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GST Comprehensive Notes for CA/ CS/ CMA Final

Beginners' Guide

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1. Introduction to GST

1. What is Goods and services Tax (GST)?

Goods and Services Tax (GST), also known in some countries as value-added tax (VAT), is a tax on consumption that is collected incrementally i.e. based on the value added at each stage of production or distribution. The standard way to implement a GST is to pay GST on the price of the product minus all taxes previously paid on goods and services. Nearly 160 of the world's approximately 193 countries levy some form of VAT/GST.

A perfect value-added tax system aims at eliminating cascading effect of taxes in a supply chain of producer/manufacturer and end consumer. A continuous chain of set-off of earlier taxes from the original producer's point and service provider's point up to the retailer's level is established so that burden of tax is passed on to end consumer, i.e. destination. This is achieved through the mechanism of Input Tax Credit.

India has been following a truncated version of VAT for more than 30 years in Central Taxes (Excise and Service Tax) and since 2005 in State Taxes (VAT and Entry Tax).

2. What are the advantages of GST?

GST will help in allowing businesses the benefit of conducting their activities unmindful of taxes or place of manufacture or distribution chain. The design of law will considerably reduce disallowance/restriction of input tax credits by States due to movement of goods out of the State as stock transfer, or in some cases even in case of sale in the course of inter-state trade or commerce.

GST is particularly important to provide domestic businesses a level playing field vis-à-vis imports and full refund of taxes on exports. This is possible by capturing the full impact of taxes at final stage rather than as embedded costs.

It is expected that the introduction of GST in India will result in the increase of national income by 1 percent to 1.5 percent (USD 20 – 40 billion annually) on a recurring basis.

3. What are the unique features of Indian GST?

India has chosen one of the most ambitious form of GST in the entire world. There will be single common market with goods and services moving seamlessly in the entire country. This is achieved through levy of integrated GST on inter-State transfers and imports which will be available as tax credits to the recipients of supplies.

GST is a dual levy in India and the eligible transactions are subject to levy of both Central Tax and State Tax. Integrated Tax is levied by Centre in the case of inter-State supplies and imports/ exports. Certain goods and services are subjected to a further levy of GST Compensation Cess. Supplies to or from Union Territories are treated as inter-State supplies. Supplies within a Union Territory without legislature are charged to UT Tax.

India, at this stage, has chosen a slightly truncated GST keeping certain critical sectors outside GST e.g. Petroleum (5 specified products). Electrical energy is also kept out of GST by providing absolute exemption from whole of tax through Notification.

4. Which of the existing taxes are subsumed under GST?

The GST has replaced following taxes:

(i) Taxes levied and collected by the Centre:

- Central Excise Duty
- Duties of Excise (Medicinal and Toilet Preparations)
- Additional Duties of Excise (Goods of Special Importance) • Additional Duties of

Excise (Textiles and Textile Products)
- Additional Duties of Customs (commonly known as CVD) and Special Additional Duty of Customs (SAD) [*Note:* Under GST, it is collected as Integrated Tax]
- Service Tax
- Central Surcharges and Cesses as far as they relate to supply of goods and services

(ii) State taxes that have been subsumed under the GST are*:*

- State VAT
- Central Sales Tax (CST)
- Luxury Tax
- Entry Tax (including Octroi and Local Body Tax)
- Entertainment and Amusement Tax (except when levied by the local bodies)
- Taxes on advertisements
- Purchase Tax
- Taxes on lotteries, betting and gambling
- State surcharges and cesses so far as they relate to supply of goods and services.

5. Which of the pre-GST taxes are not subsumed under GST?

The GST has not replaced following taxes:

- ***Taxes currently levied and collected by the Centre:***
- Taxes on income, wealth or gifts
- Basic Customs Duty (never included in GST, being tariff barrier)
- Duty of Excise on tobacco and tobacco products (will be levied over and above GST)
- Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights
- Central Stamp Duties
- Oil Industries Development Act Cess (OIDB Cess) (as petroleum is kept outside GST)

(ii) State taxes that would not be subsumed under the GST are:

- Fees in respect of markets and fairs (Mandi fees)
- Taxes on lands and buildings (property tax)
- State Stamp Duties
- Taxes on mineral rights
- Electricity Duty
- Taxes on goods and passengers carried by road or on inland waterways
- Taxes on vehicles (Road Transport Authority)
- Tolls
- Taxes on professions, trades, callings and employments
- Entertainment Tax by local bodies

6. Which goods/sectors are kept outside GST?

- Alcoholic liquor for human consumption (already done by Constitution);
- Petroleum crude o High speed diesel
- Motor spirit (commonly known as petrol)
- Natural gas
- Aviation turbine fuel
- Actionable claims except lotteries, betting and gambling
- Specified Real Estate
- Securities [However 'transaction in securities' have been included in the scope of exempt supplies while determining pro rata reversal of input tax credits used for making

both taxable and exempt supplies]

- Money

7. Is there any possibility of commodities listed above being subject to GST in future?

Definition of 'goods and services tax' in the Constitution excludes 'supply of the alcoholic liquor for human consumption'. Thus alcoholic liquor for human consumption cannot be subject to GST without making amendment in the Constitution.

GSTC has been empowered under the Constitution to recommend the date on which GST will be levied on petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel. The Central Government has been empowered under the GST Act to notify such date on the recommendation of the GST Council. A decision is yet to be taken by the Council to bring these petroleum products under GST.

All other products are strictly not excluded from GST. However GSTC has also decided to exclude land and buildings except those that are supplied before completion or first occupation from GST. Money and securities are usually not taxed in GST and have been kept outside the definition of supply and are unlikely to be included at a later stage. Same is the position with actionable claims except lotteries.

8. What would be the status of 'electricity' under GST?

It is now well settled through a catena of judgments from the Apex Court that electricity is 'goods'. There is no Constitutional bar on levy of GST on electricity. Levy of Electricity duty by States on consumption or sale of electricity can co-exist with levy of GST on electricity. The GST Act does not exclude power from GST.

As mentioned earlier, electrical energy is exempt for whole of levy of GST absolutely through notification.

9. Whether real estate will be taxed under GST?

Supply of real estate (land, buildings and civil structures) are generally immovable and are subject to levy of stamp duty which has not been subsumed in GST.

Schedule II of the CGST Act, 2017 excludes land and buildings except those that are supplied before completion or first occupation from the ambit of supply of services. Apart from this sale of land and buildings has been listed as one of the transactions that will be treated as neither a supply of goods nor of service under Schedule III of the CGST Act.

However 'sale of land and buildings' have been included in the scope of exempt supplies while determining pro rata reversal of input tax credits used for making both taxable and exempt supplies.

10. How do you summarize various taxes after the introduction of GST?

Description	**Pre-GST taxes**		**GST**
	State Taxes	**Central Taxes**	
Alcohol	√	X	X
Tobacco & Tobacco products	X	√	√
Specified petroleum products	√	√	X [to be applicable from a date to be notified by GSTC]

Power	√	X	included in GST at the statue level but exempted absolutely through notification
Real Estate	√	√ [applicable on service portion only]	Partially
Entertainment and amusement	X [except by local bodies]	X	√
Luxury Tax	X	X	√

11. What is GSTC and its functions?

GSTC is the abbreviation for The Goods and Services Tax Council. It is a Constitutional Body created for taking policy decisions about introduction and implementation of GST, including about exemptions, tax rates and tax credits.

Union Finance Minister is the Chairperson of GST Council. The Union Minister of State in charge of Revenue or Finance of the Central Government. And the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government are members of the GSTC.

Decisions of GSTC are not binding on legislatures. However, it is expected that both the Centre and States will abide by the recommendations of GSTC. GSTC will devise a mechanism for dispute resolution if any constituent deviates from its recommendations.

GSTC has the powers to allow exceptions or deviations to any tax regime from the agreed mandate in circumstances of exceptional nature e.g. earthquake.

12. What is the broad scheme of GST?

Barring exceptions, as provided above, and some exemptions, all goods and services are be charged to GST. The supplier charges Central Tax and State Tax in case of intra-State supply of goods and/or services and Integrated Tax in case of inter- State supply. GST is levied on price agreed between a supplier and the recipient except where such price is influenced or in any other way tainted. A registered tax payer recipient is allowed to take input tax credits of taxes paid to the supplier. This chain of tax credit does not stop till the goods and/or services reach the final consumer.

Import of goods is subject to Integrated Tax and ischarged in terms of the Customs Act read with the Customs Tariff Act. Baring exceptions, import of services are taxed on reverse charge basis.

It is also expected that both the Central Tax and State Tax will be administratively dealt with by one of the two tax administrations, namely, Centre or States as per an understanding and risk management tools to be finalized and operationalized.

13. How the supplies to and from Union territories are treated under GST?

In the GST Act the Union territories have been divided into two categories:

- ***Union territories with legislature,*** i.e., Delhi and Puducherry which have been included in the definition of State. Accordingly supplies to and from such UTs and supplies from one such UT to another will be treated as inter-State supplies chargeable to Integrated Tax.

Supplies within such UTs will be treated as intra-State supplies chargeable to Central Tax and State Tax.

- ***Union territories without legislature,*** i.e., the Andaman and Nicobar Islands, Lakshadweep, Chandigarh, Dadra and Nagar Haveli, Daman and Diu and also the area in Exclusive Economic Zone and Continental Shelf. Supplies to such UTs from another State or from such UTs to another State or from one such UT to another have been deemed to be inter-State supply and would be chargeable to Integrated Tax. Supplies within such UTs would be chargeable to UT GST or UT Tax that would be levied and collected under the UT GST Act

2. Chargeability

1. Charging event or levy of GST

The charging event or levy is the event which determines whether an activity attracts the charge. However tax may be collected before or after the event for the sake of administrative certainty or convenience. It will be beneficial to understand the taxable events in various taxes as under:

Tax	Taxable event
Imports	Entry of goods in the territory of a country
Central Excise	Manufacture
VAT	Sale of goods
Service Tax	Provision of a service
GST	**Provision of a supply**

GST is leviable on:

- supply of
- goods /or services
- by a taxable person
- at such rate as may be notified by Central/State Government on recommendation of the GST Council; and
- collected in the manner as prescribed.

The charging provisions for Central Tax/State Tax and Integrated Tax are similar with the only difference that Integrated Tax is leviable on inter-State supplies while Central Tax/State Tax are leviable on intra-State supplies.

Another difference is that the charging provision of Integrated Tax also provides for levy of Integrated Tax on import of goods in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 at the point when duty of Customs are levied under the Customs Act 1962. Therefore Integrated Tax will be levied as CVD on import of goods equivalent to Integrated Tax leviable on like goods if supplied in India.

2. Meaning of supply under GST

Supply is defined to ***include*** 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. It also includes importation of services for a consideration whether or not in the course or furtherance of business.

Normally a supply will involve two independent persons. However, GST makes transactions between two branches of the same legal entity in different States/ countries or two different registrations within the same State also taxable under GST.

Transactions of supply of goods between principals and agents which are not subject to tax in present regime are taxable supplies under GST as these have been treated as supplies under Schedule I of the CGST Act.

The definition of supply is inclusive and thus of the widest possible connotation.

3. Supplies without consideration

As a general rule only supplies with consideration are taxable. However certain exceptions have been carved out where supplies without consideration have also been made taxable. These are:

- Permanent transfer/disposal of assets when input tax credit has been taken on such assets.

- Supply of goods or services between related persons or distinct persons (i.e. same person with different registration numbers) when made in the course or furtherance of business. However, gifts not exceeding *fifty thousand rupees in a year by an employer to an employee shall not be treated as supply.*
- Supply of goods by a principal to his agent when the agent undertakes to supply such goods on behalf of the principal
- Supply of goods by an agent to his principal when the agent undertakes to receive such goods on behalf of the principal
- Importation of service by a taxable person from his related person or his establishment (e.g. branch office, marketing office) outside India, in the course or furtherance of business.

4. Definition of goods in GST

Under GST 'goods' have been defined as 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.

The definition of goods under the existing VAT and other applicable laws has been largely retained in GST. There are two principal changes:

a) The scope of goods has been expanded to include actionable claims; and

b) Some of the erstwhile goods are now specifically termed as services (discussed later).

Goods are generally tangible. They can be possessed, stored, delivered, transferred, bought and sold. Services are generally intangible. However, some intangibles, like electricity, trade-mark, copy right, technical know-how have also been interpreted by Courts as 'goods' as they are capable of being possessed, stored, delivered etc. On the other hand some services can also be tangible e.g. a pre-paid card with talk time.

Although actionable claims have been included in the definition of goods, supply of actionable claims, other than lottery, betting and gambling, has been treated as neither a supply of goods or services under CGST Act as the same has been listed as a Schedule III transaction.

5. Meaning of money

"Money" means Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveler cheque, money order, postal or electronic remittance 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 but shall not include any currency that is held for its numismatic value.

6. Meaning of security

For defining securities, CGST Act makes reference to section 2(h) of the Securities Contracts (Regulation) Act, 1956 according to which "securities" include—

(i) shares, scraps, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ii) derivative;

(iii) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(iv) security receipt as defined in the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(v) units or any other such instrument issued to the investors under any mutual fund scheme;

(vi) Government securities;

(vii) such other instruments as may be declared by the Central Government to be securities; and
(viii) rights or interest in securities.

Buying and selling of mutual funds or debentures, transactions in derivatives are transaction in securities.

Although securities have been excluded from the definition of 'goods' or of 'services', 'transaction in securities' have been included in the scope of exempt supplies while determining pro rata reversal of input tax credits used for making both taxable and exempt supplies.

Note: Section 17(3) of the CGST Act. Explanation 2(b) to rule 45 of the CGST Rules, 2017 provides that the value of security shall be taken as one per cent of the sale value of such security.

7. Meaning of actionable claim

For defining actionable claim, CGST Act makes reference to section 3 of the Transfer of Property Act, 1882. 'Actionable claim' thus means a claim of any debt, or to any beneficial interest in movable property other than the debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, not in possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent."

A lottery ticket is actionable claim. Assignment of right of recovery of unsecured debt is actionable claim. Railway ticket is not actionable claim. Purchase of a railway ticket gives the right to a person to travel by railway. It is nothing other than a contract of carriage.

Actionable claims have been included in the definition of goods with a limited purpose of taxing 'lottery, betting and gambling'. Schedule III provides that activities or transactions in actionable claims, other than lottery, betting and gambling shall be treated neither as a supply of goods nor a supply of services

8. Taxability of Actionable claim

Although actionable claims have been included in the definition of 'goods' in CGST Act, actionable claims other than lottery, betting and gambling have been specified as a transactions which shall be treated neither as supply of goods nor as supply of service under Schedule III of the CGST Act. Therefore, only actionable claims in the nature of lottery tickets, betting and gambling will be taxed as supply of goods under GST.

9. Definition of 'goods' in GST vis-à-vis in Sale of Goods Act and Sales Tax laws

GST	The Sale of Goods Act, 1930	Central Sales Tax Act,1956
"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	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	goods includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities

The definition of 'goods' under Sale of Goods Act and Central Sales Tax Act excludes 'actionable claims' whereas under GST 'actionable claims' have been included (albeit only to the extent of lotteries, betting and gambling) within ambit of 'goods'.

Certain transactions which involve supply of goods and provision of service as a single economic activity such as works contract, catering contracts, SIM cards or recharge vouchers in paper form are specifically declared as transaction in service in GST.

10. Definition of services in GST law

Services are defined in GST as anything other than goods.

Money and securities have specifically been excluded from the definition of services. However specified transactions in money have been included – 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.

Thus the meaning of service is much enlarged from the existing meaning in service tax law. There was a view that real estate can now be termed as service as it is not "goods". However, in the final CGST Act sale of land and buildings has been listed as one of the transactions that will be treated as neither a supply of goods or of service under Schedule III of the CGST Act.

11. Definition of 'services' in GST vis-à-vis under Service Tax law

The definition of 'service' in service tax law is restricted. It has been defined in terms of an activity carried out by a person for another for a consideration other than specifically excluded transactions like transfer of title in goods, immoveable property, transaction in money or actionable claim etc. On other hand definition of service in GST is much wider as explained above.

There were some other exclusions also from the definition of service which have been tackled differently in GST by specifying these transactions as Schedule III transactions that are treated as neither a supply of goods nor a supply of services. These are:

(i) Services by an employee to the employer in the course of or in relation to his employment;
(ii) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
(iii) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity;
(i) (iv) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause

12. Whether the existing disputes regarding scope of goods and services will continue in GST?

The taxability dispute in present regime and its resolution under GST can be depicted as follows:

Activity	Charge under State Law (VAT)	Charge under Central law (Service Tax)	Charge under GST
Works Contract relating to immovable property	On goods or specified portion as goods	On service or specified portion as service	Entirely as service
Works Contract relating to movable property	On goods or specified portion as goods	On service or specified portion as service	Depends upon which is the principal supply treating such WC as a composite

			supply
Transfer of right to use goods	As goods if effective control and possession transferred	As service if effective control and possession is not transferred	Service
Temporary transfer of Intellectual property rights	Disputed position whether taxable as goods	Service	Service
Catering contracts	Entirely as goods	Specified portion as service	Entirely as service
Development of Software	Disputed position whether taxable as goods	Service	Service

However the position is not fully resolved. At the same time any difference in this regard will have much lesser impact unless the rate of tax or place of provision changes the ultimate liability and that too in a case where tax credits are not fully admissible.

Since in CGST Act, 'works contract' is defined with reference to activities involving immovable property only, in case of works contract of movable property, such as repair of goods with material, the issues may still arise regarding the classification as supply of goods or service. If such supplies are in nature of job work, then the supply may be treated as a supply of service. If it is not in the nature of job work, then by being treated as a composite supply, the classification would be determined based on nature of the principal supply.

13. Principles for differentiating between 'goods' and 'services'

Neither the Constitution nor the CGST Act give water tight definition of 'goods' and 'services'. In India, Courts have consistently held that the test, to determine whether a property is 'goods' is whether the concerned item is capable of abstraction, consumption and use and whether it can be transmitted, transferred, delivered, stored, possessed, etc. After examining a transaction on the touch stone of tests laid down by Courts on what constitutes 'goods' one has to scan through Schedule II of the CGST Act to determine exact nature of activity. Schedule II specifies whether certain transactions listed therein are to be treated as supply of goods or service. Thereafter, anything which is not 'goods' becomes 'service' for the purpose of GST.

14. Transactions specified as supply of goods in Schedule II of the CGST Act

Following transactions are to be treated as supply of goods for the purposes of GST:

(i) Transfer of title in goods
(ii) Transfer of title in goods on a future date on payment of full consideration
(iii) Transfer/disposal of business assets with or without consideration
(iv) Sale of business assets by any other person to recover debts
(v) Goods forming part of business assets on ceasing to be a taxable person
(vi) Supply of goods by an unincorporated association to its members

15. Transactions specified as supply of services in Schedule II of the CGST Act

Following transactions are to be treated as supply of services for the purposes of GST:

(i) Transfer of right to use goods
(ii) Lease, tenancy, easement, license to occupy land
(iii) Lease or letting out of building
(iv) Job work on others' goods

(v) Personal use/ making available for non-business use of business assets
(vi) Renting of immovable property
(vii) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation, whichever is earlier
(viii) Temporary transfer or permitting the use or enjoyment of any intellectual property right
(ix) Development, design, programming, customization, adaption, up gradation, enhancement, implementation of information technology software
(x) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act
(xi) Works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract
(xii) Transfer of the right to use any goods for any purposes (whether or not for a specified period) for cash, deferred payment or other valuable consideration
(xiii) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

The services mentioned at s. no (vi) onwards, in the list above, are more or less same as Declared Services enumerated in section 66E of the Finance Act, 1994 (Service tax law). The key changes are those activities such as works contracts; transfer of right to use goods; and serving/catering of food, which are treated partly as sale of goods and partly as provision of service under the present dispensation will be treated entirety as service under GST.

16. Transactions that are neither supply of goods nor supply of services

Schedule III of the CGST Act lists activities or transactions which are neither supply of goods nor supply of services in the following manner:

(i) Services by an employee to the employer in the course of or in relation to his employment.
(ii) Services by any Court or Tribunal established under any law for the time being in force.
(iii) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
(iv) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity.
(v) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee
(vi) Services by a foreign diplomatic mission located in India or any specialized agency of the United Nations Organization or any Multilateral Financial Institution notified under the United Nations (Privileges and Immunities) Act, 1947.
(vii) Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
(viii) Sale of land and building (other than a building intended for sale to a buyer before issuance of completion certificate or first occupation thereof).
(ix) Actionable claims, other than lottery, betting and gambling.

Their complete exclusion from ambit of ‘goods’ and ‘services’ provides the benefit that no tax credits are required to be reversed for any common inputs, input services or capital goods used in such supplies along with taxable supplies.

17. Meaning of composite supply

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

For example, when a manufacturer has to supply goods which need to be transported up to the place of recipient, he will charge for value of goods, cost of packing, cost of transportation and in transit insurance up to the place of recipient. Here supply of goods is the principal activity. Activities of packing and transportation are necessary to complete the supply. There is nothing unusual in this transaction and hence these are naturally bundled in the ordinary course of business. Though individually some of these activities are supply of goods (value of goods and packing material) and some of them are supply of services (expense on putting the goods in packing material and transporting), the GST law will treat all these activities as a single activity, taking its character from main activity, i.e. supply of principal goods and tax will be charged accordingly.

For qualifying as composite supply, activities should be naturally-bundled. While selling a car, it is natural for the car dealer to supply standard accessories such as extra set of tyres, tools necessary to replace the tyres, first aid box etc. All these supplies are naturally bundled. Car dealers generally do not engage in imparting driving training. If a dealer agrees to arrange training also and charges for it, the activity of training will not fit into the concept of composite supply as it is neither 'naturally bundled' nor 'in the ordinary course of business'.

For qualifying as composite supply, composition should be in the ordinary course of business. A readymade garment is put into transparent polyethylene bag and that bag is put into a bright print card board box. This is in ordinary course of business. A FMCG company approaches the garments supplier for buying garments to be packed in a set of five pieces in an attractive, durable suit case for gifting to delegates in its upcoming sales conference. Here supply of suitcase is not in the ordinary course of business.

18. Meaning of mixed supply

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.

A hamper consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juice when supplied for a single price is a mixed supply. Supply of shaving razor with shaving cream claimed to be given free is a mixed supply of razor and cream.

In examples discussed to explain composite supply, as the transaction of imparting training with sale of car and supply of readymade garments in suit case did not qualify to be composite supply, they will become mixed supply.

19. Difference in tax treatment of 'composite supply' and 'mixed supply'

In case of composite supply, the entire bundle is charged to tax in the nature and at the rate applicable to principal supply. In case of mixed supply, bundle of supply is charged to tax according to the nature and highest rate of tax applicable on any of the commodities consisted in bundle.

In the example of supply of garments in a suit case, let us assume garment attract tax at the rate of 12 percent whereas suit case attracts tax at the rate of 18 percent. Tax will be charged on whole consideration at the rate of 18 percent.

