

## Chapter 4

# Time of Supply

Sections	Rules
12. Time of supply of goods	47. Time limit for issuing tax invoice
13. Time of supply of services	
14. Change in rate of tax in respect of supply of goods or services	

### Statutory Provisions

<p><b>12. Time of supply of goods</b></p> <p>(1) <i>The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.</i></p> <p>(2) <i>The time of supply of goods shall be the earlier of the following dates, namely: —</i></p> <p style="margin-left: 20px;">(a) <i>the date of issue of invoice by the supplier or the last date on which he is required, under <del>sub-section (1) of</del> <sup>1</sup>section 31, to issue the invoice with respect to the supply; or</i></p> <p style="margin-left: 20px;">(b) <i>the date on which the supplier receives the payment with respect to the supply: Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.</i></p> <p><i>Explanation 1.—For the purposes of clauses (a) and (b), “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.</i></p> <p><i>Explanation 2.—For the purposes of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.</i></p> <p>(3) <i>In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:—</i></p> <p style="margin-left: 20px;">(a) <i>the date of the receipt of goods; or</i></p> <p style="margin-left: 20px;">(b) <i>the date of payment as entered in the books of account of the recipient or the</i></p>
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<sup>1</sup> Omitted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019

*date on which the payment is debited in his bank account, whichever is earlier; or*

- (c) *the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:*

*Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.*

- (4) *In case of supply of vouchers by a supplier, the time of supply shall be—*
- (a) *the date of issue of voucher, if the supply is identifiable at that point; or*
- (b) *the date of redemption of voucher, in all other cases.*
- (5) *Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—*
- (a) *in a case where a periodical return has to be filed, be the date on which such return is to be filed; or*
- (b) *in any other case, be the date on which the tax is paid.*
- (6) *The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.*

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

1. Notification No. 9/2017 – Central Tax dated 28.06.2017 Seeks to appoint 01.07.2017 as the date on which the provisions of Section 12 are effective.
2. Notification No. 66/2017 – Central Tax dated 15.11.2017 Seeks to exempt all taxpayers from payment of tax on advances received in case of supply of goods (*This notification is issued superseding the earlier Notification No. 40/2017 – Central Tax dated 13.10.2017 wherein the exemption from payment of tax on receipt of advances was extended to a registered person whose aggregate turnover is less than ₹ 1.5 crores*);
3. Notification No. 4/2017 – Central Tax (Rate) dated 28.06.2017 Specifies goods the supply of which is liable to CGST under reverse charge mechanism;
4. Notification No. 8/2017 – Central Tax (Rate) dated 28.06.2017 Exemption from payment of CGST under reverse charge for supplies where value do not exceed ₹ 5,000/-;
5. Notification No. 10/2017 – Central Tax (Rate) dated 28.06.2017 CGST provides exemption in case of intra- State supplies of second hand goods for dealers in buying and selling second hand goods operating under margin scheme;

6. Notification No. 38/2017 – Central Tax (Rate) dated 13.10.2017 exempt payment of tax under section 9(4) of the CGST Act, 2017 till 31.03.2018;
7. Notification No. 10/2018 – Central Tax (Rate) dated 23.03.2018 exempt payment of tax under section 9(4) of the CGST Act, 2017 till 30.06.2018.
8. Notification No. 12/2018 – Central Tax (Rate) dated 29.06.2018 exempt payment of tax under section 9(4) of the CGST Act, 2017 till 30.09.2018.
9. Notification No. 22/2018 – Central Tax (Rate) dated 06.08.2018 exempt payment of tax under section 9(4) of the CGST Act, 2017 till 30.09.2019.
10. Notification No. 1/2019 – Central Tax (Rate) dated 29.01.2019 which rescinds Notification No. 8/2017-Central Tax (Rate), dated 28.06.2017, in view of bringing into effect the amendments (regarding RCM on supplies by unregistered persons) in the GST Acts payment of tax under section 9(4) of the CGST Act, 2017 till 30.09.2019.
11. Circular No. 38/12/2018 dated 26.03.2018 clarify the levy of GST, time of supply of goods and value of supply in case of goods sent for job-work.
12. CBIC Circular No. 22/22/2017-GST, dated 21-12-2017 clarify issues regarding treatment of supply by an artist in various States and supply of goods by artists from galleries
13. CBIC Circular No. 10/10/2017-GST, dated 18-10-2017 clarify issues wherein the goods are moved within the State or from the State of registration to another State for supply on approval basis

#### Related provisions of the Statute

Section or Rule (CGST / SGST)	Description
Section 2(31)	Definition of Consideration
Section 2(41)	Definition of Document
Section 2(52)	Definition of Goods
Section 2(66)	Definition of Tax Invoice or Invoice
Section 2(93)	Definition of Recipient
Section 2(97)	Definition of Return
Section 2(98)	Definition of Reverse Charge
Section 2(105)	Definition of Supplier
Section 2(118)	Definition of voucher
Section 7	Scope of Supply

Section 9	Levy and Collection
Section 14	Change in rate of tax in respect of supply of goods or services
Section 15	Value of taxable supply
Section 31	Tax invoice, credit note and debit note
Section 39	Furnishing of Returns

## 12.1 Analysis

### (a) Introduction

Supply has been understood to hold the key to the incidence of GST, but it is the 'time of supply' that dictates the occasion when this incidence will come to rest. Taxable supply has been defined to mean a supply of goods and/or services which is chargeable to tax under this Act. It is interesting to note the use of the expression 'chargeable to tax' as opposed to 'leviable to tax'. It has been held that 'chargeable to tax' encompasses not only the incidence of tax but also its assessment.

The opening words in section 12(1) are very interesting and forceful as it is here that the liability to pay GST arises. The subject matter of levy – goods or services – becomes encumbered with the tax upon occurrence of the taxable event – supply. But the tax levied in terms of section 9, comes to reside only at the time determined by section 12 and 13. Accordingly, these sections play a stellar role in the imposition of GST.

The provisions state that the time of supply "shall be" and as such is a "must" to be examined closely. It signifies that "time of supply" is not a fact to be inquired by the taxable person but one that is to be admitted as the time of supply appointed by the will of legislature as declared in the section. In order to not allow any opportunity for a suggestion by the taxable person or even the tax administration as to any alternative to what could be the time of supply, the legislature retains for itself the exclusive authority to appoint the time of supply by employing the words "shall be". Therefore, the time of supply is what is stated in the law to be the time of supply and nothing else.

Invoice is commonly understood as 'proof of sale' but this common understanding is far from the truth. Invoice is a document recording the terms of an arrangement already entered. Lease agreement, as an analogy, is a document in present evidencing the agreement reached between two parties is for the lease of property for certain duration in exchange for a certain consideration. A lease arrangement verbally entered into previously when documented by an indenture or deed does not bring into existence the lease when the document is prepared. In fact, the document merely is a record of an arrangement of lease entered previously, *albeit* verbally. Verbal arrangements are no less agreements in the eyes of law. Similarly, an invoice does not bring into existence a sale agreement but merely records the terms of whatever arrangement that may have been entered into by the parties, involving the subject matter. Tax laws require the preparation of an invoice not as if the absence of an invoice defeats the levy

but prescribes an unambiguous occasion when the tax may become recoverable with a proper record of the terms of the underlying arrangement. Therefore, an invoice can evidence not only a sale but every other form of supply such as transfer, barter, exchange, license, rental, lease or disposal. If issuance of an invoice is uncommon for barter or a rental arrangement, then it is to do with our own unfamiliarity and nothing to do with its impermissibility.

**(b) Time of Supply – Forward Charge**

Time of supply is prescribed (legislative will) to be the earlier of (a) date of issue of invoice or last date on which the invoice is required to be issued with respect to the supply and (b) date of receipt of payment. Date of issue of invoice requires us to examine section 31 which deals with the requirement to issue a “tax invoice”. Here two kinds of situations are contemplated, namely:

- (i) A case where the supply involves movement of goods
- (ii) Any other case

Before proceeding, it is necessary to admit the concept of ‘person and taxable person’. Person is defined in the most familiar manner in section 2(84) but taxable person is explained in detail in section 25 (please refer to the relevant Chapter for a detailed discussion). A proper reading of section 25 helps us understand – a State is the smallest registrable unit in GST – except where multiple business units are registered separately under section 25. A taxable person is, therefore, the presence of the person in a State where taxable supplies are made from in the name of such person. When a person becomes liable to be registered in a State at any place from where taxable supplies are made therein, every place in that State such person shall be a taxable person.

Now, we may return to our discussion regarding the two kinds of cases that are discussed on time of supply. It is noticeable that section 31 uses two expressions – ‘removal of goods’ and ‘movement of goods’ – which are not merely expressions of distinction without a difference. There is deliberate purpose for legislating in this manner. ‘Removal of goods’ is defined in section 2(96) and identifies the steps that may follow once the decision to supply is made. But, ‘movement of goods’ is not defined and is, therefore, an attribute of the goods at the time of supply.

Illustration 1: Machine tools on display at an exhibition in Mumbai agreed to be purchased by executives of an engineering company from Indore attending the exhibition, is a case of ‘supply involving movement’ even though the transportation is undertaken by representatives of the purchaser on their own.

Illustration 2: In illustration 1 above, if the executives from Indore were to place an order at the same exhibition with instructions for delivery to be ensured by the exhibitor (supplier) assured within six weeks, this would also be a case of ‘supply involving movement’ and the transportation being organised by the supplier through an independent transport agency from the factory or exhibitor site to the customer location.

It is for this reason that the language employed of seemingly similar or synonymous expressions – ‘removal of goods’ and ‘movement of goods’ – but demands to be supplied their separate and individual meanings and not be misled by their apparent similarity. To reiterate, ‘removal of goods’ is a question of fact to be examined from the steps that would ensue once the supply is decided whereas ‘involves movement’ is a question of the state-of-affairs of the goods being supplied.

Therefore, it is important even before the arrival of time of supply, that the goods to be supplied be classified into one of these two cases, that is, whether it is a case of supply that involves movement or one that does not involve movement of the goods. Only when this classification of the goods has been clearly made does section 31 comes into operation.

### **Supply involves movement**

Where the supply involves movement of goods then an invoice must be issued at the exact time when the goods are about to be removed. So, it is pertinent to identify the moment when the goods are considered to be getting removed. Section 2(96) defines removal in relation to goods as:

- (a) Despatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier
- (b) Collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient

As already explained above, movement of goods may be caused by the supplier (or his agent or transporter) or by the recipient (or his agent or transporter). When the movement is caused by the supplier, the point of removal will arise when the goods are despatched from the place of business of the supplier. The word ‘despatch’ means ‘to send off’. So, just before the goods are to be sent off, the invoice is required to be issued where the removal is by the supplier.

Illustration 3: Mr. X in Gujarat gets an order from Mr. Y in West Bengal on 18<sup>th</sup> March 2018 for supply of refrigerators. Mr. X dispatches the goods from his premises to his transporter’s premises on 20<sup>th</sup> March 2018. The transporter initiates the transportation on 22<sup>nd</sup> March 2018 and the goods finally reach the premises of Mr. Y on 26<sup>th</sup> March 2018. The removal of goods will be said to be caused on 20<sup>th</sup> March 2018 i.e. the date when the goods leave the premises of Mr. X. The last date of issue of invoice will also be 20<sup>th</sup> March 2018 in the given case.

Where the movement is by the recipient, the point of removal will arise when the goods are collected by the recipient from the premises of the supplier. This collection may be by the recipient or a person acting on his behalf as the agent or transporter or any other person. So, the invoice is to be issued by the supplier just before the point when the recipient (or his agent or transporter) collects the goods from his premises.

Illustration 4: Mr. X in Gujarat gets an order from Mr. Y in West Bengal on 18<sup>th</sup> March 2018 for supply of refrigerators. Mr. Y’s transporter takes delivery of the said goods from the premises

of Mr. X on 21<sup>st</sup> March, 2018 and delivers them to Mr. Y on 26<sup>th</sup> March 2018. As Mr. Y's transporter collected the goods for transportation on 21<sup>st</sup> March 2018, the date of removal will be considered as 21<sup>st</sup> March 2018 as well. The last date of issue of invoice will also be 21<sup>st</sup> March 2018 in the given case.

Illustration 5: Mr. X's manufacturing unit in Surat, Gujarat gets an order for supply of refrigerators from Mr. Y in West Bengal on 18th March 2018. It was agreed that Mr. Y's transporter will collect the goods from Mr. X's depot in Vadodara which is registered as an additional place of business under the same GSTIN as that of Surat. Mr. X removes the goods from his manufacturing unit to his depot on 20th March, 2018 which reaches the depot on 21st March 2018. Mr. Y's transporter collects these goods on 23rd March 2018 and the said goods reach Mr. Y on 28th March 2018. In this illustration, the movement of goods by the supplier between his premises cannot be called as a dispatch as it is not for delivery by the supplier. In fact, the first leg of the activity occurring between the units of Mr. X does not entail raising of invoice as it is not a supply. The removal of goods for supply to Mr. Y will arise only when the goods are collected by the transporter of Mr. Y from Vadodara i.e. 23<sup>rd</sup> March 2018 which will also be the last date of issue of invoice as per Section 31.

#### **Supply does not involve movement**

Where the supply involves movement of goods then an invoice must be issued at the exact time when the goods are about to be removed. And where the supply does not involve movement of goods then an invoice must be issued at whatever is the time when the goods are delivered or made available to the recipient. It is in this case – where supply does not involve movement – that the complexity remains even after making a proper classification. That is, determining the time when the goods are delivered or made available to the recipient. Delivery – the mode and the time – is the unilateral choice of the recipient and the supplier has no authority to decide 'how' and 'when' he will deliver the goods to the recipient. It only becomes easy in a contract for supply if it clearly records this 'choice' of the recipient regarding the mode and time of delivery. The supplier is always duty-bound to deliver in exactly the same way – manner and timing – which the recipient dictates. In fact, the supplier continues to be obligated until delivery is completed in the way it is stated by the recipient. In other words, delivery is not complete if there is any deviation in either the manner or the timing compared to that dictated by the recipient. When the delivery is to the satisfaction of the recipient, then the supplier is released from his obligation. Therefore, in all those cases (where supply does not involve movement) the additional question of fact to be determined is the mode and time of delivery dictated by the recipient and whether the same has been complied with, to the satisfaction of the recipient. It is now that section 31 comes into operation.

Illustration 6: Mr. X agrees to sell his godown in Gujarat to Mr. Y on 18<sup>th</sup> March 2018. There is a separate agreement entered by Mr. X and Mr. Y for the selling of refrigerators within the godown on 19<sup>th</sup> March 2018. Mr. X hands over the possession of the godown and the furniture on 25<sup>th</sup> March 2018. In this case, the furniture will be considered to be delivered on 25<sup>th</sup> March 2018 which will also be the last date of issue of invoice as per Section 31.

**Continuous supply of goods**

As per Section 2(32) of the CGST Act 2017, continuous supply of goods means a supply of goods which is provided or agreed to be provided continuously or on recurrent basis, under a contract whether or not by means of wire, cable, pipeline or other conduit and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may subject to such conditions as it may by notification specify.

From the above definition, it may be inferred that there are two important conditions to be satisfied for a supply to be called as continuous supply of goods:

- (a) The supply of goods should be provided on a continuous or recurrent basis
- (b) The supplier should be invoicing the recipient on a regular or periodic basis

Once, these two conditions are satisfied, any supply will be considered as continuous supply of goods. While continuous supply shall mean a supply of goods incessantly for eg., supply of lubricating oil through pipeline, a recurring supply shall mean a supply which has a pattern of reoccurrence for eg., supply of thirty water jars every day in an office. For the purpose of continuous supply, it is necessary that successive statement of accounts or successive payments or both are involved for the purpose of determining the consideration for such supply. As per Section 31, in respect of continuous supply of goods, it has been stated that invoice should be issued before or at the time each such statement is issued or each such payment is received. Please note that regularity of supply does not always imply continuous supply. Maybe each supply is complete but there is a delay in billing. That cannot become continuous supply. There must be something contingent at the time of removal / movement that can only be determined after arrival or even consumption. Deliberate delay in invoice for regular supplies does not automatically result in continuous supply. If the billing cycle coincides with tax period, there may not be much consequence of regarding such transactions to be supply as tax does get paid timely. But, if the billing cycle is contractually longer than tax period, then care must be taken to correctly categorize as continuous supply.

Please note that 'payment' as a criterion used in the context of continuous supply CANNOT be applied where consideration is in 'non-monetary form' such as barter or exchange transactions. In such cases, where consideration is in non-monetary form and involve continuous supply, experts hold the view, that the payment criterion falls apart and time of supply would need to be determined based on 'actual supply or invoice'.

**Goods sent or taken on approval for sale or return basis**

As per this system, certain goods are sent to the recipient without supplying/selling the same at its outset. These goods can be examined or tested by the recipient as to whether his requirements are fulfilled. The recipient can at his behest, approve the said supply or return the said goods. If the goods are returned, no supply will be deemed to have taken place. If the goods are approved by the recipient, then it will amount to a supply. The last date of issuance



of invoice in such cases as per Section 31(7) of the CGST Act 2017 has been given as earlier of:

- (a) Before or at the time of supply
- (b) Six months from the date of removal

Here, time of supply refers to the time when the confirmation is given by the recipient that he is willing to accept the goods. The last date of issuance of invoice in such cases will be the confirmation of acceptance subject to the fact that this acceptance should not take place after six months from the date of removal. If the approval does not come within the time frame of six months/comes after the period of six months from the date of removal, then the last date of invoice arises on the date when this period of six months from the date of removal expires.

In this regard, vide CBIC Circular No. 22/22/2017-GST, dated 21-12-2017, it has been clarified by CBIC that the movement of artwork from artist to art galleries shall not be constituted as supply as the same is sent on approval basis and the supply takes place when buyer selects a particular art work displayed at the gallery.

Also, vide CBIC Circular No. 10/10/2017-GST, dated 18-10-2017 it has been clarified that where goods are moved within the State or from the State of registration to another State for supply on approval basis i.e. such goods are to be considered as being carried on approval basis and a tax invoice can be issued when the buyer has approved the goods and taken the delivery.

Unlike the case of VAT law where an invoice is required to be issued when 'transfer of property' takes place and invoice does not have to be kept pending until they are physically removed, GST requires issuance of an invoice at the time of their 'removal' or 'delivery', as the case may be, notwithstanding any delay in transfer of property. As explained earlier, an invoice does not by itself prove anything except that it is a record of the terms of understanding of the underlying transaction. Accordingly, referring back to our brief mention about 'person and taxable person', the tests requiring examination under section 31 must be administered not only in a transaction between two persons but even on all the transactions between two taxable persons even if they belong to the same person.

It is only upon undertaking a detailed enquiry into the questions of fact determined under section 31 in the respective cases, will we be able to determine one of the two elements prescribed to be the 'time of supply' under section 12. Time of supply therefore, is earlier of date of invoice as per section 31 or date of receipt of payment with respect to the supply.

*Exceptions:*

- (i) When an amount is received in excess of tax invoice up to ₹1,000/-, the time of supply in respect of such excess at the option of the supplier shall be the date of such invoice.
- (ii) Supply shall be deemed to have been made to the extent of the value of supply indicated in the invoice or the value of payment received by the supplier.
- (iii) Date of receipt of payment shall be the date on which the payment is accounted in the

books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier.

- (iv) The registered person who did not opt for the composition levy under section 10 shall pay the central tax on the outward supply of goods at the time of supply as specified in section 12(2)(a) i.e. the date of issue of invoice by the supplier or the last date on which he is required, under section 31(1), to issue the invoice with respect to the supply. Therefore, no GST is payable on advances received against supply of goods. (NN-66/2017-Central Tax dated 15-Nov-17)). Earlier by Notification No.40/2017- Central Tax dtd.13-Oct-17, the benefit was granted to only small assesses whose turnover in the preceding financial year or in the year in which he obtained registration does not exceed or is not likely to exceed ₹150 Lakhs. However subsequently the scope was enhanced to include all registered persons making supply of goods except the persons who have opted for composition under section 10. Please note that the relaxation has been brought only for advance received for supply of goods and is not available for advance received for supply of services. In summary, the taxability of the consideration received in advance would be as follows:

Period	Taxability of consideration received in advance for supply of goods	
	Aggregate turnover less than ₹ 1.5 crores	Aggregate turnover more than ₹ 1.5 crores
01.07.2017 to 12.10.2017	Taxable	Taxable
13.10.2017 to 15.11.2017	Not taxable	Taxable
15.11.2017 and onwards	Not taxable	Not taxable

The above notifications also refer to the situations attracting the provisions of Section 14 (change in rate of tax in respect of supply of goods or services). Accordingly, the date of receipt of advances would not be relevant for the purpose of ascertaining appropriate rate of tax in case of change. In other words, the applicable rate of tax in case of change in rate of tax would be ascertained based on the date of issuance of invoice and date of supply of goods only.

