end on 12:00 midnight of 15 -16 March. Second day will end on 12:00 midnight of 16 -17 March and so on.

The validity of the e-way bill starts when first entry is made in Part-B i.e. vehicle entry is made first time in case of road transportation or first transport document number entry in case of rail/air/ship transportation, whichever is the first entry. It may be noted that validity is not re-calculated for subsequent entries in Part-B⁴.



A consignor hands over his goods for transportation on Friday to transporter. However, the assigned transporter starts the movement of goods on Monday. The validity period of e-way bill starts only after the details in Part B are updated by the transporter for the first time.

In the given situation, Consignor can fill the details in Part A on Friday and handover his goods to the transporter. When the transporter is ready to move the goods, he can fill Part B i.e. the assigned transporter can fill the details in Part B on Monday and the validity period of the e-way bill will start from Monday [Press Release No. 144/2018 dated 31.03.2018].

****Over dimensional cargo** means a cargo carried as a single indivisible unit and which exceeds the dimensional limits prescribed in rule 93 of the Central Motor Vehicle Rules, 1989, made under the Motor Vehicles Act, 1988.

Extension of validity period

Extension by Commissioner for certain categories of goods:

Commissioner may, on the recommendations of the Council, by notification, extend the validity period of an e-way bill for certain categories of goods as may be specified therein.

⁴ As clarified by FAQs on E-way Bill web portal.

Extension by transporter in exceptional circumstances: Where, under circumstances of an exceptional nature, including trans-shipment, the goods cannot be transported within the validity period of the e-way bill, the transporter may extend the validity period after updating the details in Part B, if required. Transporter can extend the validity of the e-way bill, if the consignment is not being reached the destination within the validity period due to exceptional circumstance like natural calamity, law and order issues, trans-shipment delay, accident of conveyance, etc. He needs to explain this reason in details while extending the validity period. This option is available for extension of e-way bill before 8 hours and after 8 hours of expiry of the validity⁵ [Rule 138(12)].

(11) Acceptance of e-way bill

The details of the e-way bill generated shall be made available to the -

- (a) supplier, if registered, where the information in Part A has been furnished by the recipient/transporter; or
- (b) recipient, if registered, where the information in Part A has been furnished by the supplier/transporter,

on the common portal, and the supplier/recipient, as the case may be, shall communicate his acceptance or rejection of the consignment covered by the e-way bill [Rule 138(11)].


In case, the person to whom the information in Part-A is made available, does not communicate his acceptance or rejection within the specified time, it shall be deemed that he has accepted the said details. The time-limit specified for this purpose is:

- (i) 72 hours of the details being made available to him on the common portal
 - or
 - (ii) the time of delivery of goods,
- whichever is earlier.

⁵ As clarified by FAQs on E-way Bill web portal.

(12) E-way bill generated in one State is valid in another State

The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State or Union territory shall be valid in every State and Union territory [Rule 138(13)].

 Points to remember

1. E-way bill is not valid for movement of goods without vehicle number on it.
2. Once E-way bill is generated, it cannot be edited for any mistake. However, it can be cancelled within 24 hours of generation.
3. E- Way Bill may be updated with vehicle number any number of times.
4. The latest vehicle number should be available on e-way bill and should match with the vehicle carrying it in case checked by the department.

(13) Situations where E-way Bill is not required to be generated

Notwithstanding anything explained above, no e-way bill is required to be generated in the following cases:

- (a) where the goods being transported are the ones given below:

S. No.	Description of Goods
1.	Liquefied petroleum gas for supply to household and non-domestic exempted category (NDEC) customers
2.	Kerosene oil sold under PDS
3.	Postal baggage transported by Department of Posts
4.	Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71)
5.	Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71)
6.	Currency

7.	Used personal and household effects
8.	Coral, unworked (0508) and worked coral (9601)]

- (b) where the goods are being transported by a non-motorised conveyance
- (c) where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs
- (d) in respect of movement of goods within such areas as are notified under of rule 138(14)(d) of the State or Union territory GST Rules in that particular State or Union territory
- (e) where the goods [other than de-oiled cake], being transported, are exempt from tax vide Notification No. 2/2017 CT(R) dated 28.06.2017
- (f) where the goods being transported are alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas or aviation turbine fuel
- (g) where the supply of goods being transported is treated as no supply under Schedule III of the Act
- (h) where the goods are being transported -
 - (i) under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or
 - (ii) under customs supervision or under customs seal
- (i) where the goods being transported are transit cargo from or to Nepal or Bhutan
- (j) where the goods being transported are exempt from tax under Notification No. 7/2017 CT (R) 28.06.2017 [Supply of goods by the CSD to the Unit Run Canteens or to the authorized customers and supply of goods by the Unit Run Canteens to the authorized customers] and Notification No. 26/2017 CT (R) 21.09.2017 [Supply of heavy water and nuclear fuels by Department of Atomic Energy to Nuclear Power Corporation of India Ltd. (NPCIL)]

- (k) any movement of goods caused by defence formation under Ministry of defence as a consignor or consignee
- (l) where the consignor of goods is the Central Government, Government of any State or a local authority for transport of goods by rail
- (m) where empty cargo containers are being transported
- (n) where the goods are being transported upto a distance of 20 km from the place of the business of the consignor to a weighbridge for weightment or from the weighbridge back to the place of the business of the said consignor subject to the condition that the movement of goods is accompanied by a delivery challan issued in accordance with rule 55.
- (o) where empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply

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

The person-in-charge of a conveyance shall carry -

- (a) the invoice or bill of supply or delivery challan, as the case may be; and
- (b) a copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a RFID** embedded on to the conveyance [except in case of movement of goods by rail or by air or vessel] in such manner as may be notified by the Commissioner [Rule 138A(1)].

**RFIDs are Radio Frequency Identification Device used for identification.

Invoice Reference Number in lieu of tax invoice

A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in the prescribed form and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of 30 days from the date of uploading [Rule 138A(2)].

In such a case, the registered person will not have to upload the information in Part A of E-way bill for generation of e-way bill and the same shall be

auto-populated by the common portal on the basis of the information furnished in the prescribed form [Rule 138A(3)].

Documents in lieu of e-way bill

Where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill:

- (a) tax invoice or bill of supply⁶; or
- (b) a delivery challan, where the goods are transported for reasons other than by way of supply [Rule 138A(5)].

(15) Verification of documents and conveyances [Rule 138B]

The Commissioner or an officer empowered by him in this behalf may authorize the proper officer to intercept any conveyance to verify the e-way bill in physical or electronic form for all inter-State and intra-State movement of goods.

The Commissioner shall get RFID readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.

The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf.

However, on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any other officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

(16) Inspection and verification of goods [Rule 138C]

A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of a prescribed form within 24 hours of inspection and the final report in Part B of said form shall be recorded within 3 days of such inspection.

⁶ In case of import of goods, bill of entry needs to be carried in lieu of e-way bill. The concept of bill of entry for imported goods under customs will be discussed at Final Level.

However, where the circumstances so warrant, the Commissioner, or any other officer authorised by him, may, on sufficient cause being shown, extend the time for recording of the final report in Part B of said form, for a further period not exceeding 3 days. The period of 24 hours or, as the case may be, three days shall be counted from the midnight of the date on which the vehicle was intercepted.

Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State/Union territory or in any other State/Union territory, no further physical verification of the said conveyance shall be carried out again in the State/Union territory, unless a specific information relating to evasion of tax is made available subsequently.

(17) Facility for uploading information regarding detention of vehicle [Rule 138D]

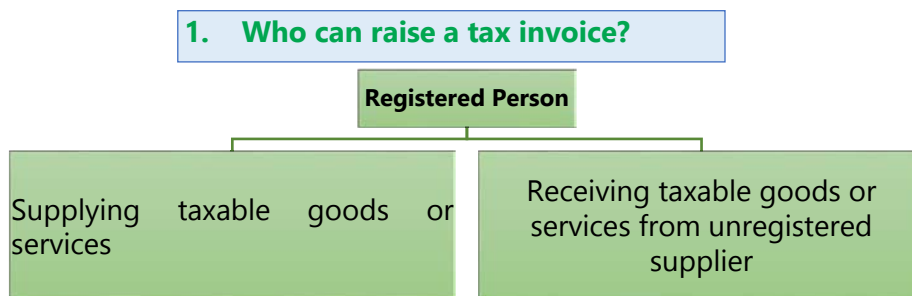
Where a vehicle has been intercepted and detained for a period exceeding 30 minutes, the transporter may upload the said information in **specified form** on the common portal.

- (18) It may be noted that the expressions 'transported by railways', 'transportation of goods by railways', 'transport of goods by rail' and 'movement of goods by rail' used in the provisions discussed above does not include cases where leasing of parcel space by Railways takes place.

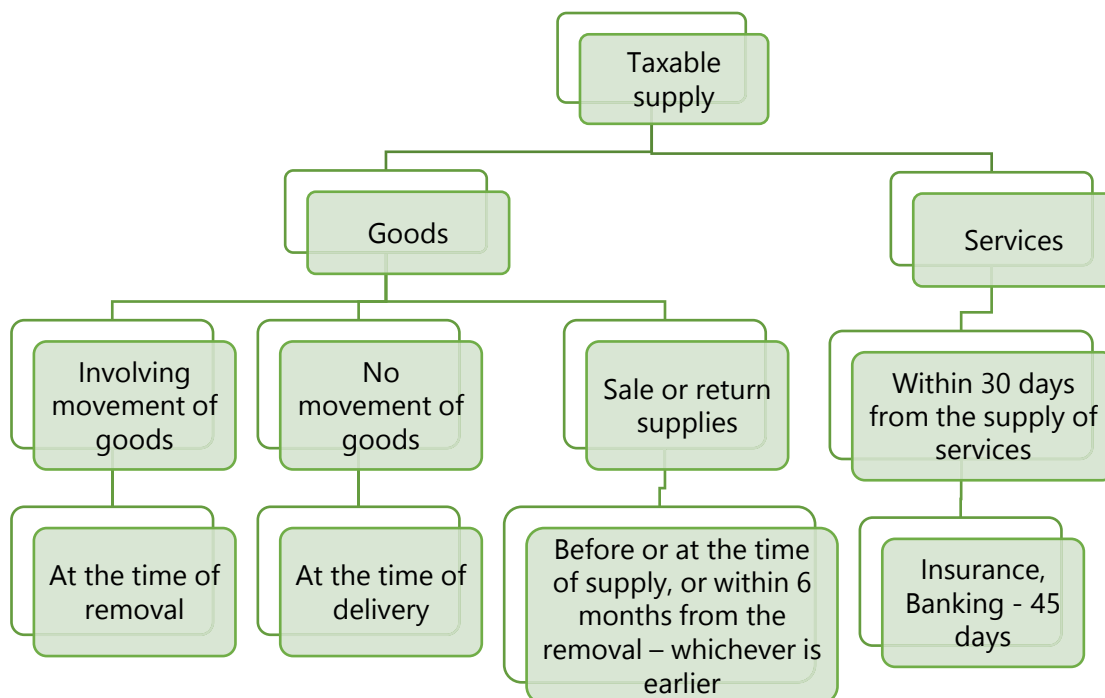
Tax invoice or bill of supply to accompany transport of goods [Rule 55A]

Person-in-charge of the conveyance shall carry a copy of the tax invoice or the bill of supply issued in accordance with the provisions of rules 46, 46A or 49 in a case where such person is not required to carry an e-way bill under these rules.

8. LET US RECAPITULATE



2. Time limit for issuance of invoice



In case of continuous supply of goods • before/at the time each successive statements of accounts is issued or each successive payment is received

In case of continuous supply of services

due date of payment is ascertainable from the contract	on/before due date of payment
not so ascertainable	before/at the time of receipt of payment
payment is linked to the completion of an event	on/before the date of completion of that event

3. Important contents of tax invoice

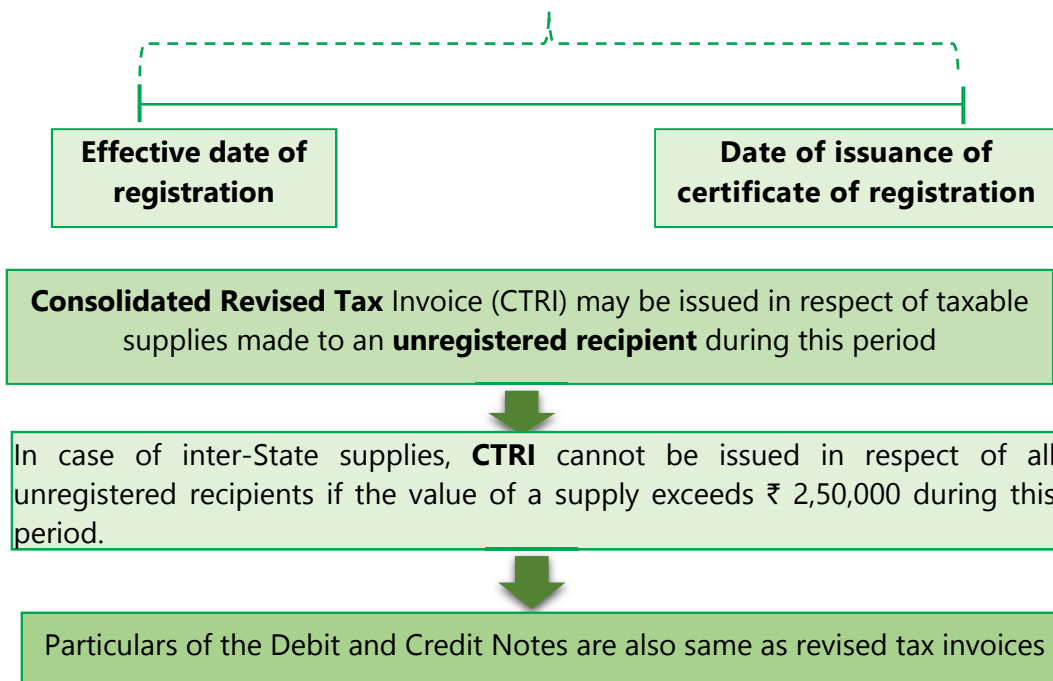
GSTIN of supplier	Consecutive Serial Number & date of issue	GSTIN of recipient, if registered	Name & address of recipient, if not registered
HSN	Description of goods or services	Quantity in case of goods	Total Value of supply
Taxable Value of supply	Tax rate – Central tax & State tax or Integrated tax, cess	Amount of tax charged	Place of supply
Address of delivery where different than place of supply		Tax payable on reverse charge basis	Signature of authorised signatory

4. Manner of issuing the invoice

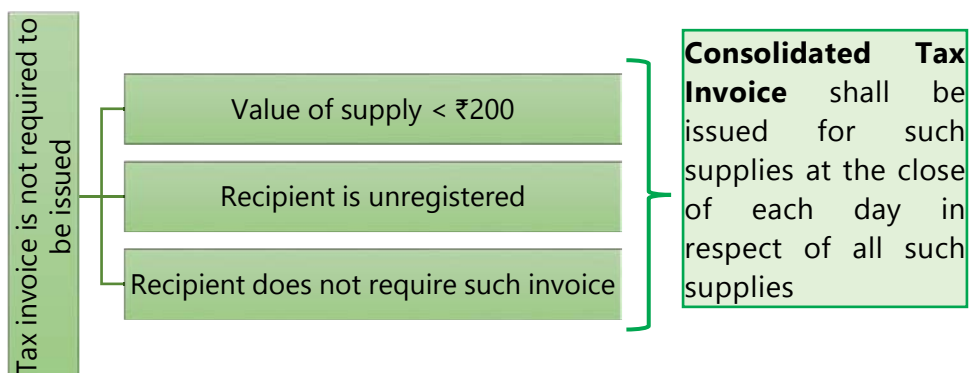
Supply of Goods	Supply of services
Triplicate	Duplicate
Original copy for recipient Duplicate copy for transporter; and Triplicate copy for supplier	Original copy for recipient; and Duplicate copy for supplier
The serial number of invoices issued during a month / quarter shall be furnished electronically in FORM GSTR-1.	

5. Revised Tax

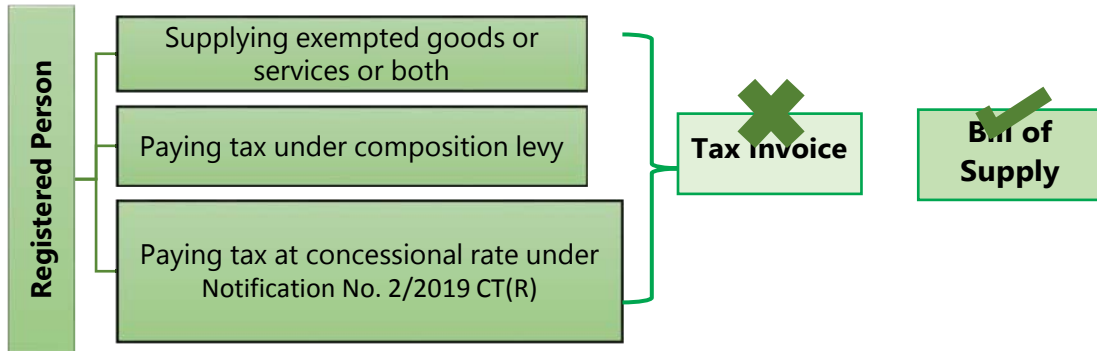
Revised Tax Invoices to be issued in respect of taxable supplies effected during this period



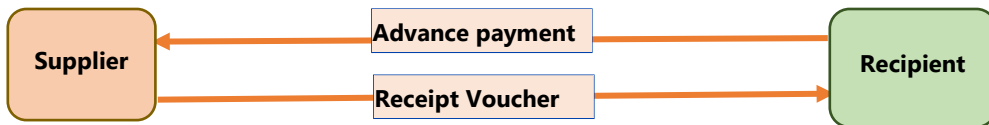
6. Consolidated Tax Invoice



7. Bill of Supply



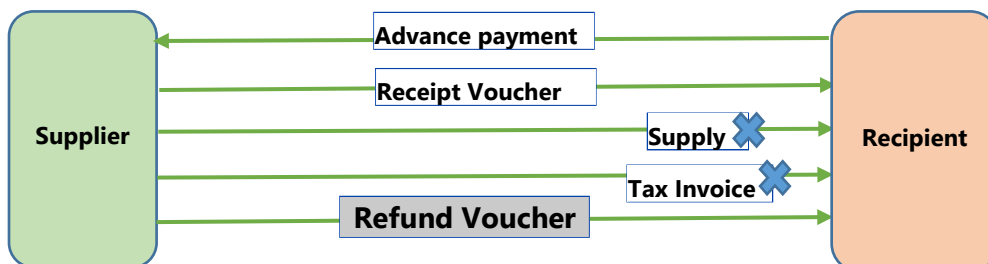
8. Receipt Voucher



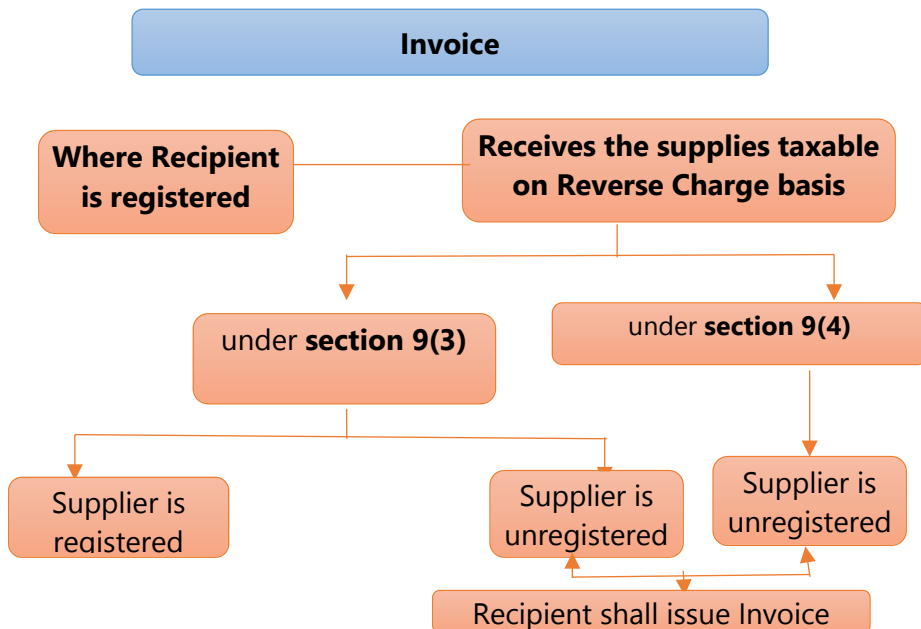
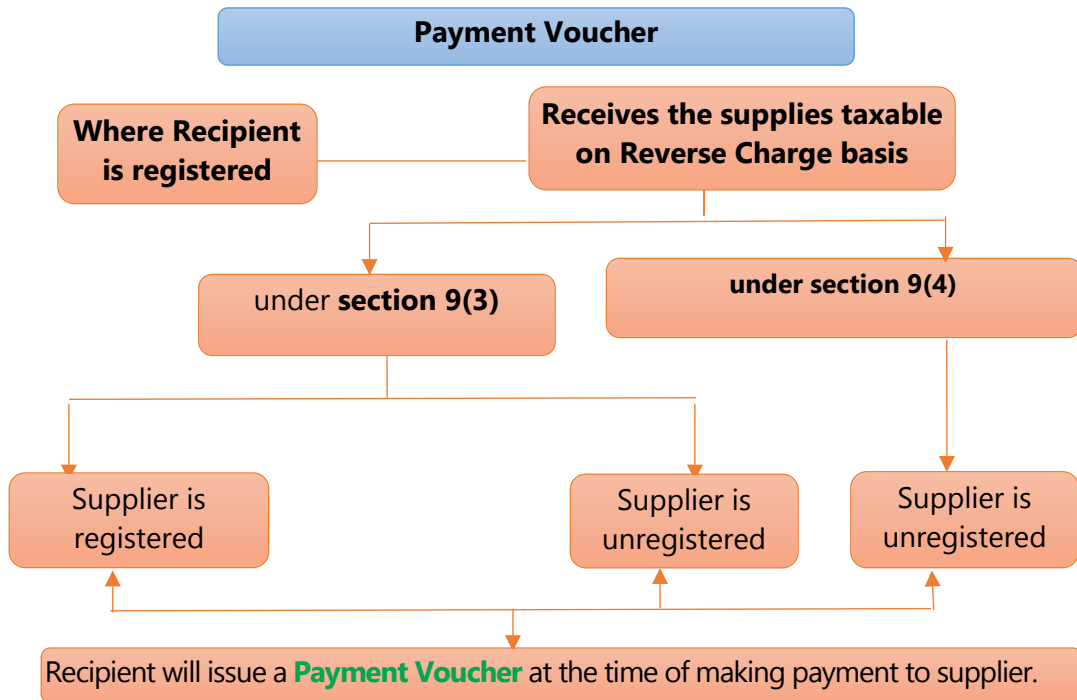
Where at the time of receipt of advance, rate of tax/ nature of supply is not determinable

