IMPORT OF SERVICES IN GST

RELEVANT STATUTPRY PROVISIONS

Section 7 of CGST Act, 2017: Scope of Supply

(*1*) For the purposes of this Act, the expression "supply" includes––

(b) **Import of services**[2] **for consideration**[1] **whether or not in the course or furtherance of business**[3].

(c) The activities specified in Schedule I, made or agreed to be made **WITHOUT CONSIDERATION**.

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

1. CONSIDERATION- Section 2(31) of CGST Act, 2017

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

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

(b) The monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply

ENTRY 4 OF SCHEDULE-I

Supply without a consideration

Import of services **by a taxable person**[4] **from a related person**[5] or **from any of his other establishments outside India, in the course or furtherance of business**

2. Section 2(*11*) OF IGST Act: **IMPORT OF SERVICES**
Means the supply of any service, where––

(i) The supplier of service is located outside India;
(ii) The recipient of service is located in India; and
(iii) The place of supply of service is in India;

3. SECTION 2(*17*) OF CGST ACT- BUSINESS includes:-

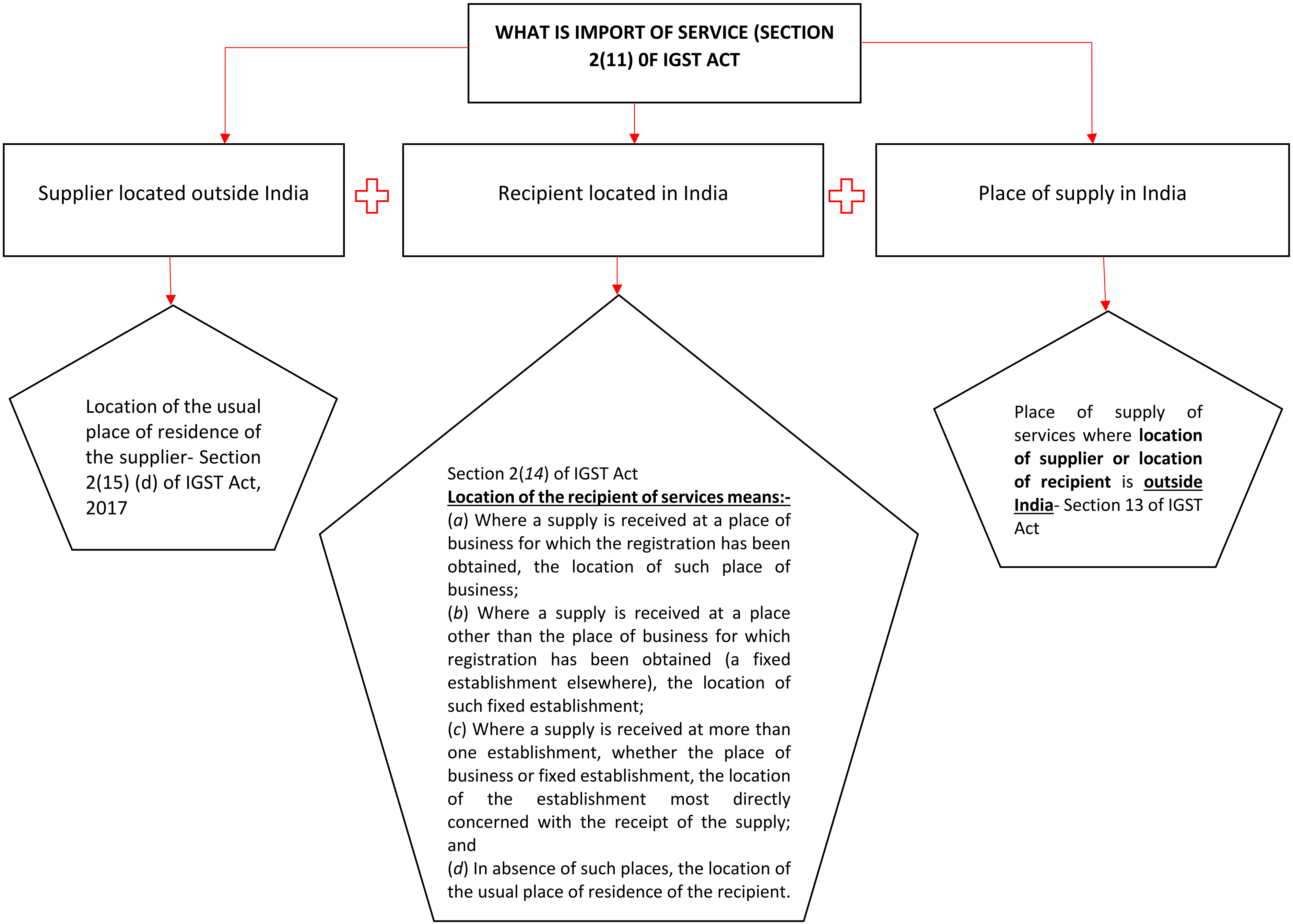
(*a*) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
(*b*) Any activity or transaction in connection with or incidental or ancillary to sub-clause (*a*);
(*c*) Any activity or transaction in the nature of sub-clause (*a*), whether or not there is volume, frequency, continuity or regularity of such transaction;
(*d*) Supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
(*e*) Provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
(*f*) Admission, for a consideration, of persons to any premises;
(*g*) Services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
(*h*) Services provided by a race club by way of totalisator or a licence to book maker in such club; and
(*i*) Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