- (v) The provisions relating to job-work provides for supply of capital goods / inputs to the job-worker without payment of tax (section 143). The intention of the law is not to tax capital goods / inputs sent to job-worker as supply since in such an arrangement the goods are received back by the principal. However, if such goods are not received back within three years and one year respectively, it would qualify as supply by way of operation of deeming fiction provided under section 143(2) and section 143(3). In such a scenario, the date of sending the goods to the job-worker would be deemed to be the date when the goods were sent to the job-worker originally. It is important to understand

here that the incidence of tax falls back on the date when the goods were sent to the and the operation of deeming fiction dictates the date of supply of goods as the time of supply. This would be in deviation to the general principles of ascertaining the time of supply viz., date of removal of goods on which the principal ought to have issued the invoice. In this regard, the Central Government has issued a Circular No. 38/12/2018 dated 26.03.2018 wherein it is clarified that the principal should issue an invoice on expiry of three years / one year and should declare such supplies in the return filed for the month in which the time period of three years / one year is expired.

Illustration 9: Assuming the circumstances given under the illustrations 3, 4, 5 and 6, please find the time of supply after considering the following additional information:

Actual date of issue of invoice	Date of receipt of payment	Amount received
21 <sup>st</sup> March 2018	19 <sup>th</sup> March 2018	5,00,000
	25 <sup>th</sup> March 2018	10,00,000

Answer: Since, the date of receipt of payment will be immaterial in considering the time of supply of goods, the earlier of the two dates i.e. the last date of issue of invoice and actual date of issue of invoice will be considered as the time of supply. So, the time of supply will be as follows:

Illustrations	Last date of issue of invoice	Actual date of issue of invoice	Time of Supply
Illustration 3	20 <sup>th</sup> March 2018	21 <sup>st</sup> March 2018	20 <sup>th</sup> March 2018
Illustration 4	21 <sup>st</sup> March 2018	21 <sup>st</sup> March 2018	21 <sup>st</sup> March 2018
Illustration 5	23 <sup>rd</sup> March 2018	21 <sup>st</sup> March 2018	21 <sup>st</sup> March 2018
Illustration 6	25 <sup>th</sup> March 2018	21 <sup>st</sup> March 2018	21 <sup>st</sup> March 2018

Illustration 10: A cement manufacturing company generates certain waste materials which are supplied to a recycling factory through a pipeline on a continuous basis.

- (a) Situation 1: Monthly payments of ₹ 5,00,000 are to be made by 7<sup>th</sup> of the next month as per the contract. For the period October – December, following were the date of issuance of invoices and payments:

Period	Date of issuance of invoice	Date of receipt of payment
October	4 <sup>th</sup> November 2018	6 <sup>th</sup> November 2018
November	6 <sup>th</sup> December 2018	8 <sup>th</sup> December 2018
December	9 <sup>th</sup> January 2019	5 <sup>th</sup> January 2019

- (b) Situation 2: Monthly statement of accounts are to be prepared by 5<sup>th</sup> of the next month as per the contract. For the period October, following were the dates of issuance of the successive statement of account and the date of issuance of invoices:

Period	Date of issuance of invoice	Date of issuance of the statement of account
October	4 <sup>th</sup> November 2018	6 <sup>th</sup> November 2018
November	6 <sup>th</sup> December 2018	3 <sup>rd</sup> December 2018
December	9 <sup>th</sup> January 2019	5 <sup>th</sup> January 2019

Answer:

Situation 1: Where there are successive payments involved, the last date of issuance of invoice is the date of receipt of such payment. As per Section 12(2), the time of supply should be the earlier of the date of issuance of invoice or the last date of issuance of the invoice. It may be noted that as per Notification no. 66/2017-CT dated 15<sup>th</sup> November 2017, only these two events are to be considered and the date of receipt of payment as mentioned under Section 12(2)(b) may be ignored. The due date when the payment should be received is also immaterial as it has not been specified in either the time of supply provisions or the provisions of the last date of issuance of invoice. Thereby, the time of supply in the given case will be the earlier of the date of receipt of successive payment (last date of issuance of invoice) or the actual date of issuance of invoice.

Period	Date of issuance of invoice	Date of receipt of payment	Time of supply
October	4 <sup>th</sup> November 2018	6 <sup>th</sup> November 2018	4 <sup>th</sup> November 2018
November	6 <sup>th</sup> December 2018	8 <sup>th</sup> December 2018	6 <sup>th</sup> December 2018
December	9 <sup>th</sup> January 2019	5 <sup>th</sup> January 2019	5 <sup>th</sup> January 2019

Situation 2: Where there are successive statements of accounts that are to be prepared, the last date of issuance of invoice will be the date of issuance of such successive statement. As per Section 12(2), the time of supply should be the earlier of the date of issuance of invoice or the last date of issuance of the invoice. It may be noted that as per Notification no. 66/2017-CT dated 15<sup>th</sup> November 2017, only these two events are to be considered and the date of receipt of payment as mentioned under Section 12(2)(b) may be ignored. The due date when the successive statement should be prepared is immaterial as it has not been specified in either the time of supply provisions or the provisions of the last date of issuance of invoice. Only the actual date of the preparation of the statement needs to be considered. Thereby, the time of supply will be the earlier of the date of issuance of successive statement of account (last date of issuance of invoice) and the date of invoice.

Period	Date of issuance of invoice	Date of issuance of the statement of account	Time of supply
October	4 <sup>th</sup> November 2018	6 <sup>th</sup> November 2018	4 <sup>th</sup> November 2018
November	6 <sup>th</sup> December 2018	3 <sup>rd</sup> December 2018	3 <sup>rd</sup> December 2018
December	9 <sup>th</sup> January 2019	5 <sup>th</sup> January 2019	5 <sup>th</sup> January 2019

Illustration 11: Certain goods are sent by Mr. X on sale on approval or return basis to Mr. Y on 22<sup>nd</sup> April 2018. The supply gets confirmed and invoice is issued on:

Case 1: 20<sup>th</sup> August 2018

Case 2: 22<sup>nd</sup> November 2018.

Payment in each of the cases is made on 23<sup>rd</sup> November 2018.

Answer: Date of receipt of payment is immaterial for the purpose of calculating time of supply u/s 12(2) of the CGST Act 2017. So, 23<sup>rd</sup> November 2018 should be ignored altogether. The time of supply should be earlier of the date of issuance of invoice or the last date of issuance of invoice. The last date of issuance of invoice will be the earlier of the confirmation of supply or six months from the date of removal.

In case 1, the confirmation of supply occurred before 6 months from the date of removal. So, the last date of issuance of invoice was 20<sup>th</sup> August 2018. On this date, the invoice was issued. So, the time of supply will be 20<sup>th</sup> August 2018.

In case 2, the confirmation of supply happened after 6 months from the date of removal. Six months expired on 21<sup>st</sup> October 2018. So, the invoice was required to be issued by this date. Since the invoice was issued on 23<sup>rd</sup> October 2018, the actual date of issue of invoice will be considered as falling after the last date of issuance of invoice. So, the time of supply will be the last date of issuance of invoice i.e 21<sup>st</sup> October 2018.

### (c) Time of Supply – Reverse Charge.

Where tax is payable on reverse charge basis, the time of supply is appointed to be the earliest of (a) date of receipt of goods, (b) date of payment or (c) 30 days from the date of issue of invoice by the supplier. If for any reason, one of these three dates cannot be determined then the time of supply will be the date of recording the supply in the books of the recipient.

Keeping in mind the definition of reverse charge in section 2(98), the above provision does not apply to payment of tax by an electronic commerce operator but only to those cases of supply which fall under sub-section 5 of section 9 of the Act.

Reverse charge in case of goods may arise either under Section 9(3) or Section 9(4) of the CGST Act. Section 9(3) empowers the issuance of notification by the Government under which

the tax will be paid by the recipient of goods as per reverse charge mechanism. Notification no. 4/2017-Central Tax (Rate) dated 28.06.2017 as amended from time to time provides the list of goods which will be subject to reverse charge mechanism subject to the category of supplier and recipient specified therein. These goods include cashew nuts (not shelled or peeled), bidi wrapper leaves (tendu), tobacco leaves, raw cotton, silk yarn, supply of lottery etc.

Prior to enactment of CGST Amendment Act, section 9(4) required the recipient of taxable goods/services to pay tax if it is registered and receives inward supplies from unregistered suppliers. The applicability of which was exempted from 13<sup>th</sup> October 2017 till 31<sup>st</sup> January, 2019. However, it was applicable for intra state supplies subject to the aggregate amount of such supplies exceeding ₹ 5000 in a day from any or all unregistered suppliers and all interstate supplies without any limit till 12<sup>th</sup> October 2017.

It is pertinent to mention that in view of bringing into effect the amendments (regarding RCM on supplies by unregistered persons) in the GST Acts vide Notification No 01/2019-Central Tax (Rate) ,dt. 29-01-2019, reverse charge exemption notification has been rescinded

Illustration 12: Mr.X, an agriculturist supplies raw cotton (under reverse charge) to Mr. Y who manufactures cotton shirts. The date wise turnout of events are given below:

01.04.2018- Mr.Y approaches Mr.X and places an order for 2 tonnes of cotton

10.04.2018- Mr.Y receives the goods

15.04.2018- Mr.X issues an invoice

20.04.2018- Mr.Y makes a payment by cheque and accordingly records it in his books of accounts.

25.04.2018- The payment gets debited from Mr.Y' s bank account

What will be the time of supply in the given case?

Answer: The time of supply shall be the earlier of the following dates:

- a. the date of receipt of goods i.e. 10.04.2018
- b. the date of payment as recorded in the books of Mr.Y i.e. 20.04.2018 or the date when the payment gets debited in the books of the recipient i.e. 25.04.2018 whichever is earlier
- c. the date immediately following thirty days from the date of issue of invoice, i.e.  $15.04.2018+30\text{days}+1\text{day}=16.05.2018$

Therefore, the time of supply will be 10.04.2018.

#### (d) Time of Supply – Vouchers

The Act introduces time of supply in respect of 'vouchers' as a separate category such that the provisions relating to time of supply of goods is made inapplicable when the supply is of such vouchers. Referring to Chapter III where in the context of supply, definition of goods has been discussed at length, we find specific inclusion of 'actionable claims'.

In relation to actionable claims, Courts have held as follows:

- (i) Actionable claims come within the definition of goods as generally understood.
- (ii) VAT laws have deliberately excluded actionable claims from the definition of goods.
- (iii) Actionable claims represent debt and accordingly carry a demand that can lawfully be made by one person against another.
- (iv) Actionable claims represent property in non-physical (incorporeal) form.

But in GST, unlike VAT laws, we find that by including actionable claims within the definition of goods, they are made liable to tax. In relation to actionable claims under GST, please note the following key aspects:

- (i) Actionable claims are included specifically in the definition of goods, but this inclusion is by creating “an exception from an exclusion”. In other words, while excluding money and securities from the definition of goods, actionable claims have been singled out. This means such forms of actionable claims that represent property in the form of money or securities are also excluded from the definition of goods. Therefore, from a large population of actionable claims, tax is applicable only on the subset of actionable claims which do not represent property in the form of money or securities and all other forms of actionable claims representing any other property is includable in the definition of goods. A receipt for having made payment is not actionable claim because that receipt represents money and not the result of a transaction resulting in debt or demand. Similarly, promissory notes, IOU slips and all other derivatives of such instruments are also not actionable claims for the purposes of GST because of the exclusion of money from the definition.
- (ii) Actionable claims which are included within the definition of goods do not become includable in the definition of services due to the accommodative and expansive language used to define services. For this reason, the property that actionable claims represent even if they are in non-physical form will continue to remain goods and not become services. Actionable claims so understood may or may not be itself in any physical form. In other words, actionable claim is not the piece of paper carrying the detailed description of the actionable claim in question but the real property, though in non-physical form, that is referred to in that piece of paper. In this digital age, piece of paper carrying the description of the actionable claim can even be present in electronic form and still retain the character of actionable claim within the definition of goods. So, actionable claims can be in physical or electronic form as long as they represent real property.

About ‘actionable claims’ discussion in Chapter III would have highlighted that the incidence is limited to ‘lottery, betting and gambling’. Further, it is important to note that vouchers are not always referring only to actionable claims. Vouchers being treated as a separate category for the purposes of determining time of supply will need to be first identified in relation to supply before applying the relevant provision regarding its time of supply. Vouchers are defined in the

Act as “an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument” and examples of voucher are coupon, token, ticket, license, permit, pass.

Now, the time of supply in the case of vouchers is stated to be:

- (i) the date of issue of voucher if the supply is identifiable at that point; or
- (ii) in all other instances, the date of redemption of the voucher.

Please refer to the section 13 regarding time of supply of services for detailed discussion on the overall aspect of vouchers.

Here, only the key aspects of the definition are discussed which may be referred back while examining the scope of section 13(4).

Money 2(75) may be represented as follows:

Object		Purpose
Indian legal tender *	Foreign currency **	Used as consideration to:
Cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognized by RBI #		<ul style="list-style-type: none"> <li>➤ settle an obligation or</li> <li>➤ exchange with Indian legal tender of different denomination (not held for numismatic value)</li> </ul>
* <i>currency recognized by law – RBI Act, 1934 and includes currency notes and coins. Legal tender issued records liability of the Central Government and a guarantee to its holder to secure value-in-exchange</i>		
** <i>legal tender of other countries recognized by India. Does not include securities denominated in foreign currency</i>		
# <i>stored value instrument known as Pre-Paid Instrument (PPI) issued by a licensee under Payment and Settlement Systems Act, 2007</i>		

Money is therefore that which is ‘used as’ consideration between parties to a transaction. Money does not represent a liability of the parties to the transaction. Money represents liability of the Central Government. A person who has money has an asset which represents a certain amount of value. There is requirement to specially prescribe ‘terms of use’ of money. It is known and is declared by the law that recognizes money to be legal tender. Money includes all ‘stored value’ instruments approved by RBI or PPIs. Value is stored in PPIs by transfer of Indian legal tender in cash or from bank account and any balance of stored value in PPIs can be withdrawn in ATM or retransferred back into bank account. PPIs are of three types – closed, semi-closed and open PPIs. There are two other kinds of hybrids where existing



banking license-holders along with a technology partner can issue PPI-like stored-value products which operate as a specie of savings bank account of the PPI-holder or beneficiary. PPIs can be physical bearer instruments as paper certificate or plastic card. PPIs can also be non-physical in the form of a digital wallet. Both represent stored value which is linked to a bank account of the beneficiary. PPIs are not to be misunderstood with Payments Bank. PPIs have more restrictions than a Payments Bank which is a scaled-down version of a regular savings bank account.

Voucher 2(119) may be represented as follows:

Object	Description
Instrument with obligation	Created by contract between private Parties
Value represented	As per terms of use
Stored value	Nil; only value of obligation admitted
Obligor (person liable to discharge admitted obligation)	Issuer or other name obligor
Parties involved	3 or more parties – supplier, receiver and obligor

Voucher is therefore 'instrument with obligation' that is accepted as consideration. Voucher does not contain any 'stored value' but 'value-to-use'. This 'value-to-use' is credited into a voucher by a contractual arrangement between the issuer-redeemer of the voucher. A customer who redeems the voucher is not a party to the arrangement for creation of the voucher. A voucher that is created changes hands through steps with a sliding-scale of discounts until it is redeemed at the face value. This 'value-to-use' at the time of its creating necessarily involves flow of payment from the issuer to the redeemer as such voucher represent cash/cash equivalent received in advance entailing an obligation. But this value-to-use, cannot be converted to cash but only expended or redeemed as per terms of use of voucher. There is no regulation governing issue, transfer and redemption of vouchers except terms of a lawful contract. Vouchers are not PPIs and hence not governed by Payments and Settlement Systems Act, 2007. It is not uncommon for the available balance of 'value-to-use' to be credited into the digital wallet of a PPIs issued by the same issuer. But the difference is that the part of the wallet balance representing stored value can be withdrawn but not the part of the wallet balance representing value-to-use or voucher. Gift voucher issued by a merchant that is a bearer certificate with a unique identification number or code is not a voucher that agrees with this definition because this gift voucher is a close-ended PPI.

Another similar product is 'loyalty points' which also contains 'value-to-use' but the difference is that in loyalty points, issuer-redeemer is the same person. Loyalty points issued represents liability of the issuer towards the beneficiary without any underlying flow of payment and is best described as 'future discount'. That is, these points accrue in one transaction and based on some conversion ratio, that can be redeemed as a discount in a subsequent transaction.

As the loyalty points are non-transferable where the issuer-redeemer is the same person, it is not an instrument with obligation. Discount allowed in the subsequent transaction is towards cancellation of points accrued from the earlier transaction. Similar to vouchers, loyalty points also do not have any regulation governing its allotment and redemption except the terms of a lawful contract. Nowadays, it is seen that the liability that accumulated loyalty points represents, are being converted into voucher by transfer of liability by issuer to an intermediary at a discounted value. From here onwards, due to intermediary's involvement, an instrument comes into existence with an obligation which is voucher.

Yet another product coupon or token in the form of a 'code', where a customer becomes entitled to discount at the very first purchase by citing this 'code'. It is interesting to note that entitlement to this code though not flowing from a transaction in the past, it is an entitlement by accepting to enter into a transaction in the future. This acceptance is recorded by registering on a website, downloading an app or any other positive act on the part of the customer. Such codes also do not satisfy the requirements of a voucher for the same reasons as applicable to loyalty points.

Among all these lies another transaction that may appear to overlap with definition of voucher, due to the words of common understanding being used interchangeably with words having specific statutory meaning and that is 'Pass'. Pass is one which could be an entry pass or customer's pass or a free ticket. For example, a ticket to a cricket match is available for ₹1,000/- but a company buys these tickets and distributes it to key customers as 'free pass'. It allows the customer to enjoy the cricket match without paying anything for the same. But the company has already paid the ticket price to the organizers of the cricket match. Another example could be free pass to view screening of a film and so on. There is a normal taxable supply between the supplier of goods or services and the person who pays and buys the 'pass'. There is another supply to be examined, between the person who pays and the person who actually enjoys the goods or services. Whatever may be the conclusions reached regarding the two transaction here, there is no voucher that comes into existence even if such entry tickets are even designated as 'free pass – not for sale' and so on. However, if such 'passes' are printed and distributed out of the ordinary course of ticket sales without reference to a specific event but permitting access to a basket of events and valid for a duration of time, then it partakes the character of voucher – instrument with obligation. When the 'Pass' loses its character as an 'advance paid' for a supply in future – whether to the Payer or any other bearer – and becomes an 'instrument with obligation', then the 'Pass' becomes a voucher.

Criteria	Money	Voucher	Loyalty Points
Instrument type	Indian legal tender, foreign currency or stored value PPI of cash paid	Physical card / non-physical account of cash received	Points-statement of accrued discount from past transactions

Beneficiary	Bearer of cash or account-holder of PPI	Bearer or account-holder	Account-holder
Represents cash deposited	Yes, paid by Beneficiary *	Yes, paid by third party Issuer *	No, notional credit of loyalty points
Paid value = Face value on redemption	Yes, no discount and no premium	No, discounted value is paid by redemption of face value	NA
Paid value refundable	Yes, stored-value	No, only value-to-use	NA, discount-to-claim
Transferrable	No	Yes	Yes **
Issuer is redeemer	Yes	No	Yes
Redemption by	Bearer	Bearer	Account-holder
Unredeemed value	Continues	Loss to issuer	Lapse
Governing law	PSS Act	Contract Act	Contract Act

\* includes nominee of bearer-instruments

\*\* becomes voucher on transfer of accumulated points before redemption

#### Illustrations:

Illustration	Voucher or Not	Nature of Instrument
Shopping gift card purchased for ₹5,000/-	Not voucher	It's money, by way of 'stored value' even if not encashable
Coupons or token given to customer by pizza outlet on making purchase of ₹1,000/- which allows 10% discount on next purchase	Not voucher	It is future discount by way of 'value-to-use' not encashable
Money deposited into digital wallet	Not voucher	It's money, by way of 'stored value' though encashable
Points credited into digital wallet	Not voucher	It is future discount by way of 'value-to-use' not encashable
Transfer of liability towards accumulated loyalty points credited to customers	Voucher	Now it's become an 'instrument with obligation'
Pre-paid instruments:	Not voucher	It's money received in

<ul style="list-style-type: none"> <li>➤ Telephone calling card / recharge card</li> <li>➤ Multi-currency traveller's card</li> <li>➤ DTH recharge card</li> </ul>		advance to be settled by making supplies in future
<p>Non-instrument based advances:</p> <ul style="list-style-type: none"> <li>➤ Receipt issued to customer for acknowledging advance payment received towards PO issued</li> <li>➤ Advance booking of film ticket</li> <li>➤ Train ticket purchased in advance</li> <li>➤ Contribution of instalments into 'gold savings scheme'</li> <li>➤ Time-share in resort</li> </ul>	Not voucher	It's money received in advance to be settled by making supplies in future

The reason why it is important to differentiate whether it is a voucher or not, is that if the instrument is money then tax is payable on the actual 'paid-in value' and not the 'value-to-use' (or redeemable face value). For example, customer pays advance of ₹1,00,000 to distributor and the distributor transfers ₹80,000 to manufacture. GST payable by the distributor will be on ₹1,00,000 and the GST payable by the manufacturer will be on ₹80,000. Ignoring the fact that credit is not allowable, this would be the treatment in respect of any instrument that fits the definition of money. However, if a voucher was supplied by the manufacturer to the distributor of face value (or value-to-use) ₹1,00,000 but paid-in value ₹80,000, GST would be payable by the manufacturer on ₹1,00,000 and not ₹80,000. Further, anomalies arise on account of distributors liability to pay GST on ₹1,00,000 but with serious concerns on availability of credit of tax charged by manufacturer. Without satisfying conditions under section 16(2) read with rule 28, credit would not be available and tax would be collected on face value or value-to-use and not the actual paid-in value. Payment of tax in the case of vouchers on face value or value-to-use is found in rule 32(6).

