

## Chapter 3

# Levy and Collection of Tax

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### Statutory Provisions

#### 7. Scope of supply

- (1) *For the purposes of this Act, the expression “supply” includes—*
- (a) *all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
  - (b) *import of services for a consideration whether or not in the course or furtherance of business; **and**<sup>1</sup>*
  - (c) *the activities specified in Schedule I, made or agreed to be made without a consideration; **and**<sup>2</sup>*
  - (d) ~~*the activities to be treated as supply of goods or supply of services as referred to in Schedule II<sup>3</sup>*~~
- (1A) Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.<sup>4</sup>**
- (2) *Notwithstanding anything contained in sub-section (1), —*
- (a) *activities or transactions specified in Schedule III; or*
  - (b) *such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public*

<sup>1</sup> Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01<sup>st</sup> July, 2017

<sup>2</sup> Omitted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01<sup>st</sup> July, 2017

<sup>3</sup> Omitted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01<sup>st</sup> July, 2017

<sup>4</sup> Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01<sup>st</sup> July, 2017

*authorities, as may be notified by the Government on the recommendations of the Council,*

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

(3) *Subject to the provisions of **sub-sections (1), (1A) and (2)**<sup>5</sup>, the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—*

*(a) a supply of goods and not as a supply of services; or*

*(b) a supply of services and not as a supply of goods.*

#### SCHEDULE I

[See section 7]

##### ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:  
Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. Supply of goods—
  - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
  - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a **person**<sup>6</sup> from a related person or from any of his other establishments outside India, in the course or furtherance of business

#### SCHEDULE II

[See section 7]

##### ACTIVITIES OR **TRANSACTIONS**<sup>7</sup> TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

<sup>5</sup> Substituted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01<sup>st</sup> July, 2017. Prior to substitution it was read as "" sub-sections (1) and (2)"

<sup>6</sup> Substituted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01<sup>st</sup> February, 2019. Prior to substitution it was read as "taxable person"

<sup>7</sup> Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01<sup>st</sup> July, 2017

1. Transfer
  - (a) any transfer of the title in goods is a supply of goods;
  - (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
  - (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods
2. Land and Building
  - (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
  - (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.
3. Treatment or process

Any treatment or process which is applied to another person's goods is a supply of services.
4. Transfer of business assets
  - (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;
  - (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;
  - (c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—
    - (i) the business is transferred as a going concern to another person; or
    - (ii) the business is carried on by a personal representative who is deemed to be a taxable person.
5. Supply of services

The following shall be treated as supply of services, namely:—

- (a) renting of immovable property;
- (b) 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 after its first occupation, whichever is earlier.

Explanation.—For the purposes of this clause—

- (1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—
  - (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
  - (ii) a chartered engineer registered with the Institution of Engineers (India); or
  - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and
- (f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

#### 6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:—

- (a) works contract as defined in clause (119) of section 2; and
- (b) 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.

## 7. Supply of Goods

The following shall be treated as supply of goods, namely:—

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

## SCHEDULE III

[See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;  
(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or  
(c) 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.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
6. Actionable claims, other than lottery, betting and gambling.
7. **[Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.]**
8. (a) **Supply of warehoused goods to any person before clearance for home consumption;**  
(b) **Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption]<sup>8</sup>**

<sup>8</sup> Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01<sup>st</sup> February, 2019

Explanation 1.—For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

**Explanation 2.— For the purposes of paragraph 8, the expression “warehoused goods” shall have the same meaning as assigned to it in the Customs Act, 1962<sup>9</sup>**

#### **Relevant circulars, notifications, clarifications issued by Government**

1. Notification No. 14/2017-Central Tax (Rate) dated 28.06.2017 was issued to notify the supplies which shall be treated neither as a supply of goods nor a supply of service;
2. Circular No. 35/9/2018 dated 05.03.2018 was issued regarding taxability of services provided by a member of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV;
3. Circular No. 34/8/2018 dated 01.03.2018 was issued clarifying on the taxability of certain services;
4. Circular No. 1/1/2017-IGST dated 07.07.2017 was issued regarding Inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance to be treated as neither supply of goods nor supply of services;
5. Circular No. 21/21/2017 dated 22.11.2017 to clarify on Inter-state movement of rigs, tools and spares, and all goods on wheels like cranes;
6. Circular No. 10/10/2017-GST dated 18.10.2017 to clarify on goods moved within the State or from the State of registration to another State for supply on approval basis to be covered u/s 7 and chargeable to tax u/s 9.
7. GST Flyer as issued by the CBIT can be referred to for a gist of the statutory provisions, titled 'The Meaning and Scope of Supply'.

#### **Related provisions of the Statute**

<b>Section or Rule</b>	<b>Description</b>
Section 2(31)	Definition of Consideration
Section 2(17)	Definition of Business
Section 2(5)	Definition of Agent
Section 2(88)	Definition of Principal

<sup>9</sup> Inserted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01<sup>st</sup> February, 2017

Section 15	Value of taxable Supply
Section 25	Registration
Section 16	Input tax credit
Chapter IV – Rules	Determination of Value of Supply Rules

### 7.1 Introduction

While the definition of the word ‘supply’ is inclusive, the legislature has carefully chosen not to use the word/s such as “means”, or “means and includes”, “shall mean”, or “shall include”, etc. A careful consideration of the above explanation would indicate that the draftsman is cautious about any transaction of supply that might escape the levy. It is for this reason that despite being exhaustive, the legislature has used the word “includes”.

A plain reading of the definition of the word ‘supply’ contained in Section 7(1) would invite anybody’s attention to the 8 words – sale, transfer, barter, exchange, license, rental, lease or disposal. Look at these 8 words – they are arranged in a descending order. Words 2 to 8 was a subject matter of challenge under the erstwhile State-level VAT Laws. This ambiguity has been done away with in the GST Laws. These 8 words together form a ‘continuum’. The last 7 words taper-off in their the absoluteness starting from the first of the forms of supply, that is, ‘sale’.

The Model GST Law released in June 2016 had included the meaning of the term ‘Supply’ within the clauses of the definition Section. However, in GST law, the term ‘supply’ is defined by way of a separate and distinct section. One understands that the meaning attributed to the term “Supply” is of very wide amplitude, but yet, an inclusive one. It must be noted that this term is ordinarily attributable to an ‘outward supply’, unless the context so requires that the term refers to an inward supply - say in case of importation of services or in respect of transactions without consideration etc. Many things come within ‘supply’ but not everything is ‘supply’. Supply too has boundaries and many transactions are excluded from its grasp. This points to a clear understanding that expression ‘supply’, although inclusively defined, does have a recipe or a set of ingredients that each transaction must be tested against to see if it is or is not a ‘supply’.

The word ‘supply’ could be understood as actual or implied. Implied supplies are governed by the relevant Schedules. The three pillars of a supply would be:

- (a) subject – viz. goods, services or goods treated as services. One cannot find an instance in the GST statute where a supply of services is treated as a supply of goods.
- (b) place of supply – to identify whether the transaction is an inter-State supply or an intra-State supply
- (c) time of supply – where legislature specifies ‘when’ the incidence is attracted.

## 7.2 Analysis

### Supply:

- (a) **Generic meaning of 'supply':** Supply includes all forms of supply (goods and / or services) and includes agreeing to supply when the supply is for a consideration and in the course or furtherance of business (as defined under Section 7 of the Act). It specifically provides for the inclusion of the following 8 classes of transactions:

- (i) Sale
- (ii) Transfer
- (iii) Barter
- (iv) Exchange
- (v) License
- (vi) Rental
- (vii) Lease
- (viii) Disposal

The word 'supply' is all-encompassing, subject to exceptions carved out in the relevant provisions. There are various ingredients that differentiate each of these eight forms of supply. On a careful consideration of the purposeful usage of these eight adjectives to enlist them as 'forms' of supply, it becomes clear that the legislature makes its intention known by the choice of words that are deliberate and unambiguous. However, the definition starts off with the phrase – "For the purpose of this Act", which means that wherever the term supply has been used anywhere in the Act, the meaning should always be derived from this section 7 and cannot be substituted by any other understanding of the term supply.

Barter means a "thing or commodity" given in 'in return of' another. In other words, no value is fixed- viz., barter of wrist watch with a wall clock.

Disposal means distribution, transferring to new hands, extinguishment of control over, forfeit or pass over control to another but in respect of goods that are 'unfit for sale'. Surely, discounted sale is not called disposal if the articles are still 'fit for sale'.

Transfer means to pass over, convey, relinquishment of a right, abandonment of a claim, alienate, each or any of the above acts, lawfully.

An attempt at identifying the characteristics of each of these forms of supply is provided below:



Forms of Supply	Two Capable Persons	Consideration in Money (Price)	Willingness to Contract		Delivery of Possession	Permanent alienation	Consensus	Object of Supply		
			Seller	Buyer				Identity of Object		
								Services	Movable	Immovable
Sale	✓	✓	✓	✓	✓	✓	✓	x	✓	NA
Transfer	✓	✓	x	✓	✓	✓	✓	x	✓	✓
Barter	✓	x	✓	✓	✓	✓	✓	✓	✓	x
Exchange	✓	x	✓	✓	✓	✓	✓	x	x	✓
License	✓	✓/x	✓	✓	x	x	✓	✓	✓	✓
Rental	✓	✓/x	✓	✓	✓	x	✓	x	✓	x
Lease	✓	✓/x	✓	✓	✓	x	✓	x	✓/x	✓
Disposal	✓	✓	✓	x/✓	✓	✓	x	x/✓	✓	x

On an understanding of the above chart, one may infer that 'supply' is not a boundless word of uncertain meaning. The inclusive part of the opening words in this clause may be understood to include everything that supply is generally understood to be PLUS the ones that are enlisted. It must be admitted that the general understanding of the word 'supply' is but an amalgam of these 8 forms of supply.

Please follow the brief discussion of the 8 forms of supply:

- Sale is a lawful, permanent and absolute transfer of ownership of property in goods for money consideration under a valid contract such that no rights are left behind with the transferor;
- Transfer is to lawfully convey property from one person to another. Here, consent of transferor and capacity of transferee need not be present although all other ingredients of a lawful contract are incumbent;
- Barter is where the consideration is in the form of goods or services (and not in money) for a sale or transfer. So in general, barter is itself not a supply but the form that consideration takes. But, when barter is called one of the forms of supply, it covers other forms of supply whose consideration is non-monetary. Therefore, barter will involve two supplies and not one. Each of these supplies would need to be examined for its respective taxability;
- Exchange is where consideration is still not in money but in form of immovable property (CIT v. Motors and General Stores Pvt Ltd AIR 1968 SC 200). Similar to barter, exchange also involves two supplies. Given that land and (completed) building is excluded from supply, exchange would be the supply whose consideration is immovable property. And the object of supply itself may be of goods or of services;
- Lease is where possession is transferred along with the right to use immovable property with a duty to care, protect and return subject to normal wear and tear along for consideration in the form of non-recurring premium only or along with recurring rent. Essence of lease being delivery of possession along with user rights is the reason lease is also used in the context of movable property (under the earlier laws). Supplier of a lease does not have possession hence not enjoy right to

use but retains right to repossess after term of lease. Lease is discussed first to contrast it with rental and license;

- License is similar to lease except that possession is not transferred but mere permission to enter and use the property (movable or immovable) is allowed along with all other ingredients of a lease. Supplier of a license retains possession of the property during the term of license without right to use (if license precludes joint use). And after expiry of the term of license or on termination of license, the licensee will be a trespasser;
- Rental is lease in respect of movable property. And since recurring payment in lease (of immovable property) is called rental, transfer of possession with user rights for recurring payment of consideration is interchangeably applied for movable and immovable property; and
- Disposal is sale or transfer but property that does not possess merchantable warranty. Articles that are not merchantable are not 'fit for sale' but trade does take place for the reason that the supplier disposes the article without ascribing any worth but the recipient accepts the article for some intrinsic worth that he is able to extract or obtain. Article that does not answer to its description cannot normally bring a valid contract into existence but due to the respective motivation of each party, such articles are lawfully disposed off. In other words, although there is no consensus as to the object of supply, the parties are consenting to enter into such a contract for the respective reasons and considerations.

Any attempt at expanding this list of 8 forms of supply, in case of goods, must be attempted with great caution. Attempting to find other forms of supply has in the normal course did not yield the desired results. However, transactions that do not amount to supply have been discovered viz., transactions in the nature of an assignment where one person steps into the shoes of another, appears to slip away from the scope of supply, as well as transactions where goods are destroyed without a transfer of any kind taking place. Perhaps, the case of destruction of goods is not included within the meaning of 'supply' considering that the input tax credits in respect of destroyed goods is a blocked credit. However, the contradiction may continue until a clarification is issued to state whether the blocked credits is in respect of goods that have been destroyed before the availment of credits, or is applicable even in case where goods are destroyed after the credits have been availed in respect of such goods.

Now looking at 'services', we find that the adjectives used to list the 8 forms of supply in this clause are akin to transactions involving goods and not services. Services other than licensing, rental and leasing services have not been specifically included in the meaning of the term 'supply'. However, transactions involving services are also required to be passed through the same criteria for determination of supply. In doing so, a slight adjustment in the way of looking at transactions involving services is

necessary so as to substitute the object of supply from goods to services while administering the tests for determining the forms of supply involving services. In other words, the same 8 forms of supply must be applied in relation to services but with adjustment that is understood by the expression *mutatis mutandis*.

The law has provided an inclusive meaning to the word 'supply' which implies that the specific transactions which are listed in the said Section are only illustrative.

It is essential that such supplies should be by the supplier who is engaged in business (refer discussion under section 2(17)). However, in case of import of services for a consideration, even if such services are imported otherwise than in the course or furtherance of business, it would still be a supply. Refer discussion on inward supply in 2(67) and compare with outward supply in section 2(83).

The word 'supply' should be understood as follows:

- It should involve delivery of goods and / or services to another person; The word 'delivery' must be understood from allied laws such as Sale of Goods Act, 1930 or Indian Contract Act, 1872; delivery could be actual, physical, constructive, deemed, etc.
- Supply will be treated as 'wholly one supply' – if the goods and / or services supplied are listed in Schedule II or could be classified as a composite supply or mixed supply;
- It should involve quid-pro-quo – viz., the supply transaction requires something in return, which the person supplying will obtain, which may be in money / monetary terms / in any other form (except in cases of activities specified in Schedule I which are deemed to be supplies, even when made without consideration). What is received in return need not be always in 'money'; it can partly/wholly be in money's worth too (non-monetary in nature);
- Transfer of property in goods from the supplier to recipient is not necessary viz., lease or hiring of goods;

It is essential that all the above forms of transactions including the extended and generic meaning given to the word 'supply' should be made for a 'consideration'. The only exception for this rule of construction will be cases specified in Schedule I. Absence of consideration (as defined in Section 2(31)) will take away the character of the word 'supply' under this clause, and accordingly, the transaction will not attract tax. It is important to note supplies listed in Schedule I would nevertheless attract the wrath of tax, even when made without consideration. One has to therefore, be very careful, while analysing the tax implications in respect of supplies listed in Schedule I.

- (b) **Supply should be in the course or furtherance of business:** For a transaction to qualify as 'supply', it is essential that the same is 'in the course' or 'furtherance of

business'. This implies that it is only such of those supplies of goods and / or services by a business entity would be liable to tax, so long as it is 'in the course' or 'furtherance of business'. Supplies that are not in the course of business or in furtherance of business will not qualify as 'supply' for the purpose of levy of tax, except in case of import of service for consideration, where the service is treated as a supply even if it is not made in the course or furtherance of business.

The expression 'in the course of' must be construed differently from 'in the course or'. The GST Laws use the expression 'in the course or' and careful analysis is therefore, essential. The expression 'in the course' appearing in Section 7(1)(a) does not appear in Section 7(1)(b). However, one cannot lose sight of the fact that the expression 'in the course' is used selectively in respect of transactions listed in Schedule I, II or III. The import of this would mean that the meaning attributable to the expression 'in the course' would apply only in respect of such of those transaction, so listed, in the relevant Schedules.

Let us now try to understand the meaning of the phrase 'in the course'. The expression 'in the course' implies not only a period of time during which the movement or transaction is in progress but postulates a connected relationship. Therefore, the class of transactions needs to be analysed and cannot be randomly applied to the provisions of Section 7 or Section 8. So construed, the word 'or' appearing in the phrase or expression 'in the course or furtherance of business' assumes importance. When read in a proper perspective, the preposition 'or' actually bisects the entire phrase into two limbs. Therefore, the 8 forms of supply would tantamount to transaction of supply when such supplies are in the *course of business*, or in the *furtherance of business*. Therefore, the legislature has supplied huge amount of elasticity in understanding the meaning of the term 'supply'.

The term 'business' has been defined under the GST Laws to include:

- (i) a wide range of activities (being "trade, commerce, manufacture, profession, vocation, adventure, wager or any similar activity"),
- (ii) "whether or not it is for a pecuniary benefit",
- (iii) regardless of the "volume, frequency, continuity or regularity" of the activity.
- (iv) and those "in connection with or incidental or ancillary to" such activities.

A recent order of the Authority for Advance Ruling – Kerala has ruled, in a matter involving recovery of food expenses from employees for the canteen facility provided by a Company, that such recovery falls within the definition of 'outward supply' and are therefore taxable outward supplies under the GST law. In paragraph 9 of the order, the AAR-Kerala has concluded that the supply of food by the applicant (Company) to its employees would definitely come under clause (b) of Section 2(17) as a transaction

incidental or ancillary to the main business and thereby the test of 'in the course or furtherance of business' is met by the applicant. – Order No. CT/531/18-C3 dated 26.03.2018.

Also, a question came up before Authority for Advance Ruling – Karnataka in the matter of Columbia Asia, whether allocation of expenses to other registered units by Corporate Office tantamount to supply of services between related or distinct persons as per Entry 2 to Schedule I to CGST Act and accordingly liable to tax. The Authority ruled that the activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the CGST Act shall be treated as supply as per Entry 2 of Schedule I of the CGST Act.

Drawing similarities from the erstwhile State-level VAT laws, it follows that the said transaction should be with a commercial motive, whether or not there is a profit motive in it or its frequency / regularity. E.g.: sale of goods in an exhibition, participation in a trade fair, warranty supplies, sale of used assets / scrap sales, etc. would be activities in the course of business.

- (c) **Import of service will be taxable in the hands of the recipient (importer):** The word 'supply' includes import of a service, made for a consideration (as defined in Section 2(31)) and whether or not in the course or furtherance of business. This implies that import of services even for personal consumption would qualify as 'supply' and therefore, would be liable to tax. This would not be subject to the threshold limit for registration, as tax would be payable in case of import of services on reverse charge basis, requiring the importer of service to compulsorily obtain registration in terms of Section 24(ii) of the Act. Although import for personal purposes is included in the definition of supply, entry 10(a) to Notification No. 9/2017-Int (Rate) dated 28 Jun 2017 exempts import of services under entire chapter 99 from payment of GST. However, the GST law has ensured that persons who are **not** engaged in any business activities will not be required to obtain registration and pay tax under reverse charge mechanism, and it turn, requires the supplier of services located outside India, to obtain registration for the OIDAR (online information and database access and retrieval) services only

*Note: Import of services is included within the meaning of 'supply' under the CGST / SGST Acts. However, it would be liable to IGST since it would not be an intra-State supply. In fact, Section 2(21) of IGST Act has adopted the meaning of 'supply' from CGST/SGST Act.*

- (d) **Transactions without consideration:** The law lists down, exhaustively, cases where a transaction shall be treated as a 'supply' even though there is no consideration. Such transactions are listed in Schedule I. Once an activity is deemed to be a 'supply' under the paragraph listed in Schedule I, the value of taxable supply shall be determined in

terms of provisions of Section 15(4) of the Act read with Chapter IV (Determination of Value of Supply) of CGST Rules.

In this regard, it may be noted that on careful consideration of the essential ingredients of a valid contract, it cannot be disputed that a contract without consideration is not a contract at all. The reference made to 'transactions without consideration' in Schedule I does not imply that a void contract is being made valid, by GST laws. It can be argued that transactions listed in Schedule I, are not contracts at all owing to lack of consideration in terms of the Contract Laws. Even though they are not contracts, by legal fiction, flowing from section 7(1)(c) read with Schedule I, they will be nevertheless regarded as a 'supply' and made taxable. As can be seen from the above, in all other clauses of section 7(1), supply exists within a valid contract, but in select circumstances supply is imputed by legal fiction in the absence of a contract. It is therefore important not to extrapolate this legal fiction beyond the specific cases to which the law imputes this fiction.