5. Explanation to section 15 of CGST Act- **RELATED PERSONS**
For the purposes of this Act:-

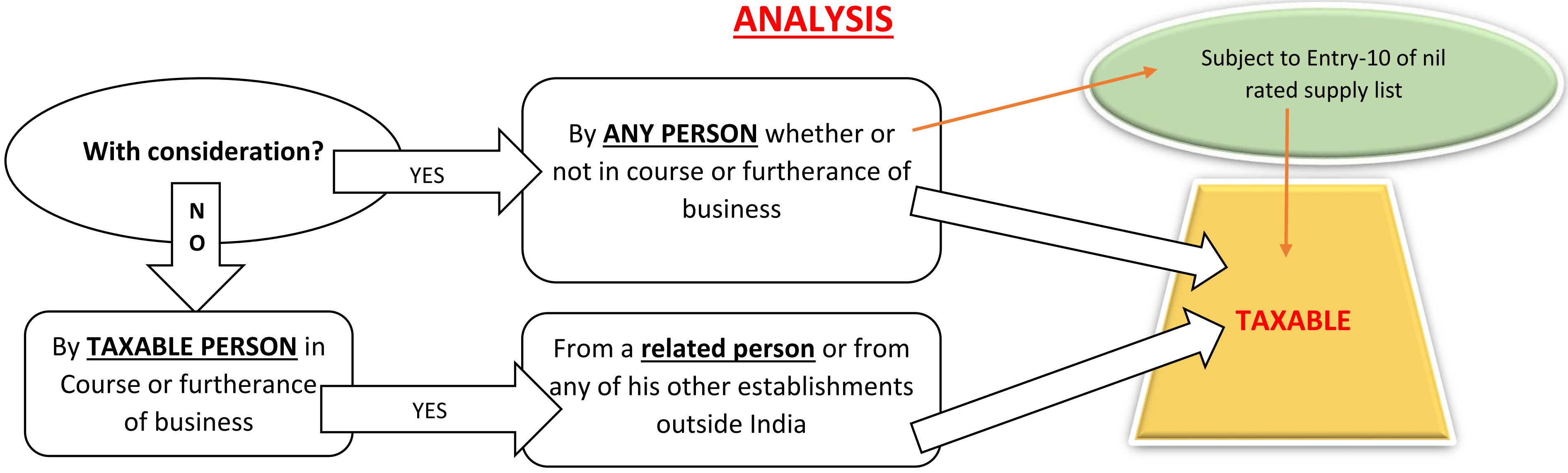
a) Persons shall be deemed to be "Related persons" if:-

(i) Such persons are officers or directors of one another's businesses;
(ii) Such persons are legally recognised partners in business;
iii) Such persons are employer and employee;
(iv) Any person directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;
(v) One of them directly or indirectly controls the other;
(vi) Both of them are directly or indirectly controlled by a third person;
(vii) Together they directly or indirectly control a third person; or
(viii) They are members of the same family;

(b) The term "person" also includes legal persons;
(c) Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.


