After 31st Dec'18 Changes- Meaning of No Supply, Non GST Supply, Non Taxable Supply, NIL Rated Supply, Exempt Supply etc.

Definition may be comparatively easy to understand when it is being defined in the GST Act. It will most critical to understand the term when not defined in the Act and then used in Form/Returns with an Expectation by Govt to report the correct data and submit correct Returns by the registered person.

Based on my understanding, I would like to explain the meaning of each term with the help of definition/instruction etc. given in the Act. I do agree that there may be different view as well.

Sr.No	Types	Section in GST Act	Reporting in GSTR Return
1	Taxable Supply	Section 2(108) of CGST Act	**GSTR 3B –** • Outward Taxable Supply - Table 3.1.a, Table 3.2 • Inward Taxable Supply – Table 4.A **GSTR -1** • Outward Supply Table 4,5,6 & 7
2	Non Taxable Supply	Section 2(78) of CGST Act	This exact term has not been used in GSTR Return 3B/GSTR 1 etc.
3	Exempt Supply	Section 2(47) of CGST Act	**In GSTR 3B –** Outward Exempted/Nil Rate–Table 3.1.c Inward Exempted/Nil Rate - Table 5 **In GSTR 1** – Outward Supply – in Table 8
4	NIL Rated Supply	Not Defined in GST	
5	No Supply	Not Defined in GST	• Table 7 of GSTR 9C (Reconciliation Statement & Certification) • Instruction to GSTR 9 (Annual Return) for table 5D, 5E & 5F
6	Non GST Supply	Not Defined in GST	**In GSTR 3B** • Outward Non GST Supply –Table 3.1.e • Inward Non GST Supply - Table 5 **In GSTR 1** • Outward Non GST Supply – in Table 8
7	Zero Rated Supply	Section 16 of **IGST Act**	In GSTR 3B - Table 3.1.b In GSTR 1 - Table 6a & 6b
8	Deemed Export	Section 2(39) and Section 147 of CGST Act	In GSTR 3B – No Separate Table So clubbing it with 3.1.a In GSTR 1 - Table 6c
9	Merchant / Penultimate Export	Notification No 40/2017 Central Tax (Rate) dated 23.10.2017 **or** Notification No 41/2017-Integrated Tax Rate dated 23.10.2017	**In GSTR 3B –** No Separate Table So clubbing it with 3.1.a **In GSTR 1 -** No Separate Table So clubbing it with Table 4A (against tax Rate of 0.1%)

Taxable vs. Non Taxable Supply

1. **Taxable Supply** - As per Section 2(108) "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;

2. **Non Taxable Supply** – As per Section 2(78) "non-taxable supply" means a supply of goods or services or both which is **not leviable to tax** under this Act or under the IGST Act;

In order to categorise any supply as Taxable/Non Taxable, we have to satisfy the below conditions -

- Condition 1 - transaction is of supply of goods or services or both and then
- Condition 2 – Determine its Leviability to Tax
  - if it is LEVIABLE to tax → Taxable Supply or
  - if it is **NOT LEVIABLE** to tax → Non Taxable Supply.

Condition 1 – The Transaction should be supply of goods or service or both. Below are the 2 situations, when condition no 1 will not be fulfilled -

A. **When the Transaction shall be treated neither as a supply of goods nor a supply of service,** (Section 7(2) of CGST Act 2017)
   - Activities or transactions specified in Schedule III or
   - such activities or transactions undertaken by the Government or any local authority in which they are engaged as public authorities, as may be **notified** by the Government. Till now, below service has been notified vide Notification No 14 of Central Tax Rate dated 28th June'17

     "Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution."

B. **If it is neither Goods nor Services.**
   As per the definition of Goods by virtue of Sec 2(52) of CGST Act and definition of service by virtue of Sec 2(102) of CGST Act, **Money and Securities** are the 2 common items which are neither goods nor services.

Condition No 2– Understanding of Leviability to tax?