20. Significance of concept of 'taxable person'

GST is a tax on the activity of supply of goods and services. Levy of tax is on activity by a person. It is therefore necessary to identify the person from whom tax will be collected.

21. Taxable person under GST law

Taxable person means a person who is registered or is liable to be registered under the GST Act.

22. Significance of phrase 'liable to be registered'

The phrase is aimed to include those persons in tax system who should have obtained registration but have failed to do so.

23. Person liable to be registered

The CGST Act, for the purposes of requirement of registration has made two categories of States

a. States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh, and Uttarakhand;
b. Other than above.

A person, who makes supplies from any of the category 'a' States, shall become liable to registration if his aggregate turnover in a financial year exceeds ten lakh rupees.

A person, who makes supplies from any State other than category 'a' States, shall become liable to registration if his aggregate turnover in a financial year exceeds twenty lakh rupees.

A person, who makes supplies from both category 'a' States and other States shall become liable to registration if his aggregate turnover in a financial year exceeds ten lakh rupees.

Above exemptions of ten or twenty lakh rupees are available only when taxable supplies are intra-State. *If supplies include inter-State supplies, no turnover based exemption is available and liability of registration will trigger at one rupee itself.*

24. Meaning of 'aggregate turnover'

'Aggregate turnover' is defined to mean aggregate value of all taxable supplies, exempt supplies, exports of goods and/or services and inter-State supplies of a person having the same Income Tax Permanent Account Number (PAN), to be computed on all India basis. Tax charged under the CGST Act, SGST Act, UTGST Act, IGST Act and Compensation Cess Act, as the case may be, will not form part of turnover. However any tax charged under any other enactments (such as Excise Duty charged by Centre on tobacco products, Mandi Fees on agricultural and dairy commodities charged in States) will form part of turnover. Value of supplies, on which tax is payable on reverse charge basis will also not form part of turnover for this purpose.

25. Scope of 'exempt supplies'

Exempt supply is defined to mean supply of any goods /or services which are not taxable under the CGST/SGST/UTGST/IGST Acts, supplies which attract nil rate of tax and those supplies which are, by notification, declared exempt generally either absolutely or subject to conditions from whole or any part of tax leviable thereon. Supply of non-GST goods i.e. alcoholic liquor for human consumption and five specified petroleum products will be covered under 'exempt supplies'.

The scope of 'exempt supplies' has been extended by section 17(3) of the CGST Act, 2017 in the context of reversal of credits attributable to exempt supplies to include the followings:-

a. Supplies on which tax is to be discharged by the recipient under reverse charge
b. Transaction in securities
c. Sale of land

d. Sale of building (except in situations covered under clause (b) of paragraph 5 of Schedule II).

26. Relevance of state-wise turnover for determining liability to be registered in a state

Turnover will be counted for a PAN computed on all-India basis. Thresh-hold exemption is not state-wise. It is for India as a whole.

27. Examples on scheme of registration requirements

- Mr. A has a grocery business in the State of Uttar Pradesh. Value of supplies of business are not likely to exceed eighteen lakhs rupees in the financial Year. Mr. A does not have any other business establishment in any of the other States. He will not be liable to seek registration under GST. In next year, Mr. A opens another branch in the State of Uttarakhand (one of the category 'a' States for which prescribed threshold limit is Rs. 10 lakh). As the branch was opened at fag end of the financial year, he could achieve turnover of one lakh rupees only in that State. Since value of supplies in Uttar Pradesh and Uttarakhand put together exceeds ten lakh rupees, he will be liable to seek registration in both the States.
- Mr. B is engaged in the profession of brokerage for green tea leaves in the state of Sikkim. He does not operate in any of the other States. His receipts of profession in the financial year are not likely to exceed nine lakh rupees, he is not liable to registration in Sikkim.
- Mr. C has a set up for manufacturing of household plastic utensils in Maharashtra. He expects to achieve a turnover of twelve lakh rupees from intra-state supplies and a turnover of five lakh rupees from inter-State supplies. As he is making inter-State supplies also, basic exemption of twenty lakh rupees is not available to him. He will be liable to seek registration in Maharashtra.

28. Exceptions for liability of registration

Section 23 of the CGST Act, 2017 provides for persons not liable for registration. Any person engaged exclusively in the business of supplying goods and/or services that are not liable to tax (e.g. specified petroleum products) or are wholly exempt from tax under GST law is not liable to seek registration. An agriculturist is not required to seek registration for the purpose of supply of produce out of cultivation of land.

29. Meaning of 'person'

'Person' is defined under section 2(84) of the CGST Act, 2017 to include:

a. individuals,
b. Hindu Undivided Family,
c. company including government company,
d. firm,
e. limited liability partnership,
f. association of persons,
g. body of individuals,
h. co-operative society,
i. local authority,
j. government including a corporation established by or under any Central, State or provincial Act,
k. trust, and
l. artificial juridical person.

Anybody incorporated by or under the laws of a country outside India is also a person under GST law.

30. Whether a taxable person in one State will automatically become taxable person in other State?

No. Taxable person will have to apply for registration in each of the States from where supplies are made/to be made if he crosses specified exemption limit. As stated earlier the turnover for the purpose of registration would be the turnover on all India basis and not the turnover in a particular State.

31. Separate registration in each State

India has federal form of governance with separate taxation powers to Centre and States. GST will subsume both Central and State taxes. However, the component of GST (State Tax) will be levied, collected and administered by the States and part of Integrated Tax although levied, by Centre will also flow to the State where the subject goods or services are consumed. Therefore for assessment and payment of State Tax and also for determining the quantum of Integrated Tax that has to flow to a State, State wise registration is required. Separate registration would also be required for union territories.

For supplies made to or from maritime zones up to 12 nautical miles, the jurisdiction of the adjacent State would apply. However, for activities in exclusive economic zone beyond 12 nautical miles, a separate registration is required as such zone is treated as 'other territory' at par with Union territories.

An establishment of a person in one state and his other establishment(s) in other state(s) are called 'distinct persons' for the purpose of GST. As establishment in every state is a distinct person, separate registration is required in each of the state.

First proviso to rule 8(1) of the CGST Rules, 2017 makes it mandatory for a Special Economic Zone unit or Special Economic Zone developer to seek separate registration in the State for DTA and SEZ establishment.

32. Criteria for determining if a person need to be registered in a State

The person shall be liable to register in a State from where he makes a taxable supply of goods and/or services.

For example: ABC has a manufacturing facility in the State of Maharashtra and depots in the States of Maharashtra, Madhya Pradesh, West Bengal, Haryana and Tamil Nadu. ABC will be required to take registrations in the states of Maharashtra, Madhya Pradesh, West Bengal, Haryana and Tamil Nadu as he is making taxable supplies from his establishments in all these states. It may also be noted that the establishments of ABC in all these States are treated as distinct persons for the purpose of GST and supplies between distinct persons are taxable even if they are without consideration. Therefore stock transfers from the manufacturing facility in Maharashtra to the depots located in other states would also be taxable.

33. In case of services how is it to be determined if a person is making taxable supply from a particular State?

If a person has a fixed establishment in the State from where he is making a taxable supply of services he is liable to be registered in that State. As already stated, an establishment of a person in every State is a distinct person.

34. Meaning of 'fixed establishment'

Fixed establishment is defined to mean a place, other than the registered 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.

Fixed establishment should be of a certain minimum size and both the human and technical resources necessary for provision of services must be permanently present.

35. Whether a person can have two registrations in a State?

A person having multiple business verticals in a state may obtain separate registration for each business vertical. Obtaining two registrations on the basis of business vertical is optional for the taxpayer.

36. Mr. A is having a small manufacturing set up in the State of Madhya Pradesh with a turnover of approx. one crore rupees. Being SSI, he is not liable for any Excise Duty. What will be his status under GST?

Under GST, the current SSI exemption scheme under Central Excise will be discontinued. As explained above the normal threshold for registration in States other than category 'a' states is Rs. 20 lakh. Therefore he will be liable to take registration if he has a turnover of Rs. one crore. He may also opt for scheme of composition levy for those taxable persons, whose aggregate turnover in a financial year does not exceed fifty lakh rupees.

37. Mr. A has a manufacturing set up in the State of Madhya Pradesh with a turnover of approx. three crore rupees. He is registered under Excise, VAT and CST Act in Madhya Pradesh. He made a stock transfer goods of approx. seventy five lakh rupees to commission agents for sale in other States for which he received form 'F' under the CST Act from agents. What will be his status under GST?

He is not required to take GST registration in the States where he does business through agents. The agents will be required to take registration if their turnover is over the threshold limit of Rs 20 lakh. Goods transferred to inter-state agents will be treated as taxable supply under GST. He needs to dispatch goods to such agents on tax invoice after charging IGST. Agent will be eligible to take input tax credit of IGST. No form like present form 'F' will need to be exchanged.

38. Consideration for a supply – a pre-condition or not

Normally a supply of goods and/or services becomes taxable supply if it is made for a consideration. Some transactions specified in Schedule I are taxable even though these are without consideration (Refer discussion made above). The concept of 'supply for a consideration' involves an element of contractual relationship wherein the person making a supply does so at the desire of the person to whom the supply is made. Supply out of love, affection, reverence, spiritual influence are not supplies under GST law as these are supplies without consideration and are not specifically included in Schedule I.

39. Meaning of consideration

Consideration is - defined under section 2(31) of the CGST Act, 2017 as "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, given in respect of the supply of goods or services or both shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the said supply

40. Is consideration only in terms of 'money'?

Generally consideration remains in the form of money. However consideration can be in kind also. If the consideration for a supply is not in money (as in a barter transaction) or the consideration is partly in money and partly something else (as in exchange offers), the tax value of the supply is the monetary equivalent of the consideration. Monetary equivalent will have to be determined according to the manner prescribed by rules.

The best example of consideration not entirely in the form of money is seen in exchange offers in retail trade of consumer durables. When you go to buy a new television set, you are offered two bargains. You can pay money and take television home. Alternatively, you may exchange your old television set and pay lesser money to the extent of value determined for old television set. Here money equivalent value of old television agreed between supplier and recipient will also be part of consideration of new television on which GST will need to be paid by the supplier.

41. Significance of 'in the course or furtherance of business'

Barring importation of services, other supplies are treated as supply under GST law only when they are made in the course or furtherance of business. If the supplier is not engaged in the business, supplies made by him will not be a supply as understood under GST law.

The phrase restricts (by excluding non-business activities) as well as expands (by including activities ancillary to the business) the ambit of supply.

42. Meaning of 'in the course or furtherance of business'

The word 'business' has been defined in the GST law. Broadly it means any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity whether or not it is for pecuniary benefits. Any activity ancillary or incidental to these activities are also covered as business. It has also been provided that any activity or transaction falling in above categories would be business whether or not there is volume, frequency, continuity or regularity in transactions.

Considering that pecuniary benefit is not the determining criterion, issues will arise whether charitable or philanthropic activities would get covered. This would depend on facts and circumstances of each case. To give an example if a charitable medical diagnostic lab provides facilities free of cost, it would not fall in the ambit of GST as services are being provided without consideration. However, if the services are provided at subsidized rates so as to recover only the cost or part of the cost, the activities will fall in the ambit of GST as the activity need not necessarily be carried out for pecuniary benefit.

Supply of goods free of cost to a charitable organization by a business house for free distribution to meet its CSR obligations will not get covered as a taxable supply as the same is without consideration. However, this activity would be in the course of business for the business house as meeting CSR obligations is an activity ancillary or incidental to its main business. On the other hand if the charitable organization is a related person of the business house then the supply of goods free of cost to such organisation would be taxable as supplies to related persons without consideration are taxable under Schedule I.

An activity, which is carried out mainly as a hobby, such as stamp collecting, or any other personal or private activity is not a business. However, if you start to sell items you collect, or have made, on a regular and continuing basis, then your hobby could become a business for GST purposes.

There is no definite yardstick to find out whether some activity is being carried as a business or not. A body whose main activities are non-business may still have some activities which count as business for GST purposes, such as selling goods to raise funds, running a staff canteen etc. Each case would need to be examined on its facts on the touchstone of definition of 'business' .Supplies made not as a main activity of business gets covered under ambit of supply by use of words 'course or furtherance'. A banking company selling hypothecated vehicles due to default in payment of instalments by borrowers sells them in the course or furtherance of business. An insurance company selling waste paper generated in its office does so in the course or furtherance of its business of insurance.

43. Meaning of 'money or otherwise'

Money is a defined term under the CGST Act and refers to legal tender, negotiable instruments, electronic payment modes etc. Word 'otherwise' is used to expand the scope of consideration to include consideration paid in the form of goods (barter or exchange) or immovable property (such as a flat given in consideration for redeveloping a house into a multi storeyed building). A contract for reciprocal supply of service such as a doctor agreeing to treat a chartered accountant in consideration of that chartered accountant filing his/her return of income will also get covered under the word 'otherwise'

44. Meaning of 'monetary value of any act or forbearance'

Term 'monetary value of any act' aims to cover provision of service in satisfaction of payment obligation for supply of goods and vice-versa. A promises to give a car to B in exchange of promise by B for appearance in a sales promotion event.

'Forbearance' is agreeing for not doing something. A agrees not to open dry clean shop in B's neighborhood for which B agrees to make a payment (non-compete agreements).

45. Meaning of 'whether by the recipient or by any other person'

It signifies that for being covered under taxable event, it is not necessary that consideration should necessarily flow from recipient of supply. M orders N, a flowers bouquet supplier, to deliver a bouquet to O on his/her birthday. Here supply is to O whereas consideration will flow from M. A pharmaceutical company asking its distributor to place sample medicines with doctor for which distributor is separately compensated, a new brand of perfumes asking its dealers to sell at below their purchase price and compensating the loss through credit notes are examples of consideration for taxable supplies being paid wholly or partly by a third person.

46. Why importation of service even not in the course or furtherance of business is included in supply?

GST is primarily a destination based consumption tax. Taxing import of service is necessary so that indigenous suppliers are not put to a disadvantageous situation vis-à-vis overseas supplier. Levying tax on import of services in recipient country is a world-wide phenomenon agreed between countries. In case of import of services by individuals or other non-business recipients, adequate provisions have been made in IGST Act for levy and recovery of tax from overseas supplier of service.

47. Significance of supplies of goods between agents and principal being treated as supply

An agent is a person employed to do any act for another or to represent another in dealing with third person. The person for whom such act is done, or who is represented, is called the 'principal'. No consideration is necessary to create an agency. As in the eyes of common law, principal and agent are one and the same so far their dealing with third persons is concerned, a special deeming provision has been brought into GST law by way of Schedule I so that transaction in goods or services between principal and agent have been made taxable even in the absence of consideration. The move is aimed to ensure seamless movement of goods through supply chain without need of exchange of various forms in the course of intra-State and inter-State movement of goods between principal and agent or vice-versa.

48. Reverse Charge

Reverse charge means payment of tax on supply of goods or services or both by the recipient rather than by the supplier as is normally done. As per section 9(3) of the CGST Act, 2017 and section 5(3) of the IGST Act, 2017 the Government may, on the recommendations of Council, notify categories of supply of goods or services or both tax on which shall be paid on reverse charge basis. Notification No. 4/2017-Central Tax (Rate) dated 28th June 2017 specifies the goods which will be liable to tax on reverse charge basis. Notification No. 13/2017-Central Tax (Rate) dated 28th June 2017 notifies the services which will be liable to tax on reverse charge basis. Notification No. 10/2017-Integrated Tax (Rate) dated 28th June 2017 notifies the services which will be liable to tax on reverse charge basis, when provision of service is in the course of inter-State trade or commerce.

- Services supplied by persons located in non-taxable territory
- Goods Transport agency services
- Services by advocates to any business entity
- Services by arbitral tribunal to any business entity
- Sponsorship services
- Service by a Director to company
- Insurance agent to insurance company, recovery agent to bank or FI, NBFC
- • Author, music composer, photographer.

49. Payment of tax by registered person for supplies by unregistered person

As per the provisions of section 9(4) of the CGST Act/ 5(4) of the IGST Act in addition to specified/ notified goods and services discussed in para 2.48 above, taxable supplies by a person who is not registered, to a registered person are liable to tax in the hands of recipient on reverse charge basis. However Notification No. 8/2017-Central Tax (Rate) dated 28th June 2017 provides for ***exemption from such tax if the aggregate value of such supplies received by the registered person from any or all the unregistered suppliers, does not exceed five thousand rupees in a day***.

Similar exemption is not provided under the Integrated Tax Act. A person engaged in inter-State taxable supply is mandatorily required to get registration under GST law, irrespective of the level of threshold exemption of ten or twenty lakh rupees.

This is a provision with far reaching implications by which tax becomes payable on supplies by un-registered person like small scale suppliers etc. The only condition is that the supply should be a taxable supply which has been defined as a supply of goods or services or both chargeable to tax under GST Acts. As a matter of procedural simplification, in terms of first proviso to Rule 46 of CGST Rules, 2017, a registered person is allowed to issue a consolidated invoice at the end of the month for all supplies received from unregistered persons.

3. Time of Supply

1. Significance of Time of Supply

The tax rates, exchange rate, exemptions and abatements keep changing from time-to-time. It is thus necessary to know the precise date and time when the charging event takes effect. This in tax parlance is known as time of supply. Sections 12 and 13 of the CGST Act provides for determination of time of supply of goods and services respectively. This chapter discusses these provisions.

2. Default provision of time of supply of goods

The default provision for time of supply of goods is the earliest of the following dates:

- Date of issue of invoice by the supplier;
- If invoice is not issued the last date on which supplier is required to issue the invoice;
- The date on which supplier receives the payment with respect to supply

3. Time of supply of interest, late fees or penalty for delayed payment of consideration for goods or services

Section 15 of the CGST Act provides for value of taxable supply. Section 15(2)(d) provides that the value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply. However the time of supply for such interest, late fees or penalty has been segregated from the original time of supply. If time of supply of the original supply was retained, interest would become payable on tax paid on such payments.

Sections 12(6) and 13(6) of the CGST Act provide that the time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value in respect of goods and services respectively.

4. Default provision of time of supply of services

The default rule for time of supply of services is the earliest of following dates:

- Date of issue of invoice by the supplier;
- The date on which supplier receives the payment with respect to the supply.

It has also been provided that, if invoice is not issued within a period of thirty days from the date of supply of service, the time of supply shall be the date of provision of service.

5. Provisions other than default Rule for the time of supply of goods and services

Nature of Supply	In respect of goods	In respect of services
Supply of vouchers when the final supply is identifiable (single purpose vouchers)	Date of issue of voucher	Date of issue of voucher
Multi-purpose vouchers i.e. the precise supply is not identifiable	Date of redemption of voucher	Date of redemption of voucher
Reverse charge taxation	Earlier of the following dates: a) receipt of goods; b) payment; c) date immediately following 30 days of	Earlier of the following dates: a) payment; b) date immediately following 60 days of invoice date.

	invoice date. If cannot be done as above: the date of entry in the books of accounts of the recipient of supply.	If cannot be done as above: the date of entry in the books of accounts of the recipient of supply.
In case of 'associated enterprises' located outside India	Not applicable	Earlier of the following: a) date of entry in books of accounts; or a) b) date of payment
Levy of interest, late fees or penalty for delay in payment of consideration	Date on which the supplier receives such addition to value	Date on which the supplier receives such addition to value
If it cannot be done by any of the above rules the time of supply will be: a) When a periodical return has to be filed, the date on which such return is to be filed; b) In any other case the date of payment of tax.		

6. Point of time when payment will be said to have been made for reverse charge taxation

The date of payment will be:

- the date on which such payment is recorded in the books of account of the recipient of supply; or
- the date on which the payment is debited in the bank account of recipient of supply,

whichever is earlier.

7. Meaning of continuous supply of goods or services

Continuous supply of goods is defined under section 2(32) of the CGST Act to mean supply of goods on continuous or recurrent basis for which the supplier invoices the recipient on a regular or periodic basis. It also includes such supply of goods which government may specifically notify. However, till date, the government has not notified any supply as deemed continuous supply of goods.

Continuous supply of services is defined under section 2(33) of the CGST Act to mean supply of services continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations. It also includes any service which government may specifically notify. However, till date, the government has not notified any supply as deemed continuous supply of services.

8. Difference between continuous supply and supply on recurrent basis

Generally supply of goods through wire (ropeway), cable (electricity), pipelines (liquids and gas) or other conduit (e.g. conveyor belt) is considered as a continuous supply. A contract by a transporter with a petrol pump for supply of fuel for its trucks on regular basis or a contract by an office with a drinking water supplying firm for supply of water jars on all working days are examples of recurrent supply. A contract for providing security on 24 X 7 basis is continuous supply of service whereas a contract for sale of under-construction property with construction–linked-payment obligations is a contract for recurrent supply of services.

9. Significance of supply on continuous basis

As the name suggests, continuous supply is opposite to supplies in batches. In case of supply in batches, a definite point of time can be prescribed for issuance of invoice and payment of tax linked with the happening of taxable event. In the case of continuous supply, whether for goods or for services, as the process of provision of supply remains uninterrupted, it is necessary to provide a separate cut off point of time when the invoice should be issued and payment of tax should be made. Continuous supply is different from ordinary supply only to this extent. Otherwise all provisions of the Act, which apply to ordinary supplies are applicable to supplies on continuous basis.

10. Time of issue of invoice for supply of goods or services

Section 31 of the CGST Act provides for time of issue of invoice. An invoice for supply of goods needs to be issued before or at the time of removal of goods for supply to the recipient where the supply involves movement of goods. If supply does not involve movement of goods invoice needs to be issued before or at the time of delivery of goods or making available goods to the recipient.

An invoice for supply of services needs to be issued before or after the provision of service but not later than thirty days from the date of provision of service.

11. Time of supply when the tax rate undergoes a change

Whenever the rate of tax changes it affords an opportunity for taking undue advantage of beneficial tax rates. To counter this, the normal rules for time of supply are suspended. The rule in these cases is called 2/3 rule i.e. two out of the three events define the precise time of supply, the three events are:

(i). The date of issue of invoice
(ii). The date of payment
(iii). The date of supply of goods and/ or services

Section 14 of CSGT Act, 2017 provides for the following situations:

Situation	Invoice issued before date of change in the tax rate tax?	Payment received before date of change in the tax rate tax?	Impact
Supply completed before change in rate	N	N	Time of supply is earliest of the date of invoice or payment i.e. after change in rate -Changed rate will apply
-do-	Y	N	Time of supply is date of issue of invoice -Changed rate will not apply
-do-	N	Y	Time of supply is the date of receipt of payment -Changed rate will not apply
Supply completed after change in rate	Y	N	Time of supply is the date of receipt of payment -Changed rate will apply
-do-	Y	Y	Time of supply is

			earliest of the date of invoice or payment i.e. before change in rate - Changed rate will not apply
-do-	N	Y	Time of supply is date of issue of invoice -Changed rate will apply

12. Time of receipt of payment in case of change in rate of tax

The date of receipt of payment shall be the date of credit in the bank account of the supplier of goods or services or the date on which receipt of the payment is entered into the books of account of the supplier of goods or services whichever is earlier.