The activities specified in Schedule I are analysed in the ensuing paragraphs:

**1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.**

- (a) Of the 8 forms of supply, the only forms that qualify as a supply, under this category are 'transfer' and 'disposal'. Other 6 forms of supply listed in section 7(1)(a) would not stand categorised in this paragraph, given that there is (a) an element of a consideration that is intrinsic to the form, such as the case of a sale or barter or exchange, or (b) there is no business asset that is permanently transferred such as in the case of a licence or rental or lease, or any other service for that matter.
- (b) Ordinarily, there can be no permanent transfer in case of goods sent for job work. The aspect of sending goods on job work is not a supply, has been clarified vide Circular No.38/12/2018 dated 26.03.2018. However, where a registered person has purchased any moulds, tools, etc. and has sent the same to the job worker, there is a good chance that the goods are never returned, given that the time limits specified in Section 143 for goods sent for job work does not apply to moulds, tools and other specified goods.
- (c) It may be noted that this paragraph conjoins two disjointed activities/transactions viz., (a) permanent transfer; and (b) disposal of business assets where input tax credit has been availed on such assets. There is a school of thought that permanent transfer without consideration is in itself an item covered under Schedule I whether or not any credit is claimed on such asset. However, there is a second school of thought, not widely followed, who strongly believe that both permanent transfer and disposal have to be in respect of a business asset on which credit is availed. For instance, where a capital asset has been procured, say, by a distillery for the purpose of manufacture of

alcoholic beverages, no input tax credit would have been availed on such asset. Accordingly, there would be no output tax payable if the asset is permanently transferred to another entity (unrelated), if the transfer is without consideration, going by the second school of thought. However, if consideration exists, there can be no escape from levy. Support can be found in the way relief is granted to the 'disposal of business assets'. If disposal is anyway one of the forms of supply, how can disposal be excused where credit is not availed. This is explained when credit is reversed in case of disposal (as contemplated in section 17(5)(h) of the CGST Act), there cannot be a levy again by the fiction in Schedule I on this disposal. Now, if Proprietor were to take away a car used in the business, can tax incidence be excused simply because credit was not allowed originally. Care must be taken to identify how the disjointed expression in schedule I is understood

- (d) In the above context, business asset need not always be goods, it can as well be service that could be permanently transferred which could attract the above provisions Eg: unexpired right in a business franchise permanently transferred to another person.
- (e) While the word 'transfer' in this entry suggests that there should be another person who would receive the business assets, there is no requirement of another person in the case of 'disposal'. Therefore, if a business asset on which credit is claimed has been discarded, the transaction shall be regarded as a supply.
- (f) Business assets procured for the purpose of serving the requirements of 'Corporate Social Responsibility', being a statutorily imposed obligation' may be contended to be a procurement made in the course or furtherance of business, and an attempt can be made to avail input tax credit. The issue would however remain contentious and there are no precedents. However, there would be no escape from the levy of tax on the transaction, if the asset is permanently transferred. The treatment would be no different even in the case of a donation.
- (g) **ADVANCE RULING ON THE CAPTIONED MATTER: AAR, MAHARASHTRA vs. CMS Info Systems Ltd.-** *"Whether disposal of scrap vehicles for consideration is a sale and section 7 explaining expression 'supply' covers supply of goods such as sale or disposal made for a consideration and it further, says that supply has to be in course or furtherance of business - Held, yes - Applicant was engaged in business of having a cash management network involving transportation of cash - Disposal of cash carrying vans was a transaction in connection with or incidental or ancillary to business of having a cash management network - As and when vehicles became scrap, they had to be disposed of and proceeds therefrom to be identified as income for business*

*which was reflected in profit and loss account of business - Thus, buying new assets and discarding old and unusable assets was an activity in course of carrying on business - Whether therefore, supply of motor vehicles as scrap after its usage was an activity of 'supply' in course or furtherance of business and such transaction would attract GST - Held, yes"*

**2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:**

**Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both**

- (a) The deemed supplies covered in this paragraph are based on a relationship between the supplier and recipient. The relationship covered under this paragraph as related persons defined by way of an explanation to Section 15 and distinct persons in terms of Section 25(4) and 25(5) of the Act.
- (b) Transactions with distinct persons are normally without consideration since they are part of the same entity located in different geographies, unless the accounting system is so sophisticated or so devised, that it treats the locations in each State as a separate / independent entity even for book-keeping purposes and effects payments in monetary terms. Let us take instances of transactions between distinct persons that are not traceable in the books of account, but requires attention from the perspective of this paragraph in the Schedule:
  - i. Stock transfers e.g., transfer of sub-assemblies, semi-finished goods or finished goods;
  - ii. Transfer of new or used capital goods/fixed assets – including movement of laptops when employees are transferred from one location to another;
  - iii. Bill-to ship-to transactions wherein the vendor issues the invoice to the corporate office and ships the goods to the branch office;
  - iv. Centralised management function like Board of Directors, Finance, Accounts, HR, Legal, procurement functions and other corporate functions at one location say corporate office and the entity having multiple registrations in various states results in supply of management services by the corporate office to distinct persons;
  - v. A transaction of sale of goods from one registration and providing after sales support or warranty services/replacement services by another registration of the same entity;



- vi. Contract awarded by a customer to an entity at the corporate office from where the centralized billing to the customer is made but the execution of the contract is carried out through various registrations of the same entity located in other / multiple States.
  - vii. Permitting employees to make use of the office assets for personal use – say usage of motor vehicles, laptops, printers, scanners, etc.
- (c) It appears that this paragraph, has an overriding effect on the first paragraph of the Schedule relating to transfer or disposal. In other words, in case a business asset is permanently transferred to a distinct person, the transaction although out of scope of paragraph 1, would be treated as a supply in terms of this paragraph, considering that this paragraph does not impose any such condition on the transaction. The provisions would equally apply even in the case of assets procured in the pre-GST regime. Please note that a transaction that is already a 'supply' is now furnished a special treatment by the fiction in Schedule I in this paragraph and in the next unlike paragraph 1 (which was not a supply but is deemed to be one by this fiction).
- (d) The explanation appended to Section 15 of the CGST Act provides that an employer and employee will be deemed to be "related persons". Accordingly, supplies by employer to employees would be liable to tax, if made in the course or furtherance of business, even though these supplies are made without consideration, except:
- i. Gifts by an employer to an employee of value up to Rs 50,000 (to be understood as inclusive of taxes, as read with Rule 35 of the CGST Rules) in a financial year (whether this value needs to be pro-rated in the first year of implementation of GST / first year of commencement of business is a moot question; however, the presumption is that a part of the financial year would be construed as a whole year);
  - ii. Cash gifts of any value, given that the 'transaction in money' is not a subject matter of supply as the same receives treatment as a taxable salary in the hands of the employee;
  - iii. Services by employee to the employer in the course of or in relation to his employment – treated as neither a supply of goods nor a supply of services.
- (e) The question that arises as to what constitutes a gift is discussed in the following paras.
- i. Gift has not been defined in the GST laws.
  - ii. In common parlance, gift when made without consideration is voluntary in nature and is normally made occasionally.

- iii. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift. However, if any gift, by whatever name called, is a right of the employee in terms of the employment contract / employee policy of the entity, then such gift shall be treated as emoluments arising out of the employment (including perquisites) and cannot be treated as a supply.
- iv. As a corollary, one can argue that the scope and ambit of the word 'supply' also includes a transaction of a barter / exchange, in which case, the transaction may be regarded a taxable supply. In such a case, the question that would arise is as to whether a salary paid in non-monetary terms will attract GST. However, the GST Act contains a dedicated valuation rule (rule 27) which contains the *modus operandi* to arrive at the value of the supply the consideration of which is made either wholly or partly in non-monetary terms.
- v. The credit restriction on membership of a club, health and fitness centre [under Section 17(5)(b)(ii)] would not apply where the employer provides the facilities to its employees, whether or not for a consideration, given that such a supply without consideration, would also be deemed to be an outward supply under this paragraph of the Schedule.
- vi. Where gifts are liable to tax under this Schedule, it would be fair and proper to treat such gifts as taxable outward supplies, and therefore, credit thereon may not be required to be restricted under Section 17(5)(h).
- vii. It may also be noted that a gift need not always be in terms of goods. A service can also constitute a gift, such as gift vouchers for a beauty treatment.
- viii. Another question which arises that is on what value will the GST liability be calculated in case the gift amount exceeds Rs.50,000/-. Although it is not expressly mentioned in the GST Act. But a reasonable construction can be drawn that GST shall be levied on the whole amount in case the gift amount exceeds Rs. 50,000/-.

### 3. Supply of goods—

- (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
- (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
  - (a) The definition of the terms 'agent' and 'principal' have to be understood contextually and have been reproduced below:

- Section 2(5) of the Act – “Agent means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another”.
  - Section 2(88) of the Act – “Principal means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both”.
- (b) Where an Agent receives goods directly from the Principal, or if the Principal's vendor directly dispatches goods to the location of the agent, the Principal shall be required to treat the movement as an outward supply of goods by virtue of this clause. If understood in its proper perspective, when an agent receives goods on behalf of the Principal and thereafter issues the goods to the Principal, the transaction will be regarded as a supply by the Agent to the Principal.
- (c) An important question that may arise is - as to how the transaction would appear to the ultimate recipient of a supply, when effected by the Principal through the Agent, or to the supplier who effects the supply to the Principal through an Agent. An analysis of the transaction where the Principal effects a supply through an Agent is provided as follows:
- i. The Principal shall recognise the transfer of goods to the Agent as a supply, at the time of such transfer.
  - ii. When the Agent supplies such goods to the third-party recipient, the Principal would recognise revenue as a supply (sale) in his books of account.
  - iii. The Agent would, however, issue the invoice to the third-party recipient in the name of the Principal, while also incorporating the Agent's own details as the supplier, and discharge taxes on the supply.
  - iv. The third-party recipient would receive the credits on account of this supply from the GSTIN of the Agent and not the Principal.
  - v. To this extent, the Principal's supplies in the GST returns will reflect a lower value as compared to the actual revenue against the supplies, since the value of supply to an Agent would normally, be lower than the actual sale price.
  - vi. The value of supplies in the GST returns of the Agent would be much higher than the actual revenues earned, which would be limited to the commission income.

- vii. It is pertinent to note that the Agent shall be required to issue an invoice on the Principal for the value of service provided by him to earn his commission income but without GST as tax has already been levied on commission in the form of selling price of the goods.
  - viii. **Statutory Update:** - As per Notification No. 15/2018- Central Tax (Rate) dated 26.07.2018 services supplied by Direct Selling Agents (Other than Body Corporate, Partnership or LLP) to Bank or NBFC shall be covered under Reverse Charge.
- (d) There are two recent circulars issued clarifying scope of transactions between principal and agent which clarifies the above aspects:
- i. Circular No.57/31/2018-GST dated September 4, 2018 (in the context of scope of principal-agent relationship). The entire jurisprudence under Indian Contract Act has been brought to bear in GST by making reference to section 182 and states as:

*“Thus, the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said paragraph. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said paragraph. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal”.*

There are various scenarios which are discussed to analysis and conclude the scope of this paragraph in Schedule I. Readers may refer to the above circular hosted on [www.cbic.gov.in](http://www.cbic.gov.in) to understand those scenarios. One interesting aspect to highlight in this circular is that ‘whether the agent is required to issue invoice to customer in his own name or in the name of the Principal’ is a question that must be determined by the flow of transactions and not left flexible in the hands of the agent. But this circular appears to wait upon the agent to confirm who will issue the invoice. This aspect can cause great concern because a c&f agent who handles the goods – receive, store and dispatch – on the Principal may pay GST on commission and later it might be imposed on this agent to pay tax ‘as if’ this entire

arrangement were a 'trading transaction' by fiction in para 3 of sch I. At that time, thing would have already concluded and irreversible.

Experts hold the view that 'if agent handles the goods belonging to Principal', this fiction applies and even though commission earned would be income for income-tax purposes, GST requires total turnover to be treated as outward supply with credit for inward supplies from Principal. If the agent does not handle the goods but merely introduces buyer and seller, this fiction would not apply. Yet another category would be cases of Customs Brokers who handle the goods not for making further supplies of this goods but to clear them with customs for import or export.

- ii. Circular No.73/47/2018-GST dated November 5, 2018 (in the context of del-credere agent) states as:

Sl No.	Issue	Clarification
1	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?	As already clarified vide circular No. 57/31/2018-GST dated 4th September, 2018, whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I of the CGST Act depends on the following possible scenarios: for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent. where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.
2	Whether the temporary short-term transaction-based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being	In such a scenario following activities are taking place: 1. Supply of goods from supplier (principal) to recipient; 2. Supply of agency services from DCA to the supplier or the recipient or both; 3. Supply of extension of loan services by the DCA to the recipient.

	<p><i>supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?</i></p>	<p><i>It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction-based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply.</i></p> <p><i>Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier. It may be noted that vide notification No. 12/2017-Central Tax (Rate) dated 28th June 2017 (S. No. 27), services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) has been exempted.</i></p>
3	<p><i>Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?</i></p>	<p><i>In such a scenario following activities are taking place: 1. Supply of goods by the supplier (principal) to the DCA; 2. Further supply of goods by the DCA to the recipient; 3. Supply of agency services by the DCA to the supplier or the recipient or both; 4. Extension of credit by the DCA to the recipient.</i></p> <p><i>It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction-based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is</i></p>

		<p><i>emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient.</i></p> <p><i>It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per clause (d) of sub-section (2) of section 15 of the CGST Act.</i></p>
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**4. Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.**

- (a) The expression 'import of service' has been defined to bear an innate requirement of an outflow of foreign convertible currency, and therefore, excludes any form of importation of services without consideration. Therefore, this clause is inserted to encompass such of those services, that are received from related persons / their establishments outside India. It is important for one to refer to Explanation 1 to Section 8 of the IGST Act, 2017 which deems any establishment outside India as an establishment of a distinct person. By virtue of this treatment, all services received by a person in India from its branches / establishments located outside India would be considered to be a supply, even when made without consideration.
- (b) For instance, say A Ltd is a holding company in USA and B Ltd a subsidiary in India. Many business operations are centralized in the USA such as accounting, ERP and other software, servers for the backup, legal function, etc. For the purpose of this clause, the back-end support provided by the holding company to the subsidiary company in India shall be regarded as a supply, whether or not there is a cross charge, even if the same is not recognised in the books, or any contracts, since it is categorized as an import of service by a person from a related person without consideration, in the course of business.

**(e) Activities or Transactions to be treated as supply of goods or supply of services:**

It is important to understand as to what constitutes a transaction of supply of goods or a transaction of supply of service. Section 7(1A) creates a fiction under the statute and

specifies 'what is' and 'what is not' to be treated as a transaction of supply of goods or a transaction of supply of service. So understood, one can list out 18 classes of transactions enlisted Schedule II of which 5 classes of transactions are listed out as supply of goods while 13 others would tantamount to supply of services. On a careful consideration of the relevant clauses, it can be noticed that all the 6 classes of transactions listed out in Article 366(29A) of the Constitution of India are covered within the scope and ambit of Schedule II. While 2 transactions, out of the 6, are treated as supply of goods, the other 4 are deemed to be supply of services.

Importantly, paragraph 6 (a) relating to works contracts (as defined in Section 2(119)) is treated as a composite supply, of services. However, Section 2(119) has 14 distinct words, all of which are required to be read in conjunction with the words "immovable property". Contracts relating to construction of immovable property are specifically covered in paragraph 5(b) of Schedule II. Therefore, all works contracts other than those relating to construction of immovable property would amount to composite supply in terms of Section 2(30) read with Section 8.

It is important for one to understand that **what is** specified/listed in Schedule II not only provides clarity but also **what has to be** treated as supply of goods or supply of services.

Transactions listed out in schedule II DO NOT enlarge scope of supply as defined under Section 7(1) of the Act. By shifting the 'placement' of schedule II from clause (d) of section 7(1) to a separate section 7(1A), it is made clear that firstly, a transaction must already be determined to be 'supply' and then, for the limited purposes of 'treatment' by fiction, entries in schedule II must be referred. This amendment was introduced with retrospective effect from 1 Jul 2017 vide CGST Amendment Act 2018.

It is not that schedule II is exhaustive. But where it is listed, then those transactions will receive the 'treatment' as specified. Transactions involving 'goods' if specified in schedule II to be treated as supply of 'services' then, all provisions of GST law that is applicable to supply of services must be extended (without exception) to this transaction even though it involves goods.

It is important to understand the intent of the legislature. For example, Para 5(a) of Schedule II reads "renting of immovable property". In this situation, how does one understand the taxability of the transaction where consideration is not involved? The only way to understand this lacuna is that such transactions that lack consideration would be relegated to valuation principles, but, importantly, the transaction would be treated as a supply.

Another instance to consider is para 1(c) of schedule II to CGST Act which deals with 'hire purchase' transactions. Although Hire Purchase Act, 1972 has been repealed in 2005. Trade understands hire-purchase versus lease (even though lease is divided into operating and finance lease). In GST law, all kinds of lease are treated the same – supply of services. Lease without possession is (legally a) license and license too is



treated as a supply of services. But not hire-purchase. While para 1(b) and 5(f) deal with lease and license, para 1(c) treats hire-purchase as a supply of goods. Invoice for goods delivered under a hire-purchase will follow time and place of supply provisions applicable to goods and not to services.

This presents an anomaly which is explain in the illustration below:

- Let's start with simple operating lease arrangement where goods, say, electricity generator whose normal sale price is Rs.1,00,000 are lying in stock at Puri, Orissa to customer-site situated in Bhilai, Chattisgarh;
- Supplier is registered in Orissa and Recipient-customer is registered in Chattisgarh;
- Supplier makes an inter-State supply and issues invoice for Rs.12,000. This is the lease rental invoice of first month of a 10-month lease including interest built into this lease rental amount;
- Goods travel from Puri to Bhilai and is clearly an inter-State movement of goods and IGST has been charged on the invoice;
- At the end of first month, Recipient-customer does NOT return the generator by transport from Bhilai back to Puri. It is retained in Bhilai to be used in the second month;
- So, the question to consider is, whether 10-month lease agreement, is one agreement with 10 instalment to pay or is it 10 monthly agreements contained in one document;
- Quick answer that comes to mind is that it is 'one agreement with 10 installments to pay'. But it is well understood that time of supply does not get deferred simply because payment is collected in installments. And if it is one agreement to supply, then it is one supply and therefore, has one time of supply which is the first day of the first month. By this reasoning, entire GST at, say, 18% on Rs.1,20,000 (Rs.12,000 x 10 installments) will be payable in first month (within due date permitted);
- On a more careful consideration of that question, it becomes clear that this lease (exceptions to be examined) is a 'month-to-month' agreement. And as all monthly agreements are identical, it is executed in a single document. Now there are 10 supplies and will have 10 times of supply and hence, GST is payable on Rs.12,000 at 18% each month;
- Now, that it is clear that lease is a month-to-month arrangement, the next question to consider is whether the lease rental invoice for the second month, will be inter-State (as the first month) or will it become an intra-State supply;
- Recollect that generator is lying with the Recipient-customer at Bhilai at the end of first month and will be continued to be used in second month without actually being return to Puri and then received back to Bhilai;
- Now, location of supplier of services is defined in IGST Act (and also in CGST Act) but location of supplier of goods is NOT defined. To examine location of supplier of goods,

reference must be had to 'place of business' as defined in section 2(85) of CGST Act which provides that it will be (i) place where business is ordinarily carried on, in this case, it would be Puri or (ii) place where goods are stored, in this case, it would be Bhilai or (iii) place from where supplies are made or supplies are received or (iv) place where books are maintained or (v) place of an agent appointed to carry on business. Applying the above 5 tests, it appears (ii) would be the appropriate test and hence location of goods in second month would be place of business;

- Business of lease is not concluded every month. It has already been concluded at the start of first month. Hence, the first limb in the definition is non-operative in the present case and second limb in the definition comes into operation to decide the 'location of supplier of goods';
- As a result, location of supplier of goods will be the location of the goods for the supply by way of lease in the second month. Goods being located in Bhilai will be an intra-State supply by the Supplier who is located in Puri;
- It is for this reason, that schedule II contains para 1(b) (and even 5(f) in case of license) that the supply of goods by way of lease will be 'treated' as supply of services;
- When transaction is treated as supply of services, then location of goods becomes irrelevant and location of supplier of services (as defined in section 2(15) of IGST Act and 2(71) of CGST Act) will determine all months to be inter-State supplies; and
- Supplier situated in Puri, Orissa will NOT be required to take registration in every State where customers' sites are located in lease or license supplies.

Now, the above concept DOES NOT apply to hire-purchase because para 1(c) states that hire-purchase will be treated as supply of goods. The new question that arises here, is whether the Supplier under hire-purchase arrangements will be liable to take registration in all States where customers' sites are located.

Experts opine that in hire-purchase, it is not a month-to-month hire-purchase but a single agreement for the entire duration and each periodic payment is only an instalment, therefore there is only one supply with one time of supply and tax is payable at the rate applicable to those goods and on ENTIRE hire-purchase price. There is a pressing need for a circular on this aspect of difference between HP and Lease. FAQs on BFSI released by Government only refers to the aspect that exemption from tax on interest is NOT AVAILABLE to finance lease (which can be extended to HP also) even though each periodic payment clearly contains an element of 'interest' (FAQ 47).

Reason for the divergent treatment of HP compared to Lease provided by experts is stated to be in the definition of 'hire-purchase agreement' from AS 19 (which carries the essence from definition in section 2(c) of the (now repealed) HP Act). It states that HP is a single agreement for the entire duration where (i) possession is already passed (ii)

option to purchase (actually, option to reject) is granted on payment of last installment and (iii) each periodic amount paid is merely an installment within HP-Price. Therefore, in case of HP, since GST has already been paid at the start of HP agreement, there is no requirement for HP-Supplier to be registered in every State where the HP-stock is supplied and put to use.

Care must be taken to study what is sought to be achieved by each entry in schedule II. As an exercise one may think about para 5(b) versus para 6(a). And examine 'why' only 'goods are referred in para 7 and not 'services' also.

The activities pertaining to this clause are listed in Schedule II to the Act and discussed in the following paragraphs.

Entry in Schedule II	Analysis
<b>1. Transfer</b>	
a. <i>Any transfer of the title in goods is a supply of goods;</i>	This would be a clear case of a transfer of goods. It may be noted that this paragraph covers even a plain vanilla transfer of <b>title in</b> goods, either by way of sale or otherwise. Accordingly, where any goods are gifted to any person, say a motor car gifted by a businessman to his successor would be a supply of goods, provided there is a transfer of "title in" such goods. In legal parlance the phrase "title in" and "title to" have different connotations.
b. <i>Any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;</i>	This paragraph can be construed to be a case of a temporary transfer whereas a transfer of <b>title in</b> goods would be a sale simpliciter. One must pay attention to the language employed in this paragraph which speaks of <b>transfer of right</b> and not transfer of title. Even though the activity is categorized as a supply of service, the rate of tax applicable on the supply has been linked to the rate of tax as applicable to the supply of same goods involving transfer of <b>title in</b> goods. Hence, for all practical purposes to determine the rate of tax on such services, all notifications in respect of that particular goods would merit equal consideration to determine the rate of tax for the service.  Refer the entries for Heading 9971 and 9973 to the Notification 11/2017 dt. 28.06.2017 prescribing the rate of tax on services, covering operating lease and financial lease transactions.