It is important to understand that a similar provision as specified in relation to time of supply of goods also exists in time of supply of services. It is reasonable to, therefore, infer that the Government in its wisdom, in all probability, will treat 'vouchers relating to goods' and 'vouchers relating to services' as distinct and separate class of transactions. What does one understand by 'vouchers relating to goods' and 'vouchers relating to services'? A layman would comprehend that vouchers relating to goods would be those class of transactions which can be exchanged for goods whereas vouchers relating to services being distinct and separate can be exchanged only for services. There can be a third class of transactions relating to vouchers, namely, a gift voucher issued by a bank which can be exchanged only for cash. But a plain reading of definition of goods and services indicates that they both exclude

money. Therefore, such vouchers relating to cash / money can be safely assumed to be outside the ambit of GST laws.

It is possible for one to construe that a voucher relating to goods can be embedded for the provision of services also. Such class of transactions must be read with Schedule II to understand whether they are to be treated as goods or as services and thereafter apply the principles laid down to the transaction as if they were goods or services. And in such situations, await until time of redemption to determine the rate of tax and class of supply.

Interesting situations arise in respect of such transactions. For instance, the points accumulated in a credit card could be used to exchange for goods or issue of an air ticket. Difficulty arises in taxing such transactions in the hands of the person issuing such points. However, the taxability or otherwise of such accumulated points would need detailed deliberations based on facts and surrounding circumstances of each case.

As discussed above, the time of supply of goods in case of supply of vouchers by a supplier will be:

- (a) date of issue of voucher if the supply is identifiable at that point
- (b) date of redemption of voucher in all other cases

This basically means that if the exact nature of goods to be supplied along with its quantity value of such goods are available when the voucher is issued, the time of supply will be the date of issue of voucher. On the other hand, if the nature of supply of goods are not available at the time of issue of voucher, then the time of supply will be considered as the date of redemption of voucher. This is not to say that the time of supply will determine the value also. This is because as per Rule 32(6), the value will always be the redemption or face value of the voucher irrespective of the time of supply.

#### **(e) Time of Supply – Residuary**

Where none of the above provisions are able to satisfactorily answer the time of supply, it is to be determined based on the residuary provision which states that the time of supply is:

- (i) where a periodical return has to be filed, the due date prescribed for such return; or
- (ii) in any other case, the date of payment of the tax.

Time of supply under this residuary provision is applicable only when the other provisions are found to be inapplicable and not merely when there is some difficulty in determining the facts that are sought for by the relevant provision.

#### **(f) Time of Supply – Special Charges**

Special charges imposed for delay in payment of consideration will enjoy the facility of time of supply being date of receipt of the charges imposed, that is, cash-basis of payment of GST. The various issues involved in these special charges are discussed in detail under time of supply of services which may kindly be referred.

Illustration 13: Mr. X enters into a contract for supply of goods worth ₹ 5,00,000 with Mr. Y on 10<sup>th</sup> April 2018. Such goods are removed with an invoice dated 12<sup>th</sup> April 2018 on 13<sup>th</sup> April

2018 for delivery to Mr. Y. The terms of the contract demanded the payment against such supply to be made within 60 days beyond which a late payment charge of ₹ 10,000 will have to be paid by Mr. Y. Mr. Y makes the payment of Rs, 5,00,000 along with the late payment charges on 15<sup>th</sup> July 2018. What will be the time of supply in respect of the entire amount?

Answer: In Section 12(2), the time of supply in respect of ₹ 5,00,000 will be the date of issuance of invoice or last date of issuance of invoice. Last date of issuance of invoice will be the date of removal where supply involves movement of goods.

Date of issuance of invoice: 12<sup>th</sup> April 2018

Last date of issuance of invoice: 13<sup>th</sup> April 2018 (date of removal)

The date of payment is immaterial as per Notification no. 66/2017-Central Tax dated 15<sup>th</sup> November 2017 as already discussed above. So, the time of supply will be 12<sup>th</sup> April, 2018 in respect of ₹ 5,00,000.

However, in respect of the time of supply for the amount of Rs, 10,000 paid as late payment charges, time of supply as per Section 12(6) has been stated to be the date on which the supplier receives the addition in value. Here, the additional amount of ₹ 10,000 is received on 15<sup>th</sup> July 2018. So, the time of supply for this amount will also arise on 15<sup>th</sup> July 2018..

Some illustrations for better understanding of the provisions of time of supply of goods

	Concept illustrations Section 12(2)	Invoice date	Invoice due date	Payment entry in supplier's books	Credit in bank account	Time of supply
1	Invoice raised before removal	10-Oct-17	20-Oct-17	26-Oct-17	30-Oct-17	10-Oct-17
2	Advance received (See Note 1)	30-Oct-17	20-Oct-17	10-Oct-17	30-Oct-17	10-Oct-17
3	Advance received	30-Nov-17	20-Nov-17	16-Nov-17	30-Nov-17	20-Nov-17

**Notes:**

1. The Notification 40/2017 dated 13.10.2017 exempts a taxable person not registered under the composition scheme and having aggregate turnover less than ₹ 1.50 crores, for payment of tax on receipt of advance. This Notification will be effective from 13.10.2017 and as such a taxable person is liable to remit tax on any advances received prior to 13.10.2017.
2. The Notification No. 66/2017 dated 15.11.2017 exempts all taxable persons from payment of tax on the advances received in relation to supply of goods. This Notification will be effective from 15.11.2017 and as such, the date of receipt of advance will not be relevant to determine the time of supply of goods thereafter.

	<b>Supply involves movement of goods Section 12(2) r/w Section 31(1)(a)</b>	<b>Invoice/ document date</b>	<b>Removal of goods</b>	<b>Delivery of goods</b>	<b>Receipt of payment</b>	<b>Time of supply</b>
4	Delayed issue of invoice	26-Oct-17	20-Oct-17	26-Oct-17	26-Oct-17	20-Oct-17
5	Inter-State stock transfer	10-Oct-17	20-Oct-17	26-Oct-17	10-Nov-17	10-Oct-17
6	Advance received, invoice for full amount issued on same day (40% advance, 60% post supply payment)	30-Oct-17	10-Nov-17	14-Nov-17	30-Oct-17	30-Oct-17
					20-Nov-17	30-Oct-17

	<b>Supply otherwise than by involving movement of goods Section 12(2) r/w Section 31(1)(b)</b>	<b>Invoice date</b>	<b>Receipt of invoice by recipient</b>	<b>Delivery of goods</b>	<b>Receipt of payment</b>	<b>Time of supply</b>
7	Delayed issue of invoice	30-Oct-17	05-Nov-17	26-Oct-17	10-Nov-17	26-Oct-17
8	Invoice issued prior to delivery	20-Oct-17	10-Nov-17	26-Oct-17	10-Nov-17	20-Oct-17

	<b>Continuous supply of goods Section 12(2) r/w Section 31(4)</b>	<b>Invoice date</b>	<b>Removal of goods</b>	<b>Due date of payment as per agreement</b>	<b>Receipt of payment</b>	<b>Time of supply</b>	
9	Contract provides for successive statements of account/ successive payments	01-Nov-17	15-Oct-17	05-Nov-17	01-Nov-17	01-Nov-17	
10			25-Oct-17				
11		08-Jan-18	11-Dec-17	08-Nov-17	05-Dec-17	11-Dec-17	05-Dec-17
			30-Nov-17	14-Dec-17			
			23-Dec-17	05-Jan-18	01-Jan-18	01-Jan-18	

	Reverse charge Section 12(3)	Date of invoice issued by supplier	Removal of goods	Receipt of goods	Payment by recipient	Time of supply
12	General	31-Oct-17	31-Oct-17	20-Nov-17	30-Nov-17	20-Nov-17
13	Advance paid	31-Oct-17	31-Oct-17	20-Nov-17	05-Nov-17	05-Nov-17
14	No payment made for the supply	31-Oct-17	30-Dec-17	05-Jan-18	-	30-Nov-17

	Sale on approval basis Section 12(2) r/w Section 31(7)	Removal of goods	Issue of invoice	Accepted by recipient	Receipt of payment	Time of supply
15	Acceptance communicated within 6 months of removal	01-Nov-17	25-Nov-17	15-Nov-17	25-Nov-17	15-Nov-17
16	Amount paid to supplier before informing acceptance	01-Nov-17	25-Nov-17	15-Nov-17	12-Nov-17	15-Nov-17
16	Acceptance not communicated within 6 months of removal	01-Oct-17	15-May-18	15-May-18	02-May-18	01-Apr-18

### Statutory Provisions

#### 13. Time of supply of services

- (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.
- (2) The time of supply of services shall be the earliest of the following dates, namely:—
- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under ~~sub-section (2)~~<sup>2</sup> of section 31 or the date of receipt of payment, whichever is earlier; or

<sup>2</sup> Omitted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019



(b) the date of provision of service, if the invoice is not issued within the period prescribed under ~~sub-section (2) of~~<sup>3</sup>section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

*Explanation.* —For the purposes of clauses (a) and (b)—

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:—

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

(4) In case of supply of vouchers by a supplier, the time of supply shall be—

(a) the date of issue of voucher, if the supply is identifiable at that point; or

(b) the date of redemption of voucher, in all other cases.

(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—

<sup>3</sup> Omitted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019

- (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
- (b) in any other case, be the date on which the tax is paid.
- (6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

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

1. Notification No. 9/2017 – Central Tax dated 28.06.2017 Seeks to appoint 01.07.2017 as the date on which the provisions of Section 12 are effective.
2. Notification No. 13/2017 – Central Tax (Rate) dated 28.06.2017 Categories of services on which CGST is payable under reverse charge mechanism.
3. Notification No. 66/2017 – Central Tax dated 15.11.2017 Seeks to exempt all taxpayers from payment of tax on advances received in case of supply of goods (*This notification is issued superseding the earlier Notification No. 40/2017 – Central Tax dated 13.10.2017 wherein the exemption from payment of tax on receipt of advances was extended to a registered person whose aggregate turnover is less than ₹ 1.5 crores*);
4. Notification No. 10/2017 – IGST (Rate) dated 28.06.2017 Categories of services on which IGST is payable under reverse charge mechanism
5. Notification No. 4/2018 - Central Tax (Rate) dated 25.01.2018 providing special procedure with respect to payment of tax by registered person supplying service by way of construction against transfer of development right and vice versa.
6. Circular No. 38/12/2018 dated 26.03.2018 is issued clarifying the levy of GST, time of supply of goods and value of supply in case of goods sent for job-work.

**Related provisions of the Statute:**

Section or Rule (CGST / SGST)	Description
Section 2(12)	Definition of Associated Enterprises
Section 2(31)	Definition of Consideration
Section 2(41)	Definition of Document
Section 2(56)	Definition of India
Section 2(66)	Definition of Tax Invoice or Invoice
Section 2(87)	Definition of Prescribed
Section 2(93)	Definition of Recipient

Section 2(97)	Definition of Return
Section 2(98)	Definition of Reverse Charge
Section 2(102)	Definition of Services
Section 2(105)	Definition of Supplier
Section 2(118)	Definition of voucher
Section 7	Scope of Supply
Section 9	Levy and Collection
Section 14	Change in rate of tax in respect of supply of goods or services
Section 15	Value of taxable supply
Section 31	Tax invoice, credit note and debit note
Section 39	Furnishing of Returns

### 13.1 Analysis

#### (a) Time of Supply – Forward Charge

Similar to goods, time of supply of services is prescribed to be the earlier of date of issue of invoice and date of receipt of payment. Date of issue of invoice requires us to examine section 31 which deals with the requirement to issue a “tax invoice”. In relation to services, section 31 requires that a tax invoice be issued whether before or after provision of service. Further, there is a time limit beyond which tax invoice to be issued in arrears cannot be delayed after completion of the provision of service.

Rule 47 of the CGST Rules prescribes the time period within which such invoice should be issued. It states that in case of the taxable supply of services, invoice should be issued within thirty days from the date of supply of services. In case of banking company/financial institution/non-banking financial company, the time period becomes forty five days from the date of supply of services. When these banking/financial institution/non-banking financial institution/telecom operator companies make taxable supplies of services between distinct persons invoice may be issued before or at the time such supplier records the same in his books of account or before expiry of the quarter during which the supply was made.

If the invoice is issued within the prescribed time period, the time of supply will be the earlier of the date of issue of invoice or the date of payment. If the invoice is issued after the prescribed time period, the time of supply will be the earlier of the date of completion of service or the date of payment. If none of these two cases are applicable, then the time of supply will be the date when the recipient shows the receipt of services in his books of accounts.

Please recollect the discussion in Chapter III where it has been explained that in accordance with Schedule II, supplies involving goods may be treated as supply of services. In all such cases, as in the case of services ordinarily understood, this provision alone applies for

determination of time of supply. One may also refer to Chapter VII regarding issuance of tax invoice in all other circumstances and determine from there the fact of issuance of tax invoice.

Therefore, where the tax invoice has been issued accordingly, the time of supply can be determined to be earlier of date of issuance of such tax invoice or date of receipt of payment.

Illustration 1: Mr. X provides consultancy services to Mr. Y worth ₹ 50,000.

08.04.2018 – An advance of ₹ 10,000 is received from Mr. Y

10.04.2018 – The consultancy services are provided

16.05.2018 – Mr X receives balance payment of ₹ 40,000 and records it in his books.

What will be the time of supply assuming Mr. X issues the invoice on:

Situation 1 - 15.04.2018

Situation 2 – 15.05.2018

Answer:

Situation 1: If invoice is issued within the prescribed time period, time of supply will be the date of receipt of payment or date of issue of invoice whichever is earlier. In the given case, the invoice is issued on 15.04.2018 which is within 30 days of the supply of services which is within the prescribed period. So, for ₹ 10,000, the time of supply will be 08.04.2018 which is the date of receipt of advance payment. For the balance amount, time of supply will be 15.04.2018 which is earlier of 15.04.2018 (date of invoice) and 16.05.2018 (date of receipt of payment).

Situation 2: If invoice is not issued within the prescribed time period, time of supply will be the earlier of the date of completion of service and the date of receipt of payment. Here, invoice is issued on 15.05.2018 which is after the prescribed time period. So, for ₹ 10,000, the time of supply will be 08.04.2018 which is the date of receipt of advance payment. For the balance amount, time of supply will be 10.04.2018 which is earlier of 10.04.2018 (date of completion of service) and 16.05.2018 (date of receipt of payment).

Illustration 2: During investigation, it was found that Mr. X had provided catering services of ₹ 1,00,000 to Mr. Y during his business convention. The payment for these services was made in cash. Mr. X had neither issued any invoice nor recognised the payment in his books of accounts. Mr. Y recorded the payment of ₹ 1,00,000 in cash in his books on 28<sup>th</sup> April 2018. What will be the time of supply in this case?

Answer: Since, the date of receipt of payment or the date of invoice is not available in case of Mr. X, the date when the payment is recorded in the books of the recipient becomes relevant. Since, Mr. Y recorded this on 28<sup>th</sup> April, the time of supply for such supply will also be considered as 28<sup>th</sup> April 2018.

*Exceptions:*

- (i) When an amount in excess of tax invoice is received up to ₹ 1,000/-, the time of supply in respect of such excess at the option of the supplier shall be the date of such invoice.

Illustration 3: A telephone company receives ₹ 4,000 on 27<sup>th</sup> July 2018 against an invoice of ₹ 3,700 on 23<sup>rd</sup> July 2018 in respect of the services provided. The excess amount of ₹ 300 can be adjusted against the invoice to be issued in the next month. Time of supply will arise only for ₹ 3700 on 23<sup>rd</sup> July 2018. For the balance amount of ₹ 300, the time of supply may not arise on 27<sup>th</sup> July 2018 at the option of the supplier and may be adjusted against the next month's invoice.

- (ii) Supply shall be deemed to have been made to the extent the value of supply indicated in the invoice or the value of payment received by the supplier.

Illustration 4: In Illustration 3, assume that the payment received was ₹ 5000 instead of ₹ 4000. Since, the amount exceeds ₹ 1000 in terms of the excess payment received, there is no option with the supplier. Here, the supply will be deemed to have been made to the extent of the invoice of ₹ 3700 on 23<sup>rd</sup> July 2018 and the balance amount of ₹ 1300 will be liable to tax on 27<sup>th</sup> July 2018.

- (iii) Date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier.

Illustration 5: Assume that payment is recorded in the books of the supplier on 25<sup>th</sup> July 2018 and the date as per the bank statement is 27<sup>th</sup> July 2018. In this situation, the date of receipt of payment will be taken as 25<sup>th</sup> July 2018 as it will be earlier of the two events.

**Continuous supply of services**

As per Section 2(33) of the CGST Act 2017, continuous supply of services means a supply of services which is provided or agreed to be provided continuously or on recurrent basis under a contract for a period exceeding three months with periodic payment obligations and includes supply of services as the Government may subject to such conditions as it may by notification specify.

This means that there are three important conditions to be satisfied in order to be a continuous supply of services:

- (a) The services should be provided continuously or on recurrent basis  
(b) The contract period should be exceeding three months  
(c) The payment obligations should be periodical

For instance an annual maintenance contract, construction contract etc. may be considered as continuous supply of services if the aforesaid conditions are satisfied. As stated in the context of goods, continuity of supply does not imply continuous supply. If each transaction is

concluded satisfactorily, there cannot be a continuous supply. There must be something that cause the mere performance and insufficient to conclude the contractual performance of supplies. Merely delaying the invoicing cannot imply continuous supply.

The date of issuance of invoice in respect of continuous supply of services has been given under Section 31(5) of the CGST Act 2017 as follows:

- (I) Where the due date of payment is ascertainable from the contract, the invoice will be issued on or before the due date of payment.
- (II) Where the due date of payment is not ascertainable from the contract, the invoice will be issued before or at the time when the supplier of services receives the payment
- (III) When the payment is linked to the completion of an event, the invoice will be issued on or before the date of completion of that event.

Illustration 6: Mr. X is getting construction services from a developer against buying of an under-construction flat for the period 01/07/2017 to 31/03/2018 for ₹ 150,00,000. The transactions are structured as follows:

Situation 1: Equal instalments to be paid at the end of every quarter

Periodic completion of service	Date of Invoice	Actual payment dates	Value
30-09-2017	03-10-2017	15-10-2017	50,00,000
31-12-2017	02-12-2017	03-02-2018	50,00,000
31-03-2018	10-04-2018	20-03-2018	50,00,000

Situation 2: Payment to be made as per mutual understanding

Periodic Completion of service	Date of Invoice	Actual payment dates	Value
31-12-2017	14-01-2018	12-01-2018	90,00,000
31-03-2018	22-04-2018	02-04-2018	60,00,000

Situation 3: 40% payment on 40% completion and balance payment on 100% completion

Periodic Completion of service	Date of Invoice	Actual payment dates	Value
01-10-2017	29-09-2017	05-10-2017	60,00,000
31-03-2018	24-04-2018	28-04-2018	90,00,000

Answer: This is a case of continuous supply of services. The first question that should be determined in these cases is whether the invoice is issued within the prescribed time period. If issued within the prescribed time period, the time of supply will be the date of issue of invoice or the date of receipt of payment whichever is earlier. If the invoice is issued after the prescribed period, then the time of supply will be the date of completion of service or the date of receipt of payment whichever is earlier.