13. Meaning of 'associated enterprise'

Term 'associated enterprise' shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961. It means:

(i). An enterprise, which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or

(ii). In respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

The Income-tax Act provides detailed list of circumstances when an enterprise is said to participate in management or control or capital of other enterprise and when same set of persons can be said to participate in management or control or capital of other enterprise.

The concept of 'associated enterprise' is relevant only for the purpose of determining time of supply of receipt of services where supplier is located out of India.

14. Examples of associated enterprise

- A Limited holds 100 percent shares of B Limited. A Limited also holds 20 percent shares of C Limited. B Limited holds 10 percent shares of C Limited. Here A Limited holds, directly and indirectly not less than twenty-six percent of voting power in C Limited. A Limited and C Limited are associated enterprises.
- A Limited holds not less than twenty-six per cent of the voting powers in D Limited and E Limited. A Limited, D Limited and E Limited are associated enterprises.
- Mr. A has a business of manufacture and sale of jewellery. Mrs. A has separate business of manufacture and sale of furniture. As two businesses are controlled by an individual and his relative, both enterprises are associated enterprises. Different line of business is of no consequence.
- XYZ Limited is manufacturing soft-drink concentrates. They have entered into contracts with several bottlers for converting concentrate in drink through a process amounting of manufacture. The bottler is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licenses, specification and secret formula of XYZ Limited. Both these enterprises are associated enterprises

15. Meaning of 'voucher'

'Voucher' has been defined in section 2(118) of the CGST Act to mean an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.

16. Time of supply in case of vouchers

The time of supply for vouchers has been given in CGST law under provisions relating to both time of supply of goods as well as time of supply of services. The time of supply of vouchers is:

(i). Date of issue of voucher if the supply is identifiable at that time (i.e. single purpose vouchers)

(ii). Date of redemption of voucher in other cases.

The purpose of mentioning the time of supply of voucher both of goods as well as service is that supply of voucher can be treated both on supply of goods or as service depending upon the underlying transactions.

4. Place of Supply

1. Significance of place of supply

GST is primarily a destination-based consumption tax though there are occasions where it can be origin-based or the place of origin and destination may be same. This, in simple terms, means that the tax collected on supply of goods or services should accrue to the jurisdiction or State in which those goods or services are consumed. While for goods determination of place of supply is relatively easier, it is difficult for services considering the intangible nature of services. Elaborate rules have been made for determining place of supply of goods and services based on the nature of supplies.

2. Implications of place of supply for a tax payer

The place of supply of a particular transaction, coupled with the location of the supplier, will determine the nature of the tax to be paid by a tax payer. If the location of the supplier and place of supply are in the same State the transaction will be intra-State transaction and the tax-payer will be liable to pay Central Tax and State Tax. If they are in different States the transaction will become inter-State transaction and the tax payer will be liable to pay Integrated Tax. If they are in the same UT without legislature then the tax payer will be liable to pay UT Tax.

Place of supply of goods

3. General rule for place of supply of goods (other than imports and exports)

Following chart captures the general rule relating to place of supply of Goods:

S. No.	Nature of transaction	Place of supply of goods
1.	Supply involves movement of goods	Location of delivery of goods to recipient
Example - A in Mumbai purchases chair from supplier B in Gujarat and the chair is to be delivered by the supplier in Mumbai. The place of supply is Mumbai as chair has moved from Gujarat to Mumbai.		
2.	Supply without movement of goods	Location of goods at the time of delivery to the recipient
Example – A, who lives in Noida and goes to Delhi and purchases washing machine from the outlet of supplier B in Delhi. A, himself takes the delivery in Delhi and transports the machine in his car. The place of supply is Delhi as supply does not involve movement of goods.		
3.	Assembly or installation at site	Place of assembly or installation
Example - Company A in Delhi want to get a printing machine installed at its office in Delhi from supplier B located in Haryana. Since the printing machine will be assembled or installed at Delhi, the place of supply is Delhi.		
4.	Supply on board a conveyance such as vessel, aircraft, train, motor vehicle	Location at which such goods are taken on board.
Example 1: A boards a Kolkata- Chennai flight for Chennai from Kolkata and purchases a bottle of water in the flight during his journey. As the water bottle was taken on board on the plane at Kolkata, the place of supply is Kolkata. Example 2: A train starts from Delhi for Mumbai. On the way water bottle cartons are taken on board at Agra that are purchased by passengers during the journey from Agra to Mumbai. The place of supply of water bottles is Agra		

5.	Supplier delivering to a recipient on direction of a third person	Third person's principle place of business for the first leg of the supply and location of delivery to recipient for the second leg.
Examples discussed in the next paragraph		
6.	If POS cannot be determined as per S. No. 1 to 5 above	Same shall be determined in a manner prescribed by the Central Government.

4. Place of supply where goods are delivered by supplier on the direction of third person

Where the goods are delivered by the supplier to a person, on the direction of a third person, whether acting as an agent or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such third person. – Section 10(1)(b) of the IGST Act.

Example 1 - A trader in consumer durables has a sales outlet in Gurgaon (Haryana) and a godown in Delhi. A resident of Delhi walks in Gurgaon outlet, buys an air-conditioner and instructs that delivery be made at his residence in Delhi. Gurgaon outlet arranges delivery of air-conditioner from its Delhi godown. Transaction involves two IGST supplies (i) By Gurgaon outlet to Delhi resident; and (ii) By Delhi godown to Gurgaon outlet. Here goods were never delivered to Gurgaon store. However, as the Delhi godown has delivered goods to the customer on the direction of Gurgaon store (here third person), it will be deemed that Gurgaon store has received the goods and then supplied these to the customer.

Example 2 - CIDCO Limited (a town planning and development authority in New Mumbai) has engaged L&T, Hyderabad for development of a railway station in New Mumbai. L&T has a factory for fabrication of lifts in Maharashtra. L&T Hyderabad places order on L&T Maharashtra for supply of lifts at the site of CIDCO railway station. Here L&T Maharashtra has delivered the goods to CIDCO, Maharashtra on the directions of L&T Hyderabad. It will be deemed that L&T Hyderabad has received the goods from L&T Maharashtra (place of supply – Hyderabad) and then supplied those goods to CIDCO at Navi Mumbai (place of supply – Navi Mumbai) despite the fact goods did not move out of Maharashtra.

5. Place of supply of goods imported into or exported from India

S. No.	Transaction	Place of Supply
1.	Import	Location of importer
2.	Export	Location outside India

Place of supply of services

6. General rule for determining place of supply where both the service provider and the service recipient are located in India

a. Where a service is provided to a registered person, the place of supply shall be the location of such recipient; - Section 12(2)(a) of the IGST Act
b. Where service is provided to an unregistered person, then place of supply shall be the:
   - Location of the service recipient if the address is available on record;
   - Otherwise location of service provider - Section 12(2)(b) of the IGST Act.

Certain exceptions have been carved out to this general rule that are captured in subsequent paras.

It may also be noted that separate place of supply rules have been provided for the following two situations:

- Where both the supplier and recipient of services are located in India (referred to as ‘domestic supplies’ in this Chapter)

- Where either the supplier or the recipient of services is located outside India (referred to as ‘cross border supplies’ in this Chapter).

The principles of place of supply in both the above situations have been explained in this Chapter.

7. Principles of place of domestic supply of services in exceptional cases

Place of supply of services where both the supplier and the recipient are located in India shall be as follows in the circumstances as described:

<table>
<tr><th>S. No.</th><th>Nature of Service</th><th>Place of Supply</th></tr>
<tr><td>1.</td><td colspan="2">Directly relating to immovable property</td></tr>
<tr><td></td><td>If property is located in India</td><td>Place where immovable property is located.</td></tr>
<tr><td></td><td>If property is located outside India</td><td>Location of recipient.</td></tr>
<tr><td colspan="3">Example: If Mr. A of Chennai has property in Delhi and avails architect services from B of Bengaluru, then place of supply would be Delhi as the supplier, recipient and property are located in India. However, if such property is located in Japan, then place of supply will be Chennai that is to say location of service recipient.</td></tr>
<tr><td>2.</td><td>Performance based services namely restaurant & catering, personal grooming, fitness, beauty treatment, health services including cosmetic & plastic surgery</td><td>Where services are actually performed</td></tr>
<tr><td colspan="3">Example – Mr. P of Kerala visits a hotel located in Jaislmer for a vacation and stays in the hotel for 5 days and avails services of gym and parlour and makes individual payment for these services to hotel, gym and parlour. The place of supply would be Jaislmer as the actual services are supplied there.</td></tr>
<tr><td>3.</td><td>Admission to an event</td><td>Where event is held</td></tr>
<tr><td colspan="3">Example – Mr. M of Manipur goes to Mumbai and purchases ticket for watching a movie at a Mumbai Cinema Hall. The place of supply would be Mumbai.</td></tr>
<tr><td>4.</td><td>Service on board a conveyance</td><td>First scheduled point of departure</td></tr>
<tr><td colspan="3">Example - A caterer is providing catering services on-board in train during MumbaiGoa-Mangalore which is not included in fare charges. The place of supply of service shall be the location of the first scheduled point of departure of that conveyance for the journey i.e. Mumbai.</td></tr>
<tr><td>5.</td><td colspan="2">Banking & Financial service(including Stock broking)</td></tr>
<tr><td></td><td>if location of recipient is available on record of the supplier</td><td>Location of service recipient</td></tr>
<tr><td></td><td>if location of the recipient of service is not available on record of the supplier</td><td>Location of service provider</td></tr>
<tr><td colspan="3">Example – N of Delhi who has a saving bank account with Axis Bank of Delhi gets a DD issued from Axis Bank at Mumbai, the place of supply will be Delhi as N’s address is in the records with Axis Bank. However, if N gets a DD issued from HDFC Bank of Mumbai, without having a bank account there, the place of supply will be HDFC Mumbai.</td></tr>
</table>

6.	Insurance service (whether provided to registered or nonregistered person)	Location of service recipient (Location of service recipient on record in case of unregistered person)
Example – B, residing in Chandigarh travels by Air India flight from Mumbai to Delhi and gets his travel insurance done in New Delhi. The place of supply is Chandigarh, being the location of the recipient on the records of the insurance company.		

8. Place of supply in case of telecommunication service (including data transfer , broadcasting, cable and direct to home television)

Place of supply in case of telecommunication service is separately provided through section 12(11) of the IGST Act.

S. No.	**Description**	**Location**		**Others**
		Service recipient	**Service provider**	
1.	For fixed line, leased circuits, internet leased circuits, cable connection or dish antenna	X	X	Where installed for receipt of service
2.	Post-paid mobile and internet service	√	X	-
3.	Prepaid mobile, internet service and direct to home television service through voucher or any other means:			
	(a). Through selling agent or a reseller or a distributor	X	X	Address of such agent, reseller or distributor
	(b). By any person to the final subscriber	X	X	Where such pre-payment is received or voucher sold
	(c). For other Cases:			
	Where address of the recipient is available as per records of the supplier	√	X	X
	Where address of the recipient is not available as per records of the supplier	X	√	X
	If prepaid service is availed or recharge is made through Internet banking or other electronic mode	√	X	X

9. Examples of services directly related to immovable property

Services provided:

- by architects, interior decorators, surveyors, engineers and other related experts;
- by estate agents;
- by way of grant of rights to use immovable property;
- by way of lodging accommodation by a hotel, inn, guest house, home-stay, club or
- campsite, house boat or any other vessel; and
- 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.

10. Determination of Place of supply under various scenarios

S. No.	Scenarios	Place of supply
1.	Services provided by Indian architect to an Indian resident constructing a building in London	Although place of supply in relation to immovable property is the location of immovable property, however since the property is located abroad, the place of supply will be the location of the service recipient.
2.	Organizing an event, say, IPL cricket series held in multiple States	In case of an event, if the recipient of service is registered, the place of supply of services for organizing the event shall be the location of such person. However, if the recipient is not registered, the place of supply shall be the place where event is held. Since the event is being held in multiple States and a consolidated amount is charged for such services, the place of supply shall be taken as being in each State in proportion to the value of services so provided in each State.
3.	Person travelling by bus from Mumbai to Goa and back to Mumbai	If the person is not registered, the place of supply for the forward journey from Mumbai to Goa shall be Mumbai - the place where he embarks. However, for the return journey, the place of supply shall be Goa as the return journey has to be treated as separate journey.
4.	A ticket/ pass for travel anywhere in India issued by Air India to a person	The place of embarkation will not be available at the time of issue of invoice as the right to passage is for future use. Accordingly, place of supply cannot be the place of embarkation. In such cases, the default rule shall apply i.e. the location of recipient if he is registered or his address on record. Otherwise location of service provider.
5.	A Mumbai based event manager	The place of supply of this service is

	organizes an event in Hyderabad. It allows admission to the employee of Bengaluru based company in the said event.	Hyderabad as event is held there.
6.	A Mumbai based event manager organizes an event in London for a registered tax payer in Mumbai.	Here, the event is taking place in London which is outside taxable territory, but as the service recipient is a registered person his location will be the POS i.e. Mumbai.

11. Place of supply where either the service provider or service recipient is located outside India

Principles of place of supply of services when the location of supplier or the location of recipient is outside India, has been drawn largely on pattern similar to the Place of Provision of Services Rules, 2012 (POPS) under erstwhile service tax regime.

It is also been provided that 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 service.

12. General rule for determining place of cross border supply of services

As per principal or default rule of place of supply of cross border services, the location of the recipient of service is the place of supply. However, in case the location of 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. [Section 13(2) of the IGST Act.

13. Key exceptions to the principal rule of place of cross border supply of services

Followings are key exceptions to the principal rule of place of cross border supply of services:

Categories	Place of supply
Services directly in relation to immovable property	Location of immovable property
Performance-based services	Location where services are actually performed
Transportation of goods, other than by way of mail or courier	Place of destination of goods
Passenger transportation services	Where the passenger embarks on the conveyance for a continuous journey
Services on board a conveyance during the course of a passenger transport operation	First scheduled point of departure of that conveyance for the journey
• Services supplied by a banking company, financial institution, non-banking financial company to account holders • Intermediary services • Hiring of means of transport other than aircrafts and vessels except yachts, up to a period of one month	Location of the supplier of service
Online information and database access or retrieval	Location of the recipient of

[OIDAR] services	service

14. Scope of performance based services

The place of supply for specified performance based services is the place where the services are actually performed. The scope of performance based services include the following:

a) Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services.
   Example**:** If a piece of equipment has to be sent from Mumbai to Hamburg in Germany for repairs then the place of supply of repair service would be Hamburg, Germany as the goods have to be made physically available to a person acting on behalf of supplier of service.
b) Services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or a person acting on his behalf, with the supplier for the supply of services.
   Example**:** If a person from Mumbai goes to UK for getting a plastic surgery done, the place of supply would be UK as the service requires presence of recipient with the supplier for the supply of such service.
c) Services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or a person acting on his behalf, with the supplier for the supply of services.
   Example**:** if a person from Mumbai goes to UK for getting a plastic surgery done the place of supply would be UK as the service requires presence of recipient with the supplier for the supply of such service.

15. Some exceptional cases relating to performance based services

If a service is 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 – e.g. if a software located in France is serviced through electronic means by an Indian software supplier from its office in India, place of supply will be France.

If the goods are temporarily brought to India for repairs and sent back out of India after repair, without putting to any other use in India, place of supply will be India – e.g. aircraft flown from Dhaka to Mumbai for repair and sent back. However if the foreign owned goods are already in India for some other reason and require repair service in India, place of supply will be in India – e.g. cargo containers of overseas owner, while in India, if need repair, place of supply will be in India.

Intermediary services

16. Meaning of an intermediary

An intermediary is defined under section 2(13) of the IGST Act to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods and/or services, between two or more persons but does not include a person who supplies main service or supplies the goods on his own account.

It is very important to distinguish whether the service being provided is the main service or an intermediary service. Some services may appear to be an intermediary service while would actually be a main service.

For example - certain support services provided in respect of the main service provided will not qualify as intermediary services. These are services like provision of marketing support services, call center services, payment processing services which are principle services in themselves (as ruled by the AAR in *M/s GoDaddy India Web Services Pvt. Ltd. versus Commissioner of Service Tax*, Delhi-IV, Ruling No.AAR/ST/08/2016). While, the services provided by a buying agent, a broker or a commission agent would be examples of intermediary services.

17. Place of supply for an intermediary

The place of supply for intermediary services changes in two situations – if the service provider and service recipient are located in India or if one of them is located outside India. These two situations can be best understood with the help of the following table:

Location of intermediary	Status of service recipient		Place of supply
Intermediary service provider and service recipient both are located in India	Recipient of service is registered		Location of recipient
	Recipient of service is not registered	Address available on record	Location of recipient
		Address not available on record	Location of the intermediary (supplier)
Intermediary service provider or recipient located out of India			Location of the intermediary

Example on domestic supply of intermediary services: Aryan is a broker in cotton yarn operating from Mumbai. Buyers and sellers from whole of India approach him for their requirements. Aryan charges his remuneration from both the parties. Many of these buyers and sellers do not want to disclose their identity with registration details and address. The location of Aryan will be the place of supply of intermediary service. In this example, if buyer is from Gujarat and is registered under GST in Gujarat, place of supply of service to buyer will be Gujarat whereas place of supply of service to seller will remain in Maharashtra. In the same example, even if buyer is not registered under GST, since his Gujarat address has been taken on record by Aryan, place of service to buyer will be Gujarat whereas place of supply to seller will be Maharashtra. If location of either recipient or suppliers is out of India, the location of intermediary will be place of supply of service.

Example of cross border supply of intermediary service: Waterland Inc. is a USA based defense equipment supplier. Many of the defense shoe suppliers from India are its clients. Waterland Inc. keeps track of defense equipment and other supplies tenders. It provides all round help to Indian suppliers in terms of tendering, arranging receipt of supplies in US, and release of payment by US agencies. Place of supply of service to Indian shoe suppliers will be USA.

Place of supply for online information and database access or retrieval [OIDAR] services

18. Meaning of online information and database access or retrieval services

Online information and database access or retrieval services is defined under section 2(17) of the IGST Act to mean 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.

Place of supply for online information and database access or retrieval services is location of recipient of services.

19. Manner of determination of location of recipient in case of online information and database access or retrieval services

It is difficult to determine the location of the recipient in case of online information and database access or retrieval services as such recipients normally access the services online and are not required to disclose their location. On the lines of the 'non contradictory evidence rule' followed in OECD VAT, it has been prescribed in IGST Act that person receiving online information and database access or retrieval services shall be deemed to be located in taxable territory if any two of the following non contradictory conditions are satisfied, namely any of the following two are located in the taxable territory:

a) Location of address presented by the recipient
b) Place of issue of credit card or debit card or charge card or any such card by which the recipient settles payment
c) Billing address of the recipient
d) IP address of the devise used by recipient
e) Bank of the recipient from where payment is made
f) Country code of the SIM used by the recipient g) Location of fixed line through services received by recipient.

20. Manner of payment of tax on online information and database access or retrieval services

If the online information and database access or retrieval service provider is located outside India and the services are provided to registered tax payer in India, the tax would be payable as import of service under reverse charge mechanism. In case of services are provided to a non-taxable online recipient then the onus has been placed on the service provider to pay Integrated tax on such supply of services and such service provider is obliged under law to take registration in India through a Simplified Registration Scheme to be notified by the Government. The registration can be taken by such service provider or by person representing such service provider or a person appointed by such service provider.

21. Services where POS is different for domestic and cross border supplies

S. No.	Nature of service	Domestic supply	Cross border supply
1.	Transportation of goods other than by mail or courier	• B2B – Location of recipient of service; • B2C – Location where goods are handed over for transportation	Place of destination of goods
2.	Transportation of goods by mail or courier	-do-	Location of recipient of service
3.	Hiring of aircrafts	• B2B – Location of recipient of service;	Location of recipient of service

		• B2C - Location of recipient of service (if address on record is available); • B2C - Location of supplier of service (if address on record is not available)	
4.	Hiring of other means of up to a period of one month	-do-	Location of supplier of service
5.	Intermediary Service	-do-	Location of supplier of service
6.	Services by a banking company or a FI or a NBFC to account holder	-do-	Location of supplier of service
7.	Services relating to immoveable property located outside India	Location of the recipient	Location of the immoveable property
8.	Services in respect of goods where goods have to be made physically available to supplier of service e.g. repairs, erection commissioning	Location of the recipient	Place of performance of service

Location of provider and recipient of service

22. Importance of location of service provider and service recipient:

The location of service provider and the location of service recipient is very important for determining the nature of a supply (i.e. inter-State or intra-State) and also for ascertaining the place of supply as the place of supply is preponderantly pegged to the location of the service recipient or the location of the service provider. It may not always be easy to ascertain the location of the service provider or the service recipient.

For example company A gives a contract from its headquarters for computer hardware maintenance of its network of branch offices located in 5 states to company B which provides these services from its headquarters and two regional offices. There will be issues as to whether the location of the service recipient is company A's headquarters or each of its branch offices. Similarly, whether the location of the service provider is the headquarters of company B and/or its two regional offices.

The IGST Act defines the location of the recipient of service and provider of service with a view to address such issues.

23. Meaning of location of service recipient/ service provider

Location of the recipient of services has been defined as:

Where…	***Then…***
a supply is received at a place of business for	the location of such place of business

which the registration has been obtained,	
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
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
in absence of such places	the location of the usual place of residence of the recipient

Location of the supplier of services has been defined as:

Where…	***Then…***
a supply is made from a place of business for which the registration has been obtained,	the location of such place of business
a supply is made from a place other than the place of business for which registration has been obtained(a fixed establishment elsewhere),	the location of such fixed establishment
a supply is made from than one establishment, whether the place of business or fixed establishment	the location of the establishment most directly concerned with the provision of the supply
in absence of such places	the location of the usual place of residence of the supplier

24. Meaning of fixed establishment

Fixed establishment" is defined under section 2(7) of the IGST Act to mean a place other than the registered place of business which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs.

25. Meaning of usual place of residence

Usual place of residence is defined under section 2(113) of the CGST Act to mean:

(a) in case of an individual, the place where he ordinarily resides;
(b) in other cases, the place where the person is incorporated or otherwise legally constituted

26. Meaning of place of business

Place of business has been defined under section 2(85) of the CGST Act to include the following:

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, provides or receives goods and/or services;
(b) a place where a taxable person maintains his books of account; or
(c) a place where a taxable person is engaged in business through an agent.

Establishment most directly concerned with the supply

27. Deciding which establishment is the most directly concerned

In the way the definitions have been framed there are bound to be disputes regarding the location of service provider or service recipient. These need to be carefully determined. Some points that could be relevant have been explained below. However, the applicability will depend on facts of each case.

If, as either the supplier or the recipient of services, you have establishments in more than one State, it is essential to determine which of those places is treated as making or receiving the supply in question.

It is generally the case that the business establishment will be the most directly concerned with the supply. However, if the supply is made using the human and technical resource of a fixed establishment, or the supply is received for the needs of the fixed establishment rather than the business as a whole, then this will be the place most directly concerned with the supply.

Where a branch of a company contracts and pays for purchases that are to be used by the whole business, the supply will be seen as being made to the business establishment, not the branch. This will be the case even where the branch creates an internal charge to the business and other fixed establishments.