Entry in Schedule II	Analysis
	<p>Illustration: Notification 37/2017 Central Tax (Rate) dated 13.10.2017 was issued to reduce the rate of tax on motor vehicle to 65% of the tax rate as applicable with certain conditions. Considering the rate of tax for leasing of such motor vehicle to be same as that of the rate of tax as applicable on the motor vehicle, even the rate of tax on leasing services stands reduced if the conditions specified in the notification are met.</p>
<p><i>c. Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.</i></p>	<p>Any instalment sale or hire purchase transaction with a precondition that the possession is transferred on day one, but the ownership is subject to payment of full consideration/ all instalments, would get categorized as a supply of goods at the time of transfer of possession. However, where the transaction is to be valued at the open market value, due care needs to be exercised so as to determine the value of instalments as against the value of the goods being transferred. One may also note that transactions of movables that could get covered under BOOT, BOLT, BOT etc., may also get covered under this paragraph.</p> <p>An important point which requires due consideration is the interest component in the hire purchase agreement. In this regard it is worth to mention that vide Notification No.12/2017-CGST (Rate) dated 28.06.2017 interest is stated to be exempt. However, only interest component is exempt. Therefore, if interest is separately mentioned then GST is not payable, however, if the interest amount is not separately mentioned then GST is payable on entire amount including interest.</p>
<b>2. Land and Building</b>	
<p><i>a. Any lease, tenancy, easement, licence to occupy land is a supply of services;</i></p>	<p>While a transfer (sale) of land is outside the scope of GST laws, the law seeks to tax certain other transfers pertaining to land, by way of this paragraph.</p> <p>Notification No. 4/2018 Central Tax (Rate) dated 25.01.2018 warrants attention in this regard. One issue which clearly emerges from the notification is</p>

Entry in Schedule II	Analysis
	<p>that in case of a joint development agreement (JDA), the activity of providing the right to construct on a land belonging to the owner, is an independent supply in the hands of the owner and that supply, is treated as a supply of service in terms of this clause. It is inferred that such a service is independent of the construction service which the developer provides to the landowner. The challenge that arises would relate to the valuation for both these supplies. It is important to note that such transactions are vivisected for the purposes of levy of tax and have not been construed as a single demise.</p> <p>Please also note that this entry throws much need light on the limits to the exclusion available in para 5 of schedule III to 'sale of land and (completed) building'. It appears only absolute sale would be excluded from GST and any arrangement inferior to or less than absolute sale, would not be excluded by schedule III. Arrangements less than absolute sale would be transactions such as lease, license, easement, etc., that create 'interest' in immovable property.</p> <p>Further, when only land and (completed) buildings are listed in schedule III, all other forms of immovable property and immovable property rights would also not be excluded by schedule III.</p>
<p><i>b. Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.</i></p>	<p>The activity of leasing or letting out of complexes for the purpose of business or commerce is covered under this clause, and not those used for the purpose of residence. It may be noted that the services by way of renting of residential dwelling for use as residence is exempt vide Notification No.12/2017 – Central tax (Rate) dated 28.06.2017. While on the subject, it is pertinent to note the distinction between a transaction of rent, lease and a transaction of "letting out". A transaction of rent is what is lawfully payable by a tenant, a transaction of lease is an alienation or conveyance for the purpose of enjoyment whether or not for a specified period. The word 'let' is to be understood as a verb meaning allow, permit, grant or hire.</p>

Entry in Schedule II	Analysis
<b>3. Treatment or process</b>	
<i>Any treatment or process which is applied to another person's goods is a supply of services.</i>	<p>While this transaction may not be <i>pari materia</i> with a works contract the activity, which could get categorized under this clause it appears would be “job work” as defined under Section 2(68) of the Act.</p> <p>The only difference between the definition clause in terms of section 2(68) and this paragraph - is that the activity would be regarded as a job work only if carried out for a registered principal. However, regardless of the registration of the principal, the activity would be categorized as service by this clause.</p> <p>Certain clarifications have been provided vide Circular No.38/12/2018 dated 26.03.2018 on job work which would be relevant and are a useful read.</p>
<b>4. Transfer of business assets</b>	
a. <i>Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;</i>	<p>This clause provides for taxability of such of those transactions where business assets stand transferred. Typically, assets donated could be an example of such a transaction. One must pay attention to the fact that this clause abstains from the usage of the expression “in the course or furtherance of business” or “consideration”. But, when read along with 2(17)(d), shutting down of a business is also included within business.</p> <p>Also, goods ‘forming part’ of business assets when applied for non-business purposes covers all cases of ‘diversion from intended end-use in business’. Such diversion may be conscious or by a <i>force majeure</i> event. Ultimately, end-use of business assets requires careful examination. And these assets may be tangible or intangible.</p> <p>Care must also be taken when such assets are partly used for business and partly for non-business use which may not escape incidence of GST.</p>
b. <i>Where, by or under the direction of a person carrying on a business, goods held or used for the</i>	Any part of the business assets if put to use for (a) private purpose or (b) make available to another person to apply it to any non-business use, are covered under this para.

Entry in Schedule II	Analysis
<p><i>purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;</i></p>	<p>Please note that this sub-para holds its own filed compared to previous sub-para regarding end-use of business assets that are goods. Also, supply involving goods may be treated as supply of goods or supply of services but para 4 is attracted when 'goods' are used as observed by these sub-paras whichever way they may be treated under other paras in sch II.</p> <p>One must exercise caution while determining what amounts to private use / non-business use, since this will have a direct bearing on the deductions claimed under the Income tax law.</p> <p>In this regard, it may be noted that a service by way of transfer of a going concern, as a whole or an independent part thereof, is an exempted service in terms of Notification 12/2017-Central Tax (Rate) dated 28.06.2017.</p>
<p>c. where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—</p> <p>i. the business is transferred as a going concern to another person; or</p> <p>ii. the business is carried on by a personal representative who is deemed to be a taxable person.</p>	<p>The supply under this clause can be understood to be a supply of goods, although the paragraph does not explicitly specify so.</p> <p>Attention is drawn to Section 29(5) of the Act dealing with "Cancellation of Registration", wherein the law provides that the person applying for cancellation of registration is required to pay an amount equivalent to the credit of input tax or the output tax payable thereon, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation, whichever is higher. But, this requirement under section 29(5) applies only to regular registered person who has claimed input tax credit and holds inputs and capital goods in stock and not to a composition taxable person who has never claimed any credit to be liable to reverse.</p> <p>It is important to understand the subtle usage of the expression "ceases to be a taxable person". Cessation of being a taxable person could result from either closure of business, voluntarily or otherwise, while the clause also speaks of transfer of business in the latter</p>

Entry in Schedule II	Analysis
	<p>part. In case of cancellation of registration, a person ceases to be a registered person and not a taxable person.</p> <p>One can reasonably infer that in terms of this clause if a business is transferred on a 'lock, stock and barrel' basis as a going concern then such transactions cannot be subjected to tax; even in situations where the transfer of business takes place and a representative (acting as a taxable person) carries on such business, the question of subjecting such a transaction to tax, as a cessation of business does not arise. For this reason, there is an express exemption in entry 2 to Notification 12/2017-Central Tax (Rate) dated 28 Jun 2017.</p>
<b>5. Supply of services: The following shall be treated as supply of service, namely: —</b>	
a. renting of immovable property;	<p>Renting wholly or partly of any immovable property is treated as a service. Therefore, unless the supply is otherwise exempted (such as renting of residential dwelling for the purpose of residence), the activity shall be regarded as a supply.</p> <p>Please note 'immovable property' covers a wide variety of property that includes interests in immovable properties.</p>
b. <i>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 after its first occupation, whichever is earlier.</i>	<p>Schedule III of the Act at SI No.5 reads "sale of land and, subject to clause b of paragraph 5 of schedule II, sale of building. We need to pay attention as to how this clause is to be read and understood. Let us now read the clause as follows:</p> <ul style="list-style-type: none"> <li>• Sale of land;</li> <li>• Sale of building;</li> <li>• Sale of land and sale of building;</li> <li>• Sale of land and building in which an undivided share in land stands transferred.</li> </ul> <p>It must be noted with caution, that paragraph 5 of schedule III is 'subject to clause b of paragraph 5 of schedule II'. It means that, this para 5 must may way for para 5 of schedule III. It is for this reason that</p>



Entry in Schedule II	Analysis
	<p>development contracts in the real estate sector have been a subject matter of tax only if they are not saved by the exclusion in para 5 of schedule III.</p> <p>Any agreement for sale of an immovable property (being in the nature of transfer of UDI in land plus building or in case of revenue share agreements which equally stipulates transfer of UDI in land plus constructed part) would be subject to tax as a service. But a plain agreement to sell land which later results in a sale deed for land <i>simplicitor</i> being executed will not be liable to GST.</p> <p>Some experts are of the view that the legislature intends to overcome the constitutional bench decision of the Supreme Court in the Larsen &amp; Toubro's case (65 VST 1) and where any part of the consideration is received, prior to obtaining completion certificate or first occupation, would be taxed while all transactions entered into thereafter, would be excluded by para 5 of schedule III as sale of land and sale of (completed) building.</p>
<p>c. <i>Temporary transfer or permitting the use or enjoyment of any intellectual property right;</i></p>	<p>The words 'or' in this clause is to be understood as a disjunctive that carves out alternatives. So, this clause envisages three separate classes of transactions which could be as follows:</p> <ul style="list-style-type: none"> <li>• Temporary transfer of any IPR;</li> <li>• Permitting the use of any IPR;</li> <li>• Permitting the use or enjoyment of any IPR.</li> </ul> <p>In respect of temporary transfer or usage of IPRs one needs to travel to the relevant notification to understand their import. The scheme of classification of services for the heading 9973 provides for temporary as well as permanent transfer of IPR in respect of goods.</p> <p>However, with effect from 15.11.2017, the rate notification for goods has also incorporated a paragraph for the permanent transfer of IPR in respect of goods and there has been no corresponding deletion of the words "or permanent" in the rate</p>

Entry in Schedule II	Analysis
	<p>notification for services.</p> <p>Due care needs to be exercised by the registered person in order to determine whether supply is of goods or services.</p>
<p>d. <i>Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;</i></p>	<p>The dichotomy which prevailed in the erstwhile service tax and VAT regime (i.e., the question of whether software should suffer service tax or VAT or both) has been put to rest under GST.</p> <p>While this paragraph takes care of certain activities in respect of IT software, it must be noted that the supply of pre-developed or pre-designed software in any medium/storage (commonly bought off-the-shelf), or making available of software through the use of encryption keys, is treated as a supply of goods, classifiable under heading 4907 or 8523.</p>
<p>e. <i>Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;</i></p>	<p>Some examples that may get covered under this clause are as under:</p> <ul style="list-style-type: none"> <li>• Non-compete agreement for a fee;</li> <li>• Notice period recovery (certain cases);</li> <li>• Additional amount agreed upon for settlement of any dispute/matter etc.;</li> <li>• Liquidated damages;</li> <li>• Forfeiture amounts actually forfeited or adjusted;</li> <li>• Punitive recoveries (even if computed based on quantity and price of material not delivered or piece-rate for work not completed);</li> <li>• Payment to induce another transaction (being itself taxable or non-taxable).</li> </ul> <p>Consider a situation where a supplier would supply product 'A' only if the recipient agrees to buy product 'B'- readers can think as to whether such transactions would amount to supply of goods or supply of services?</p> <p>Reference may be made to Maharashtra AAR decision in the case of Maharashtra State Power Generation Company Limited, ruling liquidated damages as supplies under GST.</p>

Entry in Schedule II	Analysis
	Payment made for purchase of goodwill will not come within this transaction as goodwill is goods and may be taxed under restrictive HSN or entry 453 to sch III to 1/2017-Central Tax (Rate) dated 28 Jun 2017. However, if transferee of a business accounts 'goods' being the premium paid over and above the cost of assets received in this acquisition, no supply under this para can be implied. As this goodwill is a term applied as art of purchase price accounting process.
<i>f. Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.</i>	Transfer of 'right to use goods' is treated as a supply of service and taxed at par, with the rate of tax as applicable to the goods involved in the transaction. (Refer discussion under clause 1(a) of Schedule II).
<b>6. Composite supply: The following composite supplies shall be treated as a supply of services, namely: —</b>	
<i>a. Works contract as defined in clause (119) of section 2;</i>	Our understanding of works contract under the erstwhile VAT / sales tax / service tax laws has no relevance in the GST regime. In the GST regime, only such of those contract that results in an immovable property is a 'works contract'. Every other contract which was understood to be a 'works contract' under the erstwhile laws will be treated as a composite / mixed supply under the Act. In such cases, the transaction may be treated as goods or services, based on the principles laid down in Section 8 (discussed separately in this Chapter).
<i>b. 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</i>	The Law categorises the supplies referred to in this clause as a composite supply, given that there are multiple goods and/or services which are essentially involved in such a transaction culminating into a composite supply of service.  Under this clause both restaurant and outdoor catering services get covered. It may also be contended that the clause also covers other forms such as parcels, take-away, home-delivery, etc. As long as the circumstances where the goods supplied

Entry in Schedule II	Analysis
<i>payment or other valuable consideration.</i>	<p>are 'for the purpose of immediate consumption', whether or not it is actually consumed, it would be treated as supply of services. For eg. bottled-water supplied to Railways will be supply of goods but transforms into supply of services when supplied by Railways to its passengers. Please note that the expression used here (and repeated in HSN 9963) are 'supply of goods as part of any service' will come within this fiction.</p> <p>Irrespective of the rate of tax as applicable on independent goods or services that are being supplied, the rate of tax as applicable to a restaurant service or outdoor catering service would apply to these goods being supplied but in the circumstance for 'immediate consumption; E.g.: Aerated drink which is served in a restaurant would be subject to tax at the rate applicable to the entire supply (restaurant service) although aerated drinks are otherwise subjected to a higher rate of tax as well as cess.</p> <p>By this reasoning, some experts argue that tobacco products which are sold in a restaurant and billed along with the supply of food/beverage will also be taxed at the rate as applicable to restaurant services - as a composite supply.</p> <p>The test that one needs to apply in the given situation is find out as to whether tobacco products are "other article for human consumption".</p>
<b>7. Supply of Goods: The following shall be treated as supply of goods, namely: —</b>	
<i>Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration</i>	<p>The definition of the term 'business' under Section 2(17) includes "provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;" In order to clarify that the supply of goods by such association etc., to its members is to be treated as a supply of goods and not as a service of providing facilities, this clause has been included.</p>

- (f) **Certain supplies will be neither a supply of goods, nor a supply of services:** The law lists down matters which shall not be considered as 'supply' for GST by way of Schedule III. Since these are transactions that are not regarded as 'supply' under the GST Laws, there is no requirement to report the inward / outward supply of such activities in the returns.

Activities listed in Schedule III	Analysis
Services by an employee to the employer in the course of or in relation to his employment.	The paragraph includes only services and not goods. Further, the paragraph only covers those services provided by an employee to the employer and not <i>vice versa</i> . Please note that 'in the course or in relation to' does not save every transaction between employer-employee. Only those transactions occurring within the four corners of the 'master-servant' relationship will be saved. The same two persons (who have employer-employee) can constitute another relationship and those will be taxed on their own merits.  It is also important to identify if the consideration that is claimed to be for 'services of employee' can be verified and validated with the amount reported for income-tax or provident fund purposes as 'salary'.
Services by any Court or Tribunal established under any law for the time being in force; The term "court" includes District Court, High Court and Supreme Court.	The word tribunal does not cover Arbitral Tribunal. Since the tribunal is dissolved after the adjudication proceedings are concluded.
Functions performed by MPs, MLAs, etc.; the duties performed by a person who holds any post in pursuance of the provisions of the Constitution in that capacity; the duties performed by specified persons in a body established by the Central State Government or local authority, not deemed as an employee;	Persons included in this clause may be Governor, Prime Minister, President etc.

Activities listed in Schedule III	Analysis
Services of funeral, burial, crematorium or mortuary including transportation of the deceased.	This clause is consonance with the exemption available in the erstwhile service tax regime.
Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building (i.e., excluding sale of under-construction premises where the part or full consideration is received before issuance of completion certificate or before its first occupation, whichever is earlier);	<p>It is intriguing as to why two activities being (i) sale of land and (ii) sale of building, have been clubbed into a single paragraph. However, one may expand the paragraph to read the two activities as distinct activities, so as to treat a sale of land without the sale of building, also to be outside the purview of GST. Refer to discussions schedule II paragraph 5(b) supra.</p> <p>Care must be taken to resist the urge to expand the words 'land and building' to cover 'all immovable properties'. Immovable property includes far more rights and interests that can be supplied without land and / or building.</p> <p>Also, sale is absolute sale and not lease or license. If transactions other than sale were to be excluded, then Legislature should have employed suitable words or given some indication within in the law to authorize expansion of the coverage.</p> <p>Unlike service tax, GST very cautiously allows this relief to (a) just land and (completed) building and (b) absolute sale and not other forms of interests inferior to absolute sale.</p> <p>Experts are divided on the issue of whether (a) sale includes absolute sale or something less also and (b) land includes land only or rights, benefits and interests in land also.</p>
Actionable claims, other than lottery, betting and gambling	A plain reading of this paragraph would mean that actionable claims are neither

Activities listed in Schedule III	Analysis
	<p>a supply of goods nor a supply of services. However, the three classes of actionable claims listed in this paragraph warrant attention.</p> <p>The definition of the word 'goods' includes the words 'actionable claims'. It has to therefore, be necessarily understood that the three classes of actionable claims viz. lottery, betting and gambling, if and when subjected to tax, must be taxed as goods. The irony is, while lottery is subject to tax as goods, betting and gambling have been subjected to tax as services under the heading 9996. This is deliberate to cover 'actionable claims' involving betting and gambling to taxed as goods and 'other than actionable claims' towards betting and gambling to be taxed as services.</p>
Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.	This insertion w.e.f. 1 <sup>st</sup> February 2019 puts to rest the confusion which had arisen on such transactions and keeps them outside the ambit of GST. Therefore, any transaction involving supply of goods by a person in India would not be called a supply when they are supplied from one place to another, both of which are outside India.
<p>Supply of warehoused goods to any person before clearance for home consumption;</p> <p>Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but</p>	The levy of the IGST on import of goods would be levied under the Customs Act, 1962 read with the Custom Tariff Act, 1975. IGST is payable when the goods are cleared for home consumption, however high sea sales were considered akin to inter-state transactions.

Activities listed in Schedule III	Analysis
before clearance for home consumption.	<p>Even though Circular No. 33 /2017-Cus, dated 1<sup>st</sup> August, 2017 clarified this matter that IGST on high sea sale, 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. However, the point of reversal of ITC was always contentious and various advance rulings, ruled in favour of revenue, further added on to it.</p> <p>Now after insertion of this entry in schedule III, reversal of ITC would no longer be required. Debate that now rages on is whether this was always the intention and therefore this amendment ought to be read not from 1 Feb 2018 but from 1 Jul 2017 or not, so that credit reversal can be saved. Some experts believe that the retrospective effect comes from the fact that an 'explanation' has also been inserted in section 17(3) of CGST Act.</p>

(g) **To be notified:** The Government has vested itself powers to notify 'activities or other transactions' which shall neither be treated as supply of goods nor a supply of services in terms of section 7(2). Such notification would be issued from time to time based on the recommendations of the GST Council.

- The Government has notified the following supplies in this regard:  
 Services by way of any activity in relation to a function entrusted to Panchayat under Article 243G of the Constitution  
*(Inserted vide Notification No. 14/2017- Central Tax (Rate) dated 28.06.2017)*
- The inter-State movement of goods like movement of various modes of conveyance, between 'distinct persons' as explained in this Chapter, including trains, buses, trucks, tankers, trailers, vessels, containers & aircrafts, carrying goods or passengers or both, or for repairs and maintenance, would also not be



regarded as supplies except in cases where such movement is for further supply of the same conveyance (Clarified vide *Circular No. 1/1/2017-IGST dated 07.07.2017*).

- The above logic would apply to the issue pertaining to inter-State movement of jigs, tools and spares, and all goods on wheels like cranes, except in cases where movement of such goods is for further supply of the same goods, and consequently no IGST would be applicable on such movements (Clarified vide *Circular No. 21/21/2017-GST dated 22.11.2017*).
- (h) The Government is also empowered to specify what shall be treated as a supply of goods / services, as is the function of Schedule II, based on the recommendation of the GST Council, by specifying that a supply is to be treated as:
- i) A supply of goods and not a supply of service;
  - ii) A supply of service and not a supply of goods.
- (i) In summary, supply can be understood as follows:

Section	Specified 'forms' of supply	Furtherance of Business	Existence of Consideration	Supply	
				'made'	'agreed to be made'
7(1)(a)	✓	✓	✓	✓	✓
7(1)(b)	✓	✓/x	✓	✓	x
7(1)(c)	✓	✓	✓/x	✓	x

- (j) The GST Law also treats certain transactions to be supplies by way of a deeming fiction imposed in the statute.
- (a) The law expressly uses the phrase 'deemed supply' in Section 19(3) and 19(6) in respect of inputs/capital goods sent to a job worker but are not returned within the time period of 1 year/ 3 years permitted for their return.
  - (b) The bill-to-ship-to transactions wherein the supply is deemed to have been made to the person to whom the invoice is issued, imposes an intrinsic condition that such person who receives the invoice should in turn issue an invoice to the recipient unless the transaction demands a treatment otherwise. For instance, where an order is placed on a vendor based on an order received from a customer, the registered person may request the vendor to directly ship the goods to the customer. In this case, although there is a single movement of goods, there is a dual change of title to goods, and therefore, there would be 2 supplies. However, the other limb of the transaction would get independently tested for supply under Section 7.

**Statutory Provisions****8. Tax liability on composite and mixed supplies**

*The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: —*

- (a) *a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and*
- (b) *a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.*

**Relevant circulars, notifications, clarifications issued by Government**

1. Circular No. 34/8/2018 dated 01.03.2018 clarifying on the taxability of certain services;
2. Circular No. 13/13/2017 dated 27.10.2017 regarding unstitched salwar suits;
3. Circular No. 11/11/2017 dated 20.10.2017 regarding taxability of printing contracts;
4. GST Flyer as issued by the CBIT can be referred to for a gist of the statutory provisions, titled 'Composite Supply and Mixed Supply'.

**Related provisions of the Statute**

Section or Rule	Description
Section 2(30)	Definition of Composite Supply
Section 2(90)	Definition of Principal Supply
Section 2(74)	Definition of Mixed Supply
Schedule II	Activities to be treated as a supply of goods or a supply of services

**8.1. Introduction**

Every supply should involve either goods, or services, or a combination of goods or a combination of services, or a combination of both. The law provides that such supplies would be classifiable for the purpose of tax treatment, either as wholly goods or wholly services, in the case of all such combinations. Schedule II of the Act provides for this classification in some of the listed instances thereunder.

**8.2. Analysis**

Where a supply involves multiple (more than one) goods or services, or a combination of goods and services, the treatment of such supplies would be as follows:

- (a) **If it involves more than one, goods and / or services which are naturally bundled together and supplied in conjunction with each other in the ordinary course of business and one such supply would be a principal supply:**

- (i) These are referred to as composite supply of goods and / or services. It shall be deemed to be a supply of those goods or services, which constitutes the principal supply therein. Only where all of the conditions specified for a supply of a combination of goods and/or services to be treated as a composite supply are satisfied, the supply can be regarded as a composite supply. The conditions are as follows:
1. The supply must be made **by a taxable person**: This condition presumes that composite supplies can only be effected by a taxable person.
  2. The supply must comprise 2 / more **taxable** supplies: The law merely specifies that the supplies included within a composite supply must contain 2 or more taxable supplies. A question may then arise as to what would be the treatment in case of a supply that fulfils all the conditions, but involves an exempt supply – say, purchase of fresh vegetables from a store which offers home delivery for an added charge. Fresh vegetables are exempt from tax, whereas the service of home delivery would attract tax. No clarification has been issued in this regard. However, on a plain reading of the provision, it appears that this condition would not be satisfied where the composite supply involves an exempt supply. One could argue that taxable supply includes exempt by virtue of the definition of taxable supply under Section 2(108).
  3. The goods and / or services involved in the supply must be **naturally bundled**: The concept of natural bundling needs to be examined on a case to case basis. What is naturally bundled in one set-up may not be regarded as naturally bundled in another situation. For instance, stay with breakfast is naturally bundled in the hotel industry, while the supply of lunch and dinner, even if they form part of the same invoice, may not be considered as naturally bundled supplies along with room rent.
  4. They must be supplied in conjunction with each other in the **ordinary course of business**: Where certain supplies could be naturally bundled, it is essential that they are so supplied in the ordinary course of business of the taxable person. For instance, it is possible to consider the supply of a water purifier along with the first-time installation service as a naturally bundled supply. However, if a supplier of water purifiers does not ordinarily provide the installation service, and arranges for a person to provide the installation service in the case of an important business customer, the supply would not satisfy the said condition.
  5. Only one of the supplies involved must qualify as the **principal supply**: In every composite supply, there must be only one principal supply. Where a conflict between the various components of the supply, as to which of those qualify as the principal supply, cannot be resolved and results in multiple predominant supplies, the supply cannot be regarded as a composite supply.