Situation 1: In this situation, the due date of payment can be ascertainable from the contract. So, the last date of issuance of invoice will be the due date of payment. The due date of payment will be end of each quarter. So, the time of supply will be determinable as follows:

Periodic Completion of service	Date of Invoice	Actual payment dates	Value	Invoice issued within time limit	Time of supply
30-09-2017	03-10-2017	15-10-2017	50,00,000	No	30-09-2017
31-12-2017	02-12-2017	03-02-2018	50,00,000	Yes	02-12-2017
31-03-2018	10-04-2018	20-03-2018	50,00,000	No	20-03-2018

Situation 2: In this situation, due date of payment is not ascertainable from the contract. So, the invoice is to be issued before or at the time when the supplier of services receives the payment. So, the time of supply will be determinable as follows:

Periodic Completion of service	Date of Invoice	Actual payment dates	Value	Invoice issued within time limit	Time of supply
31-12-2017	04-01-2018	12-01-2018	90,00,000	Yes	04-01-2018
31-03-2018	22-04-2018	02-04-2018	60,00,000	No	31-03-2018

Situation 3: In this situation, the payment is linked to the completion of event. The invoice should be raised on or before the completion of that event (i.e. 40% or 100% completion as the case may be). So, the time of supply will be as follows:

Periodic Completion of service	Date of Invoice	Actual payment dates	Value	Invoice issued within time limit	Time of supply
01-10-2017	29-09-2017	05-10-2017	60,00,000	Yes	29-09-2017
31-03-2018	24-04-2018	28-04-2018	90,00,000	No	31-03-2018

**Cessation of supply of services before the completion of the supply**

As per Section 31(6) of the CGST Act 2017 where the supply of services ceases before the completion of the supply, the invoice is to be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

Illustration 7: A contract for supply of professional services was entered for ₹ 5,00,000 for the period of two months on 20<sup>th</sup> July 2017. However, on 16<sup>th</sup> August 2017, the recipient informed the supplier that he is not willing to receive any more services under the contract. Both of them mutually agree that the services provided till date can be valued at ₹ 3,50,000. The invoice for this was issued on 20<sup>th</sup> August 2018 and the payment was made by the recipient on 25<sup>th</sup> August 2018.

Answer: Here the cessation of supply of services occurs on 16<sup>th</sup> August 2017. The date by which the invoice should have been raised was also 16<sup>th</sup> August 2017. However, the invoice was issued on 20<sup>th</sup> August 2017 which is after the prescribed time period. So, the time of supply will be the earlier of the date of completion of service (16<sup>th</sup> August 2017) and the date of payment (25<sup>th</sup> August 2017) which will be 16<sup>th</sup> August 2017.

**(b) Time of Supply – Reverse Charge**

Where tax is payable on reverse charge basis, the time of supply is appointed to be the earlier of date of payment or 60 days from the date of issue of invoice by the supplier. If for any reason, one or all of these two dates cannot be determined then the time of supply will be the date of recording the supply in the books of the recipient.

In case of transactions between 'associated enterprises' where the supplier of service is located outside India, the date of recording the supply in the books of the recipient or the date of payment whichever is earlier, will be the time of supply.

Again, please note that in view of the definition of reverse charge in section 2(98), the above provision does not apply to payment of tax by an electronic commerce operator but only to those cases of supply which fall under sub-section 5 of section 9 of the Act.

Illustration 8: Mr. X provides legal services as an advocate to Mr.Y which fall under reverse charge basis.

10.04.2018 – The services are provided to Mr.Y

12.04.2018 – Mr. X issues an invoice to Mr.Y

10.07.2018 – The payment is made by Mr.Y through a cheque and recorded in his books of accounts

15.07.2018 – The payment gets debited from Mr. Y's bank account

What will be the time of supply?

Answer: The time of supply shall be earlier of the following dates:

The date of payment i.e. 10.07.2018 (earlier of 10.07.2018 and 15.07.2018)



The date immediately following sixty days from the date of issue of invoice i.e. 12.06.2018 (12.04.2018+60days+1day).

Therefore, the time of supply shall be 12.06.2018.

**(c) Time of Supply – Vouchers**

Please refer to discussion regarding time of supply of goods for some background discussion about actionable claims. For purposes of this discussion on time of supply of services, please note the following comments:

- (i) the discussion on actionable claims being includible as vouchers is relevant vis-à-vis services for the only reason that certain transactions involving goods are deliberately treated as supply of services by Schedule II and to this extent actionable claims which are a sub-set of goods need to be referred in this Chapter;
- (ii) vouchers are not entirely comprised only of actionable claims and services can also be included

Now, the time of supply in the case of vouchers is stated to be:

- (i) the date of issue of voucher if the supply is identifiable at that point; or
- (ii) in all other instances, the date of redemption of the voucher.

From the above provision, it can be seen that at the time of issue of voucher, it is possible that the supply is not identifiable. So, the following key statements can be considered in this regard:

- (i) Vouchers may be issued with specific or non-specific end-use;
- (ii) Vouchers are issued on payment of money;
- (iii) Vouchers themselves are not legal tender;
- (iv) Vouchers represent some carried value in money terms;
- (v) Vouchers are accepted as substitute for payment for a supply due to their carried value;
- (vi) Vouchers are not merely receipts for pre-payment received;
- (vii) Vouchers must be non-cancellable such that they cannot be reconverted back into money;
- (viii) Vouchers may be in physical or digital form but comprise the above characteristics.

When vouchers are issued for specific end-use, then they are taxable as supply provided they otherwise satisfy the requirements of section 7 of the Act. Since, a specific provision exists in respect of time of supply of vouchers, they are not goods or services in themselves, but are singled out for the limited purposes of prescribing the time of their supply. And the rate of tax will be that applicable to goods or services they are issued in respect of or that applicable at the time of redemption. Vouchers are not merely receipts for pre-payment received because prescribing a specific time of supply would be redundant when time of supply already considers advance payments.

Please also note that the Government has issued the Payment and Settlement Systems Act, 2007 ('PSS Act') and accordingly, not everyone is permitted to issue instruments that may be used as a Payment System. RBI is expected to make major changes to the circulars issued in terms of the PSS Act by June 2017 but the framework or principles borrowed from the current circulars for the purposes of GST is expected to remain unaltered although changes may come in areas of governance, ease of doing business and inclusive growth in e-payment offerings through these Pre-Paid Instruments or PPIs. (refer RBI Circular No.RBI/DPSS/2017-18/58 dated 11 Oct, 2017)

Description	Prepaid Payment Instruments (PSS Act, 2007)			Co-branded hybrid PPIs (7.4)	
	Closed	Semi-closed	Open	Semi-closed	Limited Open
<b>Parties involved</b>					
Issuer	Merchant	NBFC/Company	Bank	NBFC/Company	Bank
Brand	Issuer	Issuer	Issuer	Co-branded	Co-branded
Holder of PPI	Consumer	Consumer	Consumer	Consumer	Consumer
PPI usage	Issuer outlet only	Pre-defined outlets	Any or ATM	Any (or ATM)	Any (or ATM)
<b>Description of PPI</b>					
Card type	Physical only	e-Card only	Any	e-Card only	Any
Payment type (2.1)	Acceptance	Settlement	Settlement	Settlement	Settlement
Reload allowed	No	Yes	Yes	Yes	Yes
Is as 'payment system'	No (2.4)	Yes	Yes	Yes	Yes
<b>Regulatory prescriptions</b>					
RBI approval	Required	Required	Authorization	Required	Gen. permission
Stored value < Rs.100,000/-	Not allowed (7.1)	Full KYC (7.2-iii)	Full KYC (7.2-iii)	Full KYC (7.2-iii)	Full KYC (7.2-iii)
Stored value < Rs.50,000/-	OVD (7.2-ii) *	OVD (7.2-ii) *	Full KYC (7.2-iii)	OVD (7.2-ii) *	Full KYC (7.2-iii)
Stored value < Rs.10,000/-	ID only (7.2-i)	ID only (7.2-i)	Full KYC (7.2-iii)	ID only (7.2-i)	Full KYC (7.2-iii)
<small>* Officially valid document as per rule 2(d) of PML Rules, 2005</small>					
<b>Cashflow / custody-flow steps</b>					
Stored value paid by	Consumer	Consumer	Consumer	Consumer	Consumer
Stored value paid to	Issuer-merchant	Issuer	Issuer-bank	Issuer	Issuer-bank
Held as	Trade advance	Trade advance	Deposit	Trade advance	Deposit
Held with (8.2 & 8.3)	Any bank (escrow)	Any bank (escrow)	Issuer-bank	Any bank (escrow)	Issuer-bank
Held for (8.3-vii)	Issuer-merchant	Issuer	Consumer	Issuer	Consumer
Interest bearing account	No (8.3-xii)	No (8.3-xii)	Yes	No (8.3-xii)	Yes
'Lien or charge' of unspent value	Consumer	Consumer	No (8.2)	Consumer	No (8.2)
'Lien or charge' of spent value	Merchant	Merchant	Merchant	Merchant	Merchant
Unspent value stored (10.2 & .3)	Lapse & forfeit	Exhausts	Withdraw	Exhausts	Withdraw
<b>Additional restrictions</b>					
Resident of India	Yes	Yes	Any	Yes	Any
Non-commercial user	Yes	Yes	Any	Any	Any
Currency	INR only (6.3)	INR only (6.3)	Any (4.1)	INR only (6.3)	Any (4.1)
User verification	Nil (bearer use)	PIN-based	PIN-OTP	PIN-OTP-Others	PIN-OTP-Others

Source: Circular RBI/2014-2015/105 DPSS.CO.PD.PPI.No.3/02.14.006/2014-15 dated July 1, 2014 (updated as on Dec 3, 2014); relevant para references in brackets.

#### (d) Time of Supply – Residuary

Where none of the above provisions are able to satisfactorily answer the time of supply, it is to be determined based on the residuary provision which states that the time of supply is:

- (i) where a periodical return has to be filed, the due date prescribed for such return; or
- (ii) in any other case, the date of payment of the tax.

#### (e) Time of Supply – Special Charges

Sometimes there may be charges imposed by the supplier on account of some deviation or special circumstance from the expected terms of contract on the part of the recipient. These special charges may be enabled by the contract though not necessarily attracted at the time of

supply of the underlying goods or service (other than these special charges) or may be agreed later – when the special circumstance occurs. These special charges are listed as interest, late fee or penalty on account of delay in payment of consideration. In these cases, the time of supply is appointed to be the date of receipt by the supplier.

Please note that even though a debit note may be issued after reaching agreement with the recipient about the special charges imposed, the time of supply continues to remain 'date of receipt' of payment towards such special charges. This is a departure from the provisions on accrual principle in section 31. As this is a special provision, the same will prevail over all other general provisions.

It is important to understand that due to time of supply being prescribed, whether the imposition of these special charges is itself a supply or not? Please see the following comparative discussion:

Special Charges 'are' Supply	Special Charges 'are not' Supply
Special charges are also supply being agreeing to an act or forbear an act or to tolerate an act (Entry 5(e) of Schedule II) read with section 2(31)	There is no 'supply' in the case of interest, late fee or penalty as these special charges are a consequence of a departure from the agreed terms of contract and not in fulfilment thereof
Interest, late fee or penalty are illustrations only and such special charges by any other name would also be liable to GST but on receipt-basis	By accepting such an expansive interpretation, damages awarded by a Court, LD imposed in a contract, forfeiture of a EMD, etc. can become liable to GST as these are all in some way 'in the course or furtherance of business'
Special charges paid is liable to GST whether agreed before or agreed subsequently as satisfaction of the limited non-performance	Other than the three special charges listed, any other charges arising from a transaction is not liable to GST as it is not contemplated in the arrangement of supply although not imposed in all cases
Delay in payment is a primary deviation that gives rise to special charges but even deviation in time or quantity of supply can entail some other form of special charges, GST on those cannot be avoided as the these listed are only illustrative	Only 'delay in payment' gives rise to GST incidence on the special charges. Any other deviation would be a variation of contract to be independently examined if it satisfies definition of 'supply'
Special charges are 'linked' to an underlying supply (original supply) and therefore all forms of special charges would also be liable to GST	Special charges are 'linked' to an original supply as such GST cannot be imposed on special charges without an original supply

From the above discussion, several necessary conclusions need to be reached, namely:

- (i) whether the three listed charges are exhaustive or only illustrative?
- (ii) whether delay in payment is the only occasion when this provision is attracted or special charges imposed for any other default linked to the original supply will also attract this provision?
- (iii) whether special charges imposed for any other default (not delay in payment) is liable to GST but not on receipt basis but accrual basis or are special charges for these cases not at all liable to GST?

It appears that the three listed cases are exhaustive not by the three cases listed but the circumstance for their imposition – delay in payment of consideration. So, any form of special charges imposed is liable to GST on receipt basis but only if it is due to delay in payment of consideration. Special charges imposed due to any other default by the recipient is then to be examined if it is linked to an 'original supply' or is it by itself a supply? If linked to an original supply, it is also liable to tax but not during enjoying flexibility to pay tax on receipt basis and tax being payable based on the date of debit note. If not linked to an original supply, GST would not be applicable if it does not satisfy the requirements of levy.

The issues raised in respect of special charges may be considered as matter of discussion and does not carry a procurement of an opinion on view. Readers are free to connect on these discussions and evaluate each such situation after giving it adequate consideration or thought.

Some illustrations for better understanding of the provisions of time of supply of services

S. No.	Concept illustrations Section 13(2)	Invoice date	Invoice due date	Payment entry in supplier's books	Credit in bank account	Time of supply
1	Invoice raised before completion of service	10-Oct-17	20-Oct-17	26-Oct-17	30-Oct-17	10-Oct-17
2	Advance received	30-Oct-17	20-Oct-17	10-Oct-17	30-Oct-17	10-Oct-17

	Based on due date for invoicing Section 13(2) r/w Section 31(2) r/w Rule – 47 related to invoice	Invoice date	Commencement of service	Completion of service	Receipt of payment	Time of supply
3	Delayed issue of invoice	26-Dec-17	20-Oct-17	16-Nov-17	28-Jan-18	16-Nov-17

4	Advance received, invoice for full amount issued on same day (40% advance, 60% post supply payment)	30-Oct-17	30-Oct-17	30-Dec-17	30-Oct-17	30-Oct-17
					04-Dec-17	30-Oct-17

	<b>Continuous supply of services Section 13(2) r/w Section 31(5)</b>	<b>Invoice date</b>	<b>Date as per contract</b>	<b>Receipt of payment</b>	<b>Entry of provision of services in books</b>	<b>Time of supply</b>
5	Section 31(5)(a) Contract provides for payments monthly on the 10 <sup>th</sup> of succeeding month	02-Nov-17	10-Nov-17	15-Nov-17	31-Oct-17	02-Nov-17
		17-Dec-17	10-Dec-17	15-Dec-17	30-Nov-17	10-Dec-17
		10-Jan-18	10-Jan-18	06-Jan-18	31-Dec-17	06-Jan-18
6	Section 31(5)(c) Contract provides for payments on completion of event. Recipient to pay within 1 month from date of completion	12-Nov-17	10-Nov-17	25-Nov-17	12-Nov-17	10-Nov-17
		24-Apr-18	24-Apr-18	20-Apr-18	24-Apr-18	20-Apr-18

	<b>Reverse charge Section 13(3)</b>	<b>Date of invoice issued by supplier</b>	<b>Date of completion of service</b>	<b>Payment by recipient</b>	<b>Entry of receipt of services in recipient's books</b>	<b>Time of supply</b>
7	General	31-Oct-17	31-Oct-17	20-Nov-17	30-Nov-17	20-Nov-17
8	Advance paid	31-Oct-17	31-Oct-17	05-Nov-17	31-Oct-17	05-Nov-17
9	Delay in payment (Max. 60 days from date of invoice)	31-Oct-17	31-Oct-17	10-Jan-18	31-Oct-17	31-Dec-17
10	Service received from associated enterprise located	31-Oct-17	30-Nov-17	05-Apr-18	31-Mar-18	31-Mar-18

	outside India (No time extension allowed)					
11	Service by unregistered person, no payment made	-	30-Sep-17	-	05-Oct-17	05-Oct-17

	<b>Issue of vouchers Section 13(4) [or Section 12(4)]</b>	<b>First service/delivery of goods</b>	<b>Issue of voucher</b>	<b>Redemption of voucher</b>	<b>Last date for acceptance of voucher</b>	<b>Time of supply</b>
12	Voucher issued to a recipient after supply of a service [or specific goods], for the same service - valid for 1 year	01-Nov-17	01-Nov-17	14-Dec-17	30-Oct-18	01-Nov-17
13	Voucher issued to a recipient of machinery along at the time of delivery, for availing repair services [or specific goods] worth ₹ 5,000 - valid for 1 year	01-Nov-17	01-Nov-17	14-Dec-17	30-Oct-18	01-Nov-17
14	Voucher issued to a recipient after supply of a service, for any other services or goods across India, - valid for 1 year	01-Nov-17	01-Nov-17	14-Dec-17	30-Oct-18	14-Dec-17

15	Gift voucher for ₹ 1,500 for services [or goods]- valid for 6 months	-	01-Nov-17	25-Dec-17	31-Mar-18	01-Nov-17
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**(f) Time of Supply – Consideration involving Development Rights or Construction Service**

In case of Consideration involving Development Rights or Construction Service, the time of supply is specially notified vide notification 4/2018 – Central Tax (R) dated 25.01.2018, under the powers conferred by Sec 148 of the CGST Act. Accordingly the liability to pay tax in certain situations would be as below:

Situation	Event requiring payment of taxes
Registered persons supplying development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure	On transfer of possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).
Registered persons supplying construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights.	

If a registered builder supplies construction service in consideration of receiving development rights from the owner, then the liability would arise for as a continuous supply of construction service through the construction duration and completed on the date of handing over.

If a registered landowner supplies development rights in consideration of construction service received from builder, then the liability would arise for immediately upon entering into an irrevocable agreement for supply of development rights although consideration in the form of constructed area is handed over much later.

Now, where 4/2018-CT is applicable, the time of supply is deferred until handing over. But, please note that where non-refundable deposit (NRD) is paid by builder to landowner or where landowner starts to sell apartment units (that are under construction), then the time of supply will not be deferred but get advanced to these earlier events of collection of NRD or booking agreement to end customers.

Further, where joint-development agreement are not on 'area sharing' basis but on 'revenue sharing' basis, then firstly, 4/2018-CT will not apply as this notification only provides

deferment of time of supply when there is an exchange. And when builder is liable to pay cash (for development rights supply), time of supply will be the time when builder is put in possession of the land. Please note that the landowner does not put the builder in possession of the land again-and-again but at one-go, when the irrevocable agreement is executed and registered. As such, the supply of development rights is at the start of the project. But the credit to the builder will be subject to rule 37, that is, only to the extent payment is made by the builder for the inward supply (of development rights) by the landowner. There is one view that supply of development rights (in case of revenue sharing development) can be treated as continuous supply so that builder is entitled to credit to the extent of each payment instalment that is made. On this, no clear view is available from the tax administration but review of the concept of continuous supply and the irrevocable development agreement may throw some light.

With effect from April 1, 2019, treatment to TDR/FSI and Long term lease has been amended for projects commencing after April 1, 2019. Vide Notification No. 4/2019 – CT(R), Exemption has been granted to the supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.

Further, vide Notification No. 5/2019 – CT(R) dated 29<sup>th</sup> March, 2019 read with Notification No. 7/2019 – CT(R) dated 29<sup>th</sup> March, 2019, in terms of liability to pay, the liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under the reverse charge mechanism (RCM). Inline, vide Notification No. 6/2019 – CT(R), the provisions relating to Time of Supply have also been amended to provide that the date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate shall be the date of issue of completion certificate. Also, the liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion.

#### Statutory Provisions

##### **14. Change in rate of tax in respect of supply of goods or services**

*Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely: —*

- (a) *in case the goods or services or both have been supplied before the change in rate of tax, —*
  - (i) *where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or*



- (ii) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or
- (iii) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;
- (b) in case the goods or services or both have been supplied after the change in rate of tax, —
- (i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or
- (ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or
- (iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:

*Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.*

*Explanation. —For the purposes of this section, “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.*

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

1. Notification No. 9/2017 – Central Tax dated 28.06.2017 Seeks to appoint 01.07.2017 as the date on which the provisions of Section 12 are effective.
2. Notification No. 66/2017 – Central Tax dated 15.11.2017 Seeks to exempt all taxpayers from payment of tax on advances received in case of supply of goods (*This notification is issued superseding the earlier Notification No. 40/2017 – Central Tax dated 13.10.2017 wherein the exemption from payment of tax on receipt of advances was extended to a registered person whose aggregate turnover is less than ₹ 1.5 crores*);

**Related provisions of the Statute**

Section or Rule (CGST / SGST)	Description
Section 2(66)	Definition of Tax Invoice or Invoice
Section 2(52)	Definition of Goods
Section 2(102)	Definition of Services
Section 2(105)	Definition of Supplier
Section 7	Scope of Supply
Section 31	Tax invoice, credit note and debit note

**14.1 Analysis**

Payment of tax requires the presence of all the following events:

- (i) supply of goods or services
- (ii) issue of invoice
- (iii) payment for the supply

When there is a change in the rate of tax during the occurrence of these three events, there may be some concern about the applicability of the correct rate of tax. Section 14 addresses this aspect clearly.