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

9. Refund Voucher

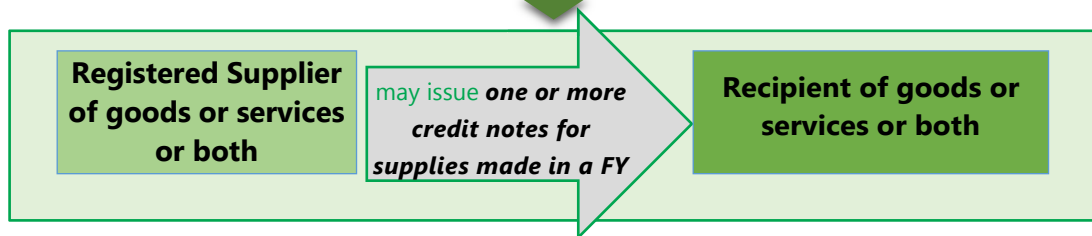
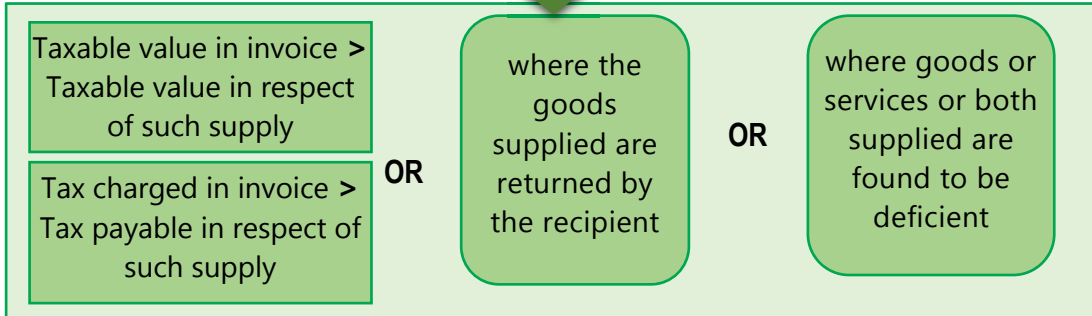


10. Invoice and Payment Vouchers to be issued by recipient of supply liable to pay tax under reverse charge



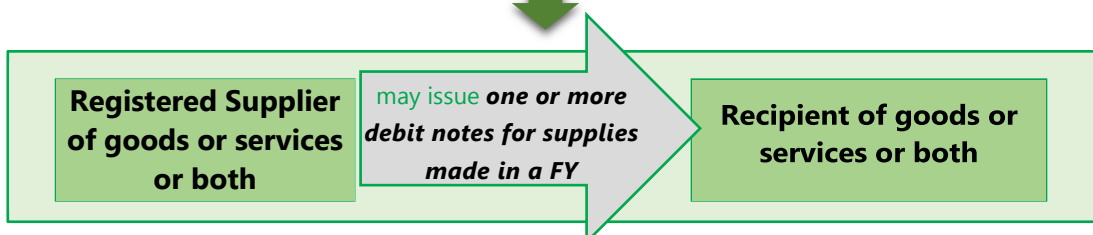
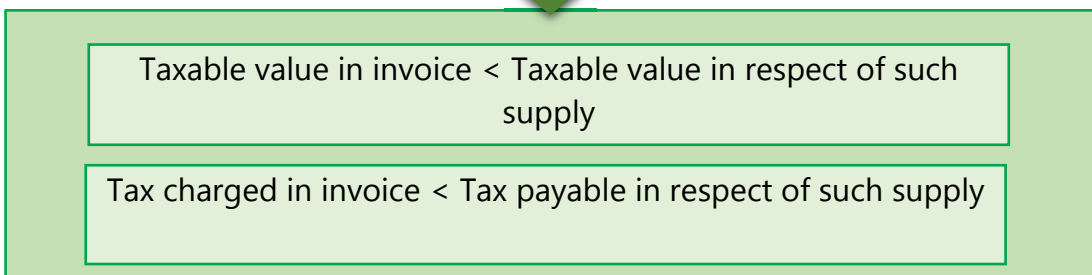
11. Credit Notes

Where **one or more tax invoices have** issued for supply of any goods or services or both



12. Debit Notes

Where **one or more tax invoices have** been issued for supply of any goods or services or both



13. E-Way Bill

<p>Meaning of e-way bill and why is it required?</p>	<p>E-way bill is an electronic document generated on the GST portal evidencing movement of goods.</p> <p>Section 68 mandates that the Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed. Rule 138 of CGST Rules, 2017 prescribes e-way bill as the document to be carried for the consignment of goods in certain prescribed cases.</p>
<p>When is required to be generated?</p>	<p>E-way Bill is mandatory in case of movement of goods of consignment value exceeding ₹ 50,000.</p> <p>Movement should be:</p> <ul style="list-style-type: none"> (i) in relation to a supply; or (ii) for reasons other than supply; or (iii) due to inward supply from an unregistered person, <p>Registered person causing movement of goods shall furnish the information relating to the said goods in Part A of Form GST EWB-01 before commencement of such movement.</p> <p>Exceptions to minimum consignment value of ₹ 50,000</p> <ul style="list-style-type: none"> <input type="checkbox"/> Inter-State transfer of goods by principal to job-worker <input type="checkbox"/> Inter-State transfer of handicraft goods by a person exempted from obtaining registration

<p>Who causes movement of goods?</p>	<p>If supplier is registered and undertakes to transport the goods, movement of goods is caused by the supplier. If recipient arranges transport, movement would be caused by him.</p> <p>If goods are supplied by an unregistered supplier to a registered known recipient, movement shall be caused by such recipient.</p>	
<p>Information to be furnished in e-way bill</p>	<p>Part A: to be furnished by the registered person** who is causing movement of goods.</p>	<p>Part B: to be furnished by the person who is transporting the goods.</p>
<p>**However, information in Part-A may be furnished:</p> <ul style="list-style-type: none"> <input type="checkbox"/> by the transporter if so authorised or <input type="checkbox"/> by the e-commerce operator/courier agency, where the goods are supplied through them. 		
<p>Who can generate the e-way bill?</p>	<p>E-way bill is to be generated by the registered consignor or consignee (if the transportation is being done in own/hired conveyance or by railways by air or by vessel) or the transporter (if the goods are handed over to a transporter for transportation by road). Where neither the consignor nor consignee generates the e-way bill and the value of goods is more than ₹ 50,000/- it shall be the responsibility of the transporter to generate it.</p>	
<p>Other points</p>	<ul style="list-style-type: none"> <input type="checkbox"/> Goods transported by railways shall be delivered only on production of e-way bill. <input type="checkbox"/> E-way bill can be generated even if consignment value is less than ` 50,000. 	

<p>Details of conveyance may not be furnished in Part-B</p>	<p>In case of intra-State movement of goods upto 50 km distance:</p> <ul style="list-style-type: none"> ❖ from place of business (PoB) of consignor to PoB of transporter for further transportation or ❖ from PoB of transporter finally to PoB of the consignee.
<p>Transfer of goods to another conveyance</p>	<p>In such cases, the transporter or generator of the e-way bill shall update the new vehicle number in Part B of the EWB before such transfer and further movement of goods.</p>
<p>Consolidated E-way Bill in case of road transport</p>	<p>After e-way bill has been generated, where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in Form GST EWB-02 may be generated by him on the said common portal prior to the movement of goods.</p> <p>Where the consignor/consignee has not generated the e-way bill in Form GST EWB-01 and the aggregate of the consignment value of goods carried in the conveyance is more than ₹ 50,000, the transporter shall generate individual Form GST EWB-01 on the basis of invoice or bill of supply or delivery challan and may also generate a consolidated e-way bill in Form GST EWB-02 prior to the movement of goods [This provision is not yet effective].</p>
<p>Cancellation of e-way bill</p>	<p>E-way bill can be cancelled if either goods are not transported or are not transported as per the details furnished in the e-way bill. The e-way bill can be cancelled within 24 hours from the time of generation.</p>

Validity period of e-way bill/consolidated e-way bill	Sl. No.	Distance within country	Validity period from relevant date
	1.	Upto 100 km	One day in cases other than Over Dimensional Cargo**
	2.	For every 100 km or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo
	3.	Upto 20 km	One day in case of Over Dimensional Cargo
	4.	For every 20 km or part thereof thereafter	One additional day in case of Over Dimensional Cargo
Acceptance/rejection of e-way bill	The person causing movement of goods shall generate the e-way bill specifying the details of other person as a recipient who can communicate the acceptance or rejection of such consignment specified in the e-way bill. If the acceptance or rejection is not communicated within 72 hours from the time of generation of e-way Bill or the time of delivery of goods whichever is earlier, it will be deemed that he has accepted the details.		
Is e-way bill required in all cases?	E-way bill is not required to be generated in certain specified cases. [Discussed in detail earlier in this chapter]		
Documents/ devices to be carried by a person-in-charge of a conveyance	<input type="checkbox"/> invoice or bill of supply or delivery challan <input type="checkbox"/> copy of the e-way bill in physical form or the e-way bill number in electronic form or mapped to a RFID** embedded on to the conveyance		
Verification of documents and	Commissioner or an officer empowered by him in this behalf may authorise the proper officer to intercept any		

<p>conveyances</p>	<p>conveyance to verify the e-way bill or the e-way bill number in physical form for all inter-State and intra-State movement of goods.</p> <p>Physical verification of a specific conveyance can also be carried out by any officer, on receipt of specific information on evasion of tax, after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.</p>
<p>Inspection and verification of goods</p>	<p>A summary report of every inspection of goods in transit shall be recorded online on the common portal by the proper officer within 24 hours of inspection and the final report shall be recorded within 3 days of such inspection.</p> <p>Once physical verification of goods being transported on any conveyance has been done during transit at one place within the State or in any other State, no further physical verification of the said conveyance shall be carried out again in the State, unless a specific information relating to evasion of tax is made available subsequently. Where a vehicle has been intercepted and detained for a period exceeding 30 minutes, the transporter may upload the said information in on the common portal.</p>



9. TEST YOUR KNOWLEDGE

1. In case of taxable supply of services, invoice shall be issued within a period of _____ from the date of supply of service.
 - (a) 30 days
 - (b) 45 days
 - (c) 60 days
 - (d) 90 days

2. *In case of taxable supply of services by an insurer, invoice shall be issued within a period of _____ from the date of supply of service.*
 - (a) 30 days
 - (b) 45 days
 - (c) 60 days
 - (d) 90 days
3. *In case of continuous supply of services, where due date of payment is ascertainable from the contract, invoice shall be issued:*
 - (a) before or at the time when the supplier of service receives the payment
 - (b) on or before the due date of payment
 - (c) Either (a) or (b)
 - (d) None of the above
4. *In case of continuous supply of services, where due date of payment is not ascertainable from the contract, invoice shall be issued:*
 - (a) before or at the time when the supplier of service receives the payment
 - (b) on or before the due date of payment
 - (c) Either (a) or (b)
 - (d) None of the above
5. *Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued:*
 - (a) before/at the time of supply
 - (b) 6 months from the date of removal
 - (c) Earlier of (a) or (b)
 - (d) None of the above
6. *Sultan Industries Ltd., Delhi, entered into a contract with Prakash Entrepreneurs, Delhi, for supply of spare parts of a machine on 7th September. The spare parts were to be delivered on 30th September. Sultan Industries Ltd. removed the finished spare parts from its factory on 29th September. Determine the date by which invoice must be issued by Sultan Industries Ltd. under GST law.*

7. *MBM Caretakers, a registered person, provides the services of repair and maintenance of electrical appliances. On April 1, it has entered into an annual maintenance contract with P for its Air Conditioner and Washing Machine. As per the terms of contract, maintenance services will be provided on the first day of each quarter of the relevant financial year and payment for the same will also be due on the date on which service is rendered. During the year, it provided the services on April 1, July 1, October 1, and January 1 in accordance with the terms of contract. When should MBM Caretakers issue the invoice for the services rendered?*
8. *The aggregate turnover of Sangri Services Ltd., Delhi, exceeded ₹ 20 lakh on 12th August. He applied for registration on 3rd September and was granted the registration certificate on 6th September. You are required to advise Sangri Services Ltd. as to what is the effective date of registration in its case. It has also sought your advice regarding period for issuance of Revised Tax Invoices.*
9. *Shyam Fabrics has opted for composition levy scheme in the current financial year. It has approached you for advice whether it is mandatory for it to issue a tax invoice. You are required to advise him regarding same.*
10. *Discuss the provisions relating to issuance of refund voucher under CGST Act and rules thereunder.*
11. *Is a registered person liable to pay tax under reverse charge under section 9(3)/9(4) of the CGST Act required to issue an invoice? Discuss the relevant provisions under CGST Act and rules thereunder.*
12. *Discuss the provisions relating to issuance of credit and debit notes under CGST Act and rules thereunder.*
13. *What is the time period within which invoice has to be issued for supply of services?*
14. *What is the time period within which invoice has to be issued in a case involving continuous supply of goods?*
15. *What is the time period within which invoice has to be issued in a case involving continuous supply of services?*
16. *What is the time period within which invoice has to be issued where the goods being sent or taken on approval for sale?*



10. ANSWERS/HINTS

1. (a) 2. (b) 3. (b) 4. (a) 5. (c)

6. As per the provisions of section 31, invoice shall be issued before or at the time of removal of goods for supply to the recipient, where the supply involves movement of goods. Accordingly, in the given case, the invoice must be issued on or before 29th September.

7. Continuous supply of service means, *inter alia*, supply of any service which is provided, or agreed to be provided continuously or on recurrent basis, under a contract, for a period exceeding 3 months with the periodic payment obligations.

Therefore, the given situation is a case of continuous supply of service as repair and maintenance services have been provided by MBM Caretakers on a quarterly basis, under a contract, for a period of one year with the obligation for quarterly payment.

In terms of section 31, in case of continuous supply of service, where due date of payment is ascertainable from the contract (as in the given case), invoice shall be issued on or before the due date of payment.

Therefore, in the given case, MBM Caretakers should issue quarterly invoices on or before April 1, July 1, October 1, and January 1.

8. As per section 25 read with CGST Rules, 2017, where an applicant submits application for registration within 30 days from the date he becomes liable to registration, effective date of registration is the date on which he becomes liable to registration. Since, Sangri Services Ltd.'s turnover exceeded ₹ 20 lakh on 12th August, it became liable to registration on same day. Further, it applied for registration within 30 days of so becoming liable to registration, the effective date of registration is the date on which he becomes liable to registration, i.e. 12th August.

As per section 31 read with CGST Rules, 2017, every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue Revised Tax Invoices. Revised Tax Invoices shall be issued within 1 month from the date of issuance of certificate of registration. Revised Tax Invoices shall be issued within 1 month from the date of issuance of registration in respect of

taxable supplies effected during the period starting from the effective date of registration till the date of issuance of certificate of registration.

Therefore, in the given case, Sangri Services Ltd. has to issue the Revised Tax Invoices in respect of taxable supplies effected during the period starting from the effective date of registration (12th August) till the date of issuance of certificate of registration (6th September) within 1 month from the date of issuance of certificate of registration, i.e. on or before 6th October.

9. A registered person paying tax under the provisions of section 10 [composition levy] shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed [Section 31(3)(c) read with CGST Rules, 2017].

Therefore, in the given case, Shyam Fabrics cannot issue tax invoice. Instead, it shall issue a Bill of Supply.

10. *Refer Para 3.*

11. *Refer Para 3.*

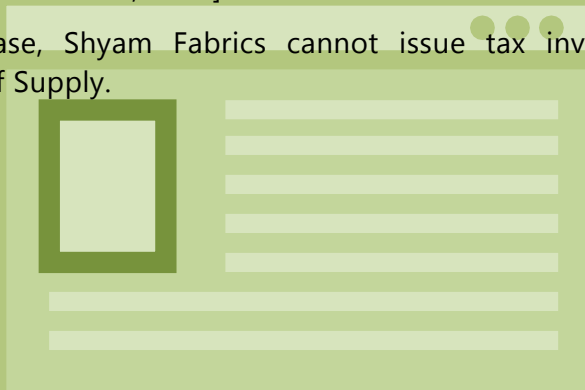
12. *Refer Para 4.*

13. *Refer Para 3.*

14. *Refer Para 3.*

15. *Refer Para 3.*

16. *Refer Para 3.*



AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has become effective from 01.08.2019. However, the amendments made in the CGST Act and IGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2020 and/or November 2020 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the new provisions relating to Tax invoice as proposed by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the provisions given hereunder in place of the related provisions discussed in the Chapter.

Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
	<p style="text-align: center;"><u>New section 31A inserted</u></p> <p>The Government may, on the recommendations of the Council, prescribe a class of registered persons who shall provide prescribed modes of electronic payment to the recipient of supply of goods or services or both made by him and give option to such recipient to make payment accordingly, in such manner and subject to such conditions and restrictions, as may be prescribed</p>	<p>A new section 31A is being inserted in the CGST Act so that specified suppliers shall have to mandatorily give the option of specified modes of electronic payment to their recipients.</p>

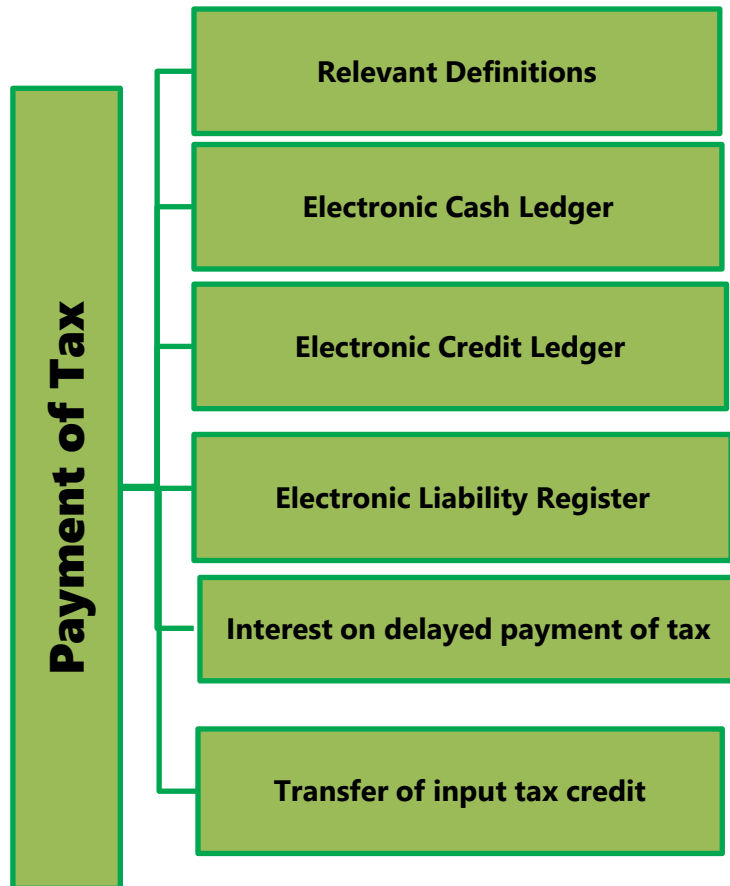
PAYMENT OF TAX



LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- ❑ describe three kinds of ledgers/register to be maintained by the taxable person-electronic cash ledger, electronic credit ledger and electronic liability register.
- ❑ understand the methodology of cross utilization of credit.
- ❑ comprehend and apply the chronological order in which the liability of a taxable person has to be discharged.
- ❑ identify and analyse the circumstances in which penal interest is levied.
- ❑ procedure for transfer of input tax credit between Central and State Government

CHAPTER OVERVIEW  **1. INTRODUCTION**

In the GST regime, for any intra-state supply, taxes to be paid are the Central GST (CGST), going into the account of the Central Government and the State GST(SGST)/UTGST, going into the account of the concerned State Government. For any inter-state supply, tax to be paid is Integrated GST (IGST) which will have components of both CGST and SGST. In addition, certain categories of registered persons will be required to pay to the government account Tax Deducted at Source (TDS) and Tax



Collected at Source (TCS)¹. In addition, wherever applicable, interest, penalty, fees and any other payment will also be required to be made.

The introduction of E-ledgers is a unique feature under the GST regime. Electronic Ledgers or E-Ledgers are statements of cash and input tax credit in respect of each registered taxpayer. In addition, each taxpayer shall also have an electronic tax liability register. Once a taxpayer is registered on common portal (GSTN), two e-ledgers (Cash & Input Tax Credit ledger) and an electronic tax liability register will be automatically opened and displayed on his dash board at all times.

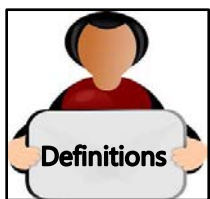
Chapter X of the CGST Act prescribes the provisions relating to payment of tax containing sections 49 to 53. While section 49 discusses the three ledgers namely the electronic cash ledger, electronic credit ledger and electronic liability register, section 50 discusses about the interest on delayed payment of tax. Section 51 lays down the circumstances in which tax deduction at source (TDS) becomes mandatory. Section 52 deals with the circumstances when tax is to be collected at source (TCS) by the Electronic Commerce Operator. Further, the manner of transfer of ITC is laid down in section 53.

Chapter IX of CGST Rules deals with provisions relating to payment of tax.

Provisions of payment of tax under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

Before proceeding to understand the provisions of section 49, 50,53 & the relevant rules, let us first go through few relevant definitions.

2. RELEVANT DEFINITIONS



✔ **Agent** means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever

¹ It may be noted that sections 51 & 52 dealing with provisions relating to TDS & TCS will be dealt in detail at the Final Level.

name called, who carries on the business of supply or receipt of goods or services or both on behalf of another [Section 2(5)].