- (a) A principal supply is defined u/s 2(90) to mean the predominant element of a composite supply to which any other supply forming part of that composite supply is ancillary.
- (b) Therefore, mere identification of the predominant element would not suffice, and it must be ascertained that all other supplies composed in the composite supply are ancillary to that predominant element of the supply.
- (c) Consider the case of a supply of dining table with chairs. There would normally be no issue in this regard if both the components are made of the same material. However, if the dining table is made of granite, while the chairs are made of superior quality wood, there would be a conflict. Normally, the dining table would be regarded as the principal supply to which the supply of chairs is ancillary. However, in this case, it may not be possible to determine which of the two make the principal supply.

Where any of the aforesaid conditions are not satisfied, the transaction cannot be treated as a composite supply.

- (ii) The matters such as time of supply, invoicing, place of supply, value of supply, rate of tax applicable to the supply, etc. shall all be determined in respect of the principal supply alone, since the entire supply shall be deemed to be a supply of the principal supply alone.
- (iii) Some Illustrations and cases of composite supplies have been discussed in the following paragraphs:
  - ✓ *Illustration (provided in Section 2(27)):* Where goods are packed, and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply. This implies that the supply will be taxed wholly as supply of goods.
  - ✓ Para 5(3) of Circular No.32/06/2018-GST dated 12.02.2018 clarifies that “food supplied to the in-patients as advised by the doctor/nutritionists is a **part of composite supply of health care** and not separately taxable”. It also goes on to clarify further that supplies of food by hospital to patients (not admitted) or their attendants or visitors are taxable.
  - ✓ Circular No.11/11/2017-GST dated 20.10.2017 has provided clarification on treatment of printing contracts. It is clarified that:
    - ❖ In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing of the content supplied by the recipient of supply is the principal supply.

- ❖ In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, the predominant supply is that of goods and the supply of printing of the content supplied by the recipient of supply is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.
  - ✓ Circular No. 34/8/2018-GST dated 01.03.2018 provides a clarification on some matters including the following:
    - ❖ The activity of bus body building is a composite supply. As regards which of the components is the principal supply, the Circular directs that it be determined on the basis of facts and circumstances of each case.
  - ✓ Re-treading of tyres– In re-treading of tyres, which is a composite supply, the pre-dominant element is the process of re-treading which is a supply of service, and the rubber used for re-treading is an ancillary supply. The Circular also specifies that *“Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature to the composite supply”*.
  - ✓ Other examples: If a contract is entered for (i) supply of certain goods and erection and installation of the same thereto or (ii) supply of certain goods along with installation and warranty thereto, it is important to note that these are naturally bundled and therefore would qualify as ‘composite supply’. Accordingly, it would *qualify* as supply of the goods therein, which is essentially the principal supply in the contract. Thus, the value attributable to erection and installation or installation and warranty thereto will also be taxable as if they are supply of the goods therein.
  - ✓ **ADVANCE RULING ON COMPOSITE SUPPLY:-** AAR, West Bengal vs. Switching Avo Electro Power Ltd.-“ *Whether if a combination of goods that does not amount to a composite supply is being offered at a single price, such supplies are to be treated as mixed supplies - Held, yes - Whether where UPS and battery are supplied as separate goods, but a single price is charged for combination of goods supplied as single contract, supply of UPS and battery is to be considered as mixed supply within meaning of section 2(74), as they are supplied under a single contract at a combined single price - Held, yes”*
- (b) **If it involves supply of more than one, goods and / or services which are not naturally bundled together but sold for a single price:**
- (i) These are referred to as mixed supply of goods and / or services. It shall be

deemed to be a supply of that goods or services therein, which are liable to tax at the highest rate of GST. The characteristics of a mixed supply is as follows:

1. It involves 2 / more **individual supplies**: It may be noted that the term used in the case of mixed supply is “individual supplies” as against “taxable supplies”. Therefore, a mixed supply can include both taxable and non-taxable supplies
  2. It is made by a **taxable person**;
  3. The supply is made for a **single price**: The fact that a composite supply does not include this condition merits consideration. Where a supply of 2 / more goods or services is made for different prices, the supplies cannot be regarded as mixed supplies.
  4. The supply does **not constitute a composite supply**: The expression “constitute” has a large ambit to include cases where the supply results in a composite supply, as well as a case where some of the components together make a composite supply, whereas the bundle together would make a mixed supply. While the condition as such is not explicit, given that there is no provision for treatment of a bundled supply where only some components together qualify as a composite supply, it may be safe to interpret that a mixed supply is one which is not regarded as a composite supply.
- (ii) The matters such as time of supply, invoicing, place of supply, value of supply, rate of tax applicable to the supply, etc. shall all be determined in respect of that supply which attracts the highest rate of tax. However, the law remains silent on what is the treatment required to be undertaken where more than one component is subjected to the highest rate of tax. For instance, consider a case where a commercial complex is let out for a consideration of monthly rentals, and the owner of the complex also supplies parking lots to those tenants who opt for the facility. While both the supplies attract tax @ 18%, the law does not prescribe for treatment of the transaction as that of only one of the two supplies.
- (iii) Some Illustrations and cases of mixed supplies have been discussed in the following paragraphs:
- ✓ *Illustration (provided in Section 2(66))*: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately. **This implies that the supply will be taxed wholly as supply of those goods which are liable to the highest rate of GST.**
  - ✓ Other examples: If a tooth paste (say for instance it is liable to GST at 12%) is bundled along with a tooth brush (say for instance it is liable to GST at 18%) and is sold as a single unit for a single price, it would be reckoned as a mixed

supply. This would therefore be liable to GST at 18% (higher of 12% or 18% applicable to each of the goods therein).

- (c) While there are no infallible tests for such determination, the following guiding principles could be adopted to determine whether a supply would be a composite supply or a mixed supply. However, every supply should be independently analysed.

Description	Composite Supply	Mixed Supply
Naturally bundled	Yes	No
Each supply available for supply individually	No	Yes / No
One is predominant supply for recipient	Yes	Yes / No
Other supply(ies) are ancillary or they are received because of predominant supply	Yes	No
Each supply priced separately	Yes / No	No
Supplied together	Yes	Yes
All supplies can be goods	Yes	Yes
All supplies can be services	Yes	Yes
A combination of one / more goods and one / more services	Yes	Yes

#### ADVANCE RULING ON COMPOSITE SUPPLY/MIXED SUPPLY

- **AAR, Haryana vs. Paras Motor Industries-**Whether activity of fabrication and fitting and mounting of bus bodies on chassis supplied by other party is a composite supply of service with supply of goods, i.e., bus bodies, being principal supply and same is covered under HSN Code 8707 - Held, yes
- **AAR, Kolkata vs. Switching Avo Electro Power Ltd.-** Whether if a combination of goods that does not amount to a composite supply is being offered at a single price, such supplies are to be treated as mixed supplies - Held, yes - Whether where UPS and battery are supplied as separate goods, but a single price is charged for combination of goods supplied as single contract, supply of UPS and battery is to be considered as mixed supply within meaning of section 2(74), as they are supplied under a single contract at a combined single price - Held, yes.

#### Statutory Provisions- Effective from 1<sup>st</sup> July, 2017 to 31<sup>st</sup> January, 2019

##### **9. Levy and Collection**

- (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value

determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

- (2) 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.
- (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both
- (4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- (5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also, he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

**Statutory Provisions- Effective from 1<sup>st</sup> February 2019 vide The Central Goods & Services Tax Amendment Act, 2018**

**9. Levy and Collection**

- (1) *Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined*



*undersection 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*

- (2) *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.*
- (3) *The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both*
- (4) **The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.**
- (5) *The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:*

*Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:*

*Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also, he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.*

#### **Relevant circulars, notifications, clarifications issued by Government**

1. All rate notifications issued under the law from time to time;
2. Circular No. 44/18/2018 dated 02.05.2018 clarifying on the taxability of tenancy rights;
3. Circular No. 35/9/2018 dated 05.03.2018 clarifying on the taxability of services provided by member of JV to JV;

4. Circular No. 34/8/2018 dated 01.03.2018 clarifying on the taxability of certain services;
5. Circular No. 32/06/2018 dated 12.02.2018 clarifying on the taxability of certain services;
6. Circular No. 30/4/2018 dated 25.01.2018 regarding supplies made to the Indian Railways classifiable under any chapter other than Chapter 86;
7. Circular No. 29/3/2018 dated 25.01.2018 regarding applicability of GST on Polybutylene feedstock and Liquefied Petroleum Gas retained for the manufacture of Poly Iso Butylene and Propylene or Di-butyl paragraph Cresol;
8. Circular No. 28/02/2018 dated 08.01.2018 regarding GST on College Hostel Mess Fees;
9. Circular No. 27/01/2018 dated 04.01.2018 regarding levy of GST on accommodation services, betting and gambling in casinos, horse racing, admission to cinema, homestays, printing, legal services etc.;
10. Circular No. 21/21/2017 dated 22.11.2017 regarding Inter-state movement of rigs, tools and spares, and all goods on wheels [like cranes];
11. Circular No. 20/20/2017 dated 22.11.2017 regarding classification and GST rate on Terracotta idols;
12. Circular No. 19/19/2017 dated 20.11.2017 regarding taxability of custom milling of paddy;
13. Circular No. 16/16/2017 dated 15.11.2017 regarding applicability of GST on certain services;
14. Circular No. 13/13/2017 dated 27.10.2017 regarding unstitched Salwar Suits;
15. Circular No. 12/12/2017 dated 26.10.2017 regarding applicability of GST on the superior kerosene oil [SKO] retained for the manufacture of Linear Alkyl Benzene [LAB]
16. Circular No. 11/11/2017 dated 20.10.2017 regarding taxability of printing contracts;
17. Circular No. 6/6/2017 dated 27.08.2017 regarding classification and rate of GST on lottery tickets.
18. Circular No. 10/10/2017-GST dated 18.10.2017 regarding clarification on movement of goods on approval basis.
19. Circular No. 6/11/2017 dated 27.08.2017 regarding classification and rate of GST on lottery tickets.

**Related provisions of the Statute**

Section or Rule	Description
Section 1	Short title, extent and commencement
Section 2(84)	Definition of Person
Section 2(107)	Definition of Taxable Person
Section 2(108)	Definition of Taxable Supply
Section 2(45)	Definition of Electronic Commerce Operator
Section 2(98)	Definition of Reverse Charge
Section 10	Composition levy
Section 11	Power to grant exemption from tax
Section 7 (IGST)	Inter-State supply
Section 8 (IGST)	Intra-State supply
Section 15	Value of supply
Section 25	Registration

**9.1. Introduction**

Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by the authority of law. The charging section is a must in any taxing statute for levy and collection of tax. Before imposing any tax, it must be shown that the transaction falls within the ambit of the taxable event and that the person on whom the tax is so imposed also gets covered within the scope and ambit of the charging Section by clear words used in the Section. No one can be taxed by implication. The scope of the taxable event being 'supply' has been discussed in the earlier part of this Chapter. This Section will provide an insight into the chargeability of tax on a supply. Section 9 is the charging provision of the CGST Act. It provides the maximum rate of tax that can be levied on supplies leviable to tax under this law, the manner of collection of tax and the person responsible for paying such tax.

It is interesting to note that the 4 pillars of taxation that together constitute the cornerstone for levy are couched in Section 9(1). The taxable event, tax rate, collection or levy, and the person to pay are so worded that there is no escape. It appears that the law laid down by the Hon'ble Supreme Court in Govind Saran Ganga Saran's Case has been followed.

**9.2. Analysis**

The IGST Law provides the basis for determination of a supply as an intra-State supply or an inter-State supply – simply put, if the location of the supplier and the place of supply are within the same State, the transaction will be an intra-State supply, barring the case of supplies made by / to SEZ, and all other supplies will be regarded as inter-State supplies. Please refer to the discussion in the IGST Chapters for a holistic understanding of 'Levy' as a concept under the GST law.

- (i) **Taxable supply:** Every taxable supply will be subjected to GST. A taxable supply refers to any supply of goods or services or both, which qualifies as a supply in terms of Section 7. The exception to this rule would be all supplies that the levy Section forgoes to tax, as also all those supplies that have been notified to be nil-rated or exempted from tax. The provisions imposing GST are phrased in such a manner so as to **exclude the supply of alcoholic liquor for human consumption** from the scope of levy itself. However, the law specifies certain other goods whereby the levy of GST has been deferred until such time the goods are notified in this regard to be taxable supplies (by the Government, based on the recommendation of the GST Council):
- (1) petroleum crude
  - (2) high speed diesel
  - (3) motor spirit (commonly known as petrol)
  - (4) natural gas and
  - (5) aviation turbine fuel
- (ii) **Tax payable:** The nature of tax would depend upon the nature of supply, viz., inter-State supplies will be liable to IGST and intra-State supplies will be liable to CGST and SGST/UTGST (i.e., UTGST in case intra-State supplies within a particular Union Territory). Every intra-State supply will attract CGST as well as SGST, as follows:
- (1) Imposition of CGST by the Union Government of India
  - (2) Imposition of SGST by the respective State Government or (in case of UTGST, by the Central Government through the appointed Administrator)
- (iii) **Tax shall be payable by a 'taxable person':** The tax shall be payable by a 'taxable person' i.e., a person who is liable to obtain registration, or a person who has obtained registration. Please note that there can be multiple taxable persons for a single person. It comprises separate establishments of persons registered or liable to be registered under sections 22 or section 24 of the CGST Act. *Please refer to the discussion under Section 25 for a thorough understanding of this concept.* Under the GST law, the person liable to pay the tax levied on a supply under the Statute would be one of the following:
- (1) The supplier, in terms of Section 9(1)—Referred to as forward charge. This is ordinarily applicable in case of all supplies unless the supplies qualify under the other two categories, i.e., this would be the residual category of supply wherein the supplier would be liable to pay tax. (In this regard, it must be noted that the term 'supplier' is attributed to an establishment, and not to the PAN as a whole. Therefore, if the supply is effected from an establishment in Karnataka, the establishment of the same entity located in say Delhi, cannot discharge the liabilities);

- (2) The recipient – Referred to as tax under reverse charge mechanism. In such a case, all the provisions of the Act as are applicable to the supplier in a normal case, would apply to the recipient of supply (being a taxable person, and not the PAN as explained above). A supply would be subjected to tax in the hands of the recipient only in the following cases:
1. Notified supplies under Section 9(3): The supply of goods or services is notified as a supply liable to tax in the hands of the recipient vide Notification No. 4/2017-Central Tax (Rate) in case of goods and Notification No. 13/ 2017-Central Tax (Rate) in case of services, as amended from time to time. Please note that the supplier discharging this liability would not render the liability discharged, since the law imposes the obligation on the recipient. The recipient of supply would nevertheless be liable to discharge the taxes, and the relief available to the supplier would be only by way of an application for refund;
  2. Supplies received from unregistered persons under Section 9(4): The supply is an inward supply of goods and / or services effected by a registered person from an unregistered supplier. In this regard, it may be noted that the levy under this clause applies (as amended by CGST Amendment Act) only in respect of (a) 'class of registered persons' and (b) 'categories of goods or services', by a notification. W.e.f. 1<sup>st</sup> April, 2019, the Central Government vide Notification No. 07/2019-Central Tax (Rate) notified the following categories of goods or services or both, in respect of which registered person shall pay tax on reverse charge basis as recipient of such goods or services or both:-

Sl. No.	Category of supply of goods and services	Recipient of goods and services
1.	Supply of such goods and services or both [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of	Promoter

	India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	
2.	Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	Promoter
3.	Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	Promoter

Central Government on the recommendation of the GST Council has notified goods in respect of whose intra-state and inter-state supplies, central/integrated tax shall be paid by the recipient of such goods under reverse charge. These goods are as under:

HSN	Description of goods	Suppliers of goods	Recipient of supply	Notification No.
0801	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person	4/2017-Central Tax (Rate) dated June 28, 2017 and 4/2017-Integrated Tax (Rate) dated June 28, 2017
1404 90 10	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person	4/2017-Central Tax (Rate) dated June 28, 2017 and 4/2017-Integrated Tax

				(Rate) dated June 28, 2017
2401	Tobacco leaves	Agriculturist	Any registered person	4/2017-Central Tax (Rate) dated June 28, 2017 and 4/2017-Integrated Tax (Rate) dated June 28, 2017
5004 to 5006	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person	4/2017-Central Tax (Rate) dated June 28, 2017 and 4/2017-Integrated Tax (Rate) dated June 28, 2017
-	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent.	4/2017-Central Tax (Rate) dated June 28, 2017 and 4/2017-Integrated Tax (Rate) dated June 28, 2017
Any Chapter	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government, State Government, Union territory or a local authority	Any registered person	36/2017-Central Tax (Rate) dated October 13, 2017
Any Chapter	Priority Sector Lending Certificate	Any registered person	Any registered person	11/2018-Central Tax (Rate) dated May 28, 2018

Central Government on the recommendation of the Council has notified the category of supply of services on which GST shall be paid by the recipient on reverse charge basis (**Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017 as amended from time to time**)

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
1	Supply of Services by a goods transport agency (GTA) who has	Goods Transport	(a) Any factory registered under or governed by the

	<p>not paid central tax @ 6% in respect of transportation of goods by road to-</p> <p>(a) any factory registered under or governed by the Factories Act, 1948(63 of 1948);or</p> <p>(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>(e) anybody corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person.</p>	Agency (GTA)	<p>Factories Act, 1948(63 of 1948); or</p> <p>(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or</p> <p>(c) any co-operative society established by or under any law; or</p> <p>(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>(e) anybody corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person; located in the taxable territory.</p>
2	<p>Services supplied by an individual advocate Including A senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a</p>	<p>An individual Advocate including a Senior advocate or firm of advocates.</p>	<p>Any business entity located in the taxable territory.</p>



	firm of advocates, by way of legal services, to a business entity.		
3	Services supplied by An arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in the taxable territory.
4	Services provided by way of sponsorship to anybody corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable property, and (2) services specified below- (i) services by the Department of posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Central Government State Government Union territory or local authority	Any business entity located in the taxable territory.
5A	Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017). (Inserted vide Notification No.3/2018-Central Tax (Rate) dated January 25, 2018	Central Government, State Government, Union territory or local authority	Any person registered under the Central Goods and Services Tax Act, 2017

6	Services supplied by a director of a company or a body corporate to the said company or the body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.
7	Services supplied by an insurance agent to any person carrying on insurance business.	An Insurance agent	Any person carrying on insurance business, located in the taxable territory.
8	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial Institution or a non-banking financial company, located in the taxable territory.
9	Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a music company, producer or the like.	Music composer, photographer, artist, or the like	Music company, producer or the like, located in the taxable territory.
10	Supply of services by the members of Overseeing Committee to Reserve Bank of India (Inserted vide Notification No.33/2017-Central Tax (Rate) dated October 13, 2017)	Members of Overseeing Committee constituted by the Reserve Bank of India	Reserve Bank of India.
11	Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs). (Inserted vide Notification No.15/2018-Central Tax (Rate) dated July 26, 2018)	Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm.	A banking company or a non-banking financial company, located in the taxable territory.
12	Services provided by business facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory

13	Services provided by an agent of business correspondent (BC) to business correspondent (BC).	An agent of business correspondent (BC)	A business correspondent, located in the taxable territory.
14	Security services (services provided by way of supply of security personnel) provided to a registered person: Provided that nothing contained in this entry shall apply to, - (i)(a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies; which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or (ii) a registered person paying tax under section 10 of the said Act. Any person other than a body corporate. A registered person, located in the taxable territory.”; (Inserted vide Notification No.29/2018-Central Tax (Rate) dated Dec 31, 2018)	Any person other than a body corporate	A registered person, located in the taxable territory.”;
15	Services provided by way of renting of a motor vehicle provided to a body corporate.	Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of	Any body corporate located in the taxable territory.

		input service in the same line of business	
16	Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended.	Lender i.e. a person who deposits the Securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI	Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI."

In addition to the above list given under Central Tax- Rate, following additional category of supply of services is listed under Notification No. 10/2017- Integrated Tax (Rate) on which GST shall be paid by the recipient on reverse charge basis:-

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
1	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.
10	Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.

**ANALYSIS:-**

- No partial reverse charge will be applicable under GST. 100% tax will be paid by the recipient if reverse charge mechanism applies.
  - All taxpayers required to pay tax under reverse charge have to mandatorily obtain registration and the threshold exemption is not applicable on them.
  - Payment of taxes under Reverse Charge cannot be made with utilisation of Input Tax Credit and has to be made in Cash.
  - The recipient can take the credit of tax paid on inward supplies liable to reverse charge once the recipient makes payment of tax in cash.
- (iv) The e-commerce operator, in terms of Section 9(5): The Government is empowered to notify categories of services wherein the person responsible for payment of taxes would neither be the supplier nor the recipient of supply, but the e-commerce operator through which the supply is effected. It is important to note that, in case of such supplies, the e-commerce operator is neither the supplier nor does it receive the services. The e-commerce operator is merely the person who owns, operates or manages digital or electronic facility or platform for e-commerce purposes. Under the erstwhile service tax law, the e-commerce operator in such an arrangement was referred to as an 'aggregator'.
1. The Government has notified certain services in this regard vide Notification No. 17/2017-Central Tax (Rate) as amended from time to time, including services by way of transportation of passengers by a radio-taxi, motor cab, maxi cab and motor cycle, etc.); accommodation in hotels, inns, guest houses, clubs, campsites; services by way of housekeeping, such as plumbing, carpeting etc.
  2. Where the e-commerce does not have a physical presence in the taxable territory, any person representing his in the taxable territory would be liable to pay the taxes. If no such representative exists, the e-commerce operator is liable to appoint such a person in order to discharge this obligation.
  3. All other provisions of the Act will apply to the e-commerce operator or his representative (as the case may be) in respect of such services, as if he is the supplier liable to pay tax on the services.
  4. In this regard it may be noted that liability to pay tax on the supply by the e-commerce operator is not another provision imposing tax on the reverse charge basis. Reference to the definition of reverse charge in section 2(98) makes it clear that reverse charge is limited to tax payable under section 9(3) and 9(4). It is very important to note that the language employed in Section 9(5) makes it clear that the liability to pay tax on the supply is placed on the e-commerce operator, "as if" the e-commerce operator were the "supplier liable to tax". The marked departure of the language from that used in case of the reverse charge provisions suggests that:

- (a) The tax that is applicable on the supply is to be paid by the e-commerce operator "as if" such e-commerce operator was the supplier liable to tax. The provisions require the e-commerce operator to step into the shoes of the actual supplier, for the limited purpose of discharging his liability, and the supply by the e-commerce operator to the actual supplier (facilitation services, commission services or by any service *inter se*) will be taxable separately, in the hands of the e-commerce operator as a supplier of service to the actual supplier.
- (b) The actual supplier is no longer liable to pay any tax. This means that the suppliers will not be the person liable to pay tax on such services effected through an e-commerce operator, even if they have obtained registration. This is clear not only from the exclusion from compulsory registration under section 24(ix) (to such actual suppliers where the e-commerce operator will pay tax under section 9(5)) but also allowed to enjoy exclusion from registration under section 23(1)(a) when entire turnover is taxed under 9(5) in the hands of e-commerce operator. Also refer Notification 17/2017-Central Tax (Rate) dated 28 Jun 2017 where exception is made for 'requirement to otherwise register under section 22" to such actual supplies attracting section 9(5).

