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Background Material

REFRESHER COURSE ON GST

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Supply under Goods and Services Tax

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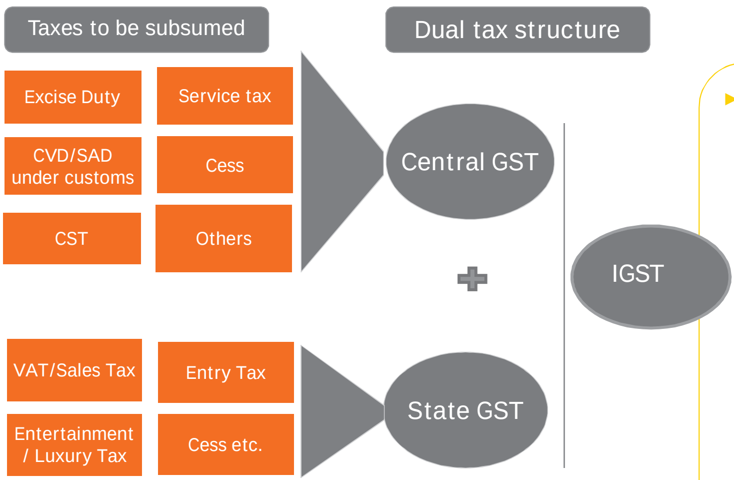
What is GST?

- GST is a common tax on both goods and services
- More commonly known as VAT in UK and few other countries
- Indian federal structure will make Indian GST regime unique and challenging for Indian companies vis-à-vis global GST/VAT regime
- Both State and Centre will exercise control on assessee except for few cases
  - 90% : 10% - up to Rs 1.5 Crore
  - 50% : 50% Above Rs 1.5 Crore
- GST will be **destination based tax**

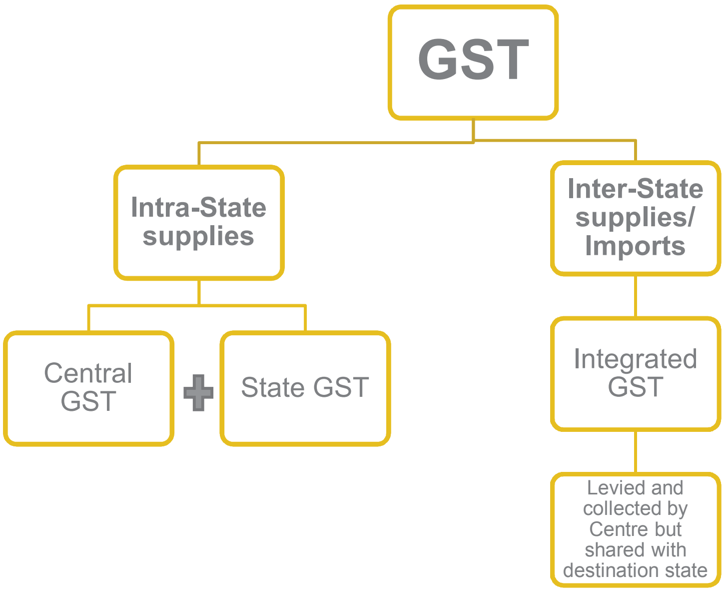
Existing vs Proposed Framework



- Introduction of GST will result in:
  - Reduction in number of taxes
  - Removal of cascading
  - Decrease in effective tax rate of goods over a period
  - Increase in transparency and tax collection
  - Uniformity in tax rates across India

*NCAER – National Council of Applied Economic Research

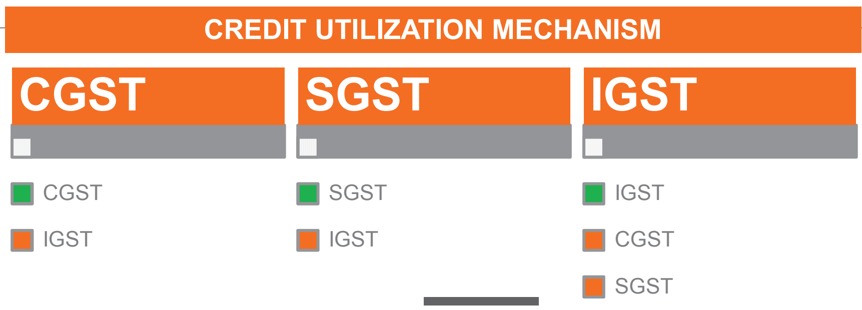
Proposed GST Structure



Availment and Utilization of ITC

Availment of ITC:

- Liberal Tax Credit regime under GST
- Available to every registered taxable person for purchases made from another registered dealer or imports
- Credit is available for Inputs, Input services and capital goods
- Amount to be credited in electronic credit ledger
- No tax credit without online reconciliation



Components of valid Levy/Tax

> What is taxable i.e. taxable event?

> Who is liable to pay tax?

> What is rate of tax?

> What should be the measure of tax i.e. valuation?

Components of valid Levy/Tax

> It was held by the SC in **Govind Saran Ganga Saran v. CST (1985) 155 ITR 144 SC** that:

"6. The components which enter into the concept of a tax are well-known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness ill the legislative scheme defining any of those components of the levy will be fatal to its validity."

Taxable Event

Manufacture of Excisable goods

Provision / Receipt of services

Sale or Purchase of goods

GST

Supply of goods or services

Supply under GST

- Model CGST Law (Revised)
  - u/s 2(95): “***supply***” shall have the meaning as assigned to it in section 3;
- Model IGST Law (Revised)
  - u/s 2(26): *“**supply**” has the same meaning as assigned to it in section 3 of <u>the CGST Act, 2016</u>;*

Taxable Supply

In order to attract GST, the following elements are required to be satisfied, i.e.

(i) supply of ***goods and / or services***;

(ii) supply is ***for a consideration*** *(few exceptions)*;

(iii) supply is made ***in the course or furtherance of business***;

(iv) supply is made in the ***taxable territory***;

(v) supply is a ***taxable supply***; and

(vi) Supply is made by a ***taxable person*** *(covered u/s 10)*

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Goods u/s 2(49)

- **Goods:**

  *"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;*

- Different from the meaning provided under the Sale of Goods Act and VAT Laws:

  "goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

- Actionable claims (included)

- Securities (excluded)

Service u/s 2(92)

- **Service:**

  "services" means anything other than goods;

  *Explanation 1.- Services include transactions in money but **does not include money and securities**;*

  Explanation 2.- Services does not include transaction in money other than an activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

- **Transaction in money**: Money Exchange, Payment wallets etc.

- Immovable Property?

Consideration u/s 2(28)

> **Consideration**

*"consideration" in relation to the supply of goods or services **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, **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**, **whether or not voluntary**, in respect of, in response to, or for the inducement of, the supply of goods or services, **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, **whether refundable or not**, given in respect of the supply of goods or services shall not be considered as payment made for the supply **unless the supplier applies the deposit as consideration for the supply**;*

Consideration u/s 2(28)

> Important phrases:
> > *"In respect of" - with reference to, or in connection with*
> > *"In response to" - a reply or a reaction*
> > *"for the inducement of" - an act or thing that is intended to persuade someone or something*

> "whether in money or **otherwise"** – Money includes all form of payments – Thus, "otherwise" relates to non- monetary consideration like Barter, Exchange etc.

> Consideration by other person may or may not be on behalf of the recipient– but should have link with the supplies – ecommerce model

> **"the monetary value of any act or forbearance"**
> > Cases like relinquishment of rights or claims, reciprocal promise etc.
> > Why not benchmark value of goods or services?

Money u/s 2(65)

- *"money" means Indian legal tender or <u>any foreign currency</u>, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or <u>electronic remittance</u> or any other instrument recognized by the Reserve Bank of India when used as consideration to settle an obligation or exchange with Indian legal tender of another denomination <u>but shall not include any currency that is held for its numismatic value;</u>*

- Foreign currency was not treated as money under the Service Tax law – 65B(33)

- Old currency notes kept for their historic importance are excluded from the definition

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Business u/s 2(17)

"**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;**

- Under VAT laws – activity should be with a motive to made gain or profit
- Pecuniary benefit means –a benefit in the form of money, property, commercial interest or anything else the primary significance of which is economic gain;

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

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Business u/s 2(17)

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

- Will not include sale of personal assets

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

- To allow ITC for setting up of business
- For payment of ITC on 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;

- Principle of Mutuality?

Business u/s 2(17)

(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;

- like independent directors etc.

(h) services provided by a race club by way of totalisator or a licence to book maker in such club;

Explanation.- Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities shall be deemed to be business.

Supply made in the course or furtherance of business

CBEC - FAQ

No definition or test as to whether the activity is in the course or furtherance of business has been specified under the MGL. However, the following business tests are normally applied to arrive at a conclusion whether a supply has been made in the course or furtherance of business:

1. Is the activity, a serious undertaking earnestly pursued?
2. Is the activity is pursued with reasonable or recognisable continuity?
3. Is the activity conducted in a regular manner based on sound and recognised business principles?
4. Is the activity predominantly concerned with the making of taxable supply for consideration/ profit motive?

The test may ensure that occasional supplies, even if made for consideration, will not be subjected to GST

Supplier u/s 2(94)

"Supplier" in relation to any goods and/or services shall mean the person supplying the said goods and/or services and shall include an agent acting as such on behalf of such supplier in relation to the goods and/or services supplied;

Recipient u/s 2(81)

"**Recipient**" of supply of goods and/or services means-

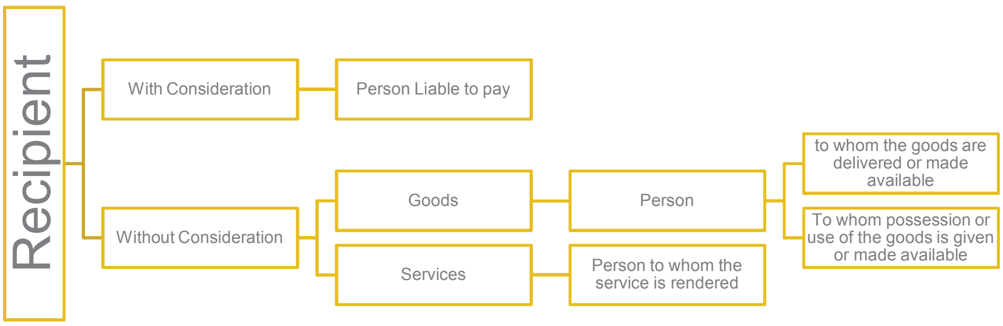
(a) where a consideration is payable for the supply of goods and/or services, the person who is liable to pay that consideration,

(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;

Explanation.- The expression "recipient" shall also include an agent acting as such on behalf of the recipient in relation to the goods and/or services supplied.

Recipient u/s 2(81)



Composite Supply u/s 2(27)

> “**Composite supply**” means a supply made by a taxable person to a recipient comprising two or more supplies of goods or services, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration : Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply.

Principal Supply u/s 2(78)

> “**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 and does not constitute, for the recipient an aim in itself, but a means for better enjoyment of the principal supply;

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Mixed Supply u/s 2(66)

> "**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;

> Illustration: 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.

Others

> **Taxable Person** - u/s 2(98) – *"taxable person"* shall have the meaning as assigned to it in section 10

> **Taxable Supply** - u/s 2(99) - means a supply of goods or services which is not chargeable to tax under the Act

> **Non-taxable supply** – u/s 2(100) – means a supply of goods or services which is not chargeable to tax under this Act

> **Taxable Territory** – u/s 2(101) – means the territory to which the provision of this Act apply.

Supply u/s 3

- Supply
  - Natural Meaning
  - Import of Services for consideration
  - Deemed Supplies
  - Non-taxable Supplies
    - Schedule III
    - Schedule IV
  - Principles of Classification

Section 3: Meaning and Scope of supply

(1) Supply includes—

> Inclusive definition with wider meaning (like section 2(f) of Excise Act)

(a) all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,

- Natural Meaning
- Captive consumptions, Theft, Pilferage, Stock transfers, Free supplies are not covered in this part

(b) importation of services, for a consideration whether or not in the course or furtherance of business, and

- Import for personal use is now also liable to GST – Recent Service Tax Amendments

(c) a supply specified in Schedule I, made or agreed to be made <u>without a consideration</u>.

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Section 3: Meaning and Scope of supply

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

- For transactions like works contract, lease etc.

(3) Notwithstanding anything contained in sub-section (1),

(a) activities or transactions specified in schedule III; or

(b) activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as specified in Schedule IV,

shall be treated neither as a supply of goods nor a supply of services.

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Section 3: Meaning and Scope of supply

(4) Subject to sub-section (2) and sub-section (3), the Central or a State Government may, upon recommendation 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; or
(c) neither a supply of goods nor a supply of services.

(5) The tax liability on a composite or a mixed supply shall be determined in the following manner —

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply;

(b) a mixed supply comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax.

Section 3(1)(a) - Natural Meaning

- Supply includes:
  - all forms of supply
  - of goods and/or services
  - such as

  - made or agreed to be made
  - for a consideration
  - by a person
  - in the course or furtherance of business

Section 3(1)(a) - Natural Meaning

Sale

> Transfer of title or ownership in goods from seller to buyer for a price

Transfer

> Legal movement of something (e.g. Property, shares etc.) from one owner to another.
> Common use of word 'transfer', is to denote the passing of title in the property or an interest therein from one person to another with the intent of passing the rights which he had in it to the latter.

Section 3(1)(a) - Natural Meaning

Barter

> Exchange of goods and services without intervention of money – Valuation might be an issue

Exchange

> Meaning is wider than Barter and includes immovable property

> When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange". **(Section 118 of Transfer of Property Act, 1882)**

> An exchange involves the transfer of property by one person to another and reciprocally the transfer of property by that other person to the first person. There must be a mutual transfer of ownership of one thing for the ownership of another. **(I.T. Commissioner Bombay v. Rasiklal Moneklal, AIR 1989 SC 1333)**

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Section 3(1)(a) - Natural Meaning

License

- Only a permission or an authority to do a particular thing – cannot be equated with lease or transfer of right to use
- Right to enjoy only

Lease

- A transfer of a right to enjoy immovable property to the exclusion of all others on payment of consideration
- Right to possess and enjoy but excludes title

Rental

- Right to use movable or immovable property for particular period
- Cover both license and lease

Section 3(1)(a) - Natural Meaning

Disposal

- Action or process of getting rid of something – discarding of waste
- Very wide meaning and includes sale etc. as well

Section 3(1)(c) – Schedule I – Supply without Consideration

Supply without Consideration

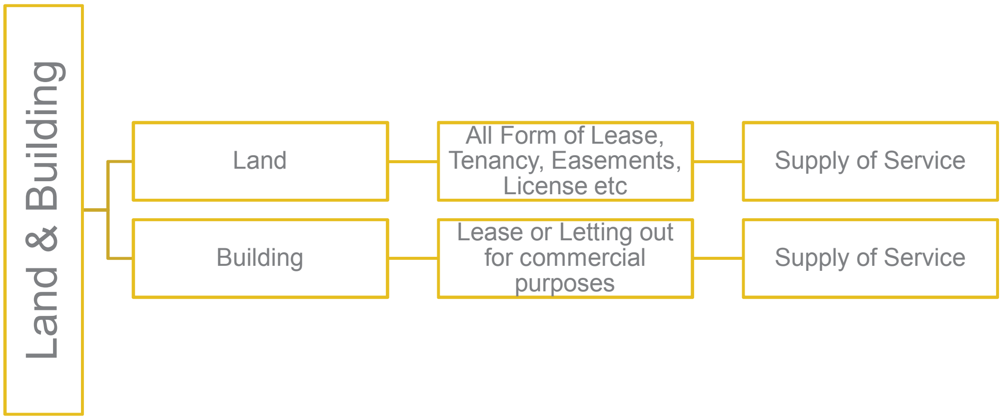
- Permanent Transfer/Disposal of Assets — If ITC has been availed
- Between Related persons or Distinct persons u/s 10 — In the course or furtherance of Business
- Principal – Agent transactions
- Importation of Services from Related person or own establishment outside India — In the course or furtherance of Business

Section 3(2) – Treatment of certain Supplies

Transfer

- Title in Goods — Supply of Goods
- Transfer without title — Supply of Service
- Conditional Transfer of Title – Subject to Payment of full consideration (Hire Purchase / Lease?) — Supply of Goods

Section 3(2) – Treatment of certain Supplies



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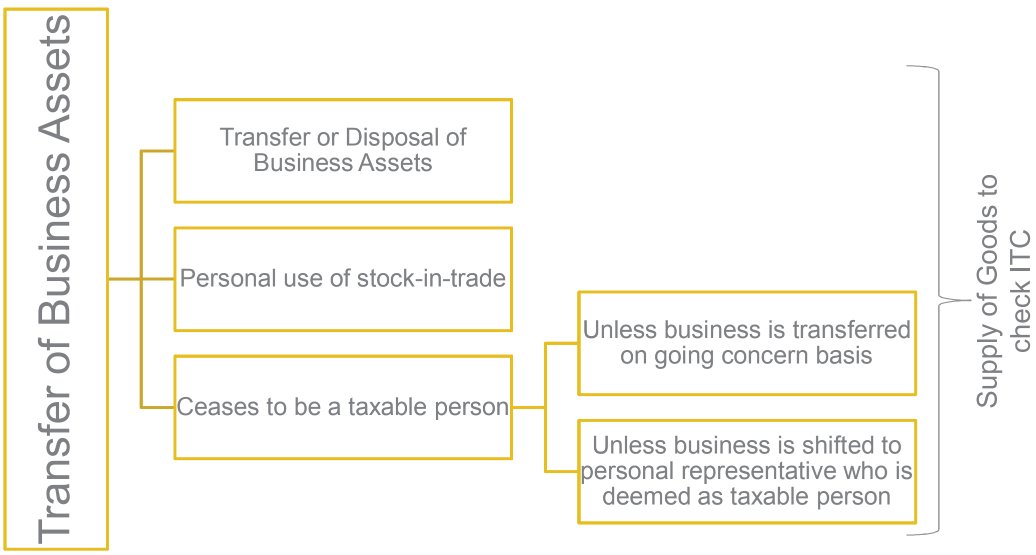