Where the supply takes place after the change in the rate of tax, the time of supply may be as follows:

**(a) Supply before the cut-off date-say 01-Sep-18**

Supply	Invoice	Payment	Time of Supply
25.08.2018	01.09.2018	05.09.2018	01.09.2018 (Invoice or payment, whichever is earlier)
25.08.2018	26.08.2018	05.09.2018	26.08.2018(Date of Invoice)
25.08.2018	01.09.2018	27.08.2018	27.08.2018(Date of payment)

**(b) Supply after the cut-off date-say 01-Sep-17**

Supply	Invoice	Payment	Time of Supply
01.09.2017	25.08.2017	05.09.2017	05.09.2017(Date of payment)
01.09.2017	25.08.2017	26.08.2017	25.08.2017 (Date of invoice or date of payment, whichever is earlier)
01.09.2017	02.09.2017	26.08.2017	02.09.2017(Date of Invoice)

It is relevant to note here that the Notification 66/2017-CT dated 15.11.2017 exempting a taxable person from payment of tax on advances received refers to the scenarios enumerated in section 14. This may not mean that the receipt of payment in advance should not be considered for determining the change in tax rate; since, the said notification will have limited application for ascertaining the time of supply of goods. In other words, section 12 specifies the scenarios for ascertaining time of supply whereas section 14 specifies the point of determination of appropriate rate of tax in cases where the events impacting time of supply fall in time zones having different rate of tax on such supply. This means that on application of the said notification, if the date of receipt of advance is relevant, the payment of tax may be deferred till the date of supply of goods at the rate applicable as on the date of receipt of advance (point of taxation).

Although supply has not yet taken place, the time of supply determined as above is valid and not in violation of the levy of GST for the following reasons:

- (i) Supply is defined in section 7(1)(a) as '.....made or agreed to be made.....'
- (ii) Levy of GST in section 9 is on such supply, that is, 'made or agreed to be made'

Prescribing the time of supply anterior to the time of actual supply is well accommodated in the language of the Act.

Determination of time of supply under Section 14 has been provided as under:

Supply		Invoice		Payment		Time of Supply
Before Change	Rate	Before Change	Rate	Before Change	Rate	Not governed by Section 14
Before Change	Rate	Before Change	Rate	After Change	Rate	Date of issue of invoice
Before Change	Rate	After Change	Rate	Before Change	Rate	Date of receipt of payment
After Change	Rate	After Change	Rate	After Change	Rate	Not governed by Section 14
After Change	Rate	After Change	Rate	After Change	Rate	Not governed by Section 14
After Change	Rate	After Change	Rate	Before Change	Rate	Date of issue of invoice
After Change	Rate	Before Change	Rate	After Change	Rate	Date of receipt of payment
After Change	Rate	Before Change	Rate	Before Change	Rate	Date of receipt of payment or date of issue of invoice, whichever is earlier

Please note that in above chart, “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

## Chapter 5

# Value of Supply

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<b>Sections</b>	<b>Rules</b>
15. Value of taxable supply	27. Value of supply of goods or services where the consideration is not wholly in money 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent 29. Value of supply of goods made or received through an agent 30. Value of supply of goods or services or both based on cost 31. Residual method for determination of value of supply of goods or services or both 31A. Value of supply in case of lottery, betting, gambling and horse racing. 32. Determination of value in respect of certain supplies 32A. Value of supply in cases where Kerala Flood Cess is applicable 33. Value of supply of services in case of pure agent 34. Rate of exchange of currency, other than Indian rupees, for determination of value 35. Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax

**Statutory Provisions****15. Value of taxable supply**

- (1) *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*
- (2) *The value of supply shall include—*
- (a) *any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*
  - (b) *any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*
  - (c) *incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*
  - (d) *interest or late fee or penalty for delayed payment of any consideration for any supply; and*
  - (e) *subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.*
- Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.*
- (3) *The value of the supply shall not include any discount which is given—*
- (a) *before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and*
  - (b) *after the supply has been effected, if—*
    - (i) *such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and*
    - (ii) *input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.*
- (4) *Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.*

(5) *Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.*

*Explanation.—For the purposes of this Act,—*

- (a) *persons shall be deemed to be “related persons” if—*
- (i) *such persons are officers or directors of one another’s businesses;*
  - (ii) *such persons are legally recognised partners in business;*
  - (iii) *such persons are employer and employee;*
  - (iv) *any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;*
  - (v) *one of them directly or indirectly controls the other;*
  - (vi) *both of them are directly or indirectly controlled by a third person;*
  - (vii) *together they directly or indirectly control a third person; or*
  - (viii) *they are members of the same family;*
- (b) *the term “person” also includes legal persons;*
- (c) *persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.*

#### **Extract of the CGST Rules 2017**

#### **27. Value of supply of goods or services where the consideration is not wholly in money**

*Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall, -*

- (a) *be the open market value of such supply;*
- (b) *if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;*
- (c) *if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;*
- (d) *if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.*

*Illustration:*

- (1) *Where a new phone is supplied for twenty thousand rupees along with the exchange of an old phone and if the price of the new phone without exchange is twenty four thousand, the open market value of the new phone is twenty four thousand.*
- (2) *Where a laptop is supplied for forty thousand rupees along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is four thousand rupees but the open market value of the laptop is not known, the value of the supply of laptop is forty four thousand rupees.*

**28. Value of supply of goods or services or both between distinct or related persons, other than through an agent**

*The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-*

- (a) *be the open market value of such supply;*
- (b) *if the open market value is not available, be the value of supply of goods or services of like kind and quality;*
- (c) *if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:*

*Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:*

*Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.*

**29. Value of supply of goods made or received through an agent**

*The value of supply of goods between the principal and his agent shall:*

- (a) *be the open market value of the goods being supplied, or at the option of the supplier, be ninety per cent. of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.*

*Illustration:*

*A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of five thousand rupees per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of four thousand five hundred and*



fifty rupees per quintal. The value of the supply made by the principal shall be four thousand five hundred and fifty rupees per quintal or where he exercises the option, the value shall be 90 per cent. of five thousand rupees i.e., four thousand five hundred rupees per quintal.

- (b) where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.

### **30. Value of supply of goods or services or both based on cost**

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

### **31. Residual method for determination of value of supply of goods or services or both**

Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

### **31A. Value of supply in case of lottery, betting, gambling and horse racing.-**

- (1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall be determined in the manner provided hereinafter.
- (2) (a) The value of supply of lottery run by State Governments shall be deemed to be 100/112 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.
- (b) The value of supply of lottery authorised by State Governments shall be deemed to be 100/128 of the face value of ticket or of the price as notified in the Official Gazette by the organising State, whichever is higher.

Explanation:- For the purposes of this sub-rule, the expressions-

- (a) "lottery run by State Governments" means a lottery not allowed to be sold in any State other than the organizing State;
- (b) "lottery authorised by State Governments" means a lottery which is authorised to be sold in State(s) other than the organising State also; and
- (c) "Organising State" has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.
- (3) The value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid into the totalisator.

**32. Determination of value in respect of certain supplies**

- (1) Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided hereinafter.
- (2) The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner, namely:-
- (a) for a currency, when exchanged from, or to, Indian Rupees, the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency:
- Provided that in case where the Reserve Bank of India reference rate for a currency is not available, the value shall be one per cent. of the gross amount of Indian Rupees provided or received by the person changing the money:*
- Provided further that in case where neither of the currencies exchanged is Indian Rupees, the value shall be equal to one per cent. of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by the Reserve Bank of India.*
- Provided also that a person supplying the services may exercise the option to ascertain the value in terms of clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.*
- (b) at the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be-
- (i) one per cent. of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees;
- (ii) one thousand rupees and half of a per cent. of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and
- (iii) Five thousand and five hundred rupees and one tenth of a per cent. of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to a maximum amount of sixty thousand rupees.
- (3) The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated at the rate of five per cent. of the basic fare in the case of domestic bookings, and at the rate of ten

*per cent. of the basic fare in the case of international bookings of passage for travel by air.*

*Explanation.- For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.*

- (4) *The value of supply of services in relation to life insurance business shall be,-*
- (a) *the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;*
  - (b) *in case of single premium annuity policies other than (a), ten per cent. of single premium charged from the policy holder; or*
  - (c) *in all other cases, twenty five per cent. of the premium charged from the policy holder in the first year and twelve and a half per cent. of the premium charged from the policy holder in subsequent years:*

*Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.*

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

*Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.*

- (6) *The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.*
- (7) *The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the said Act between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.*

### **32A. Value of supply in cases where Kerala Flood Cess is applicable**

*The value of supply of goods or services or both on which Kerala Flood Cess is levied under*

*clause 14 of the Kerala Finance Bill, 2019 shall be deemed to be the value determined in terms of section 15 of the Act, but shall not include the said cess*

### **33. Value of supply of services in case of pure agent**

*Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-*

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;*
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and*
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.*

*Explanation.- For the purposes of this rule, the expression "pure agent" means a person who-*

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;*
- (c) does not use for his own interest such goods or services so procured; and*
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.*

#### *Illustration*

*Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.*

### **34. Rate of exchange of currency, other than Indian rupees, for determination of value**

- (1) The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.*

- (2) *The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.*

**35. Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax**

*Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,-*

*Tax amount = (Value inclusive of taxes X tax rate in % of IGST or, as the case may be, CGST, SGST or UTGST) ÷ (100+ sum of tax rates, as applicable, in %).*

*Explanation.- For the purposes of the provisions of this Chapter, the expressions-*

- (a) *“open market value” of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;*
- (b) *“supply of goods or services or both of like kind and quality” means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.*

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

1. Notification No. 9/2017 – Central Tax dated 28.06.2017 Seeks to appoint 01.07.2017 as the date on which the provisions of Section 12 are effective;
2. Circular F. No. 354/107/2017-TRU dated 04.01.2018 clarifying the value of services for payment of tax.
3. Circular No. 73/47/2018-GST dated 05-11-2018 clarifying the Scope of principal and agent relationship under Schedule I of CGST Act, 2017 in the context of del-credere agent and the valuation to be adopted
4. Circular No. 47/21/2018-GST, dated 8-6-2018 clarifying inclusion of cost of moulds and dies owned by Original Equipment Manufacturers (OEM) and are sent free of cost (FOC) to a component manufacturer

**Related provisions of the Statute:**

<b>Section or Rule (CGST / SGST)</b>	<b>Description</b>
Section 2(1)	Definition of Actionable Claim
Section 2(5)	Definition of Agent
Section 2(17)	Definition of Business
Section 2(31)	Definition of Consideration
Section 2(52)	Definition of Goods
Section 2(73)	Definition of Market value
Section 2(93)	Definition of Recipient
Section 7	Scope of Supply
Section 9	Levy and Collection
Rule 27	Value of supply of goods or services where the consideration is not wholly in money
Rule 28	Value of supply of goods or services or both between distinct or related persons, other than through an agent
Rule 29	Value of supply of goods made or received through an agent
Rule 30	Value of supply of goods or services or both based on cost
Rule 31	Residual method for determination of value of supply of goods or services or both
Rule 31A	Value of supply in case of lottery, betting, gambling and horse racing
Rule 32	Determination of value in respect of certain supplies
Rule 32A	Value of supply in cases where Kerala Flood Cess is applicable
Rule 33	Value of supply of services in case of pure agent
Rule 34	Rate of exchange of currency, other than Indian rupees, for determination of value
Rule 35	Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax

**15.1. Introduction**

Consideration is *quid pro quo* in a contract and price is the consideration expressed in money terms. Value is the price prevalent when a transaction takes place under controlled conditions. Valuation is the study of all those circumstances and assessment of steps to reverse or rectify the effect of contractual or other arrangements that may suppress or understate the value of the transaction.

### 15.2. Analysis

This section applies to both goods and services supplied for purposes of valuation of the taxable supply.

Although contained in the CGST Act, the valuation method provided in this section applies to UTGST, SGST, CGST and IGST. Valuation must be as provided exclusively in this section.

Transaction value should be taken for the purpose of valuation under GST. "Transaction value" has been explained in the section as the price actually paid or payable for the supply of goods and/or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. From this, it can be gathered that there should be a clear nexus between the supply of goods or services and the amount received by the supplier of goods or services. If no linkage can be established between the price paid or payable and the supply of goods/services, the inclusion of the price within the valuation may be called into question. For this, the contractual terms and obligations of the supplier and the recipient should be examined to evaluate whether nexus between the supply and the price paid/payable against it can be established. For instance, in a contract of job work, value of material given by the manufacturer to the job worker will not be considered for the purpose of GST. This is because the contract involved the supply of services by job worker only against which the price is paid by the manufacturer. There is no supply of material involved which can be attributable to the price paid/payable,

Price is consideration in money terms. Value, as stated earlier, is price that would be prevalent under controlled conditions. This 'three-test' formula prescribed :

- Transaction having a price
- Between persons not related
- And that price being the sole consideration

In other words, the exercise of valuation is aimed to recreate the above conditions and take any given transaction through to see the result – price – that would emerge. It is popularly believed that transaction price between 'unrelated persons' is incontestable. This is far from true for the reason that if 'related parties' is the sole disqualification after 'price' is established, then the section 15(1) should NOT have laid down the 'third' of the three-tests. And it is for this reason that even among unrelated persons, the price offered may NOT be the sole consideration that there are 'three-tests' and NOT 'two-tests'. It is easily possible that among unrelated persons, the price (that is, monetary consideration) MAY NOT be the 'sole consideration' for which the remedy is found in rule 27. That is, where consideration is partly in monetary form and partly in non-monetary form, then rule 27 comes into operation. It is not that rule 27 comes into operation only among 'related persons'. It will come into operation among unrelated persons where consideration is not wholly in monetary form as much as it will, among related persons. Hence, care must be taken NOT to overlook the 'three-test' formula. In fact, these three tests may even be called 'disqualifications' for the rules to take over the valuation of the transaction rather than 'tests'.

As discussed above, for assuming price as the valuation mechanism, two important aspects should be considered – supplier and recipient are not related and the fact that price is the sole consideration.

Situations when the supplier and recipient will be considered as related have been enumerated in Explanation to Section 15(5) of the CGST Act 2017. They are deemed to be related persons if:

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

Further, it has been stated that the word 'person' will also be including legal persons as per the comprehensive definition given under Section 2(84) of the CGST Act. Also, it has been stated that the persons who are associated with business of one another as sole agent or sole distributor or sole concessionaire will also be deemed to be related persons.

It is pertinent here that the term price is the sole consideration should be understood. If there is any consideration in non-monetary form, only the price actually paid cannot be taken as the basis of valuation. In this situation, price cannot be called as the sole consideration. In fact any additional consideration received apart from the monetary consideration should also be considered to arrive at the proper value. The fact that the consideration can be both monetary and non-monetary can very well be inferred from the definition of consideration given as per Section 2(31) of the CGST Act. Further, the payment against the supply made either by the recipient directly or by another person will both be covered within the ambit of consideration and considered as part of the price for the purpose of valuation. This can be elaborated by an example. Let's say the supplier supplies goods worth ₹ 5,00,000 to the recipient. Against this supply, ₹ 3,00,000 is paid by the recipient directly and balance ₹ 2,00,000 is paid by the recipient's debtor. Both the payments will be included in the price for the purpose of valuation under GST.

For determination of the taxable value, classification between deposits and advances should be interpreted diligently. Advances refer to payment as part of consideration of an agreement before the supplier performs his obligation under the said agreement. It is not provided with an intent of refunding unlike deposit. Advance is treated to be part of the consideration to the



contract and thereby includible within the taxable value. A deposit can be described as an amount given to the supplier with an obligation entrusted upon the supplier to keep it safely. The essence of the deposit is that there must be a liability to return it to the party by whom or on whose behalf it is made upon fulfilment of certain conditions or to apply it as consideration at a future date depending on the terms of the contract. Till the deposit is classifiable as such, it does not form part of the taxable value. As and when this deposit is applied as consideration under the contract against the supply made or agreed to be made, it forms part of the taxable value. Retention money is a classic example of deposit. To elaborate, the recipient may withhold a certain part of the consideration payable to a supplier and keeps a part of that amount as deposit with himself. Only when the given obligations are discharged by the supplier as per the terms of the contract, this retention money is released. This retention money is not included in the value if returned as such to the supplier. However, if the supplier fails to fulfil the given obligations as per the contract, the recipient may charge the said retention money and apply it against the default. When applied, the said retention money becomes chargeable to tax. It may be pertinent to point out here that the money retained will not reduce the value of the original contract of supply. This means the principal supply will continue to be valued at the full amount without any deduction for the retention money. Another example that can be taken here is that of a rent agreement. Let us assume that a tenant is required to pay a three-month deposit to the landlord in an eleven-month contract. Upon default of the rent of any one month, the deposit is partly deducted as the rental for that month. Only to the extent of such deduction towards the rent of that month, it will be considered as part of the taxable value. Further, deposit is not chargeable to tax under normal circumstances unless applied as consideration. So, there may be a tendency towards classification of the taxable advance as deposit. However, any such classification should not be made based on the nomenclature of the payment only. Based on the nature of business, frequency, application and intent of such payments etc., it may be susceptible to challenge by the Governmental authorities. The subtlety involved in classification of payments between 'advance' and 'deposit' should be carefully analysed in terms of the contract and as per customary practises to determine the correct nature of the payment.

In addition to the price, certain express checks to be carried out that can disqualify a price that is otherwise perfectly admissible are provided:

- Taxes levied under any other law(s)- this clause provides for exclusion of GST from the value and therefore all other taxes charged must be included in the value before quantifying GST. Taxes other than GST will cause cascading and this is deliberate. For instance, on import of goods IGST is charged not only on the value of goods but the basic customs duty paid under the Customs law.
- “transaction value” which is the price actually paid or payable for the said supply of goods and/or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*
- Any amounts paid by recipient that are obligation of supplier to pay- this clause removes any doubt about the need to include costs paid by the recipient to a third party

in the value of supply by the supplier. The prescription in this clause is to identify any occasion where costs – in respect of which the supplier is the principal creditor / obligor – are diverted away from the principal such that the recipient directly makes the payment resulting in lowering the rightful value of supply. At the same time, this clause does not authorize every payment where the recipient is the principal creditor / obligor and require these also to be included in the value of supply.

CBIC vide Circular no. 47/21/2018-GST, dated 8-6-2018 has clarified that if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components.

This point may be illustrated by an example of – payment of commission to agent for facilitating the supply. If the payment is ‘buying commission’ which is paid by the recipient, then the obligation to pay the agent is always of the recipient and does not require to be included in the value of supply. But if the payment is ‘selling commission’ which happens to be paid by the recipient, then the obligation to pay the agent being that of the supplier is required to be included in the value of supply. In this case (of selling commission), the underlying obligation is that of the supplier because it is the supplier who engages the agent to identify customers to make a supply. And if, somehow, the supplier manages to pass this obligation to pay the agent (the amount towards selling commission) to the recipient, then the price paid to supplier is not the true value of supply. Had the recipient refused to pay this selling commission to the agent, then the supplier would have paid the agent and made a corresponding increase in the price of the supply. It is this objective that is being achieved by this clause. Another example can be of a free on road contract wherein the payment of transportation charges is directly made by the recipient and the value to be paid to the supplier by the recipient is reduced to that extent. In this case, the transportation charges which was reduced from the price payable will be added back to the taxable value. There are several other examples that can be considered, please also refer to the discussion on value of supply for further illustration on this point.

- Incidental expenses charged by the supplier- this clause addresses a completely different aspect compared to the previous clause. Here, costs that the supplier incurs ‘at’ or ‘before’ supply are liable to be included in the value of supply. For example, cost of packing and transportation has been debated under the VAT laws whether they are incurred before or after the ‘transfer of property’. In GST, the point when title passes is irrelevant. To address the issues that had been so vigorously debated under VAT laws, this clause lays down that any cost that the supplier incurs including commission and packing which is charged to the recipient will be included in the value of supply. With this clause there is no opportunity to claim that certain charges recovered by the supplier ‘after supply’ are not to be included in the value of supply. Also incidental expenses like home delivery charges are includible in the value of supply when food is delivered by a restaurant to a customer’s home. Another example can be the extra bed

charges included by a hotel in the value in case of accommodation services provided by a hotel to a customer. Yet another example can be installation of new modular furniture at office wherein the installation expenses are recovered separately by the supplier. Special packing charges by a gift shop while selling a show piece can also be a pertinent illustration here. If it is a charge recovered from the recipient, then the same is includible in the value of supply provided it is not incurred 'after' the completion of supply. An example of cost incurred after date of supply yet not liable to be included in the value of supply could be amount of input tax credit, considered as eligible in pricing of supply, but denied to the supplier by (say) section 16(4). And an example of a cost incurred by the supplier after the date of supply but still includible could be cost of in-warranty parts (actual or scientifically estimated provision) supplied after the date of supply.