Readers may refer to decision of Karnataka AAR in the matter of Opta Cabs Private Limited as below:

Question raised: Whether the money paid by the customer to the driver of the cab for the services of the trip is liable to GST and whether the applicant company is liable to pay GST on this amount

Ruling: The services of transportation of passengers is supplied to the consumers through the applicant and it shall be deemed that the applicant would be deemed to be the supplier liable to pay tax in relation to the supply of such service by the taxi operator - in accordance with the provisions of sub-section (5) of section 9 of the Central Goods and Services Tax Act 2017 r/w Notification No. 17/2017- Central Tax (Rate), the applicant is liable to tax on the amounts billed by him on behalf of the taxi operators for the service provided in the nature of transportation of passengers through it.

- (iv) **Rate of tax:** The rate of tax will be applicable as specified in the Notification No. 1/2017- Central Tax (Rate) for goods and Notification No. 11/2017- Central Tax (Rate) for services issued in this regard and read with other Rate Notifications which may be issued to partially exempt any other goods or services from payment of tax. The rates of tax contained in these notifications cannot exceed 20% under each limb (i.e., 20% under CGST Law and 20% under SGST), as amended from time to time. These rates would be notified based on the recommendation of the GST Council. In order to determine the applicable rate of tax, the following approach is to be adopted:

- (i) Identify whether the supply is an intra-State supply;
  - (ii) Identify whether the supply is a plain supply / composite supply / mixed supply and adopt the treatment accordingly;
  - (iii) Identify HSN of the goods or services and applicable rate of tax as per rate notification;
  - (iv) Identify whether the HSN applies to more than one description-line. If yes, analyse which of the description is most specific to the supply in question;
  - (v) Once classification is ascertained, identify whether such goods or services qualify for any exemption (partially or wholly) from payment of tax.
- (v) **Taxable value:** The rate of tax so notified will apply on the value of supply as determined under Section 15. The transaction value would be accepted subject to inclusions / exclusions specified in the said Section, where the price is the sole consideration for the supply and the supplier and recipient are not related persons. In all other cases, the value of supply will be that value which is determined in terms of the rules (i.e., Chapter IV of the CGST Rules, 2017).
- (vi) **Classification of Goods or Services:** In order to apply a particular rate of tax, a taxable person need to determine the classification of his supply as to whether supply constitute a supply of goods or services. Once the same is determined, further classification in terms of HSN of goods and services has to be made by the assessee so as to arrive at the rate of tax at which he is required to pay tax. At the outset, it is important to note that HSN for goods are contained in Chapters from 1 to 98 and HSN for Services are contained in Chapter 99. Since Classification of Goods is older and is based on knowledge gathered from precedents on HSN classification, we shall discuss the steps for classification of goods. The steps for determination of proper classification is as under:
- (vii) It is important to note that classification of each product supplied has to be made separately if supply of such product is independent. This shall include all by-products, scraps etc.
  - (viii) Identify the description and nature of the goods being supplied. One must confirm that the product is also similarly or more specifically covered in the Customs Tariff and HSN 2017. The Section Notes and Chapter Notes to the applicable Schedule to be read as it forms an integral part of the Tariff for the purpose of classification.
  - (ix) If there is any ambiguity, first reference shall be made to the Rules for interpretation of the Customs Tariff.
  - (x) As per the Rules, first step to be applied is to find the trade understanding of the terms used in the Schedule, if the meaning or description of goods is not clear.
  - (xi) If the trade understanding is not available, the next step is to refer to the technical or

scientific meaning of the term. If the tariff headings have technical or scientific meanings, then that has to be ascertained first before the test of trade understanding.

- (xii) If none of the above are available reference may be had to the dictionary meaning or ISI specifications. Evidence may be gathered on end use or predominant use.
- (xiii) In case of the unfinished or incomplete goods, if the unfinished product bears the essential characteristics of the finished product, its classification shall be same as that of finished product.
- (xiv) If the classification is not ascertained as per above point, one has to look for the nature of product which is more specific.
- (xv) If the classification is still not determinable, one has to look for the ingredient which gives the article its essential characteristics.
- (xvi) It is important to note that in following cases of supply of services, same rate of central tax as on supply of like goods involving transfer of title in goods would be applicable:

SI No.	Chapter, Section or Heading	Description of Service	Rate (per cent.) of Central Tax	Rate (per cent.) of Integrated Tax
15	<b>Heading 9971</b> (Financial and related services)	(ii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	Same rate of central tax as on supply of like goods involving transfer of title in goods	Same rate of central tax as on supply of like goods involving transfer of title in goods
		(iii) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.	Same rate of central tax as on supply of like goods involving transfer of title in goods	Same rate of central tax as on supply of like goods involving transfer of title in goods
17	<b>Heading 9973</b> (Leasing or rental services, with or	(iii) Transfer of the right to use any goods for	Same rate of central tax as on supply of like	Same rate of central tax as on supply of like



	without operator)	any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	goods involving transfer of title in goods	goods involving transfer of title in goods
		(iv) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.	Same rate of central tax as on supply of like goods involving transfer of title in goods	Same rate of central tax as on supply of like goods involving transfer of title in goods
		(vi) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv) and (v) above.	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods

- (xvii) The only exception to the above table is leasing of motor vehicle which was purchased by the Lessor prior to July 1, 2017, leased before July 1, 2017 and no ITC of central excise, VAT or any other taxes on such motor vehicle was availed by him. If all these conditions are fulfilled then the lessor is liable to pay GST only on 65% of the GST applicable on such motor vehicle. – Refer notification No.37/2017- Central Tax (Rate) dated October 13, 2017.

### 9.3 Comparative review

Under the erstwhile tax laws, Central Excise is levied on 'manufacture of goods', VAT / CST is levied on 'sale of goods' and service tax is charged on 'service provided or agreed to be provided'. Unlike such different incidences, under the GST law, it is 'supply' which would be the taxable event. Under the erstwhile law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT / CST on production of necessary forms – however, under the GST law, it would be taxable as a 'supply' if such supplies are between distinct persons under section 25(4) or 25(5). Further, free supplies were liable to excise duty, while under the VAT laws, free supplies would require reversal of input tax credit; under the GST law, we have to be careful to analyse whether there is any non-monetary consideration

(inducement) present in the supplies (free-marketed as), if yes then we have to get into valuation of such free supplies to arrive at a transaction value. If not, then the treatment would be similar to the erstwhile VAT laws, where the supplies are made without any consideration (monetary/ otherwise). However, where the free supplies are made between distinct persons or between related persons then such supplies may be regarded as supply under Schedule I, paragraph 2.

In the erstwhile law, there are multiple transactions which apparently qualify as both 'sale of goods' as well as 'provision of services'. E.g.: license of software, providing a right to use a brand name, etc. To avoid this situation, GST law clarifies as to whether a transaction would qualify as a 'supply of goods' or as 'supply of services' by introducing a deeming fiction. A transaction of supply under composite contracts would either qualify as supply of goods or as services, under the GST law (Schedule II of the Act, concept of composite supply and mixed supply).

The payment of VAT in the hands of the purchaser (registered dealer) on purchase of goods from an unregistered dealer and the circumstances where the Service Tax is payable under the reverse charge mechanism in respect of say, advocate services, import of services, sponsorship services etc. are comparable to the 'reverse charge mechanism' prescribed herein. However, the concept of partial reverse charge is not continuing in the GST regime, viz., every supply will be liable either to forward charge or full reverse charge. Further, under erstwhile law, the concept of reverse charge only exists in relation to services. The GST law, however, permits the supply of goods also to be subjected to reverse charge.

#### 9.4 Issues and concerns

1. The activity of import of service is subjected to tax, whether or not such import is in the course or furtherance of business. While the relaxation from obtaining registration is provided to a 'non-taxable online recipient' who imports OIDAR services, relaxation to other persons who import services for personal use flows from exemption in entry 10(a) to notification 9/2017-Int (Rate) dated 28 Jun 2017.
2. Although, the word 'business' is clearly defined u/s 2(17), the phrase 'in the course or furtherance of business' has not been defined in the Act. The meaning that can be derived from this phrase is so wide that it can include every activity undertaken by a business concern, including activities in the course of employment, since employment is a subset of the activities undertaken in the course of business.
3. A plain reading of the meaning of the terms 'composite supply' and 'mixed supply' suggests that the concepts pre-suppose a condition that they are effected by taxable persons. Say in case of a supply effected by a non-taxable person to a registered person attracting tax under reverse charge, the supply would not be regarded as a composite supply even where all the conditions are satisfied, and cannot be regarded as a mixed supply either, for the same reason. Such an understanding would defeat the very purpose of the legislative intent. Therefore, in case of reverse charge transactions,

the supply must be understood to have been made by the registered person who is the recipient of supply, i.e., even supplies effected by unregistered persons may be qualified to be termed 'composite supply' or mixed supply', subject to the normal conditions which would otherwise apply.

4. While the concept of 'mixed supplies' requires that the goods and / or services supplied in the mixed supply must be supplied for a single price, there is no such requirement in the case of composite supplies. Therefore, a person effecting a mixed supply of goods would certainly have an option to strategically alter the bundle of supplies so that all the goods / services included in the mixed supply would not all be subjected to the highest rate of tax applicable on the said supplies.

On the other hand, a supplier who effects a composite supply wishes to charge for the supply of two or more goods or services separately, which otherwise constitute a composite supply, a question may arise as to whether the rate of tax applicable on all the supplies would continue to be the rate applicable to the principal supply. Say, a supplier of air conditioners (taxable @ 28%) who always effects the supply along with the installation service, now chooses to split the cost of the service in order to tax such service portion at the rate of 18%. Such a split-up may be questioned, given that there is no escape from treatment as a composite supply merely because the values are ascertained separately. Generally, transactions that are intentionally broken up with an intent to minimise the impact of tax would be subject to scrutiny / valuation.

#### 9.5 FAQs

- Q1. In respect of exchange of goods, namely gold watch for restaurant services, will the transaction be taxable as two different supplies or will it taxable only in the hands of the main supplier?

Ans. Yes, the transaction of exchange is specifically included in the scope of "supply" under Section 7. Thus, exchange could be taxable both ways. Provided the person exchanging gold watch is in the business of selling watches (A contrary view could also be taken. It depends on the facts of each and every case).

- Q2. What are examples of 'disposals' as used in 'supply'?

Ans. "Disposals" could include donation in kind or supplies in a manner other than sale.

- Q3. Will a not-for-profit entity be liable to tax (if registered under GST) on any supplies effected by it – e.g.: sale of assets received as donation?

Ans. Yes, it would be liable to tax on value as may be determined under Section 15, for said sale of donated assets.

- Q4. Is the levy under reverse charge mechanism applicable only to services?

Ans. No, reverse charge applies to supplies of both goods and services by virtue of Notification No.4/2017-CT(Rate) and Notification No.13/2017-CT(Rate) for goods and services respectively.

Q5. What will be the implications in case of purchase of goods from unregistered dealers?

Ans. As per Section 9(4) of the CGST Act, 2017 as amended by The CGST Amendment Act, 2018 specified that the tax shall be payable under reverse charge by the specified class of registered persons, in respect of supply of specified categories of goods.

### 9.6 MCQs

Q1. As per Section 9, which of the following would attract levy of CGST?

- (a) Inter-State supplies, in respect of supplies within the State to SEZ;
- (b) Intra-State supplies;
- (c) Both of the above;
- (d) Either of the above.

Ans. (b) Intra-State supplies

Q2. Which of the following forms of supply are included in Schedule I?

- (a) Permanent transfer of business assets on which input tax credit has been claimed
- (b) Agency transactions for services
- (c) Barter
- (d) None of the above

Ans. (a) Permanent transfer of business assets on which input tax credit has been claimed

Q3. Who can notify a transaction to be supply of 'goods' or 'services'?

- (a) CBIT
- (b) Central Government on the recommendation of GST Council
- (c) GST Council
- (d) None of the above

Ans. (b) Central Government on the recommendation of GST Council

### **Statutory Provisions- Effective from 1<sup>st</sup> July, 2017 to 31<sup>st</sup> January, 2019**

#### **10. Composition levy**

- (1) *Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding,—*

- (i) *one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,*
- (ii) *two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and*
- (iii) *half per cent. of the turnover in State or turnover in Union territory in case of other suppliers,*

*subject to such conditions and restrictions as may be prescribed:*

*Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council*

- (2) *The registered person shall be eligible to opt under sub-section (1), if: —*
  - (a) *he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;*
  - (b) *he is not engaged in making any supply of goods which are not leviable to tax under this Act;*
  - (c) *he is not engaged in making any inter-State outward supplies of goods;*
  - (d) *he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and*
  - (e) *he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:*

*Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.*

- (3) *The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).*
- (4) *A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.*
- (5) *If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.*

**Statutory Provisions- Effective from 1<sup>st</sup> February 2019 vide The Central Goods & Services Tax Amendment Act, 2018**

**10. Composition levy**

(1) *Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, **in lieu of the tax payable by him under sub-section (1) of section 9, an amount calculated at such rate***<sup>10</sup>*as may be prescribed, but not exceeding,—*

- (i) *one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,*
- (ii) *two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and*
- (ii) *half per cent. of the turnover in State or turnover in Union territory in case of other suppliers,*

*subject to such conditions and restrictions as may be prescribed:*

*Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding **one crore and fifty lakh rupees***<sup>11</sup>*, as may be recommended by the Council*

**Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.**

(2) *The registered person shall be eligible to opt under sub-section (1), if: —*

- (a) *save as provided in sub-section (1), he is not engaged in the supply of services;*
- (b) *he is not engaged in making any supply of goods which are not leviable to tax under this Act;*
- (c) *he is not engaged in making any inter-State outward supplies of goods;*
- (d) *he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and*
- (e) *he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council*

<sup>10</sup> Substituted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019. Before substitution, it was read as "in lieu of the tax payable by him, an amount calculated at such rate"

<sup>11</sup> Substituted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019. Before substitution, it was read as "one crore rupees"

*Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.*

- (3) *The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).*
- (4) *A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.*
- (5) *If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.*

#### **Amendment by The Finance (No.2) Act, 2019<sup>12</sup>**

In section 10 of the Central Goods and Services Tax Act, —

- (a) in sub-section (1), after the second proviso, the following Explanation shall be inserted, namely: —

“Explanation. –For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.”;

- (b) in sub-section (2), —

- (i) in clause (d), the word “and” occurring at the end shall be omitted;
- (ii) in clause (e), for the word “Council:”, the words “Council; and” shall be substituted;
- (iii) after clause (e), the following clause shall be inserted, namely: —  
“(f) he is neither a casual taxable person nor a non-resident taxable person.”;

- (c) after sub-section (2), the following sub-section shall be inserted, namely: —

“(2A) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to

<sup>12</sup> Effective date yet to be notified

opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not—

- (a) engaged in making any supply of goods or services which are not leviable to tax under this Act;
- (b) engaged in making any inter-State outward supplies of goods or services;
- (c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;
- (d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and
- (e) a casual taxable person or a non-resident taxable person:

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

- (d) in sub-section (3), after the words, brackets and figure “under sub-section (1)” at both the places where they occur, the words, brackets, figure and letter “or sub-section (2A), as the case may be,” shall be inserted.
- (e) in sub-section (4), after the words, brackets and figure “of sub-section (1)”, the words, brackets, figure and letter “or, as the case may be, sub-section (2A)” shall be inserted.
- (f) in sub-section (5), after the words, brackets and figure “under sub-section (1)”, the words, brackets, figure and letter “or sub-section (2A), as the case may be,” shall be inserted.
- (g) after sub-section (5), the following Explanations shall be inserted, namely: —

‘Explanation 1.—For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression “aggregate turnover” shall include the value of supplies made by such person from the 1st day of April of a financial year up to the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Explanation 2.—For the purposes of determining the tax payable by a person under this section, the expression “turnover in State or turnover in Union territory” shall not



include the value of following supplies, namely:—

- (i) supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act; and
- (ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.’.

### Extract of the CGST Rules, 2017

#### **3. Intimation for composition levy.**

- (1) Any person who has been granted registration on a provisional basis under clause (b) of sub-rule (1) of rule 24 and who opts to pay tax under section 10, shall electronically file an intimation in FORM GST CMP-01, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, prior to the appointed day, but not later than thirty days after the said day, or such further period as may be extended by the Commissioner in this behalf:

*Provided that where the intimation in FORM GST CMP-01 is filed after the appointed day, the registered person shall not collect any tax from the appointed day but shall issue bill of supply for supplies made after the said day.*

- (2) Any person who applies for registration under sub-rule (1) of rule 8 may give an option to pay tax under section 10 in Part B of FORM GST REG-01, which shall be considered as an intimation to pay tax under the said section.
- (3) Any registered person who opts to pay tax under section 10 shall electronically file an intimation in FORM GST CMP-02, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 within a period of sixty days from the commencement of the relevant financial year.

[(3A) Notwithstanding anything contained in sub-rules (1), (2) and (3), a person who has been granted registration on a provisional basis under rule 24 or who has been granted certificate of registration under sub-rule (1) of rule 10 may opt to pay tax under section 10 with effect from the first day of the month immediately succeeding the month in which he files an intimation in FORM GST CMP-02, on the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the 31st day of March, 2018, and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 within a period of

*[one hundred and eighty days]<sup>13</sup> from the day on which such person commences to pay tax under section 10:*

*Provided that the said persons shall not be allowed to furnish the declaration in FORM GST TRAN-1 after the statement in FORM GST ITC-03 has been furnished]<sup>14</sup>.*

- (4) *Any person who files an intimation under sub-rule (1) to pay tax under section 10 shall furnish the details of stock, including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts to pay tax under the said section, electronically, in FORM GST CMP-03, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within a period of [ninety]<sup>15</sup> days from the date on which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf.*
- (5) *Any intimation under sub-rule (1) or sub-rule (3) or [sub-rule (3A)]<sup>16</sup> in respect of any place of business in any State or Union territory shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.*

#### **4. Effective date for composition levy.**

- (1) *The option to pay tax under section 10 shall be effective from the beginning of the financial year, where the intimation is filed under sub-rule (3) of rule 3 and the appointed day where the intimation is filed under sub-rule (1) of the said rule.*
- (2) *The intimation under sub-rule (2) of rule 3, shall be considered only after the grant of registration to the applicant and his option to pay tax under section 10 shall be effective from the date fixed under sub-rule (2) or (3) of rule 10.*

#### **5. Conditions and restrictions for composition levy.**

- (1) *The person exercising the option to pay tax under section 10 shall comply with the following conditions, namely:-*
  - (a) *he is neither a casual taxable person nor a non-resident taxable person;*
  - (b) *the goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, where the option is exercised under sub-rule (1) of rule 3;*

<sup>13</sup> Substituted for the word [ninety days] vide Notf no. 03/2018- CT dt. 23.01.2018

<sup>14</sup> Substituted vide Notf no. 45/2017-CT dt. 13.10.2017

<sup>15</sup> Substituted for the word [sixty] with effect from 17.08.2017 vide Notf no. 22/2017 – CT dt. 17.08.2017

<sup>16</sup> Inserted vide Notf no. 34/2017 – CT dt. 15.09.2017

- (c) *the goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under sub-section (4) of section 9;*
  - (d) *he shall pay tax under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both;*
  - (e) *he was not engaged in the manufacture of goods as notified under clause (e) of sub-section (2) of section 10, during the preceding financial year;*
  - (f) *he shall mention the words —composition taxable person, not eligible to collect tax on supplies // at the top of the bill of supply issued by him; and*
  - (g) *he shall mention the words —composition taxable person on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.*
- (2) *The registered person paying tax under section 10 may not file a fresh intimation every year and he may continue to pay tax under the said section subject to the provisions of the Act and these rules.*

**6. Validity of composition levy.**

- (1) *The option exercised by a registered person to pay tax under section 10 shall remain valid so long as he satisfies all the conditions mentioned in the said section and under these rules.*
- (2) *The person referred to in sub-rule (1) shall be liable to pay tax under sub-section (1) of section 9 from the day he ceases to satisfy any of the conditions mentioned in section 10 or the provisions of this Chapter and shall issue tax invoice for every taxable supply made thereafter and he shall also file an intimation for withdrawal from the scheme in FORM GST CMP-04 within seven days of the occurrence of such event.*
- (3) *The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in FORM GST CMP-04, duly signed or verified through electronic verification code, electronically on the common portal.*
- (4) *Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 or has contravened the provisions of the Act or provisions of this Chapter, he may issue a notice to such person in FORM GST CMP-05 to show cause within fifteen days of the receipt of such notice as to why the option to pay tax under section 10 shall not be denied.*
- (5) *Upon receipt of the reply to the show cause notice issued under sub-rule (4) from the registered person in FORM GST CMP-06, the proper officer shall issue an order in FORM GST CMP-07 within a period of thirty days of the receipt of such reply, either*

accepting the reply, or denying the option to pay tax under section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.

- (6) Every person who has furnished an intimation under sub-rule (2) or filed an application for withdrawal under sub-rule (3) or a person in respect of whom an order of withdrawal of option has been passed in FORM GST CMP-07 under sub-rule (5), may electronically furnish at the common portal, either directly or through a Facilitation Centre notified by the Commissioner, a statement in FORM GST ITC-01 containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied, within a period of thirty days from the date from which the option is withdrawn or from the date of the order passed in FORM GST CMP-07, as the case may be.
- (7) Any intimation or application for withdrawal under sub-rule (2) or (3) or denial of the option to pay tax under section 10 in accordance with sub-rule (5) in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.

#### **7. Rate of tax of the composition levy.**

The category of registered persons, eligible for composition levy under section 10 and the provisions of this Chapter, specified in column (2) of the Table below shall pay tax under section 10 at the rate specified in column (3) of the said Table:-

Sl. No.	Category of registered persons	Rate of tax
1	Manufacturers, other than manufacturers of such goods as may be notified by the Government	half per cent. of the turnover in the State or Union territory <sup>17</sup>
2	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	two and a half per cent. of the turnover in the State or Union territory <sup>18</sup>
3	Any other supplier eligible for composition levy under section 10 and the provisions of this Chapter	half per cent. of the turnover of taxable supplies of [goods and services] <sup>19</sup> in the State or Union territory <sup>20</sup>

<sup>17</sup> Substituted with effect from 01.01.2018 vide Notf no. 03/2018- CT dt. 23.01.2018

<sup>18</sup> Substituted with effect from 01.01.2018 vide Notf no. 03/2018- CT dt. 23.01.2018

<sup>19</sup> Substituted vide Notf no. 03/2019-CT dt. 29.01.2019 wef 01.02.2019

<sup>20</sup> Substituted with effect from 01.01.2018 vide Notf no. 03/2018- CT dt. 23.01.2018

**Relevant circulars, notifications, clarifications issued by Government**

1. Notification No. 1/2018-Central Tax dated 23.01.2018 issued for revision of Rules and for reduction of rate of composition tax;
2. Notification No. 46/2017- Central Tax dated 13.10.2017 issued to increase the threshold limit on aggregate turnover to opt for composition scheme (1 crore / 75 Lakhs);
3. Order No. 11/2017-GST dated 21.12.2017 issued to extend the time limit to furnish intimation for opting into the Composition Scheme;
4. Order No. 01/2017-Central Tax being the CGST (Removal of Difficulties) Order, 2017 dated 13.10.2017 issued to clarify that outward supply of services for which the consideration is in the form of interest, shall not be taken into account for composition taxpayers;
5. GST Flyer as issued by the CBIC can be referred to for a gist of the statutory provisions, titled '*Composition Levy Scheme in GST*'.
6. Notification No. 22/2017- Central Tax dated 17.08.2017 issued to extend the time limit to file FORM GST CMP-03 giving details of stock, including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts to pay tax u/s 10.
7. Notification No. 34/2017- Central Tax dated 15.09.2017 issued to insert sub section (3A) in the GST Rules as amended through Notification No. 45/2017-CT dated 13.10.2017.
8. Notification No.8/2017 issued on 27.07.2017 as amended from time to time specifying turnover limits for the applicability of section 10,
9. Notification No 3/2018-CT dated 23.01.2018 issued amending the rate of tax as mentioned in rule 7 of the CGST Rules, 2017.
10. Notification No.43/2019-Central Tax dated 30.09.2019 issued to exclude manufacturers of aerated waters from the purview of composition scheme.