✔ **Authorised bank** shall mean a bank or a branch of a bank authorised by the Government to collect the tax or any other amount payable under this Act [Section 2(14)].

✔ **Business** includes

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) ***activities of a race club including by way of totalisator or a license to bookmaker or activities of a licensed bookmaker in such club; and***
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities [Section 2(17)].

✔ **Central Tax** means the central goods and services tax levied under Section 9 [Section 2(21)].

✔ **Common portal** means the common goods and services tax electronic portal referred to in section 146 [Section 2(26)].

- ◆ **Council** means the Goods and Services Tax Council established under article 279A of the Constitution [Section 2(36)].
- ◆ **Electronic Cash ledger** means the electronic cash ledger referred to in sub-section (1) of Section 49 [Section 2(43)].
- ◆ **Electronic Credit ledger** means the electronic credit ledger referred to in sub-section (2) of section 49 [Section 2(46)].
- ◆ **Integrated tax** means the integrated goods and services tax levied under the Integrated Goods and Services Tax Act [Section 2(58)].
- ◆ **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—
 - ✓ the integrated goods and services tax charged on import of goods;
 - ✓ the tax payable under the provisions of sub-sections (3) and (4) of section 9;
 - ✓ the tax payable under the provisions of sub-section (3) and (4) of section 5 of the IGST Act;
 - ✓ the tax payable under the provisions of sub-section (3) and sub-section (4) of section 9 of the respective State Goods and Services Tax Act; or
 - ✓ the tax payable under the provisions of sub-section (3) and sub-section (4) of section 7 of the Union Territory Goods and Services Tax Act,but does not include the tax paid under the composition levy [Section 2(62)].
- ◆ **Input Tax Credit** means the credit of input tax [Section 2(63)].
- ◆ **local authority** means-
 - ✓ a "Panchayat" as defined in clause (d) of article 243 of the Constitution;
 - ✓ a "Municipality" as defined in clause (e) of article 243P of the Constitution;
 - ✓ a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
 - ✓ a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

- ✓ a Regional Council or District Council constituted under the Sixth Schedule to the Constitution;
- ✓ a Development Board constituted under article 371 **and article 371J** of the Constitution; or
- ✓ a Regional Council constituted under article 371A of the Constitution. [Section 2(69)].

📌 **Notification** means a notification published in the Official Gazette and the expression “notify” and “notified” shall be construed accordingly [Section 2(80)].

📌 **Output tax** in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis [Section 2(82)].

📌 **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 [Section 2(84)].

❖ **Recipient** of supply of goods or services or both, means—

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].

❖ **State Tax** means the tax levied under any State Goods and Services Tax Act [Section 2(104)].

❖ **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].


❖ **Taxable person** means a person who is registered or liable to be registered under Section 22 or section 24 [Section 2(107)].

❖ **Valid return** means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full [Section 2(117)].

After going through the various definitions relevant to this Chapter, let us discuss the provisions of Chapter X of the CGST Act.



3. PAYMENT OF TAX, INTEREST, PENALTY AND OTHER AMOUNTS [SECTION 49]

		STATUTORY PROVISIONS
Section 49		Payment of tax, interest, penalty and other amounts
Sub-Section	Clause	Particulars
(1)		<i>Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.</i>
(2)		<i>The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.</i>
(3)		<i>The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made there under in such manner and subject to such conditions and within such time as may be prescribed.</i>
(4)		<i>The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.</i>
(5)		<i>The amount of input tax credit available in the electronic credit ledger of the registered person on account of—</i>

	(a)	<i>integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;</i>
	(b)	<i>the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;</i>
	(c)	<i>the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;</i> <i>Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;</i>
	(d)	<i>the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;</i> <i>Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax</i>
	(e)	<i>the central tax shall not be utilised towards payment of State tax or Union territory tax; and</i>
	(f)	<i>the State tax or Union territory tax shall not be utilised towards payment of central tax.</i>
(6)		<i>The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.</i>

(7)	<i>All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.</i>								
(8)	<p><i>Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:—</i></p> <p>—</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; vertical-align: top;"><i>(a)</i></td> <td><i>self-assessed tax, and other dues related to returns of previous tax periods;</i></td> </tr> <tr> <td style="text-align: center; vertical-align: top;"><i>(b)</i></td> <td><i>self-assessed tax, and other dues related to the return of the current tax period;</i></td> </tr> <tr> <td style="text-align: center; vertical-align: top;"><i>(c)</i></td> <td><i>any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74;</i></td> </tr> </table>	<i>(a)</i>	<i>self-assessed tax, and other dues related to returns of previous tax periods;</i>	<i>(b)</i>	<i>self-assessed tax, and other dues related to the return of the current tax period;</i>	<i>(c)</i>	<i>any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74;</i>		
<i>(a)</i>	<i>self-assessed tax, and other dues related to returns of previous tax periods;</i>								
<i>(b)</i>	<i>self-assessed tax, and other dues related to the return of the current tax period;</i>								
<i>(c)</i>	<i>any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74;</i>								
(9)	<i>Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.</i>								
Explanation.—For the purposes of this section,—									
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center; vertical-align: top;"><i>(a)</i></td> <td><i>the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;</i></td> </tr> <tr> <td style="text-align: center; vertical-align: top;"><i>(b)</i></td> <td><i>the expression,—</i></td> </tr> <tr> <td style="text-align: center; vertical-align: top;"><i>(i)</i></td> <td><i>“tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and</i></td> </tr> <tr> <td style="text-align: center; vertical-align: top;"><i>(ii)</i></td> <td><i>“other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made there under.</i></td> </tr> </table>	<i>(a)</i>	<i>the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;</i>	<i>(b)</i>	<i>the expression,—</i>	<i>(i)</i>	<i>“tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and</i>	<i>(ii)</i>	<i>“other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made there under.</i>
<i>(a)</i>	<i>the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;</i>								
<i>(b)</i>	<i>the expression,—</i>								
<i>(i)</i>	<i>“tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and</i>								
<i>(ii)</i>	<i>“other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made there under.</i>								

Chapter IX: Payment of Tax of the CGST Rules	
Rule 85	Electronic Liability Register
(1)	<i>The electronic liability register specified under sub- section (7) of section 49 shall be maintained in FORM GST PMT-01 for each person liable to pay tax, interest, penalty, late fee or any other amount on the common portal and all amounts payable by him shall be debited to the said register.</i>
(2)	<p><i>The electronic liability register of the person shall be debited by:-</i></p> <p>(a) <i>the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person;</i></p> <p>(b) <i>the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person;</i></p> <p>(c) <i>the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or</i></p> <p>(d) <i>any amount of interest that may accrue from time to time.</i></p>
(3)	<i>Subject to the provisions of section 49, section 49A and section 49B, payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained as per rule 86 or the electronic cash ledger maintained as per rule 87 and the electronic liability register shall be credited accordingly.</i>
(4)	<i>The amount deducted under section 51, or the amount collected under section 52, or the amount payable on reverse charge basis, or the amount payable under section 10, any amount payable towards interest, penalty, fee or any other amount under the Act shall be paid by debiting the electronic cash ledger maintained as</i>

	<i>per rule 87 and the electronic liability register shall be credited accordingly.</i>
(5)	<i>Any amount of demand debited in the electronic liability register shall stand reduced to the extent of relief given by the appellate authority or Appellate Tribunal or court and the electronic tax liability register shall be credited accordingly.</i>
(6)	<i>The amount of penalty imposed or liable to be imposed shall stand reduced partly or fully, as the case may be, if the taxable person makes the payment of tax, interest and penalty specified in the show cause notice or demand order and the electronic liability register shall be credited accordingly.</i>
(7)	<i>A registered person shall, upon noticing any discrepancy in his electronic liability ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04.</i>
Rule 86	Electronic Credit Ledger
(1)	<i>The electronic credit ledger shall be maintained in FORM GST PMT-02 for each registered person eligible for input tax credit under the Act on the common portal and every claim of input tax credit under the Act shall be credited to the said ledger.</i>
(2)	<i>The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with the provisions of section 49 or section 49A or section 49B.</i>
(3)	<i>Where a registered person has claimed refund of any unutilized amount from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.</i>
(4)	<i>If the refund so filed is rejected, either fully or partly, the amount debited under sub- rule (3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.</i>

(5)	Save as provided in the provisions of this Chapter, no entry shall be made directly in the electronic credit ledger under any circumstance.
(6)	A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04 .
Explanation	For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.
Rule 87	Electronic Cash Ledger
(1)	The electronic cash ledger under sub-section (1) of section 49 shall be maintained in FORM GST PMT-05 for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the common portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.
(2)	Any person, or a person on his behalf, shall generate a challan in FORM GST PMT-06 on the common portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount.
	Provided that the challan in FORM GST PMT-06 generated at the common portal shall be valid for a period of fifteen days.
	Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 may also do so through the Board's payment system namely, Electronic Accounting System in Excise and Service Tax from the date to be notified by the Board.

(3)	<p><i>The deposit under sub-rule (2) shall be made through any of the following modes, namely:-</i></p>
<i>(i)</i>	<i>Internet Banking through authorised banks;</i>
<i>(ii)</i>	<i>Credit card or Debit card through the authorised bank;</i>
<i>(iii)</i>	<i>National Electronic Fund Transfer or Real Time Gross Settlement from any bank; or</i>
<i>(iv)</i>	<i>Over the Counter payment through authorised banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft:</i>
<p><i>Provided that the restriction for deposit up to ten thousand rupees per challan in case of an Over the Counter payment shall not apply to deposit to be made by –</i></p>	
<i>(a)</i>	<i>Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;</i>
<i>(b)</i>	<i>Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;</i>
<i>(c)</i>	<i>Proper officer or any other officer authorised for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any ad hoc deposit:</i>
<p><i>Provided further that a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 may also make the deposit under sub-rule (2) through international money transfer through Society for Worldwide Interbank Financial Telecommunication payment network, from the date to be notified by the Board.</i></p>	

Explanation	For the purposes of this sub-rule, it is hereby clarified that for making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the person making such payment.
(4)	Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the common portal.
(5)	<p>Where the payment is made by way of National Electronic Fund Transfer or Real Time Gross Settlement mode from any bank, the mandate form shall be generated along with the challan on the common portal and the same shall be submitted to the bank from where the payment is to be made:</p> <p>Provided that the mandate form shall be valid for a period of fifteen days from the date of generation of challan.</p>
(6)	On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number shall be generated by the collecting bank and the same shall be indicated in the challan.
(7)	On receipt of the Challan Identification Number from the collecting bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the common portal shall make available a receipt to this effect.
(8)	Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number is generated or generated but not communicated to the common portal, the said person may represent electronically in FORM GST PMT-07 through the common portal to the bank or electronic gateway through which the deposit was initiated.
(9)	Any amount deducted under section 51 or collected under section 52 and claimed in FORM GSTR-02 by the registered taxable person from whom the said amount was deducted or, as the case may be,

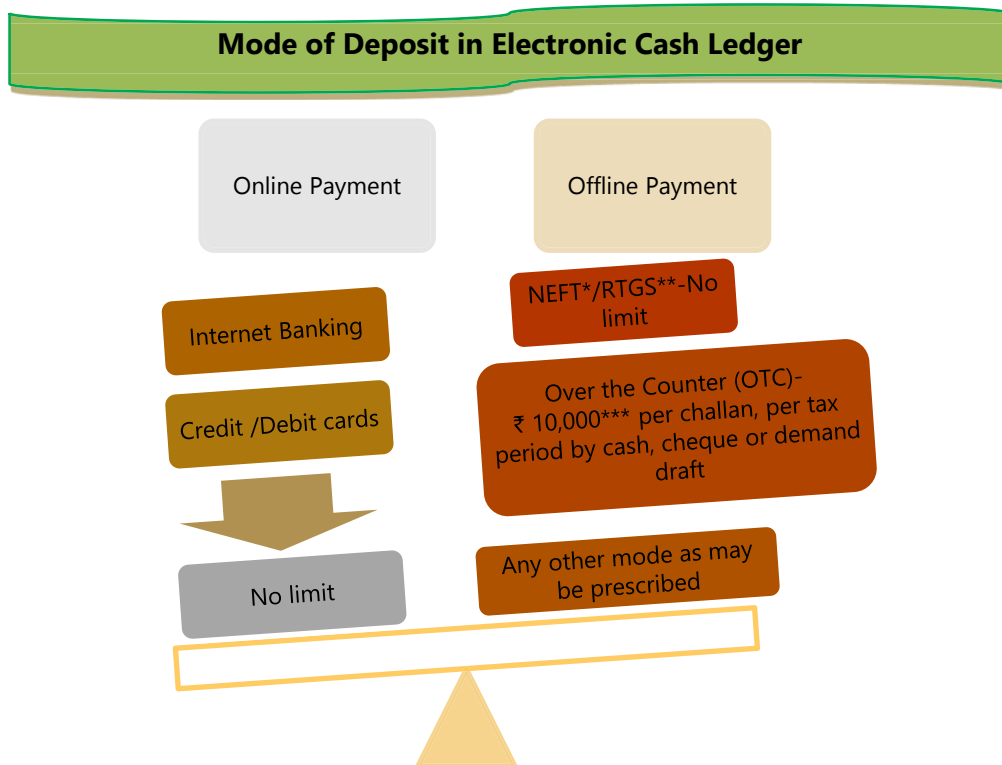
	collected shall be credited to his electronic cash ledger in accordance with the provisions of rule 87.
(10)	Where a person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger.
(11)	If the refund so claimed is rejected, either fully or partly, the amount debited under sub-rule (10), to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in FORM GST PMT-03 .
(12)	A registered person shall, upon noticing any discrepancy in his electronic cash ledger, communicate the same to the officer exercising jurisdiction in the matter, through the common portal in FORM GST PMT-04 .
Explanation 1	The refund shall be deemed to be rejected if the appeal is finally rejected.
Explanation 2	For the purposes of this rule, it is hereby clarified that a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.
Rule 88	Identification number for each transaction
(1)	A unique identification number shall be generated at the common portal for each debit or credit to the electronic cash or credit ledger, as the case may be.
(2)	The unique identification number relating to discharge of any liability shall be indicated in the corresponding entry in the electronic liability register.
(3)	A unique identification number shall be generated at the common portal for each credit in the electronic liability register for reasons other than those covered under sub-rule (2).



ANALYSIS

A. ELECTRONIC CASH LEDGER [SECTION 49(1) & (3) READ WITH RULE 87 OF CGST RULES]

The Electronic Cash Ledger contains a summary of all the deposits/payments made by a taxpayer. Electronic Cash Ledger is maintained on the GST Portal. The Electronic Cash Ledger has to be maintained in prescribed form on the common portal by a person liable to pay tax.



*NEFT stands for National Electronic Fund Transfer.

**RTGS stands for Real Time Gross Settlement.

***any amount as per FAQs on "offline payments: over the counter" web-hosted on <https://www.gst.gov.in>.

Non-applicability of Over the Counter payment limit on deposits to be made by

Proper officer or any other officer authorized

Government Departments

to recover outstanding dues including attachment proceedings or sale of moveable/ immoveable properties

to collect the amount by way of cash/cheque/demand draft during any investigation/enforcement activity /any ad hoc deposit

Persons notified by Commissioner

Payment by Challan



What are CPIN, CIN, BRN and E-FPB?



CPIN stands for Common portal Identification Number. It is created for every Challan successfully generated by the taxpayer. It is a 14-digit unique number to identify the challan. CPIN remains valid for a period of 15 days.



CIN or Challan Identification Number is generated by the banks, once payment in lieu of a generated Challan is successful. It is a 17-digit number that is 14-digit CPIN plus 3-digit Bank Code.

CIN is generated by the authorized banks/Reserve Bank of India (RBI) when payment is actually received by such authorized banks or RBI and credited in the relevant government account held with them. It is an indication that the payment has been realized and credited to the appropriate government account. CIN is communicated by the authorized bank to taxpayer as well as to GSTN.



BRN or Bank Reference Number is the transaction number given by the bank for a payment against a Challan



E-FPB stands for Electronic Focal Point Branch. These are branches of authorized banks which are authorized to collect payment of GST. Each authorized bank will nominate only one branch as its E-FPB for PAN India transaction.

The E-FPB will have to open accounts under each major head for all governments. Any amount received by such E-FPB towards GST will be credited to the appropriate account held by such E-FPB. For NEFT/RTGS Transactions, RBI will act as E-FPB.



Are manual Challans applicable as allowed earlier under the VAT regimes?



Manual or physical Challans are not allowed under the GST regime. It is mandatory to generate Challans online on the GST Portal.



How many types of Challans are prescribed for various taxes and payments to be paid under the GST regime?



There is single Challan prescribed for all taxes, fees, penalty, interest, and other payments to be made under the GST regime.

Other Aspects relating to Challan



E- challan validity is for 15 days. The commission for making payment through e-challan has to be borne by the person making the payment.



Any unregistered person has to make payment on the basis of temporary identification number generated through common portal.

**Validity of
challan-15 days**



The mandate form obtained after making NEFT/RTGS payment has to be submitted in the Bank. The validity of the mandate form is 15 days.



On successful credit of amount in the concerned (Central/State) Government Account maintained in the authorized bank, a Challan Identification Number (CIN) will be generated by the collecting bank which will be indicated in the challan.



The 'deposit' made by one of the modes and in the prescribed manner will be credited to the Electronic Cash Ledger of the taxable person.





On receipt of the CIN from the collecting bank, the said amount is credited into the electronic cash ledger of the person on whose behalf the deposit is made and the common portal will generate a receipt to this effect.



If CIN is not generated even after making payment and submission of mandate form or when after generation, it has not reflected in the common portal, the person making the deposit or the person on whose behalf the deposit has been made, can make a representation in prescribed form

through the common portal or e-gateway through which the payment has been made.

-  Date of credit into the treasury of the State Government/Central Government is deemed to be the date of deposit and not the actual date of debit to the amount of the taxable person.
-  In case any discrepancy is noticed in electronic cash ledger, the registered person shall communicate the same to the officer exercising jurisdiction in the matter, through the common portal in prescribed form.

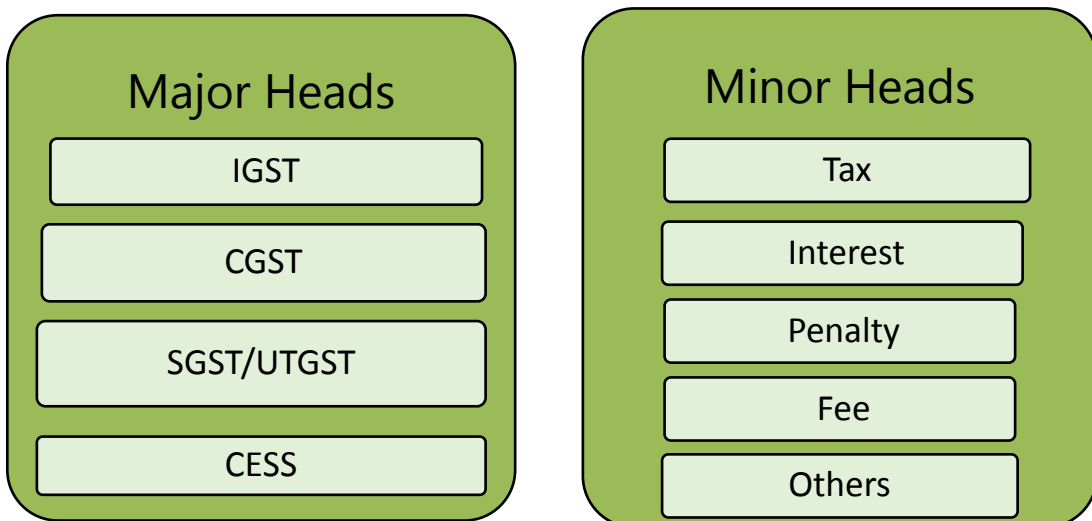
Manner of utilization of amount reflected in Electronic Cash Ledger

Sub-section 3 of section 49 of the CGST Act lays down the following:

The amount reflected in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fee, or any other amount in the prescribed manner.

In the ledger, information is kept minor head-wise for each major head. The ledger is displayed major head-wise i.e., IGST, CGST, SGST/UTGST, and CESS. Each major head is divided into five minor heads: Tax, Interest, Penalty, Fee, and Others.

A registered taxpayer can make cash deposits in the recognized Banks through the prescribed modes to the Electronic Cash Ledger using any of the Online or Offline modes permitted by the GST Portal. The Cash deposits can be used for making payment(s) like tax liability, interest, penalties, fee, and others.



B. ELECTRONIC CREDIT LEDGER [SECTION 49(2),(4) &(5), SECTION 49A, SECTION 49B READ WITH RULE 86 AND RULE 88A OF CGST RULES]

Sub-section (2) of section 49 of the CGST Act provides that the self-assessed **input tax credit (ITC)** by a registered person shall be credited to its Electronic Credit Ledger or **Electronic Input Tax Credit Ledger**. This is to be maintained in the prescribed form.

Input Tax Credit as self-assessed in monthly returns will be reflected in the ITC Ledger. The credit in this ledger can be used to make payment of ONLY TAX and not other amounts such as interest, penalty, fees etc.


Non-utilisation of ITC for tax liability under reverse charge mechanism

The amount available in the electronic credit ledger may be used for making any payment towards output tax under CGST or IGST. It is pertinent to note that "output tax" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods and/or services made by him or by his agent but excludes tax payable by him on reverse charge basis. Thus, ITC cannot be utilised for tax payable under reverse charge mechanism.

Manner of utilisation of ITC [Combined reading of section 49(5), 49A, 49B, rule 88A and Circular No. 98/17/2019 GST dated 23.04.2019]²


 **Available IGST credit in the credit ledger should first be utilized towards payment of IGST.**

- ✓ **Remaining amount if any, can be utilized towards the payment of CGST and SGST/UTGST in any order and in any proportion, i.e. ITC of IGST can be utilized either against CGST or SGST.**

 **Entire ITC of IGST is to be fully utilised first before the ITC of CGST or SGST/UTGST can be utilized.**

 Available CGST Credit in the credit ledger shall first be utilized for payment of CGST.

- ✓ Remaining amount if any, will be utilized for payment of IGST

 Available SGST /UTGST credit in the credit ledger shall first be utilized for payment of SGST/UTGST.

² The detailed provisions have already been discussed in Chapter-6: "Input tax credit".