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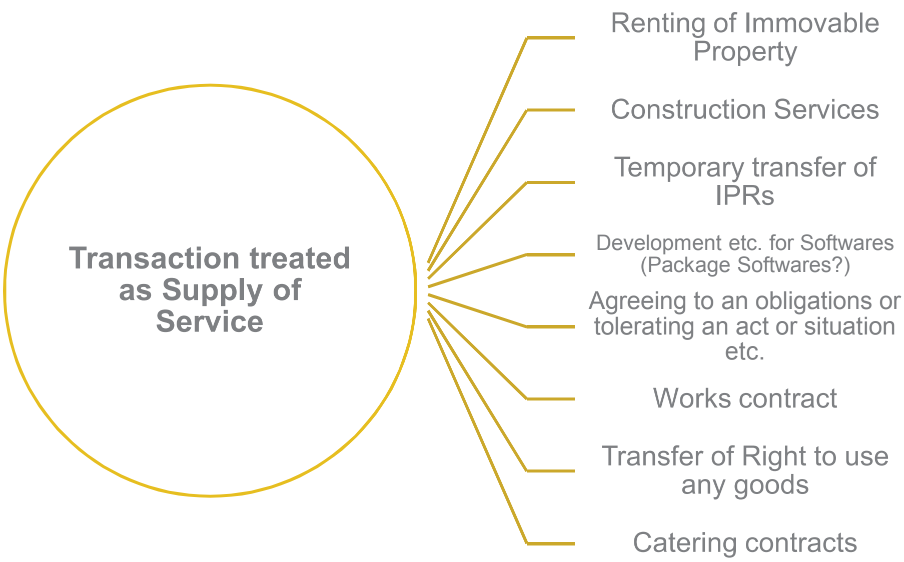

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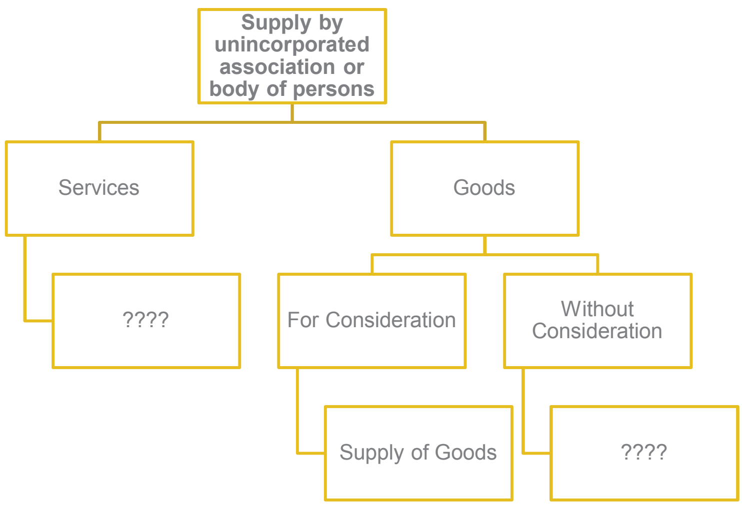
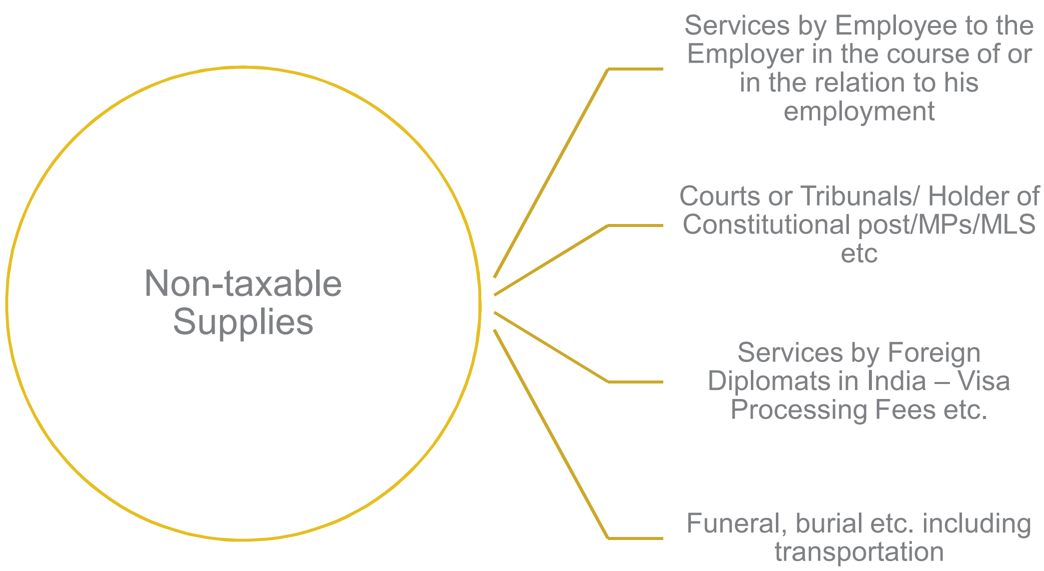


No legal fiction to treat club and members as separate persons or supply from club to members as taxable supply

Section 3(3) – Schedule III



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Section 3(3) – Schedule IV

- Relates to services provided by:
  - **Government - u/s 2(50)**
    - Central Government, State Government, Union Territory or their departments – provides books of accounts are required to be kept in accordance with Article 150
  - **Local Authority - u/s 2(62)**
    - Panchayat, Municipality, Municipal Committee, Cantonment Board, Regional Council or District Council, Development Board etc.
  - **Governmental Authority (Explanation 1 in Sch. IV)**
    - A board or an authority or any other body established with 90% or more participation (equity or control) by Government and setup under an Act of the Parliament or State Legislature to carry out any functions entrusted under Article 243W (Municipality) or Article 243G (Panchayat)

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Section 3(3) – Schedule IV

Service By Government / LA - To Government /LA Except:

- Postal services
- Transport of goods or services
- Services relating to aircraft or vessel

Service By Government/ LA - To **Individuals** in discharge of statutory functions such as:

- Passport, Visa, Driving License, Birth Certificate or Death Certificate
- Assignment of Right to use natural resources to individual farmer for agriculture

Service by Government/LA/Govt. Authority by way of:

- Functions entrusted to MUNICIPALITY under Article 243W of the Constitution
- Functions entrusted to PANCHAYAT under Article 243G of the Constitution
- Health Care
- Education

Section 3(3) – Schedule IV

Services provided by Government towards:

- Diplomatic or consular activities
- Citizenship, Naturalization and Aliens
- Admission into, and emigration and expulsion from India
- Currency, coinage and legal tender, foreign exchange
- Trade and commerce with foreign countries, import and export , Inter-state trade etc.
- Maintenance of public order

Any Service by a Government or LA

- In the course of discharging any liability on account of any tax levied by such Government or Authority

Service provided by a Government or a LA by way of:

- Tolerating non-performance of a contract for which consideration is the form of fines of liquidated damages is payable to the Government or Local Authority under such contract
- Assignment of right to use any natural resources where such right to use was assigned by the Government or the local Authority before the 1st April 2016* - On one time charge payable in installments

Section 3(3) – Schedule IV

Services provided by Government:

- By way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import or export of cargo on payment of Merchant Overtime Charges

Services provided by Government or LA by way of

- Registration required under any law for the time being in force
- Testing, calibration, safety checks or certification relating to protection or safety of workers, consumers or public at large, required under any law for time being in force

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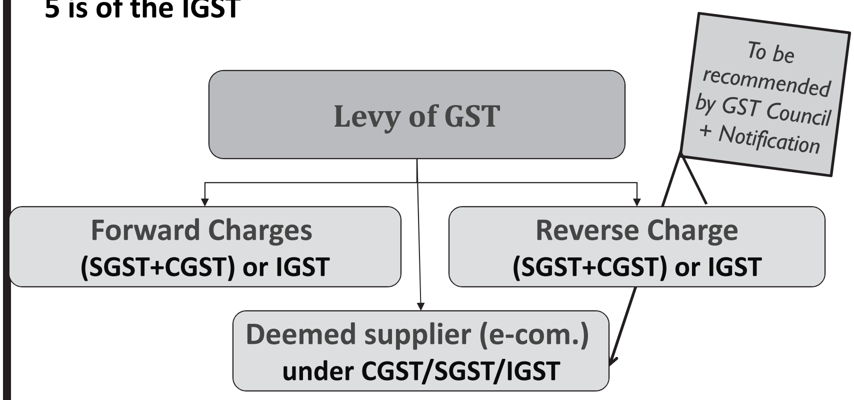
INDIAN GST
INCIDENCE & LEVY
2

Incidence and Levy of GST

8(1) of the CGST/SGST	5(1) of the IGST
• There shall be levied a tax called the CGST/SGST • on all intra-State supplies of goods and/or services • on value determined u/s 15 • at such rates as may be notified by the Central/State Govt in this behalf, but not exceeding 14%, on the recommendation of the Council, and • collected in such manner as may be prescribed.	• There shall be levied a tax called IGST • on all supplies of goods/services made in the course of inter-State trade or commerce • on value determined u/s 15 of CGST • at such rates as may be notified by Central Govt in this behalf, but not exceeding 28%, on recommendation of Council, • collected in such manner as may be prescribed, and • shall be paid by every taxable person as per the provisions of this Act.

Incidence and Levy of GST

- No tax shall be levied or collected except by the authority of law. [Article 265 of COI]
- Sec 8 is the charging provision of the CGST / SGST Act; Sec 5 is of the IGST



Rates of Tax

Sec 8 of CGST/SGST

- **CGST – Maximum 14%**
- **SGST – Maximum 14%**
- **IGST – Maximum 28%**
- **To be notified on the recommendation of GST Council by way of notification – Would NOT be part of the Law as Schedule**
- **Tax shall be paid by every taxable person u/s 10, as per the provisions of the Act**

Incidence and Levy of GST

- **Tax shall be payable by the taxable person u/s 10**
- **Taxable Person means -**
  - **a person who is registered or required to be registered under Schedule V of the Act**
  - **Persons who have obtained more than one registration in one state or others – To be treated as distinct persons**
  - **Establishment of the person in the same state or other state – To be treated as distinct persons**
- **Taxable person is liable to pay tax & file periodical returns**
- **A person who is required to be registered will be considered as a taxable person only if his aggregate turnover in a financial year exceeds Rs. 20 lacs (Rs. 10 lacs in case of North Eastern States including Sikkim).**

Taxable Person

Who is Taxable Person – Section 10 read with Schedule V

(Irrespective of Threshold Limit)

- **Person effecting Inter-State Supply**
- **Person liable pay tax under reverse charge**
- **Casual Taxable Person u/s 2(20):**
  - who occasionally undertakes transactions involving supply in the course or furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business.
- **Non-Resident Taxable Person u/s 2(68):**
  - A taxable person who occasionally undertakes transactions involving supply whether as principal or agent or in any other capacity but who has no fixed place of business in India.

Taxable Person

Who is Taxable Person (contd…)

(Irrespective of Threshold Limit)

- **Notified e-commerce operators u/s 8(4)**
- **Person who supplies goods/services on behalf of another registered taxable person.**
- **Person supplying goods/services through an Electronic Commerce Operator**
- **Electronic Commerce Operators**
- **Input service distributor – Whether or not separately registered**
- **Person required to deduct TDS u/s 46 – Whether or not separately registered**

Taxable Person

<u>Who is Taxable Person (contd…)</u>

- **Person required to collect tax u/s 56 – Whether or not separately registered**
- **Such other persons as the Central/State Govt. may notify on recommendations from the Council.**
- **Central/State Govt. or the local authority functioning as public authorities (except the activities listed in Sch IV) if its aggregate turnover exceeds the threshold limit.**
- **Every person who is registered or holds a license under an repealing law, shall be liable to be registered under this Act with effect from the appointed day.**

Taxable Person

<u>Who is NOT Taxable Person</u>

- **Agriculturist**
- **Persons engaged wholly in supply of goods/services not liable to tax under the Act or are exempt from tax**

IGST on Import

Proviso to Sec 5(1) of IGST

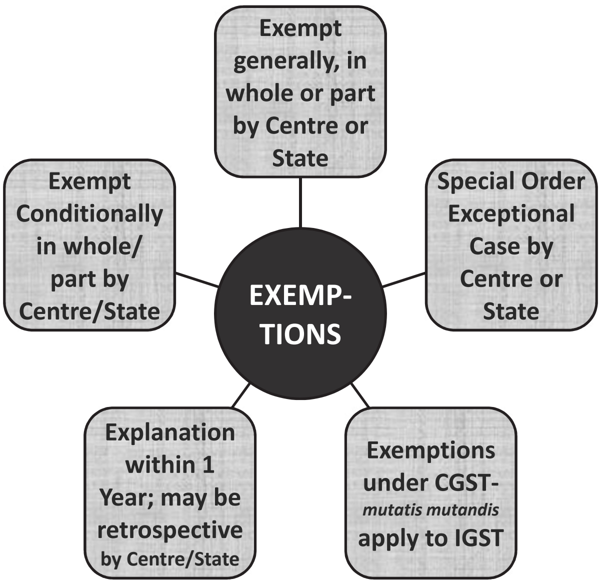
- **IGST on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975**
- **at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962,**
- **on a value as determined under the first mentioned Act.**

Sec 3(3) of IGST

- **Supply of goods in the course of import into the territory of India till they cross the customs frontiers of India shall be deemed to be a supply of goods in the course of inter-State trade or commerce.**

Exemptions

Sec 11 of CGST/SGST + 6(1) of IGST



Mechanism of set-off

IGST	CGST	SGST
RULES of SET-OFF:		
Local taxpayer	No cross set-off of CGST & SGST	
Inward Supply from other States	Input IGST will be set-off against - (a) Output IGST; (b) Output CGST; and then (c) Output SGST	
Outward Supply to other States	Output IGST will set-off - (a) Input IGST; (b) Input CGST; and then (c) Input SGST after adjusting output SGST	
Separate accounting for IGST, CGST & SGST		

Levy & Collection of GST-Summary

- Registration wise – Further within the GSTIN – separate for IGST (I), CGST (C) and SGST (S)
- Maintain separate registers for tax, credit & liability for I, C & S for every GSTIN
- No cross set-off of C & S within the State
- No cross of input C or I in one state from Output C or I in other State
- Transfer of ITC in respect input service to the concerned state is allowed. This ITC cannot be claimed unless pertains to the concerned State making taxable supplies
- Transfer of ITC in respect of goods and capital goods not allowed , even to the concerned state

Need for Discussion

- Two separate Mechanism – (i) (CGST+SGST) (ii) IGST
- Purpose of "Integrated Goods and Services Tax" (IGST) - To make success the destination based tax; and to transfer the tax to the consuming State
- All three are governed by separate Statutes
- If intra-State is subsequently treated as inter-State, then the person shall claim refund of CGST/SGST u/s 70 of the Model GST Law.
- In case of vice-a-versa, the person shall claim refund of IGST u/s 19 of the Model IGST Law.
- Since GST is destination based tax – POS are framed

Mechanism

- The scope of IGST Model is that Centre would levy IGST, which would be almost equal to (CGST + SGST) in the State of supply, on all inter-State transactions of taxable goods and services with appropriate provisions for consignment or stock transfer of goods and services.
- Power to impose GST on supply of goods and services in the course of inter-State trade vests with Central Govt. through the IGST Law.
- Inter-State supplier shall pay IGST on value addition after adjusting available credit of IGST, CGST, and SGST on his inward supplies.
- Place of supply generally applies destination principle; However, in few cases, it is origin-based.

Mechanism

- IGST Registration is State Specific
- Place of supply is different from the place of delivery
- Need for IGST Mechanism:
  - In respect of B2B transactions, taxes paid are taken as credit by the recipient.
  - For B2B transactions, location of recipient takes care of situations as further credit is to be taken by recipient since the recipient usually further supplies to another customer.

Section 2(14) – IGST - IGST means tax levied under the IGST Act on supply of any goods/ services in the course of inter-State trade or commerce.