**Related provisions of the Statute**

Section	Description
Section 9	Levy and collection
Section 2(6)	Definition of Aggregate turnover
Section 2(102)	Definition of Services
Section 2(78)	Definition of Non-taxable supply

Section	Description
Section 2(112)	Meaning of Turnover in a State
Section 52	Collection of tax at source

### 10.1 Introduction

This Section provides for a registered person to opt for payment of taxes under a scheme of composition, the conditions attached thereto and the persons who are entitled, but not mandated, to make payment of tax under this Scheme. The conditions, restrictions, procedures and the documentation in respect of this scheme are contained in Chapter II of the Central Goods and Service Tax Rules, 2017 from Rule 3 to Rule 7 (Composition Rules).

### 10.2 Analysis

Tax payment under this scheme is an option available to the taxable person. This scheme would be available only to certain eligible persons.

- (a) **Payment of tax:** The composition scheme offers to a registered person, the option to remit taxes on the turnover as against outward supply-wise payment of taxes. In other words, the registered person opting to pay tax under the composition scheme needs only to ascertain the aggregate value of outward taxable supplies, and compute the tax thereon at a fixed rate, regardless of the actual rate of tax applicable on the said outward supply. The rate of tax prescribed in this regard is as under:
- (i) In case of manufacturers: 1% (0.5% CGST+ 0.5% SGST) of the turnover in the State/UT (Note: The rate applicable has been reduced from 2% to 1% vide Notification No. 1/2018-Central Tax dated 23.01.2018 effective 01.01.2018);
  - (ii) In case of food/restaurant services: 5% (2.5% CGST+ 2.5% SGST) of the turnover in the State/UT (*i.e., in case of composite supply of service specified in Entry 6(b) of Schedule II*);
  - (iii) In case of other suppliers: 1% (0.5% CGST+ 0.5% SGST) of the turnover of taxable supplies in the State/UT (*such as like traders, agents for supply of goods, etc.*)
- (b) **Eligibility to pay tax under composition scheme:** The conditions for eligibility to opt for payment of tax under the composition scheme is as follows:
- (i) Registered persons having an 'aggregate turnover' as defined under Section 2(6) of the Act (*i.e., aggregate of turnovers across all States under the same PAN, including exempt supplies, supplies specified under Schedule I, etc.*) does not exceed the prescribed limit in the preceding financial year will be eligible to opt for payment of tax under the composition scheme. *Please refer to the discussion*

on aggregate turnover as explained in the definitions Chapter for a better understanding of the expression. In this regard, the following may be noted:

1. The prescribed threshold limit is Rs. 1 crore (and Rs. 75 lacs in case of Special Category States being Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Himachal Pradesh); The prescribed threshold limit is Rs. 1.5 crores (including States of Jammu & Kashmir, Assam, Uttarakhand and Himachal Pradesh).

For Special Category States, the limit is Rs. 75 Lakh (except States of Jammu & Kashmir, Assam, Uttarakhand and Himachal Pradesh)

Please note, changes consequent to J&K Reorganization Act, 2019 from 31 Oct 2019 are yet to be notified and the same may be referred in their amended form in the context of applicability of limits in UT of J&K and UT of Ladakh.

2. The aggregate turnover of the registered person should not exceed the said prescribed limit during the financial year in which the scheme has been availed;
3. The 'aggregate turnover' as computed for a composition taxpayer shall not include any interest income, which is earned by way of supply of services such as extending deposits, etc. where such interest or discount is exempted under the GST Law.

**Central Goods and Services Tax (Amendment) Act, 2018**

The threshold limit upto which the Government has powers to notify the eligibility limit for of Composition levy has been increased to Rs.1.50 crores from existing Rs.1 crore.

It is effective from a date yet to be notified by the Government.

4. As per Order No. 01/2017 dated 13.10.2017 the following is clarified:-
  - i. A person supplying restaurant services along with the supply of any exempt services shall not be eligible for composition scheme u/s 10 of CGST.
  - ii. In computing the limit of aggregate turnover in order to determine the eligibility of composition scheme, value of supply of any exempt service shall not be taken into account.
- (ii) The scheme cannot be opted for during the middle of a financial year, except in the case where the person obtains registration, and opts for composition scheme

at the time of applying for registration under the GST Law:

1. **Taxable Person obtaining a new registration under GST laws:** Such option can be exercised at the time of obtaining registration under section 22 in Part B of Form GST-REG-1. Such new application may also include cases of migration from the erstwhile laws. In both cases, the option to pay tax under composition scheme shall be effective from the effective date of registration. [Refer Rule 3 of CGST Rules]
2. **Registered person switches over to composition scheme:** A person is required to file an intimation before the commencement of the financial year for which he opts to pay tax under the scheme. In such cases, the provisions of section 18(4) shall stand attracted and the registered person shall be required to file a statement containing details of stock and inward supply of goods received from un-registered persons, held in stock, on the date immediately preceding the date. Please refer to the discussion in Section 18 for a better understanding.

- (iii) In order to be eligible to opt for the scheme, the registered person must not be in possession of stock of goods which has been purchased from unregistered persons. In any such case, due tax ought to have been paid thereon under Section 9(4);

Note: In case of migrated registrations from the erstwhile laws, the GST Law imposes an additional condition that the stock of goods held on the GST appointed day (01.07.2017) does not include any goods which have been procured in the course of inter-State trade or commerce or received from his branch / his agent /his principal situated outside the State or imported from a place outside India.

- (iv) The registered person would **not** be eligible to effect any:
1. Supply of goods **through an e-commerce operator** who is liable to collect tax at source (TCS) – while there is no restriction on goods supplier through a portal owned and operated by the same person;  
In this regard, it may be noted that the provision for TCS has been notified recently to be effective from 01.10.2018.
  2. Supply of **non-taxable goods**, i.e., alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel;
  3. Supply of **services**, other than services specified in Entry 6(b) to Schedule II. This would mean, a trader opting for composition scheme will not be entitled to provide any after-sales support services, howsoever trivial they may be



(unless such supply is a composite or mixed supply of goods). In this regard, it must be noted that the Government has issued an order for the removal of difficulties to clarify that any services provided by a composition taxpayer shall not be taken into account where the consideration for the said service is by way of "interest" which is exempted from tax under the GST Law.

### Removal of Difficulty Order

One of the difficulties which was initially faced by such persons was that if he earns any interest income (particularly in a proprietorship firm) then that would have been deemed to be a supply against service under GST and therefore, any registered person receiving interest income in course of furtherance of business shall be deemed to be supplying services. Thus, such registered person shall not be eligible for opting composition scheme. To overcome such difficulties an order was passed, The Central Goods and Services Tax (Removal of Difficulties) Order, 2017 to clarify as under:

- "(i) it is hereby clarified that if a person supplies goods and/or services referred to in clause (b) of paragraph 6 of Schedule II of the said Act and also supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, the said person shall not be ineligible for the composition scheme under section 10 subject to the fulfilment of all other conditions specified therein.*
- (ii) it is further clarified that in computing his aggregate turnover in order to determine his eligibility for composition scheme, value of supply of any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account."*

### Central Goods and Services Tax (Amendment) Act, 2018

A registered person under Section 10 is allowed to supply services upto a value not exceeding 10% of the turnover in a State or UT in preceding financial year or 5 lakhs whichever is higher. This has been inserted through a proviso to Section 10.

4. **Inter-State outward supplies**, including supplies to SEZ unit / developer. Please note that this condition implies that the registered person will not be in a position to effect inter-State stock transfers to its own establishments located outside the State. It is also important to note that the condition is not limited to taxable supplies alone, and extends to exempt supplies as well.

(v) Shall not collect tax: Taxable person opting to pay tax under the composition scheme is prohibited from collecting tax on the outward supplies. Care must be taken when composition taxable persons are involved in supply of MRP-goods. MRP includes output tax and selling at MRP violates this condition. The impact is far more severe as the composition facility gets rejected and full output tax is liable to be paid but input tax credit (otherwise available) would not have been availed within the relevant time permitted.

(vi) Not entitled to input tax credit: Taxable person opting to pay tax under the composition scheme will not be eligible to claim any input tax credits.

However, if the taxable person becomes ineligible to remain under composition scheme, the taxable person will become entitled to take input tax in respect of inputs held in stock (as inputs, contained in semi-finished or finished goods) on the day immediately preceding the date from which he becomes liable to pay tax under Section 9. (Refer Section 18(1)(c) for the provision. A statement of stock shall be filed in Form GST ITC-1 within 30 days from the date from which the option is withdrawn or the order cancelling the composition option is passed).

(vii) The registered person must **not** be:

1. A manufacturer of such goods as may be notified by the Government (based on the recommendations of the GST Council), in the year for which he opts for the scheme, or in the preceding financial year (E.g. Ice cream, pan masala, tobacco). However, there is no restriction in trading of such goods, i.e., where the person has not manufactured the goods.
2. A casual taxable person;
3. A non-resident taxable person;

(viii) All the registrations obtained under a single PAN are also mandated to opt for payment under the composition scheme, i.e., all the registered persons under the PAN will also be mandated to comply with all the conditions mentioned above, including the business verticals having separate registrations within the same State under the same PAN. The scheme would become applicable for all the registrations and it cannot be applied for select verticals only. E.g.: Say a company has the following businesses separately registered:

- Sale of mobile devices (Registered in Kerala)
- Franchisee of branded restaurant (Registered in Goa)

The scheme would be applicable for the said 2 units. The company cannot opt for composition scheme for the registration in Kerala and opt to pay taxes under the regular scheme for the registration in Goa.

- (ix) The scheme will be applicable to all the outward supplies. The option of the scheme will be qua-person and not qua-class of goods – once opted it will be applicable for all supplies by effected by the registered person; it must be noted that a taxable person **cannot** opt for payment of taxes under composition scheme for supply of one class of goods and opt for regular scheme of payment of taxes for supply of other classes of goods or services.
- (c) **Conditions applicable on a composition supplier:** Once a person has opted to pay tax under the composition scheme, the following conditions would stand attracted:
  - (i) Every notice or signboard in every registered place of business, displayed at a prominent place, shall carry the words “Composition taxable person”;
  - (ii) Every bill of supply issued by the composition suppliers shall carry the declaration “Composition taxable person, not eligible to collect tax on supplies” on top of the bill;
  - (iii) RCM on inward supplies: The composition supplier shall be liable to make payment at the rate applicable on the supply in respect of every inward supply liable to tax under the reverse charge mechanism, regardless of the rate of tax that is applied by him on the outward supplies effected by him. It may be noted that the value of such inward supplies would not be included in the aggregate turnover of the composition taxpayer although the liability is discharged by him on such inward supplies;
  - (iv) Not entitled to collect tax: The composition taxpayer is prohibited from collecting any GST / Cess applicable on the outward supplies effected by him. Accordingly, the recipients of supply would also not be eligible to claim any credits where the inward supply is from a composition taxpayer;
  - (v) Not entitled to claim credit of taxes paid: The composition taxpayer is not entitled to claim credit in respect of taxes paid by him on any of the inward supplies effected by him, including inward supplies on which he pays tax under reverse charge mechanism.
  - (vi) A Composition supplier shall not be entitled to issue any tax invoice. However, to effect supplies of goods/services the supplier will have to issue “Bill of Supply” without indicating any tax amount on it.

*However, if the composition taxpayer switches over to become a regular taxpayer, he will be entitled to take input tax in respect of inputs held in stock (as inputs, contained in semi-finished or finished goods) on the day immediately preceding the date from which he becomes liable to pay tax under Section 9 (regular taxpayer). Refer the discussion in Section 18(1)(c) for a better understanding of the provisions.*

- (d) **Important Note:** The option to pay tax under the composition scheme will remain valid so long as the registered persons comply with all of the aforesaid conditions in (b) and (c) above. The composition suppliers will be treated as any other registered supplier with effect from the date on which any of the said conditions cease to be complied with. The composition suppliers would not be entitled to re-enter the scheme until the expiry of the financial year.
- (i) The registered person would be required to file an intimation (*suo motu*) for withdrawal from the scheme within 7 days of the non-compliance;
  - (ii) The registered person may also file an intimation if he wishes to withdraw from the scheme, before the effective date of withdrawal, and such withdrawal can be applied for anytime during the financial year.  
*Once granted, the eligibility would be valid unless the permission is cancelled or is withdrawn or the person becomes ineligible for the scheme.*
  - (iii) Cancellation of permission: Where the proper officer has reasons to believe that the taxable person was not eligible to the composition scheme, the proper officer may cancel the permission (in order CMP-7) and demand the following:
    - a. Differential tax and interest – viz., tax payable under the other provisions of the Act after deducting the tax paid under composition scheme;
    - b. Penalty determined based on the demand provisions under Section 73 or 74.
- (e) **Comments specific to migration cases (transition from the erstwhile law to the GST regime):** In case of migration of old registration into registration under GST, option to avail composition scheme under GST Laws can be exercised only if the goods held in stock by such taxable person, on the appointed day have not been purchased in the course of inter-state trade or commerce or imported from a place outside India or received from his branch situated outside the State, or from his agent or principal outside the State.
- (i) As per rule 3(1) of the CGST Rules, in cases involving migration, there is need to exercise such Option for composition in Form GST CMP 01 prior to appointed date or within 30 days after the appointed date. In this case, the option to pay tax under composition scheme shall be effective from the appointed date. This date has further been extended to 16.08.2017. Such person would be required to file stock statement under Rule 3(4) in Form GST-CMP03 within a period of 90 days (extended from 60 days to 90 days by Notification No.22/2017) from the date on which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf. However, the due date was extended further till 31.01.2018 vide Order No. 11/2017-GST dated 21.12.2017.

- (ii) A new sub-rule (3A) was inserted by Notification No.34/2017 – Central Tax dtd.15.09.2017 which has an overriding effect on provisions of sub-rule (1), (2) and (3). It may be noted that, the purpose of rule (3A) is only to enable the persons to opt for composition scheme in the first year of GST implementation, without making them to wait up to the next financial year. This is on account of the fact that, the threshold limit for the purposes of Composition scheme u/s 10 was enhanced twice i.e. once on 27.06.2017 and then again on 13.10.2017. Hence, sub-rule (3A) would only cover cases, where the application is made prior to 31.03.2018. For all applications made during the financial year 2018-19, the matter would be governed by Rule 3(3).

### 10.3 Comparative review

Under the erstwhile tax laws, the scheme of composition is provided for in most State level VAT laws. The conditions prescribed under the GST law for composition scheme is broadly comparable to the conditions / restrictions under the State level VAT laws.

### 10.4 Issues & concerns

1. While it is clear that a composition supplier is not entitled to effect a supply of services, there is no specific provision in case of a composite supply / a mixed supply which are taxed as supply of goods. Therefore, based on the principles specified in Section 8 of the Act, it may be safe to infer that a supplier opting for composition scheme would be entitled to effect a composite supply containing services, where the principal supply is goods, considering that the **“supply shall be treated as a supply of such principal supply”**. On the other hand, a mixed supply shall be treated as a **“supply of that particular supply which attracts the highest rate of tax”**. Given this position, there is no clear case for mixed supplies wherein both services and goods contained in the mixed supply suffer the highest rate of tax, from amongst the rates of tax applicable on each of the individual supplies contained in the mixed supply. Due care must be exercised in this regard.
2. An amendment of the rate applicable to the supplies effected by composition suppliers was made with effect from 01.01.2018. In this regard, attention is drawn to the rate applicable to traders which reads as follows – “half per cent of the turnover **of taxable supplies of goods** in the State or Union territory”. It must be noted that the highlighted expression, more specifically, **“of taxable supplies”** is missing in the rate entries applicable to manufacturers and restaurant service providers. Therefore, the said 2 classes of persons would be liable to pay tax on the turnover in State, whether or not the supplies are exempted from tax.

### 10.5 FAQs

- Q1. Will a taxable person be eligible to opt for composition scheme only for one out of 3 branches, duly registered?

- Ans. No. Composition scheme would become applicable for all the business verticals / registrations which are separately held by the person with same PAN.
- Q2. Can composition scheme be availed if the taxable person has inter-State inward supplies?
- Ans. Yes. Composition scheme is applicable subject to the condition that the taxable person does not engage in making inter-state outward supplies, while there is no restriction on making any inter-State inward supplies.
- Q3. Can the taxable person under composition scheme claim input tax credit?
- Ans. No. Taxable person under composition scheme is not eligible to claim input tax credit.
- Q4. Can the customer who buys from a taxable person who is under the composition scheme claim composition tax as input tax credit?
- Ans. No. customer who buys goods from taxable person who is under composition scheme is not eligible for composition input tax credit.
- Q5. Can composition tax be collected from customers?
- Ans. No. The taxable person under composition scheme is restricted from collecting tax.
- Q6. What is the threshold for opting to pay tax under the composition scheme?
- Ans. The threshold for composition scheme is up to 1.50 crores of aggregate turnover in the preceding financial year.
- Q7. How to compute 'aggregate turnover' to determine eligibility for composition scheme?
- Ans. The methodology to compute aggregate turnover is given in Section 2(6). However, since composition scheme is applicable only to suppliers making intra-state supplies, 'aggregate turnover' means 'Value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies (except interest income as discussed above), exports of goods or services or both or inter-state supplies of a person having the same PAN (i.e., across India) excluding CGST, IGST, SGST, UGST and cess.
- Q8. What does a person having the same PAN mean?
- Ans. "Person having the same PAN" means all the units across India having the same PAN as is issued under the Income Tax Law.
- Q9. What are the penal consequences if a taxable person is not eligible for payment of tax under the Composition scheme?
- Ans. Taxable person who is not eligible for the said scheme, could be imposed penalty as determined under Section 73 or 74.

Q10. What happens if a taxable person who has opted to pay taxes under the composition scheme crosses the threshold limit of ₹1.50 crores during the year?

Ans. In such case, from the day the taxable person crosses the threshold, the permission granted earlier is deemed to stand withdrawn, and he shall be liable to pay taxes under the regular scheme i.e. section 9, from such day.

## 10.6 RELEVANT CASE LAWS

### 1. Vaishno Associates vs. CCE, Jaipur

Assessee classified activity carried out by it under category of 'works contract services' - It claimed benefit of Works Contract Composition Scheme - Adjudicating Authority denied benefit of Composition Scheme on plea that assessee had failed to file any intimation or option to department opting for payment of service tax in respect of works contract under Composition Scheme - Whether denial of benefit of Composition Scheme for sole reason for failure to file intimation prior to payment of service tax was justified - Held, no.

### 2. ABL Infrastructure (P.) Ltd. vs. CCE, Customs & Service Tax

Assessee was engaged in providing works contract service - It opted to discharge service tax liability under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 - It did not include value of material supplied by service recipient free of cost in gross value of works contract - Whether value of free supply material also be added in gross value of works contract - Held, yes.

## SPECIAL SCHEME IN CASE OF INTRA-STATE SUPPLY OF GOODS OR SERVICES OR BOTH WITH TAX RATE OF 6%

The Central Government vide Notification No. 2/2019-Central Tax (Rate) dated 07<sup>th</sup> March, 2019 notified Composition scheme in case of **intra-State supply** of goods or services or both, at the rate along with the conditions specified below:

Description of supply	Rate (per cent)	Conditions
First supplies of goods or services or both up to an aggregate turnover of Rs. 50 lakhs made on or after the 1st day of April in any financial year, by a registered person.	3	1. Supplies are made by a registered person, (i) whose aggregate turnover in the preceding financial year was Rs. 50 lakh or below; (ii) who is <b>not eligible</b> to pay tax under sub-section (1) of section 10; (iii) who is <b>not engaged</b> in making any supply which is <b>not leviable to tax</b> ; (iv) who is <b>not engaged</b> in making any <b>inter-State</b> outward supply; (v) who is neither a casual taxable person nor

		<p>a non-resident taxable person;</p> <p>(vi) who is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52; and</p> <p>(vii) who is not engaged in making supplies of:</p> <ol style="list-style-type: none"> <li>Ice cream and other edible ice, whether or not containing cocoa.</li> <li>Pan masala</li> <li>Tobacco and manufactured tobacco substitutes</li> </ol> <p>2. Where more than one registered persons are having same PAN, central tax on supplies by all such registered persons is paid at the given rate.</p> <p>3. The registered person <b>shall not collect any tax</b> from the recipient nor shall he be entitled to any credit of input tax.</p> <p>4. The registered person shall issue, instead of tax invoice, a bill of supply.</p> <p>5. The registered person shall mention the following words at the top of the bill of supply, namely: -  ‘Taxable person paying tax in terms of Notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, not eligible to collect tax on supplies’.</p> <p>6. Liability to pay central tax at the rate of 3% on all outward supplies <b>notwithstanding any other notification issued</b> under section 9 or section 11 of said Act.</p> <p>7. Liability <b>to pay central tax on inward supplies</b> on reverse charge under sub-section (3) or sub-section (4) of section 9 of said Act.</p> <p>Explanation: For the purposes of this notification, the expression “first supplies of goods or services or both” shall, for the</p>
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		<p>purposes of determining eligibility of a person to pay tax under this notification, include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the said Act but for the purpose of determination of tax payable under this notification shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.</p>
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**Important Note:** It may be noted that while computing aggregate turnover in order to determine eligibility of a registered person to pay central tax at the rate of 3%, value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

#### Analysis:

With effect from 1<sup>st</sup> April 2019 a new composition scheme has come into force in case of intra-State supply of goods or services or both, at the rate of 6% (3% CGST + 3% SGST) for first supplies of goods or services or both up to an aggregate turnover of Rs. 50 lakhs made on or after the 1<sup>st</sup> day of April in any financial year by a registered person subject to certain conditions.

This is an optional facility through a rate notification that is 'notwithstanding' any other rate notification issued. Therefore, the notification overrides Notification No. 11/2017-Central Tax (Rate). As it is optional, registered person should carefully consider the conditions before opting for the same. This facility and composition scheme under section 10 operate as mutually exclusive. Thus, traders and manufacturers of goods and restaurant service providers who are eligible for composition (even if not opted) will not enter this facility.