- ✓ Remaining amount if any, will be utilized for payment of IGST, **only when credit of CGST is not available for payment of IGST**



CGST credit cannot be utilized for payment of SGST/UTGST. Similarly, SGST/UTGST credit cannot be utilized for payment of CGST.

Common Points for Electronic Cash & Credit Ledger



Where a person has claimed refund of any amount from the electronic cash or credit ledger, the said amount shall be debited to the electronic cash or credit ledger



If the refund so claimed is rejected, either fully or partly, the amount debited earlier, to the extent of rejection, shall be credited to the electronic cash or credit ledger by the proper officer by an order made in prescribed form

C. ELECTRONIC LIABILITY REGISTER [SECTION 49(7), (8) & (9) READ WITH RULE 85 OF CGST RULES]

Sub-section (7) of section 49 speaks about the third kind of ledger to be maintained by a taxable person viz. **Electronic Liability Register**. While the terms "Electronic Cash Ledger" and "Electronic Credit Ledger" are defined in the Act, the term "Electronic Liability Register" is not defined. The Section lays down that all liabilities of a taxable person will be maintained in a separate register.

Electronic Liability Register will reflect the total tax liability of a taxpayer (after netting) for the particular month.



Order of discharge of tax and other dues


Sub-section (8) prescribes the chronological order in which the liability of a taxable person has to be discharged:



self -assessed tax and other dues for the **previous tax periods** have to be discharged first.



the self -assessed tax and other dues for the **current period** have to be discharged next.

 Once these two steps are exhausted, thereafter any other amount payable including **demand determined under section 73 or section 74** to be discharged. In other words, the liability if any, arising out of demand notice and adjudication proceedings comes last. This sequence has to be mandatorily followed.

The expression "other dues" referred above mean interest, penalty, fee or any other amount payable under the Act or the rules made thereunder.







Presumption that incidence of tax is passed on

Sub-section (9) contains a deeming clause. This part of the section provides that when a taxable person has paid the GST under the corresponding Act, the taxable person is deemed to have passed on the incidence of such payment of tax to the recipient of such goods and /or services. Thus, if tax has been paid under the CGST Act, then the taxable person is deemed to have passed on the incidence of such payment of CGST to the recipient. This is subject to the contrary being proved.



Chapter IX of CGST Rules provide the following:

(I) Debit to electronic liability register:

-  all amounts payable towards tax, interest, late fee and any other amount as per return filed;
-  all amounts payable towards tax, interest, penalty and any other amount determined in a proceeding by an Assessing authority or as ascertained by the taxable person;
-  the amount of tax and interest payable.
-  any interest amount that may accrue from time to time.








(II) Debit to Electronic Credit/Cash ledger:

Debit to Electronic Credit Ledger and Credit to Electronic Liability Register	Debit to Electronic Cash Ledger and Credit to Electronic Liability Register
Payment of all the liabilities of a registered person as per his return subject to section 49.	Payment of all the liabilities of a registered person as per his return subject to section 49.

Payment of TDS deducted under section 51, TCS deducted by e-commerce operator under section 52, amount payable under reverse charge basis, amount payable under section 10, amount payable towards payment of interest, penalty, fee or any other amount under the Act.




How do the new payment systems benefit the taxpayer and the Commercial Tax Department?

-  No more queues and waiting for making payments as payments can be made online 24 X 7.
-  Instant online receipts for payments made online.
-  Tax Consultants can make payments on behalf of the clients.
-  Single Challan form to be created online, replacing the three or four copy Challan.
-  Revenue will come earlier into the Government Treasury as compared to the old system.
-  Greater transparency.
-  Online payments made after 8 pm will be credited to the taxpayer's account on the same day.



4. INTEREST ON DELAYED PAYMENT OF TAX [SECTION 50]

	STATUTORY PROVISIONS
Section 50	Interest on delayed payment of tax
Sub-section	Particulars
(1)	<i>Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay</i>

	<i>the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.</i>
(2)	<i>The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.</i>
(3)	<i>A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.</i>






ANALYSIS



When interest is payable ?

Interest is payable in following 3 circumstances:-

-  Delay in payment of tax, in full or in part within the prescribed period
-  Undue or excess claim of input tax credit under section 42(10)
-  Undue or excess reduction in output tax liability under section 43(10)

⇒ section 42 (10) of CGST Act deals with contravention of provisions for matching of claims for input tax credit by a recipient and

⇒ section 43 (10) of CGST Act deals with contravention of provisions for matching of claims for reduction in output tax liability by a supplier



Rate of interest

The rate of interest shall be notified by the Government on the basis of recommendation of the Council. However, such rate to be notified **shall not exceed-**

- (a) 18% in case of belated payment of tax i.e. on failure to pay tax (or part

of tax) to the Government's account. *Notification No. 13/2017 CT dated 28.06.2017* has notified the rate of interest as 18% per annum.

- (b) 24% on undue or excess claim of ITC or on such undue or excess reduction in output tax liability. *Notification No. 13/2017 CT dated 28.06.2017* has notified the rate of interest as 24% per annum.



Computation of period for calculation of interest

The period of interest will be from the date following the due date of payment to the actual date of payment of tax.



Other relevant points relating to interest



The term "tax" here means the tax payable under the Act or Rules made thereunder.



The payment of interest in case of belated payment of tax should be made voluntarily i.e. even without a demand.



The interest payable under this section shall be debited to the Electronic Liability Register.



The liability for interest can be settled by adjustment with balance in Electronic Cash Ledger **but not with balance in electronic credit ledger.**



5. TRANSFER OF INPUT TAX CREDIT [SECTION 53 OF CGST ACT & SECTION 18 OF IGST ACT]

If the amount of CGST is utilised towards dues of IGST then, in terms of section 53 of the CGST Act, there shall be reduction in the amount of CGST, equal to the credit so utilized, and the Central Government shall transfer such amount equivalent to the amount so reduced in CGST account to the IGST account.

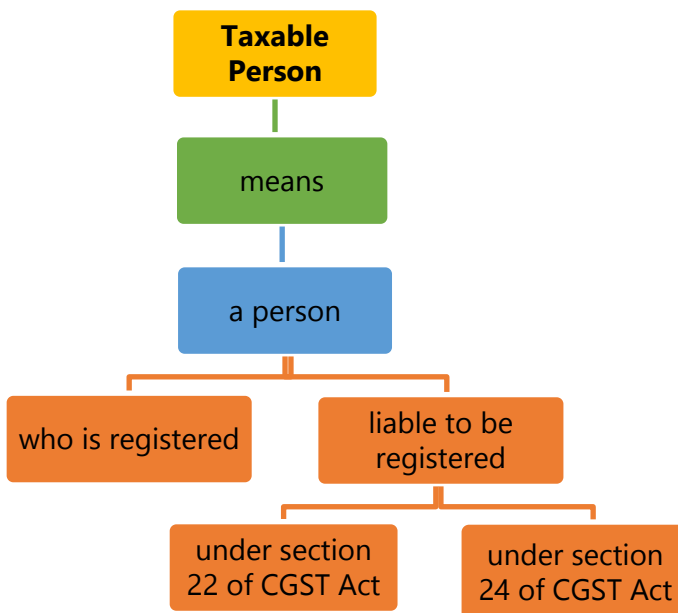
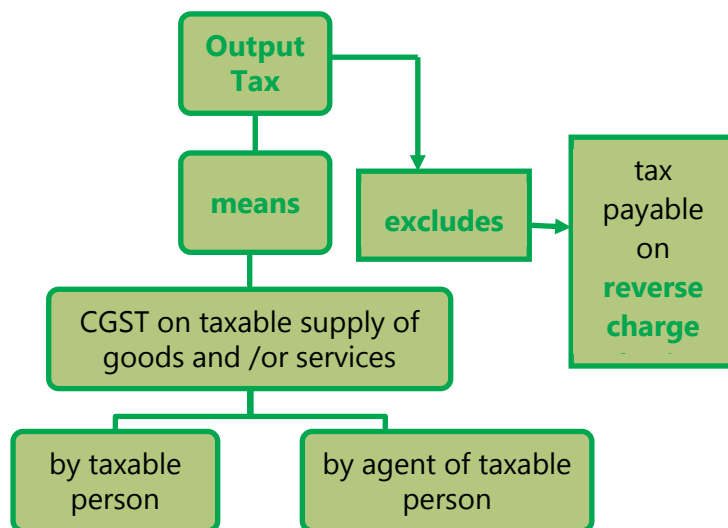
Similarly, if the amount of IGST is utilised towards dues of CGST/UTGST then, in terms of section 18 of the IGST Act, there shall be reduction in the amount of IGST, equal to the credit so utilized, and the Central Government shall transfer such amount equivalent to the amount so reduced in IGST account to the CGST/UTGST account.

However, if the amount of IGST is utilised towards dues of SGST then, in terms of section 18 of the IGST Act, there shall be reduction in the amount of IGST, equal to the credit so utilized, and will be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the respective State Government.

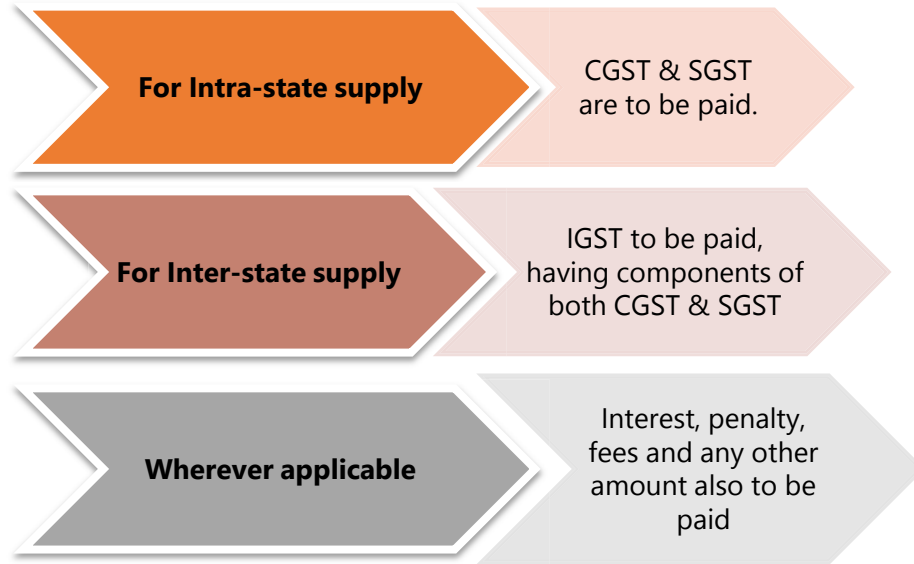
6. LET US RECAPITULATE

The provisions relating to payment of tax, interest and other amounts have been summarised by way of table and diagrams to help students remember and retain the provisions in a better and effective manner:-

DEFINITIONS OF CERTAIN KEY TERMS



Payments to be made in GST regime



Key Features of Payment process

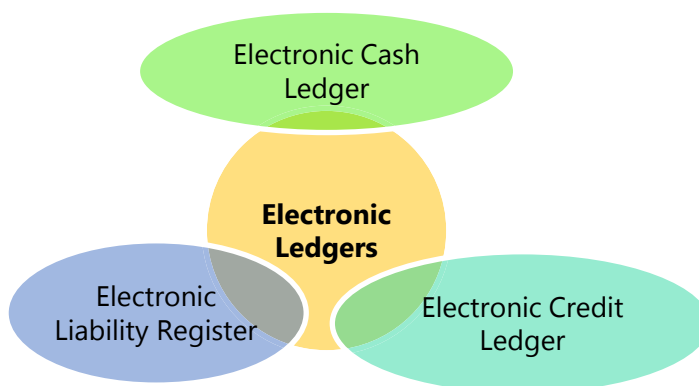
- ✎ Electronically generated challan from GSTN common portal in all modes of payment and no use of manually prepared challan;
- ✎ Facilitation for the tax payer by providing hassle free, anytime, anywhere mode of payment of tax;
- ✎ Convenience of making payment online;
- ✎ Logical tax collection data in electronic format;
- ✎ Faster remittance of tax revenue to the Government Account;
- ✎ Paperless transactions;
- ✎ Speedy Accounting and reporting;
- ✎ Electronic reconciliation of all receipts;
- ✎ Simplified procedure for banks;
- ✎ Warehousing of Digital Challan.

What are E-Ledgers/register?



Electronic Ledgers or E-Ledgers are statements of cash and input tax credit in respect of each registered taxpayer. In addition, each taxpayer shall also have an electronic tax liability register.

Types of Electronic ledgers/register

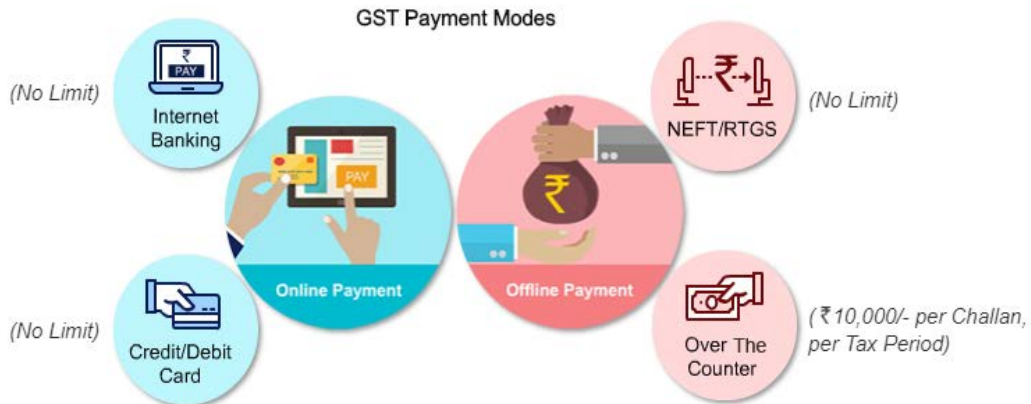


A. Electronic Cash Ledger

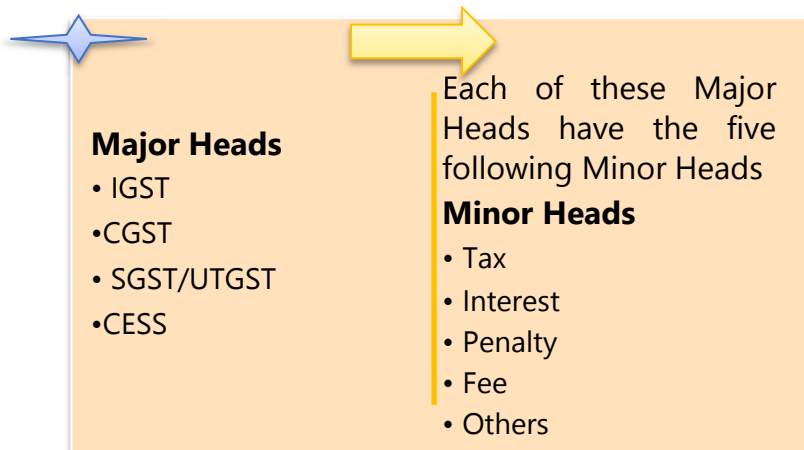
Electronic Cash Ledger is an account where records of deposits or receipts and its utilization towards liabilities are maintained.

<p>Cash Receipts (Credit) +</p> <p>IGST CGST SGST/UTGST CESS</p> <p>Cash receipts using Online modes or OTC Deposits (CIN)</p> <ul style="list-style-type: none"> • Tax Deducted at Source (TDS) • Tax Collected at Source (TCS) 	<p>Liability Payments (Debit) -</p> <p>IGST CGST SGST/UTGST CESS</p> <p>Payment of</p> <ul style="list-style-type: none"> • Tax • Interest • Penalty • Fee • Other Amount
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Modes of Deposit in Electronic Cash Ledger



Major and Minor Heads of Payment



Cross utilization of funds across major or minor heads → Possible

Date of deposit of tax dues

Which date is considered as date of deposit of the tax dues ?		
(i)	Date of presentation of cheque	×
(ii)	Date of payment	×
(iii)	Date of credit of amount in the account of government	✓

B. Electronic credit ledger

Order of utilisation of input tax credit available in electronic credit ledger

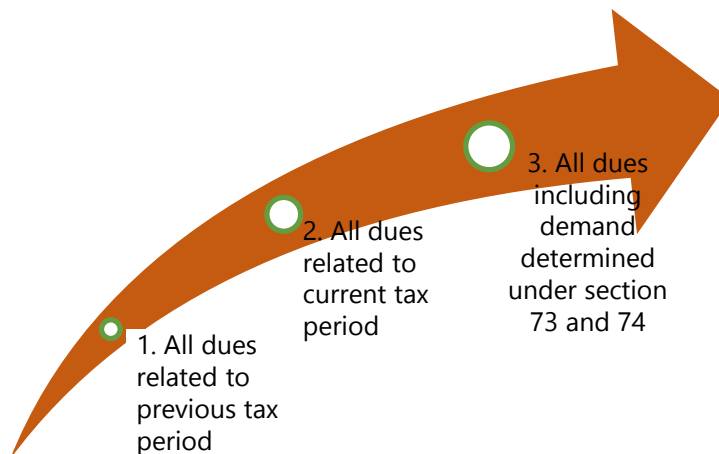
ITC	Order of utilisation	
	(1)	(2)
IGST	IGST	CGST/SGST/UTGST- <u>any proportion</u>
<i>ITC of IGST to be completely exhausted mandatorily</i>		
CGST	CGST	IGST
<i>ITC of CGST has been utilized fully</i>		
SGST/UTGST	SGST/UTGST	IGST



The CGST credit cannot be utilized for payment of SGST/UTGST.
The SGST/UTGST credit cannot be utilized for payment of CGST.

c. Electronic liability register

Order of discharge of liability of taxable person



Manner of making payment

Through debit of Electronic Credit Ledger	In cash, by debit in the Electronic Cash Ledger
Through debit of Credit Ledger of the tax payer maintained on the Common portal – ONLY Tax can be paid.	Payment can be made in cash, by debit in the Cash Ledger of the tax payer maintained on the common portal.

E-Ledgers/Register

Electronic Cash Ledger

- It will reflect all deposits made in cash, and TDS/TCS made on account of the tax payer.
- This ledger can be used for making **ANY PAYMENT** towards tax, interest, penalty, fees or any other amount on account of GST.

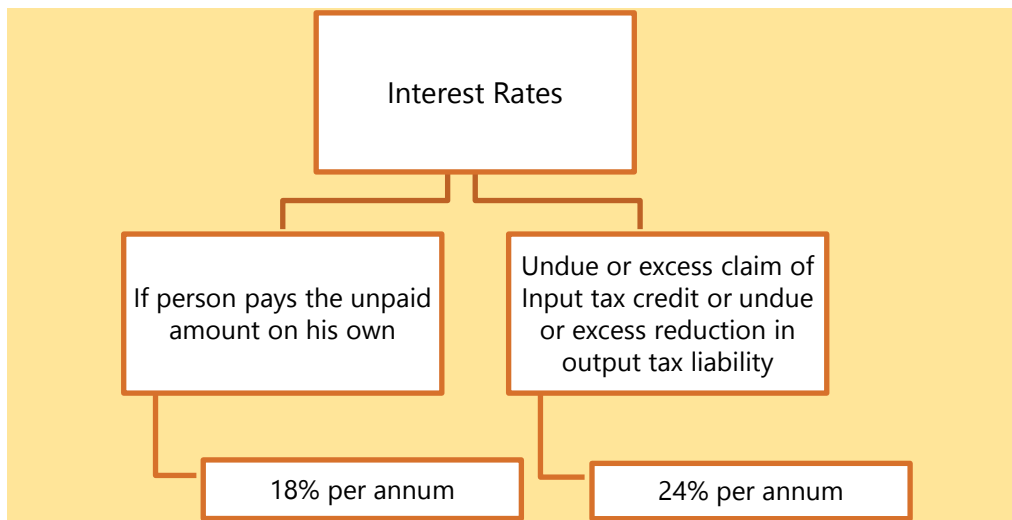
Electronic Credit Ledger

- It will reflect Input Tax Credit as self-assessed in monthly returns.
- The credit in this ledger can be used to make payment of **ONLY TAX** i.e. output tax and not other amounts such as interest, penalty, fees etc.

Electronic Liability Register

- Electronic Liability Register will reflect the total tax liability of a taxpayer (after netting) for the particular month.