Local Supply - Manner

I	Tax Paid on Purchases	Input CGST (Say Rs.100)	⊕	Input SGST (Say Rs.100)
O	Tax Charged on Sales	Output CGST (Say Rs.120)	⊕	Output SGST (Say Rs.120)
N	Tax Payable to Govt.	O – I (Rs.20) To Centre	⊕	O – I (Rs.20) To State

No Cross set-off of CGST & SGST, Generally

Inter-State Supply - Manner

Every Inter-State Supply would have ONE component – IGST

Exporting State

I	Tax Paid on Purchases	Input CGST (say 100)	⊕	Input SGST (say 100)
O	Tax Charged on Central Sales	Output IGST = CGST + SGST		(Say) 220 = 110 + 110
N	Tax Payable to Central Govt.	O – Input IGST – CGST – SGST	→	220 – 0 – 100 – 100 = 20

Exporting State will pay to Centre Rs.100/- (SGST recd. on inputs)

Inter-State Supply - Manner

Every Inter-State Supply would have ONE component – IGST

Importing State

I	Tax Paid on Central Purchases	→	Input IGST [Rs. 220]		
O	Tax Charged on Local Sales	→	Output CGST [Say Rs. 120]	⊕	Output SGST [Say Rs.120]
N	Tax Payable to Govt.	→	Output CGST – IGST (O-I) = 0 [120 – 120]	⊕	Output SGST – IGST [O-I] = 20 [120-100]

Centre will pay to Importing State amount of input IGST

Inter-State Supply of Goods/Services

Supply of Goods/Service u/s 3, 4 of IGST

Inter-State

Subject to the provisions of section 7/9, supply of goods/ Services in the course of inter-State trade or commerce means -

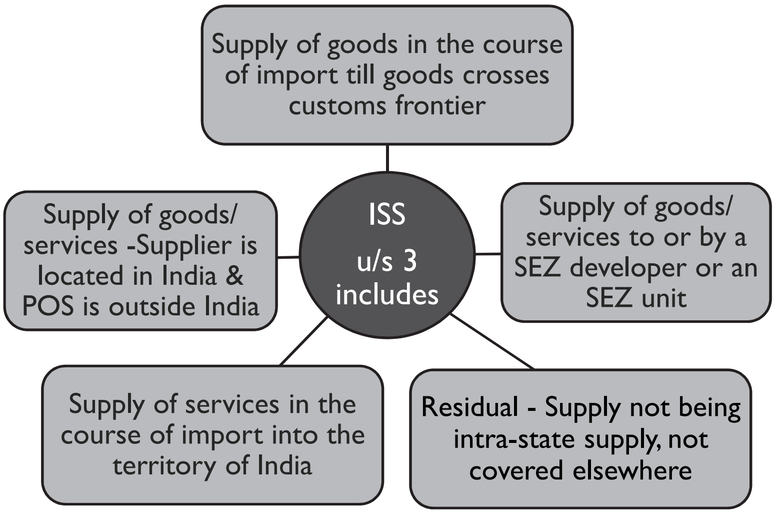
any supply where the 'location of the supplier' and the 'place of supply' are in different States.

Intra-State

Subject to the provisions of section 7/9, supply of goods/ Services in the course of inter-State trade or commerce means -

any supply where the 'location of the supplier' and the 'place of supply' are in the same State.

Deemed Inter-State Supply of Goods/Services



Intra-State Supply of Goods/Services

Supplies of goods/services in the course of intra-State trade or commerce - Section 4 of IGST–

- **Intra-State supplies shall not include -**
  - **Supply of goods to or by a SEZ developer or to or by an SEZ unit;**
  - **Supply of goods brought into India in the course of import till they cross the customs frontiers of India.**
  - **Supply of services to or by a SEZ developer or to or by an SEZ unit.**

Intra-State Supply of Goods/Services

•**Illustration – Whether Inter-State or Intra-State**

	Location of Supplier	Place of Supply	Nature of Transaction
1	Delhi	Punjab	Inter-State
2	Delhi	Delhi	Intra-State

Definitions

Section 2(12) – India

(a) Territory of the Union as referred to in clauses (2) and (3) of Article 1 of the Constitution;

(b) Its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976

(c) Seabed and subsoil underlying the territorial waters;

(d) Air space above its territory & territorial waters; and

(e) Installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof

Definitions

"Location of Supplier of Goods" – Not Defined

"Location of Recipient of Service" – Section 2 (17) –

i) Where a supply is received at a place of business for which registration has been obtained, the location of such place of business ;

ii) Where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;

iii) Where a supply is received at more than one establishment, the location of the establishment most directly concerned with the receipt of the supply; and

iv) In absence of such places, the location of the usual place of residence of the recipient;

Definitions

"Location of Supplier of Service" – Section 2 (18) –

i) Where a supply is made from a place of business for which registration has been obtained, the location of such place of business ;

ii) Where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment; *(Temporary place can't be the establishment)*

iii) Where a supply is made from more than one establishment, the location of the establishment most directly concerned with the provision of the supply; and

iv) In absence of such places, the location of the usual place of residence of the supplier;

Definitions

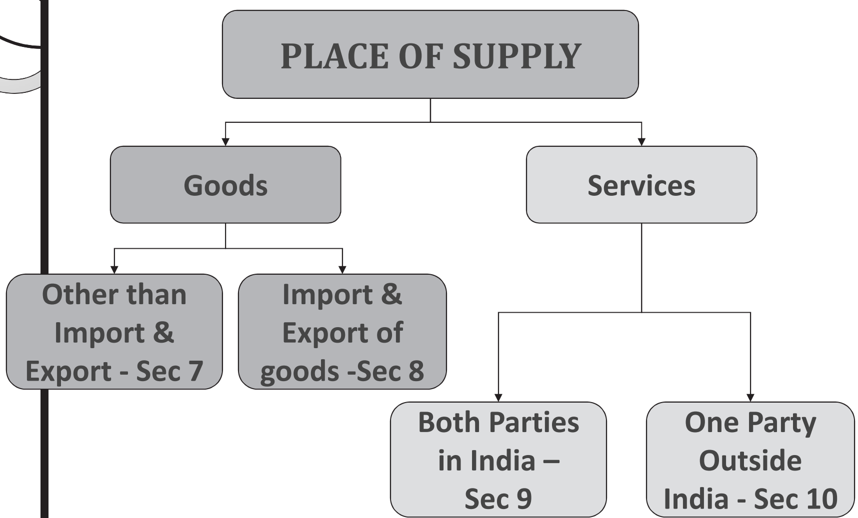
- **2(8) "Fixed Establishment"** means a place (other than the place of business) which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs
- **2(22) "Place of Business" includes**

(a) place from where business is ordinarily carried on, and includes a warehouse, a godown or place where a taxable person stores goods, and provides/receives goods/services;

(b) place where a taxable person maintains his books of account;

(c) a place where a taxable person is engaged in business through an agent, by whatever name called

Inter-State Supply of Goods/Services



Place of Supply of Goods
(Other than Export and Import)

- **Transfer of property in goods is irrelevant for the purpose of section 3 or 7**

	Circumstances (2 Parties)	Place of Supply (POS)
Sec. 7(2)	**Supply involves movement of goods, whether -** • **by the supplier, or** • **by the recipient, or** • **by any other person**	**Location of goods at the time at which movement of goods terminates for delivery to the recipient**

Place of Supply of Goods
(Other than Export and Import)

	Circumstances (3 Parties)	Place of Supply (POS)
Sec. 7 (3)	**Supply involves movement of goods - Delivery of goods by the supplier to a recipient or any other person, -** • on the direction • of a third person, whether acting as an agent or otherwise, • before or during movement of goods, • either by way of transfer of documents of title to the goods or otherwise	It shall be deemed that the said third person has received the goods, and the POS of such goods shall be the principal place of business of such (third) person

Whether Intra-State or IGST

Section 7 (2) & (3) – To illustrate

S.	Circumstances	Whether IGST or Local
1	PQR of Delhi asks ABC-Delhi to supply goods at its Delhi Office	Not IGST since LOS and POS are at Delhi; thus, local supply *qua* ABC
2	PQR of UP asks ABC-Delhi to supply goods at UP	IGST since LOS is Delhi and POS is UP
3	PQR of UP asks ABC-Delhi to supply goods to XYZ-Gujarat (PQR is selling goods to XYZ)	○ *qua* ABC: POS at UP [S.7(3)] and LOS at Delhi - Thus IGST ○ *qua* PQR: POS at Delhi [S.7(2)] and LOS at UP - Thus IGST

Whether Intra-State or IGST

Section 7 (2) & (3) – To illustrate

	Circumstances	Whether IGST or Local
4	PQR-UP asks ABC-Delhi to supply goods to MNO-Delhi (PQR is selling goods to MNO)	○ *qua* ABC: POS at UP [S.7(3)] and LOS at - Thus IGST ○ *qua* PQR : POS at Delhi [S. 7(2)] & LOS at UP-Thus IGST
5	Counter sale - UP registered buyer comes in Delhi; buys goods & carries goods to UP	IGST since POS at UP [S.7(2)] and LOS at Delhi
6	ABC having fixed place of business in UP comes to Delhi – purchases goods – sells within Delhi to PQR	ABC is casual person in Delhi; requires registration in Delhi - Thus Local Supply in Delhi by ABC

Place of Supply of Goods

(Other than Export and Import)

Section 7 (4), (5), (6) & (7)

- Where the supply does not involve movement of goods, whether by the supplier or the recipient, the POS shall be the location of such goods at the time of the delivery to the recipient

For example, a trader in Delhi hires a computer from a company in Haryana and at a later on decides to buy the computer. In this case, the location of goods at the time of supply is Delhi

- A software company in UP develops a software program in the office of Delhi-based company. In this case, the location of supply of the software is Delhi.

Place of Supply of Goods

(Other than Export and Import)

Section 7 (4), (5), (6) & (7)

- Where the goods are assembled or installed at site, the POS shall be the place of such installation or assembly

Suppose, while entering into two separate contracts for goods and services, a supplier sends components separately from, say Haryana; which are finally assembled in, say Delhi.

POS of components supplied from Haryana: It would fall u/s 7(2), and will be place from where they are finally delivered (i.e., Delhi) – Subject to IGST; He would have to pay tax at the time of removal itself

POS of assembled goods At the place where goods are assembled (i.e., Delhi). If installed by Delhi Office – CGST + SGST; If installed by Haryana Office - IGST

Place of Supply of Goods
(Other than Export and Import)

Section 7 (4), (5), (6) & (7)

Suppose, while entering into one contract for supply of goods and erection and commissioning, a supplier sends components separately from, say Haryana; to its Delhi Office, which are finally assembled in, say Delhi.

In such a case, the POS of such components and goods which are assembled at site will be separately determined.

POS of transfer of components to another branch u/s 10: it would fall u/s 7(2), and will be place from where they are finally delivered (i.e., Delhi) – Subject to IGST to be charged from Delhi Branch

POS of assembled goods - At the place where goods are assembled (i.e., Delhi). Installed by Delhi Office– CGST+ SGST on total value

Place of Supply of Goods
(Other than Export and Import)

Section 7 (4), (5), (6) & (7)

- Where goods are supplied on board a conveyance, such as vessel, aircraft, train or motor vehicle, the POS shall be the location at which such goods are taken on board

  For example, food is supplied on board after carrying on board (e.g. in aircraft originating from Delhi), POS would be at Delhi from where goods are taken on board.

- **Residual clause:** Where the POS of goods cannot be determined as above, it shall be determined in a manner prescribed by the Central Govt. on the recommendation of the Council

Import of Goods

- As per the 101st Constitution Amendment, Basic Customs Duty has not been subsumed in GST.
- Parliament will have power to impose IGST on import of goods (since CVD and SAD are subsumed in GST), which will, however, be eligible for set-off as input tax credit to the importer.
- As per **section 2(10) of Model IGST Act, "import of Goods",** means bringing into India from a place outside India.

Section 8 (1)

- POS of goods imported into India shall be the location of the importer

Export of Goods

- **"Export of Goods" means** taking out of India to a place outside India. [Section 2(5) of Model IGST Law]
- Exports are zero-rated in the GST

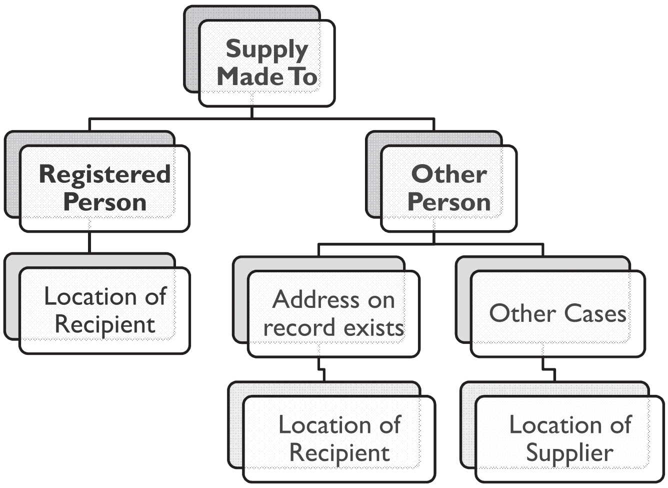
Section 8 (2)

- POS of goods exported from India shall be the location outside India

Place of Supply of Service

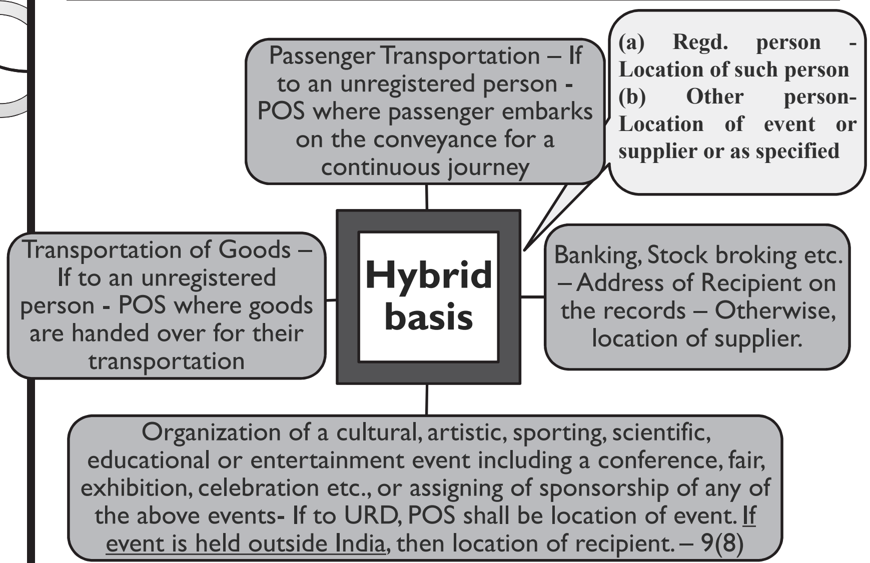
(Location of Recipient & Supplier is in India)

Section 9(2), & (3) – General Rule (other than (9(4) to (15))



Place of Supply of Service

(Location of Recipient & Supplier is in India)



Place of Supply of Service

(Location of Recipient & Supplier is in India)

Section 9(4) – POS at Location at which Immovable Property or Boat or Vessel is located or intended to be located

- Directly in relation to Immovable property,
- In relation to Services provided by architects, interior decorators, surveyors, engineers & other related experts or estate agents,
- In relation to any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work
- By way of Lodging accommodation by a hotel, inn, guest house, home-stay, club or campsite, by whatever name called and including a house boat or any other vessel

Place of Supply of Service

(Location of Recipient & Supplier is in India)

Section 9(4) - Location at which Immovable Property or Boat or Vessel is located or intended to be located (contd…)

- by way of accommodation in any immovable property for organizing any marriage or reception or matters related therewith, **official**, social, cultural, religious or **business** function including services provided in relation to such function at such property
- any services ancillary to the above referred services

Place of Supply of Service

(Location of Recipient & Supplier is in India)

Section 9(4) - Location at which Immovable Property or Boat or Vessel is located or intended to be located (contd…)

- If the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient
- Where the immovable property or boat or vessel is located in more than one State, the supply of service shall be treated as made in each of the States. It shall be in proportion to the value for services separately collected or determined as per the contract or agreement; and in its absence, on such other reasonable basis as may be prescribed

Place of Supply of Service

(Location of Recipient & Supplier is in India)

- **Section 9(5) -** Restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery - Location where the services are actually performed

- **Section 9(6) -** Training and performance appraisal to -

(a) A registered person - Location of such person;

(b) A person other than a registered person -

Location where the services are actually performed

Place of Supply of Service
(Location of Recipient & Supplier is in India)

- **Section 9(7) -** Admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place and services ancillary thereto - The place where the event is actually held or where the park or such other place is located

To illustrate, a Delhi based event manager organizes an event in Haryana. It allows admission to the employee of ABC-Haryana in the said event. The place of supply of this service is Haryana as event is held there.

Place of Supply of Service
(Location of Recipient & Supplier is in India)

- **Section 9(8) -** Organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events, or services ancillary to organization of any of the above events or services, or assigning of sponsorship of any of the above events to -

(a) A registered person - Location of such person;

(b) A person other than a registered person - Location where event is actually held

Contd.....

Place of Supply of Service
(Location of Recipient & Supplier is in India)

- **Section 9(8) –** contd...

  Where event is held in more than one State and consolidated amount is received, the supply of service shall be treated as made in each of the States. It shall be determined as per the contract or agreement proportionately; and in its absence, on such other reasonable basis as prescribed

  Where event is held outside India, the supply of service shall be the location of the recipient.

  There might be overlapping with 9(4) – Immovable property – Business Function, etc

Place of Supply of Service
(Location of Recipient & Supplier is in India)

- **Section 9(9) -** Services by way of transportation of goods, including by mail or courier to-

  (a) A registered person - Location of such person;

  (b) A person other than a registered person - Location at which such goods are handed over for their transportation

- **Section 9(11) -** Services on board a conveyance, such as, vessel, aircraft, train or motor vehicle - Location of the first scheduled point of departure of that conveyance for the journey

Place of Supply of Service
(Location of Recipient & Supplier is in India)

- **Section 9(10) -** Passenger transportation service to-

(a) A registered person - Location of such person;

(b) A person other than a registered person - The place where the passenger embarks on the conveyance for a continuous journey

However, where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the POS of such service shall be determined as per sec. 9(2) or 9(3), i.e., General Rules.