- Interest, late fee or penalty for delayed payment- this would also have been a charge recovered by the supplier 'after' the supply that would not be includible in the value of supply but due to the express words of this clause will be included. Please refer detailed discussion regarding this clause under time of supply as 'special charges' under section 12(6) / 13(6) where characterization of these charges as well as their rate of tax (supply-dependent or independent) are addressed. For example, Mr. X enters into a contract for supply of goods worth ₹ 2,00,000 on 15<sup>th</sup> March 2018. As per the said contract, a payment of the said amount was required to be made within 2 months of the sale. If the complete payment is not made within this time period, a late penalty of ₹ 10,000 will be chargeable. Let us assume that the payment is not made within the said period. In this situation, ₹ 10,000 will be includible in the taxable value.
- Subsidy realized by supplier on the supply- this clause expressly provides for the limited exclusion of subsidy from value of supply, that is, subsidy given by the Government alone is excluded from value of supply. This clause makes an interesting requirement that any transaction where there is any form of price-intervention that behaves like a 'subsidy' is liable to be included in the value of supply. In today's economy, there are many transactions that 'behave like subsidy'. For example, contribution of consideration by third party to contract, incentive to supplier given by brand holder linked to each supply, etc. Please note, extended credit terms to one customer and upfront payment terms to another customer cannot be interfered with by relying on this clause. There appears to be no room to include 'notional additions' by this clause because unlike Central Excise which relies upon 'assessable value' for quantifying the duty, GST relies upon 'transaction value' for quantification. Also, please note 'no cost EMI' and 'cash back' are a form of price-intervention by third party but not included in this clause because these forms of price-intervention is reaching the recipient of supply and not the supplier. The condition for inclusion is also that the subsidy should be directly linked to the price. If the subsidy is provided in a manner which cannot be directly linked to the price of the product in question, then that amount cannot be included for the

determination of taxable value. For instance, subsidy against a capital asset does not affect the value of the product directly and hence not includible in the price. However, all subsidies directly linked to price will be added if the said subsidy is not provided by the Government. For example, a cafeteria in X Ltd (a corporate office) provides lunch at ₹ 120 per plate to the employees of the company. However, the vendor in the cafeteria receives an amount of ₹ 70 per plate in the form of subsidy from X Ltd for providing the food at a lower rate. Here, value of ₹ 70 will be added to the taxable value of ₹ 120 for the purpose of charging GST. Had this subsidy been provided by the Government to the company against mid day meals, such amount of ₹ 70 would not have been includible in the taxable value.

Discount is another area that needs special mention. The emphasis to tax treatment of discounts is visible in the repeated mention of discounts in section 15(3) where the value of supply will not include discount, provided:

- It is allowed before supply.
- It is allowed after supply, provided that it is established in agreement linked to specific supplies and corresponding credit is reversed by recipient.

It would be helpful to discuss the various kinds of discounts and the GST act implication of each, namely:

- 'In-bill' discounts – are those that are allowed exactly at the point of supply so as to reduce the published product price as a result of negotiations. Generally, 'in-bill' discounts are admissible as the reduction in arriving at the transaction value. However, abnormal discounts cast a shadow of doubt as regards price being the 'sole consideration'. To reiterate some of the points mentioned earlier, firstly, no one gives anything in exchange for nothing, secondly, one cannot give more than what they would get, thirdly, sale under distress circumstances does not mean sale is under duress and lastly, discount must always be related to the present supply and no others. When discount on an invoice is abnormal, inquiry is necessary regarding the circumstances for such an abnormal discount. Abnormality of discount refers to discount greater than available margins. A supplier may be willing to give away all of his margin perhaps to clear away stocks and make room for new inventory. But, when the discount exceeds the margins and there are no distress circumstances, it appears highly suspect that the supplier is receiving something in non-monetary form from the customer. Although it seems strange that the 'in-bill' discount needs to be dissected and evaluated to such an extent but the need for that arises by the remarkable words used in the definition of consideration in section 2(31), particularly clause (b). On a quick perusal, it will now become palatable that the dissection and evaluation discussed about is very much warranted. It is so because hardly anything can escape this sweeping language 'in relation to, in response to or for the inducement of'. The supplier may be induced to offer more than his margins to conclude a supply and choose to designate it as

'discount'. The direction of the flow of supply is in the opposite direction of the flow of consideration, more on this a little later.

- 'Off-bill' discounts – are those that are allowed after supply through a credit note. Credit notes in the context of GST have been discussed in detail under section 34 which may be referred to identify whether in all cases of 'off-bill' discount, is credit note allowed to be issued. For such 'off-bill' discounts to qualify as the reduction from the transaction value adherence to the conditions specified in section 15(3) are sufficient. These conditions are very explicit and simple in their application. This simplicity is not to be equated with ease because these conditions specified are such that can cause great unease and result in many transactions where 'off-bill' discounts fail to satisfy these conditions. But when the conditions are satisfied, 'off bill' discounts can be reduced from the transaction value.
- Cash discounts – are those that are allowed to incentivize the customer for prompt payment. Merely because the policy of allowing cash discount is in existence before supply does not always make cash discounts eligible under section 15(3). In other words, the price at which a transaction of supply was negotiated and concluded is what is liable to GST and not the contingency linked to payment of the dues in respect of such supply. GST is not a tax on recovery of dues to word supplies but a tax on supply itself. Cash discounts therefore, are unlikely to satisfy the requirements of section 15(3) in most cases. As remarkable as this implication appears to be, cash discounts, when looked at very dispassionately, are more akin to bad debts than a proper reduction in the value of supply. Any resistance to accept this view needs to be supported with nothing less than the high standards laid down in section 15(3). Bad debts is not always failure to recover the value of supply. Bad debts can also be abstinence from enforcing recovery of the full value of supply. Bad debts is not the state of helplessness but the decision of prudence in the interest of continued relationship with customers, cost of pursuing recovery measures and the quantum of dues lying unrecovered. It is not suggested that all cases of cash discounts are not available to be reduced from the transaction value. But the circumstances under which cash discounts have been allowed requires inquiry into the circumstances leading to this cash discount.
- Quantity discounts – are those that are aimed at reducing the price of each supply on the condition that a certain quantity of stocks need to be exhausted within a specified duration of time. Here again, inquiry is required into the terms and conditions applicable to this quantity discount. Where the stock supplied by a manufacturer to a dealer are at a specified 'dealer price', which is applied in respect of supplies to all dealers along with additional discount linked to conditions – quantity and time – that is contingent at the time of supply by the manufacturer, this would be an eligible discount under section 15(3). But discounts allowed in an invoice in respect of supplies made earlier are not discounts because transaction value can be reduced by discount allowed in respect of the present supply and not in respect of any other supplies. This is because one of the conditions for allowance of the reduction in value is that the discount should be

specifically linked to the original invoices against which the discount is to be given. Since, quantity discount is linked to time and volume and not against any specific invoice, the establishment of linking to the original invoices may be questionable.

- Special discounts – are those that are allowed by a supplier to incentivize aggressive marketing of inward supplies on special occasions or in special market conditions. In most cases, such incentives designated as special discounts are really acknowledgment of services of aggressive marketing and product promotion. The direction of flow of consideration is an indicator of the direction of receipt of supplies. In other words, the incentives flow from the manufacturer to the dealer, that are not related to the present supplies. In fact, it indicates an acknowledgment by the manufacturers of the services received from the dealer. The services so identified are from the dealer back to the manufacturers and this is a supply on its own. In fact the rate of tax of the services supplied by the dealer to the manufacturer needs to be classified independently of the classification applicable to the supplies by the manufacturer to the dealer. Although it is true that between a manufacturer and a dealer all transactions are closely related by the common thread of the dealership agreement, GST travels deeper into this relationship and picks out individual transactions of supply to apply the right rate of tax on each of them. Special discounts by their very nature appeared to be outside the scope of section 15(3).
- Discounts 'in-kind' – are those that are allowed in the form of holiday packages, gold coin, motor vehicle and other objects of high perceived incentive value. To begin with, these articles are rarely stocks in which the parties are dealing with. Further, these articles are incentives to the proprietor, director, marketing executive and other individuals and not the recipient of supplies in the normal course. Accordingly discounts in kind are not discounts satisfying the requirements of section 15(3). When a manufacturer pays money to a travel agency for a holiday package and issues the same to the individual-dealer identified, it is important to examine whether the payment by the manufacturer to the travel agent is a payment to discharge the obligation of the dealer (eligible for this incentive) or is it a direct inward supply from the travel agent to the manufacturer. If the travel agent issues the invoice in the name of the manufacturer, it is an inward supply by the manufacturer. Where the said travel package is issued to the dealer, it is an outward supply under the paragraph 4(a), schedule II and accordingly liable to tax (at the respective rate of tax the along with restrictions on input tax credit, if any). If however, the invoice is issued by the travel agency in the name of the dealer but the payment alone moves from the manufacturer to the travel agency then, there is a supply of some services received by the manufacturer which is being paid by settling the bills of the travel agency. It is sufficient for the present if the issues involved in special discounts are appreciated. Reference may be had to a detailed discussion on supply to come back and identify existence of such invisible supplies lying embedded in seemingly ordinary transactions that are called discounts.

- Free stocks – are those that are similar to discounts 'in-kind' except that the articles given away are the items of inventory date with by the parties. In such a case, the stocks given away are taxable outward supply in exchange of non-monetary consideration flowing from the manufacturers to the dealer entitled to such free stocks. When the manufacturers gives away stocks for free to a dealer, it is clear that this is not the case of charity by the manufacturer towards the dealer but a prudent business decision by the manufacturer to allow the dealer to realize the following proceeds from sale of such free stocks and retain them as his incentive without having to make any payment to the manufacturer towards the cost of such free stocks. It is important to note that cost of such free stocks in the hands of the manufacturer would be far lower than the value of the incentive realized and retained by the dealer which is the selling price of these stocks. Here is a case where a manufacturer incurs a small cost and delivers a far greater perceived value to the dealer. In hindi, the word consideration has been referred as 'Prathiphal' which seems to convey the meaning on 'quid pro quo' more clearly. A further implication of giving away free stocks is that, in the hands of the manufacturer it is a taxable outward supply without the benefit of input tax credit to the dealer as no payment is made in respect of the supply. Having paid tax once on the outward supply by the manufacturer, there is a further taxable outward supply in the hands of the dealer when the free stocks are sold to customers. The tax inefficiency in transactions of issue of free stocks is evidently clear so that appropriate decisions may be made to revisit this entire policy.
- 'Buy one-take two' – are transactions where two units of stocks are supplied against payment of the price designated against only one of them. Under the method of transaction value-based assessment of tax under the GST law, each unit of stock is liable to determination of transaction value on its own merit. 'buy one-take two' is not the case where the two units of stocks are bundled together with a single price assigned to them but are individually priced with no differentiation in the quality of each of the units except that the present offer allows the customer to pay the published price of one and collect two units of the stock. The stock collected without making any payment could very well have been the one that was paid for and purchased or vice versa. It merits to mention here that multiple units of a product may be bundled together with a single price published for them such as 4-bars of soap or pack-of-5 socks. Therefore, unless bundled together with preselected units of stock and a single price affixed, all other transactions of 'buy one-take two' are individually taxable – the paid unit at the price paid and the free unit at the price determined by the valuation rules.
- Nominal value supplies – is another form of discount or incentive where items of inventory are admitted to be a taxable outward supply but a nominal value is charged for such supply. Relying on the second proviso to rule 28, there appears to be a lot of confidence in continuing such nominal value supplies as a form of discount or incentive. The discussion under rule 28 may be referred to the implications of charging nominal

value but for the present, it helps to recollect the discussions about regarding the requirement for every transaction to pass the test of 'sole consideration'. Charging a nominal value is an admission that the price is not the sole consideration and when price is not the sole consideration the transaction is dispatched into rule 27 for determination of the appropriate transaction value. As such, nominal value supplies are admittedly liable to tax but not at the nominal value. The value determinable as per Rule 27 should be taken for calculation of the liability of tax.

- Liquidated damages – Most of the contracts requires the performance by the suppliers within a given time limit. A delay beyond this time period may result in a loss being incurred to the recipient. To mitigate such losses and to ensure the performance of the contract within the time limit, liquidated damages may be collected. For instance, in a construction contract, the contractor undertakes to perform his service within 3 years and the delay beyond such period will result in deduction of the liquidated damages to the tune of 1% per month by the recipient. In such cases, it may prima facie seem that against the principal supply of construction services, a lower than agreed upon consideration is being received due to the delay in performance and such lower value should be offered for taxation. However, upon analysing the definition of supply under the GST law, it will result in a conclusion that there are actually two supplies which are taking place here. First is the principal supply of the construction service by the contractor for which the value was fixed as per the contract terms. Second supply is that which is provided by the recipient of the principal supply to the contractor in form of agreeing to the obligation to tolerate an act in terms of 5(e) of Schedule II against consideration in the form of deduction from total value of consideration. So, essentially there are two forms of supply for which the consideration are partially set off against each other through book entry usually and the balance monetary consideration only exchanges hands. This only provides one of the common models for settlement of liquidated damages. However, to determine the correct treatment of such charges, a threadbare analysis of the contractual rights and obligations along with the intent behind such contracts becomes an issue of utmost importance.

If and only if the transaction value cannot be determined as above, reference to CGST Rules related to valuation is permitted. Hence, recourse to the Valuation Rules is permitted only in the following circumstances:

- Supplies not covered by section 7(1)(a);
- Supplies covered by section 7(1)(a) but between related persons;
- Supplies covered by section 7(1)(a) and not adjusted for aspects provided by sub-section 2.

Government is free to notify tariff values in specific cases to determine the tax payable in such cases. This would prevail over the valuation provided for in sub-section 1. Valuation Rules are prescribed under Chapter IV of the Central Goods & Services Tax Rules, 2017 from Rule 27 to Rule 35.



**(a) Consideration not wholly in money - Rule 27**

This rule comes into effect when the condition that price is the sole consideration gets violated. It is important to consider the difference between 'free' and 'no consideration'. It is probably common to consider that these two are synonymous. At the outset, there can be no contract without consideration. Experts in Contract Law will see the gross illegality if one were to say that there is a contract that has no consideration in it. If the contract is valid, then there must exist a consideration though in non-monetary terms which is erroneously stated to be a contract having 'no consideration'. It is impermissible that a contract exists but lacks consideration. It is just impossible. If price is not the sole consideration, there should be consideration in some other form as per the contract. Normally, upon analysing the terms of the contract, consideration in all forms can be found out. Now, if there is a contract with non-monetary consideration, Rule 27 of the Central Goods and Services Tax Rules comes into operation. Although this rule states that it applies when 'consideration is not wholly in money', it applies even when the consideration is partly in money or wholly in non-monetary form. This rule provides that the value of supply "shall be" and not be "based on" or "guided by", so that mandatory nature of the prescription of this rule can be appreciated. Further, this rule comes into operation not only when the consideration paid is partly in money and partly in non-monetary form but also when the whole of the consideration is found to be in non-monetary form. Some of the transactions discussed earlier and found to be taxable supplies such as discounts, will rely on this rule to arrive at their value.

*(b) "supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.*

The following transactions of supply under section 7 straightaway arrive at this rule for the determination of the transaction value as they failed to qualify for application of section 15(1), namely:

- barter and exchange transactions
- transactions listed in schedule I
- transactions listed in schedule II but without consideration

The order of application of the methods prescribed under this rule cannot be deviated from merely because a later in the third is a more acceptable answer or is easier to apply. The value of supply shall therefore be:

- (i) Open market value (OMV)– which is the full value in money payable by an unrelated person as its sole consideration at the same time as the supply under inquiry. OMV is a new phrase but not too far from its scope and covered from its explanation. Transaction value is price of the supply under inquiry and open market value is the price of the

same supply but without the circumstances that impairs the use of transaction value for quantification of tax. OMV is not comparable price to unrelated customer. The definition of OMV does not allow comparison of supplies in comparable circumstances. It only requires supply 'at the same time'. So, OMV is not price in another 'comparable' supply at a close proximity in time. Bought-out goods given for non-monetary consideration has the purchase price itself as the OMV for outward supply. This provision does not provide the manner of adjustments to be made to overcome the effect of those disqualifying circumstances present but simply states that OMV 'shall be' the value of the supply. As such, this clause is not of much avail in addressing the deficiency which was the reason for arriving at the Rules as no resolution was possible in the section itself.

For example, in an offer of buy 1 get 1 free of shirts by a shop, the value charged is ₹ 2,000. In this situation, the free shirt will be subject to valuation under Rule 27. As the value of the chargeable shirt is available as ₹ 2,000, the open market value can be said to be taken as the valuation mechanism here. In that case, the free stock item may be subject to the same value as that of the chargeable stock item. So, the value for the purpose of charging GST will be considered as ₹ 4,000.

- (ii) Sum total of monetary consideration and 'money-equivalent' to consideration not in money – here two aspects are involved – one, to establish that OMV is not available (a task that will be discussed shortly) and two, to arrive at the money value of the non-monetary consideration. Having identified that OMV is not very specific to be able to clearly be determined, it becomes more acute to establish that OMV is not available before proceeding to clause (ii). Onus lies on the one who asserts – the taxable person would have admitted that the circumstances of section 15(1) are not fulfilled and warrants recourse to the Rules but having arrived at the rules, the onus remains with the taxable person to establish that OMV is not available. OMV is not comparable alternate price. Supplies to unrelated persons are always taking place although in different 'commercial circumstances' which is not provided in the definition of OMV. As such, overcoming the first aspect – OMV not available – is a challenge which tax administration can be stubborn about. Then, arriving at money value of non-monetary consideration is not guided by requirement to use standards of Cost Accounting, etc. Rule of reasonableness is the only guide for arriving at the value which can be shot down by tactic of arbitrariness of the tax administration. Suitable guidance is much needed in this entire exercise.

For instance, an old antique art of work is sold against which consideration is partly in the form of money of ₹ 20,000 and partly in the form of a new furniture whose value known at the time of supply is ₹ 35,000. Then the value for the purpose of GST will be the monetary consideration combined with the equivalent money value of the new furniture i.e. ₹ 55,000.

- (iii) Value of supply of 'like kind and quality' – here again two aspects are involved – one, to establish that clause (a) and (b) are not determinable and two, to identify 'likeness' of kind and quality. This is a salutary method where there is much experience in Customs Valuation in successfully arriving at the comparable value. Subjectivity must be overcome which is possible by applying data that is reliably substantiated rather than arbitrary factors. The definition provides guidance on the manner of finding this 'likeness' for identifying whether the comparables are really comparable without being subject to any arbitrariness in tax compliance or tax administration.

As per the explanation of the term 'supply of goods or services or both of like kind and quality', the supply through which the comparison is taking place should be under similar circumstances in respect of the characteristics, quality, quantity, functional components, materials and reputation of goods or services or both and should be same or closely/substantially resemble the subject supply. So, all the factors should be taken into account and the supply which is closest in terms of these factors should only be taken for the purpose of valuation. The factor may not be exactly replicated in the supply being valued but should be substantially resembling the supply being used for comparison. This rule should not be applied if the circumstances are vastly different between the supply being valued and the one being used for comparison. For instance, the value of a product in New Delhi and that in Sikkim may be vastly different due to non-similar circumstances. Further, it may be very difficult to compare the reputation and quality in respect of services as it involves subjectivity and arbitrariness. The nature of the services will depend on the facts and circumstances of each case.

Taking an example where this mechanism can be applied, a customised air conditioning unit whose open market value is not available is installed at an office wherein the consideration is paid in the form of money of ₹ 40,000 and an old air conditioning unit whose price is not available at the time of supply. A similar air conditioning unit in terms of characteristics, quality, quantity, functional components, materials and reputation etc. has been installed by the company at another client's premises for ₹ 60,000. Since, the value of goods of like kind and quality is available, the value of ₹ 60,000 will be taken under Rule 27.

- (iv) Sum total of monetary consideration and value determined by rule 30 or rule 31 in respect of consideration not in money – similar to the previous clause, the first of the two aspects – value is not determinable as above – is the one that presents the greatest difficulty. Expect that it is crude to import values from rule 30 or 31, the rest of this clause is simple in its application. Please note that rule 30 must be applied first and then rule 31, more on that in the discussion of those rules. Some illustrations are provided in rule 27 that may be referred for understanding its application.