Interest on delayed payment of tax [Section 50]




Payment of Tax via Electronic Ledger

A. Electronic Cash Ledger


(Assume it as an account statement provided by bank, for easy understanding)

Debit Amount (DR)	Credit Amount (CR)
<ul style="list-style-type: none"> • Credit amount of this ledger may be used for payment of tax, interest, fees etc. • Remaining credit balance amount after payment of above tax etc. will be refunded to taxable person. 	<ul style="list-style-type: none"> • Any deposit made towards tax, interest, penalty, late fee etc. via internet banking, RTGS, fund transfer etc. • TDS/TCS claimed




B. Electronic Credit Ledger

Debit Amount (DR)	Credit Amount (CR)
<ul style="list-style-type: none"> • Credit amount of this ledger may be used for payment of output tax viz IGST, CGST, SGST, UTGST in the prescribed order. 	<ul style="list-style-type: none"> • Input Tax credit as self-assessed in the return in the form of IGST, CGST, SGST, UTGST

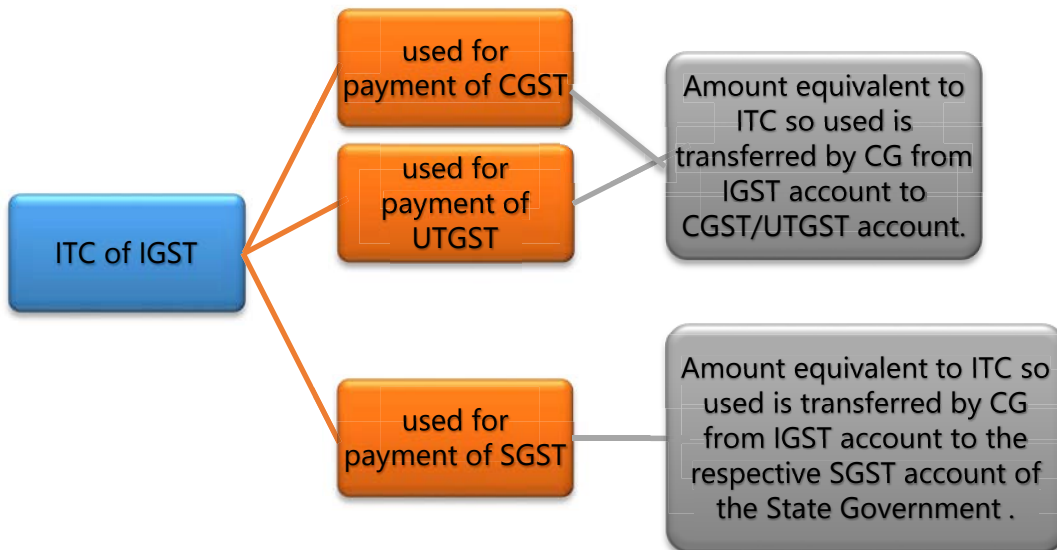


C. Electronic Liability Register

Debit Amount (DR)	Credit Amount (CR)
<ul style="list-style-type: none"> • Amount payable towards tax, interest, fees etc. • Tax or interest payable • Any other dues 	<ul style="list-style-type: none"> • Electronic cash ledger
<ul style="list-style-type: none"> • Amount payable towards output tax 	<ul style="list-style-type: none"> • Electronic credit ledger



Transfer of input tax credit [Section 53 of CGST Act & section 18 of IGST Act]



7. TEST YOUR KNOWLEDGE

- Which of these electronic ledgers/register are maintained online?
 - Electronic liability register
 - Electronic credit ledger
 - Electronic cash ledger
 - All of the above

2. Deposits towards tax, penalty, interest, fee or any other amount are credited into the ----- of a taxable person.
- (a) Electronic liability register
 - (b) Electronic credit ledger
 - (c) Electronic cash ledger
 - (d) All of the above
3. Input tax credit as self-assessed in the return of the registered person shall be credited to which of the following ledger?
- (a) Electronic liability register
 - (b) Electronic credit ledger
 - (c) Electronic cash ledger
 - (d) All of the above
4. Which of the following items are debited to electronic credit ledger?
- (a) Output tax
 - (b) Interest
 - (c) Penalty
 - (d) All of the above
5. Balance in electronic credit ledger under SGST can be used against which liability?
- (a) SGST Liability only
 - (b) SGST and IGST liability
 - (c) SGST, IGST and CGST liability
 - (d) None of the above
6. Which input tax credit cannot be claimed against which output tax liability?
- (a) IGST, SGST
 - (b) CGST, IGST
 - (c) SGST, IGST
 - (d) CGST, SGST

7. Interest is payable on:-
- (a) Belated payment of tax
 - (b) Undue/excess claim of input tax credit
 - (c) Undue/ excess reduction in output tax liability
 - (d) All of the above
8. Which of the following liability cannot be adjusted against input tax credit of CGST?
- (a) IGST
 - (b) SGST/UTGST
 - (c) All of the above
 - (d) None of the above
9. Which of the following shall be discharged first, while discharging liability of a taxable person?
- (a) All dues related to previous tax period
 - (b) All dues related to current tax period
 - (c) Demand raised under section 73 and 74
 - (d) No such condition is mandatory
10. Interest is calculated:-
- (a) From the day following the day on which tax becomes due to be paid
 - (b) From the last day such tax was due to be paid
 - (c) No period is specified
 - (d) None of the above
11. Which of the following statement is true:
Which date is considered as date of deposit of the tax dues
- (a) Date of presentation of cheque or
 - (b) Date of payment or
 - (c) Date of credit of amount in the account of Government
12. How many types of electronic ledger/register are there?

13. What are the main features of GST payment process?
14. Explain the following terms in brief:
 - (a) E-FPB
 - (b) CPIN
 - (c) CIN
15. Are principles of unjust enrichment applicable for payment made under GST?
16. State the name of output tax under GST, where any of the input tax credit under GST can be availed?



8. ANSWERS/HINTS

1. (d) 2. (c) 3. (b) 4. (a) 5. (b) 6. (d)
7. (d) 8. (b) 9. (a) 10. (a) 11. (c)
12. (a) Electronic cash ledger
 (b) Electronic credit ledger
 (c) Electronic liability register
13. Refer para-Electronic Liability Register
14. Refer para-Electronic Cash Ledger
15. Yes, as per Section 49(9) of the CGST Act, 2017 every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.
16. IGST. IGST, CGST, SGST, UTGST i.e. all input tax credit can be availed against output tax liability known as IGST.

AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has become effective from 01.08.2019. However, the amendments made in the CGST Act and IGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2020 and/or November 2020 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions³ relating to payment of tax are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the provisions given hereunder in place of the related provisions discussed in the Chapter.

Section No.	Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
49		<p><u>After sub-section (9) of section 49 the following sub-section (10) and (11) shall be inserted:</u></p> <p>“(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be</p>	<p>New sub-sections are being inserted in section 49 of the CGST Act to provide a facility to the registered person to transfer an amount from one (major/minor) head to another (major/minor) head in the electronic cash ledger.</p>

³ Provisions existing as on the date when the Study Material was released for printing

		<p>prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.</p> <p>(11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1).”.</p>	
<p>50</p>	<p><u>Sub-section (1)</u> Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding 18%, as may be notified by the Government on the</p>	<p><u>Sub-section (1)</u> Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding 18%, as may be notified by the Government on the recommendations of the Council.</p> <p>“Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due</p>	<p>New proviso is being inserted in section 50(1) of the CGST Act so as to provide for charging interest only on the net cash tax liability, except in those cases where returns are filed subsequent to initiation of any proceedings under section 73 or 74 of the CGST Act.</p>

	recommendations of the Council.	date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.”.	
53A		<p><u>New Section 53A: “Transfer of certain Amounts” inserted after section 53</u></p> <p>Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union territory Goods and Services Tax Act, the Government shall, transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time as may be prescribed.”</p>	A new section 53A is being inserted in the CGST Act so as to provide for transfer of amount between Centre and States consequential to amendment in section 49 of the CGST Act allowing transfer of an amount from one head to another head in the electronic cash ledger of the registered person.

RETURNS



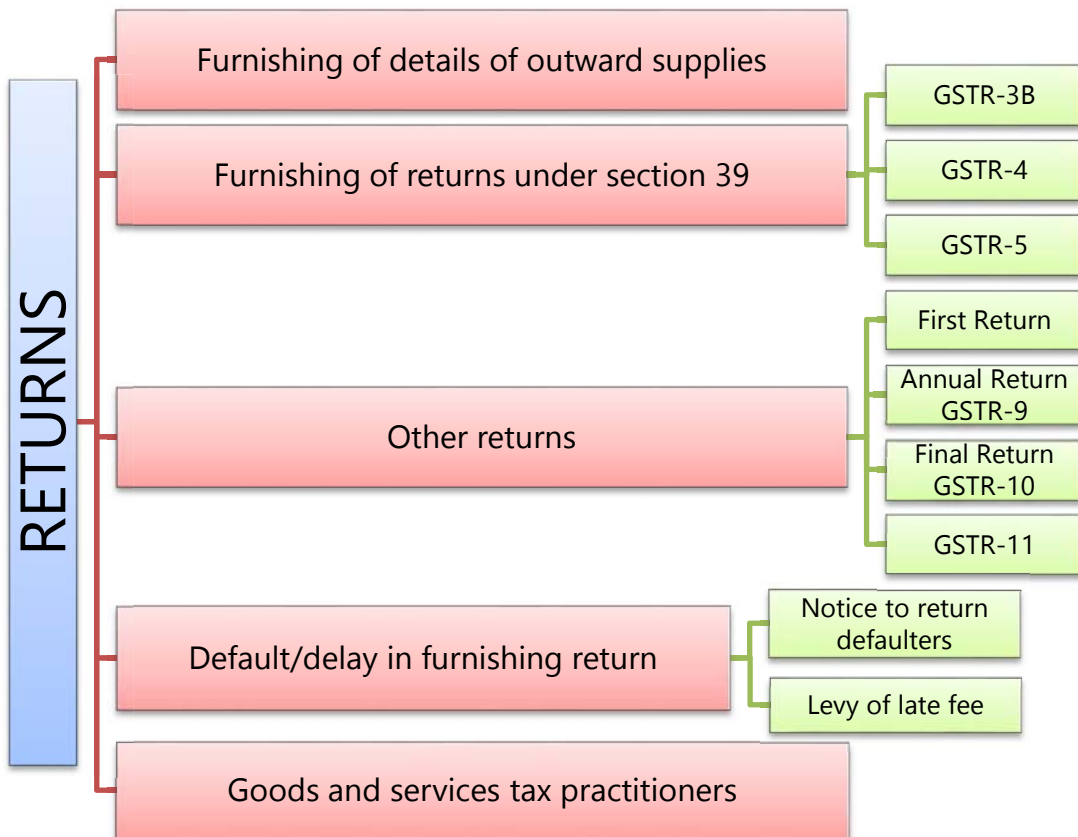
For the sake of brevity, the term input tax credit has been referred to as ITC in this Chapter. The section numbers referred to in the Chapter pertain to CGST Act, unless otherwise specified.

LEARNING OUTCOMES

This Chapter will equip you to –

- ❑ enlist the various types of statements and returns to be filed by a registered taxpayer
- ❑ identify the persons eligible to file various statements/returns as also the forms prescribed therefor and explain the periodicity for filing such statements/returns
- ❑ determine the late fee for delayed filing of return
- ❑ apply the above concepts in problem solving
- ❑ explain the provisions relating to GST practitioner

CHAPTER OVERVIEW



1. INTRODUCTION

The term "return" ordinarily means statement of information (facts) furnished by the taxpayer, to tax administrators, at regular intervals. The information to be furnished in the return generally comprises of the details pertaining to the nature of activities/business operations forming the subject matter of taxation; the measure of taxation such as sale price, turnover, or value; deductions and exemptions; and determination and discharge of tax liability for a given period.

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

The returns serve the following purposes:

- a) Mode for transfer of information to tax administration;
- b) Compliance verification program of tax administration;
- c) Finalization of the tax liabilities of the taxpayer within stipulated period of limitation;
- d) Providing necessary inputs for taking policy decision;
- e) Management of audit and anti-evasion programs of tax administration



The taxpayer is generally required to furnish the return in a specific statutory format. These formats are, therefore, designed to take care of all the provisions of the law that have a bearing on computation of tax liability of a taxpayer. Hence, a study of various fields contained in the form of return *vis-à-vis* the relevant corresponding provisions of the tax law, can facilitate overall understanding of the tax law in a better manner.

 A red pushpin is pinned to a yellow sticky note. The note contains the following text:

Filing of GST returns helps in determination of tax liability of the return filer and at the same time it also has a huge bearing on determination of tax liability of other persons with whom the former has entered into taxable activities.



Under the GST laws, the correct and timely filing of returns is of utmost importance because of two reasons. Firstly, under GST laws, a taxpayer is required to estimate his tax liability on “self-assessment” basis and deposit the tax amount along with/before the filing of such return. The return, therefore, constitutes a kind of working sheet/supporting document for the tax authorities that can be relied upon as the basis on which the tax has been computed by the taxpayer. Secondly, under the GST regime, filing of returns not only determines the tax liability of the person filing the same, but it also has a huge bearing on determination of tax liability of other

persons with whom the former has entered into taxable activities.

Chapter IX of the CGST Act [Sections 37 to 48] prescribes the provisions relating to filing of returns as under:

Section 37	Furnishing details of outward supplies
Section 38	Furnishing details of inward supplies
Section 39	Furnishing of returns
Section 40	First return
Section 41	Claim of input tax credit and provisional acceptance thereof
Section 42	Matching, reversal and re-claim of input tax credit
Section 43	Matching, reversal and re-claim of reduction in output tax liability
Section 44	Annual Return
Section 45	Final Return
Section 46	Notice to return defaulters
Section 47	Levy of late fee
Section 48	Goods and services tax practitioners

The provisions relating to forms and manner, in which information is to be furnished through returns, are given under Chapter VIII of the CGST Rules [Rules 59-84]. State GST laws also prescribe identical provisions in relation to filing of returns.

Provisions of returns, other than late fee, under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

However, the return filing process is under review and is yet not finalized. A simplified monthly return in Form GSTR 3B was introduced in July, 2017 to help businesses to file returns easily in the initial months of GST roll out. This was to be followed with filing of returns - GSTR - 1, 2 and 3. Further, to ease the compliance requirements for small tax payers, the GST Council allowed taxpayers with annual aggregate turnover up to ₹ 1.5 Crore to file details of outward supplies in Form GSTR-1 on a quarterly basis and on monthly basis by taxpayers with annual aggregate turnover greater than ₹ 1.5 Crore. The GST Council also recommended to postpone the date of filing of Forms GSTR-2 (details of inward supplies) and GSTR-3 (monthly return) for all normal tax payers, irrespective of turnover, till further announcements were made in this regard.

The return process has still not been streamlined and the GST Council has extended GSTR-3B filing requirement till end of September, 2019. Therefore, in the subsequent pages of this Chapter, provisions of only those sections which are practically effective, have been discussed.

The CBIC has issued a press release relating to the decision taken by the GST Council in its 28th meetings held on 21st July, 2018, with regard to return simplification process. The salient features of the press release are:

- 1. All taxpayers excluding small taxpayers and a few exceptions like ISD etc. shall file one monthly return. The return is simple with two main tables. One for reporting outward supplies and one for availing input tax credit based on invoices uploaded by the supplier. Invoices can be uploaded continuously by the seller and can be continuously viewed and locked by the buyer for availing input tax credit. This process would ensure that very large part of the return is automatically filled based on the invoices uploaded by the buyer and the seller. Simply put, the process would be "UPLOAD – LOCK – PAY" for most tax payers.*
- 2. Taxpayers would have facility to create his profile based on nature of supplies made and received. The fields of information which a taxpayer would be shown and would be required to fill in the return would depend on his profile.*
- 3. NIL return filers (no purchase and no sale) shall be given facility to file return by sending SMS.*
- 4. Council approved quarterly filing of return for the small taxpayers having turnover below ₹ 5 Cr as an optional facility. Quarterly return shall be similar to main return with monthly payment facility but for two kinds of registered persons – small traders making only B2C supply or making B2B + B2C supply.*

For such taxpayers, simplified returns have been designed called Sahaj and Sugam. In these returns details of information required to be filled is lesser than that in the regular return.

5. *The new return design provides facility for amendment of invoice and also other details filed in the return. Amendment shall be carried out by filing of a return called amendment return. Payment would be allowed to be made through the amendment return as it will help save interest liability for the taxpayers.¹*

However, as on date², the new simplified return process as envisaged in the above press release has not become effective. Therefore, in this chapter only those provisions which are currently effective, have been discussed. The amendments which will be made in the law to give effect to the new process will be given in the Statutory Update, after the new process becomes operational.

All the returns under GST laws are to be filed electronically. Taxpayers can file the statements and returns by various modes. Firstly, they can file their statement and returns directly on the GST common portal online. However, this may be tedious and time consuming for taxpayers with large number of invoices. For such taxpayers, offline utilities have been provided by GSTN that can be used for preparing the statements offline after downloading the auto populated details and uploading them on the common portal. GSTN has also developed an ecosystem of GST Suvidha Providers (GSP) that will integrate with the common portal.

GSP- GST Suvidha Provider

- It is an eco-system of third party service providers, having access to GST system, who can help taxpayers in GST Compliance.
- GSP will develop applications for return filing, reconciliation of purchase register data with auto-populated data for acceptance/rejection/modification, dashboards for taxpayers for quick monitoring.

DO YOU KNOW?

GST INFORMATION SERIES

NATION TAX MARKET

GST

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The details furnished by the taxpayer in the form of returns shall be consolidated and stored at the common portal which will be common for both, i.e. Central Government and State Governments.

¹ The Press Release is given solely with the objective of familiarising the students with the proposed process.

² Date when the Study Material was released for printing

2. RELEVANT DEFINITIONS



-  **Common portal** means the common goods and services tax electronic portal referred to in section 146 [Section 2(26)].
-  **Credit note** means a document issued by a registered person under sub-section (1) of section 34 [Section 2(37)].
-  **Debit note** means a document issued by a registered person under sub-section (3) of section 34 [Section 2(38)].
-  **Electronic cash ledger** means the electronic cash ledger referred to in sub-section (1) of section 49 [Section 2(43)].
-  **Electronic credit ledger** means the electronic credit ledger referred to in sub-section (2) of section 49 [Section 2(46)].
-  **Exempt supply** means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply [Section 2(47)].
-  **Goods and services tax practitioner** means any person who has been approved under section 48 to act as such practitioner [Section 2(55)].
-  **Invoice or tax invoice** means the tax invoice referred to in section 31 [Section 66].
-  **Inward supply** in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration [Section 2(67)].
-  **Non-resident taxable person** means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India [Section 2(77)].

- ❖ **Outward supply** in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business [Section 2(83)].
- ❖ **Prescribed** means prescribed by rules made under this Act on the recommendations of the Council [section 2(87)].
- ❖ **Proper officer** in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board [Section 2(91)].
- ❖ **Quarter** shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year [Section 2(92)].
- ❖ **Recipient** of supply of goods or services or both, means—
 - where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
 - where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
 - where no consideration is payable for the supply of a service, the person to whom the service is rendered,and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].
- ❖ **Registered person** means a person who is registered under section 25 but does not include a person having a Unique Identity Number [Section 2(94)].
- ❖ **Return** means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder [Section 2(97)].
- ❖ **Reverse charge** means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-

section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act [Section 2(98)].

- ✔ **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].
- ✔ **Tax period** means the period for which the return is required to be furnished [Section 106].
- ✔ **Taxable person** means a person who is registered or liable to be registered under section 22 or section 24 [Section 2(107)].
- ✔ **Taxable supply** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108)].
- ✔ **Valid return** means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full [Section 2(117)].



3. FURNISHING DETAILS OF OUTWARD SUPPLIES [SECTION 37 READ WITH RULE 59 OF THE CGST RULES]

(i) Who is required to furnish the details of outward supplies?

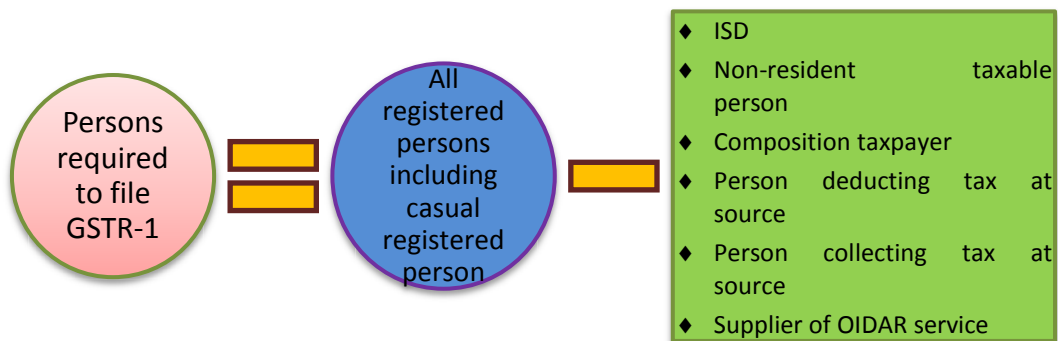
The details of outward supplies (see definition) of both goods and services are required to be furnished by every registered person including casual registered person except the following:

- ❖ input service distributor (ISD)*
- ❖ non-resident taxable person
- ❖ person paying tax under composition scheme
- ❖ person deducting tax at source*
- ❖ person collecting tax at source i.e., e-commerce operator (ECO), not being an agent*



- ❖ a supplier of online information and database access or retrieval services (OIDAR)*

* Note: Provisions for filing of returns by an input service distributor, a person deducting tax at source, a person collecting tax at source and a supplier of online information and database access or retrieval services (OIDAR) will be discussed at the Final level.



(ii) What is the form for submission of details of outward supplies?

The details of outward supplies are required to be furnished, electronically, in **Form GSTR-1**. Such details can be furnished through the common portal, either directly or from a notified Facilitation Centre.

(iii) What is the due date of submission of GSTR-1?

GSTR-1 for a particular month is filed on or before the 10th day of the immediately succeeding month. In other words, GSTR-1 of a month can be filed any time between 1st and 10th day of the succeeding month. It may be noted that GSTR-1 cannot be filed during the period from 11th day to 15th day of month succeeding the tax period.




The details of outward supplies pertaining to the month of October will be required to be furnished on or before 10th November and GSTR-1 for October cannot be filed between 11th November to 15th November.

*As a measure of easing the compliance requirement for small tax payers, GSTR-1 has been allowed to be filed quarterly by small tax payers with aggregate annual turnover up to ₹ 1.5 crore in the preceding financial year or the current financial year. As of now this facility has been given till the quarter **July-September 2019**. Tax payers with annual aggregate turnover above ₹ 1.5*

crore will however continue to file GSTR- 1 on a monthly basis. [Notification Nos. 57 & 58/2017 CT dated 15.11.2017, 71 & 72 /2017 CT dated 29.12.2017, 17 & 18/2018 CT dated 28.03.2018, 32 & 33/2018 CT dated 10.08.2018, **11 & 12 2019 CT dated 07.03.2019, 27& 28/2019 CT dated 28.06.2019**].

The due date of filing GSTR-1 may be extended by the Commissioner/Commissioner of State GST/Commissioner of UTGST for a class of taxable persons by way of a notification.