We need to refer the Section 9(1) and Section 9(2) of CGST Act 2017.

Section 9(1) of CGST Act, subject to the provisions of sub-section (2), there shall be ***levied a tax called the CGST*** on all intra-State supplies of goods or services or both, ***except on the supply of alcoholic liquor for human consumption***, on the value determined u/s 15 and at such rates, not exceeding 20%, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Section 9(2) of CGST Act -The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall ***be levied with effect from such date as may be notified*** by the Government on the recommendations of the Council.

Therefore following items **are not leviable to tax** and it may **be treated as non-taxable supply**-

(1) Alcoholic liquor for human consumption,
(2) 5 Specified petroleum products i.e.
    (a) petroleum crude,
    (b) high speed diesel,

(c) motor spirit (commonly known as petrol),
(d) natural gases and
(e) aviation turbine fuel

Please note that term Non-Taxable Supply is not used anywhere in the GSTR 3B, GSTR 1 etc.

Exempt Supply vs Nil Rated

3. **Exempt Supply - As per Section 2 (47) of CGST Act 2017 "exempt supply"** means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax u/s 11 of CGST Act, or u/s 6 of the IGST Act, and includes non-taxable supply;

We can say Exempt Supply is a wider term and includes three types of supplies i.e. -

a) NIL Rated Supply,
b) Wholly Exempt from Tax u/s 11 of CGST Act or u/s 6 of IGST,
c) Non Taxable Supply

We do agree that all the above three are exempt supply by virtue of Section 2(47) of CGST Act however we need to differentiate further to each other, because of the separate column for reporting in GSTR 3B/GSTR 1 and other GST return etc.

For ease of understanding, Screen Shot of relevant Table of GSTR 3B & GSTR 1 are provided below –

Table 3.1 of GSTR 3B

3.1 Details of Outward Supplies and inward supplies liable to reverse charge

Nature of Supplies	Total Taxable value	Integrated Tax	Central Tax	State/UT Tax	Cess
1	2	3	4	5	6
(a) Outward taxable supplies (other than zero rated, nil rated and exempted)					
(b) Outward taxable supplies (zero rated)					
(c) Other outward supplies (Nil rated, exempted)					
(d) Inward supplies (liable to reverse charge)					
(e) Non-GST outward supplies					

Table 5 of GSTR 3B -

5. Values of exempt, nil-rated and non-GST inward supplies Help

Last Save request has been processed successfully.

Nature of Supplies	Inter-State Supplies (₹)	Intra-State Supplies (₹)
From a supplier under composition scheme, Exempt and Nil rated supply	₹0.00	₹0.00
Non GST supply	₹0.00	₹0.00

Table 8 of GSTR 1

8. Nil rated, exempted and non GST outward supplies

Description	Nil Rated Supplies	Exempted (Other than Nil rated/non-GST supply)	Non-GST supplies
1	2	3	4
8A. Inter-State supplies to registered persons			
8B. Intra- State supplies to registered persons			
8C. Inter-State supplies to unregistered persons			
8D. Intra-State supplies to unregistered persons			

I would like to share the Notification No for Rates and Exemption for Supply of Goods and Services.

Notification for **Rate of Taxes** of Goods/Services	Notification for **Exemption** of Goods/Services
01/2017 – Central Tax (Rate) dated 28th June 2017 – CGST Rate of Tax for Goods	02/2017 – Central Tax(Rate) dated 28th June 2017 - List of Exempted Goods
11/2017 - Central Tax(Rate) dated 28th June 2017- Rate of Taxes for Supply of Service	12/2017 - Central Tax(Rate) dated 28th June 2017- Exemptions on supply of services

4. ***Nil Rate Supply –*** Not defined in GST Act however as per my view it will be those supply of goods or service which are part of GST Tariff and chargeable to NIL Rate. **This will not carry any tax even though it is not forming part of exemption notification.**

   Like in case of goods, rates of tax are defined in Notification No 01/2017 – Central Tax (Rate) dated 28th June 2017 and which are having the following schedules chargeable to tax @ 2.5%, 6%, 9%, 14%, 1.5% and 0.125%. There is no schedule which is chargeable as NIL Rate so in case of goods there is **no NIL Rated supply**.