#### Eligibility to pay tax under composition scheme:

Supplies are made by a registered person, -

1. whose aggregate turnover in the preceding financial year was Rs. 50 lakh or below;
2. who is **not eligible** to pay tax under sub-section (1) of section 10;
3. who is **not engaged** in making any supply which is **not leviable to tax**;
4. who is **not engaged** in making any **inter-State** outward supply;
5. who is neither a casual taxable person nor a non-resident taxable person;
6. who is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52; and

7. who is not engaged in making supplies of:
- Ice cream and other edible ice, whether or not containing cocoa.
  - Pan masala
  - Tobacco and manufactured tobacco substitutes
  - Aerated Water<sup>21</sup>

**Conditions applicable on a composition supplier:** Once a person has opted to pay tax under the composition scheme, the following conditions would stand attracted

1. Where more than one registered persons are having same PAN, central tax on supplies by all such registered persons is paid at the given rate.
2. The registered person **shall not collect any tax** from the recipient nor shall he be entitled to any credit of input tax.
3. The registered person shall issue, instead of tax invoice, a bill of supply.
4. The registered person shall mention the following words at the top of the bill of supply, namely: -  
  
'Taxable person paying tax in terms of Notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, not eligible to collect tax on supplies'.
5. Liability to pay central tax at the rate of 3% on all outward supplies **notwithstanding any other notification issued** under section 9 or section 11 of said Act.
6. Liability **to pay central tax on inward supplies** on reverse charge under sub-section (3) or sub-section (4) of section 9 of said Act.

Where any registered person who has availed of input tax credit opts to pay tax under this notification, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as if the supply made under this notification attracts the provisions of section 18(4) of the said Act and the rules made there-under and after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

### Classification and Exemption

#### Introduction

Unlike Customs law, GST law does not contain a commodity classification tariff, these are contained within the notification which prescribes the rate of tax. Classification, therefore, is an exercise that is inevitable to identify the specific entry in any of the 6 schedules for determining the rate of tax on the supply of goods or services. The revenue department could

<sup>21</sup> Inserted vide Notification No.43/2019-Central Tax dated 30<sup>th</sup> September 2019

object to the rate adopted or exemption claimed when the error is observed at the time of assessment, investigation or revenue audit. This could lead to multiple demands at all stages of supply and also denial of credit. The customer may object to the classification or the rate. The assessee himself may come to know of the error due to competitors using different rates, paying or not paying, attending some awareness session, reading articles, books. Errors may also come to light at the time of due diligence, internal audit, statutory audit, outsourced consultant changing, etc.

#### **Errors in GST classification – Impact**

Many assessees could suffer loss of business in period of uncertainty till proper classification is arrived at as they may have adopted some rate for their supplies since they could not afford to stop business for want of HSN. After that they may be following the same incorrect classification unless there is any objection.

The cost of errors would include the following:

1. In case of higher tax being charged, assessee may have to suffer the loss of orders and cost of re-establishing business with the customers, the loss of credibility with customers. The cost of discounts given to retain the customer due to incorrect rate is inevitable.
2. In case of goods or services supplied which are nil rated or exempted the non-availability of credit can be fatal for the business if this claim for exemption is not accurately made by the supplier. In other words, where exemption is availed erroneously, demand for output tax will be made without any facility to allow credit that could have been availed. Similarly, where exemption is omitted to be claimed, there would be a scenario of recovery of input tax credit being ineligible from the start. Demands maybe made at multiple stages of the supply chain. This is a major departure from the earlier regime.
3. In case of short charge due to incorrect classification or claim of exemption which is not available, would result in non-recoverability of taxes from the customers and cost of interest. In business, breaking the credit chain could make business unviable.
4. Valuation methods prescribed for certain categories of goods and or services would be dependent on the classification of such goods and/or services. Wrong classification would lead to wrong payment of tax.
5. On certain goods and/or services GST is to be discharged by the recipient of supply under reverse charge mechanism. Wrong classification may result in non-payment of tax or un-necessary payment of tax.
6. Denial of benefits under FTP such as duty drawback and incentives being provided for various goods and/or services at varied rates can be the result of incorrect classification of goods/services.

7. Non-payment of compensation Cess, if any, applicable on specified goods and or services which may result in penal proceedings over and above the interest liability.
8. Calculating incorrect liability on import of goods / services or not claiming the ITC (Input Tax Credit) benefit of export on goods/service exports due to improper classification could also happen. This could happen when the alternative headings available have different import/export criterion being applicable to them.

In case of revenue raising the short charge or ineligible exemption issues, in addition to the above costs: the cost of penalty, denial of credit availed, cost of dispute resolution at adjudication, appeal, Court stages also would arise. It would also result in internal manpower resources getting substantially involved to resolve the issue inspite of the fact that a specialist in GST may be outsourced to prepare the reply, appearance etc.

### Analysis

#### (i) Classification of Goods or Services:

In order to apply a particular rate of tax, one needs to determine the classification of the supply as to whether the supply constitutes a supply of goods or services or both. Once the same is determined in terms of Section 7 and 8, a further classification in terms of HSN of goods and services has to be made so as to arrive at the rate of tax applicable to the supply. At the outset, it is important to note that HSN for goods are contained in Chapters from 1 to 98 and HSN for Services are contained as Chapter 99 Notified as the 'Scheme of Classification of Services' provided as an Annexure to the Notification issued for rate of tax (CGST) applicable to services (i.e., Annexure to Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017).

The Classification of Goods is older and is based on knowledge gathered from precedents on HSN classification, as an adaptation from that formulated by the World Customs Organisation. The suggested steps for determination of proper classification of goods are as under:

1. The classification of each supply has to be made separately for every individual supply, regardless of the form of supply (such as sale / transfer / disposal including by-products, scraps etc.)
2. Identify the description and nature of the goods being supplied. One must confirm that the product is also more specifically covered in the Customs Tariff. The Section Notes and Chapter Notes specified in the Customs Tariff would squarely apply to the Tariff Schedules under the GST Law, and ought to be read as an integral part of the Tariff for the purpose of classification.
3. If there is any ambiguity, first reference shall be made to the 'Rules of Interpretation' of the First Schedule to the Customs Tariff Act 1975.
  - (a) As per the Rules, first step to be applied is to **find the trade understanding**

**of the terms** used in the Schedule, if the meaning or description of goods is not clear.

- (b) If the trade understanding is not available, the next step is to **refer to the technical or scientific meaning of the term**. If the tariff headings have technical or scientific meanings, then that has to be ascertained first before the test of trade understanding.
  - (c) If none of the above are available **reference may be made to the dictionary meaning or ISI specifications**. Evidence may be gathered on end use or predominant use.
4. In case of the unfinished or incomplete goods, if the unfinished goods bear the essential characteristics of the finished goods, its classification shall be the same as that of the finished goods.
  5. If the classification is not ascertained as per above point, one has to look for the nature of goods which is more specific.
  6. If the classification is still not determinable, one has to look for the ingredient which gives the goods its essential characteristics.

(ii) **Rate of tax for goods or services**

Purpose of Notification	Supply of Goods	Supply of Services
Prescribing the rate of tax	1/2017-Central Tax (Rate) (As amended from time to time)	11/2017-Central Tax (Rate) (As amended from time to time)
Granting the exemption	2/2017-Central Tax (Rate) (As amended from time to time)	12/2017-Central Tax (Rate) (As amended from time to time)

A screenshot of the website hosted by the Central Board of Indirect Taxes and Customs (CBIC – Source link: <http://www.cbic.gov.in/htdocs-cbec/gst/central-tax-rate-notfns-2017>) containing the list of notifications is provided below:

Central Tax (Rate) Notifications			
Notification No. & Date of Issue	English	हिन्दी	Subject
07/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (254 KB)	<a href="#">देखें</a> (512 KB)	Exemption from CGST supplies by CSD to Unit Run Canteens and supplies by CSD / Unit Run Canteens to authorised customers notified under section 11 (1) and section 55 CSD
06/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (142 KB)	<a href="#">देखें</a> (498 KB)	Refund of 50% of CGST on supplies to CSD under section 55
05/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (269 KB)	<a href="#">देखें</a> (985 KB)	Supplies of goods in respect of which no refund of unutilised input tax credit shall be allowed under section 54 (3)
04/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (263 KB)	<a href="#">देखें</a> (739 KB)	Reverse charge on certain specified supplies of goods under section 9 (3)
03/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (299 KB)	<a href="#">देखें</a> (859 KB)	2.5% concessional CGST rate for supplies to Exploration and Production notified under section 11 (4)
02/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (375 KB) <a href="#">Corrigendum</a> (100 KB) <a href="#">Corrigendum</a> (249 KB), dated 27-07-2017	<a href="#">देखें</a> (856 KB) <a href="#">Corrigendum</a> (100 KB) <a href="#">Corrigendum</a> (234 KB), dated 27-07-2017	CGST exempt goods notified under section 11 (1)
01/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (1506 KB) <a href="#">Corrigendum</a> (252 KB), dated 30-06-2017 <a href="#">Corrigendum</a> (100 KB), dated 12-07-2017 <a href="#">Corrigendum</a> (257 KB), dated 27-07-2017	<a href="#">देखें</a> (3398 KB) <a href="#">Corrigendum</a> (488 KB), dated 30-06-2017 <a href="#">Corrigendum</a> (85 KB), dated 12-07-2017 <a href="#">Corrigendum</a> (333 KB), dated 27-07-2017	CGST Rate Schedule notified under section 9 (1)

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Central Tax (Rate) Notifications			
Notification No. & Date of Issue	English	हिन्दी	Subject
18/2017-Central Tax (Rate), dt. 30-06-2017	<a href="#">View</a> (136 KB)	<a href="#">देखें</a> (37 KB)	Seek to reduce the rate of Central Tax, Union Territory Tax, on fertilisers from 6% to 2.5% and Integrated Tax rate on fertilisers from 12% to 5%
17/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (136 KB)	<a href="#">देखें</a> (585 KB)	To notify the categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator
16/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (344 KB)	<a href="#">देखें</a> (385 KB)	To notify specialised agencies entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them under CGST Act
15/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (142 KB)	<a href="#">देखें</a> (431 KB)	To notify the supplies not eligible for refund of unutilized ITC under CGST Act
14/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (248 KB)	<a href="#">देखें</a> (318 KB)	To notify the supplies which shall be treated neither as a supply of goods nor a supply of service under the CGST Act
13/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (274 KB)	<a href="#">देखें</a> (722 KB)	To notify the categories of services on which tax will be payable under reverse charge mechanism under CGST Act
12/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (440 KB)	<a href="#">देखें</a> (960 KB)	To notify the exemptions on supply of services under CGST Act
11/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (396 KB) <a href="#">Annexure</a> (252 KB)	<a href="#">देखें</a> (1.11 MB) <a href="#">Annexure</a> (252 KB)	To notify the rates for supply of services under CGST Act
10/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (154 KB)	<a href="#">देखें</a> (503 KB)	CGST exemption for dealers operating under Margin Scheme notified under section 11 (1)
09/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a> (143 KB)	<a href="#">देखें</a> (500 KB)	Exempting supplies to a TDS deductor by a supplier, who is not registered, under section 11 (1)

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**(iii) Requirement of Classification**

It may seem like classification may not be so cumbersome, and tools such as experience, logic and common sense are sufficient to identify the classification, and to interpret the tariff notifications. However, a quick look at some examples would drive home the need to pay close attention to the principles of classification. Let us consider the following examples:

- (1) a 'watch made of gold' – an article of gold or a watch, albeit an expensive one?
- (2) a confectionary product 'hajmola' – an ayurvedic medicaments or remains confectionary sweets?
- (3) serving of 'brandy with warm water' – classified based on its curative effect on common cold, or dismissed as alcoholic liquor for human consumption?
- (4) surgical gloves – latex products or accessories to healthcare services?

- (5) mirror cut-to-size for automobiles – article of glass or accessories to motor vehicles fitted as rear-view mirror?

As can be seen from the few instances mentioned above, classification is not one that is free from doubt. When coupled with differential rates of tax, the scope for misclassification is bound to be reinforced with motivation to either reduce the tax incidence / or to pay a higher tax to circumvent any possible interest and penalty. Both these motivations can work on either sides – industry as well as tax administration. Classification cannot, therefore, be left to the whims and fancies of each person, and reference must be made to the guidance provided in the law itself.

**(iv) Approach to Classification**

The notifications prescribing the rate of tax in respect of goods as well as services contain explanations as to how the classification must be undertaken. Extracts of some of those explanations are provided below for ease of reference:

(iii) “Tariff item”, “sub-heading” “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

**Notification 1/2017-Central Tax (Rate) dated 28 June, 2017**

4. *Explanation.*- For the purposes of this notification,-

(i) Goods includes capital goods.

(ii) Reference to “Chapter”, “Section” or “Heading”, wherever they occur, unless the context otherwise requires, shall mean respectively as “Chapter”, “Section” and “Heading” in the annexed scheme of classification of services (Annexure).

(iii) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of heading 9988.

(iv) Wherever a rate has been prescribed in this notification subject to the condition that

**Notification 11/2017-Central Tax (Rate) dated 28 June, 2017**

As can be seen from the above, the notification prescribing the rate of tax itself specifies the approach that is to be followed for purposes of classification, namely:

- (a) in respect of goods, the notification requires reference to be had to the First Schedule to Customs Tariff Act 1975: A quick look at these would help us to recognize the approach that needs to be followed for classification.

**1. THE CUSTOMS TARIFF ACT, 1975 (51 Of 1975)<sup>1</sup>**

(1)

An act to consolidate and amend the law relating to customs duties.

Be it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:-

1. (1) This Act may be called the Customs Tariff Act, 1975.

(2) It extends to the whole of India.



















(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. <sup>2,3</sup>

2. The rates at which duties of customs shall be levied under the Customs Act, 1962, are specified in the First and Second Schedules,<sup>4</sup>

The above table is an adaptation of the Harmonized System of Nomenclature (HSN) established for aiding in uniformity in Customs classification in international trade between member countries of World Customs Organization. It was drafted under the aegis of Customs Cooperation Council Nomenclature, Brussels. It was adopted for Customs purposes by India in 1975 and readapted (with some changes) for Central Excise in 1985 and now for purposes of GST in 2017. Please bear in mind that reference to the original HSN would be of much help in understanding the scope of any entry to understand the full extent of meaning implied in any entry found while reading Customs Tariff Act. Refer [www.wcoomd.org](http://www.wcoomd.org) where the HSN is available for purchase or subscription from World Customs Organization.

- (b) in respect of services, the notification requires reference to the Annexure which contains the Scheme of Classification: The Annexure is appended to the CGST rate notification and contains entries under Chapter 99 (although there is no such chapter for services in the HSN prescribed under the Customs Law). Additionally, Explanatory Notes to such classification were recently issued to assist in interpretation of various entries in the Annexure to the rate notification:



Central Tax (Rate) Notifications		
Notification No. & Date of Issue	English	हिन्दी
18/2017-Central Tax (Rate), dt. 30-06-2017	<a href="#">View</a>  (136 KB)	<a href="#">देखें</a>  (37 KB)
17/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a>  (136 KB)	<a href="#">देखें</a>  (585 KB)
16/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a>  (344 KB)	<a href="#">देखें</a>  (385 KB)
15/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a>  (142 KB)	<a href="#">देखें</a>  (431 KB)
14/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a>  (248 KB)	<a href="#">देखें</a>  (318 KB)
13/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a>  (274 KB)	<a href="#">देखें</a>  (722 KB)
12/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a>  (440 KB)	<a href="#">देखें</a>  (990 KB)
11/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a>  (399 KB)	<a href="#">देखें</a>  (1.11 MB)
	<a href="#">Annexure</a>  (252 KB)	<a href="#">Annexure</a>  (252 KB)
10/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a>  (143 KB)	<a href="#">देखें</a>  (503 KB)
09/2017-Central Tax (Rate), dt. 28-06-2017	<a href="#">View</a>  (143 KB)	<a href="#">देखें</a>  (500 KB)
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- (v) In this regard, it may also be noted that the tariff entries in case of certain services refer to the rate of tax applicable to the relevant goods. In the following cases of supply of services, the rate of tax applicable as on a supply of like goods involving transfer of title in goods, would be applicable on the supply of services:

Chapter, Section or Heading	Description of Service
<b>Heading 9971</b> (Financial and related services)	(ii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.
	(iii) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.
<b>Heading 9973</b> (Leasing or rental services, with or without operator)	(iii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.
	(iv) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.
	(vi) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv) and (v) above.

The only exception to the above table is leasing of motor vehicle which was purchased by the lesser prior to July 1, 2017, leased before the GST appointed date (i.e., 01.07.2017) and no credit of central excise, VAT or any other taxes on such motor vehicle had been availed by him. If all these conditions are fulfilled, then the lessor is liable to pay GST only on 65% of the GST applicable on such motor vehicle. – Refer Notification No.37/2017- Central Tax (Rate) dated 13.10.2017.

**(vi) Customs Tariff Act – Rules of Interpretation**

The rules of interpretation are contained in the Customs Tariff Act provides guidance regarding the approach to be followed for reading and interpreting tariff entries. These rules are merely summarized and listed below for convenience, whereas a detailed study of the rules is advised from commentaries and value-added updated tariff publications. Please refer to Customs Tariff Act for full set of Rules of Interpretation

- Rule 1: headings are for reference only and do not have statutory force for classification;
- Rule 2(a): reference to an article in an entry includes that article in CKD-SKD condition;
- Rule 2(b): reference to articles in an entry includes mixtures or combination;
- Rule 3(a): where alternate classification available, specific description to be preferred;
- Rule 3(b): rely on the material that gives essential character to the article;
- Rule 3(c): apply that which appears later in the tariff as later-is-better;
- Rule 4: examine the function performed that is found in other akin goods;
- Rule 5: cases-packaging are to be classified with the primary article;
- Rule 6: when more than one entry is available, compare only if they are at same level.

**(vii) Role of 'Manufacture' in Classification**

Classification would be well understood by applying the above rules of interpretation. Now, the process that goods are passed through can impact their classification. For example, cutting, slicing and packing pineapple in cans in sugar syrup has primary input of pineapple and the output is canned fruit with extended shelf-life. Now, the input and output are not identical, but it has been held in the case of *"Pio Food Packers"* that this is not a process amounting to manufacture. But, would it be possible to regard the input and the output to retain the same classification. The answer lies in knowing the scope of each entry applicable to classification. Another example, Kraft paper used to make packing boxes may be sold as it is or after laminating them. It has been held in the case of *Laminated Packaging* that this process is manufacture even though the input and

output fall within the same classification entry. GST Law has adopted, in section 2(72), the general understanding of manufacture that is very similar to that in Central Excise. The real test from this definition – is the input and output functionally interchangeable or not in the opinion of a knowledgeable end-user – and not based on the classification entry. Change in classification entry from one to the other, that is, classification entry for input is not the same as that of the output, could only arouse suspicion about the possibility of manufacture. Please note that ‘manufacture’ is included in the definition of ‘business’ (in section 2(17)) but it is not included as a ‘form of supply’ (in section 7(1)(a) or anywhere else). Hence, the nature of the process that inputs are put through may not be manufacture but yet may appear to move the output into a different entry compared to the input. So, would change of classification entry be relevant or degree of change produced in the input due to the process carried out must be considered. With the adoption of HSN based classification from Custom Tariff Act, it is imperative to carefully consider whether one entry has been split and sub-divided into categories even if they both carry the similar rate of tax. Hence, the key aspects to consider are:

- Identify the scope of an entry for classification of input or output
- Study the nature of process carried out on the inputs
- Examine by the ‘test’ (above) if result of the process is manufacture
- Now identify the classification applicable to the output

For example, Is ‘desiccating a coconut’ a process of manufacture? If yes, the desiccated coconut ought not to be considered as eligible to the same rate of tax as coconut. Drying grains may not appear to be a process of manufacture but frying them could be manufacture as the grains are no longer ‘seed grade’ although it resembles the grain.

Manufacture need not be a very elaborate process. It can be a simple process but one that brings about a distinct new product – in the opinion of a knowledgeable end-use – and not just any person with no particular familiarity with the article. Manufacture need not be an irreversible process. It can be reversible yet until reversed it is recognized as a distinct new product, again, in the opinion of those knowledgeable in it. Processes such as assembly may be manufacture in relation to some articles but not in others. So, caution is advised in generalizing these verbs – assembly, cutting, polishing, etc. – but examining the degree of change produced and the identity secured by the output in the relevant trade as to the functional inter-changeability of the output with the input. If a knowledgeable end-use would accept either input or output albeit with some reservation, then it is unlikely to be manufacture. But, if this knowledgeable end-user would refuse to accept them to be interchangeable, then the process carried out is most likely manufacture. Usage of common description of the input and output does not assure continuity of classification for the two.

**(viii) Role of 'Supplier Status' in Classification**

This is best explained with an illustration – a restaurant buys aerated beverage on payment of GST at 28% +12% including cess and on resale of this beverage as part of food served as a combo with 'composition status' under Section 10 of CGST Act, the rate of tax on this beverage would be 5%. Therefore, it is important to note that classification can undergo a change depending upon the 'status' of the Supplier. Another illustration could be medicaments which are taxed at 5% would be exempt from tax when they are administered by the hospital to casualty/emergency admissions and to in-patients even if billed separately in the invoice issued to patient by the hospital.

**(ix) Classification for Exemptions**

In GST law the exemptions are set out under section 11 of the whole of the tax payable or a part of it. In granting exemptions, it is not necessary that the exemption be made applicable to the entire entry. In other words, exemption notifications are capable of carving out a portion from an entry so as differentially alter the rate of tax applicable to goods or services within that entry. Exemptions can take any of the following forms:

- Supplier may be exempt – here, regardless of the nature of outward supply, exemption apply to the supplier. Conditions specified may make such exemption be applicable to the supplier but when the supplies are made to specified recipients

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities.	Nil	Nil

- Supplies may be exempt – here, the supplier is not as relevant and all supplies that are notified would enjoy the exemption. Conditions specified may help to determine the supplies that are to be allowed the exemption.

28	Heading 9971	Services by way of— (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) <i>inter se</i> sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.	Nil	Nil
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**(x) Role of ‘Conditions’ in Exemptions**

It is well understood that conditions in exemption notifications tend to convert the exemption into an option, that is, the exempted / concessional rate of tax would apply when the conditions are fulfilled and by deviating from the conditions, the full rate of tax would apply. This principle has been tested in the context of Section 5A of the Central Excise Act. However, a quick look at the Explanation to Section 11 of the CGST Act (reproduced below) appears to indicate that unless an express option is granted in the exemption notification, the concessional or exempted rate of tax along with attendant conditions must be availed without any discretion to opt out of it.

*Explanation.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.*

While there may be alternate views that the above explanation applies only when the exemption is ‘granted absolutely’ and not in all cases, such a view may find the contradiction where one entry in an exemption notification prescribes a concessional rate of tax that applies its restriction on input tax credit, while another entry in the very same notification prescribes two rates of tax where one of them enjoins restriction on input tax credit.

And the reason for resisting the view that – exemption with the condition is an option – is when the Government felt free to specify two alternate tax consequences in respect of a given entry in one case (GTA, in above illustration), there is no justification to make an assumption about the existence of an option even when in the very same notification that government opted to notify only one tax consequence. Accordingly, it would be a reasonable construction that – exemption is a condition is not an option – and all court decisions under earlier laws to the contrary are rendered otiose in view of the explanation to section 11.