Now, going back to the discussion on – valid contract having non-monetary consideration — it is important to understand some of the common instances when the supply is claimed to be of this nature, namely:

- Warranty supply of parts to end customer through a dealership – the parts are supplied ‘free’ to the end customer. At first, it is important to determine whether the parts replaced are actually covered by warranty in the supply contract or whether there is any replacement request entertained for out-of-warranty equipment for brand building exercise. Then, the warranty obligation lies only with the original equipment manufacturer (OEM) but the actual replacement is carried out at the dealership. When a warranty claim is made with the dealership by the end customer, the dealer seeks approval from OEM. Only after ‘in-warranty approval’ is received from OEM does the dealer replace the part. Now, the warranty replacement between OEM to end customer is not liable to GST not because it is free but because the price for the replacement is built into the price of the equipment originally supplied and therefore tax has already been paid by OEM. However, the dealer who replaces the part does not carry any role in the warranty fulfilment. In fact, the dealer ‘delivers’ the part to customer but ‘supplies’ it to OEM. Hence, there is another supply embedded here between dealer to OEM because dealer uses a tax-paid part from his inventory to replace it for the end customer. Alternatively, the OEM issues credit note to dealer for the part used in the warranty replacement. Reference may be had to Mohd. Ekram Khan’s decision of SC in 144 STC 542. As such, warranty involves two supplies and neither of which are free from tax. One is tax pre-paid and another is currently taxed though not involving end customer.
- Physician’s sample of drugs provided through sales representatives – these drugs are distributed by the physician during clinical consultation with patients. As such, the fee paid by patient to physician is one supply (whether taxable or exempt in GST) but the supply by pharmaceutical company to physician is another supply. To hold that cost of such free samples is included in the price of other units sold and therefore there is no requirement to again impose GST based on OMV on the samples, would go against the valuation methodology adopted in GST. In other words, GST law does not follow valuation based on ‘assessable value’ but follows valuation based on ‘transaction value’. If the cost or the value of the goods sold were to be the basis of computation of tax payable then the argument of inclusion of cost of samples may have been tenable. But that is not the case in GST and each supply must stand on its own merit to be subjected to tax – if a price exists then tax would be computed on that price and if the price does not exist then tax would be computed on its OMV. If it is established that there is a non-monetary consideration flowing to the supplier then, samples will be liable to GST as determined by rule 27. This would be true not only of drugs but samples of any kind that are permanently given away. As regards physician’s samples, there is raging debate that Courts are currently engaged in addressing due to the far reaching implications and no final outcome has yet been reached in this regard. This principle may be challenged if the facts considered to exist in the course of the about discussion were not to be in alignment in the facts of any other case so as to possibly receive a very different treatment in its valuation.

- Defaced samples of garments given to supplier by brand-holder – in comparison with physician's samples, defaced samples are those which are 'unfit for resale or end-use'. Such kinds of samples are given in B2B transactions for helping suppliers to study the expected final product to prepare quotation for further orders. As these samples have been deliberately defaced and rendered unsuited for resale or end-use, there can be no argument that consideration flows from recipient of defaced samples back to brand-holder. Taking recourse to section 17(5)(h) does not satisfy the requirements of section 15 in the case of 'saleable' samples given away for non-monetary consideration. Reference may be had to the previous discussion on the concept of non-monetary consideration existing in a commercial transaction. Non-Availment of credit by a mistaken application of section 17(5)(h) will result in credit being given up along with the liability under section 15 continuing to exist where the samples given away are 'saleable' though not sold. Reference may be had to the detailed discussion on the circumstances requiring credit reversal in case of 'disposal' of samples that are 'unfit for sale'.
- Stocks issued to discharge CSR obligations – without repeating the concept of non-monetary consideration, it is sufficient to mention that consideration is recognized in India even if it flows from a third-party to a contract. Stocks issued without any flow of consideration from a recognized and qualifying charitable institution would continue to be a supply 'for consideration' *albeit* in non-monetary form where the obligation under Companies Act stands satisfied/fulfilled. This in itself is the consideration for the supply and GST becomes payable based on the OMV. Continuing further, stocks issued in excess of the CSR obligation limit would also be a taxable supply. A legal entity is incapable of feeling the emotion necessary to make voluntary contributions towards needy causes. What in fact takes place is that the management of the legal entity will feel the necessary emotion, draw the stocks from inventory and then issue it for such voluntary/charitable purposes. As such, the drawal of stocks from inventory by the management itself is a supply under paragraph 4(a), Schedule II and its subsequent issuance by the management does not alter the tax incidence. In fact, such charitable contributions by legal entity is disallowed as normal business expenditure for Income-tax purposes and enjoys deduction under a different provision of tax laws, that is, Chapter VI-A.
- Impairment of assets accounted in books – as per AS 28 (Ind AS 36) where impairment provision is to be made or reversed every time the assessment is done, the implication in GST needs to be kept in mind as to whether there is a supply and whether there is any corresponding impact of credit denial under section 17(5)(h) in respect of these assets. The usage of the words 'written off' can trigger extreme consequences and therefore caution must be exercised in the accounting treatment, disclosure of such treatment and implications of such treatment or disclosure under GST on a case to case basis. Generally, GST should not be applicable on 'write down' in the value of an asset that is neither permanent nor irreversible but the nature of the accounting treatment

extended to the inquiry undertaken in relation to impairment may yield a different result if it is regarded to be a 'write-off'. No definitive view is being expressed here on the GST liability of impairment.

- Leased car provided by employer disclosed in Form 12BA as perquisite – the reporting of perquisites admits a personal element involved in the enjoyment of the company car and the supply that is excluded in Schedule III is the service 'by' employee 'to' employer. But the present case is of supply of leased car 'by' employer 'to' employee which is not covered by Schedule III. By this admission in Form 12BA, GST becomes applicable but the valuation will not be as adopted in Rule 3 of Income-tax Rules but by GST Valuation Rules. It is important to examine the purpose of leasing a car by the employer and the purpose of permitting the employee to use the car. If it is for the advancement of the ends of the employer then it would not be a supply but if the ends of the employee are advanced, the conclusion would be very different. If the leased car provided to the employee is as per the terms of the employment agreement, then such charges of leased car becomes a part of cost to company in respect of that employee. In that case, a reasonable argument may emerge that the leased car is a consideration against the supply of services by the employee to employer which is excluded from the ambit of supply as per Schedule III. However, care should be taken to examine all attendant facts, contracted obligations, established practices and other information that indicate the primary purpose of such leasing arrangements.
- Free-issue-material provided by client to contractor – is admittedly not a supply in itself, but the question that arises is whether there is any consideration flowing from the client to the contractor vis-à-vis the free-issue-material (FIM). Care should be taken in drafting the contract whether the work was awarded for a full rate and then deductions are made towards FIM by reducing the running-account-bill of the contractor or whether the contract itself was awarded for the reduced rate. Reference may be had to NM Goel's decision 1989 AIR 285 (SC) in relation to sales tax and Bhayana Builders decision (2018) 51 GSTR 133 (SC) in the context of service tax. The development of collective thought of experts with regard to taxability of FIM depends on whether there is any consideration flowing from the contractor to the client for having issued the said material or the material so issued is the object upon which the contractor is to carry out his supplies and fulfil his contracted obligations. If the contractor were merely required to account for the entire quantity of FIM received by him with complete liberty to apply the FIM for the client's project or on any other project, without any restrictions or embargo only then would it be a case of supply of the FIM itself. For the issuance of FIM to be regarded as a 'transfer', it must be absolute and unhindered to constitute a supply in and of itself. Reference may be had to the characteristics of each of the 8 forms of supply under section 7(1)(a) and examine if issuance of FIM comes within the grasp of any of the said forms of supply. Fabric given by a customer to a tailor is not a case of supply of fabric by the customer to the tailor and a supply back by the tailor of the finished garment. An air conditioner given by a customer to an electrician called

upon for its installation, is not a case of supply of the air conditioner itself to the electrician. If the air conditioner were not given by the customer there would be nothing for the electrician to install. The electrician is not at liberty to install the air conditioner in any other premises but the premises of the customer. However, in the construction of a plant wherein the contractor was liable to supply the entire materials, if steel is supplied by the recipient which results in a reduction of the price of the contract, then such giving of steel will definitely be a supply by customer to contractor within GST. Further such supply of the works contract service by the contractor should include the value of steel within it. As such, experience and understanding of the fiction in the valuation provisions under the earlier laws – where composition rate of tax was applicable or abatement valuation method was follows – must not be allowed to percolate into GST. It goes without saying that legal fiction in any law does not travel beyond the purpose for which that fiction was coined. The law of GST entertains no such fiction when it comes to valuation of each taxable supply.

These illustrations do not cover all possible scenarios but lay down some pointers that need to be considered while determining the valuation and GST impact of various transactions.

**(b) Supply between related persons (Rule 28)**

A supply between related persons or between distinct persons (with same PAN) is *prima facie* not fulfilling the requirements of section 15 to admit the transaction value for quantification of GST. In such cases, the value of supply will be:

- (i) Open market value – please refer to previous discussion;

For example, a trader in computers gifts one of the laptops worth ₹ 50,000 to his relative during Diwali. Since the open market value of this is available, it needs to be taken for the purpose of charging GST.

- (ii) Value of supply of 'like kind and quality' – please refer to previous discussion;

For example, a Holding company provides a capital equipment whose open market value is not available to its subsidiary company which is not registered under GST. A similar capital equipment in terms of characteristics, quality, reputation etc. is available in the market at ₹ 10,00,000. This value of ₹ 10,00,000 will be adopted for the purpose of valuation.

- (iii) Value determined by rule 30 or rule 31 – please refer to subsequent discussion.

The proviso to this rule is of significance where it is the recipient, who are entitled to full credit, the value declared in the invoice is deemed to be OMV. In other words, in a case of supply eligible by this rule – related parties or distinct persons – the supplier is entitled to unquestioned admittance of 'any price' that may be charged. This provision appears to accommodate internal preferences of the parties where the tax paid is revenue neutral. However, caution is advised in taking recourse of this proviso and charging a price lower than cost.

In the case of inter-branch supply of services, valuation of these supplies will involve additional tax due to costs such as salary, amortization, etc. which do not involve any input tax credit. For example, if a Head Office incurs certain entity-level expenses that are common to all registered taxable persons in other States, it is not permissible for the HO to retain the whole of these common credits due to the limitation in the language of section 16(1) – used by him in his business – although a portion of this credit may still be available. Previously, such HOs were registered as ISD under service tax but this may not be the case in GST. Please refer to discussion in section 20 for some analysis of these issues. Now, surely the HO is not ‘merely an office receiving invoice for services’ but is actually the ‘seat of management and control’ performing very significant services that are supplied to all branches. HOs ought not to continue as ISD but recognize the nature of the supply of services to all branches. And on this basis, apply these Rules for quantifying tax to be discharged. The proviso in this rule does not authorize payment of tax on cost because the value to be determined under this rule is OMV or else like-kind-and-quality or else rule 30 / 31 value. Hence, HO may be required to invoice for its services appropriately and not distribute credit as ISD. Valuation at nominal amount, appears to be permissible by second proviso to this rule. The eagerness to value stock transfers at nominal value misleads one to rely on the condition – recipient eligible for full input tax credit – appears to play culprit. It must be recalled that a transaction of stock transfers from one branch to another being defined to be a taxable supply under section 7(1)(c) read with schedule I deserves to be subjected to the rightful amount of tax based on the rightful value of this supply. This rule cannot undo what was set out to be achieved by the section. In order to read this second proviso harmoniously with the definition of supply, it appears to be appropriate to construe ‘the value declared in the invoice’ under the second proviso to be nothing short of the OMV of the stocks transferred between the branches inter se. This OMV could very well be the cost incurred by the supplier branch. But if the urge to apply nominal value to such supplies continues, by the words ‘value declared in the invoice’, the one declaring the value on the invoice cannot do so by affixing a nominal value which would be completely in disharmony between the rule and the section. A quick reference to rule 32 makes it clear that section 15 provides the boundaries within which every exercise of valuation must operate.

For example, an entity has four branches in Delhi, Mumbai, Kolkata and Bangalore. There is a head office of that entity in Hyderabad. The HO in Hyderabad recruits certain key management personnel for its branches. Here, it will be considered as if the manpower recruitment services are provided by the HO to its branches. For the valuation purposes, one needs to go through the hierarchy provided in Rule 28. As mentioned above, a nominal value for the purpose of billing should not be taken. There should be a reasonably justifiable method of valuation as explained above.

**(c) Supply through agent (Rule 29)**

Every supply involving an agent is not a taxable supply. As discussed in Chapter III, supply by Principal and Agent *inter se*, all though merely a channel to supply to the end customer, is treated as a supply in Schedule I where the goods are handled by the Agent or principal.



Please note that this rule is applicable only in case of 'supply of goods' and not 'supply of services' or 'supply involving goods treated as supply of services'. When this rule is applicable, the value of supply will be:

- (i) open market value or 'at the option' of supplier 90% of the price charged for goods of 'like kind and quality' by the Agent– this rule provides for an ad hoc reduction of 10% from the price otherwise charged to accommodate the incentive or margin left for the Agent in pricing. Where margins are lower than 10%, this rule can cause great anguish. But, discarding the use of this clause is not permitted freely.
- (ii) value determined by rule 30 or rule 31 – please refer to subsequent discussion.

Transactions treated as supply by Schedule I of the CGST Act, which need to be subjected to tax requires a valuation mechanism. Principal and Agent do not *ipso facto* become related persons for rule 28 to be applicable to them.

Please note that agency cannot be inferred but must be express or implied. Agency may be understood as 'delegated authority' and 'detached consequences'. Within the scope of agency, the Principal will be obligated to third parties without any limit by actions of the Agent. As such, the authority to the Agent to act is delegated by the Principal and the Agent is not obliged to the consequences arising from his actions, provided they are within the scope of the agency. Undisclosed Principal still obligates the Principal because the lack of disclosure is to the third party and not that the Principal is unaware of the possible obligations accruing.

It is important to note that not all transactions between a Principal and Agent attract paragraph 3, schedule I. but it is only those transactions where the Agent 'handles' the goods of the Principal. Only when it is identified that it is a transaction of such nature, will the valuation under this rule become applicable. Further, it is to be considered that recourse to this rule is not an option because every transaction between Principal and agent are disqualified under section 15(1) and required to be examined with reference to these rules. Once having arrived at rule 29, there is only one method – price of supply of goods of like kind and quality – and no others. This rule applies only in respect of goods and not services.

There is a very interesting clue in a press release that permits advertisement agency to opt for either agency-model or resale-model as regards publishing of advertisements in media. Here, the press release appears to require an alternation in the contractual arrangement with the media (which may not be agreeable or not advisable), but it would be advantageous if, for limited purposes of GST, the agency were to apply agency-model or the resale-model.

#### **Clarification on Value of Supply by a Del-Credere Agent (DCA) (Circular No. 73/47/2018-GST dated 05-11-2018)**

DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the DCA guarantees the payment to the supplier. Circular dated 05-11-2018 was issued to clarify on levy of GST on various types of DCA transactions with the principal.

In terms of the circular, a DCA would be an agent as per Schedule I of CGST Act if the invoice is raised by the principal to DCA and then by DCA to final customer. In such a scenario, DCA may advance credit to customer to enable him make payment to principal. For such credit, DCA charges interest as a consideration. In such a situation, there was a concern whether the interest charged by DCA to customer would be includible to compute GST in terms of Sec 15(2)(d), as the same was relatable to supply made by DCA to customer.

It is clarified that such interest is relatable to the supply of goods by DCA to Customer and was no more a separate supply of advancing credit. Such interest was to be included to the value of taxable supply of goods by DCA to its customer.

**(d) Cost based value (Rule 30)**

Where cost is used as a base for determining the value of supply and when any of the more specific methods prescribed are unavailable for specific reasons, this rule may be applied. It provides that the value will be 'cost plus 10%'. Please note that this rule applies to both goods and services supplied.

Every supply claimed to be free but involving non-monetary consideration faces the threat of tax being determined on this method. Cost of acquiring the product is the cost incurred by the person for bringing the production in the condition and location for the purpose of selling. While price paid to purchase goods that are given away for non-monetary consideration, the OMV is this purchase price but when it not a readily bought-out supply (goods or services), the cost construction method may need to be applied. Cost Accounting Standards may be relied upon to determine cost for purposes of this rule. CAS-4 enumerates various costs to be included in determining the cost of raw materials. As per the said standard, cost of material shall consists of cost of material, duties, taxes, freight inward, insurance and other expenses directly attributable to the procurement. Trade discount, rebate and similar items will be deducted in determining the cost of material. Input tax credit in any form will also be deducted. Thus cost of acquisition will include the cost of transportation, any local taxes, insurance, other expenditure like commission etc. on procurement of goods. However, cost of determining provision of service is not that straightforward. In case of services, the major components are the cost of the employee and other administrative expenses,

Please refer to the few illustrations discussed in previous sections such as warranty replacement, physician's samples, etc. Tax administration may be kept at bay if valuation is not lower than 'cost plus 10%'. Although this method appears simple, it is important to note that only when it is established that the other more specific rule and the specific methods under those rules are unable to yield an acceptable value for the supply under inquiry. Only where the other methods of valuation cannot be applied, will this rule be available to apply. Where margins are not as high as 10%, suppliers may justifiable move to Rule 31 but by satisfying that this rule does not provide a reasonable value.

In respect of supply of services (also transactions involving goods treated as supply of services), the supplier is permitted to apply rule 31 instead of rule 30, if that were more favourable.

**(e) Residual valuation (Rule 31)**

Where value cannot be determined by any other method, this rule authorizes the use of 'reasonable means to arrive at the value. It is important to consider that these reasonable means must be commensurate with the principles of section 15. This rule provides some crucial guidance on the manner of application of all other rules – any valuation method applied that is contrary to 'principle of section 15' – may not be accepted.

**(f) Lottery, betting, gambling and horse racing (Rule 31A)**

The debate on the taxable value of services for betting, lottery, gambling and horse racing has been put to rest by introduction of Rule 31A to the CGST Rules vide notification no. 3/2018-Central Tax dated 23.2018. The said rule overrides all the other provisions relating to Valuation Rules. The use of the word 'shall be' implies that the value has to be necessarily determined as per the said rule. According to this rule, the valuation in respect of the following services shall be determined as follows:-

- (i) **Lottery run by State Government** – Value of supply shall be 100/112 of the face value of ticket or the price as notified in the Official Gazette by the organising State; whichever is higher. – The phrase 'lottery run by State Government' is defined to mean a lottery not allowed to be sold in State other than the organising State. 'Organising State' has the meaning assigned in Rule 2(1)(f) of the Lotteries (Regulation) Rules, 2010 which is defined to mean any State Government which conducts the lottery either in its own territory or sells its tickets in the territory of any other State.
- (ii) **Lottery authorized by State Government** - Value of supply shall be 100/128 of the face value of ticket or the price as notified in the Official Gazette by the organising State; whichever is higher. The phrase 'lottery authorized by State Government has been defined to mean a lottery which is authorized to be sold in State(s) other than the organising State also.

It is relevant to note that the rate of GST on sale of lottery tickets run by State Government is 12% and the sale of lottery tickets which are authorized by State Government is liable to 28%. As stated in rule 31A, the face value of the lottery ticket shall be taken as inclusive of applicable taxes which is *pari-materia* with the provisions specified under rule 35.

- (iii) **Betting, Gambling or Horse Racing** – Actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be 100% of the face value of the bet or the amount paid to totalisator. This implies that that the value on which GST has to be paid will be the amount of bet placed or the amount paid to the totalisator instead of the commission or share of revenue of the race club.

It is interesting here to refer to schedule III which states that actionable claim other than lottery, betting and gambling would qualify as an activity or transaction which shall be treated neither as supply of goods nor supply of services. This means that transaction in lottery, betting and gambling would for the purpose of GST law, qualify as supply. The

terms 'goods' under section 2(52) includes actionable claims. Services under section 2(102) is defined to exclude goods. Accordingly, the actionable claim in the form of chance to win betting, gambling and horse racing with reference to the above definitions will be goods and not services. Business under section 2(17) is defined to include the services provided by a race club by way of a totalisator or a licence to book maker in such club. The tax rate notifications issued for goods states that 'actionable claim in the form of chance to win in betting, gambling, or horse racing in race club' is liable to tax at the rate of 28%. The rate notification issued for services also specifies that the gambling as an activity involving services and accordingly, liable to tax at 28% (refer entry No. 34(v) of Notification No. 11/2017 (Rate)).

It is also interesting to refer to the clarifications issued by TRU vide F. No. 354/107/2017-TRU dated 04.01.2018 wherein it is clarified that the actionable claim involving betting, gambling or horse racing would be a service. It is further clarified that the tax would be applicable at 28% on the total value of betting which exceeds the authority to tax since, only certain percentage of the total value of betting will be retained as commission in providing the services of betting / gambling and balance amount forms part of the prize money.

With the above ambiguities there may be some confusion whether to tax actionable claims as goods or services and the rate at which such supply should be taxed.

**(g) Specific supplies (Rule 32)**

Before commencement of the discussion on the provisions of Rule 32, it may be pertinent to emphasize here that the determination of valuation as per the mechanism specified is only an option available to the supplier. If the supplier feels that the valuation mechanism specified under the Rule 32 does not reflect the correct position or that the value adopted should be in accordance with Section 15 and Rules 27 to 31, he may choose to ignore the said Rule 32. He may determine the value accordingly under Section 15 and Rules 27 to 31 as the case may be. Supplies which were previously under some form of abatement of value are found in this rule, namely:

- (i) supply of services involving sale/purchase of foreign currency, the value of supply will be:
  - (a) option (a) – difference between buying-selling rate and the reference rate published by RBI. Where reference rate is not available, 1% of gross Indian Rupee value of the transaction. And where the conversion is not into Indian Rupees, then 1% of the lesser of the Indian Rupee equivalent of each currency exchanged;
  - (b) option (b) – 1% of gross amount upto ₹1 lac, 1/2% after ₹1 lac upto ₹10 lacs and 1/10% after ₹10 lacs. This option (b) once exercised cannot be withdrawn during the financial year.