28. Factors which may help in deciding which establishment receives supplies

Deciding factors can be:

- obvious use of services at a particular establishment (for example, the lease of equipment for use at that establishment)
- particular establishment issuing instructions
- the service relating to business being conducted by the recipient in an establishment in a particular State (such as written reports or accounts)
- making any supplies of goods or services to a particular establishment

5. Valuation

1. Concept of valuation under GST

Section 15 of the CGST Act, 2017 provides for value of taxable supply. Value of supply is transaction value i.e. price paid or payable for the supply provided the supplier and the recipient are not related to each other and price is the sole consideration.

Any taxes, fees, charges levied under any law other than CGST Act, SGST Act, UTGST Act and GST (Compensation to the States) Act, expenses incurred by the recipient on behalf of the supplier and incidental expenses like commission and packing incurred by the supplier are also to be added (if not forming part of price) to the price to arrive at the transaction value.

In case of supply between two related persons or cases where money value of the supply is not available the price will be determined as per the prescribed valuation rules [Chapter V – Rules 27 to 35 of the Central Goods and Services Tax Rules, 2017].

2. Valuation if supply is from a related person

As stated above, in case of a supply between two related persons the value of the supply will be determined as per prescribed valuation rules.

Broadly speaking, a person who is under the influence of another person is called a related person. Under GST Law, by way of Explanation in section 15, various categories of related persons have been specified viz. members of the same family, employer and employee, holding company & its subsidiaries etc.. Special rules need to be framed for valuation of related party transactions as the value assigned to such transactions by the supplier may not represent an arm length price or an uninfluenced price.

3. Inclusions in the taxable value

Following amounts have to be included in the value of supply:

(i). Any taxes, duties, cesses, fees and charges levied under any other statute (other than GST)
(ii). Expenses incurred by the recipient on behalf of the supplier
(iii). Incidental expenses, such as, commission and packing, charged by the supplier to the recipient
(iv). Subsidies (excluding the services provided by a Government) directly linked to the price

4. Treatment of supplies made by the recipient (e.g., FOC material)

Supplies made by the recipient to supplier, which are either not in relation to supply or, if in relation to the supply, the supplier was not liable to be paid for by the supplier, are not includible in transaction value. For better understanding let us take following examples:

Example 1: A Limited awards contract for construction of two thousand electrical towers. Steel is major raw material for these towers. Under the contract A Limited will supply required quantity of steel to the contractor.

Contractor will arrange for all other materials and deliver complete tower at designated place and time. Value of steel will not be included in taxable value for GST as the supplier was not liable to pay for the steel as per the contract.

Example 2: Let us expand the above example. Standard bill of materials prescribe 10 tons of steel for each tower. Two percent is standard permissible scrap percentage. Thus for two thousand towers, required steel is 20400 tons. The contractor draws 21500 Tons of steel from stores. While paying to contractor, A Limited deducts value of 1100 tons of steel. This becomes supply of Steel by A Limited to contractor liable for GST.

Example 3: In example 1 if as per the contract the steel was to be provided by the contractor and

A Limited ends up supplying part of the quantity of steel required, say 5000 tons, lying in its store, the value of 5000 tons of steel will be liable to GST in the hands of A Limited. The contractor will be eligible to avail input tax credit on such supplies by A Limited.

5. Treatment of discounts in valuation

Any discount given before or at the time of delivery and which is recorded in the invoice is allowed to be excluded from the value. A discount, called by whatever name (trade discount, cash discount, quantity discount, turnover discount and so on), is deductible from total value for arriving at taxable value if indicated in invoice.

Discount given after the time of delivery can also be excluded provided such discount is established in terms of the agreement between a supplier and the recipient and input tax credits attributable thereto are reversed by the recipient.

6. Determination of value when the consideration is not wholly in the form of money

According to rule 27 of the CGST Rules, in such cases the following values will be taken sequentially:

1. Open market value of the supply.
2. In case open market value is not available total money value of supply (monetary consideration plus money value of non-monetary consideration).
3. In case it is not possible to determine the value as above, then value of supply of the like kind and quality.
4. Further if it is not possible to determine taxable value through above methods then cost plus ten percent markup method will be adopted to determine the value.
5. Finally in the absence of all the above options the value is determined as per residual method i.e. best judgment assessment relying on any reasonable means that is consistent with the statutory provisions as well as any other previous rules

7. Determination of value for supplies to related persons, captive consumption, depot transfers or supplies through agents

The manner of valuation in such cases is provided in the valuation rules. In case of supplies between related persons valuation will be on principals similar to the principles as enumerated in point 6 above. If the goods are intended for further supply as such by the recipient, the supplier has been given an option to value the goods at ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customers, provided such customers are not a related person.

However, if recipient is eligible for full input tax credit, the value declared in the invoice will be accepted as open market value, i.e. the transaction value.

For supplies made or received through agents, open market value of goods supplied or, at the option of the supplier, 90% of the price charged by the recipient in the normal course of trade to his customer will be the transaction value.

8. Supplies for which special valuation rules are framed

Valuation rules provide for special treatment to services in relation to purchase or sale of foreign currency including money changing, air travel agent services and services in relation to life insurance business. The erstwhile service tax law also provided for special valuation provisions in respect of money changing services, air travel agent, life insurance and lottery distribution and selling agents. Table below captures the special provisions in valuation rules.

S. No.	Description of service	Valuation under GST law
1.	Purchase or sale of foreign currency	***Option 1:***

	including money changing	***Where one of the currencies is Indian Rupees:*** Difference between buying rate and selling rate of currency and RBI reference rate multiplied by total units of foreign currency. If RBI reference rate is not available, 1% of the gross amount of Indian Rupees ***Where neither of the currencies is Indian Rupees:*** 1% of the lesser of the two amounts the person changing money would have received by converting any of the two currencies in Indian rupees ***Option 2:*** • 1% of the gross amount of currency exchanged for an amount upto one lakh rupees, subject to minimum amount of two hundred and fifty rupees. • One thousand rupees and half of a percent of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees. • Five thousand rupees and one tenth of a percent of the gross amount of currency exchanged for an amount exceeding ten lakh rupees subject to a maximum amount of Rs. sixty thousand rupees.
2.	Booking of tickets for air travel by an air travel agent	• Domestic bookings – five percent of basic fare; • International bookings – ten percent of basic fare
3.	Life Insurance business	• Where policy has dual benefits of risk coverage and investment: Gross premium charged less amount allocated for investments or savings if such allocation is intimated to the policy holder at the time of collection of premium; • Single premium policy where allocation for investments and savings is not intimated to the policy holder: ten percent of the

		single premium; • Other cases: Twenty five percent of premium charged for first years and twelve and a half percent for subsequent years; • Where policy has benefit of risk coverage only: Entire premium charged

9. Value of token or voucher or coupon

Rule 32(6) of the CGST Rules provides that the value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

10. Value for second hand goods and value of goods repossessed

Person dealing in buying and selling of second hand goods: Rule 32(5) of the CGST Rules, 2017 provides that where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored. This is known as the ***margin scheme***.

Further, notification No.10/2017-Central Tax (Rate), dated 28.06.2017 exempts Central Tax leviable on intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods [who pays the central tax on the value of outward supply of such second hand goods as determined under sub-rule (5)] from any supplier, who is not registered. This has been done to avoid double taxation on the outward supplies made by such registered person, since such person operating under the Margin Scheme cannot avail input tax credit on the purchase of second hand goods.

Thus, Margin Scheme can be availed of by any registered person dealing in buying and selling of second hand goods [including old and used empty bottles] and who satisfies the conditions as laid down in Rule 32(5) of the CGST Rules. Persons who purchase second hand goods after payment of tax to supplier of such goods will be governed by this valuation rule only when they do not avail input tax credit on input supply. If Input tax credit is availed, such persons will be governed by normal GST valuation.

Separate valuation rule has been provided for supply of goods repossessed from a defaulting borrower: If the defaulting borrower is not registered person, the purchase value will be purchase price in the hands of such borrower reduced by five percentage points for every quarter or part thereof. The repossessing lender agency will be liable to GST on supply value reduced by computed purchase price. However, if the defaulting borrower is not registered, the repossessing lender agency will discharge GST at the supply value without any reduction for actual/notional purchase value.

11. Notification of service providers to treat value of inter se supplies between distinct persons as 'Nil'.

Rule 32(7) of the CGST Rules empowers the Government on recommendations of the GST Council, to notify such class of service providers for whom the value of taxable services between distinct persons will be treated as nil. This will apply only in cases where input tax credit on such service is available to the recipient distinct person. It may be recollected that distinct person means same person with different GST registration number. This provision will enable the Government to simplify transaction load for such notified persons who would otherwise have to issue invoices for each inter distinct person transaction in taxable services with no revenue implications as credits are available to the recipient. Till date no such notification has been issued.

12. Meaning of 'open market value'

As per explanation given under chapter IV of the CGST Rules 'Open market value' means the full value in money, excluding GST, where the supplier and the recipient of the supply are not related and price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

13. Meaning of 'like kind and quality'

As per explanation given under chapter IV of the CGST Rules supply of like kind and quality means any other supply made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials and reputation is the same or, closely or substantially resembles same.

6. Input Tax Credit

1. Meaning of input tax credit (ITC)

Input tax credit (ITC) means credit of Central Tax, State Tax, Union Territory Tax, Integrated Tax and Compensation Cess paid on supply of goods or services by a supplier that can be used by a recipient for payment of its output tax liability. Integrated Tax paid on import of goods or services and tax paid by the recipient on reverse charge basis is also available as input tax credit. For example steel scrap supplier ‘A’ charges Rs. 18000 as Integrated Tax from recipient ‘B’. Subsequently recipient ‘B’ utilizes scrap in making steel ingots and supplies the same at Rs. 120000, on which Integrated Tax of Rs. 21600 is payable. ‘B’ can discharge the tax liability of Rs. 21600, by using available ITC of Rs. 18000 and payment of balance of Rs. 3600 in cash

2. Utilization of tax credits of various taxes

The order for utilization of tax credit has been provided under section 49(5) of the CGST Act. Integrated Tax credits can be used for payment of Integrated, Central and State Taxes, or as the case may be, Union Territory tax in the said order. Central Tax credits can be used for payment of Central Tax and Integrated Tax in this order. Similarly State Taxes credits or Union Territory Taxes credits can be used for payment of State Taxes or Union Territory Taxes and Integrated Tax in this order.

However Central Tax cannot be used for payment of State Taxes/UT tax and vice-versa. It can be better understood by following chart:

Type of credit →→→→	**Order**	**IT**	**CT**	**ST/ UTT**
To be used first for payment of	↓	IT	CT	ST/UTT
Remaining amount can be used for payment of		CT	IT	IT
Remaining amount can be used for payment of		ST/UTT	Cannot be used for payment of ST/UTT	Cannot be used for payment of CT
Input tax credit cannot be used for payment of interest, penalty or fees. Further, as per proviso to section 11 of the GST (Compensation to States) Act, 2017, the credits of compensation cess can be used only for payment of compensation cess.				

3. Key principles for eligibility of tax credits

Followings are key principles for eligibility of tax credits:

Supplier should…	**Recipient should…**	**Goods and Services should…**
1. be registered under GST	1. be registered under GST	1. be for use or intended for use in course or furtherance of business
2. not be under composite levy	2. not be under composite levy	2. not be in the negative list
3. have deposited the tax to the credit of the govt.	3. have paid tax to the Government if on reverse charge	_

4. file valid tax return	4. have made payment to supplier within 180 days from the date of invoice	–
–	5. have actually received the goods or services	–

4. Scope of 'use in the course or furtherance of 'business'

Tax paid on inputs, input services or capital goods that are used in the course or furtherance of its business by the recipient is available as credit. This phrase intends to widen scope of eligibility of credit. Restrictions in erstwhile regime such as 'use in factory', 'in or in relation to the manufacture', for use in 'manufacturing or processing of goods', 'for sale' etc. are no more relevant. Word 'furtherance' intends to allow credit of tax even for new or future lines of businesses.

5. Meaning of word 'business' under GST law

GST law has defined 'business' in very wide terms to include any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit.

6. Meaning of negative list of input credits

These are inputs or input services, tax paid on which is not available as credit even though they have been used in the course or furtherance of business. These restrictions have been placed under section 17(5) of the CGST Act.

7. Input credits falling in the negative list

Input tax credits are not allowed under GST in respect of following:

Negative List	
Goods	**Services**
1. Meant for personal consumption	1. Meant for personal consumption
2. Motor Vehicles**	2. Outdoor catering*
3. Goods lost, stolen, destroyed, written off	3. Beauty Treatment*
4. Goods disposed off by way of gift or free samples	4. Health Services*
5. Goods received for construction of immovable property on own account (other than plant and machinery)	5. Cosmetic and plastic surgery*
	6. Membership of club, health & fitness center
	7. Travel benefits to employees
	8. Rent a cab, life insurance, Health insurance****
	9. Works contracts for construction of immovable property other than Plant and Machinery.***

	10. Services received for construction of immovable property on own account

*These credits are allowed if the service is used for providing same category of service e.g. services of a beautician taken by a beauty parlor or as an element of a taxable composite or mixed supply. **Allowed in the following cases:

i. Further supply of such vehicle or conveyance (e.g. credit of tax paid on cars by the manufacturer will be available to a car dealer);
ii. Taxable supply of transportation of passengers;
iii. Taxable supply of imparting training on driving, flying, navigating such vehicles or conveyances; (e.g. tax paid by dealer on sale of cars will be available as credit to a car driving school).

***Allowed if used for providing work contracts service e.g. tax paid by sub-contractor for construction of a factory administration building is available as credit to the main contractor for payment of its liability, however the tax paid by the main contractor will not be available to the factory owner / manufacturer.

****Can be allowed by way of notification if mandatory on part of employer to provide these facilities. If these services are used as an input for supply of same category of service or as an element of a taxable composite or mixed supply, tax credit will be available.

Note: Telecommunication towers and pipelines outside the factory premises have been specifically excluded from the definition of plant and machinery.

8. Meaning of plant and machinery

Credit of tax paid on goods and services used for construction of immovable property including work contract service has been allowed only if such immovable property is in the nature of plant and machinery. The expression 'plant and machinery' has been defined through explanation in Chapter V of the CGST Act to mean apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but *excludes*:

(i). Land, building or any other civil structures;
(ii). Telecommunication towers; and
(iii). Pipelines laid outside the factory premises

9. Exclusion of credits relating to towers, pipeline and land / building / civil structures

From the definition of plant and machinery telecommunication towers and pipelines laid outside the factory premises cannot be treated as plant and machinery. Similarly land, building and other civil structure (excluding foundation and structural support) cannot be treated as plant and machinery. Therefore, any inputs or capital goods used for construction of telecommunication towers, pipeline laid outside the factory, buildings and other civil structures (excluding foundation and structural support) will not be available on input tax credit.

10. Credit on diaries and calendars distributed at New Year for business promotion

Goods disposed of by way of gifts are in the negative list. Credit of tax paid on purchase of diaries, calendars or other goods which are disposed of as free gifts would not be available.

11. Will tax credits be available - various instances

Will tax credits be available if ……..

IF…	**THEN…**
Cement is used for construction of	No. Building is not plant and machinery

administration building	
Cement is used for foundation of pillars supporting a boiler	Yes as such structural support for plant and machinery is included in definition of plant and machinery.
Works contract services is provided by sub-contractor to a contractor	Yes. Works contracts service is excluded except when used for providing work contract service.
Health insurance for factory workers if it is statutorily mandated to take such insurance	No. Apart from being statutorily mandated, credit is not allowed unless permitted by Government by notification
Goods are used for running a guest house in a factory	Yes as guest house is used for furtherance of business. (dispute cannot be ruled out) However credit in respect of provision of food and beverages & catering services will not be available
Car used by a factory for personal use	No. Car or any conveyance is in negative list, except when it is intended for use in further supply or for making taxable supply of transportation of passenger service.
Steel and other structural are used for setting up a telecommunication tower	No. Telecommunication towers have been specifically excluded from definition of plant and machinery.

12. Time for availing input tax credit

Subject to fulfilment of other conditions explained in para 3 above, credit can be availed when the recipient has received:

(i) tax invoice or debit note or other prescribed tax paying document; and
(ii) underlying goods and/or services.

If the goods under an invoice are received in lots, credit can be availed only after receipt of the last lot. For better understanding let us have following examples:

- 'A' Limited received services of repair of machinery in plant on April 16, 2016 and released payment on the basis of pro-forma invoice on same day. Tax invoice was issued by the supplier on April 30, 2016. Credit can be availed on or after April 30, 2016.
- 'B' Limited released payment for services of repair of machinery in plant on April 16, 2016 on the basis of pro-forma invoice. Engineers of the service provider visited plant on between May 01 to May 05, 2016 and carried repair. They brought the tax invoice dated April 30, 2016 issued by the supplier. Credit can be availed on or after May 05, 2016.
- 'C' limited placed order for supply of 1000 bags of cement. Supplier was asked to dispatch 200 bags every alternate day. Supplier issued Tax invoice for 1000 bags on May 01, 2016 and dispatched first lot of 200 bags. Payment was released on May 02, 2016. Last lot of 200 bags was received on May 09, 2016. Credit can be availed on or after May 09, 2016. If separate invoice is issued for each of the lots then credit can be taken on receipt of each lot

13. Inputs, input services and capital goods defined separately for availment of credits

Inputs, input services and capital goods have been defined separately. While inputs and input services have been defined to mean goods and services used or intended to be used in the course or furtherance of business, capital goods have been defined to mean goods whose value is capitalized in the books of accounts of the person claiming the credit and which are used or intended to be used in the course of furtherance of business.

14. Credits for capital goods are available in full upfront

Credits for capital goods are available in full. There is no provision stipulating availment of capital goods credit in instalment or tranches. Further, if the tax payer claims depreciation of the tax component in the value of capital goods under the provisions of Income Tax Act, then credit is not allowed on such tax component of capital goods.

15. Difference in treatment of capital goods credit from credit of inputs and input services?

There is no major difference as credit in case of capital goods is also available upfront. There would only be difference in treatment of capital goods when supplied after use or in manner of reversal of credits when inputs / capital goods are used for taxable and non-taxable supplies or partly for the purposes of business and partly for other purposes.

16. Inputs or input services used partly for making taxable supplies and partly for non-taxable supplies or partly for non-business purpose

When common taxable inputs and/or services are used for making both taxable and non-taxable/ exempt supplies or inputs and/or services are diverted to non-business/ personal use then the quantum of credit on such inputs/input services is restricted to the credit attributable to taxable supplies or to the extent such inputs/input services are used in course or furtherance of business. In other words the total credit will be subject to pro-rata reversals i.e. reversal in proportion to value of non-taxable/exempt supplies or value of inputs/input services diverted for non-business use or personal use.

Rule 42 of the CGST Rules, 2017 prescribes principles/formula for computation of ineligible credit or for pro rata reversals. The scheme prescribed through rules is summarized below:-

An input tax credit claimant, engaged in supply of taxable as well as exempt supplies (including non-taxable supply) should segregate total input tax as under:-

<table>
<tr><td>T1</td><td>Credit attributable to inputs and input services intended to be used exclusively for purposes other than business</td><td></td></tr>
<tr><td>T2</td><td>Credit attributable to inputs and input services intended to be used exclusively for effecting exempted supply (including non-taxable supply)</td><td></td></tr>
<tr><td>T3</td><td>Inputs and input services on which credit is not available under section 17(5), i.e. negative list</td><td></td></tr>
<tr><td>T4</td><td>Credit attributable to inputs and input services used exclusively for effecting taxable supply including zero-rated</td><td rowspan="2">Amounts gets credited to electronic credit ledger</td></tr>
<tr><td>C2</td><td>Credit attributable to inputs and input services which do not fall in any of above category (common use credit)</td></tr>
<tr><td colspan="3">Out of C2 portion ineligible due to (i) use for the purpose of effecting exempt supply (D1) and (ii) use for purposes other than business (D2) will be calculated by following formula:
D1 = C2 X (E / F)</td></tr>
</table>

Where E is the aggregate value of exempt supplies.

D2 = 5% of C2

As common credit, i.e. C2 was credited to electronic credit ledger, D1 and D2 will be added to output tax liability.

If for the credits which are common for taxable and exempt supplies and/or used for non business purposes, the taxpayer has identified T1 and T2 at invoice level, the amount will not form part of common credit (C2). Credit for eligible portion will be available in full.

Above computation for reversal of input tax credit will be made by tax payer for every tax period and again at the end of financial year.

If D1 and D2 computed earlier is less than D1 and D2 calculated at the end of financial year, the shortfall will be added to the output tax liability of the current year. The taxpayer will be liable to interest from April 1st of the year succeeding the relevant financial year till the month in which ineligible credit has been added. The taxpayer will have to offer shortfall as part of output tax liability in the return for any tax period succeeding the relevant financial year but not later than the month of September.

If D1 and D2 computed earlier is more than D1 and D2 calculated at the end of financial year, the taxpayer will be allowed to claim credit of such excess in the return for any tax period succeeding the relevant financial year but not later than the month of September. However, the taxpayer will not be eligible for interest on excess output tax liability admitted earlier.

17. Meaning of exempt supplies for pro rata reversals

As per the definition of 'exempt supplies' under GST law, exempt supplies include supplies which attracts NIL rate of tax; supplies which may be exempt and includes non-taxable supplies as well. The ambit of the term 'exempt supplies' has been expanded for purpose of determining pro rata distribution of input tax credits to include the following:

1) Transaction in securities (which is neither treated as goods nor services)
2) Sale of land
3) Sale of building provided the entire consideration has been received after issuance of completion certificate where required by the competent authority or before its first occupation whichever is earlier.

Explanation in Chapter V of the CGST Rules, 2017 provides that value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty and the value of security shall be taken as one percent of the value of such security.

18. Exclusion of non GST taxes for pro rata reversals

19. As per definition of 'aggregate turnover' under GST law it includes the total value of supply of goods or services or both minus the GST taxes paid by the registered person on such value. Therefore, while calculating the credits attributable to nontaxable turnover for the purpose of pro rata reversals the value of non-GST taxes like Excise duty, VAT etc are not getting excluded leading to disproportionately high reversals.

Explanation in rule 42 of the CGST Rules provides that for the purpose of computation of quantum of pro rata reversals, the aggregate value of exempt supplies and total turnover shall exclude Central and State Excise Duty and Sales VAT. However, the Central Sales Tax is not excluded. This appears to be an inadvertent mistake, but is the position in law.

20. Illustration to explain computation of pro-rata reversal

Let us take example of a large format retail store selling cosmetics, refrigerators, milk, fruits & vegetables, soaps, shampoos, alcohol for human consumption etc. Assuming cosmetics and refrigerator are liable to GST; Milk, fruits and vegetables are exempt from GST. Alcohol for human consumption is a non-GST product.

Cosmetics are delivered in bright print plastic boxes. Refrigerators are repacked in wooden caskets. Milk is delivered in non-returnable glass bottles. Fruits & vegetables, soaps, shampoo, alcohol are delivered in a polythene bags which are common for all the goods.