   I. 2.5 per cent. in respect of goods specified in Schedule I,

II. 6 per cent. in respect of goods specified in Schedule II,
III. 9 per cent. in respect of goods specified in Schedule III,
IV. 14 per cent. in respect of goods specified in Schedule IV,
V. 1.5 per cent. in respect of goods specified in Schedule V, and
VI. 0.125 per cent. in respect of goods specified in Schedule VI

Now in case of **Supply of Service**, rates of tax are defined in Notification No 11/2017 Central Tax Rate dated 28th June 2017 and which are having the various tax rate, including some tariff heading which are classifiable as Rate of tax (%) NIL, will be categorised as **NIL Rated Supply**.

Relevant Serial Number of Notification No 11 having the Rate (Per Cent) as NIL-

Sr No 24 of Notification No 11/2017 Central Tax (Rate) dated 28th June 2017

Sl. No.	Chapter, Section or heading	Description of Service	Rate (Per Cent.)	Condition
24	Heading 9986	(i) Support services to agriculture, forestry, fishing, animal husbandry.	NIL	NIL

In the main Tax Rate Notification No 11/2017, following services were further inserted vide Notification No 1/2018 – Central Tax Rate dated 25th Jan 2018 having the Tax Rate as NIL-

Sl. No.	Chapter, Section or heading	Description of Service	Rate (Per Cent.)	Condition
16	Heading 9972	(i) Services by the Central Government, State Government, Union territory or local authority to governmental authority or government entity, by way of lease of land.	NIL	NIL
		(ii) Supply of land or undivided share of land by way of lease or sub lease where such supply is a part of composite supply of construction of flats, etc. specified in the entry in column (3), against serial number 3, at item (i); sub-item (b), sub-item (c), sub item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi). Provided that nothing contained in this entry shall apply to an amount charged for such lease and sub-lease in excess of one third of the total amount charged for the said composite supply. Total amount shall have the same meaning for the purpose of this proviso as given in paragraph 2 of this notification.	NIL	NIL

Question - If we refer the Notification No 12/2017 Central Tax Rate dated 28th June 2017, services are having rate (per cent) described as **NIL so does it means that it will be a NIL Rated Supply**?

CA Arun Chhajer

Answer - No. Exemption notification for Goods (Notification No 2/2017 dated 28th June 2017) and for Service (Notification No 12/2017 dated 28th June 2017) was issued by the Govt. in exercise of the power conferred by sub-section (1) of **section 11 of CGST Act** and exempted from whole of tax. Therefore it will be categorised as Exempt Supply irrespective of the sign being used against such supply like 'NIL' or '-' or '0%' etc.

<u>No Supply vs Non GST Supply</u>

5. **<u>No Supply</u>** - It is not defined in GST and it is being used first time at 2 places –
   (1) GSTR 9C (Reconciliation Statement & Certification)- **<u>in Table 7C of GSTR 9C</u>** (Format of GSTR 9C is revised and notified vide Notification No 74/2018 – Central Tax dated 31st Dec'18)
   (2) **Instruction to GSTR 9** (Annual Return) **<u>– Instruction to Table No 5D,5E & 5F</u>** (Format of GSTR 9 is notified vide Notification No 74/2018 – Central Tax dated 31st Dec'18)