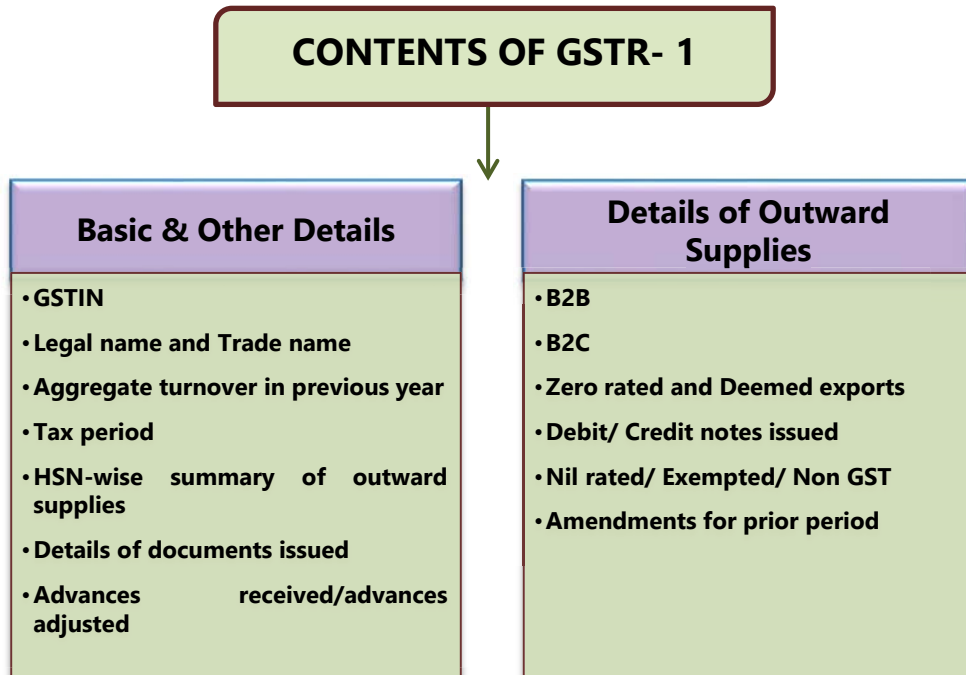
 **A taxpayer cannot file GSTR-1 before the end of the current tax period.**


However, following are the exceptions to this rule:

- a. Casual taxpayers, after the closure of their business**
- b. Cancellation of GSTIN of a normal taxpayer**

A taxpayer who has applied for cancellation of registration will be allowed to file GSTR-1 after confirming receipt of the application.

(iv) What are the contents of GSTR-1?



 **GST is a destination based consumption tax, hence the tax revenue is transferred to the State which is the place of supply³ of the particular transaction. Since, the place of supply is crucial for determining the share of every State in the tax revenue, GSTR-1 also captures information relating to place of supply.**

(v) What kind of details of outward supplies are required to be furnished in GSTR-1?

The registered person is required to furnish details of invoices and revised invoices issued in relation to supplies made by him to registered and unregistered persons during a month and debit notes and credit notes in GSTR-1 in the following manner:

Sl. No.	Invoice-wise* details of ALL	Consolidated details of ALL	Debit and credit notes
(i)	Inter-State and Intra-State supplies made to registered persons	Intra-State supplies made to unregistered persons for each rate of tax	Issued during the month for invoices issued previously
(ii)	Inter-State supplies made to unregistered persons with invoice value exceeding ₹ 2,50,000	Inter-State supplies made to unregistered persons with invoice value upto ₹ 2,50,000 for each rate of tax separately for each State	

It can be seen from the above table that uploading of invoices depends on whether the supply is B2B or B2C plus whether the supply is intra-State or inter-State.

³ Principles determining the place of supply of goods and place of supply of services are contained in sections 10 and 12 of IGST Act. These will be discussed at the Final Level.

B2B means business to business transaction. In such type of transactions, the recipient is also a registered supplier and hence, takes ITC.

B2C means business to consumer transaction. In such type of transactions, the recipient is consumer or unregistered and hence, will not take or cannot take ITC.

For B2B supplies, all invoices need to be uploaded irrespective of whether they are intra-State or inter- State supplies. This is so because the recipient will take ITC basis such invoices.

For B2C supplies, uploading in general is not required as the buyer will not be taking ITC. However, still in order to implement the destination based principle, invoices of value more than ₹ 2.5 lakh in inter-State B2C supplies need to be uploaded. For inter-State invoices below ₹ 2.5 lakh, State wise summary is sufficient and for all intra-State invoices, only consolidated details need to be given.

The provisions relating to uploading of invoices have been explained by way of a diagram given at next page.

Invoices can be uploaded any time during the tax period and not just at the time of filing of GSTR-1.



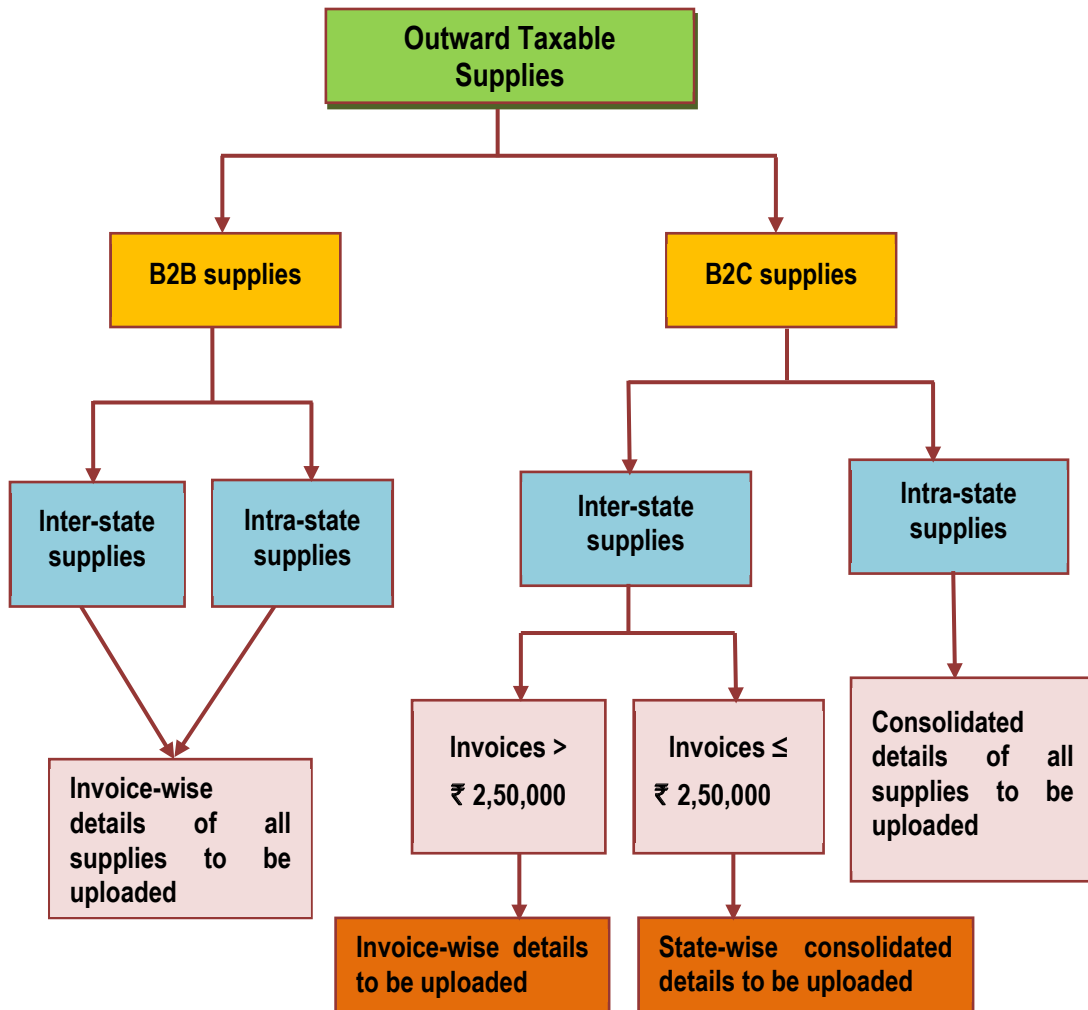
For the month of October, the taxpayer can upload invoices from 1st October to 10th November. In case of late filing of GSTR-1, invoices can be uploaded after 15th November.

Invoices can be modified/deleted any number of times till the submission of GSTR-1 of a tax period. The uploaded invoice details are in a draft version till the GSTR-1 is submitted and can be changed irrespective of due date.



Scanned copies of invoices are not required to be uploaded. Only certain prescribed fields of information from invoices need to be uploaded e.g., invoice no., date, value, taxable value, rate of tax, amount of tax etc. In case there is no consideration, but the activity is a supply by virtue of Schedule 1 of CGST Act, the taxable value will have to be worked out as prescribed and uploaded.

★ Description of each item in the invoice need not be uploaded. Only HSN code in respect of supply of goods and accounting code in respect of supply of services need to be fed.



Indication of HSN details

The minimum number of digits of HSN code that a filer has to upload depend on his turnover in the last year. *Notification No. 12/2017 CT 28.06.2017*, which has been issued in this regard, provides as under:

Annual turnover in the preceding financial year	Number of Digits of HSN Code
Upto ₹ 1.5 crore	Nil
More than ₹ 1.5 crore and upto ₹ 5 crore	2
More than ₹ 5 crore	4

(vi) Communication of details of GSTR-1 to the recipient of supply

The details of outward supplies for a month furnished by the supplier are communicated and made available electronically (auto populated) to the respective recipient(s) in Part A of Form GSTR- 2A/ Form GSTR-4A (in case of registered person opting for composition levy/**Notification No. 2/2019 CT (R) dated 07.032019**) through the common portal after the 10th day of the succeeding month (due date of filing of GSTR-1).

(vii) How are the details of outward supply furnished in prior periods amended? [Section 37(3)]

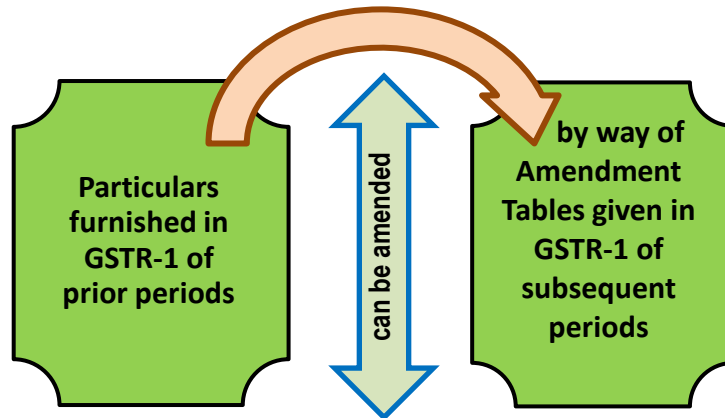
(a) Scope of amendment/ correction entries

Tables 9, 10 and 11(II) of GSTR-1 provide for amendments in details of taxable outward supplies furnished in earlier periods (hereinafter referred to as "Amendment Table"). The details of original debit notes/ credit notes / refund vouchers issued by the tax-payer in the current tax period as also the revision in the debit notes/ credit notes / refund vouchers issued in the earlier tax periods are required to be shown in Table 9 of the GSTR-1.

Ordinarily, in Amendment Table, the supplier is required to give details of original invoice (No and Date), the particulars of which have been wrongly entered in GSTR-1 of the earlier months and are now sought to be amended. However, it may happen that, a supplier altogether forgets to include the entire original invoice while furnishing the GSTR-1 for a particular month.

In such cases also, he would be required to show the details of the said missing invoice which was issued in earlier month in the Amendment

Table only, as such type of errors would also be regarded as data entry error.



(b) Rectification of errors

If the supplier discovers any error or omission, he shall rectify the same in the tax period during which such error or omission is noticed, and pay the tax and interest, if any, in case there is short payment, in the return to be furnished for such tax period.





A supplier discovers a mistake in details of the invoice furnished in GSTR-1 for the month of August, in October. He can rectify the said mistake in the GSTR-1 for the month of October.

(c) Time limit for rectification

Suppose for some reason, supplier could not make correction at the time of filing of GSTR-1 for the month of October then he can make such amendments in the subsequent periods.

However, the maximum time limit within which such amendments are permissible is earlier of the following dates:

-  Date of filing of monthly return u/s 39 for the month of September following the end of the financial year to which such details pertain or
-  Date of filing of the relevant annual return



An entity has furnished the annual return for a financial year (X-Y) on August 15 of the succeeding financial year (Y-Z). An error is discovered in respect of a transaction pertaining to November month of year X-Y. The entity has filed the returns for the month of September of year Y-Z on October 20 of year Y-Z. In this case, the rectification of the error pertaining to the transaction in the November month of year X-Y cannot be rectified beyond August 15 of year Y-Z.



It may be noted that, the expression 'due date' is missing in time limits prescribed for making amendments u/s 37(3) [GSTR-1]. Therefore, such date apparently means actual date of filing and not the due date.



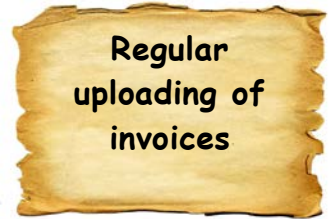
- ✪ **GSTR-1 needs to be filed even if there is no business activity (Nil Return) in the tax period.**
- ✪ **Taxpayer opting for voluntary cancellation of GSTIN has to file GSTR-1 for active period.**
- ✪ **In cases where a taxpayer has been converted from a normal taxpayer to composition taxpayer, GSTR-1 will be available for filing only for the period during which the taxpayer was registered as normal taxpayer. The GSTR-1 for the said period, even if filed with delay would accept invoices for the period prior to conversion.**

What are the precautions that a taxpayer is required to take for a hassle free compliance under GST?

One of the most important things under GST is the timely uploading of the details of outward supplies in GSTR-1 by 10th of next month. How best this can be ensured will depend on the number of B2B invoices that the taxpayer issues. If the number is small, the taxpayer can upload all the information in one go. However, if the number of invoices is large, the invoices (or debit/ credit notes) should be uploaded on a regular basis.




Timely uploading of the details of outward supplies in Form GSTR-1



Regular uploading of invoices

GST common portal allows regular uploading of invoices even on a real time basis. Till the statement is actually submitted, the system also allows the taxpayer to modify the uploaded invoices. Therefore, it would always be beneficial for the taxpayers to regularly upload the invoices. Last minute rush makes uploading difficult and comes with higher risk of possible failure and default.

The second thing would be to ensure that taxpayers follow up on uploading the invoices of their inward supplies by their suppliers. This would be helpful in ensuring that the ITC is available without any hassle and delay. Recipients can also encourage their suppliers to upload their invoices on a regular basis instead of doing it on or close to the due date. The system would allow recipients to see if their suppliers have uploaded invoices pertaining to them.



Follow up with suppliers to upload the invoices of inward supplies



4. FURNISHING OF RETURNS UNDER SECTION 39

(i) GSTR-3B [Rule 61(5) of the CGST Rules]

Section 39(1) prescribes a monthly return in **Form GSTR-3** for every registered person, other than an input service distributor or a non-resident taxable person or a composition tax payer, a person deducting tax at source, an electronic commerce operator and supplier of OIDAR services. GSTR-3 is to be filed by 20th day of the month succeeding the relevant calendar month or part thereof. *However, filing of GSTR-3 has been deferred by the GST Council till **September 2019**.*

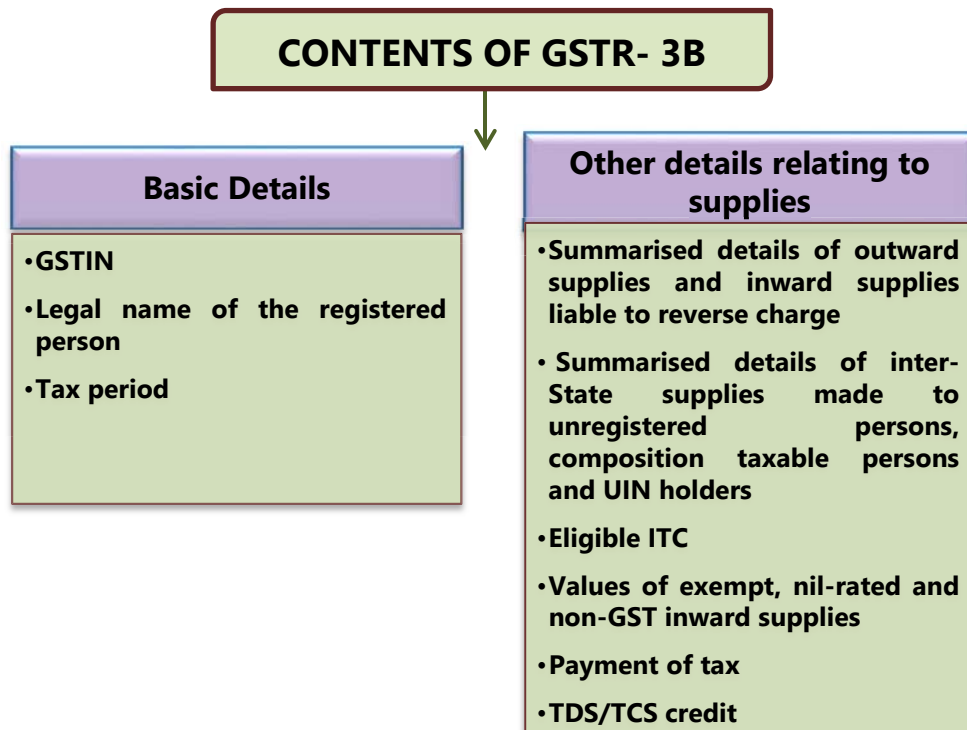


Currently, return in **Form GSTR-3B** is being notified as the monthly return to be filed by the registered persons who are required to file GSTR-3. Presently, the due date of submission for GSTR-3B is being notified as 20th day of the month succeeding the relevant month.

GSTR-3B can be submitted electronically through the common portal, either directly or through a notified Facilitation Centre

GSTR-3B is a simple return containing summary of outward supplies, inward supplies liable to reverse charge, eligible ITC, payment of tax etc. Thus, GSTR-3B does not require invoice-wise data of outward supplies.

The broad content of GSTR-3B are given by way of the following diagram:



(ii) GSTR-4 – Return for composition supplier and person paying tax under *Notification No. 2/2019 CT (R) dated 07.03.2019* [Section 39(2) read with *Notification No. 21/2019 CT dated 23.04.2019* issued under section 148, and rule 62 of the CGST Rules]

(a) Person eligible to file return, periodicity and form of return



The following persons are required to file an **annual** return in **FORM GSTR-4**:

- ❑ Every registered person paying tax under section 10 i.e., composition supplier; or
- ❑ **Every registered person paying tax by availing the benefit of Notification No. 2/2019 CT (R) dated 07.03.2019.**⁴

GSTR-4 for a financial year or part of a financial year should be filed electronically through the common portal either directly or through a notified Facilitation Centre.

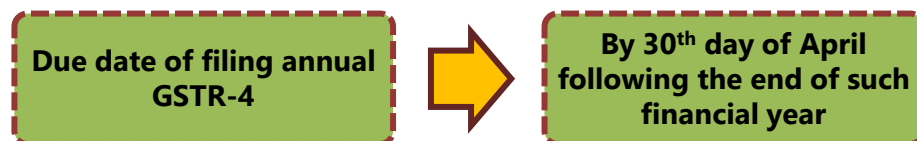
Quarterly statement for payment of self-assessed tax: *The persons required to file GSTR-4 are also required to furnish a statement in the FORM GST CMP-08 containing details of payment of self-assessed tax, for every quarter (or part of the quarter), by 18th day of the month succeeding such quarter.*



While a composition supplier and the person paying tax under Notification No. 2/2019 CT (R) are required to file the return GSTR-4 annually, they are required to pay the tax quarterly.

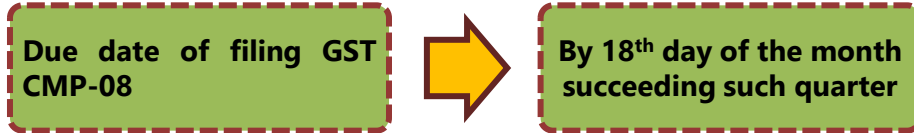
(b) Due date for filing GSTR-4 and Statement for payment of self-assessed tax

GSTR-4 for a financial year should be furnished by 30th April of the succeeding financial year.



GST CMP-08 (quarterly statement for payment of self-assessed tax) should be furnished by 18th day of the month succeeding such quarter.

⁴ A concessional rate of tax @ 6% is payable under Notification No. 2/2019 CT (R) dated 07.03.2019. The provisions relating to this notification are discussed in detail in Chapter 3: Charge of GST

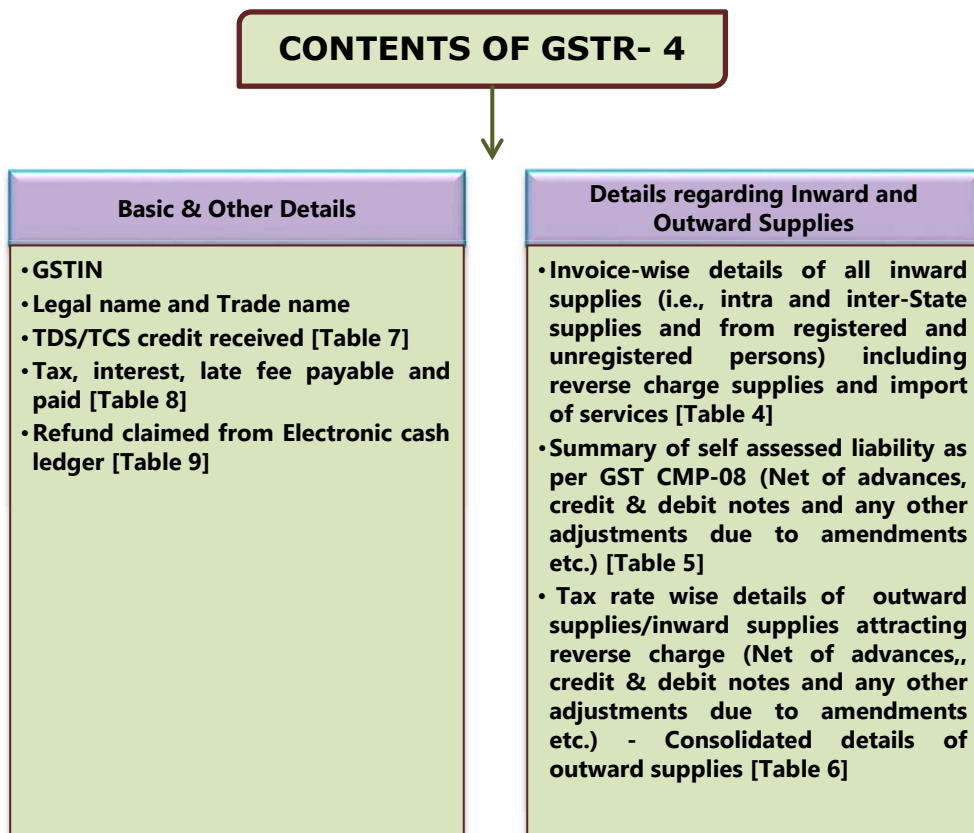


(c) Auto-population of inward supplies

The inward supplies of a composition supplier/*person paying tax under Notification 2/2019 CT (R)* received from registered persons filing GSTR-1 will be auto populated in **FORM GSTR-4A** for viewing.