The retail store has cleaning staff, internet connectivity, security, a diesel generating set for back up electricity supply, arrangement with a bank for daily pickup of cash etc. These services are common for all goods and services supplied from the store.

So far as tax credit of goods sold is concerned, there is no ambiguity and respective credits can be availed. For example, full credit of tax paid on refrigerator would be available to the retail store as the refrigerators are being sold further on payment of GST. Credit relating to bright print plastic boxes for cosmetics, wooden caskets for refrigerator would also be admissible in full as these items are identifiable as used in taxable supplies. Let us assume credit identifiable with taxable supplies works out to Rs. 'a'.

Non-returnable glass bottles for milk are identifiable with exempt supplies and hence tax credit cannot be claimed. Let us assume credit identifiable with exempt supplies works out to Rs. 'b'.

Tax credit relating to polythene bags which are used for delivery of fruits & vegetables, alcohol, soaps and shampoos are credits in respect of inputs that are used for making exempt, non-GST as well as taxable supplies. Let us say common credits on inputs work out to Rs.'c1'. Similarly input services are common for exempt, non-GST and taxable supplies. Let us say common credits on input services works out to Rs. 'c2'.

Let us further assume that store achieved a turnover of Rs 50 lakh (F) during the calendar month. This consisted of supply of taxable goods and service worth Rs. 30 lakh and supply of non-taxable and exempt goods/services worth Rs. 20 lakh (E).

Total credit available (T) = a+b+ c1+c2.

Credit identifiable with taxable supplies (X) = a

Credit identifiable with non-taxable/exempt supplies (Y) = b

Common credit (C) = c1+c2

Ineligible credit (D) = (E/F) x C = (20/50) x C

Credits available for utilization = T – ['b' + D]

Common credit was disallowed in the proportion of non-eligible turnover vis-à-vis total turnover.

21. Credit on capital goods are also subject to pro rata reversal

If capital goods are used for making both taxable and exempt/non-taxable supplies, the credits in respect of such capital goods will also be restricted to the extent it is attributable to non-taxable supplies/non business activity. Exact mechanism for working out the credits so attributable is provided in rule 43 of the CGST Rules. The scheme prescribed through rules is summarized below:-

An input tax credit claimant, engaged in supply of taxable as well as exempt supplies (including non-taxable supply) should segregate total input tax in respect of capital goods as under:-

<table>
<tr><td></td><td>Credit attributable to capital goods intended to be used exclusively for purposes other than business</td><td rowspan="2">Rule 43 does not talk about credits attributable to capital goods barred by section</td></tr>
<tr><td></td><td>Credit attributable to capital goods intended to be</td></tr>
</table>

<table>
<tr><td></td><td>used exclusively for effecting exempted supply (including non-taxable supply)</td><td rowspan="2">17(5). However since provisions in Act will supersede rules, credit attributable to ineligible capital goods should also be identified at this stage</td></tr>
<tr><td></td><td>Credit attributable to capital goods which is barred by section 17(5), i.e. negative list</td></tr>
<tr><td></td><td>Credit attributable to capital goods intended to be used exclusively for effecting taxable supply including zero rated</td><td rowspan="2">Amounts gets credited to electronic credit ledger</td></tr>
<tr><td>Tc</td><td>Credit attributable to capital goods which do not fall in any of above category (common use credit)</td></tr>
<tr><td colspan="3">For capital goods comprised in Tc, the taxpayer will maintain record of each capital asset separately. Useful life of each capital asset will be considered as 5 years. For each tax period i.e. calendar month, the taxpayer will calculate common credit attributable to such capital asset (Tm) based on age profile of asset. Sum of all Tm will be denoted as Tr.

Ineligible portion (Te) will be calculated every tax period by following formula:

Te = Tr X (E / F)

Where E is the aggregate value of exempt supplies, i.e. all supplies other than taxable supplies and zero rated supplies and F is total turnover during the tax period.

As common credit, i.e. Tc was credited to electronic credit ledger, Te will be added to output tax liability.

The taxpayer will also be liable to interest on Te for the period starting from the month in which entire credit was claimed till the month in which ineligible credit is added to output tax liability.</td></tr>
</table>

22. Treatment of credit already availed where capital goods used for making taxable supplies are subsequently used for making exempt supplies as well

Credit proportionate to the residual life of the capital goods will be subject to reversals based on turnover of exempt supplies. Proviso below rule 43(d) provides that original input tax credit eligible for availment will get reduced by five percentage points for every quarter or part thereof and balance will be subject to reversal computation.

23. Input tax credit in respect of services procured centrally

The provisions of input service distributor has been provided to allow business to go for centralized procurement of services and distribute the tax credits where such services have been used.

Input service distributor is a special concept to enable the entrepreneur to distribute the tax credit of common services to different registrations of the same entity (same PAN). An entrepreneur avails several services which cannot be identified to a particular registration. Services of statutory auditors are best example of such common services. An enterprise may be operating in all 29 States and 7 Union Territories with its registered and corporate office, say in Hyderabad. Statutory audit is done for corporate entity. Auditors will carry major part of their procedures in Hyderabad, discuss with management in Hyderabad, and sign the accounts and reports in Hyderabad etc. Though most of the activities are performed in Hyderabad, it cannot be said that auditors were providing services only to the enterprise's establishment in the State of Telangana. In fact auditors were working for establishments of the enterprise located in all 29 States and 07 Union Territories and credit of tax charged by the auditors needs to be distributed to all States and UTs.

24. Manner of distribution of credit by an ISD

An ISD is allowed to distribute the credit as follows:

Credit of	**ISD and the recipient of credit…**	**Credit to be distributed as…**
Integrated tax	are in different States/ Union Territory	Integrated tax (sum of Central Tax & State/UT Tax)
Central Tax		
State Tax/Union Territory Tax		
Integrated tax	are in same State/ Union Territory (different business vertical or otherwise)	Integrated Tax
Central Tax		Central Tax
State Tax/Union Territory Tax		State Tax/ Union Territory Tax
Compensation Cess	Whether same State or different State	Compensation Cess [Input tax credit rules have not dealt with distribution of cess]

25. Conditions for distribution of credit by an ISD

- ISD has to be registered separately.
- The input service invoice should be in favour of ISD indicating ISD's GSTIN
- The credit availed on the basis of each invoice is to be distributed to other registrations following prescribed rule
- Input Service Distributor will issue an ISD invoice in favour of the registrations to which credit belong. The amount to be distributed has to be calculated separately for credit of four different taxes
- All credits have to be distributed in the same month of availment.
- Amount in-eligible and the amount eligible will be distributed separately.

26. Rule for credit distribution by an ISD

- If input credit is identifiable to any one particular registration it will be distributed to only that registration.
- If the input tax credit is attributable to more than one registration of a person then the credit will be distributed amongst such registrations to which the credit is attributable. The credit in such case will be distributed pro rata to the turnover (excluding Central & State Excise duties and VAT, if any) of a registration during the relevant period to the aggregate of turnover (excluding Central & State Excise duties and VAT, if any) of all registrations to whom such credit is attributable.
- If the input tax credit is attributable to all registrations of a person then the credit will be distributed amongst such registrations to which the credit is attributable. The credit in such case will be distributed pro rata to the turnover of a registration during the relevant period to the aggregate of turnover of all registrations of the person.

27. Exclusion of non GST taxes from value of ISD

For distribution of credits to a registered person engaged in supply of taxable as well as not taxable goods and services or both, the aggregate value of turnover of such person shall be reduced by amount of any duty or tax levied under following Entries of VII Schedule of the Constitution.

- Entry 84 of List I (taxes on manufacture like Excise Duty on petroleum etc.)
- Entry 51 of List II (duties of Excise on alcoholic liquor for human consumption etc.)
- Entry 54 of List II (taxes on sale and purchase of goods)

Otherwise as per the definition of 'aggregate turnover' only GST taxes were excluded from the value which was leading to disproportionate distribution of credit to units manufacturing excluding products since the turnover of such units included the value of non GST taxes.

28. Meaning of relevant period

Relevant period is normally the financial year preceding the year during which credit is to be distributed. If all the registrations do not have turnover in preceding financial year, then it is the last quarter for which details of such turnover are available previous to the month during which credit is to be distributed.

29. Examples of distribution of credits by an ISD

Rule 29 of the CGST Rules, 2017 prescribe following formula for arriving at credit distributed to each recipient:-

C1 = (t1/T) x C

Where,

'C' is the amount of credit to be distributed,

't1 is the turnover for the registration to which credit is distributed

'T' is the aggregate of the turnover at PAN level

Let us take example of an enterprise with establishments in 10 states engages the services of a statutory auditor to provide audit services in respect of its entire operations. Annual audit fees were say Rs. 10 lakh and input tax thereon works out say Rs 1.80 lakh. Let us further assume that the enterprise achieved a turnover of Rs. 1000 crore in preceding financial year with following spread in ten States. Credit Distribution will look as under:

State	**Turnover (Rs. In cr.)**	**Distributed credit (Turnover of State/ Total Turnover) x Total common credit (Rs.)**
1	50	9000
2	100	18000
3	125	22500
4	80	14400
5	90	16200
6	130	23400
7	175	31500
8	150	27000
9	75	13500
10	25	4500

Total	1000	180000
Here C = 180000 and T = 1000.		

30. Distribution of credits for goods procured centrally

Concept of input service distributer is applicable only for services. It is not required for goods that are procured centrally and distributed for use in various registrations as credit would automatically get distributed when goods are stock transferred to other registrations for actual use on payment of GST.

31. Period for availing tax credits

Credit should be availed on or before furnishing of the return for the month of September following the end of the financial year to which invoice relates or furnishing of the relevant annual return whichever is earlier. Return for a month is to be filed on or before the twentieth day of the succeeding month. Thus return for the month of September is to be filed by 20th October.

Input Service Distributor is required to file return within thirteen days of the succeeding month. Thus for an Input Service Distributor, return for the month of September is to be filed by 13th October. Annual return is to be filed by thirty first day of December following the end of relevant financial year. This can be further understood with following example of a Non-ISD taxpayer:

Where Annual return for Financial Year 2017-18 is filed on August 16, 2018:

Invoice Date	Last date up to which tax credit should be availed
April 01, 2017	August 16, 2018
March 31, 2018	August 16, 2018

Where Annual return for Financial Year 2017-18 is filed on December 31, 2018

Invoice Date	Last date up to which tax credit should be availed
April 01, 2017	October 20, 2018
March 31, 2018	October 20, 2018

32. Penalties of wrongly availing tax credits

Tax credit wrongly availed will be added to the output tax liability of the month in which discrepancy in tax credit claim is communicated to claimant recipient. Recipient will also be liable to interest for the period from the date of availing credit till the date of corresponding addition.

If the credit has been availed without actual receipt of goods and/or services either fully or partly, the claimant will be liable to further consequence of a penalty of rupees ten thousand or an amount equivalent to the input tax credit so availed, whichever is higher

33. Penalty applicable to availment or actual utilization

Interest and penalty both are applicable on availment. Actual utilization thereof is not material.

34. Possible reasons for mismatch in invoice details reported by the supplier and those reported by the recipient

Following reasons might lead to mismatch in details furnished by two parties:

- Clerical error at either party end

- Mismatch in transaction value as per understanding of recipient while placing order for supply
- Mismatch in classification (where rates of tax are different in two classifications entries) as per understanding of recipient while placing order for supply
- Receipt of lesser quantity than reported dispatched by supplier (this may be due to human error at the end of recipient or some natural/man made losses occurring in transit)

35. Manner of dealing with any mismatch of invoices uploaded by supplier and those recorded by the recipient

Supplier and recipient should come to a common understanding. For transaction value mismatch, supplier can agree to issue a credit/debit note. Recipient will accept previously uploaded invoice and also the credit/debit note. For classification dispute, both the parties will have to reach an agreement. Here, if the classification claimed by the recipient was of lower rate of tax, mismatch would have already been accepted by the GSTN. Loss of input tax credit in the hands of recipient remains a commercial dispute only. For loss of goods in transit, supplier is not entitled to reduce tax liability. To save tax credit, recipient will have to accept the invoice details uploaded by supplier. Mismatch remains a commercial dispute only

36. Consequences of invoices remaining mismatched

Tax credit pertaining to invoices remaining mismatched will be added to the output tax liability of recipient. The recipient will be liable to pay interest on such disallowed credit from the date of availing of credit till the date of addition.

37. Necessity of quickly rectifying the invoices shown as mismatched

Provisionally allowed tax credit will be disallowed and will remain disallowed till the time it is not rectified. If mismatch is not settled by the time of filing of annual return credit will be lost forever.

38. Importance of paying for receipt of goods and services in time

Under GST it is very important that supply of goods and services on which input tax credit is taken are paid for in time. As per CGST Act if recipient of goods or services fails to pay to the supplier the amount towards value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice, an amount equal to the input tax credit availed on such supply shall be added to output tax liability of recipient along with interest. The Input tax credit rules provide that such addition will be proportionate to the amount not so paid. The recipient shall be entitled to avail the credit again once he makes payment to the supplier. However the interest paid will not be refunded.

39. Payment condition in credit availment in cases of reverse charge

The condition for payment to the supplier within 180 days for availment of credit does not apply to supplies on which tax is payable under reverse charge.

7. Electronic Commerce

1. Electronic commerce

Electronic commerce is defined under section 2(44) of the CGST Act to mean supply of goods or services or both, including digital products over digital or electronic network.

2. Electronic commerce operator (ECO)

Electronic commerce operator is defined under section 2(45) of the CGST Act to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

3. Supply of own goods and/or services over internet

Goods and/or services supplied over digital or electronic network are covered in the definition of 'electronic commerce'. A website created and owned by a person for supply of own goods and/or services is also covered under the definition of 'electronic network operator'. For instance, Amazon and Flipkart are e-commerce operators because they are facilitating actual suppliers to supply goods through their platform. Titan supplying watches and jewels through its own website would also be considered as an e-commerce operator going by the definition of electronic commerce and electronic commerce operator in GST ACT.

4. Registration & electronic commerce

Threshold exemption for registration, available to normal taxpayers, is not available to ECOs and suppliers of goods/services through ECOs.

What if..	then..
you are supplying your own goods through your own portal	irrespective of your annual turnover, you are required to obtain registration and discharge tax
you are supplying services through your own portal	
you are a supplier of goods through a web portal	
you are a supplier of services through a web portal (other than cases, where ECO is a deemed supplier)	

5. Eligibility for composition levy

E-commerce operators (ECO), suppliers of goods/services through ECO are not eligible to opt for composition levy. However, a person making intra-State supply of own goods over own digital or electronic facility or platform can opt for composition levy.

6. Need to have special provisions for supplies through electronic commerce operator

Technology enables supplier and recipient of supply to contact each other over electronic platform. In case of supply of goods, it is not easy to track unregistered suppliers spread across the country. In case of supply of services through digital channels, such as internet, it is virtually impossible for any regulator to track the transaction at supplier's or recipient's end. In such a situation, fastening of liability of tax on electronic commerce operator, even by way of a tax collected at source (TCS), brings the supplier as well as the recipient on the radar of tax authorities and ensures that they do not escape tax liability.

7. Special provisions for electronic commerce operators dealing in services

It is provided that the Central or a State Government may, on the recommendation of the Council, by notification, specify certain categories of services, the tax on which shall be paid by the electronic commerce operator if such services are supplied through it. Notification Nos. 17/2017-Central Tax (Rate) 14/2017-Integrated Tax (Rate) both dated 28th June, 2017 have been issued for this. Once notification is issued, such electronic commerce operator will be deemed to be taxable person despite the fact that it is neither supplier nor recipient of service. In case such ECO does not have physical presence in the taxable territory then his representative or a person appointed by ECO will be liable to pay tax.

8. Tax collection at source (TCS)

Every electronic commerce operator (ECO), who is not an agent and is responsible for collection of consideration for intra-State supplies (other than supplies for which it is a deemed supplier) made through it, has to collect an amount at notified rate not exceeding one percent for Central Tax and one percent for State Tax of the net value of such supplies. In case of inter-State supplies tax at source need to be collected at notified rate not exceeding two percent. This is known as TCS. Every ECO responsible to collect tax at source has to take a mandatory registration under GST Act, whether or not separately registered under GST Act. ECO has to deposit this amount (TCS) with the appropriate government within 10 days of next month and has to file a monthly return containing the details of outward supplies made through it by 10th of next month. Subsequently the supplier of such supplies, for which tax has been collected at source by the ECO, can claim credit of such amount (TCS) in his electronic cash ledger. The provisions for TCS has not come into force yet. These will be brought into force once a notification specifying rate of TCS is issued.

9. Manner of deposit of tax to appropriate government

The manner in which tax is to be deposited by the ECO is still in an area of doubt. It is not clear as to whether ECO will need to take registration in every such state where a supplier, conducting business through such ECO, is located and supplies goods / services directly to the buyer.

10. Liability to make TCS on supplies made on one's own portal

As stated above, supplier selling/supplying its own goods/services on portal owned by it also falls in the ambit of definition of ECO. However as per the provisions, an ECO is required to make TCS on supplies made through it. As a logical corollary, person selling own goods on its own portal is not be liable to make TCS. In any case there cannot be TCS on own supplies as tax has to be discharged on entire value of the supply by the same person.

11. ECO and supply between principal & agent

The GST Act provides that supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, will be treated as supply without consideration. Therefore ECOs who are working as an agent of supplier will be liable to pay tax. This provision may affect the working of 'Fulfilment' model' in the e-commerce sector.

12. Matching of monthly returns filed by an ECO and its suppliers

(i). The details relating to supplies made through an ECO, declared in GSTR 8 return of an ECO, shall be matched with corresponding details declared by the supplier in his outward supply return. The comparison shall be based on following two parameters
- State of place of supply
- Net Taxable value

(ii). Mismatch of any parameter to be communicated to both supplier and ECO.

(iii). In case of non-rectification of mismatch, tax liability along with interest to be added to the output tax liability of the supplier for the month, next to the month in which mismatch was communicated.

13. Information to be provided by ECOs

A senior tax authority (Joint commissioner & above) may seek information from an ECO relating to

a. Supplies of goods/services effected though him during any period;
b. Stock of goods held by those suppliers, who has declared godown/ warehouse of ECO as additional place of business, in the godowns/ warehouse of ECOs

ECO to provide such info in 15 days of the service of notice.

Failure in providing the information will result in penalty upto Rs.25000.

14. Special Provisions for 'online information and database access or retrieval services'

Special provisions have been provided in IGST Act regarding payment of tax where online information and database access services are provided to nontaxable online recipients in India. There is need to provide for such special provisions making the overseas service provider as liable to pay tax as the place of provision of such services is in India and a non-taxable online recipient cannot be expected to fulfil compliance formalities. Further in such online information services it is very easy to manipulate the location of service provider by simply operating from a server located overseas to escape tax liability.

15. Meaning of online information and database access or retrieval services

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:

1. advertising on the internet;
2. providing cloud services;
3. provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
4. providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
5. online supplies of digital content (movies, television shows, music and the like);
6. digital data storage; and
7. online gaming

Place of supply for online information and database access or retrieval services is location of recipient of services.

16. Meaning of 'non-taxable online recipient'

'Non-taxable online recipient' means Government, a local authority, a government authority, an individual or any person not registered under GST and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

17. Person responsible for payment of tax for 'online information and database access or retrieval services'

A person located in non-taxable territory and supplying 'online information and database access or retrieval services' to non-taxable online recipient shall be the person liable for paying Integrated Tax. If such supply is arranged or facilitated through an intermediary located in non-taxable territory, then such intermediary will be the person liable for paying Integrated Tax.

However, if the intermediary is working only as a conduit between actual service provider and actual service recipient, the service provider will continue to be liable to pay tax. For example: A USA based company ABC provides online video services to Indians. To watch the video an individual has to pay some money electronically ABC has neither any office/ representative nor any equipment in India. In this case, company ABC has to discharge the Integrated Tax liability.

18. Manner of determination of location of recipient in case of online information and database access or retrieval services

It is difficult to determine the location of the recipient in case of online information and database access or retrieval services as such recipients normally access the services online and are not required to disclose their location. On the lines of the 'non contradictory evidence rule' followed in OECD VAT, it has been prescribed in IGST Act that person receiving online information and database access or retrieval services shall be deemed to be located in taxable territory if any two of the following non contradictory conditions are satisfied, namely any of the following two are located in the taxable territory:

a) Location of address presented by the recipient
b) Place of issue of credit card or debit card or charge card or any such card by which the recipient settles payment
c) Billing address of the recipient
d) IP address of the devise used by recipient
e) Bank of the recipient from where payment is made
f) Country code of the SIM used by the recipient
g) Location of fixed line through services received by recipient

19. Manner of payment of tax on online information and database access or retrieval services

If the online information and database access or retrieval service provider is located outside India and the services are provided to registered tax payer in India, the tax would be payable as import of service under reverse charge mechanism. In case services are provided to a non-taxable online recipient then the onus has been placed on the service provider to pay Integrated tax on such supply of services and such service provider is obliged under law to take registration in India through a Simplified Registration Scheme to be notified by the Government. The registration can be taken by such service provider or by person representing such service provider or a person appointed by such service provider.

8. Job Work

1.	**Meaning of job work**

In the age of outsourcing, it is common to get certain operations done from another person. This latter person may carry out either a part of the process allowing its completion by another person or by the person sending the goods or may himself complete the goods. Such operations are called job work operations.

The person sending the goods is known as principal and that carrying out the operation is known as job worker.

Section 2(68) of the CGST Act defines job work to mean any treatment or process undertaken by a person on goods belonging to another registered person.

2.	**Need for registration/ declaration of the place of business of job worker as principal's additional place of business**

A contract between owner and job worker is a contract between two principals. Place of business of job worker is not t h e place of business of the principal and therefore the principal is not required to register/ declare the place of business of job worker as his additional place of business. However, if the principal intends to supply job worked inputs and/or capital goods from the place of job worker itself, the principal will have to declare the place of business of the job-worker as his additional place of business in case the job worker is not registered.

3.	**Permission from/ intimation to department for sending the goods for job work**

No permission of the tax department is required for sending the goods for job work. However the principal sending goods for job work will have to intimate to the department about his intention to send inputs for job work. The procedure for such intimation will be announced by the Government in due course.

4.	**Removal of goods for job to be without payment of GST**

The GST law suspends the levy of GST for goods sent for job work.

The input goods are required to be returned within one year and the capital goods are required to be returned within three years of the date of sending it for job

work. However, in the case of capital goods in the nature of moulds, dyes, jigs, fixtures or tools, it is not necessary to receive back these goods.

5.	**Job work on semi-finished goods**

GST law does not distinguish between raw material, finished goods and semi-finished goods. It talks about inputs and capital goods. Even semi-finished goods or intermediates are 'goods' and in turn 'input'.

By way of an Explanation in section 143, it has been clarified that inputs include intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

6.	**Supply of job worked inputs and capital goods from the place of business of job worker**

Job worked inputs and capital goods can be supplied from the place of business of job worker provided principal declares the place of business of the job worker as his additional place of business, in case the job worker is not registered. Therefore, if the job worker is registered under GST law, the principal can supply the inputs and capital goods, after job work, from the place of job worker without declaring the place of business of the job worker as his additional place of business.