<u>Screen Shot of relevant part of GSTR 9C & GSTR 9 are produced as under</u>

(a) <u>GSTR 9C – Table No 7</u>

7	**Reconciliation of Taxable Turnover**	
A	Annual turnover after adjustments (from 5P above)	<Auto>
B	Value of Exempted, Nil Rated, Non-GST supplies, No-Supply turnover	
C	Zero rated supplies without payment of tax	
D	Supplies on which tax is to be paid by the recipient on reverse charge basis	
E	Taxable turnover as per adjustments above (A-B-C-D)	<Auto>
F	Taxable turnover as per liability declared in Annual Return (GSTR9)	
G	Unreconciled taxable turnover (F-E)	**AT 2**
8	**Reasons for Un - Reconciled difference in taxable turnover**	

b) **GSTR 9 Annual return** – Table 5 and Instruction to table 5D, 5E & 5F

5	**Details of Outward supplies made during the financial year on which tax is not payable**					
A	Zero rated supply (Export) without payment of tax					
B	Supply to SEZs without payment of tax					
C	Supplies on which tax is to be paid by the recipient on reverse charge basis					
D	Exempted					
E	Nil Rated					
F	Non-GST supply (includes 'no supply')					
G	Sub-total (A to F above)					

Instructions to GSTR 9: –

5D,5E and 5F	Aggregate value of exempted, Nil Rated and Non-GST supplies shall be declared here. Table 8 of FORM GSTR-1 may be used for filling up these details. The value of —no supply shall be declared under Non-GST supply (5F).

<u>As per my view 'No Supply' should include</u> the Activities or transaction which are neither supply of goods nor supply of service as mentioned in Section 7(2) of CGST Act i.e.

- Activities or transactions specified in Schedule III or
- such activities or transactions undertaken by the Government or any local authority in which they are engaged as public authorities, as may be notified by the Government. Till date one notification has been issued. Notification No 14 of Central Tax Rate has been issued till date.

  "Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution."

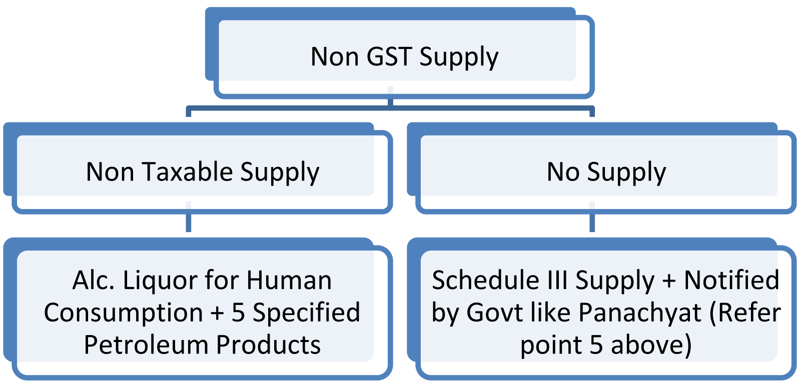
Question- Do we need to report 'No Supply' in GSTR 3B, GSTR 1 etc.?

Answer - As per the instruction given in GSTR 9 for the table 5D, 5E & 5F, The value of "no supply" shall also be declared under Non-GST supply (5F).

It is worthwhile to note that if something will form part of Annual Return i.e. GSTR 9 then it should also be reported under monthly return otherwise it will **lead to a reconciliation issue**. Also it is clearly stated under the instruction to GSTR 9 that '*Table 8 of FORM GSTR-1 may be used for filling up these details'.* Therefore we can say that **No Supply** should also be reported in GSTR 3B (Under Table 3.1.e & Table 5) and similarly under the table 8 of GSTR 1. Meaning thereby we will club it with Non GST Supply.

6. **Non GST Supply** - The term used in GSTR 3B is Non GST Supply which is again not defined in GST Act. Prima facie we should interpret as Non Taxable Supply only. Therefore a registered person should report following under the NON GST Supply
   (1) Alcoholic liquor for human consumption,
   (2) 5 Specified petroleum products i.e.
      (a) petroleum crude,
      (b) high speed diesel,
      (c) motor spirit (commonly known as petrol),
      (d) natural gases and
      (e) aviation turbine fuel

However after reading the instruction to GSTR 9 (Explained above), the value of No Supply should also be declared. Therefore we can say that **Non GST Supply for the purpose of reporting in GSTR 3B/GSTR 1** etc. will be the **sum total of Non Taxable Supply and No Supply.**



7. **Zero Rate Supply**

As per Section 16(1) of IGST Act 2017 "zero rated supply" means any of the following supplies of goods or services or both, namely:–

(a**) Export** of goods or services or both; or

(b) Supply of goods or services or both **to a Special Economic Zone** developer or a Special Economic Zone unit.