WHAT IS IMPORT OF SERVICE (SECTION 2(11) 0F IGST ACT
Supplier located outside India
Recipient located in India
Place of supply in India
Location of the usual place of residence of the supplier- Section 2(15) (d) of IGST Act, 2017
Section 2(*14*) of IGST Act
Location of the recipient of services means:-
(*a*) Where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
(*b*) Where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
(*c*) Where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
(*d*) In absence of such places, the location of the usual place of residence of the recipient.
Place of supply of services where **location of supplier or location of recipient** is **outside India**- Section 13 of IGST Act

ANALYSIS



INPORTANTS POINTS EMERGING FROM STATUTORY PROVISIONS

- **In section 7(1) (b) of CGST Act, it is not mentioned BY WHOM such services be imported. So import of services <u>with consideration</u>, subject to exemption under entry 10 of list of nil rated service, is taxable:-**

  ✓ By any person.
  ✓ Whether registered or not.
  ✓ Whether for personal use or for business purpose.
  ✓ Import is treated as inter-state supply- Section 7(4) of IGST Act, 2017 and importer of services is under compulsory registration under clause (i) of section 24 of CGST Act, 2017.

- **In entry 4 of schedule-I in CGST Act, import of services <u>without consideration</u>, is taxable:-**

  ✓ By a person registered to **<u>require to be registered</u>**
  - Turnover exceeding specified limit- section 22
  - Compulsory registration- section 24s

  ✓ From **<u>related person</u>** or any of his **<u>own establishments</u>** outside India
  ✓ For business purpose.
  ✓ Import is treated as inter-state supply- Section 7(4) of IGST Act, 2017 and importer of services is under compulsory registration under clause (i) of section 24 of CGST Act, 2017.

EXAMPLES

Srn	Importer	Supplier	Purpose	Consideration	Taxability	Covered Under	Exemption ?
1	Rajiv in Delhi	Dubai based Interior designer	Services for designing residential house	Yes	Yes	Section 7(1)(b)	Yes- Entry 10 of Nil rate list
2	Dinesh In Mumbai	London based Architect- Brother of Dinesh	Service for construction of own office in mumbai	No	Yes	Entry 4 Schedule-I	No, Dinesh will pay IGST under RCM
3	Maruti Limited	China Based Technician	Technical Services for cars	Yes	Yes	Section 7(1)(b)	No, Maruti will pay IGST under RCM
4	Maruti Limited	Subsidiary company in Dubai	Technical Services for cars	No	Yes	Entry 4 Schedule-I	No, Maruti will pay IGST under RCM
5	Ajay in Delhi	Sigapore based Image Consultant	Services for personality development	No	No	Not covered anywhere	Not required to pay tax
6	Rajesh in Delhi	US Based data analyst	Service for analysis of sales data	Yes	Yes	Section 7(1)(b)	No, Rajesh will pay IGST under RCM

EXEMPTION DETAIL- NOTE-1 BELOW

REVERSE CHARGE PROVISIONS- NOTE-2 BELOW

NOTE-1: EXEMPTION-IMPORT OF SERVICES

Entry: 10 Services **received from a provider of service located in a non- taxable territory**

By

(a) The Central Government, State Government, Union territory, a local authority,
A governmental authority or
An individual in relation to any purpose **other than commerce, industry or any other business or profession;**

(b) An entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) for the purposes of providing charitable activities; or

(c) A person located in a non-taxable territory:

Provided that the exemption shall not apply to –

(i) Online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or
(ii) Services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.

ANALYSIS

Exempt if imported by

- Govts /UT/local authority/ Governmental authority
- An individual other than business/commerce
- Registered entity U/s 12AA
- Person located in non-taxable territory

Taxable

- Online information and database access or retrieval services **received by**:-
- Services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India **received by:-**

Section 2(*17*) of IGST Act

***O*nline 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

(*i*) Advertising on the internet;
(*ii*) Providing cloud services;
(*iii*) Provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
(*iv*)Providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
(*v*) Online supplies of digital content (movies, television shows, music and the like);
(*vi*) Digital data storage and
(*vii*) Online gaming;

NOTE 2: NOTIFIED SERVICES WHICH ARE UNDER REVERSE CHARGE- SECTION 9(3) OF CGST ACT/5(3) OF IGST ACT 2017/7(3) OF UTGST ACT

Entry no. 1 of table of specified services under Reverse charge notification - exempt non-taxable online recipient to pay tax under RCM on import of services.

No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	**(2)**	**(3)**	**(4)**
1	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory **other than non-taxable online recipient.**

Section (*16*) of IGST Act, 2017

Non-taxable online recipient

Means any **Government, local authority, governmental authority,** **an individual** **or** **any other person not registered** and receiving **online information and database access or retrieval service**s in relation to **any purpose other than commerce, industry or any other business or profession**, located in taxable territory.

Explanation.—For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,—

(*i*) Set up by an Act of Parliament or a State Legislature; or

(*ii*) Established by any Government, with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;