7.	**Computation of period of one year or three years in cases where inputs and/or capital goods are sent directly to job worker**
	In such a case, date of receipt of inputs and/or capital goods by job worker will be considered as the date on which these goods were sent for job work and period of one year or three year, as may be the case will be counted accordingly.
8.	**Consequences if inputs and/or capital goods are not received back within stipulated time**
	Section 143(3) and 143(4) of the Act and also rule 45(4) of the Rules provide that if the inputs and/or capital goods are not received back by the principal within stipulated time or are not supplied from the place of business of the job worker, it shall be deemed that such inputs and/or capital goods had been supplied by the principal to the job worker on the day when the said inputs were sent out. Consequently, in addition to applicable tax, the principal will also become liable for interest on late payment of tax. The tax so paid in turn will be eligible for input tax credit in the hands of job worker. However, in case the job worker is not registered under GST, it will lead to loss of tax. If removal of goods for job work is deemed as supply on invocation of sections and rule mentioned above, the principal shall issue invoice in the month in which such demining provision triggers and declare the same in its GSTR-1.
9.	**Refund of tax levied on deemed supply due to non-receipt of job worked inputs and/or capital goods within specified time, if such inputs are brought back subsequently**
	There is no provision in the GST law providing for taking refund of tax paid if inputs/capital goods that are not received back within specified time are brought back subsequently. Such return would be treated as a fresh supply on which job worker may have to discharge appropriate GST liability and the principal will be able to take credit of the tax so paid. There is some ambiguity as to whether job worker will be able to take credit of the inputs originally received by him for job work which is later deemed as a supply. In all likelihood this credit would be available since the inputs originally supplied for job work will become a deemed taxable supply at the hands of the principal on which appropriate GST will have to be discharged.
10.	**Disposal of waste and scrap generated during the job work from job worker's place**
	It is not necessary to bring back such waste and scrap to the principal's place of business. If job worker is registered under GST law, waste and scrap can be supplied directly by the job worker. If job worker is not registered under GST law, waste and scrap can be supplied by the principal directly from the place of job worker.
11.	**GST on service charges of job worker**
	GST will be payable on the job work charges including on any material used by the job worker at his own level. Principal will be entitled to take tax credit of same subject to usual conditions.
12.	**Document for movement of goods for Job work**
	Rule 55 of the CGST Rules, 2017 provide that for the purposes of transportation of goods for job work, the consigner may issue a delivery challan, serially numbered, in lieu of invoice at the time of removal of goods for transportation. Rule also provide minimum contents for such challan. The goods dispatched on challan will have to be declared in Form [Way Bill].

9. Inter-State Supplies

1. Significance of taxing inter-State supplies

GST is primarily a destination-based consumption tax. The place of supply of a particular transaction, coupled with the location of the supplier, will determine the nature of the tax to be paid by a tax payer.

If the location of the supplier and place of supply are in the same State (including UTs with legislature) the transaction will be an intra-State transaction and the tax payer will be liable to pay State + Central Tax. If they are in different States the transaction will become inter-State transaction and the tax payer will be liable to pay Integrated Tax and part of the Integrated Tax collected transferred to the State where the consumption takes place i.e. the State where the place of supply is located.

Transactions between two UTs and transactions to/from UT from/to another State are also treated as inter-State transactions liable to Integrated Tax. Transactions within a UT without legislature would be charged to UT GST or UT Tax.

The inter-State supplier will be allowed to avail credit of various GST taxes paid on his purchases. This will allow maintenance of uninterrupted ITC chain at all-India level.

2. Meaning of inter-State supply

Section 7 of the IGST Act provides that following supplies will be inter-State supplies:

a) Supply of goods and/or services where location of the supplier and place of supply are in two different States; or two different Union territories; or a State and a Union territory.
b) Supply of goods and/or services where location of the supplier is in India and the place of supply is outside India (normally referred to as exports).
c) Supply of goods imported into the territory of India, till they cross the customs frontier of India
d) Supply of services imported into the territory of India.
e) Supply of goods and/or services to or by a SEZ developer or a SEZ unit.
f) Any supply of goods and/or services in the taxable territory, not being an intra-State supply and not covered above (e.g. supply from a State to a place/ location to a place located in EEZ/Continental shelf and vice-versa)

3. Meaning of intra-State supply

Section 8 of the IGST Act provides that intra-State supply means any supply of goods and/or services where location of the supplier and place of supply are in the same State or same Union territory.

However, supply of goods and/or services to or by a SEZ developer or to or by an SEZ unit will not be considered as intra-State supply despite the fact that both supplier and recipient are located in the same State. Proviso to rule 8(1) of the CGST Rules makes it mandatory for SEZ unit (s) or SEZ developer to obtain separate registration as a business vertical distinct from its other units located outside the SEZ.

Supply of goods brought into India in the course of import till they cross the customs frontiers of India will also not be considered as intra-State supply despite the fact that both supplier and recipient are located in the same State.

Supplies of goods to a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes (tourist) will also not be treated as intra-State supply, provided the tourist takes those goods out of India. This special provision is made to enable the tourist to claim refund of tax paid on such supply from the

Central Government.

4. Location of supplier of goods

Unlike in the case of services, the location of supplier of goods and location of recipient of goods are not defined either in the CGST Act or the IGST Act. These terms are to be understood certainly not as the location of their registered office but as the place where the supplier holds control over the goods ready to deliver. In other words, location of supplier may be understood as the location of goods ready for supply. The word ‘location’ in this phrase refers to the site or premises (geographical point) where the supplier is situated, with the goods in his control, ready to be supplied.

While for tangible goods, application of above rule will not pose much challenge, for intangible goods such as copyright, trademark, literacy work etc. the legal maxim ‘Mobila Sequuntur Personam’ has emerged as a means to determine the situs of property. In the situation of legislative vacuum, the internationally accepted principle of ‘mobilia sequuntur personam’ would apply, i.e., the situs of the owner of an intangible asset would be the closest approximation of the situs of his intangible asset.

5. Location of recipient of services

Services are capable of being contracted from one place, supplied from another and paid for at yet another. Moreover a service can be partially received at multiple locations. This introduces unique complexity in identifying the true location of the recipient in case of services. Determining location of recipient of services is pre-requisite for identifying the jurisdiction where consumption either by a B2B recipient or by a B2C recipient happens.

Location of recipient of services has been defined in section 2(14) of the IGST Act to mean:

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

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

(iii) Where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

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

Usual place of residence, in case of an individual means, the place where the person ordinarily resides. In other cases it means the place where the person is incorporated or otherwise legally constituted.

6. Illustration of location of recipient of service

- A Bangalore based supplier is engaged in providing advertising services. Its customer has business establishment in Delhi and a branch in Bangalore which is a fixed establishment. Although day-to-day contact on routine administrative matters is between the Bangalore supplier and the Bangalore branch of recipient, it’s the Delhi establishment’s services that are being advertised. The supplies are received at the Delhi establishment.
- A customer has a business establishment in Lucknow and fixed establishments in a number of other States. The customer contracts to buy accounting and planning software maintenance service through its Bangalore branch, making all payments from there. However, the software maintenance services are used by the customer at all of its branches throughout the States. The establishment most closely connected to the supply will be the business establishment in Lucknow. This is because the services are not for the needs of a specific branch. Ideally ISD mechanism needs to be used for distribution of

credit to all the States where the services are used.

7. Location of supplier of services

Location of supplier of services as defined in section 2(15) of the IGST Act is the mirror image of location of recipient of services. For better understanding, it is reproduced below through strikethrough

(i) Where a supply is ~~received at~~ made from a place of business for which the registration has been obtained, the location of such place of business;
(ii) Where a supply is ~~received at~~ made from a place other than the place of business for which registration has been obtained(a fixed establishment elsewhere), the location of such fixed establishment;
(iii) Where a supply is ~~received at~~ made from 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
(i) In absence of such places, the location of the usual place of residence of the ~~recipient~~ supplier

8. Illustration of location of supplier of services

'J' a telecom operator provides mobile services to a subscriber residing in Jharkhand. Jharkhand is part of Chhattisgarh-Jharkhand Telecom Circle and 'J' circle headquarters are in Raipur, capital of Chhattisgarh. 'J' also has an office in the State of Jharkhand. The towers and equipment from where services are provided are also located in Chhattisgarh. In this case the location of service provider shall be the State of Jharkhand as the 'J" has a fixed establishment in Jharkhand from where the services are being provided.

9. Import of services

Import of service means the supply of any service, where:

(a) the supplier of service is located outside India,
(b) the recipient of service is located in India, and
(c) the place of supply of service is in India

10. Export of services

Export of service means the supply of any service, 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) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
(e) the supplier of service and recipient of service are not merely establishments of a distinct person (same PAN)

11. Treatment of supplies to and by SEZ units/SEZ developers

Discussed in next Chapter on Imports and Exports

12. Establishment of distinct person

Explanation 1 in section 8 of the IGST Act provides that

(i) An establishment of a person in India and any of his other establishments outside India; or

(ii) An establishment of a person in a State and any of his other establishments outside that State

(iii) An establishment in a State and any other establishment being a business vertical registered within that State

are establishments of a distinct person.

Explanation 2 clarifies that a branch office or an agency or a representation office is also an establishment.

13. Meaning of establishment

Word 'establishment' is not defined under GST law. In common parlance an establishment means a place of business through which the business of an enterprise is wholly or partly carried on. It includes a place of management, a branch, an office, a factory, a workshop, a mine, a quarry or any other place of extraction of natural resources. It also encompasses a building site, a construction, assembly or installation project. Engaging sufficient human and technical resources are key characteristics of an establishment. European Courts have taken a view that there is no requirement to own the resources in question and that an establishment could be created through the use of resources belonging to a third party. However simply owning immovable property does not denote presence of an establishment.

14. Distinct person

Distinct persons are persons that have the same legal identity (PAN) but a distinct identity under GST by virtue of being located in different States (or in same State if separate Registration) or, by constitution, in different country.

15. Some examples which do not constitute exports of services

Facts	Whether exports and reason
Provision of service by an entity located in India to its establishment in London	No exports; being same entity
Provision of service to an independent entity in Nepal and receiving payment in INR	No; payment not in convertible foreign exchange
Provision of service to an independent entity abroad relating to an exhibition held in India	No; place of supply is in India

16. Time limit for receipt of payment in convertible foreign exchange

GST Law does not envisage any time limit for receipt of payment in convertible foreign exchange. However the law does not use the words 'is receivable or has been received' meaning thereby that for being eligible to be covered under the expression 'export of services' payment must be received within a reasonable time. What is reasonable time will be decided on case-to-case basis depending upon terms of the contract and foreign exchange regulations, if any. Normally the period prescribed by RBI, or such extended period as RBI may allow, will be reasonable period.

17. Import of goods

Import of goods means bringing goods into India from a place outside India. The definition is same as in the Customs Act, 1962.

18. Export of goods

Export of goods means taking goods out of India to a place outside India. The definition is same as in the Customs Act. (For detailed discussion on imports and exports please turn to the chapter on Imports and Exports)

19. Supplies between two Union territories without legislature

Currently there are seven Union territories in India:

- Andaman and Nicobar Islands.
- Chandigarh.
- Dadra and Nagar Haveli.
- Daman and Diu.
- Delhi (National Capital Territory of Delhi)
- Lakshadweep.
- Puducherry.

The National Capital Territory of Delhi and Union territory of Puducherry each has a legislative assembly and council of ministers. Other five union territories are Union territories without legislature. As per clause (26B) of section 366 of the Constitution of India, for the purposes of GST 'State' includes a Union territory with legislature. Therefore UTs without legislature will not be treated as a State. For UTs without legislature Union Territory Goods and Services Tax Act will apply.

Areas which do not constitute any specific State but are a part of Union of India (e.g. continental shelf and EEZ) will also be treated as Union territories for the purpose of GST law. These have been collectively given the nomenclature of 'other territories'and treated as Union territories. However, a person supplying goods or services from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of appropriate base line is located. Where the location of the supplier or the place of supply is in the territorial waters, their respective location will be deemed to be in coastal State or Union territory where the nearest point of appropriate base line is located.

The manner of administration of levy of Integrated Tax/UT Tax on supplies from or within Other territories like continental shelf and EEZ is not clear at the moment.

20. Definition of India and status of area beyond 12 nautical miles

India means the territory of the Union as referred to in clauses (2) and (3) of Article 1 of the Constitution, its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976. It also includes the seabed and the subsoil underlying the territorial waters; the air space above its territory and territorial waters;

Area beyond 12 nautical miles, till the limits of continental shelf/EEZ is also included in the definition of India.

21. Small scale exemptions on inter-State supplies

A taxable person who makes inter-State outward supplies of goods is not eligible to opt for composition levy or avail threshold exemption. However there is no restriction on receipt of goods or services from inter-State suppliers.

22. Consequences if tax on intra-State supply is paid treating it as inter-State supply and vice-versa

Section 9 of the IGST Act provides that a taxable person who has paid Integrated Tax on a supply considered by him to be an inter-State supply, but which is subsequently found to be an intra-State supply, shall be granted refund of the amount of IGST so paid.

Section 77 of the CGST Act provides that a taxable person who has paid Central and State Taxes on a supply considered by him to be an intra-State supply, but which is subsequently found to be an inter-State supply, shall be granted refund of the amount of the said tax. The taxable person will have to deposit correct tax with appropriate authority. There is no provision for inter-authority tax adjustment. However no interest liability will arise in the name of short/non-payment of tax.

23. High Seas sales of imported goods

‘High Sea sale is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the High Sea sale of goods, the Customs declarations i.e. Bill of Entry etc is filed by the person who buys the goods from the original importer during the said sale. High Seas sales of imported goods are akin to inter-State transactions. All interState transactions are subject to IGST. The Government, through Circular No. 33/2017-Customs dated 1st August, 2017 has communicated the decision of GST council that IGST on high seas sale(s) transaction of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.

10. Imports and Exports

1. Broad scheme of taxation of imports in GST

As per provisions of the IGST Act import of goods into India shall be deemed to be a supply in the course of inter-State trade or commerce. It has also been provided that Integrated 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 at the point when duties of Customs are levied on the said goods under the Customs Act, 1962, on a value as determined under the Customs Tariff Act, 1975.

The Taxation Laws (Amendment) Act, 2017 provides that IGST on imports will be levied at value of imported article as determined under the Customs Act plus duty of customs and any other sum chargeable in addition to customs duty (excluding GST and GST Cess). This in effect makes levy of IGST at par with present levy of CVD which is on basic value plus customs duty.

As per the definition of 'supply' under CGST Act, import of services for a consideration whether or not in the course or furtherance of business is deemed to be supply and as per the IGST Act, supply of services in the course of import into the territory of India, shall be deemed as supply of services in the course of inter-state trade or commerce. Accordingly, Integrated Tax would be levied on import of services. The Integrated Tax on import of services would be payable by the recipient under reverse charge.

Further, there would be no change in applicability of countervailing duty levied under section 9BB of the Customs Tariff Act, 1975 (and different from the additional duty of Customs levied under section 3, ibid., also known as CVD), anti-dumping or safeguard duties, where ever imposed by the Government.

2. Treatment of supplies to and by SEZ units/SEZ developers

As per the IGST Act, supplies of goods and services to or by Special Economic Zone (SEZ) units or SEZ developers will be treated as inter-State supplies. As per the SEZ Act, supply of goods from SEZs is treated as import of goods into India. Accordingly Basic Customs Duty (BCD) & Integrated GST will be levied on such supplies from SEZ units and SEZ developers into DTA.

Supplies of goods and/or services to SEZ units or SEZ developers are to be treated as "zero rated supplies" and the SEZ developer or SEZ unit receiving such zero rated supplies will be given similar treatment as exports (please refer next question for details).

Proviso to rule 8(1) of the CGST Rules makes it mandatory for SEZ unit (s) or SEZ developer to obtain separate registration as a business vertical distinct from its other units located outside the SEZ.

3. Treatment of exports under GST

As per the provisions of IGST Act, export of goods and/or services are to be treated as "zero rated supplies" and a registered taxable person exporting goods or services shall be eligible to claim refund under one of the following two options:

(i). Export under bond or letter of undertaking without payment of Integrated Tax and claim refund of unutilized input tax credit.

(ii). Export on payment of Integrated Tax and claim refund of the tax so paid on goods and services exported.

The aforesaid refunds will be subject to prescribed rules, safeguards and procedures

4. Fate of export promotion schemes like Advance License, EPCG in GST.

After 1st July 2017, the benefits under Advance authorization scheme, Export Promotion Capital Goods (EPCG) scheme, duty credit scrips such as Merchandise Exports from India Scheme (MEIS) & Service Exports from India Scheme (SEIS) shall be restricted only to Basic Customs Duty, Safeguard Duty, Transitional Product Specific Safeguard Duty and Anti-dumping Duty in respect of goods leviable to IGST. For items specified in Fourth Schedule to the Central Excise Act, 1944 (specified petroleum products, tobacco etc.) exemption from Additional Duty leviable under Sections 3(1), 3(3) and 3(5) of the Customs Tariff Act, 1975 shall be available.

5. Treatment of warehoused goods

For deposit of imported goods into a warehouse and for subsequent clearance of goods from the warehouse for home consumption, provisions made under Customs Act, 1962 shall be applicable. The Taxation Laws (Amendment) Act, 2017 provides for inclusion of 'a warehouse' in the definition of Customs area to ensure that an importer would not be required to pay the IGST at the time of removal of goods from a Customs station to a bonded warehouse.

On clearance of goods from a warehouse for home consumption Integrated Tax would be leviable in place of CVD and SAD today.

6. Examples of supplies outside India which do not constitute export of goods or services

(i). Supply of service to a person located outside India where place of supply of service is in India. For example - a property rented out in Mumbai to a person residing in Dubai; agent located in India providing service to a New York based exporter for selling goods to China.

(ii). Supply of services where consideration is received in Indian currency or a currency other than convertible currency. For example supply of consultancy service by an Indian consulting firm to an overseas entity, payment for which is made in Indian rupees by Indian branch of overseas entity.

(iii). Provision of service by an Indian entity to a branch or office of the same entity located overseas

7. Place of supply of goods and/or services in cases of import or export of goods and/or services.

For detailed discussions please see Chapter on Place of Supply

8. Treatment of supplies in exclusive economic zone of India

Areas which do not constitute any specific State but are a part of Union of India (e.g. EEZ) will also be treated as Union territories for the purpose of GST law. These have been given the nomenclature of 'other territories' and treated as Union territories under GST law. Thus in line with treatment of transactions to/from UTs without legislature, supplies to/from EEZ would be treated as inter-State supplies chargeable to Integrated Tax. Supplies within /EEZ will be chargeable to UT Tax. For example, services of drilling provided on a rig located in EEZ by a service provider would be chargeable to Integrated Tax even if the service provider is located in the State adjacent to such EEZ.

The manner of administration of levy of Integrated Tax/UT Tax on supplies from or within 'other territories' like continental shelf and EEZ is not fully clear at the moment. Another aspect of the jurisdiction is that International law as well as the Maritime Zones Act, 1976 recognizes limited jurisdiction over the EEZ. Accordingly, there is a school of thought that special provisions may be provided by the Government regarding leviability of GST on supplies to and from EEZ.

9. Meaning of continental shelf and exclusive economic zone of India

The continental shelf of India comprises the seabed and subsoil of the submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baseline where the outer edge of the continental margin does not extend up to that distance.

The exclusive economic zone of India (hereinafter referred to as the exclusive economic zone) is an area beyond and adjacent to the territorial waters, and the limit of such zone is two hundred nautical miles from the baseline. Continental Shelf was an older concept in International Law to define maritime jurisdiction of coastal State which has now largely been replaced worldwide by concept of EEZ which prescribes a uniform limit of 200 nautical miles irrespective of the natural prolongation of the continental shelf.

10. Refunds of taxes on exports and deemed exports be claimed

In case of refund of tax on inputs used in exports:

- Refund of 90% will be granted provisionally within seven days of acknowledgment of application in Form GST RFD – 01.
- Remaining 10% will be paid within a maximum period of 60 days from the date of receipt of application complete in all respects.
- Interest @ 6% is payable if full refund is not granted within 60 days.

In the case of refund of IGST paid on exports, the shipping bill filed with the Customs is treated as an application for refund and shall be deemed to have been filed after submission of export general manifest and furnishing of a valid return in Form GSTR-3 by the applicant. The Customs shall process the claim for refund and an amount equal to the IGST paid in respect of each shipping bill shall be credited to the bank account of exporter.

11. Applicable penal provisions to imports- IGST law or the Customs Act 1962

As per the provisions of IGST Act, Integrated Tax on goods imported into India shall be levied and collected in accordance with provisions of Customs Tariff Act 1975. Accordingly for any offences relating to levy of Integrated Tax on imports penal provisions of Customs Act, 1962 would be leviable. However import of services has been deemed as a supply under Central GST Act and import of services is treated as supply of services in the course of inter-State supply. Accordingly for offences relating to import of services provision of IGST Law will be applicable.

12. Will SEZ Act have an overriding effect over the GST Acts?

As per Section 51 of SEZ Act, the SEZ Act has an overriding effect on any other law for the time being in force. This overriding effect is limited only to the laws notified by the Central Government. There is no clarity whether GST laws will be notified under the SEZ Act. Another school of thought is that in view of the provisions of the amended Article 246 of the Constitution, SEZ Act cannot have overriding effect on GST laws. It is expected that to preserve the SEZ scheme, the SEZ Act may be given an overriding effect over GST Acts. However, unless express provision is made either in SEZ Act or GST Act to provide overriding effect to SEZ Act, the SEZ Act will not override GST Acts.

13. Tax treatment of export of goods and services to Nepal and Bhutan

In terms of para 2.52 of the Indian Foreign Trade Policy (2015-2020) exports proceeds from Nepal and Bhutan can be realized in Indian rupees. Despite receipt of export proceeds in India, rupee exports of goods to Nepal and Bhutan will be treated at par with export to any other country as definition of 'export of goods' under IGST ACT attaches no condition other than 'taking goods out of India to a place outside India'. However in case of export of services, in case export proceeds are received in Indian rupees, it will not qualify as 'export' as the definition of 'export of services' mandates receipt of payment in 'convertible foreign exchange'.

14. Merchant export

The concept of merchant or manufacturer exporter has become irrelevant under the GST regime. The procedure in respect of the supplies made for export is same for both merchant exporter and a manufacturer exporter.

15. Deemed export

Deemed export has been defined under section 2(39) of the CGST Act as supplies of goods as may be notified under section 147 of the said Act. Under section 147, the Government may, on the recommendation of the GST Council, notify certain supplies of goods manufactured in India as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange. However, till date, the government has not notified any supply as deemed export.