8. Deemed Export

According to Section 2(39) "deemed exports" means such supplies of goods as may be notified under section 147.

According to Section 147 of CGST Act, the Government may, on the recommendations of the GST Council, notify certain supplies of **GOODS** 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, if such goods are **manufactured in India**.

As per **Notification No 48/2018- Central Tax dated 18th Oct 2017** Central Government notifies the following supplies of goods as deemed exports –

S.No.	Description of supply
1	Supply of goods by a registered person against **Advance Authorisation**
2	Supply of capital goods by a registered person against **Export Promotion Capital Goods Authorisation**
3	Supply of goods by a registered person to **Export Oriented Unit**
4	Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation.

As per Explanation to said Notification No 48/2017-Central Tax dated 18th Oct'17-

- "**Advance Authorisation**" means an authorisation issued by the Director General of Foreign Trade (DGFT) under Chapter 4 of the Foreign Trade Policy (FTP) 2015-20 for import or domestic procurement of inputs on pre-import basis for physical exports.
- **Export Promotion Capital Goods Authorisation** means an authorisation issued by the DGFT under Chapter 5 of the FTP 2015- 20 for import of capital goods for physical exports.
- "**Export Oriented Unit**" means an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the FTP 2015-20.

9. Merchant Export/Penultimate Export – This is not an Export and simply it is a domestic supply only. 'Penultimate Export means **last sales made in India** to **the exporter** for the **purpose of export in the same form.**

Recipient (who in turn will do the actual exporter) on fulfilment of **certain condition as notified** can procure the goods at a subsidies rate (which is 0.1% IGST or 0.05%+0.05% CGST &SGST) from the supplier. In this case it will be a Merchant Export/ **Penultimate Export** in the hand of Supplier.

It will be reported by supplier as a normal B2B Supply under Table 3.1.a (in GSTR 3B) and under Table 4A (In GSTR 1).

Conditions are given vide Notification No 40/2017 Central Tax (Rate) dated 23rd Oct'17 or Notification No 41/2017 Integrated Tax (Rate) dated 23rd Oct'17. (For all conditions and entire discussion in soft copy, please download the attached File).

Conditions

(a) the registered supplier shall supply the goods to the registered recipient **on a tax invoice**;

(b) the registered recipient shall **export within a period of 90 days** from the date of issue of a tax invoice by the registered supplier;

(c) the registered recipient shall indicate the GSTIN of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be;

(d) the registered recipient shall be registered with an **Export Promotion Council** or a **Commodity Board** recognised by the Department of Commerce;

(e) the registered recipient shall **place an order** on registered supplier for procuring goods at **concessional rate** and a copy of the same shall also be provided to the **jurisdictional tax officer of the registered supplier;**

(f) the registered recipient shall **move the said goods** from place of registered supplier –

  (i) **directly to the Port**, Inland Container Deport, Airport or Land Customs Station from where the said goods are to be exported; or

  (ii) **directly to a registered warehouse** from where the said goods shall be move to the Port, Inland Container Deport, Airport or Land Customs Station from where the said goods are to be exported;

(g) if the registered recipient intends to **aggregate supplies** from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Deport, Airport or Land Customs Station from where they shall be exported; (viii) in case of situation referred to in condition

(h) the registered recipient shall **endorse receipt of goods on the tax invoice** and also obtain **acknowledgement of receipt of goods** in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and

(i) When goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of GSTIN and tax invoice of the registered supplier along with proof of **export general manifest or export report** having been filed to the registered supplier as well as **jurisdictional tax officer** of such supplier.

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