Return journey shall be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

Place of Supply of Service
(Location of Recipient & Supplier is in India)

- **Section 9(12) -** Telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person -

(a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna - Location where goods/equipments are installed for receipt of service

(b) in case of mobile connection for telecommunication and internet services provided on post-paid basis - Location of billing address of Recipient on the record of Supplier

Place of Supply of Service
(Location of Recipient & Supplier is in India)

- **Section 9(12) - *contd…* -** Telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person –

(c) in cases where mobile connection for telecommunication and internet service are provided on pre-payment through a voucher or any other means -
  - Through selling agent or distributor – Address of the selling agent or distributor as per the records of supplier at the time of sale
  - By any person to final consumer - Location where such pre-payment is received or such vouchers are sold

Place of Supply of Service
(Location of Recipient & Supplier is in India)

- **Section 9(12) - *contd…* -**

If such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment - POS shall be the location of the recipient of services on record of the supplier of services

Where the leased circuit is installed in more than one State and a consolidated amount is charged for supply of services relating to such circuit - POS shall be taken as being in each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf

Place of Supply of Service
(Location of Recipient & Supplier is in India)

- **Section 9(13) -** Banking and other financial services including stock broking services to any person - Location of Recipient of services on the records of Supplier of services

  However, if the location of the recipient of services is not on the records of the supplier, POS shall be location of the Supplier

Place of Supply of Service
(Location of Recipient & Supplier is in India)

- **Section 9(14) -** Supply of Insurance Service to -

(a) A registered person - Location of such person;

(b) A person other than a registered person - Location of Recipient on the records of the Supplier of service.

- **Section 9(15) -** Supply of advertisement services to the Central Govt, a State Govt, a statutory body or a local authority meant for identifiable States - It shall be taken as located in each of such States and the value of such supplies specific to each State shall be in proportion to amount attributable to service provided by way of dissemination in the respective States as may be determined in terms of the contract/agreement; and in its absence, on such other reasonable basis as may be prescribed in this behalf

Import of Services

- **<u>Section 2(11) of Model IGST Act</u>**:

  Supply of any service shall be treated as "Import of Service" when -

  (a) the supplier of service is located Outside India,

  (b) the recipient of service is located in India,

  (c) the place of supply of service is in India,

- **Import of service shall be subject to IGST on reverse charge basis.**

Export of Services

2(6) - Supply of any service shall be treated as <u>"Export of Service"</u> when -

(a) the supplier of service is located in India,

(b) the recipient of service is located outside India,

(c) the place of supply of service is outside India,

(d) payment is received in convertible foreign exchange, &

No such condi- tion for export of goods

(e) Supplier of service & recipient of service are not merely establish. of a distinct person as per expln. to Sec. 5. Establish. of a person in India/ State and outside India/ State to be treated as establish. of distinct persons ????

- **What happens if export denied-Subject to IGST – Then who will claim tax credit – Recipient located out of India**
- **Export of service is Zero rated**

Place of Supply of Service

(Location of Recipient OR Supplier is outside India)

Sec. 10(2) – General Rule [other than 10(3) to (13)]

- **POS, in general, shall be location of the Recipient of service**
- **In case the location of the recipient of service is not available in the ordinary course of business, POS shall be the location of the supplier of service.**

Place of Supply of Service

(Location of Recipient or Supplier is outside India)

S 10(3) – POS at Location where service is actually performed:

- Services supplied in respect of **goods** that are required to be made physically available by the recipient of service to the supplier of service, or to a person acting on behalf of the supplier of service in order to provide the service

  When such services are provided from a **remote location** by way of electronic means, POS shall be the location where goods are situated at the time of supply of service

  This clause shall not apply if service is supplied in respect of goods that are temporarily imported into India for repairs and are exported after repairs without being put to any use in India, other than that which is required for such repairs

Place of Supply of Service
(Location of Recipient or Supplier is outside India)

Sec. 10(3) – POS at Location where service is actually performed:

- Services supplied to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the recipient, with the supplier for the supply of the service

Place of Supply of Service
(Location of Recipient or Supplier is outside India)

Section 10(4) – POS at Location at which the Immovable Property is located or intended to be located

- Directly in relation to Immovable property,
- Services supplied in this regard by experts and estate agents,
- Supply of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever name called,
- Grant of rights to use immovable property,
- Services for carrying out or co-ordination of construction work,
- Architects or interior decorators services

Place of Supply of Service
(Location of Recipient or Supplier is outside India)

Section 10(5) – POS at Place where Event is actually held

- Services supplied by way of admission to, or organization of, a -
  - cultural, artistic, sporting, scientific, educational, or entertainment event, or
  - a celebration, or
  - conference, fair, exhibition, or
  - similar events, and
- Services ancillary to such admission

Place of Supply of Service
(Location of Recipient or Supplier is outside India)

Section 10(6), (7) - Where any service referred to in sub-sections (3), (4), or (5) is supplied -

- at more than one location, including a location in the taxable territory, its POS shall be the location in the taxable territory where the greatest proportion of the service is provided
- in more than one State, the POS shall be taken as being in each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf

Place of Supply of Service
(Location of Recipient or Supplier is outside India)

Section 10(8) – POS at Location of Supplier of Service

(a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) intermediary services;

(c) services consisting of hiring of means of transport other than aircrafts and vessels except yachts, up to a period of one month.

- For the purpose of this section, the expression "goods" shall include 'securities' as defined in section 2(90) of the CGST Act, 2016

Definitions

Section 2(13) – Intermediary

Means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of a service (hereinafter called the 'main' service) or the supply of goods, between two or more persons, but does not include a person who supplies main service or goods on his account

Place of Supply of Service
(Location of Recipient or Supplier is outside India)

Section 10(9) – Transportation of goods, other than by way of mail or courier

Place of destination of the goods

Section 10(10) – Passenger transportation service

Place where the passenger embarks on the conveyance for a continuous journey

Section 10(11) – Services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board

First scheduled point of departure of that conveyance for the journey

Place of Supply of Service
(Location of Recipient or Supplier is outside India)

Section 10(12) – "Online information and database access or retrieval services" services -

POS at Location of recipient of service

- For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory if any two of the following non-contradictory conditions are satisfied, namely:-

(i) the location of address presented by the recipient of service via internet is in taxable territory;

(ii) the credit card or debit card or store value card or charge card or smart card or any other card by which recipient of service settles payment has been issued in taxable territory;.

Place of Supply of Service

(Location of Recipient or Supplier is outside India)

Section 10(12) – “Online information and database access or retrieval services” services (contd....)

(iii) the billing address of recipient of service is in the taxable territory;

(iv) the internet protocol address of the device used by the recipient of service is in the taxable territory;

(v) the bank of recipient of service in which the account used for payment is maintained is in the taxable territory;

(vi) the country code of the subscriber identity module (SIM) card used by the recipient of service is of taxable territory;

(vii) the location of the fixed land line through which the service is received by the recipient is in taxable territory.

Place of Supply of Service

(Location of Recipient or Supplier is outside India)

Section 10(13) – Residual Powers of the Central Govt.

In order to prevent double taxation or non-taxation of the supply of a service, or

for the uniform application of rules,

– the Central Government shall have the power to notify any description of service or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service

Stock Transfer

- Stock transfer by one unit of a person to its another unit located in other State would be subject to IGST.
- Similarly, stock transfer by principal to its agent in other State would also be subject to IGST.
- Thus, generally, when goods are transferred from one GSTIN to another GSTIN, it would be subject to GST.
- As per Rule 3(5) of the GST Valuation Rules, where goods are transferred from—

  (a) one place of business to another place of the same business, (b) the principal to an agent or from an agent to the principal,

  whether or not situated in the same State, **the value of such supply shall be the <u>transaction value</u>. ????**

Export of Goods & Services

- It may be noted that under the present service tax provisions, if the place of provision is outside India, then the service is beyond the scope of taxation. However, under the GST, even though the place of supply is outside India, yet in order to claim exemption from GST, the person has to satisfy the other conditions, including that whether payment is received in convertible foreign exchange.

<u>Deemed export [Section 2(37)]</u>

- "Deemed exports", would be notified by the Central / State Govt. on the recommendation of the GST Council, and
- In these transactions, goods supplied do not leave India, &
- Payment for such supplies is received either in Indian Rupees or in convertible foreign exchange.

Zero Rated Supply – Section 16

- "Zero rated supply" means any of the following taxable supply of goods and/or services, namely :

(a) export of goods and/or services; or

(b) supply of goods and/or services to a SEZ developer or an SEZ unit.

- Credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
- Zero rated does not mean that seller would not charge GST.
- A registered taxable person exporting goods or services shall be eligible to claim refund under one of the following two options, namely --------

Contd..........

Zero Rated Supply – Section 16

(a) a registered taxable person may export goods or services under bond, subject to such conditions, safeguards and procedure as may be prescribed in this regard, without payment of IGST and claim refund of unutilized input tax credit in accordance with provisions of section 48 of the CGST Act, 2016 read with rules made thereunder;

(b) a registered taxable person may export goods or services, subject to such conditions, safeguards and procedure as may be prescribed in this regard, on payment of IGST and claim refund of IGST paid on goods and services exported in accordance with provisions of section 48 of CGST Act, 2016 read with rules made thereunder.

Zero Rated Supply – Section 16

- **In case of exports, the invoice shall carry an endorsement**
  - ***"SUPPLY MEANT FOR EXPORT ON PAYMENT OF IGST" or***
  - ***"SUPPLY MEANT FOR EXPORT UNDER BOND WITHOUT PAYMENT OF IGST",***

  as the case may be.
- **Further, it shall, contain the following details: -**
  - **(i) Name and address of the recipient;**
  - **(ii) Address of delivery;**
  - **(iii) Name of the country of destination; and**
  - **(iv) Number and date of application for removal of goods for export [ARE-1**

Zero Rated Supply – Section 16

- **The SEZ developer or SEZ unit receiving zero rated supply specified shall be eligible, subject to the conditions, safeguards and procedure as may be prescribed in this regard, to claim refund of IGST paid by the registered taxable person on such supply. ??????????**

- ***It could not be understood that when the regd. Taxable person has not charge any tax, and SEZ has not paid any ITC, how can SEZ claim refund***

Zero Rated Supply – Section 16

Illustrations – SEZ

- **Supply by DTA to SEZ – IGST – Zero rated**
- **Supply by SEZ to SEZ – IGST – Zero rated**
- **Supply by SEZ to DTA – IGST – Taxable**
- **Supply by SEZ to Outside India – IGST – Zero rated**

Supply to Outbound Tourist– S.20

- **The IGST paid on any supply of goods to outbound tourist shall be refunded, in the manner and subject to such conditions and safeguards as may be prescribed, if such goods are taken out of India.**
- **The refund shall be allowed only on such supply of goods that is procured from a registered taxable person who satisfies the conditions and complies with the requirement, including relating to issue of invoice in the prescribed manner.**

Transitional Provisions– Sec.21

- **Import of services or inter-State supply of goods/services made after the appointed day shall be liable to tax under the GST Act regardless of whether such transactions had been initiated before the appointed day.**
- **However, if the tax on such import or inter-State supply had been paid in full under the earlier law, no tax shall be payable on such import or inter-state supply under GST**
- **If the tax on such import of services had been paid in part under the earlier law, balance amount of tax shall be payable on such import or inter-state supply under GST.**
- **A transaction shall be deemed to have been initiated before the appointed day if either the invoice relating to such supply or payment, either in full or in part, has been received or made before the appointed day.**

Time of Supply of Goods/Services

- Under the present laws, i.e., Excise, Service Tax and VAT, time of supply have been defined under the statute, directly or indirectly
- Under the GST, 'supply' is the taxable event and being an 'event' it occurs at a precise time and not at any approximate time.
- Until the 'time' of supply has not arrived then, the GST cannot be levied. Therefore, section 12 of the GST contains the provisions when GST would be levied in respect of supply of goods and services
- As per sec 12/13, liability to pay CGST / SGST on the goods/services shall arise at the time of supply as determined in terms of the provisions of these sections.

Time of Supply of Goods

Supply of Goods u/s 12(2),(3)

Subject to Forward Charge

Earliest of the following:

(a) Date of issuance of invoice by the supplier;
(b) Last date on which supplier is required to issue invoice in terms of sec 28;
(c) Date of receipt of payment/ advance by supplier (earliest of date of entry in accounts books or credit date in bank)

Subject to Reverse Charge

Earliest of the following:

(a) Date of receipt of goods; or
(b) Date on which payment is made (earliest of credit date in accounts books or debit date in bank a/c); or
(c) Date immediately following 30 days from the date of issue of invoice by supplier.

If not possible: Entry Date in books of recipient

Time of Supply of Goods

Section 2(94)): - Meaning of supplier

- "supplier" in relation to any goods and/or services shall mean the person supplying the said goods and/or services and shall include
- an agent acting as such on behalf of such supplier in relation to the goods and/or services supplied;

Section 2(81)): - Meaning of Recipient

- (a) where consideration is payable for supply of goods/ services, person who is liable to pay that consideration,
- (b) where no consideration is payable for goods - Person to whom goods are delivered or made available, or to whom possession or use of goods is given or made available,
- (c) where no consideration is payable for a service, the person to whom the service is rendered

Time of Supply of Goods

Section 28(8)): - Goods sent on approval

- **where the goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place, -**

- the invoice shall be issued before or at the time when it becomes known that the supply has taken place (or)

- 6 months from the date of removal,

whichever is earlier.

Time of Supply of Goods

Section 12(2):

- **However, where the supplier of taxable goods receives an amount up to INR 1000/- 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.**
- ***To illustrate, MNC supplies goods to ABC on regular basis. For a given period, MNC raises the invoice of INR 7500/- on ABC for May. ABC pays INR 8000/- against the invoice on the due date. General rule in this case is: INR 500 (received in excess) shall be taxable at the time of receipt. However, by virtue of this provision, an option has been given to the supplier (i.e., MNC in the present case) to pay tax at the time of raising of subsequent invoice (instead of at the time of receipt).***

Time of Supply of Goods

Removal / Delivery of goods

- **Sec. 28 - A registered taxable person supplying taxable goods shall issue a tax invoice, before or at the time of, -**
  - **(a) removal of goods for supply to the recipient, where the supply involves movement of goods, or**
  - **(b) in any other case- delivery of goods or making available thereof to recipient. e.g., erection of machine, lift, stc**

Meaning of Removal of goods u/s 2(85):

- **"Removal", in relation to goods, means –**
  - **(a) despatch of the goods for delivery by supplier thereof or by any other person acting on behalf of supplier, or**
  - **(b) collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient.**

Time of Supply of Goods

Continuous supply of goods

- **Sec. 28(4) - In case of continuous supply of goods (e.g. supply of gas thr. pipeline), where successive statements of accounts or successive payments are involved, -**
  - **invoice shall be issued before or at the time each such statement is issued or, at the time each such payment is received.**
- **“continuous supply of goods” u/s 2(30) –**
  - **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, for which the supplier invoices the recipient on a regular or periodic basis.**
  -

Time of Supply of Service

Supply of Service u/s 13(2)

Subject to Forward Charge

Earliest of the following:

(a) Date of issuance of invoice by the supplier;

(b) Last date on which the supplier is required to issue invoice in terms of sec 28;

(c) Date of receipt of payment by supplier (earliest of date of entry in accounts books or credit date in bank a/c)

Subject to Reverse Charge

Earliest of the following:

(a) Date on which payment is made (earliest of credit date in accounts books or debit date in bank a/c); or

(b) Date immediately following 60 days from the date of issue of invoice by supplier.

If not possible: Date of Entry in accounts books of recipient

Time of Supply of Services

Section 13(2):

- **However, where the supplier of taxable services receives an amount up to INR 1000/- 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.**
- ***To illustrate, MTNL raises the invoice of INR 750/- on ABC for May. ABC pays INR 1000/- against the invoice on the due date. General rule in this case is: INR 250 (received in excess) shall be taxable at the time of receipt. However, by virtue of this provision, an option has been given to the supplier (i.e., MTNL in the present case) to pay tax at the time of raising of subsequent invoice (instead of at the time of receipt).***

Time of Supply of Services

Issuance of invoice – Sec 28(2)

- **A registered taxable person supplying taxable services shall issue a tax invoice, before or after the provision of service, but within a period prescribed in this behalf.**
- **As per Rule 1(2) of the draft GST (Invoice) Rules -**
  - **(a) Taxable supply of service - 30 days from the date of supply of service**
  - **(b) Banking company or a financial institution including a non-banking financial company – 45 days from the date of supply of service.**

Time of Supply of Goods

2(31) "Continuous Supply of Services"

- Means a 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 service as the Central or a State Government may by notification, specify

Time of Supply of Services

S. 28(5) – Continuous Supply of Services – Issuance of Invoice

Situation	*Date of issuance of invoice*
Where due date of payment is ascertainable from the contract	Before or after payment is liable to be made by the recipient but within 30 days (45 days in case banks, FI, NBFC) from the date of supply, whether or not payment is made by supplier.
Where due date of payment is not ascertainable from the contract	Before or after each such time when the supplier of service receives the payment but within 30/45 days from the date of supply
Where payment is linked to completion of an event	Before or after the time of completion of that event but within 30/45 days from the date of supply

Time of Supply of Services

Sec 28(6) – Supply of services ceases – Issuance of Invoice

- **In 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 effected before such cessation**

- **Sec 13(3) – Associated Enterprises**
- **In case of 'associated enterprises', where the supplier of service is located outside India, the time of supply shall be earliest of the following dates: -**
  - **the date of entry in the books of account of the recipient of supply, or**
  - **the date of payment.**

Time of Supply of Goods/Services

Section 12(5) & 13(5) – Residual Clause

- **In case it is not possible to determine the time of supply in accordance with earlier stated provisions : Time of supply shall be earliest of the following dates:**

  (a) in a case where a periodical return has to be filed, the date on which such return is to be filed, or

  (b) in any other case, the date on which the CGST/SGST is paid.