16. High-seas sales

The CBEC Circular number 33/2017-Cus dated 01.08.2017 clarifies that IGST on high-seas sale transactions of imported goods, whether one or multiple, will be levied and collected only at the time of importation – i.e. when import declarations are filed before the Customs authorities for customs clearance purposes for the first time. Further, value addition accruing in each such high-seas sale will form part of the value on which IGST is collected at the time of clearance. The importer (the last buyer in the chain) would be required to furnish the entire chain of documents, such as original invoice, high-seas sales contract, details of service charges/ commission paid etc., to establish a link between the first contracted price of the goods and the last transaction.

17. Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking

Rule 96A of CGST Rules, 2017 provides as under:

Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest (if any) within a period of—

(a) 15 days after the expiry of 3 months from the date of issue of the invoice for export, if the goods are not exported out of India; or

(b) 15 days after the expiry of 1r, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

Where the goods are not exported within the time specified in sub-rule (1) and the registered person fails to pay the amount mentioned in the said sub-rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of the Act.

However, the export as allowed under bond or Letter of Undertaking withdrawn shall be restored immediately when the registered person pays the amount due.

The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.

The above provisions shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.

18. Conditions and safeguards for the registered person who intends to supply goods or services for export without payment of integrated tax, for furnishing a Letter of Undertaking in place of a Bond

The following registered person shall be eligible for submission of Letter of Undertaking in place of a bond:—

(a) a status holder as specified in *paragraphs 3.20 and 3.21* of the Foreign Trade Policy 2015-2020; or

(b) who has received the due foreign inward remittances amounting to a minimum of 10% of the export turnover, which should not be less than one crore rupees, in the preceding financial year,

and he has not been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 or under any of the existing laws in case where the amount of tax evaded exceeds two hundred and fifty lakh rupees - notification no.16/2017-central tax, dated 7-7-2017.

19. Different export houses and their classification

Export House status	FOB/ FOR of exports (in US million $)
One-star export house	3
Two-star export house	25
Three-star export house	100
Four-star export house	500
Five-star export house	2000

20. Furnishing a bank guarantee with bond

FORM RFD -11 under rule 96A of the CGST Rules requires furnishing a bank guarantee with bond. Field formations have requested for clarity on the amount of bank guarantee as a security for the bond. In this regard it is directed that the jurisdictional Commissioner may decide about the amount of bank guarantee depending upon the track record of the exporter. If Commissioner is satisfied with the track record of an exporter then furnishing of bond without bank guarantee would suffice. In any case the bank guarantee should normally not exceed 15% of the bond amount.

All exporters, not covered by the notification no.16/2017-central tax, dated 7-7-2017, would submit bond. The procedures for submission and acceptance of bond has already been prescribed vide circular No. 2/2/2017-GST dated 4th July, 2017. The bond shall be furnished on non-judicial stamp paper of the value as applicable in the State in which bond is being furnished - CBEC Circular no.4/4/2017, Dated 7.7.2017.

11. Transitional Provision

1. Migration of existing tax payers to GST

Every taxpayer registered for any one of the taxes getting subsumed in GST like Central Excise, Service Tax and State VAT is liable e for provisional registration under GST. Post provisional registration as above, the tax payer will have to submit prescribed information and comply with prescribed conditions. On successful submission of the said information and compliance of conditions final registration certificate will be granted.

A person who has been granted provisional registration for the reason of being already registered under any of the pre-GST taxes, but who is not liable for registration under GST may apply for cancellation of GST registration within a period of thirty days from the appointed day. [Rule 24(4) of the CGST rules].

2. Process of migration

- GSTN opened the portal for migration of State VAT registrations to GSTN on 8/11/16
- Different days were allocated for migration of registrants of different states
- On slated dates, the existing registrant had to log on to the portal for enrolment after filling up a basic form and providing a registered mobile number and email id
- The applicant received a user id and password for enrolment
- The user id given is essentially the provisional GSTIN number that will be so labelled once the law is enacted
- Thereafter (after enactment) the registrant will have a period of three months to upload the required documents in FORM GST REG-26, for getting a permanent GSTIN.
- Similarly, the migration of existing Central Excise Registrations started from 1/1/17 and Service tax registrants from 9/1/17.
- If the information and particulars furnished in FORM GST REG-26 are found to be correct and complete, final registration certificate in FORM GST REG-06 shall be issued.

3. Transfer of unutilized credit balances of various taxes like Central Excise Duty, Service Tax, VAT etc that have subsumed under GST

The Cenvat credit, credit of VAT and Entry Tax carried forward in the return relating to the period ending with the day immediately preceding the date of transition (appointed date) are eligible to be carried to the GST provided that the said amount is admissible under GST law also. This is explained in the table below:

<table>
<tr><th colspan="3">Treatment of credit Balance in last return under earlier law</th></tr>
<tr><th>On appointed day</th><th>Under GST</th><th>Condition</th></tr>
<tr><td>Excise</td><td>shall be carried forward as Central Tax</td><td rowspan="5">If same is admissible both under earlier law and GST law;
Credit is lying in balance in return for the period ending the day before appointed date under earlier law;
The claimant files declaration in Form GST TRAN-1 within ninety days of the</td></tr>
<tr><td>Service Tax</td><td>shall be carried forward as Central Tax</td></tr>
<tr><td>VAT</td><td>shall be carried forward as State Tax</td></tr>
<tr><td>Entry Tax</td><td>shall be carried forward as State Tax</td></tr>
<tr><td>Centralized Registration</td><td>shall be carried forward as Central Tax. May transfer to any of registered taxable</td></tr>
</table>

	person having same PAN	appointed day, giving details of stock held on appointed day and in case of capital goods of amount of tax or duty availed & utilized and to be availed
ISD	shall be carried forward as Central Tax	
Un-availed credit of capital goods	Credit which have not been availed fully in erstwhile law shall be available	

4. Transfer of credits of cesses such as Education Cess, Secondary and Higher Education Cess, Swatch Bharat Cess and Krishi Kalyan Cess

The Transitional provisions under the CGST Act allow carryover of only the Cenvat Credit and Credit of eligible duties mentioned in the explanations given at the end of section 140. Education Cess & Secondary and Higher Education Cess are not mentioned there. Therefore these will not be carried forward as credit of these cesses is not allowed under GST.

Swatch Bharat Cess (SBC) and Krishi Kalyan Cess will not be eligible for carry forward to GST regime as credit of these cesses is not allowed under GST. The cesses will also not be leviable under GST to the extent they are levied as duties of excise (except on excluded items) or Service Tax or as a surcharge.

5. Illustration of credits that will not be carried forward

Tax credit scheme under GST law is more liberal than the existing laws. Therefore, possibility of such situations is low. Credit of Excise Duty on products going out of GST will lapse at the hands of suppliers of GST goods or services. For example, airlines will not be able to carry forward the credit as ATF is out of GST ambit.

6. Transfer of credit of taxes paid on goods in stock in certain situations

There will be several situations wherein a person was not required to pay either Central Excise Duty or Service Tax or VAT on its outward supply, however under GST such person or premises of a person has become liable to pay GST.

In these situations it is necessary to make provisions for allowing the person to take credit of taxes that have been paid in respect of inputs lying in stock and inputs contained in semi-finished or finished goods lying in stock. Migration of such credits has also been contemplated and provided for in the transition provisions, Such situations can occur in following situations:

1. Person manufacturing exempted goods or engaged in provision of exempted services or person selling goods that are exempt under earlier regime but taxable under GST;
2. Person engaged in manufacturer of non-exempted goods and exempted goods or provision of non-exempted service as well as exempted service that have entirely become taxable under GST;
3. Credit of Excise Duty paid on goods lying in stock with retailers, warehouses, wholesalers etc.;
4. Persons switching over from composition schemes;
5. Persons providing services like works contract etc. and following composition/abatement schemes that were subject to condition of non availment of credit.

The provisions in this regard that have been provided for in GST law are encapsulated in the table below:

Treatment of tax credit held in inputs, WIP in stock, inputs contained in final product		
Situation	**Transition to GST**	**Condition**

Person who was not liable under earlier law First stage dealer Second stage dealer Importer WC availing benefit u/n no.26-2012 Person who was doing exclusively business of exempted goods/ services Person who was engaging in business of exempted & taxable goods/ services Person who switching over from composition scheme	• Input tax credit of eligible taxes allowed. • Eligible duties and taxes include Central Excise Duty, Additional Duty of Excise (textile and textile articles), Additional Duty of Excise (goods of special importance), NCCD, CVD, SAD and Service Tax. Amongst state taxes these include VAT and Entry Tax. • Eligible taxes does not include ED cess, SHE cess, NCCD, KKC	• Credit should be in respect of inputs held in stock and inputs contained in semi-finished foods and finished goods held in stock on cutoff day(appointed day) • The taxable person is eligible for input tax credit on such inputs under GST law. • Should be in possession of invoice or other documents evidencing payment of duty and the relevant invoices / other documents are not issued earlier than 12 months preceding the appointed day. • Such inputs are used or intended to be used for making taxable supplies. • The supplier of service is not eligible for any abatement under GST Law.

7. Manner of availment of credit of embedded Excise Duty on goods procured from dealers on such invoices which are not the duty paying documents for Excise Duty

Rule 117(4) of the CGST rules provide that a taxpayer who is not in possession of any document evidencing payment of central excise duty shall be allowed tax credit at the rate of sixty percent of the central tax applicable if GST (CGST+SGST or IGST as the case may be) is payable at the rate of 18 per cent or more.

If GST is payable at a rate which is less than 18 percent, forty percent of the central tax applicable will be available as input tax credit. The amount will be credited to electronic credit ledger after payment of applicable central tax.

The window for claiming tax credit will be open for six tax periods from the appointed date. The details of such stocks will have to be submitted in a statement in FORM GST TRAN 2 at the end of each of six tax periods.

8. Credit of state taxes in cases linked to production of certain prescribed forms in current regime

For the goods claimed to have been sold in the course of inter-State trade and commerce against form 'C' or penultimate sale of goods against form 'H' or subsequent sale claimed to have been made while goods were in inter-state transit and stock transfers against Forms 'E1", E2' or 'F', the claim of carry forward of credit to GST regime will be allowed only when underlying forms 'C'. 'H', 'E1' or 'E2', 'F' as the case may be have been received by the seller. A period of ninety days from the cut-off date will be allowed for producing these forms.

The claimant will have to file declaration in Form GST TRAN-1 giving details of supplies against forms during the financial year relating to relevant return. The form calls for information since 1st April 2015 till 30th June 2017. The declaration shall contain the serial number and value of declarations in Forms C and/or F and Certificates in Forms E H or Form I specified in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 submitted by the applicant in support of the claims above.

If the claimant is not able to produce these forms within stipulated time, underlying credit will not be allowed to be carried forward to GST regime. However, the seller will be allowed to claim refund of such embedded tax from respective sales tax authorities.

9. Credit on capital goods installed in the premises of suppliers

There are no provisions that will enable a person, not entitled to take credit of taxes paid on capital goods installed in their premises before the appointed date, to avail credit of such taxes after the appointed date even if the person isrequired to discharge GST on supplies made using such capital goods. For example, a retail shop will not be entitled to credit of Excise Duty paid on capital goods like air conditioner, computer, furniture etc. installed in the shop.

10. Goods in transit on the appointed date

Several transition provisions have also been provided for goods in transit on appointed date or transactions that were initiated before the appointed date and are concluded after the appointed date. These situations, where the tax treatment before the appointed date has a bearing on the tax treatment on conclusion of the movement or transaction, include:

1. Movement of goods on which tax is paid starting in pre-GST regime but which reach recipient after the appointed day, i.e. in GST regime.
2. Input services received on or after the appointed date but tax has been paid before the appointed date
3. Goods sent for job work before the appointed date but are received back after the appointed date
4. Goods cleared on payment of tax before the appointed date but returned back after the appointed date
5. Services where POT has happened before the appointed date.

In brief the transition provisions are as follows:

Treatment of goods in transit or services whose POT has happened before appointed date		
Situation	**Treatment under GST**	**Condition**
Receipt of Goods or services after appointed day but Tax has been paid before the appointed date	Eligible taxes and duties paid under the earlier regime shall be eligible for credit – Section 140(5) of the CGST Act	• To be accounted within 30 days in the books of account; • Credit is admissible both under present & GST law
Exempted goods cleared before appointed date but returned thereafter	No tax to be paid on return	• If returned back within 6 months in B2B case; • No Time bar limit for B2C
Duty paid goods cleared before appointed date but	In case goods are returned by registered person it shall be treated as fresh supply &	Such goods are identified to the satisfaction of proper

returned under GST	GST will be applicable. In case goods (cleared not earlier than six months from the appointed date) are returned by unregistered person, the registered taxable person will be eligible for refund – Section 142(1) of the CGST Act	officer.
Services whose POT has happened before appointed date	• No tax under GST. • Service Tax to be paid based on POT which has happened before the appointed date – Section 11(1)(b) of the CGST Act	
For claim of credit on inputs and input services received on or after appointed day duty or tax on which was paid by the supplier under the earlier law, the claimant will be required to furnish declaration in Form GST TRAN-1 containing details of the name of supplier, serial number and date of invoice or other tax paying document, description, quantity and value of goods or services, the amount of eligible Central and/or state tax and the date on which the receipt of goods or services is accounted for in the books of accounts.		

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

If such goods have been supplied within six months before the appointed day, and are returned within six months (extendable by another two months by the competent authority) from the appointed day, then no tax will be payable thereon. However if return is happening after six months or extended period then tax will be payable by the person returning such goods.

The person having sent goods on approval will be required to file declaration in Form GST TRAN-1 electronically within sixty days of the appointed day specifying therein details of such goods sent on approval.

12. Credit reversed on goods transferred to branches before the appointed date and lying in stock in branches on the appointed date be admissible

Any amount of credit reversed before the appointed date will not be admissible as credit under SGST Acts.

13. Service tax credits reversed prior to the appointed date on the grounds that the payment were not made to the service provider

The credit can be reclaimed if the payment to the supplier is made within 3 months of the appointed date. The claimant will have to separately specify relevant stock in electronic application filed in this behalf. [Section 140(9) of the CGST Act.]

14. Goods sent to job worker before the appointed date and returned after the appointed date

The transition provisions in this regard are as follows:

Nature of goods	Treatment under GST	Conditions
Inputs Semi-finished	• Not taxable if received within specified time	• No tax; • Specified time period –

Finished goods	limit; • ITC to be reversed if not received within specified time limit [Section 141(1) & (2) of the CGST Act; • Manufacturer has option to remove goods from job-work location on payment of duty in domestic market or without payment of duty for export [Section 141(3) of the CGST Act].	within six month from appointed day; It may be extended for 2 months by competent authority; • To be returned in same factory from where it was sent; • Both party to file declaration of stocks lying on appointed day

15. Pending assessments, adjudications

Proceedings like assessments, adjudications, appeals, revision or review pertaining to the period before the appointed date, whether instituted before or after GST regime, will be disposed of in accordance with the provisions of earlier law. If as a result any amount becomes due to the tax payer, the same will be refunded in cash and if any amount becomes recoverable, same will be recovered as arrear of tax under GST Law. Input tax credits (ITC) of such arrears will not be available under GST.

16. Refund of taxes paid under the earlier law

All refund claims pertaining to earlier law, whether filed before or after the GST regime, will be disposed of in accordance with the provision of earlier law and any refund amount accruing to the taxpayer will be paid in cash, in case of Central taxes and in accordance with the provisions of earlier law (in case of State taxes). Where refund claim of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse. Further no refund claim of any tax credit, balance part of which has been carried forwarded under GST, will be allowed.

17. Refund claims in respect of services not provided

Refund claim filed after the appointed date for tax deposited under the earlier law in respect of service not provided shall be disposed of in accordance with the provisions of earlier law and any amount eventually accruing shall be paid in cash.

18. Amount recovered or refunded pursuant to revision of return

Where any return furnished under the earlier law is revised after the appointed date and pursuant to such revision if any amount found to be recoverable, the same will be recovered as arrear of tax. However any amount is found to be refundable, the same shall be refunded in cash.

Various situations in which such refunds can arise and their treatment under GST will be as follows:

Nature of refund	Treatment after GST	Condition
CST	• shall be refunded as per the provisions of earlier law; • can be claimed & filed after appointed day; • If the claim is fully or	Refund claim must be filed within prescribed time period under earlier law
Goods cleared before appointed day but export made before/after appointed day		
Pending refund claims of		

earlier law on account of appeal, revision, review, finalizing of proceedings	partially rejected, then the amount so rejected shall stands to lapse; • It shall be paid in cash	
Tax deposited or payments received before appointed day but refund claims after appointed day		
Amount recoverable or refunded in pursuance of assessment or adjudication proceeding		

19. Claims of Cenvat credit pertaining to earlier law

Every proceeding of appeal, review, revision or reference pertaining to input tax credit under the earlier law and any amount found admissible will be paid in cash, in case of Central taxes and in accordance with the provisions of earlier law in case of State taxes. If any amount becomes recoverable, same will be recovered as arrear of tax under GST Law. Input Tax credits (ITC) of such arrears will not be available under GST.

20. Miscellaneous

Various situations will transition as follows under GST:

Situation	Under GST	Condition
Long term construction/ works contract	If supply done on or after the appointed day GST will be applicable	_
WC-TDS	No deduction is required	if payment made on or after appointed day
Progressive or periodic supply	No tax	if the payment has been received and tax has been deposited prior to appointed day
Arrear	Arrear of tax, interest, fine or penalty of an assessment or adjudication shall be recoverable as arrear of tax under GST	_
Price is revised in pursuance of a contract	Supplementary invoice or debit note to be issued for price revised upwards under GST; Credit note to be issued for price revised downwards under GST	Within a period of 30 days of such price revision; Taxable person shall be allowed to reduce his tax liability on account of issue of credit note only if the recipient has reduced his input tax credit corresponding to such reduction of tax liability

21. Treatment of tax paid on the goods lying with agents

Where any goods or capital 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 or capital goods. Section 142(14) in the SGST Acts provides certain conditions for it. The agent and principal, both will be required to declare details of goods so held in Form GST TRAN-1.

22. Un-availed credit on spectrum not reflected in the return on the appointed date

Normally only credit carried forward in a return is allowed under GST. However, there are special provision to allow credit of un-availed credit in respect of capital goods not carried forward in a return provided the said credit was admissible both under the earlier law as well as under the GST. Similar provisions are not there for un-availed credit in respect of spectrum. Telecom industry has represented for provisions similar to capital goods.

23. Credit by ISD

Input tax credit on any service received prior to appointed day by an ISD shall be eligible for distribution as credit under GST even if the invoices is received on or after the appointed day.

24. Credit of CST paid on goods/inputs lying in stock on appointed date

There are no provisions that permit availment of CST credit even though post GST inter-State supplies will be subject to full of IGST.

12. Other Routine Procedures in GST

	Registration
1.	**Registration under GST**

A supplier of taxable goods/ services, whose aggregate turnover in a financial year exceeds threshold limit in a financial year, has to get registered in the State from where he makes the supply. The threshold limits have been prescribed in section 22 of the CGST Act, 2017 as given below:

S. No.	Category of States	Threshold limit (Rs. In lakh)
1.	North-Eastern States	10
2.	Hilly States	10
3.	All other States/ UTs	20

The following categories of persons require registration under GST from the beginning, as concession of threshold limit is not available to them – Section 24 of the CGST Act, 2017.

1. Inter State suppliers
2. Persons who are required to pay tax under reverse charge
3. Casual taxable persons
4. Non resident taxable persons
5. Electronic commerce operators who are providing certain specified services as deemed suppliers
6. Notified persons who are required to make TDS
7. Persons who supply goods on behalf of other persons whether as an agent or otherwise
8. Input service distributor
9. Persons who are supplying goods/services through electronic commerce operators
10. Every electronic commerce operator
11. Every person supplying online information & database access or retrieval services from a place outside India to a unregistered person (consumer) in India
12. Any other class of persons notified by Government

2. Persons not liable for registration

1. A person whose aggregate turnover in a financial year is below the prescribed threshold limit and he does not fall in the list mentioned above;
2. A person exclusively engaged in the business of supplying non-taxable goods/services or supplies that are wholly exempt from GST;
3. An agriculturist, to the extent of supply of produce out of cultivation of land

3. Meaning of aggregate turnover

Aggregate turnover as defined under section 2(6) of the CGST Act is computed on all India basis for a person having same Permanent Account Number (PAN). It is sum of value of all outward supplies (excluding any tax paid under GST laws) falling in the following four categories:

- Taxable supplies
- Exempt supplies
- Exports of goods/services
- Inter-state supplies.

In case of an agent, the aggregate turnover also includes value of all supplies made on behalf of all his principals.

4.	**Meaning of exempt supplies**

Exempt supply as defined under section 2(47) of the CGST Act, 2017 means Supply of goods/services, which are

- Not taxable under GST
- Attract nil rate of tax
- Wholly exempt from tax through a Notification.

5.	**Obtaining registration under GST**

A supplier has to get registration in the State, where he is liable to be registered. Person intending to make supplies from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate base line is located. The registration can be obtained by uploading requisite information & documents on the common portal (gst.gov.in). Registration is a one time exercise except for casual taxpayers and non-resident taxpayers, who have to apply for renewal of registration after every 90 days from effective date of registration.

6.	**Documents required for registration**

Following documents are required for registration:

- Documents related to constitution of taxpayer.
- Proof of principal/additional place of business.
- Proof of bank account.
- Authorization form for each authorized signatory in prescribed format.

7.	**Changes that require amendment of registration**

Change related to the following can lead to amendment in registration.

i. Name of business
ii. Principal place of business
iii. Details of management responsible for business operations

8. Situations which can cause cancellation of GST registration

Following changes can lead to cancellation of registration:

i. The business is closed down.
ii. The business is sold.
iii. The constitution of business has changed.
iv. Taxpayer is no longer liable to be registered.
v. Taxpayer has contravened the provisions of the Act and rules made thereunder.
vi. Composition scheme holder has not filed returns for three consecutive tax periods.
vii. A taxpayer has not filed returns for a continuous period of six months.
viii. A person who has taken voluntary registration has not commenced business within 6 months of registration.

	Records & Accounts
9.	**Type of accounts & records a taxpayer has to keep & maintain**

Section 35 of the CGST Act, 2017 provides for maintenance of accounts and other records by taxpayers. Records and accounts of all taxable supplies, exempt supplies, zero rated supplies, supplies liable for tax under reverse charge which are received or supplied in the furtherance or course of business have to be kept and maintained. As per GST law, all taxable persons have to keep and maintain business records and accounts relating to the following at their principal place of business-

- All goods/services supplied or received
- Production or manufacture of goods
- Stock of goods
- Input tax credits availed
- Output tax payable and paid
- Other prescribed particulars

If….	then…
more than one place of business	keep accounts relating to each place of business at such place of business
not in a position to keep accounts as per provisions of law	approach GST authorities (commissioner/chief commissioner) for relaxation
commissioner/chief commissioner notifies to maintain additional accounts/documents	maintain additional records as per order/notification
turnover during a financial year exceeds two crore rupees [Section 35(5) read with Rule 80(3)]	get accounts audited by a chartered accountant/ cost accountant and submit a copy of audited annual accounts along with reconciliation statement & other prescribed documents to the GST authority.
records are not maintained properly	tax authorities can initiate proceedings related to demand & recovery of tax.