(d) Contents of GSTR-4

The broad contents of GSTR-4 are given below:



Consolidated details of outward supplies

Composition taxpayers *and persons paying tax under Notification No. 2/2019 CT (R)* are neither entitled for any ITC

nor entitled to pass on any input tax credit to its customers (registered / unregistered). Therefore, composition taxpayers **and persons paying tax under Notification No. 2/2019 CT (R)** are required to provide consolidated details of outward supplies in GSTR-4 (Table 6) and not invoice-wise details. However, details of inter-State and intra-State inward supplies received from registered and un-registered persons are to be provided invoice-wise (Table 4).



Tax liability

Since composition suppliers **and persons paying tax under Notification No. 2/2019 CT (R) in GSTR-4** are not eligible to take ITC, they discharge their tax liability only by debiting electronic cash ledger.

(e) Statements/return for the period prior to opting for composition scheme

If a registered person opts to pay tax under composition scheme/**Notification No. 2/2019 CT (R)** from the beginning of a financial year, he will, where required, furnish statements/return relating to the period prior to paying tax under composition scheme/**Notification No. 2/2019 CT (R)** till the



due date of furnishing the return for the month of September of the succeeding financial year, or



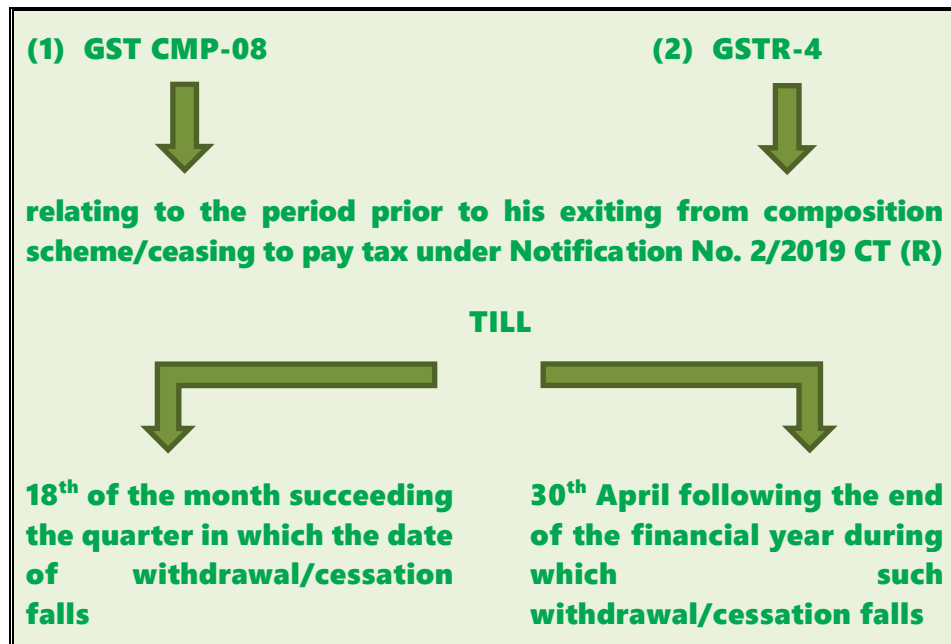
furnishing of annual return of the preceding financial year,

whichever is earlier.

The composition supplier and the **person paying tax under Notification No. 2/2019 CT (R)** will not be eligible to avail ITC on receipt of invoices or debit notes from the supplier for the period prior to their opting to pay tax under composition scheme/**Notification No. 2/2019 CT (R)**.

(f) GSTR-4 for the period prior to exiting from composition scheme

A registered person opting to withdraw from the composition scheme at his own motion or where option is withdrawn at the instance of the proper officer **and a registered person who ceases to pay tax under Notification No. 2/2019 CT (R)** will, where required, furnish-

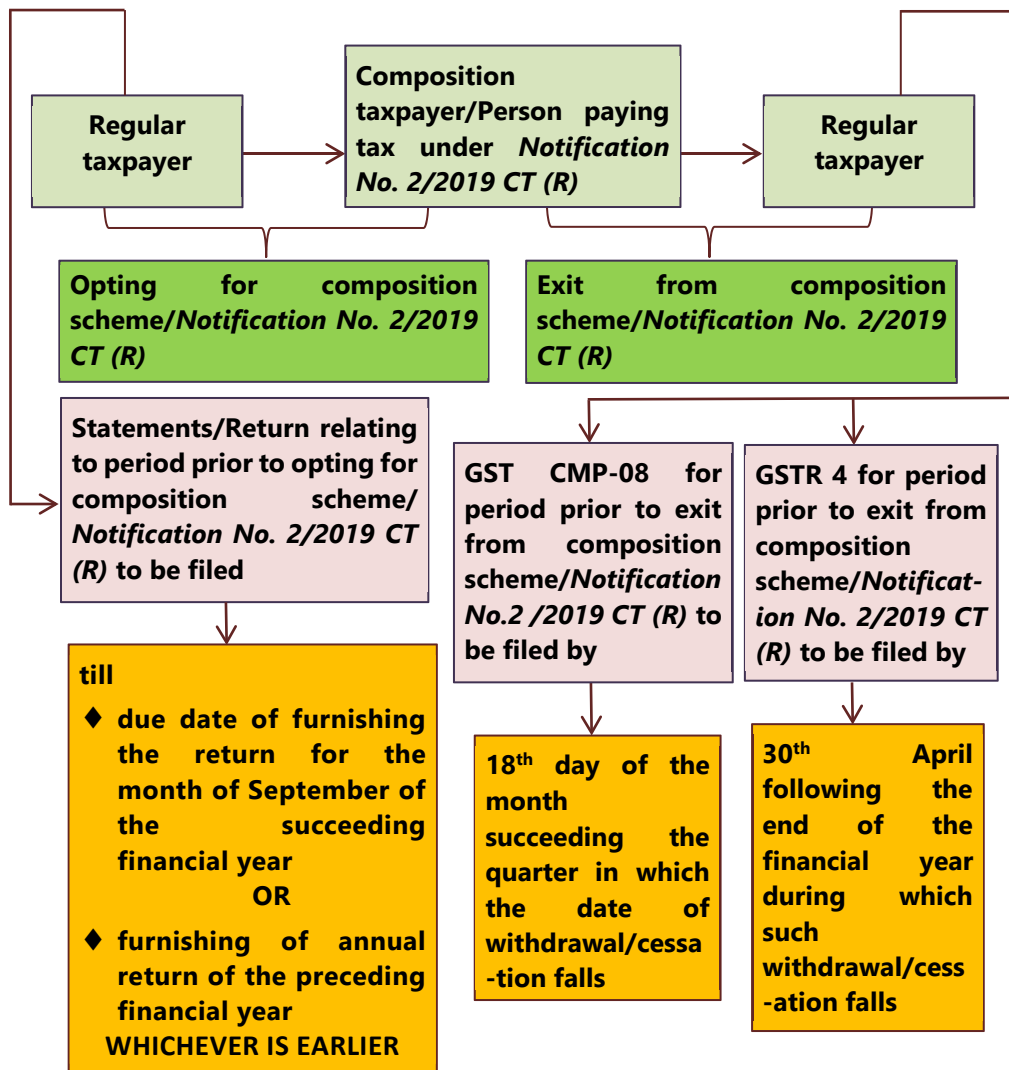


The provisions explained in points (e) and (f) above have been explained by way of a diagram given at the next page.



As per section 29(2), a proper officer is empowered to cancel the registration of a taxable person if, *inter alia*,

- (a) a person paying tax under composition scheme has not furnished his GSTR-4 for 3 consecutive tax periods**
- (b) any other taxable person has not furnished returns for consecutive period of 6 months.**



★ GSTR-3B and GSTR-4 need to be filed even if there is no business activity (nil return) in the tax period.

(iii) **GSTR-5 - Return for Non-Resident Taxable Persons [Section 39(5) read with rule 63 of the CGST Rules]**

Non-Resident Taxable Persons (NRTPs) are those suppliers who do not have a business establishment in India and have come for a short period to make supplies in India. They would normally import their products into India and make local supplies. *The concept of Non-Resident Taxable Person has been discussed in detail in Chapter 7 – Registration.*

(a) **Monthly return**

A registered NRTP is not required to file separately the Statement of Outward Supplies and applicable return for a normal tax payer.

In place of the same, a simplified monthly tax return has been prescribed in **Form GSTR-5** for a NRTP for every calendar month or part thereof. The details of outward supplies and inward supplies of a NRTP are incorporated in GSTR-5.



(b) **Last date of filing return**

GSTR-5 should be furnished within 20 days after the end of the calendar month or within 7 days after the last day of validity period of the registration, whichever is earlier.

(c) **Payment of interest, penalty, fees or any other amount payable**

A NRTP should pay the tax, interest, penalty, fees or any other amount payable under the GST law till the last date of filing GSTR-5.



A NRTP is not required to file an annual return.

(iv) **Due date for payment of tax**

Due dates for payment of tax in respect of the persons required to file GSTR-3B and GSTR-5 are linked with the due dates for filing of such returns i.e., the last dates (due dates) of filing such returns are also the due dates for payment of tax in respect of persons required to file such returns.

However, in case of registered persons paying tax under composition scheme or Notification No. 2/2019 CT (R) dated 07.03.2019 the due date for payment of tax and filing of GSTR-4 is delinked. While GSTR-4 for a financial year is required to be filed by 30th April of the following year, tax for a quarter is to be paid by 18th of the month succeeding such quarter.

Also, NRTPs or casual taxable persons are required to make advance deposit of an amount equivalent to their estimated tax liability for the period for which registration is sought or extension of registration is sought in terms of section 27(2).

(v) Rectification of errors/omissions [Section 39(9)]

If a return has been filed, how can it be revised if some changes are required to be made?



In GST since the returns are built from details of individual transactions, there is no requirement for having a revised return. Any need to revise a return may arise due to the need to change a set of invoices or debit/ credit notes. Instead of revising the return already submitted, the system allows changing the details of those transactions (invoices or debit/credit notes) that are required to be amended. They can be amended in any of the future GSTR- 1 in the tables specifically provided therein for the purposes of amending previously declared details.

Omission or incorrect particulars discovered in the returns filed u/s 39 can be rectified in the return to be filed for the tax period during which such omission or incorrect particulars are noticed. Any tax payable as a result of such error or omission will be required to be paid along with interest.



Exception

It is important to note that section 39(9) does not permit rectification of error or omission discovered on account of scrutiny, audit, inspection or enforcement activities by tax authorities.

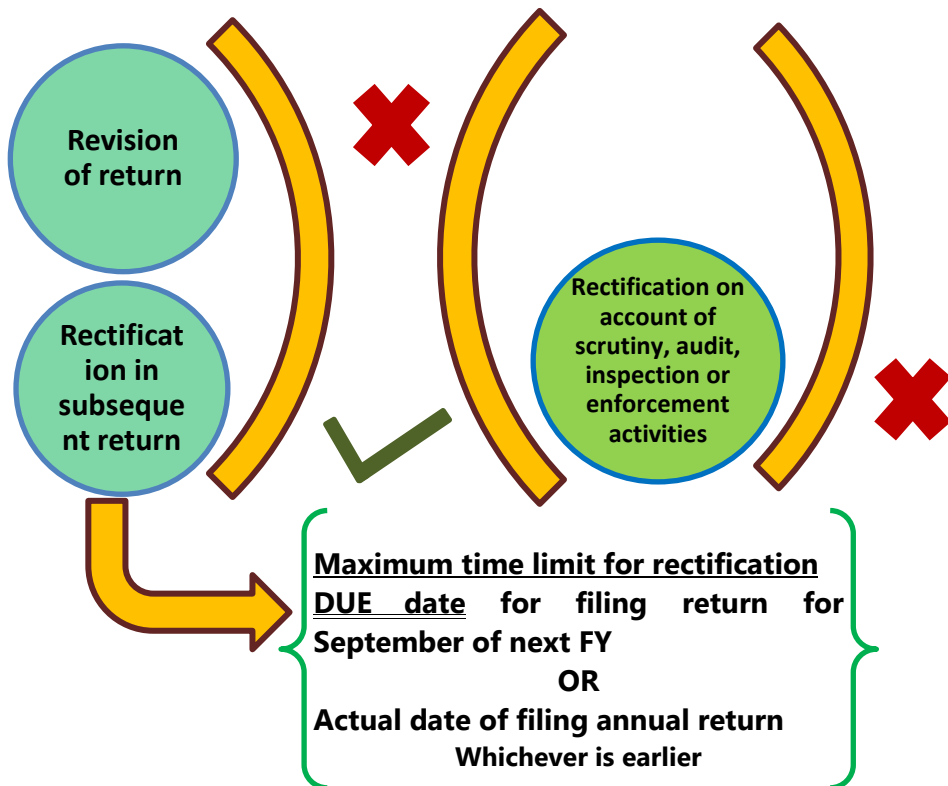
Hence, assessee may not be able to pass on the ITC to the receiver in respect of tax payments made by him in pursuance of any of the aforementioned situations.

Time limit for making rectification

The maximum time limit within which the rectification of errors/omissions is permissible is earlier of the following dates:

-  Due date of filing of return for the month of September following the end of the financial year [i.e., 20th October of next financial year] or
-  Actual date of filing of the relevant annual return

The last date of filing of annual return for a financial year is 31st December of next financial year. Hence, if annual return for the year 2017-18 is filed before 20th October 2018, then no rectification of errors/omissions in returns pertaining to FY 2017-18 would be permitted thereafter.





- ★ A return furnished under section 39(1) on which self-assessed tax has been paid in full is considered as a valid return.
- ★ Filing of returns for current month is possible only when returns of the previous month have been filed.
- ★ A taxpayer needs to electronically sign the submitted returns otherwise it will be considered not-filed.
- ★ Taxpayers can electronically sign their returns using a DSC (mandatory for all types of companies and LLPs), E-sign (Aadhaar-based OTP verification), or EVC (Electronic Verification Code sent to the registered mobile number of the authorized signatory).



5. OTHER RETURNS

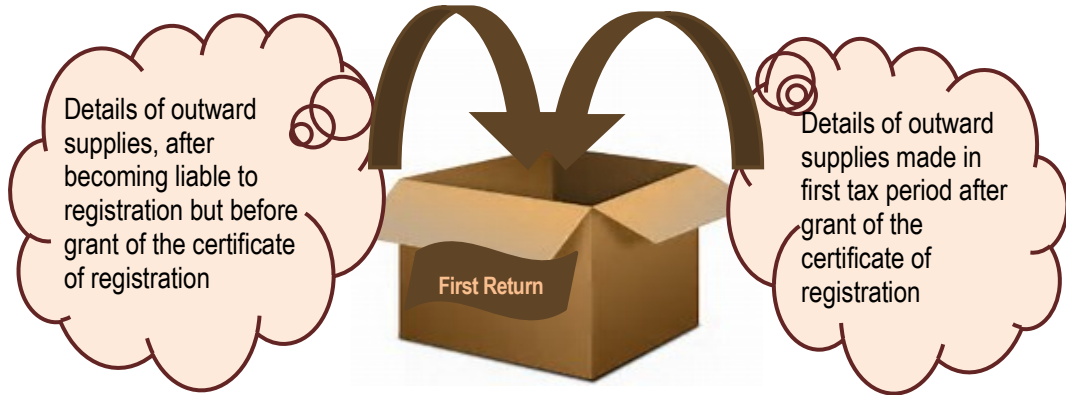
(i) First Return [Section 40]

When a person becomes liable to registration after his turnover crosses the threshold limit, he may apply for registration within 30 days of so becoming liable. Thus, there might be a time lag between a person becoming liable to registration and grant of registration certificate.

During the intervening period, such person might have made the outward supplies, i.e. after becoming liable to registration but before grant of the certificate of registration.

Now, in order to enable such registered person to declare the taxable supplies made by him for the period between the date on which he became liable to registration till the date on which registration has been granted so that ITC can be availed by the recipient on such supplies, firstly, the registered person may issue revised tax invoices against the invoices already issued during said period within 1 month from the date of issuance of certificate of registration [Section 31(3)(a) read with rule 53 of CGST Rules, 2017 – Discussed in detail in Chapter-8: Tax Invoice, Credit and Debit Notes; E-Way Bill]. Further, section 40 provides that registered person shall declare his outward supplies made

during said period in the first return furnished by him after grant of registration. The format for this return is the same as that for regular return.



(ii) Annual Return [Section 44 read with rule 80 of the CGST Rules]

(a) Who is required to furnish annual return and what is the due date for the same?

All registered persons are required to file an annual return. However, following persons are not required to file the annual return:

- (i) Casual taxable persons.
- (ii) Non- resident taxable person
- (iii) Input service distributors⁵ and
- (iv) Persons authorized to deduct/collect tax at source under section 51/52⁶.

The annual return for a financial year needs to be filed by 31st December of the next financial year.

Every registered person who is required to get his accounts audited under section 35(5)⁷ shall also furnish electronically a copy of audited annual accounts and a certified reconciliation statement in the prescribed form along with the annual return.

⁵ The concept of Input Service Distributor will be discussed at the Final Level.

⁶ The concept of person deducting/collecting tax at source will be discussed at the Final Level.

⁷ Section 35 contains the provisions relating to Accounts and Records. Such provisions will be discussed at the Final Level.

Reconciliation Statement reconciles the value of supplies declared in the return furnished for the financial year with the audited annual financial statement and such other particulars, as may be prescribed.

(b) What is the prescribed form for annual return?

The annual return is to be filed electronically in **Form GSTR-9** through the common portal.

Composition scheme supplier: A person paying tax under composition scheme is required to file the annual return in **Form GSTR-9A**.



(iii) Final Return [Section 45 read with rule 81 of the CGST Rules]

(a) Who is required to furnish final return?

Every registered person who is required to furnish return u/s 39(1) and whose registration has been surrendered or cancelled is required to file a **final return** electronically in **Form GSTR-10** through the common portal.



(b) What is the time-limit for furnishing final return?

The final return has to be filed within 3 months of the:

- (i) date of cancellation
 - or
 - (ii) date of order of cancellation
- whichever is **later**.

(iv) Details of inward supplies of persons having UIN [Rule 82 of the CGST Rules]

(a) When UIN is issued for claiming refund of taxes paid on inward supplies

Such person shall furnish the details of the inward supplies of taxable goods and/or services on which refund of taxes has been claimed, in **Form GSTR-11**, along with application for such refund claim.



(b) When UIN is issued for purposes other than refund of taxes paid

Such person shall furnish the details of inward supplies of taxable goods and/or services as may be required by the proper officer in Form **GSTR-11**.



6. DEFAULT/DELAY IN FURNISHING RETURN [SECTIONS 46 & 47]

(i) Notice to return defaulters [Section 46 read with rule 68 of the CGST Rules]

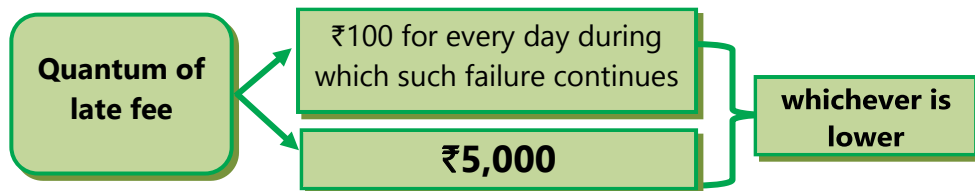
A notice in prescribed form shall be issued, electronically, to a registered person who fails to furnish return under section 39 [Normal Return] or section 44 [Annual Return] or section 45 [Final Return] or section 52 [TCS Statement]. The notice would require the registered person to furnish the return within 15 days.



(ii) Late fees levied for delay in filing return [Section 47]

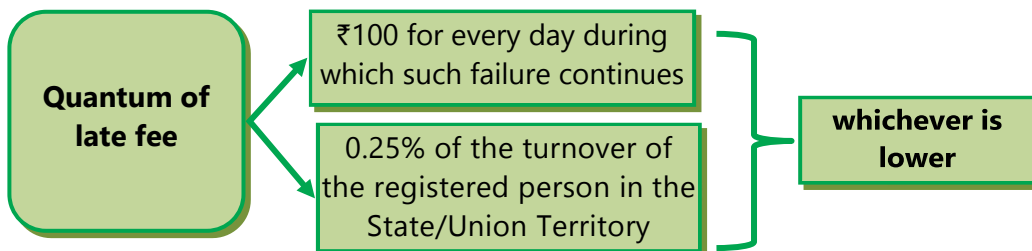
Delay in filing any of the following by their respective due dates, attracts late fee:

- (A) Statement of Outward Supplies [Section 37]
- (B) Returns [Section 39]
- (C) Final Return [Section 45]



Late fees levied for delay in filing annual return

A registered person who fails to furnish the annual return by the due date is required to pay a late fee as under:





It may be noted that the late fee payable by a registered person for delayed filing of a return and/or annual return, as mentioned above, is with reference to only the CGST Act. An equal amount of late fee would be payable by such person under the respective SGST/UTGST Act as well.



7. GOODS AND SERVICES TAX PRACTITIONERS [SECTION 48]

Section 48 provides for the authorisation of an eligible person to act as approved Goods and Services Tax Practitioner (GSTP). A registered person may authorise an approved GSTP to furnish information, on his behalf, to the Government. The manner of approval of GSTPs, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning have been prescribed in the rules 83 and 84 of the CGST Rules.