Time of Supply of Vouchers

Section 12(4) & 13(4)

- **In case of supply of vouchers, by whatever name called, by a supplier, the time of supply shall be-**
  - **(a) the date of issue of voucher, if the supply is identifiable at that point; or**
  - **(b) the date of redemption of voucher, in all other cases.**

Meaning of voucher – Not defined in the Law

(i) Gift voucher provided by the supplier to its customers (or potential customers) to be redeemable by the supplier on a future date. For example, on purchase of one TV, the supplier gives voucher of INR 1000/- redeemable on future purchase of any goods from the same supplier;

Time of Supply of Vouchers

Meaning of voucher – Not defined in the Law

(ii) Supply voucher issued by supplier of service, where service is to be provided by supplier on future date. These vouchers are tradable from supplier to distributor and to retailer; e.g., prepaid talk-time vouchers issued by Airtel or Vodafone.

(iii) Voucher issued by third party which could be encashed at specified stores for procurement of goods or services. E.g., Sodexo Vouchers are issued by M/s Sodexo SVC India (P) Ltd. to its customers who might give to it to their employees for purchasing food/ other items. Employees, in turn, present theses vouchers to various affiliates with whom Sodexo has arranged for supply. Affiliates present such vouchers to Sodexo, who reimburses cost of these vouchers. Sodexo might take service charges from customers and affiliates.

Time of Supply of Services – Change in Effective Rate (CERT)-Sec.14

	Date of service	Date of Invoice	Receipt of Payment	Time of Supply
1	Before CERT	After CERT	After CERT	**Date of issue of invoice or receipt w.e.i. earlier**
2	Before CERT	Before CERT	After CERT	**Date of Issue of Invoice**
3	Before CERT	After CERT	Before CERT	**Date of Payment**
4	After CERT	Before CERT	After CERT	**Date of Payment**
5	After CERT	Before CERT	Before CERT	**Date of issue of invoice or receipt w.e.i. earlier**
6	After CERT	After CERT	Before CERT	**Date of Issue of Invoice**

Upward Revision of Price in GST-Transition

S. N.	Repealing Law	GST
178	Upward Revision of Price – Supple-mentary Invoice or Debit Note (CGST & SGST)	a. Contract entered before the appointed date b. Upward Revision of price after the appointed date c. Removal / Sale of goods before the appointed date d. Seller may issue supplementary invoice or debit note within 30 days of revisions; and e. Such revision would be taxable under the GST *[Care should be taken where Recipient is not eligible for ITC]*

Downward Revision of Price in GST-Transition

S. N.	Repealing Law	GST
178	Downward Revision of Price – Supple-mentary Invoice or Credit Note (CGST & SGST)	a. Contract entered before the appointed date b. Downward Revision of price after the appointed date c. Removal / Sale of goods before the appointed date d. Seller may issue supplementary invoice or credit note within 30 days of revisions; and such revision would be deemed to be issued under the GST e. May reduce his tax liability provided the recipient has reduced his corresponding ITC

Revision of Returns - Transition

S. N.	Repealing Law	GST
185	Treatment in pursuance of Revision of Returns (CGST & SGST)	• Where any return, furnished under the earlier law, is revised after the appointed day, and in pursuant to such revision ***(applies to all returns – not only last return – DVAT-Revision time is one year)*** - a. Amount eventually accruing to him shall be refunded as per the provisions of repealing law provided return is revised within the specified period b. Amount eventually recoverable shall be recoverable as an arrears of GST; and such amount shall not be claimed as ITC in GST

Ongoing Contracts - Transition

S. N.	Repealing Law	GST
186	Treatment of works contract (CGST & SGST)	a. Contract entered before the appointed date b. Supply of goods/services after the appointed date c. To be taxable under the GST
187	Progressive or periodic supply of goods or services (CGST & SGST)	a. No tax shall be payable on the supply of goods and/or services made on or after the appointed day if – a. consideration for said supply has been received prior to appointed day, and b. the duty or tax payable thereon has already been paid under the earlier law

Taxability of Supply of Services - Transition

S. N.	Repealing Law	GST
188	Taxability of Supply of Services (CGST & SGST)	• Notwithstanding anything contained in section 13 or 14 (Time of supply of service and change in rate of tax), tax in respect of the taxable services shall be payable under the earlier law to the extent the point of taxation in respect of such services arose before the appointed day. • Explanation - Where the portion of the supply of services is not covered by this section, such portion shall be liable to tax under the GST Act.

Taxability of Supply of Goods - Transition

S. N.	Repealing Law	GST
189	Taxability of Supply of Goods (CGST & SGST)	• Notwithstanding anything contained in section 12 or 14 (Time of supply of Goods and change in rate of tax), tax in respect of the taxable goods shall be payable under the earlier law to the extent the point of taxation in respect of such goods arose before the appointed day. • Explanation - Where the portion of the supply of goods is not covered by this section, such portion shall be liable to tax under the GST Act.

Transitional Provisions– S.21/IGST

- **Import of services or inter-State supply of goods/services made after the appointed day shall be liable to tax under the GST Act regardless of whether such transactions had been initiated before the appointed day.**
- **However, if the tax on such import or inter-State supply had been paid in full under the earlier law, no tax shall be payable on such import or inter-state supply under GST**
- **If the tax on such import of services had been paid in part under the earlier law, balance amount of tax shall be payable on such import or inter-state supply under GST.**
- **A transaction shall be deemed to have been initiated before the appointed day if either the invoice relating to such supply or payment, either in full or in part, has been received or made before the appointed day.**

Issues during Transition

- Ensure that running bills in respect of supply of goods or service is pending on the appointed day (AD)
- Where service is rendered under ST regime, but raising of invoice and receipt of payment after AD – GST is leviable -
  - Few organizations are raising invoice on first day of the month for all services rendered during the last month – They must raise invoice on last date of the ST Regime
- If the service providers wants to issue credit note for service rendered under ST regime, raise before AD itself
- Likewise, if the seller of goods wants to give credit note for quantity discount or return of goods, raise before AD

Issues during Transition

- POT in relation to Service Recipient (SR) is earliest of -
  - (i) Date of payment
  - (ii) 3 months from the date of invoice

As per proviso to R.3(7) of CCR, in respect of input service subject to reverse charge, credit of service tax payable by the service recipient shall be allowed after such service tax is paid.

Suppose, liability is discharged under the GST regime, it would be difficult to claim ITC on that payment since there are no related transition provisions.

Issues during Transition

- Inter-Unit transfers/removal – Supplier may charge E.D. from recipient so that recipient could claim ITC on the AD
- Service providers, having centralised ST number, would have to obtain registration in every such state where they have fixed establishment
- Goods in Transit:
  - Excise – Taxable at the time of removal; Cenvat at the time of receipt – ITC available u/s 171 if recorded within 30 days
  - Central sales and purchase and transfers – Try to receive goods before AD. Record the purchase/transfers before AD so that easy to issue form C, E-1, H, F etc.; otherwise, Sec 21 will be applicble

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Input Tax Credit under Revised Model GST Law

Whilst the Government is keen to make Goods and Services Tax (**"GST"**) a reality soon, efforts put in by the Government to look into the voluminous suggestions submitted by various stakeholders, on First cut Model GST Law [**"MGL"**] (put on public domain on June 14, 2016), is indeed commendable. Honest attempt of the Government to eradicate the daunting provisions in the earlier Model GST Law, can be very well seen in the Revised Model GST Law which was made public on November 26, 2016.

Apart from addressing key concerns of the Industry in a very decent manner, the Revised Model GST Law has also proposed an anti-profiteering mechanism to ensure benefit of lower taxes is shared with consumers, and also ensures no tax on securities and subsidies provided by the Government as also free of cost supplies.

This Article deciphers the provisions of 'Input Tax Credit (**"ITC"**)'under Revised MGL, in a lucid manner for easy understanding.

ITC - Manner of availment and utilization thereof [Section 16 to 22 of the Model CGST/SGST Act, 2016]

ITC is believed to be the backbone of the GST. Tax cascading has been one of the daunting flaws of the current indirect taxation system which increases the cost of goods and services. The GST regime is being envisaged to provide seamless flow of credit on goods and services across the supply chain.

Meaning of Key Terms

- **'Input Tax Credit'**[Section 2(56)] means credit of 'Input tax'.
- **'Input Tax'** [Section 2(55)], in relation to a taxable person, means the IGST, includingthat on import of goods, CGST and SGST charged on any supply of goods or services to him and includes the tax payable under section 8(3) [i.e. under Reverse Charge], but does not include the tax paid under section 9 [i.e. under Composition Levy].
- **'Input'** [Section 2(52)] means any goods, other than capital goods, **used or intended to be used** by a supplier **in the course or furtherance of business**.
- **'Input service'** [Section 2(53)] means any service, **used or intended to be used** by a supplier **in the course or furtherance of business**.
- **'Capital goods'** [Section 2(19] means goods, the **value of which is capitalised in the books of accounts** of the person claiming the credit and which are **used or intended to be used in the course or furtherance of business**.

I Eligibility and conditions for taking ITC

- Only the registered taxable person under GST can claim ITC.

- **Application of registration to be made within 30 day:** In order to avail ITC on inputs held in stock and inputs contained in semi- finished/ finished goods held in stock on the day immediately preceding the date from which a person becomes liable to pay GST, application for registration has to be made within 30 days.

  In the absence of any provisions as to eligibility to avail ITC when there is delay in applying for registration under GST, it appears that such credit on inputs would be lapsed and would be available only after the date of registration granted under the GST Law.

- Specific provision has been inserted which states that ITC in respect of pipelines and telecommunications tower fixed to earth by foundation or structural support including foundation and structural support is to be obtained 1/3rd on yearly basis.

- The registered taxable person shall avail ITC under GST, subject to the following **essential requirements**:

  ✓ Must be in possession of tax invoice, debit note or other taxpaying document(s) as may be prescribed.

  ✓ The goods and/or services must have been received.

  ✓ Tax charged has been actually paid to the appropriate government.

  ✓ Return has been furnished.

  ITC made dependent upon payment of tax by supplier: Availability of ITC to recipient has been made dependent on payment of tax by supplier. Thus, even if the receiver has paid the amount of tax to the supplier and the goods and/or services so procured are eligible for ITC, no credit would be available, till the time tax so collected by the supplier is deposited to the Government.

  Payment of invoice for supply of services is to be made within 3 months: ITC availed is to be added to output tax liability of recipient along with interest thereon, when value of services and tax is not paid within 3 months from date of issue of invoice by supplier (similar to current CENVAT provisions). However, the law is silent as to when such credit can be reclaimed again on payment of invoice.

- **Time limit for availment of credit:** ITC shall not be allowed after furnishing of return for September month following the end of financial year or furnishing of relevant annual return (December 31st is the due date for filing annual return), whichever is earlier.

- **Proportionate ITC** to the extent used for business purposes is admissible when goods and/or services are partly used for other than business purposes.
- ITC is **restricted to the extent of taxable supplies including zero-rated supplies,** when goods and/or services are partly used for effecting exempt supplies including supplies under reverse charge basis.
- ITC shall **not be allowed if depreciation is claimed** on tax component of cost of capital goods.
- Registered taxable person is entitled to take **credit upon receipt of last lot or installment**, where goods against an invoice are received in lots or instalments.
- **Negative list of goods and/or services on which ITC shall not be admissible:**
    - ✓ **Motor vehicles** and other conveyances except when used for further supply of such vehicles or conveyances, transportation of passengers and goods, imparting training on driving etc.
    - ✓ Goods and/or services like food and beverages, outdoor catering, health services etc., except where inward supply of particular category is used for making outward taxable supply of same category.
    - ✓ Membership of a club, health and fitness centre.
    - ✓ Rent-a-cab, life insurance etc., except where it is obligatory for an employer under any law in force.

      It is suggested that ITC, beside on rent-a-cab, life & health insurance, should also be allowed on the services such as outdoor category etc., when it is obligatory for an employer to provide to its employees under any law for the time being in force.
    - ✓ **Works contract services** when supplied for construction of immovable property, other than plant and machinery, except where it is an input service for further supply of works contract service.
    - ✓ Goods or services received by a taxable person for **construction of an immovable property on his own account**, other than plant and machinery, even when used in course or furtherance of business.
    - ✓ Goods and/or services on which tax is paid under **composition scheme**.

- ✓ Goods and/or services used for **personal consumption**.
- ✓ Goods **lost, stolen, destroyed, written off or disposed of** by way of gift or free samples.
- ✓ Any tax paid in terms of Sections 67 (i.e. in fraud cases), 89 (i.e. detention and release of goods and conveyances in transit) or 90 (i.e. confiscation of goods or conveyances and levy of penalty).

II Utilisation of ITC

Utilization of ITC		
Transaction within the States (Intra- State transactions)		**Inter-State transactions**
CGST	**SGST**	**IGST**
Credit of CGST to be utilized sequentially- **1. CGST** **2. IGST**	Credit of SGST to be utilized sequentially- **1. SGST** **2. IGST**	Credit of IGST to be utilized sequentially **1. IGST** **2. CGST** **3. SGST**
Cross utilization of CGST and SGST is not permissible		

It seems that honest attempt has been made by the Government to eradicate the daunting provisions in the First MGL, which can be very well seen in the above discussed provisions. However, it is required that the lawmaker should address the issues raised by stakeholders which are still left for the smooth transition to GST regime.

To keep abreast of all the developments and changes in Indirect Taxation with way forward GST, please download our mobile app 'GST A2Z' at http://www.a2ztaxcorp.com/app

Hope the information will assist you in your Professional endeavours. In case of any query/ information, please do not hesitate to write back to us.

Thanks & Best Regards,

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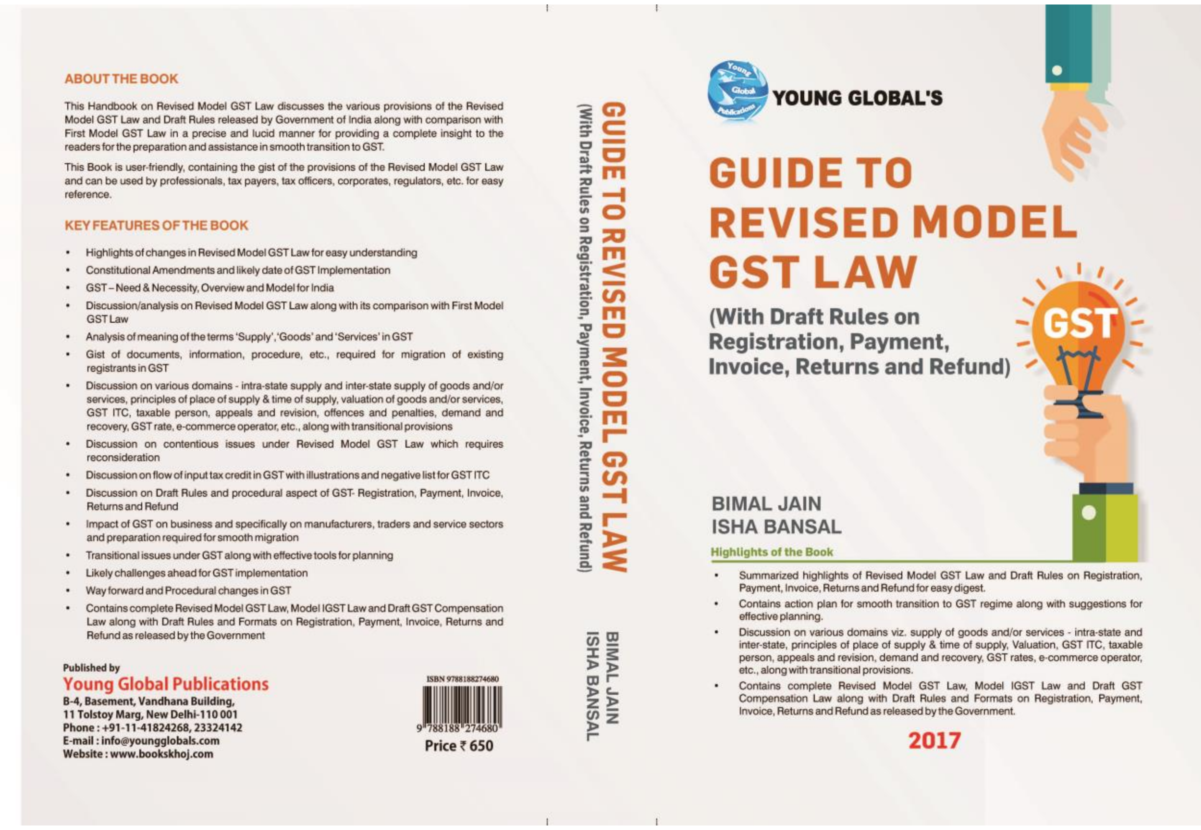

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Goods and Services Tax – Job Work and Branch Transfer

NIRC of ICAI

February 22, 2017

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Author:

Service Tax – Law & Practise

GST - Law & Practise

GST – Job Work

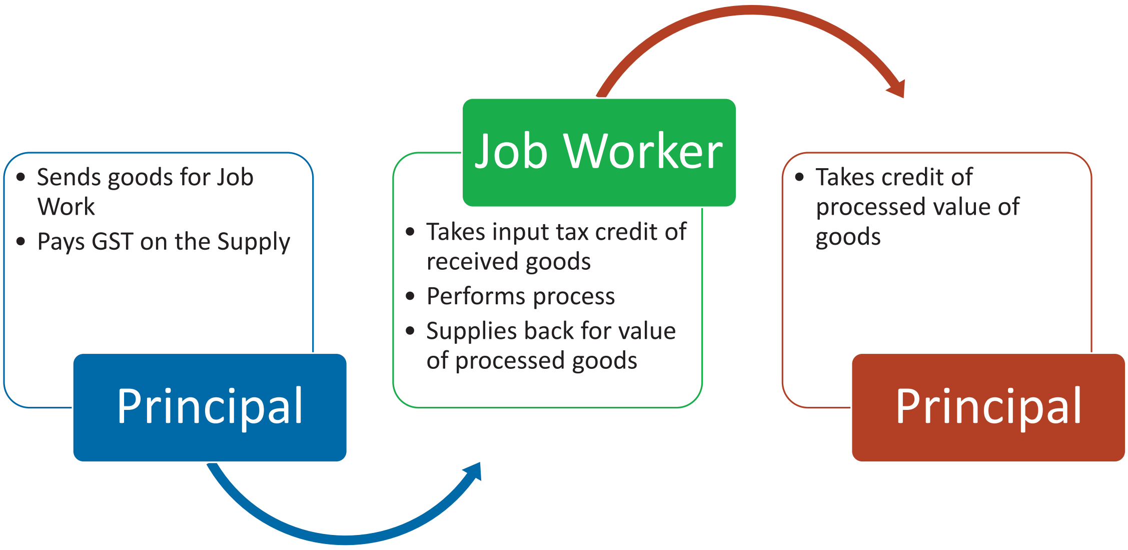
Section 2 (61) - Model GST Law

“job work” means

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

The supply of goods, after completion of job-work, by a registered jobworker shall be treated as the supply of goods by the “principal” referred to in section 55, and the value of such goods shall not be included in the aggregate turnover of the registered job worker

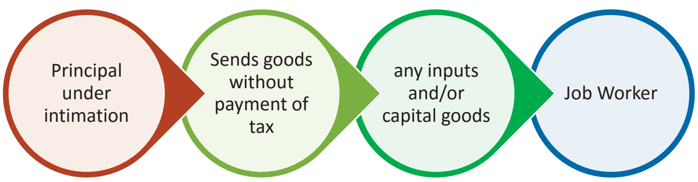
GST – Job Work



GST – Job Work

Section 55 - Special procedure for removal of goods for certain purposes

- A registered taxable person (hereinafter referred to in this section as the "principal") may,
- under intimation and subject to such conditions as may be prescribed,
- send any inputs and/or capital goods,
- without payment of tax,
- to a job worker for job-work and from there subsequently send to another job worker and likewise,

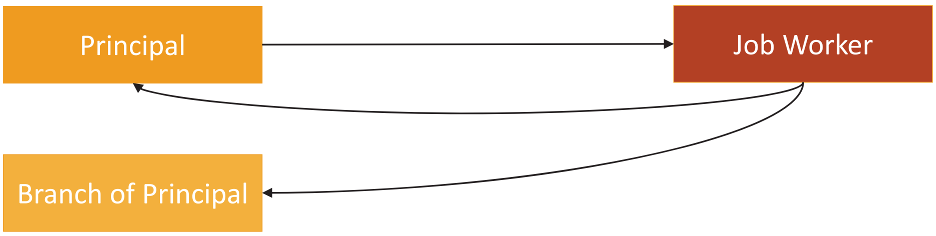


GST – Job Work

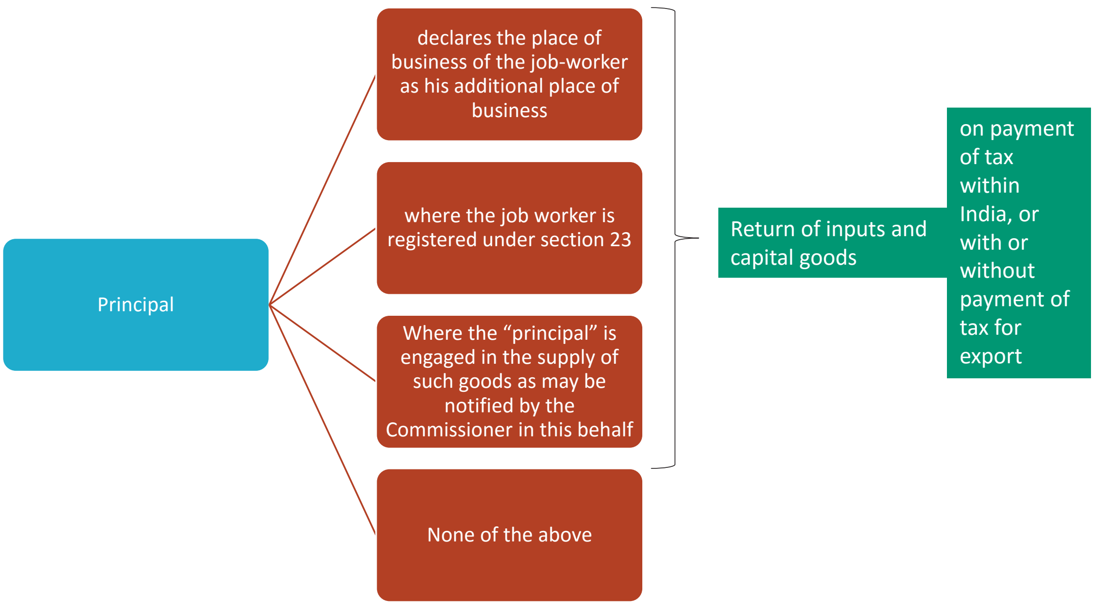
Section 55 - Special procedure for removal of goods for certain purposes

Principal may bring back after completion of job-work or otherwise,

- Inputs within one year
- capital goods, other than moulds and dies, jigs and fixtures, or tools, within three years
- to any of his place of business,
- without payment of tax



GST – Job Work



GST – Job Work

Taking input tax credit in respect of inputs sent for job work

- The "principal" referred to in section 55 shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job-worker for job-work
- "principal" shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job-work without their being first brought to his place of business.
- On year condition for return of input
- Condition of one year to be read as three years in case of Capital Goods

GST – Branch Transfer

Section 10

- A person who has obtained or is required to obtain more than one registration, whether in one State or more than one State, shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act
- An establishment of a person who has obtained or is required to obtain registration in a State, and any of his other establishments in another State shall be treated as establishments of distinct persons for the purposes of this Act.
- Transfer from one Branch to another within same state
- Transfer from one Branch to another within same state

GST – Branch Transfer

Branch Transfer of Goods / Services

- GST payable?
- Place of Supply
- Point of Supply?
- Valuation – no consideration?
- Transfer from one Branch to another within same state – records?
- Accounting Enries?

GST – Branch Transfer

Branch Transfer of Services

- Location of Supply
- Cross Charge between branches
- Common inputs
- Transition Credits availability
- Input service distributor

E-COMMERCE AND ONLINE INFORMATION SERVICES UNDER GST

REFERENCE COURSE ON GST
BY NIRC OF ICAI
Date-11 FEB 2017

Ashu Dalmia

FCA, DISA, CISA, ICAI Certified-FAFD,ICAI-Certified Arbitrator, Special Auditor u/s 72A of the finance Act 1994 (office of the Commissioner, Service, Tax Audit-II Delhi)

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E-COMMERCE UNDER GST

Summary of Sections for E-Commerce under MGL

Section 2(41) of CGST/SGST Act	• Meaning of electronic commerce
Section 2(42) of CGST/SGST Act	• Meaning of electronic commerce operator
Section 8 (4) of CGST/SGST Act	• Levy and collection of CGST/SGST from e-commerce operator
Section 23 and Sch V of CGST/SGST Act	• Mandatory registration for e-commerce operator
Section 56 of CGST/SGST Act	• Collection of tax at source
Section 17 of IGST Act	• Application of certain provisions of the CGST Act, 2016 with some Exception

DEFINITIONS UNDER MODEL GST LAW

- *As per Section 2(41) of the Model GST Law,* **"electronic commerce"** means supply of goods and/or services including digital products over digital or electronic network;

- *As per Section 2(42) of the Model GST Law,* **"electronic commerce operator"** means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

LEVY AND COLLECTION OF CGST/SGST FOR E-COMMERCE OPERATOR

➢**Section 8(4) of the Model GST Law** provides for Levy and Collection of CGST/SGST in case of e-commerce operator.

➢The Central or a State Government may, on the recommendation of the Council, **by notification, specify categories of services the tax on 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 person liable for paying the tax in relation to the supply of such services;

➢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;

➢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.

REGISTRATION FOR E-COMMERCE OPERATOR

As per Section 23 of this act read with paragraph 6 of Schedule V of Model GST Law, in the following cases e-commerce operator are obliged to register themselves under this act irrespective of threshold limit;

➢Persons who are required to pay tax under sub-section (4) of Section 8 **i.e. "e-commerce operator".**

➢Persons who are required to collect tax under section 56, whether or not separately registered under the act **i.e. "e-commerce operator".**

➢Every electronic commerce operator who supply goods and/or services, other than supplies under Section 4(8) and who is required to collect tax at source under section 56.

➢Every others electronic commerce operator

E-COMMERCE OPERATOR-RATE OF TAX TO BE COLLECTED

➢As per **Section 56 (1) of CGST/SGST Act,** Every electronic commerce operator **is liable to collect tax @ 1%** of the **net value of the taxable supplies.**

[*Net value of the Taxable supplies=Aggregate value of taxable supplies of Goods and Services [(Other than services under Section 8(4)]- Aggregate value of taxable supplies returns****]***

➢As per **Section 17 (1) of IGST Act,** the electronic commerce operator **shall collect tax @ 2% instead 1% as given above** of the value of net supplies.

E-COMMERCE OPERATOR-TIME LIMIT FOR COLLECTION OF TAX AND FURNISHING A STATEMENT

➢Section 56 (2) & (3) of CGST/SGST Act, 2016.

➢Tax Collected at Source "TCS" is required to be paid to the appropriate Government **by 10th of the Next Month.**

➢Electronic Commerce Operator **is liable to file the Return i.e. "GSTR-8" , with in 10 days after the end of such month.**

E-COMMERCE OPERATOR-CREDIT TO BE TAKEN BY SUPPLIER

➢As per Section 56 (4) of the CGST/SGST Act, 2016, Supplier **shall claim credit in electronic cash ledger** of the TCS reflected in GSTR-8.

E-COMMERCE OPERATOR-MATCHING OF RETURNS AND DISCREPANCY IN MATCHING

➢As per Section 56 (5) of the CGST/SGST Act, 2016, **Matching** of GSTR-8 with the corresponding GSTR-1 regarding details of outwards supplies.

➢As per Section 56 (6) of the CGST/SGST Act, 2016, If the returns **do not match, discrepancies will be communicated** to both Operator and Supplier.

E-COMMERCE OPERATOR-CONSEQUENCES OF NON-RECTIFICATION AND TAX LIABILITY FOR ADDITION

- As per Section 56 (7) of the CGST/SGST Act, In case the Operator **does not correct the return, Output liability of Supplier will be increased** in the succeeding month in which discrepancies is communicated.

- As per Section 56 (8) of the CGST/SGST Act, 2016, **Supplier shall liable to pay interest on the addition of the amount as per Section 56 (7).**

E-COMMERCE OPERATOR-ISSUANCE OF NOTICE, TIME LIMIT AND PENALTY FOR NOT FURNISHING DETAILS

- In terms of section 56 (9) of the CGST/SGST Act, 2016, **an officer not below the rank of Joint Commissioner** may require the operator to furnish details through notice relating to:
  - i. supplies of goods / services effected through the operator during any period; or
  - ii. stock of goods held by actual supplier making supplies through such operator in the godowns or warehouses managed by such operators and declared as additional places of business by such suppliers.

- The operator is required to furnish the above information **within 15 working days from the date of service of notice** asking such information.

- In case of failure to furnish such information, the penalty could be extended to Rs. 25,000/-

ONLINE INFORMATION AND DATABASE ACCESS OR RETRIVEL SERVICES

Summary of Sections for Online Information and Database access or retrieval services under MGL

Section 2(21) of IGST Act	• Meaning of "Online Information and Database access or retrieval services"
Section 10(12) of IGST Act	• Place of Supply in case of "Online Information and Database access or retrieval services"
Section 23 and Sch V of CGST/SGST Act	• Registration for supplier of "Online Information and Database access or retrieval services"
Section 12 of IGST Act	• Payment of Tax by Supplier of "Online Information and Database access or retrieval services"

DEFINITIONS UNDER MODEL GST LAW

- ***As per Section 2(21) of the IGST Act,* "online information and database access or retrieval services" means** services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to ensure in the absence of information technology and includes electronic services such as,-
  - **a) advertising on the internet;**
  - **b) providing cloud services;**
  - **c) provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet;**
  - **d) providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;**
  - **e) online supplies of digital content (movies, television shows, music, etc.);**
  - **f) digital data storage; and**
  - **g) online gaming;**

PLACE OF SUPPLY OF SERVICES

- ***As per Section 10 (12) of the IGST Act, 2016,*** In case of "online information and database access or retrieval services" **place of supply shall be the Location of the recipient of service.**

- *For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory* ***if any two of the following*** *non-contradictory conditions are satisfied, namely:-*

  - *i. the location of address presented by the recipient of service via internet is in taxable territory;*
  - *ii. the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of service settles payment has been issued in the taxable territory;*
  - *iii. the billing address of recipient of service is in the taxable territory;*
  - *iv. the internet protocol address of the device used by the recipient of service is in the taxable territory;*
  - *v. the bank of recipient of service in which the account used for payment is maintained is in the taxable territory;*
  - *vi. the country code of the subscriber identity module (SIM) card used by the recipient of service is of taxable territory;*
  - *vii. the location of the fixed land line through which the service is received by the recipient is in taxable territory."*

REGISTRATION BY A SUPPLIER OF ONLINE INFORMATION AND DATABASE ACCESS OR RETRIEVAL SERVICES

- As per Section 23 of this act read with paragraph 6 of Schedule V of CGST/SGST Act 2016, every person supplying online information and database access or retrieval services from a **place outside India to a unregistered taxable person, then the persons supplying such services** is required to take the registration In India.

- For the supply of online information and database access or retrieval services **from a place outside India to a registered user** will be covered in imports. The liability to pay GST on such transactions will be on importer.

PAYMENT OF TAX BY A SUPPLIER OF ONLINE INFORMATION AND DATABASE ACCESS OR RETRIEVAL SERVICES

- **Section 12 of IGST Act 2016,** provide for the special provisions for payment of tax by a supplier of online information and database access or retrieval services located outside India.

- When a **supplier in non – taxable territory supplying** the online information and database access or retrieval **services to specified person in the taxable territory,** then the supplier in non-taxable territory will be liable to pay IGST on the supply.

- In case the supply of services by a person in non-taxable territory to a non registered person in taxable territory involving an intermediary and the location of that intermediary is also in non-taxable territory. Then that intermediary will be deemed to be receiving those services from supplier. It will also be deemed that intermediary provide that services to the recipient in India.

PAYMENT OF TAX BY A SUPPLIER OF ONLINE INFORMATION AND DATABASE ACCESS OR RETRIEVAL SERVICES

- If the intermediary **fulfill the following conditions it will not be deemed to receive or supply such services;**

a. the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;

b. the intermediary involved in the supply does not authorize the charge to the customer or take part in its charge i.e. intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-assesse online recipient and the supplier of such services;

c. the intermediary involved in the supply does not authorize delivery;

d. the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the service provider.

REVISED MODEL GST LAW

IMPORT, EXPORT AND SEZ

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PRINCIPLES FOR

DETERMINING SUPPLY OF GOODS AND/OR SERVICES

IN THE COURSE OF INTER-STATE TRADE OR COMMERCE

Section 3 (IGST) - Supplies of goods and/or services in the course of inter-State trade or commerce

(1) Subject to the provisions of **section 7,**

- **supply of goods** in the course of inter-State trade or commerce **means**
- **any supply** where **the location of the supplier** and the **place of supply** are in **different States.** **Contd....**

(2) Subject to the provisions of **section 9**,

- **supply of services** in the course of inter-State trade or commerce **means**
- **any supply** where the **location of the supplier** and the **place of supply** are in **different States.**

(3) Supply of goods in the **course of import into the territory of India till they cross the customs frontiers of India** shall be

- **deemed to be a supply of goods in the course of inter-State trade or commerce**.

(4) Supply of services in the **course of import into the territory of India** shall be

- **deemed to be a supply of services in the course of inter-State trade or commerce**.

(5) Supply of goods and/or services,

- when the **supplier is located in India** and the **place of supply is outside India**, shall be
- **deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.**

(6) Supply of goods and/ or services to or by a **SEZ developer** or an **SEZ unit**, shall be

- **deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.**

(7) Any supply of goods and/or services in the **taxable territory,**

- **not being an intra-State supply and not covered elsewhere in this section**, shall be
- **deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.**

4. Supplies of goods and/or services in the course of INTRA-STATE trade or commerce

(1) Subject to the provisions of **section 7,**

- **intra-State supply of goods** means
- **any supply of goods where the location of the supplier and the place of supply are in the same State:**

- **PROVIDED** that the intra-State supply of goods **shall not include**:
- (i) supply of goods to or by a SEZ developer or to or by an SEZ unit;
- (ii) supply of goods brought into India in the course of import till they cross the customs frontiers of India.