10. List of activities for which records must be maintained

Keep record of all operations connected with the business which affect the amount of GST charged or ITC claimed. These include:

i. Every supply of goods/services received, on which GST has been charged by the supplier.
ii. Every supply of goods/services received on which tax has been paid under reverse charge.
iii. All the outward supplies made including zero rated & exempt supplies.

11. Period for retention of accounts and other records

Section 36 of the CGST Act, 2017 provides for period of retention of accounts as under:-

Situation, if…	then retention of…
Normal	all records for seventy two months from the due date of filling of related annual return
an investigation is pending	relevant records till one year after closure of investigation
an adjudication is pending	relevant records till one year after order of adjudication
an appeal or revision is pending	relevant records till one year after final disposal of such appeal or revision

12. Special provisions about maintenance of records by a warehouse/godown operator

Section 35(2) of the CGST Act, 2017 provides that every owner or operator of warehouse/godown or any other place used for storage of goods, whether registered as a taxpayer or otherwise has to maintain records of consignor, consignee and other prescribed details.

13. Precautions that should be taken while accepting an invoice related to taxable inward supplies

Invoice related to a taxable inward supply should have all the essential contents of a GST invoice. These contents have been listed under the section relating to "Tax Invoice" of this Chapter. Proper invoice for recipient is a must for claiming ITC. Rule 36(2) of the CGST Rules, 2017 provides that input tax credit can be availed only if all the applicable particulars are contained in the tax paying document.

14. Records that have to be maintained for claiming ITC

- All invoices, debit notes, credit notes and their supporting documents related to inward supplies of goods/services received, on which GST has been charged by the supplier.
- All invoices, debit notes, credit notes and their supporting documents related to supply of goods/services, on which tax has been paid under reverse charge.
- Bills of entry including courier bills of entry and their supporting documents related to imported goods
- Certificate issued by appraiser of customs in post office related to goods imported through post office
- Records related to goods/services diverted for non-business purposes.
- Records related to goods/services falling in the negative list of ITC.
- Evidence of receipt of goods/services like gate pass

15. Accounts & records an Input Service Distributor (ISD) has to keep & maintain

An ISD has to keep & maintain business records and accounts relating to the following at his principal place of business:

- all services received
- input tax credits availed
- output tax payable and paid
- unit wise distribution of credits

Tax Invoice

16. Tax invoice - basic meaning

Tax invoice is a written account of particulars viz. description, quantity, price and the tax charged thereon etc. of goods or services supplied by a supplier to a recipient

17. Significance of a tax invoice

Tax invoice is a statutory document. Under the GST law it is compulsory for a supplier to issue an invoice. However for certain category of services, government may notify certain other documents like bus ticket, entry ticket, bank voucher etc. which can be deemed to be a tax invoice. A tax invoice is an essential document for a recipient for claiming input tax credits.

18. Issuing a tax invoice

Various scenarios related to date/time of issuance of an invoice are listed below (Section 31 of the CGST Act, 2017 read with Rule 47 of the CGST Rules, 2017):

(A) Supply of Goods	
When a taxpayer…	**then issue a tax invoice…**
supplies taxable goods which involves movement of goods.	before or at the time of removal of goods.

supplies taxable goods which does not involve movement of goods.	before or at the time of delivery of goods or making available thereof to the recipient.
makes continuous supply of goods, which involves successive statements of accounts or payments	before or at the time of issuance of such statement or receipt of such payment.
makes a supply in certain cases, where goods (being sent/taken for approval or sale or return or similar terms) are removed before it is known whether a supply will take place.	before or at the time when it becomes known that supply has taken place or six months from date of removal, whichever is earlier.
(B) Supply of Services	
When a taxpayer…	**then issue a tax invoice…**
makes a supply of service	within 30 days from the date of supply of service [45 days in cases where supplier is a banking company/NBFC/financial institution.]
makes continuous supply of services, where the due date of payment is ascertainable from the contract	before or after the payment is liable to be made by the recipient, but within 30 days after the due date whether or not any payment has been received by the supplier
makes continuous supply of services, where the due date of payment is not ascertainable from the contract	before or after each such time when payment is received but within 30 days of receipt of payment
makes continuous supply of services, where the payment is linked to the completion of an event	before or after completion of the event but within 30 days of completion of the event.
makes continuous supply of services, where the supply of service ceases under a contract before the completion of the supply	at the time when the supply ceases, for the supply effected before such cessation.
(C) Other scenarios	
When a tax payer…	**then issue…**
supplies exempted goods/services.	a bill of supply
who has opted for composition scheme makes a supply.	a bill of supply
receives an advance amount for any supply	a receipt voucher or any other document containing prescribed particulars evidencing receipt of such payment.
receives a supply, which is liable to tax under reverse charge, from an unregistered person	self-invoice on the date of receipt of such supply.

19. Essential contents of a tax invoice

(A). There is no specified format for a tax invoice however certain essential contents have been prescribed under invoice rules, which are listed below:

1.	Type of invoice (tax invoice, revised invoice or supplementary invoice)
2.	Name, address and GSTIN of the supplier
3.	A consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash symbolised as '-' and '/' respectively and any combination thereof, unique for a financial year.
4.	Date of issue of invoice
5.	HSN code of goods or accounting code of services
6.	Description of goods or services
7.	Quantity of goods or unit quantity code
8.	Total value of goods/services
9.	Taxable value of goods or services
10.	Rate of tax separately for Central tax, State/UT tax or Integrated tax and cess
11.	Amount of tax charged separately for Central tax, State/UT tax or Integrated tax and cess
12.	Place of supply along with name of state, in case of inter-state supply
13.	Address of delivery if same is different from place of supply
14.	Applicability of reverse charge is mentioned wherever applicable
15.	Signature or digital signature of supplier or his authorized representative

(B). Apart from the above invoice should have the following information:

When …	**then…**
supply is meant for a registered recipient	name, address and GSTIN/UID no. of the registered recipient
supply is meant for an unregistered recipient and taxable value of supply is Rs. 50,000/- or more	name & address of the recipient and the address of delivery, name of state & its code.
supply is for export	• Endorsement on the top "supply meant for export on payment of IGST" or "supply meant for export under Bond without payment of Integrated Tax"; • Name & address of the recipient, address of delivery and name of the country of destination

(C). Tax invoice in special cases should contain the following information:

When tax invoice is issued by a/an..	**…then invoice should have the information**
Input Service Distributor (ISD)	i. Name, address and GSTIN of the ISD ii. A consecutive serial number containing alphabets or numerals or special characters hyphen or dash and slash symbolised as, '-', '/', respectively, and any combination thereof unique for a financial year*

	iii. Date of issue iv. Name, address and GSTIN of the recipient of credit v. Amount of credit distributed vi. Signature or digital signature of the supplier (ISD) or his authorized representative
Banking company / NBFC / financial institution	Information mentioned at A. above, but following information is not essential: • Invoice serial no. • Address of the recipient
Goods transport agency	i. Information mentioned at 'A' above ii. Gross weight of the consignment iii. Name of the consignor & the consignee iv. Registered no. of goods carriage, used for transportation v. Details of goods transported vi. Details of place of origin & destination vii. GSTIN of person liable for paying tax.
Supplier of passenger transport service	Information mentioned at A. above and ticket; but address of the recipient is not essential.
*Not essential if ISD is a banking company/NBFC or Financial institution.	

(D). Raising Copies of Invoice

The GST Law requires businesses to keep copies of all of their invoices. The details of this are furnished below.

(1). Invoices for Supply of Goods

The invoice must be prepared in **triplicate**. They will be clearly marked as:

1. Original Copy for the use of the recipient
2. Duplicate Copy for the use the transporter
3. Triplicate Copy for the use of the supplier

(2). Invoices for Supply of Services

The invoice must be prepared in **duplicate** and clearly marked as:

1. Original Copy for the use of the recipient
2. Duplicate Copy for the use the supplier

Form GSTR-1 will contain the serial number of invoices issued during the tax period along with other details of purchases.

Registered persons selling exempted goods/services or paying GST under composition scheme will need to issue a separate bill of supply.

(E). HSN Code

Turnover less than 1.5 crores	HSN code is not required to be mentioned
Turnover between 1.5 to 5 crores	can use 2-digit HSN code
Turnover above 5 crores	must use 4-digit HSN code

20. Bill of Supply

A supplier supplying exempted goods or service or a supplier who has opted for composition levy scheme has to issue a bill of supply instead of a tax invoice [Section 31(3)(c) of the CGST Act, 2017]. A bill of supply is not eligible for claiming input tax credits.

21. Rectification of an error in an invoice

If…	Then…
there is a typographical/clerical error in the invoice	issue an amended invoice
higher taxable value or tax rate has been charged resulting into higher tax amount	issue a debit note and report in the next return
lower taxable value or tax rate has been charged resulting into lower tax amount	issue a credit note and report in the next return

22. Receipt voucher on receipt of advance payment

Section 31(3)(d) of the CGST Act, 2017 provides for issuance of a receipt voucher on receipt of advance for supply by a taxpayer. Rule 50 the CGST Rules, 2017 provides for minimum contents for receipt voucher. List of contents is elaborate. The person receiving advance need to know precise details of proposed supply such as description of goods or services, total value, taxable value, rate of tax, amount of tax, place of supply, intra-State/ inter-State nature of supply and so on.

23. Invoice on receipt of goods or services from an unregistered supplier

Section 31(3)(f) of the CGST Act, 2017 provides that in respect of supply of taxable goods or services or both by a supplier, who is not registered the tax is to be paid by the registered recipient on reverse charge basis. Such registered recipient will issue an invoice on the date of receipt of supply. Notification No. 8/2017-Central Tax (Rate) dated 28th June, 2017 has exempted levy of tax on reverse charge basis on receipt of supplies from an unregistered supplier so long the aggregate value of such supplies from any or all the suppliers does not exceed five thousand rupees in a day.

Second proviso to Rule 46 permits issue of a consolidated invoice at the end of a month for payment of tax on reverse charge basis on supplies received from unregistered suppliers.

24. Payment voucher for goods or services taxable on reverse charge basis

Section 31(3)(g) of the CGST Act, 2017 provides that a registered recipient of supply of taxable goods or services or both which are taxable on reverse charge basis whether for the reason of such supplies falling in the notified category supplies or for the reason of supplier being an unregistered person will be required to issue a payment voucher at the time of making payment for such supplies. Rule of the CGST Rules, 2017 provides minimum contents for such payment voucher.

Payment of Tax and other dues under GST

25. How to pay tax and other dues

A taxpayer or his representative can generate a challan from common portal and fill the details of the amount to be deposited and purpose thereof. The said challan will be valid for 15 days.

The desired amount can be deposited only through banks. On successful payment, a challan identification no. (CIN) will be generated by the bank and same will be indicated in the challan. The modes of payment can be:

If…	**….then**
amount is up to Rs. 10,000/- per tax period [*exception:* amount restriction does not apply in case of deposits by Government departments/ notified persons/ tax authorities.]	over the counter of an authorised bank through cash, cheque or demand draft.
any amount more than Rs. 10,000/-	***Option 1 (Through authorised banks):*** • Internet banking • Credit card/debit card after registering the same on common portal • National Electronic Fund Transfer (NeFT); or • Real Time Gross Settlement (RTGS) ***Option 2 (Through any bank):*** • National Electronic Fund Transfer (NeFT); or 1) Real Time Gross Settlement (RTGS) from any bank.

26. Electronic tax liability register

For every tax payer an electronic tax liability register will be maintained on the common portal (gst.gov.in) and it will be debited or credited as per the following actions:

Dr.	**Cr.**
For amount payable towards tax, interest, late fee or any other amount as per the return	On payment of liability by using input tax credits.
For amount payable towards tax, interest, late fee or any other amount as determined by the tax authorities.	On payment of liability by cash.
For amount of tax & interest payable due to mismatch of invoices	On reduction in liability by an appellate authority.
For any other amount of interest that may accrue from time to time.	–

27. Electronic cash ledger

For every tax payer an electronic cash ledger will be maintained on the common portal (gst.gov.in) for crediting the amount deposited and debiting the payment towards tax, interest, penalty, fee or any other amount. The date of credit to the bank account of appropriate government will be deemed to be date of deposit in the electronic cash ledger.

28. Electronic credit ledger

For every tax payer an electronic credit ledger will be maintained on the common portal (gst.gov.in) for crediting every claim of input tax credits and available credit can be used for discharge of tax liability only.

29. Utilising input tax credit for payment of tax

Input tax credits can be utilised in the following manner:

Type of Tax credit	First for payment of	Then for payment of	Remaining amount can be used for payment of
Integrated tax	Integrated tax	Central tax	State/ UT tax
Central tax	Central tax	Integrated tax	**cannot be used for payment of State/ UT tax**
State/ UT tax	State/ UT tax	Integrated tax	**cannot be used for payment of Central tax**

30. Date by which tax has to be deposited

Tax has to be paid not later than the last date on which return is to be filed. The date of credit to the bank account of the government will be the date of payment of tax. In case of normal taxpayers due date is 20th of the next month of the tax period.

What if….	…then
Tax is not paid on time and there is a pending liability	Pending liability will attract interest. Return without full payment of self-assessed tax will not be treated as a valid return.
Tax is not paid by the supplier.	Recipient will not be entitled to avail input tax credit. Tax credit provisionally availed by such recipient will be liable for reversal.
Someone wants to deposit tax after due date	Pay tax along with interest

31. Order in which a taxpayer has to discharge his tax and other dues

The taxpayer has to discharge his tax and other dues in the following manner:

1. Self-assessed tax and other dues related to returns of previous tax periods;
2. Self-assessed tax and other dues related to return current tax period;
3. Any other amount payable under the GST Act & Rules there under

Tax Returns under the GST

32. Meaning of a tax return

A statutory document wherein a tax payer has to declare certain information like details of his inward supplies, outward supplies, tax paid and payable, input tax credits availed etc. is called a return. Under GST, all returns are to be filed online and a return has to be filed even if there was no business activity during the period covered by the return.

33. Types of returns prescribed under GST

The types of returns, nature of compliance, periodicity and reference to statutory provisions and return rules are tabulated hereunder:

Form GSTR	Nature of compliance/ category of tax payer	Periodicity	Due date in the succeeding month	Section/ Return Rule
1	Furnishing details of	Monthly	10^{th}	S.37 Rule-

	outward supplies			59(1)
2A	Auto drafted details of supplies to the Recipient (paying tax u/s 9)	Monthly	After 10th	S.37 Rule-59(3)
2	Filing of monthly details of inward supplies	Monthly	15th	S. 38(2) Rule 60
1A	Communication of auto drafted details of supplies to the Supplier	Monthly	After 15th	S.38(3) /(4) Rule 59(4)
3	Monthly Return	Monthly	20th	S.39(1) Rule 61
4	Composition Taxable person	Quarterly	18th	Section 39(2) Rule 62
4A	Auto drafted details to recipient being a Composition Tax payer	Quarterly	After 10th	S. 37 Rule-59(3) & 66(2)
5	Return for Non-Resident Taxable person	Monthly	20th	S. 39(5) Rule 63
5A	Details of supplies of OIDAR services provided by person located outside India to a nontaxable person in India	Monthly	20th	Rule 64
6	Return of Input Service Distributors	Monthly	13th	S. 39(4) Rule 65
6A	Auto drafted details to recipient being an ISD	Monthly	After 10th	S. 37 Rule 59(3) & 65
7	TDS return	Monthly	10th	S. 39(3) Rule 66
8	Statement of TCS	Monthly	20th	S. 52(4) Rule 67(1)
11	Inward supply statement by UIN holders	Monthly	??	Rule 82

Second proviso to section 37(1), first proviso to section 38(2) and section 39(6) of the CGST Act, 2017 empowers the Commissioner to extend the dates of filing of forms GSTR-1, GSTR-2 and GSTR-3 respectively. Rule 61(5) of the CGST Rules, 2017 provides that in case of extension of dates of filing of forms GSTR-1 and GSTR-2, a return in form GSTR-3B needs to be furnished in lieu of return in form GSTR-3. The Government, through series of Notifications issued on 8 th August, 2017 extended dates for furnishing of forms GSTR-1, GSTR-2 and GSTR-3 for the months of July and August 2017. A separate Notification of

even date was issued providing for dates for filing of form GSTR-3B for these two months.

34. Revision of a tax return

A tax return cannot be revised. However errors in a return can be rectified by amending the entries which have caused errors in a return and posting the updated entries in the next return.

No rectification is allowed after due date of filing of the return for the month of September of the next financial year (20th October) or actual date of filing of annual return, whichever is earlier.

35. Uploading of inward and outward supplies and their matching

Common portal will match the input tax credits (ITC) claimed by a recipient with tax paid by the supplier. A normal supplier has to monthly upload invoice level details of his outward supplies by 10th of next month. Details to these supplies will be made available to all his recipients, who can verify and validate the same with their purchase records and accordingly file details of their inward supplies by 15th . Subsequently supplier will receive an intimation about the action taken by his buyers, and will have an option to verify and validate claims of his buyers vis-à-vis his (suppliers) outward supply claims by 17th . Based on this self-matching exercise, a taxpayer will calculate & discharge his tax liability before filing his monthly return on 20th. Provisional ITC will be allowed to the recipient based on his claim.

36. Key points in matching, reversal and reclaim of input tax credits (ITC)

1) Every B2B invoice/debit note of the supplier linked to ITC has to be compared with details of inward supplies uploaded by the recipient for checking the veracity of his ITC claims;
2) Comparison to be based on 5 parameters viz. GSTIN of supplier, GSTIN of recipient, invoice or debit note number, invoice or debit note date and tax amount (Rule 69);
3) Invoice/debit note to be considered as matched if the all the said 5 parameters match;
4) Invoice/debit note to be also considered as matched if 4 parameters match and ITC claimed by recipient is less than the tax paid by the supplier (Explanation (ii) to Rule 69);
5) Mismatch of any parameter to be communicated to both supplier and recipient;
6) Provisional ITC claim related to an unmatched invoice to be disallowed and tax liability along with interest to be added to the output tax liability of recipient for the month, next to the month in which mismatch was communicated;
7) Recipient will have the option to reclaim the ITC if supplier rectifies the details of unmatched invoice/debit note in his future returns. However no rectification is allowed after filing of annual return or due date of filing of return for the month of September of the next financial year (20th October), whichever is earlier.

37. Reporting of advance amount in outward supply return

On receipt of advance, a receipt voucher or any other document containing prescribed particulars evidencing receipt of such payment has to be issued. A count of such receipt vouchers is to be reported in Form GSTR-1 of the tax period. However the taxpayer need to discharge tax liability arising on receipt of advance only if the invoice has not been issued in the same tax period in which the advance was received. (Instruction 15 to Form GSTR-1)

38. Late fees on late filing of returns

What If………	**…….then**
A taxpayer fails to upload details of outward supplies or inward supplies or monthly return by due dates.	Pay late fee of Rs. 100/- per day till details are uploaded, subject to maximum of Rs. 5000/-.

A taxpayer fails to upload final return by due date.	Pay late fee of Rs. 100/- per day till details are uploaded, subject to maximum of Rs. 5000/-.
A taxpayer fails to upload annual return by due date.	Pay late fee of Rs. 100/- per day till details are uploaded, subject to maximum of an amount calculated at quarter percent of his turnover in the state.

39. Tax Deduction at Source (TDS)

1) Appropriate Government may mandate a government department/agency or local authority or any other person to deduct tax (TDS) at the rate of two percent (one percent for Central Tax and one percent for State/UT Tax) from the payment made to the supplier of taxable goods/services, where total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees.
2) Deductor responsible to deduct tax at source has to take a mandatory registration under GST Law.
3) Deductor to deposit TDS with the appropriate government within 10 days of next month and to file a monthly return by 10th of next month. Failure to deposit TDS with appropriate will attract interest.
4) Deductor to issue a certificate to the supplier, within five days of crediting the amount to appropriate government otherwise deductor will be liable to pay a late fee of Rs. 100 per day from the expiry of five days until the mistake is rectified. The maximum amount of penalty is Rs. 5000.
5) The supplier of such supplies, for which tax has been deducted at source can claim credit of such amount (TDS) in his electronic cash ledger.

Compliance & Tax Authorities

40. Assessment under GST

Every taxpayer shall himself assess the taxes payable under the GST Acts & furnish periodic returns. However if he is unable to determine the value or rate of tax of supply, he may make a request for provisional assessment to the tax authorities.

41. Scrutiny of returns by tax authorities

To verify correctness of the returns, tax authorities may scrutinize the same and seek explanation of the taxpayer. In case explanation is not found satisfactory then tax authorities may initiate action to safeguard the revenue.

42. Audit of records by tax authorities

Audit by or on behalf of tax authorities is a tool to check the status of tax compliances being followed by a taxpayer. Under GST Law three type of audits have been prescribed.

Type of Audit	Who can conduct	Who can order	Time period to complete the audit
Audit by Tax Authorities	Commissioner or an officer authorized by him	Commissioner	Three months from start of audit, which can be extended by another three months by respective Commissioner
Special Audit	Nominated chartered	AC/DC after	90 days

	accountant or cost accountant	approval from Commissioner	
CAG Audit	Officers of CAG	Officers of CAG	Not prescribed

Tax authorities can start proceedings related to demand & recovery of tax, if tax evasion is detected during the audit.

43. GST compliance rating

Section 149 of the CGST Act, 2017 introduces concept of GST compliance rating. It can be called compliance report card. Tax authorities will assign a GST compliance rating score to every taxpayer, which will be determined based on certain prescribed parameters and will be updated after periodic intervals. Score will be intimated to the taxpayer and placed in the public domain. It is expected that scoring will help in improving tax compliance.

44. Some Illustrative scenarios of complicated compliance scenarios

What if…	then….
goods are received back without delivery to the buyer	issue credit note and acceptance of credit note by customer
defective goods returned by the customer	issue credit note and acceptance of credit note by customer OR the customer returns the goods on a new invoice.
short receipt of goods (ex-work supply)	recipient claim tax credits related to actual receipt, tax credits related to lost goods cannot be claimed by supplier
payment of goods or services has not been made to the supplier within a period of 180 days of issuance of invoice	Credit proportionate to unpaid amount will be added to the output liability of recipient along with interest. Recipient can re-avail credit on making payment
inward supply received in more than one lot	avail ITC credit after receipt of last lot
tax paid on receipt of advance but order cancelled (one time customer)	supplier to issue the refund voucher to the person who had made the payment supplier
CGST/SGST paid on receipt of advances but subsequently supply is made inter-state	IGST to be paid and refund claim for CGST/SGST to be filed.
invoice not uploaded on common portal by supplier but booked by recipient in his books of account	recipient can claim ITC by uploading it on common portal while filing his GSTR2 return; provisional credit for 2 months till rectification/ acceptance by supplier

Sources for compilation of GST - Comprehensive Notes for CA/ CS/ CMA Final

CBEC

GST Twitter Handle

Taxmann's GST

JioGST

IDTC of ICAI

ICSI Education Series

ICMAI GST Analysis

Bharat Law House's GST Ready Referencer

ET GST Analysis