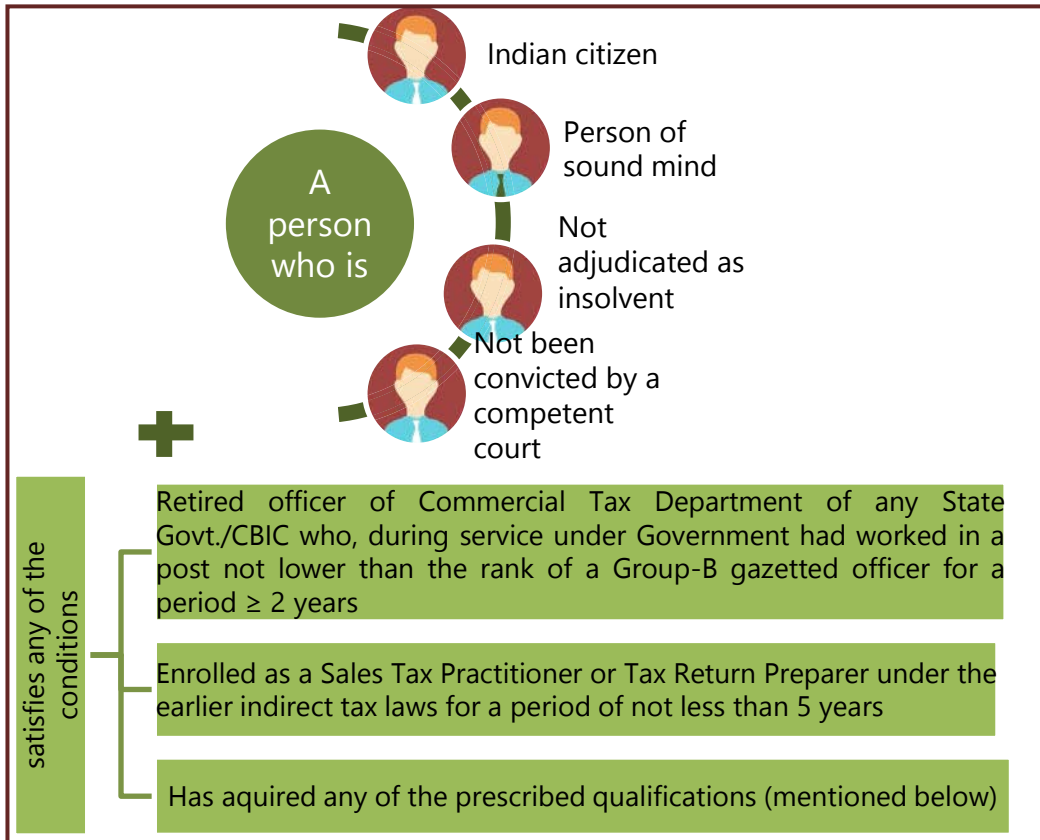


GSTN provides separate user ID and Password to GSTP to enable him to work on behalf of his clients without asking for their user ID and passwords. They can do all the work on behalf of taxpayers as allowed under GST Law. A taxpayer may choose a different GSTP by simply unselecting the previous one and then choosing a new GSTP on the GST portal.

Standardised formats from GST PCT-1 to GST PCT-5 have been prescribed for making application for enrolment as GSTP, certificate of enrolment, show cause notice for disqualification, order of rejection of application of enrolment, list of approved GSTPs, authorisation letter and withdrawal of authorisation. A GSTP enrolled in any State or Union Territory shall be treated as enrolled in the other States/Union territories.

(i) What is the eligibility criteria for GSTP?

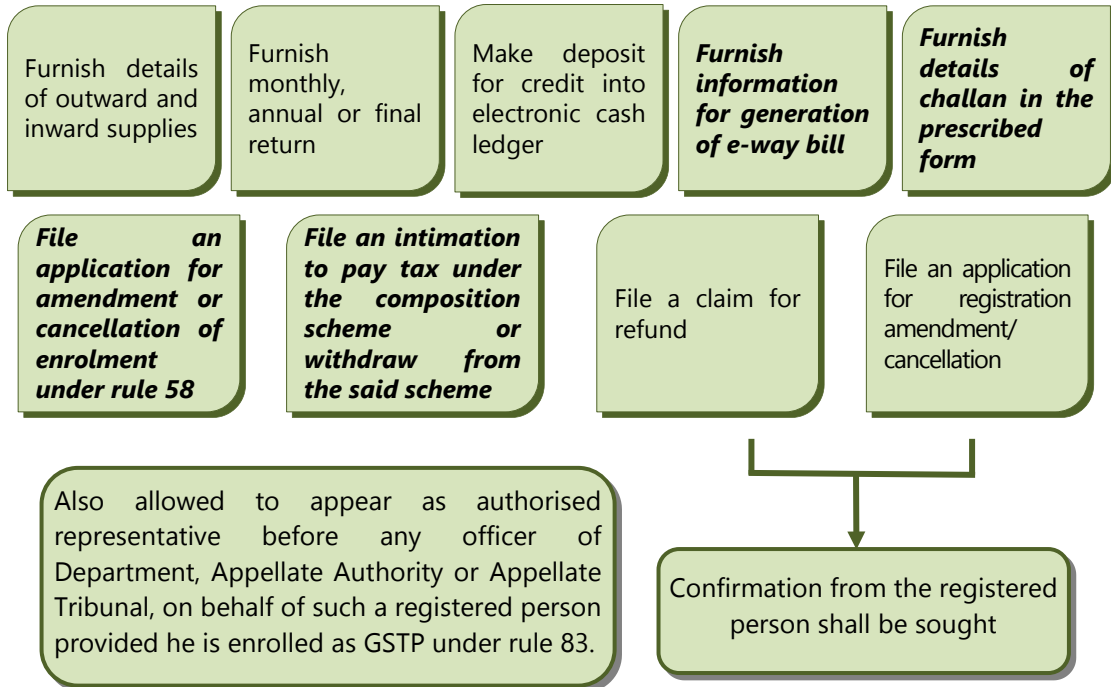
The eligibility criteria for GSTP has been explained by way of a diagram given at the next page.



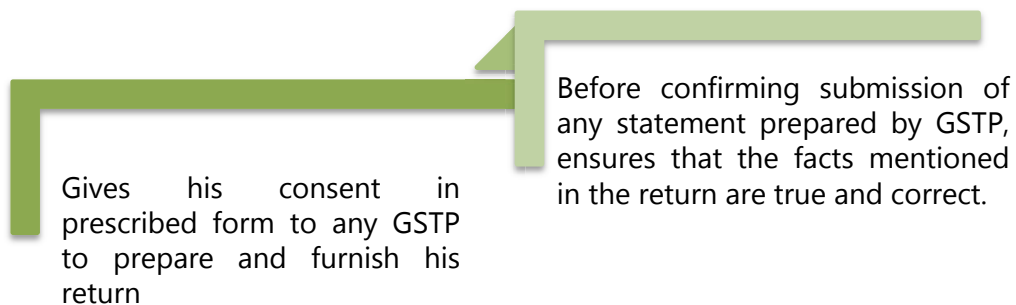
- Prescribed Qualifications**
- (i) Graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force
 - (ii) Degree examination of any Foreign University recognised by any Indian University as equivalent to the degree examination mentioned in sub-clause (i)
 - (iii) Any other examination notified by the Government, on the recommendation of the Council, for this purpose
 - (iv) Any degree examination of an Indian University or of any Foreign University recognised by any Indian University as equivalent of the degree examination
 - (v) Has passed final examination of ICAI/ ICSI/ Institute of Cost Accountants of India.

(ii) What are the activities which can be undertaken by a GSTP?

A GSTP can undertake any/all of the following activities on behalf of a registered person, if so authorised by him:



Furnishing returns through GSTP: When a registered person opts to furnish his return through GSTP, such registered person:



Thus, the responsibility for correctness of any particulars furnished in the return or other details filed by the GSTP continues to rest with the registered person on whose behalf such return and details are furnished.

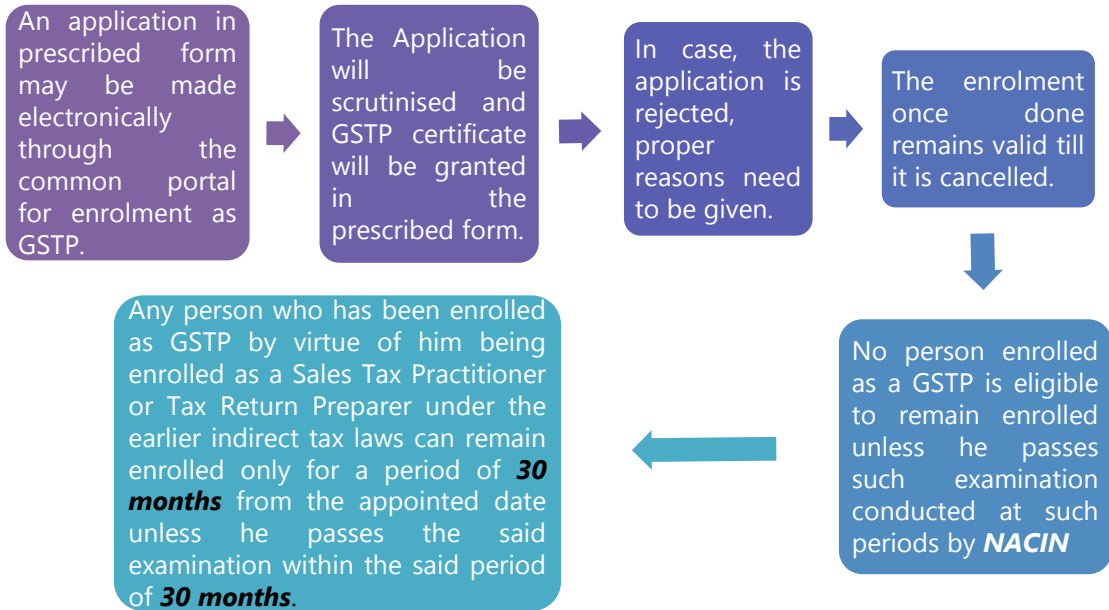
The registered person before confirming, should ensure that the facts mentioned in the return are true and correct before signature. However, failure to respond to request for confirmation is treated as deemed confirmation.

(iii) Other points

- ❑ A registered person gives his consent and authorises a GSTP in the prescribed form by listing the authorised activities in which he intends to authorise the GSTP. The GSTP accepts the authorisation in Part B of the same form.
- ❑ The GSTP can undertake only such tasks as indicated in the prescribed form. The registered person may, at any time, withdraw such authorization.
- ❑ Any statement furnished by the GSTP is made available to the registered person on the common portal. For every statement furnished by the GSTP, a confirmation is sought from the registered person over email or SMS.
- ❑ The GSTP should prepare all statements with due diligence and affix his digital signature on the statements prepared by him or electronically verify using his credentials.
- ❑ If the GSTP is found guilty of misconduct, his enrolment will be liable to be cancelled and a show cause notice would be issued to him.

(iv) What is the procedure for enrolment as GSTP?

The procedure for enrolment of GSTP has been depicted in the following diagram:

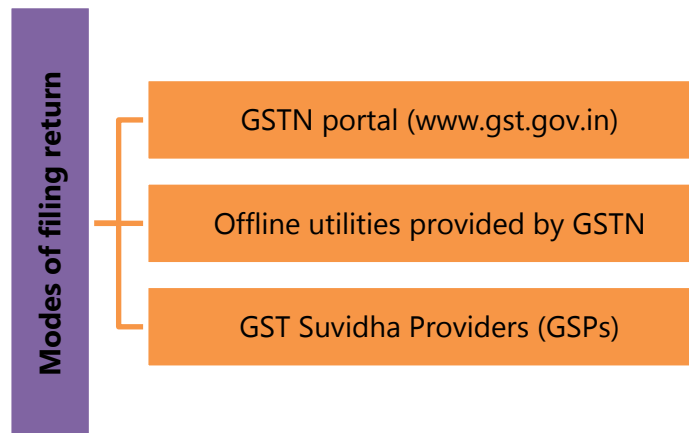


8. LET US RECAPITULATE

The provisions relating to returns have been summarised by way of tables and diagrams to help students remember and retain the provisions in a better and effective manner:

1. Modes of filing returns

All the returns are to be filed online.

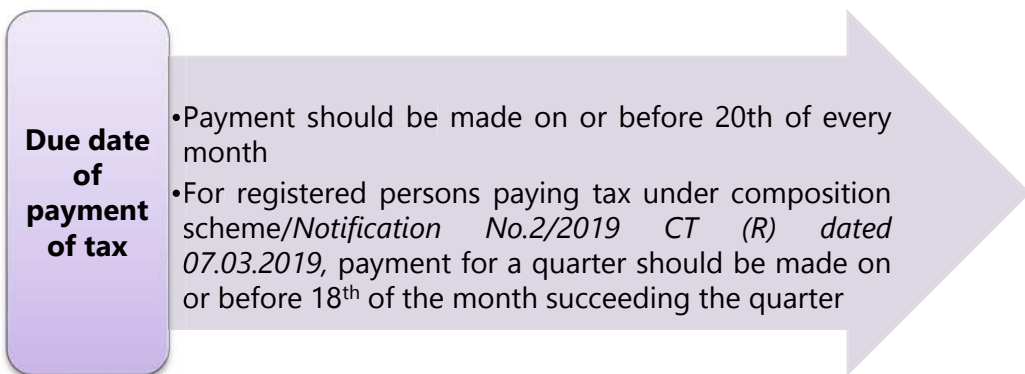


2. List of statements/returns under GST

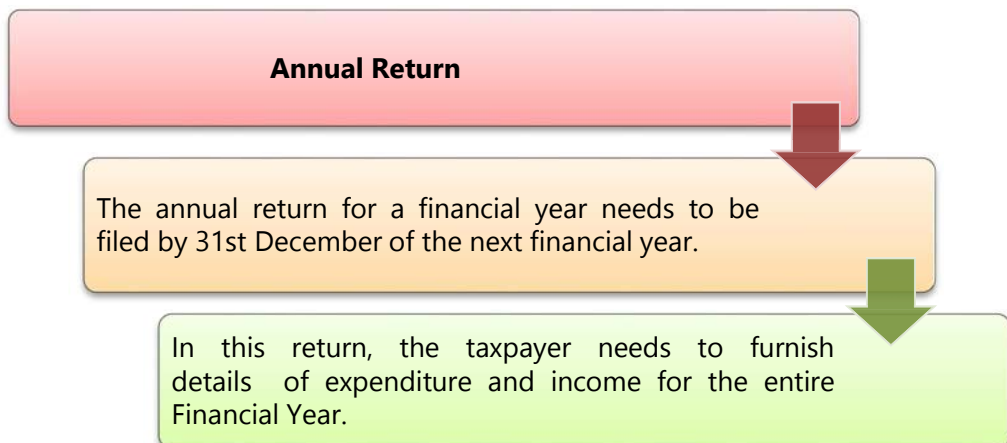
Return	Periodicity/description	Who Files?	Date for filing
GSTR-1	Monthly Statement of Outward supplies of goods and/or services	Registered person with annual aggregate turnover greater than ₹ 1.5 crore	10 th of the next month
	Quarterly Statement of Outward supplies of goods and/or services	Registered person with annual aggregate turnover up to ₹ 1.5 crore	10 th of the month succeeding the quarter
GSTR-3B	Monthly return for a normal taxpayer	Registered person	20 th of the next month
GSTR-4	Return for a financial year	Registered person paying tax under composition scheme/ <i>Notification No.2/2019 CT (R) dated 07.03.2019</i>	30 th April of the next financial year
GSTR-5	Monthly return	Non-resident Taxpayer	20 th of the next month or within 7 days after expiry of registration, whichever is earlier
GSTR-9	Annual return	Registered person other than an ISD, tax deductor/tax collector, casual taxable person and a non-resident taxpayer	31 st December of the next financial year

GSTR-10	Final return	Taxable person whose registration has been surrendered or cancelled	Within three months of the date of cancellation or date of order of cancellation, whichever is later.
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3. Due date of payment of tax



4. Annual return



5. Revision of returns

There is no mechanism of filing revised returns for any correction of errors/omissions.

The rectification of errors/omissions is allowed in the subsequent returns.

However, no rectification is allowed after the due date for furnishing the return for the month of September following the end of the financial year to which such details pertain **or** furnishing of the relevant annual return, **whichever is earlier**.

6. Late fee for delay in filing of returns

Any registered person who fails to furnish statements, returns u/s 39 and final return by the due dates

is liable to pay a late fee of ₹ 100 per day,

subject to a maximum of ₹ 5,000, under the CGST Act

Any registered person who fails to furnish the annual return by the due date

shall be liable to pay a late fee of ₹ 100 per day,

subject to a maximum of 0.25% of his turnover in the State/Union Territory, under the CGST Act



9. TEST YOUR KNOWLEDGE

- Who is required to furnish details of outward supplies in Form GSTR-1?
 - Person paying tax under composition scheme
 - Non-resident taxable person
 - Both (a) & (b)
 - None of the above
- What does N stand for in HSN?
 - Network

- (b) Nationalization
(c) Nomenclature
(d) Nomination
3. Which form is furnished for submission of details of outward supplies u/s 37?
(a) GSTR-1
(b) GSTR-2
(c) GSTR-3
(d) GSTR-5
4. What is the due date for submission of monthly GSTR-1?
(a) on or before 10th day of the immediately succeeding month
(b) on or before 15th day of the immediately succeeding month
(c) on or before 17th day of the immediately succeeding month
(d) on or before 20th day of the immediately succeeding month
5. Composition tax payer is required to file return in Form no. _____.
(a) GSTR-2
(b) GSTR-3
(c) GSTR-4
(d) GSTR-5
6. Which of the following are not required to file the annual return?
(a) Input Service Distributor
(b) Casual Taxable Person
(c) Non-resident Taxpayer
(d) All of the above
7. The maximum amount of late fee payable under the CGST Act for delay in furnishing returns under section 39 is ₹ _____.
(a) 1,000
(b) 5,000
(c) 20,000
(d) 25,000

8. The due date of filing final return is _____.
- (a) 20th of the next month
 - (b) 18th of the month succeeding the quarter
 - (c) Within three months of the date of cancellation or date of order of cancellation, whichever is later
 - (d) 31st December of next financial year
9. Mr. X, a regular tax payer, did not make any taxable supply during the month of July. Is he required to file any goods and service tax return?
10. If a return has been filed, how can it be revised if some changes are required to be made?



10. ANSWERS/HINTS

1. (d) 2. (c) 3. (a) 4. (a) 5. (c) 6. (d) 7. (b)

8. (c)

9. A regular tax payer is required to furnish a return u/s 39 for every month even if no supplies have been effected during such period. In other words, filing of Nil return is also mandatory.

Therefore, Mr. X is required to file monthly return even if he did not make any taxable supply during the month of July.

10. In GST since the returns are built from details of individual transactions, there is no requirement for having a revised return. Any need to revise a return may arise due to the need to change a set of invoices or debit/ credit notes. Instead of revising the return already submitted, the system allows changing the details of those transactions (invoices or debit/credit notes) that are required to be amended. They can be amended in any of the future GSTR- 1 in the tables specifically provided for the purposes of amending previously declared details.

As per section 39(9), omission or incorrect particulars discovered in the returns filed u/s 39 can be rectified in the return to be filed for the month during which such omission or incorrect particulars are noticed. Any tax payable as a result of such error or omission will be required to be paid along with interest. The rectification of errors/omissions is carried out by entering appropriate particulars in "Amendment Tables" contained in GSTR-1.

AMENDMENTS MADE VIDE THE FINANCE (NO. 2) ACT, 2019

The Finance (No. 2) Act, 2019 has become effective from 01.08.2019. However, the amendments made in the CGST Act and the IGST Act vide the Finance (No. 2) Act, 2019 would become effective only from a date to be notified by the Central Government in the Official Gazette. Such a notification has not been issued till the time this Study Material is being released for printing. Therefore, the applicability or otherwise of such amendments for May 2020 and/or November 2020 examinations shall be announced by the ICAI only after such notification is issued by the Central Government.

In the table given below, the existing provisions⁸ relating to returns are compared with the provisions as amended by the Finance (No. 2) Act, 2019.

Once the announcement for applicability of such amendments for examination(s) is made by the ICAI, students should read the amended provisions given hereunder in place of the related provisions discussed in the Chapter.

Section No.	Existing provisions	Provisions as amended by the Finance (No. 2) Act, 2019	Remarks
39	<p>Sub-section (1)</p> <p>Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return,</p>	<p>Sub-section (1)</p> <p>Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or</p>	<p>Under the existing provisions, composition taxpayers as well as registered persons paying tax under <i>Notification No. 2/2019 CT (R) dated 07.03.2019</i> are required to file annual return and make quarterly payment of taxes in terms of <i>Notification No. 21/2019 CT</i></p>

⁸ Provisions existing as on the date when the Study Material was released for printing

	<p>electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.</p>	<p>services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and manner, and within such time, as may be prescribed: Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.</p>	<p><i>dated 23.04.2019</i> issued under section 148 read with rule 62 of CGST Rules. Such provisions are now being incorporated in the CGST Act vide the amendment being proposed by the Finance (No. 2) Act, 2019 in section 39. Section 39 of the CGST Act is being amended so as to allow the composition taxpayers (which includes tax payers paying tax under <i>Notification No. 2/2019 CT (R) dated 07.03.2019</i> by virtue of amendment being made in section 10 of the CGST Act vide the Finance (No. 2) Act, 2019) to furnish annual return along with quarterly payment of taxes. Further, other specified taxpayers may be given the option for quarterly or monthly</p>
	<p><u>Sub-section (2)</u> A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days</p>	<p><u>Sub-section (2)</u> A registered person paying tax under the provisions of section 10, shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid and such other particulars in such form and manner, and within</p>	

	after the end of such quarter.	such time, as may be prescribed.	furnishing of returns and payment of taxes under the proposed new return system.
<p><u>Sub-section (7)</u></p> <p>Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:</p>	<p><u>Sub-section (7)</u></p> <p>Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:</p> <p>Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and</p>		

		<p>within such time, as may be prescribed:</p> <p>Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.</p>	
<p>44</p>	<p><u>Sub-section (1)</u></p> <p>Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as</p>	<p><u>Sub-section (1)</u></p> <p>Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first</p>	<p>This amendment seeks to empower the Commissioner to extend the due date for furnishing annual return.</p>

may be prescribed on or before the thirty-first day of December following the end of such financial year.

day of December following the end of such financial year.

Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.

Note

The Study Material follows a systematic approach of explaining the GST law by first extracting the statutory provisions followed by their analysis. Students may note that the provisions which do not form part of the syllabus are not included in such statutory provisions. Such excluded provisions can either be complete sections or rules or sub-sections/sub-rules of sections/rules.

However, where a section/rule is included in the syllabus, but contains reference to *inter alia* another section/rule which is excluded from the syllabus, the entire section has been given in the statutory provisions i.e., the reference to the excluded section has not been removed while reproducing the statutory provisions. While analysing the section, however, only the relevant portion has been dealt with in detail.

The discussion on the GST law in this Study Material incorporates the content and images made available by the CBIC on its website www.cbic.gov.in namely, FAQs on GST, e-flyers issued on various aspects of GST, sectoral FAQs as also the user manuals and FAQs available on the GST common portal www.gst.gov.in, to the extent relevant to such discussion.