(2) Subject to the provisions of **section 9**,

- **intra-State supply** of services
- means **any supply of services where the location of the supplier and the place of supply are in the same State:**

- PROVIDED that the intra-State supply of services
- shall not **include supply of services to or by a SEZ developer or to or by an SEZ unit.**

5. Levy and collection of Integrated Goods and Services Tax

(1) There shall be levied a tax called the **Integrated Goods and Services Tax**

- **on all supplies** of **goods and/or services** made in the course of **inter-State trade or commerce**
- on the **value determined** under **section 15 of CGST Act, 2016** and **contd..**

- at such **rates as may be notified by the Central Government** in this behalf,
- but **not exceeding twenty eight percent**, on the recommendation of Council and
- **collected in such manner as may be prescribed** and
- shall be **paid by every taxable person** in accordance with the provisions of this Act.

- PROVIDED that the Integrated Goods and Services Tax on goods **imported into India**
- **shall be levied and collected** in accordance with the provisions of **section 3 of the Customs Tariff Act, 1975 (51 of 1975)**
- at the point **when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962 (52 of 1962),**
- on a **value as determined under the first mentioned Act.**

12. Special provision for payment of tax by a supplier of online information and database access or retrieval services located outside India to specified person in the taxable territory

(1) On supply of online information and database access or retrieval services

- by any person **located in a non-taxable territory** and **contd....**

- received by non-taxable online recipient
- the **supplier of service located in a non-taxable territory**
- **shall be the person liable for paying IGST:**

- PROVIDED that in case the supply of online information and database access or retrieval services
- **by any person located in a non-taxable territory and received by non taxable online recipient**, **contd....**

- an **intermediary located in the non-taxable territory**,
- who arranges or facilitates provision of such service,
- shall be **deemed to be receiving such services from the service provider in non-taxable territory and**
- supplying such services to the non-taxable online recipient **except when such intermediary satisfies all the following conditions, namely** :- **contd….**

(a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply

- **clearly identifies the service in question** and **its supplier in non-taxable territory;**

(b) the intermediary involved in the supply **does not authorise the charge to the customer or take part in its charge**

- i.e. intermediary neither collects or processes payment in any manner nor **contd…**

- is responsible for the **payment between the non-assesse online recipient and the supplier of such services;**
- (c) the intermediary involved in the supply **does not authorise delivery;**
- (d) the **general terms and conditions** of the supply **are not set by the intermediary** involved in the supply but by the service provider.

- (2) The supplier of online information and database access or retrieval services referred in sub-section (1) shall,
- for **payment of IGST**, take a **single registration under a Simplified Registration Scheme** as may be prescribed:
- PROVIDED that any **person located in taxable territory representing such supplier** for any purpose in the taxable territory shall
- **take a registration and pay IGST on behalf of the supplier:**

- PROVIDED FURTHER that **if such supplier does not have a physical presence** or
- **does not have a representative** for any purpose in the taxable territory,
- **he may appoint a person** in the **taxable territory** for the **purpose of paying IGST** and
- such **person shall be liable for paying IGST.**

16. Zero rated supply

(1) "**zero rated supply**" means any of the **following taxable supply of goods and/or services**, namely -

(a) **export** of goods and/or services; or

(b) supply of goods and/or services **to a SEZ developer or an SEZ unit.**

(2) Subject to provisions of **sub-section (3) of section 17 of the CGST Act, 2016,**

- **credit of input tax may be availed for making zero-rated supplies,**
- **notwithstanding that such supply may be an exempt supply.**

(3) A registered taxable person exporting goods or services shall be **eligible to claim refund** under **one of the following two options**, namely – **contd....**

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(a) a registered taxable person may **export goods or services under bond,**

- **subject to such conditions**, safeguards and procedure as may be prescribed in this regard,
- **without payment of IGST** and
- **claim refund of unutilized input tax credit**
- in accordance with provisions of **section 48 of the CGST Act, 2016 read with rules made thereunder;**

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(b) a registered taxable person may **export goods or services,**

- **subject to such conditions**, safeguards and procedure as may be prescribed in this regard,
- on **payment of IGST** and
- **claim refund of IGST paid on goods and services exported**
- in accordance with provisions of **section 48 of the CGST Act, 2016 read with rules made thereunder**.

- (4) The **SEZ developer or SEZ unit receiving zero rated supply**
- specified in **clause (a) of sub-section (1)** shall be eligible,
- **subject to the conditions**, safeguards and procedure as may be prescribed in this regard,
- to **claim refund of IGST paid by the registered taxable person on such supply**.

20. Refund of IGST paid on supply of goods to outbound tourist

(1) The **IGST paid on any supply of goods to outbound tourist shall be refunded,**

- in the manner and subject to such conditions and safeguards as may be prescribed,
- **If such goods are taken out of India.**

- (2) The **refund under sub-section (1) shall be allowed only**
- on such **supply of goods that is procured from a registered taxable person**
- who satisfies the conditions and complies with the requirement,
- **including relating to issue of invoice** in the prescribed manner.

21. Import of services or inter-State supply of goods and/or services made on or after the appointed day

- Notwithstanding anything contained in section 12 and 13 of the CGST Act, 2016 **import of services or inter-State supply of goods and/or services**
- made **after the appointed day**
- **shall be liable to tax** under the provisions of this Act

- **regardless of whether the transactions for such import of services or inter-state supply**
- had been **initiated before the appointed day:**

- **PROVIDED** that if the tax on such import or inter-State supply had been paid in full under the earlier law,
- **no tax shall be payable on such import or inter-state supply** under this Act:

- PROVIDED FURTHER that if the tax on such import of services had been paid in part under the earlier law,
- **balance amount of tax shall be payable on such import or inter-state supply under this Act.**

- *Explanation: For the purpose of this section,*
- *a* ***transaction shall be deemed*** *to* have been **initiated before the appointed day**
- **if either the invoice relating to such supply or payment**,
- **either in full or in part, has been received or made before the appointed day.**

8. Place of supply of goods imported into, or exported from India

(1) The place of supply of goods **imported into India shall be the location of the importer**.

(2) The place of supply of goods **exported from India shall be the location outside India**.

10. Place of supply of services where the location of the supplier or the location of the recipient is outside India

(1) The provisions of this section shall apply to determine the place of supply of services

- where the location of the supplier of service or
- the location of the recipient of service is **outside India.**

Contd…

(2) The place of supply of services

- **except** the services specified in subsections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13)
- shall be the **location of the recipient of service**:
- **PROVIDED** that in case the **location of the recipient** of service **is not available** in the ordinary course of business,
- the place of supply **shall be the location of the supplier of service.**

3) The **place of supply of the following services shall be the location where the services are actually performed**, namely:-

(a) services supplied in respect of **goods** that are required to be **made physically available** by the **recipient of service** to the **supplier of service**,

- or to a person acting on behalf of the supplier of service in order to provide the service:

- **PROVIDED** that when such services are provided from a **remote location** by way of **electronic means,**
- the **place of supply shall be the location where goods are situated at the time of supply of service**:

- **PROVIDED FURTHER** that this clause shall **not apply** in the case of a **service supplied in respect of goods** that are **temporarily imported into India** for **repairs** and
- are **exported after repairs** without being put to any use in India,
- other than that which is required for such repairs;

(b) **services supplied to an individual,**

- represented either as the recipient of service or a person acting on behalf of the recipient,
- which require the physical presence of the receiver or the person acting on behalf of the recipient,
- with the supplier for the supply of the service.

(4) The place of supply of **services** supplied directly in relation to an **immovable property**,

- including services supplied in this regard by experts and estate agents, supply of hotel accommodation by a hotel, inn, guest house, club or campsite,
- by whatever name called, grant of rights to use immovable property,
- services for carrying out or co-ordination of construction work, including architects or interior decorators,

- shall **be the place where the immovable property is located or intended to be located.**

(5) The place of supply of services supplied by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission,

- shall be the **place where the event is actually held**.

(6) Where any service referred to in **sub-sections (3), (4), or (5)** is **supplied at more than one location**,

- including a **location in the taxable territory**,
- its place of supply shall be the **location in the taxable territory where the greatest proportion of the service is provided.**

(7) Where the services referred to in **sub-sections (3), (4), (5) or (6)** are supplied in **more than one State**,

- the **place of supply of such services** shall be **taken as being in each of the States** in **proportion to the value of services**
- so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or,
- in **absence of such contract or agreement**,
- on such other reasonable basis as may be prescribed in this behalf.

(8) The place of supply of following services shall be the **location of the supplier of service**:-

(a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) intermediary services;

(c) services consisting of hiring of means of transport other than aircrafts and vessels except yachts, upto a **period of one month.**

- Explanation.- For the purpose of this section,
- the expression "**goods**" shall include '**securities'** as defined in **sub-section (90) of section 2 of the CGST Act, 2016.**

- (9) The place of supply of services of **transportation of goods, other than** by way of **mail or courier**,
- shall be the **place of destination of the goods.**

(10) The place of supply in respect of a **passenger transportation service**

- shall be the place **where the passenger embarks on the conveyance for a continuous journey.**

(11) Place of supply of services provided on board a conveyance during the course of a passenger transport operation,

- including services intended to be wholly or substantially consumed while on board,
- shall be the **first scheduled point of departure of that conveyance for the journey**.

(12) (a) The place of supply of the "**online information and database access or retrieval services**" services **shall be location of recipient of service.**

(b) For the purposes of this sub-section,

- person **receiving such services shall be deemed to be located in the taxable territory**
- if any two of the following non-contradictory conditions are satisfied, namely:-

(i) the location of address presented by the recipient of **service via internet** is in taxable territory;

(ii) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of service settles payment has been issued in the taxable territory;

(iii) the **billing address of recipient** of service is in the taxable territory;

(iv) the **internet protocol address of the device used by the recipient** of service is in the taxable territory;

(v) the **bank of recipient** of service in which the **account used for payment** is maintained is in the taxable territory;

(vi) the country code of the subscriber identity module **(SIM) card** used by the recipient of service is of taxable territory;

(vii) the **location of the fixed land line** through which the service is received by the recipient is in taxable territory.

(13) In order to **prevent double taxation** or non-taxation of the supply of a service, or for the uniform application of rules,

- the Central Government shall have the **power to notify** any description of service or circumstances
- **in which the place of supply shall be the place of effective use and enjoyment of a service**.

Northern India Regional Council of
The Institute of Chartered Accountants of India

Model Goods and Service Tax:
Transitional Provisions
(Sunday, 12 February, 2017)

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The objectives of transitional provisions:

The objectives of the transitional provisions are to:

1. Smoothen integration of tax collection under the old laws into the collection under the proposed new laws
2. Ensure seamless availability of credit across goods and services

Summary of provisions

Sr. No	Sections	Description
1.	165	General provisions for administration of GST
2.	166	Migration of existing tax payers to GST
3.	167 to 172 and 197	Carry forward of Cenvat/input tax credit in the returns to be allowed as input tax credit under GST
4.	173 to 177	Goods sent on job work
5.	178	Debit notes and credit notes
6.	179 to 181	Pending refunds

Summary of provisions

S No	Sec	Description
7.	182	Claim of Cenvat Credit to be disposed of under the earlier law
8.	183	Finalization of proceedings relating to output duty or tax liability
9.	184	Treatment of the amount recovered or refunded in pursuance of assessment or adjudication proceedings
10.	185	Treatment of the amount recovered or refunded pursuant to revision of returns
11.	186	Treatment of long term construction / works contracts

Summary of provisions

S No	Sec	Description
12.	187	Progressive or periodic supply of goods or services
13.	188	Taxability of supply of services in certain cases
14.	189	Taxability of supply of goods in certain cases
15.	190	Credit distribution of service tax by ISD
16.	191	Provision for transfer of unutilized Cenvat Credit by tax-able person having centralized registration under the earlier law
17.	192	Tax paid on goods lying with agents to be allowed as credit

Summary of provisions

S No	Sec	Description
18.	193	Tax paid on capital goods lying with agents to be allowed as credit
19.	194	Treatment of branch transfers
20.	195	Goods sent on approval basis returned on or after the appointed day
21.	196	Deduction of tax source
22.	197	Transitional provisions for availing Cenvat credit in certain cases

This PPT covers

Sections 179 to Sec 197

Sec179: Pending Claims to be disposed of under earlier law

1. Any person filed claim for refund amount before or after the appointed day, for refund of Cenvat credit, duty, tax or interest paid before the appointed day, shall be disposed under earlier law.

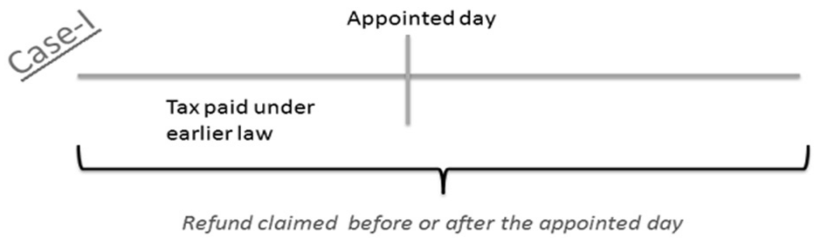


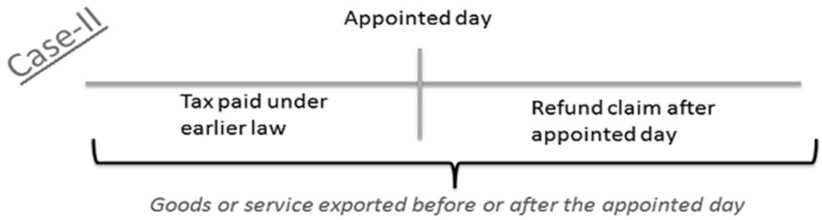
Image from CA Umesh in Tax Guru athttp://taxguru.in/goods-and-service-tax/goods-and-services-tax-refund-under-revised-model-gst-law.html

Sec179: Pending Claims to be disposed of under earlier law

2. Any person filed claim for refund (before or after the appointed day), of Cenvat credit, duty, tax or interest paid before the appointed day, shall be disposed under earlier law.
3. If refund of cenvat credit fully or partially rejected, the rejected clam shall lapse.
4. The amount of cenvat credit which is allowed to be carried forward under this act as on appointed day shall not be refunded.
5. Any amount eventually accruing to him shall be paid in cash.
6. This provision is overruling the all provisions of earlier law other than Sec 11B(2) of central excise act 1944.

Sec180: Refund claims filed for goods cleared or service provided before the appointed day and exported before or after the appointed day to be disposed of under earlier law

1. Any person filed claim for refund amount after the appointed day, for refund of any duty or tax paid for goods or service exported before or after the appointed day, shall be disposed under earlier law.

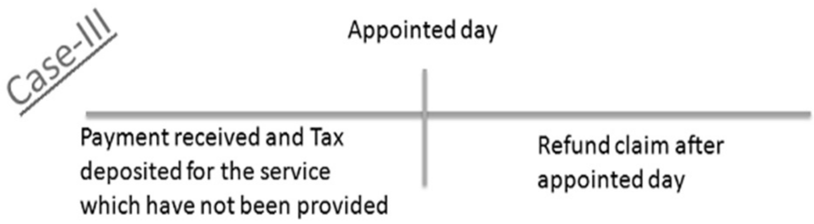


Sec180: Refund claims filed for goods cleared or service provided before the appointed day and exported before or after the appointed day to be disposed of under earlier law

2. If refund of cenvat credit fully or partially rejected, the so rejected shall be lapse.
3. No refund of balance amount of cenvat credit shall be allowed which are carried forward under this act as on appointed day.

Sec181: Refund claims filed after the appointed day for payment received and tax deposited before the appointed day in respect of services not provided

1. Any person filed claim for refund amount after the appointed day, for the refund of such tax amount which is deposited to the government in respect of services not provided, shall be disposed under earlier law.



Sec182: Claim of Cenvat Credit to be disposed of under the earlier law

1. Every proceeding of appeal, revision, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day, under the earlier law shall be disposed of in accordance with the provisions of earlier law,
2. Any amount of credit found to be admissible to the claimant shall be refunded to him in cash
3. If any amount of credit becomes recoverable as a result of (1) above, the same shall be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

Sec183: Finalization of proceedings relating to output duty or tax liability

1. Similarly (As under Section 182) If as a consequence of any appeal, revision, review or reference, relating to any output duty or tax liability initiated whether before, on or after the appointed day, shall be disposed of in accordance with the provisions of the earlier law, and
2. If any amount becomes recoverable as a result of such appeal, revision, review or reference, the same shall be recovered as an arrear of duty or tax under this Act and amount so recovered shall not be admissible as input tax credit under this Act.

Sec183: Finalization of proceedings relating to output duty or tax liability

1. Similarly (As under Section 182) If as a consequence of any appeal, revision, review or reference, relating to any output duty or tax liability initiated whether before, on or after the appointed day, shall be disposed of in accordance with the provisions of the earlier law, and
2. If any amount becomes recoverable as a result of such appeal, revision, review or reference, the same shall be recovered as an arrear of duty or tax under this Act and amount so recovered shall not be admissible as input tax credit under this Act.