Illustration below shows a style where exemption would ‘not be option’:

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
8	<b>Heading 9964</b> (Passenger transport services)	(i) Transport of passengers, with or without accompanied belongings, by rail in first class or air conditioned coach.	2.5	Provided that credit of input tax charged in respect of goods used in supplying the service is not utilised for paying central tax or integrated tax on the supply of the service

The following illustration is a style of drafting exemption entries that is 'not optional':

Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
		[[vi) Transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service, other than the input tax credit of input service in the same line of business (i.e. service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle), has not been taken. [Please refer to Explanation no. (iv)]
				or
			6	-] <sup>20]</sup> <sup>21</sup>
		(vii) Passenger transport services other than (i), (ii) (iii), (iv), (v) and (vi) above.	9	-

#### (xi) Composite Supply vs. Mixed Supply

Reference can also be made to the discussion on Composite Supply and Mixed Supply which can assist in classification of the supply into goods based on the principal supply in a transaction or that part of the transaction which carries the highest rate

**(xii) CGST Amendment Act, 2018**

The CGST Act, 2017 has been retrospectively amended from July 1, 2017 to provide that transactions covered under Schedule II are not supplies but if they qualify as supplies then such transactions are to be 'treated' for the purpose of determining the relevant rate notification, HSN Code, Time of Supply, Place of Supply and other consequential implications.

**(xiii) Classification of Works Contract**

Schedule II provides that works contract would be taxed as services and hence irrespective of the value of goods involved in the contract, works contract would be treated as services. Works Contract has been defined at Section 2(119) of the CGST Act to provide that construction, commissioning, fabrication etc related to immovable property would only be treated as works contract. Thus, any activity related to movable property though understood as works contract under the erstwhile laws would not be treated as works contract under the GST law and will have to be classified based on the concept of composite supply

**(xiv) Conclusion**

In light of the foregoing discussion, the following points of learning can be summarized:

- (a) transactions involving goods are, in certain cases, required to be treated as supply of services. As such, the fundamental classification to be undertaken is the differentiation between goods and services;
- (b) classification of goods and services cannot be made based on logic, experience or common sense. But, recourse to rules of interpretation in the first schedule to Customs Tariff Act is mandatory in relation to classification of goods. And reference to the scheme of classification (contained in the annexure) is inevitable in relation to classification of services. There can be no interchange in the use of the relevant classification rules between goods and services;
- (c) classification in GST requires a deep appreciation of the technical understanding of words and phrases in each domain and any urge to use the common meaning of such words and phrases must be actively discouraged. In other words, even if the common meaning of certain words and phrases appears reasonable, it must be understood that government has deliberately and mindfully words that each and in the case and specific interpretation in the relevant trade;
- (d) classification is not only required to determine the rate of tax applicable but also examine the availability of exemptions. There is no compulsion for an exemption notification to exempt" correctly what is the carveout from an entry a subset of transactions – supplies or suppliers – to attract a different rate of tax;
- (e) exemptions are not optional as are the conditions prescribed in respect of such exemption. Violation of the condition contracts consequences and not options.

'Absolutely exempt' does not mean 'wholly exempt' and it does not require to be 'unconditionally exempt' to be 'absolutely exempt'.

### Common Errors in Classification

The errors/ deliberate action which could lead to exposure should the extent possible be avoided. The errors would include many some of them illustrated below:

- (i) Classifying the supply for lower rate of GST without merit- This maybe due to competition or due to fact that the buyer is unable to avail the credit.
- (ii) Classifying the supply under higher slab to avoid dispute – Though there may not be any demand- customer may have some objection and raise a debit note in future. It lead to higher working capital
- (iii) Classifying under wrong heading considering applicability of the same rate- This may not have any commercial impact as there is no rate difference. However when the rate changes there may be a problem.
- (iv) Classifying the supplies based on convenience of operation – This may not be advisable as it is bound to lead to disputes for self as well as the customers.
- (v) Classifying the supplies incorrectly to claim of exemption – This would also be disastrous as demands if any can cripple the enterprise.
- (vi) Classifying the services considering the place of supply to claim as export etc – This can lead to a) demand for GST as supply is liable b) denial of credit due to time lapse or if longer period invoked and c) Demand for excess refund with interest and penalties.
- (vii) Similar to above classifying differently to avoid Reverse charge mechanism. – This could also lead to demand.
- (viii) Classifying under residuary entry when specific entry or general entry is available.

### Illustrative rulings by Authority for Advance Rulings relevant for classification of goods/services

1. AUTHORITY FOR ADVANCE RULINGS, DAMAN, DIU AND DNH in case of Western Cable Engineering (P.) Ltd.,

Classification of goods (NR) - Heat shrinkable cable jointing kits - Applicant-company is engaged in clearing of their manufactured good, 'Heat Shrinkable Components' under Chapter 854790 in existing law, i.e., under Central Excise Tariff Act, 1985 and were paying duty at rate of 12.5 per cent - However, in GST regime, they have changed their classification and started clearing their goods under Chapter 854690 - Whether since with introduction of GST law, no change is effected in basic characteristics of said product a sudden change in their classification without having legal and reasonable backing is not tenable and, thus, Heat Shrinkable Cable Jointing Kits assembled from various components is to be classified under HS 8547 - Held, yes [Para 5] [In favour of revenue



2. AUTHORITY FOR ADVANCE RULINGS, MAHARASHTRA in case of Shree Construction.

Classification of services (NR) - Works contract services to main contractor - Whether sub-contractor providing works contract services by way of construction, erection, commissioning, or installation to main contractor in respect of original contract works pertaining to railways would be covered for concessional rate of GST at rate of 12 per cent as given under Serial No. 3 of Notification No. 11/2017 as amended - Held, yes [Para 5] [In favour of assessee]

3. AUTHORITY FOR ADVANCE RULINGS, HARYANA in case of Epcos India (P.) Ltd

Classification of goods (NR) - Battery for mobile handset - Whether product 'Battery for Mobile Handset', whether it be separable or non-separable i.e., whether it be detachable or non-detachable, when sold to mobile handset manufacturers who use same to make mobile handset, form part of mobile handset, will qualify to be classified under heading 85 having description 'Parts for manufacture of telephones for cellular networks or for other wireless networks' attracting GST Rate of 12 per cent - Held, yes - Whether product 'Battery for Mobile Handset', when sold to customers other than mobile handset manufacturers who does not use same in manufacture of mobile handset, will qualify to be classified under heading 8507 having description Electric accumulators, including separators thereof, whether or not rectangular (including square), attracting GST at rate of 28 per cent - Held, yes [Para 5] [In favour of applicant.]

4. AUTHORITY FOR ADVANCE RULINGS, UTTARAKHAND in case of Ginni Filament Ltd.-

Whether wet baby wipes consist of wadding felt and non-woven fabric coated or covered with perfume or cosmetic and falls under HSN 3307, taxable at 18 per cent GST under Notification No. 41/2017-Central Tax (Rate) - Held, yes - Whether since, basic nature and working of product wet face wipes is almost same as that of wet baby wipes i.e. gently cleaning skin by removing dirt and moistening it and on comparing basic functions of ingredients which is coated in form of lotion over non-woven fabric in respect of wet baby wipes, accordingly same are also classified under HSN 3307 - Held, yes - Whether as regards classification of bed and bath towels also it is observed that basic nature and working of product is almost same as that of wet face wipes, i.e., gently cleaning skin by removing dirt and moistening it; therefore, same merits classification under HSN 3307 - Held, yes

II. Classification of goods (NR) - Shampoo towels - Product shampoo towel consists of non-woven spun lace fabric of 40-60 grams per square meter of standard size 300 mm x 240 mm - Basic function of shampoo towels is to clean and shampoo hair which may be used for a bed-ridden person or who requires partial assistance - Product in question has undergone a process which makes it a preparation for use on hair - Package of shampoo towels indicate that it is meant for application on hair and said product is

indeed manufactured for use on hair only - Whether thus, product 'shampoo towel', merits classification under Chapter 3305 and rate of GST applicable on said product is 18 per cent - Held, yes

5. AUTHORITY FOR ADVANCE RULINGS, WEST BENGAL in case of MD Mohta

Whether 'Rakhi' is an independently identifiable product which may be made up of innumerable materials of no fixed or predetermined ratio, and yet retain its specific identity as a symbol of a bond involving potential care of sister by brother, and not merely an assemblage of discrete materials - Held, yes - Whether Rakhi cannot be termed as a 'handicraft' item under GST under Notification No 32 of 2017-Central Tax dated 15-9-2017 - Held, yes - Whether Rakhi's, which applicant intends to manufacture will not be restricted to mere yellow and red yarn of 'Kalava', hence, Rakhi is not purely puja samagri and will not attract NIL rate of duty under Serial No 92(2) of TRU Clarification - Held, yes - Whether applicant has to classify 'Rakhi' as per its constituent materials in accordance with rule 3(c) of Rules for Interpretation of Customs Tariff Act, 1975, as laid down in Explanatory Notes (iv) of Notification No. 1 of 2017-CT(Rate), dated 28-6-2017 attracting GST in accordance to its classification and exemption under Notification No. 2 of 2017-Central Tax (Rate), dated 28-6-2017 is not applicable for 'Rakhi' - Held, yes

### Conclusion

The proper classification is the foundation to avoid disputes with customers as well as demands from the revenue. The applicability of rates (which have changed in between) and exemptions (have been notified and withdrawn) requires the updated knowledge as well as the information of the past changes.

### Statutory Provisions

#### **11. Power to grant exemption from tax**

- (1) *Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.*
- (2) *Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.*
- (3) *The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or*

*order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.*

*Explanation. —For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.*

### 11.1 Introduction

This provision confers powers on the Central Government to exempt either absolutely or conditionally goods or services or both of any specified description from whole or part of the central tax, on the recommendations of the Council. It also confers power on the Central Government to exempt from payment of tax any goods or services or both, by special order, on recommendation of the Council.

### 11.2 Analysis

The Central or the State Governments are empowered to grant exemptions from tax, subject to the following conditions:

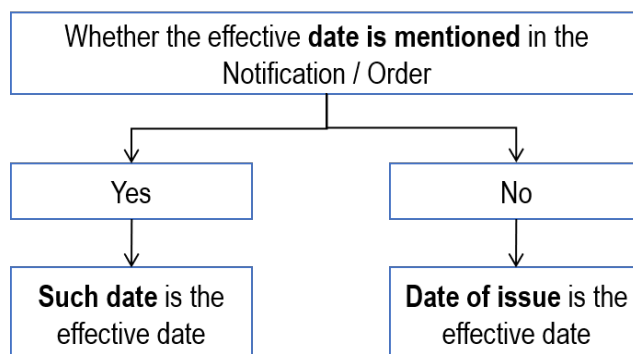
- (i) Exemption should be in public interest;
- (ii) By way of issue of notification;
- (iii) On recommendation from the Council;
- (iv) Absolute / conditional exemption may be for any goods and / or services of any specified description. In this regard, it may be noted that the exemption would be in respect of the supply and not specifically for any classes of persons. E.g.: An absolute exemption could be granted in respect of supply of water. Whereas, a conditional exemption could be granted for supply of goods to canteen stores department.
- (v) Exemption by way of special order (and not notification) may be granted by citing the circumstances which are of exceptional nature.
- (vi) The GST Law specifies that a registered person supplying the goods and / or services is not entitled to collect a tax higher than the effective rate, where the supply enjoys an absolute exemption.

#### **Effective date of the notification or special order:**

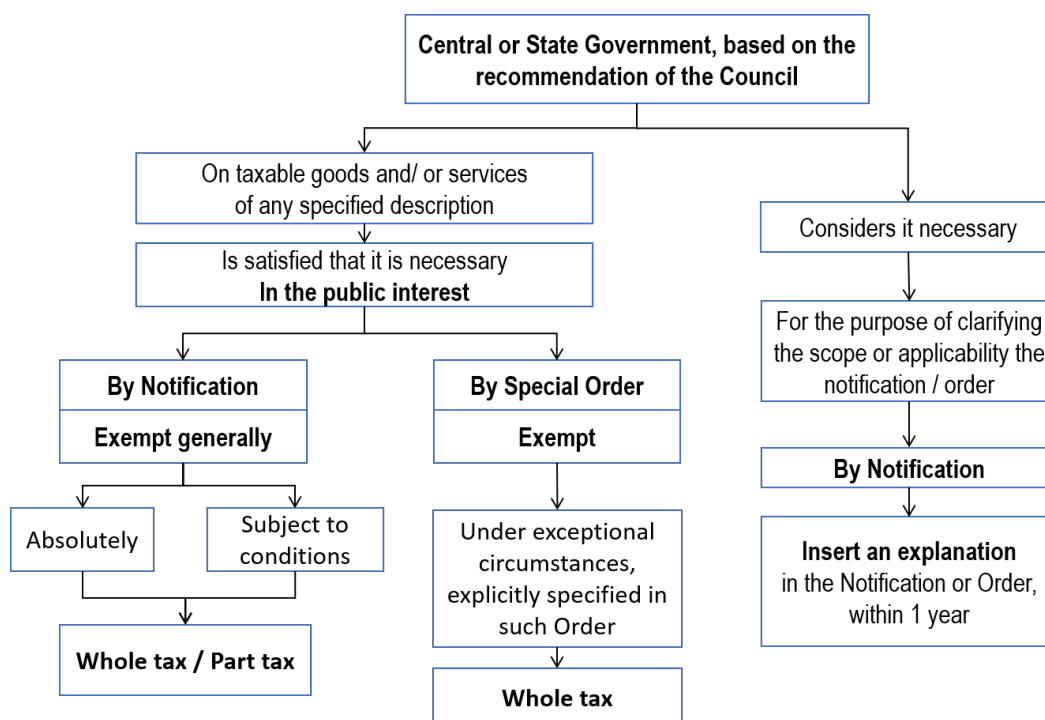
The effective date of the notification or the special order would be date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would be:

- Date of its issue for publication in the official gazette;

- Date on which it is made available on the official website of the Government Department.



The analysis of above provision in a pictorial form is summarised as follows:



#### Exemption under one GST Law and the effect on another GST Law:

An exemption issued under the CGST Act will 'automatically' exempt the same supply from the levy of tax under the SGST/UTGST Act. This is provided under the SGST/UTGST Act. But the converse is not necessarily applicable, that is, exemption under an SGST/UTGST Act will not exempt levy of tax under the CGST Act.

Exemption under CGST Act	Deemed to be exempt under SGST Act
	Deemed to be exempt under UTGST Act
	No auto-application of exemption under IGST Act
Exemption under IGST Act	No auto-application of exemption under CGST Act

**Clarification on a Notification / Special Order**

The law also provides for the Government to embed a clarification to such notification or special order, by way of an "Explanation", at any time within a period of 1 year from the date of the said notification or special order. Such explanation inserted within the timelines would have a retrospective effect, viz., from the effective date of the relevant notification or special order.

**Section 11 – Illustrations**

1. Absolute exemption: Exemption to following taxable services from tax leviable thereon:

- Services by way of renting of residential dwelling for use as residence.
- Services by Reserve Bank of India.
- Services by a veterinary clinic in relation to health care of animals or birds.

*Notification No. 12/2017 - Central Tax (Rate) dt.28.06.2017*

2. Conditional Exemption: The Central Government has exempted the tax payable under the CGST/ UTGST/ IGST Acts by any taxable person on supply of "Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation less than ` 1000/- per day".

*Notification No. 12/2017 - Central Tax (Rate) dt.28.06.2017*

3. Conditional, partial exemption: Intra-State supplies of goods or services or both received by a registered person from an unregistered person is exempted from payment of tax under reverse charge provided the aggregate value of such supplies received by a registered person from all or any of the suppliers does not exceed ` 5000/- in a day.

*Notification No. 08/2017-Central Tax (Rate) dated 28.06.2017 (Please note that this Notification has been amended various number of times vide various notifications. Presently the above said exemption has been extended till 30.09.2019).*

**Glimpse of notifications issued for exemption from payment of tax**

Notification No.	Particulars	Comments
02/2017 - Central Tax (Rate) dated 28.06.2017	Exempted supplies of around 149 items of goods in terms of Section 11(1) of the CGST Act, 2017. Ex. Electricity, Salt, fresh fruits, plastic	The notification was issued in exercise of powers conferred u/s 11(1). The notification was made applicable retrospectively

Notification No.	Particulars	Comments
	bangles, passenger baggage etc. <b>Amended vide Notification No. 28/2017, 35/2017, 42/2017, 7/2018 - Central Tax (Rate)</b>	w.e.f 01.07.2017. The said notification has been amended various number of times to include as well as exclude various items from the notification.
Notification No. 03/2017-Central Tax (Rate) dated 28.06.2017	Goods specified in the List annexed required in connection with various kinds of petroleum operations undertaken are given concessional rate i.e. at the rate of 2.5% under CGST i.e. 5% IGST.	Although petroleum products are outside the purview of GST. But, the notification seeks to provide a concessional rate of tax supplies relating to petroleum operations.
Notification No. 07/2017-Central Tax (Rate) dated 28.06.2017	Exemption to supplies by CSD to Unit Run Canteens and supplies by CSD / Unit Run Canteens to authorised customers	The notification came into effect retrospectively w.e.f. 01.07.2017
Notification No. 08/2017-Central Tax (Rate) dated 28.06.2017	Exemption granted from levy of CGST under RCM on supplies received from unregistered persons. (if value of supplies does not exceed ` 5000 from any or all the suppliers in a day) <b>Amended vide Notification No. 38/2017 and 10/2018-Central Tax (Rate)</b> Scope of this exemption has been enhanced to all supplies without any monetary limit, by way of an amendment, upto 31.06.2018.	Exemption in respect of all supplies has been granted up to 31.03. 30.09.2019 by Notification No. 22/2018 dated. 06.08.2018. However, given that a notification corresponding to Notification No. 08/2017 is missing in the IGST Law, it may be understood that all inter-State supplies remain taxable under Section 5(4) of the IGST Act, 2017 upto 13.10.2017, from which date, all supplies, without any monetary limit, are exempt upto 30.09.2019.
Notification No. 09/2017-Central Tax (Rate) dated 28.06.2017	Exemption granted to supplies to a TDS deductor by a unregistered supplier	This exemption notification is not available under IGST (Rate).
Notification No. 10/2017 - Central Tax (Rate) dated	Exemption to Supplies of second hand goods received by registered person dealing in buying	This exemption notification is not available under IGST

Notification No.	Particulars	Comments
28.06.2017	& selling of second hand goods from unregistered person provided the dealer pays central tax on supply of such second-hand goods as per CGST Rules	(Rate).
Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017	Exemption to supply specified services under the CGST Act. Almost, all the exemptions were available earlier under the erstwhile regime also under service tax <b>Amended vide Notification No. 21/2017, 25/2017, 32/2017 and 47/2017, 2/2018 - Central Tax (Rate)</b>	The notification contains nearly 79 entries exempting various supply of services from GST. The notification has been amended various number of times either to include or exclude various services from the exemption.
Notification No.26/2017-Central Tax (Rate) dated.21.09.2017	Exemption to supply of heavy water and nuclear fuels falling in Chapter 28 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) by the Department of Atomic Energy to the Nuclear Power Corporation of India Ltd	The Exemption notification provided absolute exemption from whole of the Tax Payable.
Notification No.30/2017-Central Tax (Rate) dated.29.09.2017	Exempting supply of services associated with transit cargo to Nepal and Bhutan	The notification was issued as an amendment of Notification No.12/2017.
Notification No.5/2018-Central Tax (Rate) dated 25.01.2018	Exempting the Central Government's share of Profit Petroleum as defined in the contract entered into by Central government in this behalf	
Notification No.18/2017-Integrated Tax (Rate) dated 05.07.2017	Exemption from IGST to SEZs on import of Services by a unit/developer in an SEZ	Corresponding Notification would not apply in case of intra-State supplies, given that all supplies by SEZ are inter-State supplies

### 11.3 Comparative review

The provisions relating to exemption are broadly similar to the exemption provisions under the erstwhile tax regime. There are no significant differences.

### 11.4 Issues and concerns

1. The law provides that tax shall not be collected at a rate higher than the effective rate of tax applicable on a supply enjoying an absolute exemption. In this regard, there is one school of thought wherein it is inferred that this provision is specific to absolute exemptions only, and in case of conditional exemptions, there is an option available to the registered supplier to collect tax from a recipient (Such a methodology, if adopted by suppliers, would imply that the requirement for input tax credit reversals under Section 17(2) of the Act would not stand attracted). The other view is that the conditional exemptions are not optional, but are mandatory when the conditions relating to the exemption are satisfied.
2. On similar lines, it is to be noted that the restriction imposed by law is upon the "collection" of tax. Therefore, certain registered suppliers may resort to payment of tax without collection thereof, in order to effect only taxable supplies whereby they would not be required to undergo the hassle of reversal of input taxes. However, the issue would arise as regards the documentation. A registered supplier may consider issuing a tax invoice instead of a bill of supply, against a supply that is wholly exempt, and specifying in the tax invoice prominently, that the recipient is not required to pay the tax charged on the invoice on the basis that the supply is exempted under law. However, this practice is frowned upon, as this methodology is not entirely in compliance with the provisions of the law. It is also important to note that the GST Law casts an obligation on the supplier to prove that he has not collected taxes in such situations.

### 11.5 Relevance of Section 11 in GSTR-9, 9A and 9C

1. Pt. 5D of GSTR-9 requires details comprising of Taxable Value, CGST, SGST, IGST and Cess as applicable, in respect of "Exempted Outward Supplies". Further, the instructions annexed to the form also clarify that Table 8 of Form GSTR-1 may be used for filling up the above-mentioned details.
2. Pt. 6B of GSTR-9A also requires details comprising of Turnover, Rate of Tax, CGST, SGST, IGST and Cess as applicable, in respect of "Exempted Outward Supplies" as declared in returns filed during the financial year.
3. Pt. 7B of GSTR-9C requires the value of **Exempted**, NIL Rated, Non-GST supplies, No Supply turnover. Further, the instructions annexed to the form contain a clarification that the figure so reported shall be net of credit notes, debit notes and amendments if any.

### 11.6 FAQs

- Q1. When exemption from whole of tax leviable on goods and/or services has been granted unconditionally, can taxable person collect tax?



Ans. No, the taxable person providing goods and/or services shall not collect the tax on such goods and/or services in respect of those supplies which are notified for absolute exemptions.

Q2. Under what circumstances can a special order be issued?

Ans. The Government may in public interest, issue a special order on recommendation of GST council, to exempt from payment of tax, any goods and/or services on which tax is leviable. The circumstances of exceptional nature would also have to be specified in the special order.

Q3. What shall be the effective date in case of issue of notification?

Ans. The Notification shall be effective from the date as mentioned in the notification. However, in case no date is mentioned in the notification the effective date shall be the date of issue of the notification.

#### **11.7 MCQs**

Q1. Which of the following can be issued by Central Government/ State Government to exempt goods and/or services on which tax is leviable in exceptional cases?

- (a) Exemption Notification
- (b) Special order
- (c) Other notifications
- (d) None of the above

Ans. (b) Special Order