- (ii) supply of services by travel agent of booking of tickets for air-travel, the value of supply will be 5% of basic domestic fare or 10% of basic international fare. Please note that commission to the travel agent may flow from passenger or airline or any other person and the value determined here will be the tax for all the sources of commission. In case travel agents opt to pay tax on this abated value, a customer who is registered under GST law may have to forego input tax credit. Credit referred here is not merely the GST charged by the travel agent on the abated value. Travel agent will have eclipsed the GST charged by the airline on the ticket – 5% on economy ticket and 12% on any higher class ticket. For example, on a ticket value of ₹1 lac, GST paid by airline could be as high as ₹12,000 but the travel agent would issue an invoice for ₹1 lac + GST of ₹500. Registered customer would not be willing to forego this credit of ₹12,000. As mentioned by someone, a credit-hungry registered customer would drive the travel agent to reverse his supply model – airline to invoice the (registered) customer directly to pass on credit and agent to invoice service fee to airline.
- (iii) supply of services in relation to life insurance, the value of supply will be gross premium reduced by investment allocation, in the case of single premium policy will be 10% of premium and in all other cases will be 25% of first year's premium and 12.5% for other year's premia. This rule will not apply to premium related to coverage for risk-of-life.
- (iv) supply of services of person dealing in second-hand goods, the value of supply will be difference between purchase price and selling price. Please note 'second-hand goods' refers to goods used or otherwise employed in some process without causing any change in their nature. Used goods and not the same as pre-owned goods which need not have been put to use. For example, a motor car where mark of registration has been assigned by RTO, even if left unused for long time will not be able to satisfy that it has not been used. And similarly, the odometer reading showing '0 kms' but duly registered by RTO will not override the conclusion that it is used. Please note that most appropriate tests for identifying whether the goods have been used or not may be examined. Also, this rule does not apply only to 'supply of second-hand goods' but to supply of services of person dealing in second-hand goods. In other words, disposal of leased car will also come within the operation of this rule

Intra-State supplies of second hand goods, by an unregistered supplier to a registered person, dealing in buying and selling of second hand goods and who pays the central tax and compensation cess on the value of outward supply of such second hand goods as determined under Rule 32(5) of Central goods and Services tax Rules, 2017, is exempted. This has been done to avoid double taxation on the outward supplies made by such registered person, since such person operating under the margin scheme cannot avail input tax credit on the purchase of second hand goods. (NN 10/ 2017-Central Tax (Rate) dated 28-Jun-17 and NN 04/ 2017-Compensation cess (Rate) dated 20-Jul-17)

It is important to note that the registered taxable person disposing off used-goods would not be able to avoid payment of tax on this outward supply. Facility under this 'margin method' is available only when the outward supply involving sale of used-goods is by a unregistered person to a registered taxable person dealing in used-goods. In the case of used-cars, the levy of tax on outward supply has completely taken the sheen off used-car business because registered sellers cannot avail this margin-method coupled with the visibly high rates of GST plus Cess applicable. However, the Government vide notification no. 8/2018-Central Tax (Rate) dated 25.01.2018 has reduced the rate of GST to 18% and 12% on the sale of old and used motor vehicles. Further, the Cess payable on sale of old and used motor vehicle has also been exempted vide notification no. 1/2018-Compensation Cess(Rate) dated 25.01.2018. However, the major change as per the said notification was the valuation mechanism under GST. The said valuation was stated to be the margin involved i.e. the difference between the selling and purchase price. If the selling price is greater than the purchase price, then this amount should be ignored for the purpose of GST. However, where the selling price is lower than the purchase price, only the differential margin will be taxable. In case of sale by a registered person, it has been stated that the value that needs to be taken in lieu of the purchase price will be the depreciated value of goods on the date of supply. So, the taxability arises in respect of the margin if the selling price is higher than the depreciated value of the motor vehicle,

Illustration: Mr. X, a registered person in GST had purchased a motor car on 1<sup>st</sup> June, 2016 for ₹ 10,00,000. The said car was sold on 25<sup>th</sup> February 2018 by him for:

- a) ₹ 9,00,000
- b) ₹ 7,00,000

Determine the valuation under GST

Ans: The depreciated value of the car as on 1<sup>st</sup> April 2017 is ₹ 10,00,000 –  $15 \times 10,00,000 = ₹ 8,50,000$ . If the sale value of the car is Rs,9,00,000, ₹ 50,000 will be the value for charging GST. If the car is sold at ₹ 7,00,000, the margin will be negative and hence it should be ignored.

*Proviso* to Rule 32(5) speaks about the repossession of goods in case of default by an unregistered borrower. In this scenario, the purchase price for the calculation of margin will be the purchase price of such goods by the defaulter. However, such purchase price will be subject to reduction of 5% every quarter or part thereof for the period between the date of purchase and the date of disposal. Illustration: Mr. X took a car loan of ₹ 3,00,000 from ABC Bank Ltd. on 1<sup>st</sup> September 2017 which was entirely used for the purchase of car worth the same amount. Mr. X defaults on the loan balance and thereby his car is repossessed by the bank on 1<sup>st</sup> March 2018. This car is sold on 30<sup>th</sup> March 2018 by the bank for ₹ 2,50,000. Determine the valuation under GST.

Answer: The purchase value to be taken will be the purchase price in the hands of the

borrower – 5% per quarter or part thereof (September – March) i.e. 3,00,000 – (5%\*3\*300,000) = ₹ 2,55,000. As the sale value of the car is below ₹ 2,55,000, the margin will be ignored for the charging of GST.

When such 'presumptive value' is opted for payment of tax, then it is NOT permissible for tax administrators to attempt a 'second bite at the same cherry'. That is, once tax is paid on the presumptive value, then entire supply and consideration (from all sources) in respect of that same supply is NOT to be taxed. For eg. travel agent who pays tax at 0.9% on domestic fare CANNOT be taxed again on the consideration received from (i) passenger called 'service charges' or (ii) airlines called 'commission' in monetary credits to agent's account or 'paid up tickets' at no charge to be sold for 'price' or (iii) 'share of commission' from CRS societies / companies where airlines list their inventory. Experts caution that attempts could be made to single out air-ticketing activity into these three components and restrict the 'presumptive value' only to airline commission and take a 'second bite' on all other two sources of income of travel agent. Remember, it is one supply which earns income from three sources and not three supplies. However, courts will have final say in the matter as the law in GST is precise than rule 6(7) of Service Tax Rules. But the point is that presumptive value is 'in lieu of tax otherwise payable on the various individual courses of consideration for the supply.

- (v) supply of voucher, the value will be the redemption value of the voucher. Please note voucher includes coupon, stamp, token, etc. Please refer to the discussion on vouchers under section 13 for the various forms that voucher can take including digital vouchers to which this rule will apply. Also, please note the those instruments that are approved by RBI and included in the definition of 'money' under the expression "*.....or any other instrument approved by RBI when used as a consideration to settle an obligation.....*" should not be treated as vouchers merely because they are popularly referred as 'vouchers'. All vouchers are not vouchers attracting this rule. Reference may be had to the discussion under section 12(4)/13(4) to identify instruments that 'are' or 'are not' vouchers.

Illustration: Mr. X had purchased a voucher for ₹ 200 which was redeemable against purchase of a wallet worth ₹ 500 from Shopper's stop. Here, the valuation that should be taken here is the redemption value of ₹ 500 in respect of the voucher and not the purchase value of ₹ 200.

- (vi) supply of services between distinct persons, that are notified by Government and where input tax credit is availed will be Nil. Please note that the implications of denial of credit u/s 17(2) in case of supply being exempt will be attracted in these cases. Care should be taken to identify that the notification to be issued in this regard are 'distinct persons' and supplies *inter se* when notified will have a deemed value of Nil. No notification has been issued as yet, in this regard. But it is expected that branches of banks may be notified to avail this facility where credit is fully available to the recipient-branch and even if 50% credit facility is availed by the bank, it is applicable only at the supplier-

branch under section 17(4). And this expectation is borrowed from benefit to suppliers by second proviso to rule 46.

**(h) Service of pure agent (Rule 33)**

Agency supplies are different from 'pure agent' in relation to valuation. This rule applies only to supply of services. It provides for the exclusion from valuation of any supply of certain costs and expenses if and only if the following tests are satisfied:

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient; the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (ii) the supplies procured by the pure agent from the third party as a pure agent of recipient of supply are in addition to the services he supplies on his own account. *Explanation.-* For the purposes of this rule, the expression "pure agent" means a person who-
  - (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
  - (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
  - (c) does not use for his own interest such goods or services so procured; and
  - (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

*Illustrations*

Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

- (a) Ticket in railways is booked by a travel agent on behalf of the customer and the charges for such ticket are recovered by the agent along with the commission by showing them separately
- (b) Customs duty, dock dues, transportation, port clearance charges etc. are paid by the customs broker on behalf of the importer and are recovered along with his commission from the importer
- (c) Advertisement charges to the newspaper are paid by Advertising agency on behalf of the customer and are recovered separately along with commission



- (d) In an ex-factory delivery contract, if the transportation charges are paid by the supplier on behalf of the recipient and are recovered separately from the recipient along with the price of the goods

To establish that the conditions of pure agent are getting satisfied, it is recommended that there should be a written contract between the supplier and the recipient. The clauses of the agreement should clearly point to compliance with all the conditions as discussed above with regard to pure agent. This will act as the most reasonable defence if any questions are raised by the Department later on. However, even if the contract is not in writing, it can be established by other available evidence that the conditions of pure agent are satisfied. However, any contract in writing may be considered as more persuasive in nature.

Further, in order to claim any amount as a deduction in the form of a pure agent, the dealer will have to demonstrate with substantial evidence that the liability to incur the cost was on the recipient and that the dealer has incurred such cost merely for convenience sake. Further, the dealer has to ensure that the invoice/ bill of supply/ receipt has been received in the name of the recipient, who is the ultimate beneficiary.

**(i) Exchange rate to be used (Rule 34)**

Transactions undertaken in foreign currency must be translated into Indian Rupees. The rate of exchange for the determination of the value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 and for the determination of the value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply in respect of such supply in terms of section 12 or, as the case may be, section 13 of the Act.

**Illustrations on Section 15 read with Central Goods and Service Tax Rules:**

Q1. Mrs. Jaya purchases a Samsung television set costing ₹ 85,000 from Giriyas, in exchange of her existing TV set. After an hour of bargaining, the shop manager agrees to accept ₹78,000 instead of his quote of ₹81,000, as he would still be in a profitable position (the old TV can be sold for ₹8,000).

Ans. Where the price is not the sole consideration for the supply, the 'open market value' would be the value of the supply. Therefore, ₹ 85,000 would be the value of the supply.

[Section 15(4) r/w Rule 27(a) of Central Goods and Service Tax Rules]

Q2. Mr. Mohan located in Manipal purchases 10,000 Hero ink pens worth ₹4,00,000 from Lekhana Wholesalers located in Bhopal. Mr. Mohan's wife is an employee in Lekhana Wholesalers. The price of each Hero pen in the open market is ₹52. The supplier additionally charges ₹5,000 for delivering the goods to the recipient's place of business.

Ans. Mr. Mohan and Lekhana Wholesalers would not be treated as related persons merely because the spouse of the recipient is an employee of the supplier, although such spouse and the supplier would be treated as related persons. Therefore, the transaction

value will be accepted as the value of the supply. The transaction value includes incidental expenses incurred by the supplier in respect of the supply up to the time of delivery of goods to the recipient. This means, the transaction value will be: ₹4,05,000 (i.e., 4,00,000 + 5,000).

[Section 15(1) r/w Section 15(2)]

Q3. Sriram Textiles is a registered person in Hyderabad. A particular variety of clothing has been categorised as non-moving stock, costing ₹5,00,000. None of the customers were willing to buy these clothes in spite of giving big discounts on them, for the reason that the design was too experimental. After months, Sriram Textiles was able to sell this stock on an online website to another retailer located in Meghalaya for ₹2,50,000, on the condition that the retailer would put up a poster of Sriram Textiles in all their retail outlets in the State.

Ans. The supplier and recipient are not related persons. Although a condition is imposed on the recipient on effecting the sale, such a condition has no bearing on the contract price. This is a case of distress sale, and in such a case, it cannot be said that the supply is lacking 'sole consideration'. Therefore, the price of ₹2,50,000 will be accepted as value of supply.

[Section 15(4) r/w Rule 27(d) r/w Rule 31 of Central Goods and Services Tax Rules]

Q4. Rajguru Industries stock transfers 1,00,000 units (costing ₹10,00,000) requiring further processing before sale, from Bijapur in Karnataka to its Nagpur branch in Maharashtra. The Nagpur branch, apart from processing units of its own, engages in processing of similar units by other persons who supply the same variety of goods, and thereafter sells these processed goods to wholesalers. There are no other factories in the neighbouring area which are engaged in the same business as that of its Nagpur unit. Goods of the same kind and quality are supplied in lots of 1,00,000 units each time, by another manufacturer located in Nagpur. The price of such goods is ₹9,70,000.

Ans. In case of transfer of goods between two registered units of the same person (having the same PAN), the transaction will be treated as a supply even if the transfer is made without consideration, as such persons will be treated as 'distinct persons' under the GST law. The value of the supply would be the open market value of such supply. If this value cannot be determined, the value shall be the value of supply of goods of like kind and quality. In this case, although goods of like kind and quality are available, the same may not be accepted as the 'like goods' in this case would be less expensive given that the transportation costs would be lower. Therefore, the value of the supply would be taken at 110% of the cost, i.e., ₹ 11,00,000 (i.e., 110% \* 10,00,000).

However, if the Nagpur branch is eligible for full input tax credit, the value declared in the invoice will be deemed to be the open market value of the goods in terms of 2<sup>nd</sup> proviso of Rule 28.

[Section 15(4) r/w Rule 28(b) & (c) r/w Rule 30 of Central Goods and Services Tax Rules]

Q5. M/s. Monalisa Painters owned by Vasudev is popularly known for painting the interiors of banquet halls. M/s. Starry Night Painters (also owned by Vasudev) is engaged in painting machinery equipment. A factory contracts M/s. Monalisa Painters for painting its machinery to keep it free from corrosion, for a fee of ₹1,50,000. M/s. Monalisa Painters sub-contracts the work to M/s. Starry Night Painters for ₹1,00,000, and ensures supervision of the work performed by them. Generally, M/s. Starry Night Painters charges a fixed sum of ₹1,000 per hour to its clients; it spends 120 hours on this project.

Ans. Since M/s. Monalisa Painters and M/s. Starry Night Painters are controlled by Mr. Vasudev, the two businesses will be treated as related persons. Therefore, ₹1,00,000 being the sub-contract price will not be accepted as transaction value. The value of the service would be the open market value being ₹ 1,20,000 (i.e., ₹ 1,000 per hour \* 120 hours)\*.

*Note: This view is based on the grounds that there are no comparables to this supply.*

However, if M/s. Starry Nights is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of services i.e. ₹ 1,00,000/-

[Section 15(4) r/w Rule 28(a) of Central Goods and Services Tax Rules]

Q6. Prestige Appliances Ltd. (Bangalore) has 10 agents located across the State of Karnataka (except Bangalore). The stock of chimneys is dispatched on Just-In-Time basis from Prestige Appliances Ltd. to the locations of the agents, based on receipt of orders from various dealers, on a weekly basis. Prestige Appliances Ltd. is also engaged in the wholesale supply of chimneys in Bangalore. An agent places an order for dispatch of 30 chimneys on 22-Sep-2017. Prestige had sold 30 chimneys to a retailer in Bangalore on 18-Sep-2017 for ₹ 2,80,000. The agent effects the sale of the 30 units to a dealer who would affect the sales on MRP basis (i.e., @ ₹10,000/unit).

Ans. The law deems the supplies between the principal and agent to be supplies for the purpose of GST. Therefore, the transfer of goods by the principal (Prestige) to its agent for him to effect sales on behalf of the principal would be deemed to be a supply although made without consideration. The value would be either the open market value, or 90% of the price charged by the recipient of the intended supply to its customers, at the option of the supplier. Thus, the value of the supply by Prestige to its agent would be either ₹ 2,80,000, or 2,70,000 (i.e., 90%\*10,000 \* 30), based on the option chosen by Prestige.

[Section 15(5) r/w Rule 29(a) of Central Goods and Services Tax Rules]

Q7. Mr. & Mrs. Mehta purchase 10 gift vouchers for ₹ 500 each from Crossword, and 5 vouchers from Four Fountains Spa costing ₹ 1,000 each, and gives them as return gifts to children and their parents for their son's birthday party. The vouchers from Four

Fountains Spa had a special offer for couples – services for both persons at the price chargeable to one.

- Ans. The value of the supply would be the money value of the goods redeemable against the voucher. Thus, in case of vouchers from Crossword, the value would be ₹ 5,000 (i.e., ₹500 \* 10) and the value of vouchers in case of Four Fountains Spa would be ₹ 10,000 (i.e., ₹ 1,000 \* 2 \* 5).

[Section 15(5) r/w Rule 32(6) of Central Goods and Services Tax Rules]

- Q8. In a rent of company accommodation, the rent received by the landlord is ₹ 30,000 per month. As per the said contract, the building maintenance to the tune of ₹ 3,000 per month is required to be paid by the landlord. In the month of April 2018, the tenant directly pays the building maintenance to the residential society and deducts the said amount from the total consideration of ₹ 30,000 and ₹ 27,000 to the landlord. Further, the tenant discharge municipal taxes of ₹ 2,000 in April 2018. Find the taxable value in the month of April 2018?

- Ans. ₹ 3,000 represents the amount liable to be discharged by the landlord which has been paid by the tenant. So, ₹ 3,000 will be added to the actual price paid or payable of ₹ 27,000 for the purpose of valuation. ₹ 2,000 will also be added to the taxable value as it is in the form of taxes, duties, cesses, fees and charges levied under the law. So, the total taxable value will be ₹ 32,000.

[Section 15(2)(a) and Section 15(2)(b)]

### 15.3. Comparative Review

Valuation Rules in Customs, Central Excise and Service Tax have been tested for applicability in various circumstances. All that experience and judicial interpretation may be brought to provide a good understanding of the words used in these Rules and the purpose for such usage. They are:

- Customs Valuation (Determination of Price of Imported Goods) Rules, 2007
- Customs Valuation (Determination of Price of Export Goods) Rules, 2007
- Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000
- Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008
- Service Tax (Determination of Value) Rules, 2006

### 15.4. Issues and concerns

1. There appears to be concerns over the taxability of actionable claims in form of betting, gambling and horse race as goods or services. The definition of goods specifically states that the actionable claims would qualify as goods for the purpose of GST law. When that being the case, seems appropriate to conclude that the actionable claim as goods and accordingly, the applicable rate of tax should be ascertained. This is based

on the understanding that the notifications cannot overrule what is specified under the law.

2. A taxable person should be cautious in case of supply of services where the consideration is in kind by way of receipt of other services. In such cases, it may appear that the services are supplied without consideration. However, it could result in barter which would qualify as barter. For illustration, we may refer to the recent advance ruling wherein the Kerala Authority of Advance Ruling has pronounced that the canteen services provided to employees would amount to supply and accordingly, canteen recoveries from the employees would be subject to GST. Such caution should be exercised since the payment of GST on the subsidized recovery would be incorrect. It is a supply of service by employer in exchange of employment services by employee and since, the employer and employee are termed as related parties, the valuation of such supplies should be in terms of rule 28. In other words, the employer should remit the tax at open market value. In this backdrop, a taxable person should exercise extra caution to ascertain the value of taxable supply of services.
3. The common expenses incurred by a taxable person in relation to procurement of services used by the branches located in another States, the allocation of such expenses to respective branches may qualify as supply of services. There appears to be an ambiguity on ascertaining the time of supply – whether, at the end of each month such taxable person should arrive at the cost to be allocated respective branches and remit the tax accordingly or shall arrive at the cost to be allocated at the end of the year and remit the tax on the expenses allocated to branch for the whole year.
4. The discount after effecting the taxable supplies should be issued by credit notes. Section 34(2) states that the discounts should be issued before the end of September following the end of the financial year or the date of furnishing the annual return. This necessarily means that discount can be issued to the recipient after the supplies are effected but not after the lapse of time period specified under section 34(2).
5. Every transaction seems to be covered by ‘consideration’. It is important to carefully understand benefits, rewards and gratuitous contributions that do not amount to consideration under Contract law (see section 25 and 70 of Contract Act).