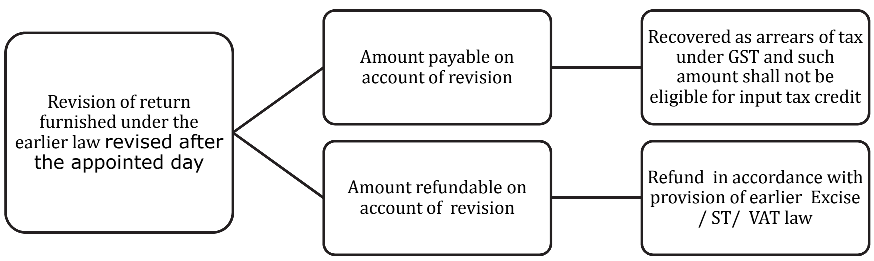
Sec184: Treatment of the amount recovered or refunded in pursuance of assessment or adjudication proceedings

1. Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the earlier law, any amount of tax, interest, fine or penalty becomes recoverable from the taxable person after the appointed day, the same shall be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.
2. Similarly if any amount becomes refundable to the taxable person, the same shall be refunded to him in cash under the earlier law.

Sec185: Treatment of the amount recovered or refunded pursuant to revision of returns

1. Where any return, furnished under the earlier law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of cenvat credit is found to be inadmissible, the same shall be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.
2. If any amount is found to be refundable or cenvat credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the earlier law

Treatment of amount recovered or refunded pursuant to revision of return – S. 185



Treatment of long term construction / works contracts – S. 186

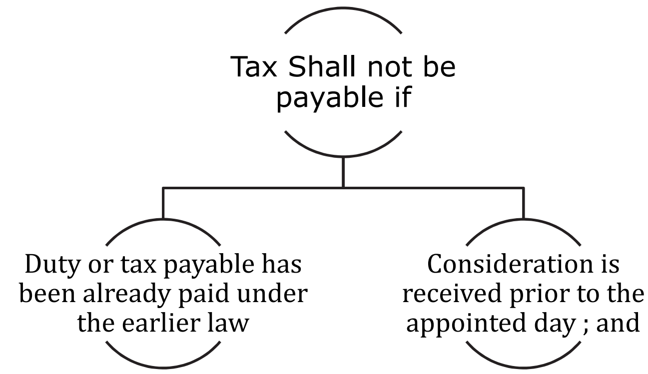
1. The goods and/or services supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act. **(CGST Law)**

2. The goods and/or services supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act. **(SGST Law)**

Sec 187: Progressive or periodic supply of goods or services

1. Notwithstanding anything contained in section 12 and 13, no tax shall be payable on the supply of goods and/or services made on or after the appointed day where the consideration, whether in full or in part, for the said supply has been received prior to the appointed day and the duty or tax payable thereon has already been paid under the earlier law.

Progressive or periodic supply of goods or services – S. 187

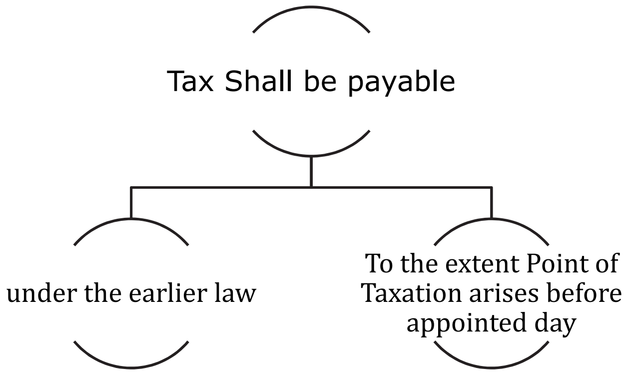


Sec 188:Taxability of supply of services in certain cases

Notwithstanding anything contained in section 13 or 14, the tax in respect of the taxable services shall be payable under the earlier law to the extent the point of taxation in respect of such services arose before the appointed day.

Explanation: Where the portion of the supply of services is not covered by this section, such portion shall be liable to tax under this Act.

Taxability of Supply of Goods/ Services – S. 188



Sec 189:Taxability of supply of goods in certain cases

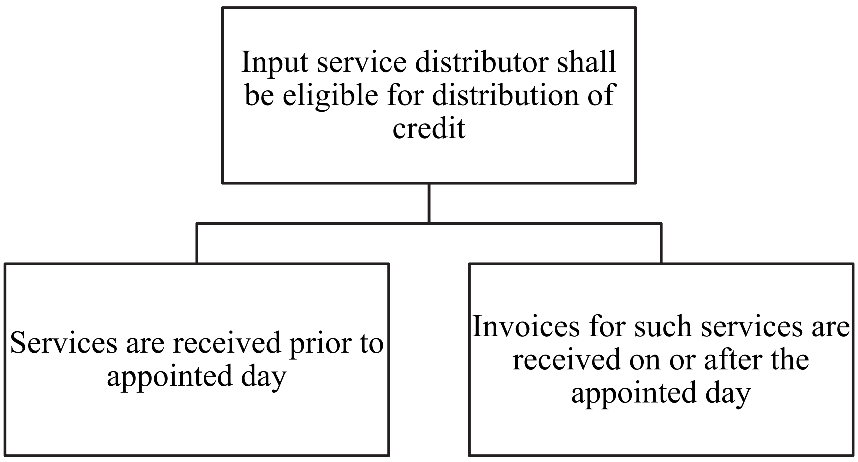
Notwithstanding anything contained in section 12 or 14, the tax in respect of the taxable goods shall be payable under the earlier law to the extent the point of taxation in respect of such goods arose before the appointed day.

Explanation: Where the portion of the supply of goods is not covered by this section, such portion shall be liable to tax under this Act.

Sec 190: Credit distribution of service tax by Input Service Distributor

Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoice(s) relating to such services is received on or after the appointed day.

Credit distribution of service tax by ISD (CGST) – S. 190



Sec 191:Provision for transfer of unutilized Cenvat Credit by taxable person having centralized registration under the earlier law

Where a taxable person having centralized registration under the earlier law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of cenvat credit carried forward in a return, furnished under the earlier law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed.

Sec 192: Tax paid on goods lying with agents to be allowed as credit

Where any goods belonging to the principal are lying at the premises of the agent on the appointed day, the agent shall be entitled to take credit of the tax paid on such goods subject to fulfilment of the following conditions:

i. The agent is a registered taxable person under this Act;
ii. Both the principal and the agent declare the details of stock of goods lying with such agent on the date immediately preceding the appointed day in such form and manner and within such time as may be prescribed in this behalf;

Sec 192: Tax paid on goods lying with agents to be allowed as credit

Where any goods belonging to the principal are lying at the premises of the agent on the appointed day, the agent shall be entitled to take credit of the tax paid on such goods subject to fulfilment of the following conditions:

iii.The invoices for such goods had been issued not earlier than twelve months immediately preceding the appointed day; and
iv. The principal has either reversed or not availed of the input tax credit in respect of such goods.

Sec 192: Tax paid on goods lying with agents to be allowed as credit

Where any goods belonging to the principal are lying at the premises of the agent on the appointed day, the agent shall be entitled to take credit of the tax paid on such goods subject to fulfilment of the following conditions:

iii.The invoices for such goods had been issued not earlier than twelve months immediately preceding the appointed day; and
iv. The principal has either reversed or not availed of the input tax credit in respect of such goods.

193. Tax paid on capital goods lying with agents to be allowed as credit

194. Treatment of branch transfers

195. Goods sent on approval basis returned on or after the appointed day

196. Deduction of tax source

197. Transitional provisions for availing Cenvat credit in certain cases

GST Transitional Provisions

February 2017

Transitional Provisions

Section	Provision	Particulars	Action/ Decision making Points
165	General Provision	• All officers under Central & State Indirect tax laws (which are subsumed in GST) shall be deemed to have been appointed as GST officers under GST Act • CG may issue orders or make rules consistent with the need for smooth transition to GST	
166	Migration of existing tax payers	• Every person registered under the earlier laws, would be granted a provisional registration on the basis of a valid PAN • The provisional registration granted shall be valid for a period of 6 months from the date of its issue • After grant of such provisional certificate, the applicant would be asked to furnish certain details, on the basis of which, a final certificate would be issued. On failure of issuance of such information, the provisional certificate can be cancelled	• Track the enrolment schedule • Update PAN, Mobile No. and E-mail ID on the portal • Create user name and password from the provisional ID • Collect the provisional registration in Form GST REG-21 • Application for Registration Certificate to be made within 6 months after appointed date in Form GST REG – 20 • Appoint primary authorised signatory • Select principal Place and Additional place of business • Opt for ISD registration, if required
167	Amount of CENVAT credit carried forward in a return to be allowed as ITC	• The amount of CENAVT credit carried forward in a return relating to the period ending on 30 June 2017 shall be allowed as ITC provided the amount is eligible as ITC under the GST regime as well • Similarly, credit of VAT and Entry tax carried forward in a return relating to the period ending on 30 June 2017 shall be allowed as ITC provided the amount is eligible as ITC under the GST regime as well • The return for the period ending on 30 June 2017 should be filed within 90 days • However, if the statutory forms like Form C, H, F etc. are not submitted with the time prescribed under Rule 12 of Central Sales Tax (registration and turnover) Rules, 1957, the ITC pertaining to such sales shall not be not be eligible to be credited under GST	• Collect all pending concessional statutory forms under the CST law • Try and utilize the available VAT credit as far as possible • Identify the pendency of concessional forms to be received under the CST law and differential tax amount relating to such pendency. This will be required to adjust the carry forward of VAT credit balance to the GST regime. Such adjustment will be available as refund in case the pending statutory forms are provided in the GST regime. • Closing balance of credits available in the books to be transferred as follows: (a) VAT Credits to SGST (b) CENVAT credit into CGST

Transitional Provisions

Section	Provision	Particulars	Action Points
168	Amount of CENVAT credit in relation to capital goods	• Every registered taxable person shall be entitled to take credit of unavailed CENVAT credit & input tax credit in respect of capital goods not carried forward in the return furnished under the earlier law for the period ending on 30 June 2017 • Unavailed credit means amount of credit already availed under previous law less aggregate amount of credit entitled in respect of capital goods	• Record the unavailed CENVAT credit in respect of capital goods under the GST regime • Record the unavailed VAT credit in respect of capital goods under the GST regime
169	Credit of eligible duties and taxes in respect of inputs held in stock to be allowed in certain situations	• Following person shall be entitled to take credit of the eligible duties and taxes (which includes Excise duty, NCCD, CVD, SAD and Service tax) on the inputs either held in stock or contained in semi-finished or finished goods held in stock : ▪ Person not liable to be registered under the earlier law ▪ Person engaged in manufacture of exempted goods ▪ Engaged in provision of exempted services or works contract service ▪ FSD, SSD or registered importer • In order to avail the aforesaid credit following conditions have to be fulfilled: ▪ Inputs are used or intended to be used for making taxable supplies under GST ▪ Supplier passes the benefit of such credit by way of reduced prices to recipient ▪ Registered person is eligible for input tax credit on such inputs under GST ▪ The said inputs were not exempted under the VAT schedules or Entry tax schedules of the earlier law ▪ Registered person is in possession of invoice and/or other prescribed documents evidencing payment of duty or taxes ▪ Such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding 30 June 2017 ▪ Supplier of service is not eligible for ay abatement under the GST Act • However, Traders not in possession of invoice or any other document evidencing payment of taxes and duties shall be eligible to take credit at such rate and subject to such conditions as may be prescribed	• Ensure physical stock taking on the appointed date ie 1 July 2017 • Separately keep manual record of the tax amount at the time of purchase itself (should not be earlier than 12 months from the appointed date), which was not available as credit in the current law • Avail such credit under GST law on the first appointed date • Pricing to customers needs to be reviewed to pass on such benefit to the end consumer • Preparedness for the government prescribed measures to avail such credit

Transitional Provisions

Section	Provision	Particulars	Action Points
170	Amount of Credit in respect of inputs held in stock under certain situations	• Every registered taxable person engaged in the following activities a) manufacture of non-exempted as well as exempted goods under CEA, 1944 or b) providing non exempted as well as exempted services under chapter V of Finance Act, 1994 shall be entitled for the following: ▪ CENVAT credit carried forward in a return furnished under the earlier law; and ▪ The amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on 1 July 207 relating to exempted goods or services	
171	Credit of eligible duties & taxes in respect of inputs or input services during transit	• Credit of eligible duties i.e. Excise, Service Tax and VAT/ Entry Tax in respect of inputs or input services received on or after 1 July 2017 but tax in respect of which has been paid before 1 July 2017 shall be allowed only if the invoice was recorded in the books of accounts within 30 days from the appointed date ie 1 July 2017	• For in-transit, record invoices within 30 days of the appointment date and avail credit of the taxes paid

Transitional Provisions

Section	Provision	Particulars	Action Points
172	Credit of eligible duties & taxes on inputs held in stock to be allowed to a taxable person switching over composition scheme	• A registered taxable person paying taxes as a " composition taxpayer" or under the "composition scheme" shall be entitled to take credit of eligible duties or VAT in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to following conditions: ▪ Inputs are used or intended to be used for making taxable supplies under GST ▪ The said person is not paying tax under the composition scheme under GST ▪ Registered person is eligible for input tax credit on such inputs under GST ▪ The said inputs were not exempted under the VAT schedules or Entry tax schedules of the earlier law ▪ Registered person is in possession of invoice and/or other prescribed documents evidencing payment of duty or taxes ▪ Such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding 30 June 2017	• Ensure physical stock taking on the appointed date i.e., 1 July 2017 • Identify whether the inputs in stock or finished goods or semi-finished goods are exempted or not under the existing VAT laws schedules • Avail such credit under GST law on the first appointed date
173	Exempted goods returned to the place of business on or after 1 July 2017	• No tax shall be paid on exempted goods which were cleared 6 months prior to appointed day and are returned within six months on or after appointed day • It will be taxable only when the goods are required to be taxed under the GST regime and are returned after months from the appointed date	• Segregation of goods returns into sold before 6 months and thereafter • Ensure that taxable invoice is issued for all the goods purchased pre-GST, however returned 6 months post GST

Transitional Provisions

Section	Provision	Particulars	Action Points
174	Duty paid on goods returned on or after appointed day	• Refund of duty shall be allowed on goods on which duty / taxes have bee paid under the earlier law and which were cleared earlier than 6 months prior to appointed day. Further such goods are returned by a person other than registered person within six months on or after appointed day	• Ensure that invoice is issued and taxes are paid for all the goods sold pre-GST, however returned post GST
175/ 176	Inputs removed for job work and returned on or after appointed day	• Inputs/ semi-finished goods sent to job worker before the appointed date and received in the factory after the appointed date • No tax on such supply made by Job Worker to the Principal Manufacturer, if such inputs/ finished goods are returned within 6 months (or extended period of two months) to the premises of the Principal Manufacturer and both Job Worker and Principal Manufacturer disclose the same in their last return as stock. • If inputs/ semi- finished goods are returned after 6 months (or extended period), input tax credit availed earlier be recoverable.	• Track the job-worker register cautiously • Ensure that all inputs sent to job –worker prior to 1 July 2017 are returned to the Principal manufacturer within 6 months ie 31 Dec 2017 • Goods sent for refurbishment should be adequately declared by both manufacturer and job-worker in prescribed form and manner

Transitional Provisions

Section	Provision	Particulars	Action Points
177	Finished goods removed for carrying out certain process and returned on or after appointed day	• No tax shall be paid on finished goods which were cleared 6 months prior to appointed day for the purpose of testing or carrying out any other process (not amounting to manufacture) and are returned back to the factory within six months (or extended period of two months) from the appointed day • If finished goods are returned after 6 months (or extended period), input tax credit availed earlier be recoverable.	• Same as above
178	Issuance of a Supplementary Invoice, Debit/Credit Note on revision of price of contract:	• In case of an upward revision of the price of goods supplied under a contract entered into prior to the appointed date, a supplementary invoice/ debit note required to be issued within 30 days of such price revision. • Such supplementary invoice and debit note would be deemed to be made in respect of an outward supply made under this Act • In case of a downward revision of the price of goods supplied under a contract price entered into prior to the appointed date is made, a supplementary invoice/ credit note shall be issued within 30 days of such price revision. • Further, the tax liability can be reduced only when the corresponding input tax credit has also been reduced.	• For revision of contract price, a debit/credit note, for adjustment of the price along with GST, is issued within 30 days of the appointed date

Transitional Provisions

Section	Provision	Particulars	Action Points
179	Pending refund claims to be disposed of under earlier law	• Refund claims filed before or after 1 July 2017 for refund of CENVAT credit, duty, tax or interest paid **before** 1 July 2017 would be disposed off in accordance with the provisions of the earlier law. • Amount eventually accruing as refund will be refunded in cash to the assessee • If any refund claim has been denied fully or partially, the amount rejected would lapse • Refund claim in respect of the CENVAT credit shall be allowed only when the balance amount as on 1 July 2017 has not been carried forward in the returns	• Ensure speedy processing of the refund claims • To ensure that the amount of CENVAT credit claimed as refunds should not be carried forward in the returns
180	Refund claim filed **after** appointed day for goods or services provided before or after the appointed day under earlier law	• Refund claims filed after 1 July 2017 but in respect of goods or services either exported before or after 1 July 2017 will be disposed of in accordance with the earlier laws if the duty or tax has been paid under the earlier law • If any refund claim has been denied fully or partially, the amount rejected would lapse • Refund claim in respect of the CENVAT credit shall be allowed only when the balance amount as on 1 July 2017 has not been carried forward in the returns	