

# CA/CMA FINAL INDIRECT TAXES



## Features

Relevant for Nov26 Onwards

As per New ICAI SM

All Amendments Upto  
30 April 2026 Covered

# HANDWRITTEN

# 9.C



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**CA Riddhi  
Baghmar**

# CA FINAL INDIRECT TAX

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✍️

Hello all!

Presenting version 9.0 of 'OUR' handwritten book with lots of love. Every effort is made to simplify the concepts and make learning fun. This book will be your guide and friend to make your Indirect Taxes journey smooth and scoring.

The book is fully amended for SEPT26/JAN27 exams covering all amendments upto 28/02/2026.

Pictures, Charts, Tables, examples, mnemonics, tricks..... will not just help you understand the concept but also aid you in remembering everything with utmost ease.

Rock the exams!! All the best!!

- CA Riddhi Baglamar

## GST in India - An Introduction

### \* What is Tax ?

- A Pecuniary burden laid upon individuals or property owners to support the Govt., a payment exacted by legislative authority.
- It is not a voluntary payment or donation, but an enforced contribution.

## TAX

### DIRECT TAX

- \* The person paying the tax to the Government directly bears the incidence of the tax.
- \* Progressive in nature - high rate of taxes for people having higher ability to pay.



Burden of Tax borne by the person himself  
Eg: Income Tax

### INDIRECT TAX

- \* The person paying the tax to the Government collects the same from the ultimate consumer. Thus, incidence of the tax is shifted to the other person.
- \* Regressive in nature - All the consumers equally bear the burden, irrespective of their ability to pay.



Burden of Tax shifted to another person.  
Eg: GST, Custom Duty

### \* Framework of GST in India : Dual GST

Due to country's federal structure, dual GST model is adopted. i.e. Centre + State/UT Concurrently impose taxes.

\* GST is a destination based tax on consumption of G/S/B. Tax revenue would accrue to the place of consumption state/UT.

# \* Genesis of GST in India

GST was launched on "1/7/2017"

- France was the first country to implement GST
- Presently > 160 countries have adopted GST
- **Genesis of GST In India:**

**2000:-** The then P.M mooted the concept of GST and set up a committee

**2006-07:-** Union Finance Minister P. Chidambaram announced in budget that GST be introduced from 1 April 2010

**December 2014:** The **Constitution (122nd Amendment) Bill** was Introduced in Lok Sabha

**6th May 2015:-** Lok Sabha Passed the Bill

**3rd Aug 2016:-** Rajya Sabha Passed the Bill

**8th Sept 2016:-** President Assent

The **Constitution (101st Amendment) Act** was enacted

**Sept. 2016:-** 1st GST council meeting

**April 2017:** - GST Council recommends C/S//U/cess bill

**April 2017:-** CGST/SGST/UTGST/ comp. Cess Act passed

**May 2017:** - GST Council recommends all the rules

**30th June 2017:-** All states except J & K passed their SGST Act

**8th July 2017:-** SGST Act passed by J&K; CGST and IGST ordinances promulgated to extend GST to J & K.

Presently. GST Applicable to **whole of India**

## \* Concept of GST:

1. Value added Tax
2. Continuous chain of tax credits
3. Burden borne by final consumer
4. No cascading of taxes

## \* States and UTs for GST Purpose

28 States (+)

3 UTs with

legislature

- Delhi

- J&K

- Puducherry



CGST + SGST

5 UTs without

Legislature (ALL CD)

A - Andaman & Nicobar

L - Lakshadweep

L - Ladakh

C - Chandigarh

D - Dadra & Nagar Haveli  
and Daman & Diu

Other - Other Territory (eg: EEZ)



CGST + UTGST

## \* Special Category States in GST:

(NO ASTHMA in Uttarakhand and J&K)

N - Nagaland

A - Assam

S - Sikkim

T - Tripura

H - Himachal Pradesh

M - Manipur, Mizoram, Meghalaya

A - Arunachal Pradesh

U - Uttarakhand

J - Jammu & Kashmir

## Classification under GST

Harmonised System of  
Nomenclature (HSN)  
For Goods

Scheme of Classification  
of Services  
For Services

\* Taxes Subsumed in GST:

- Central Taxes
- Excise
  - Service Tax
  - CVD & Special CVD
  - CST
  - Surcharges and cesses relating to supply of Goods and Services

- State Taxes
- Luxury Tax
  - Tax on lottery, betting and gambling
  - Purchase Taxes
  - VAT / sales Tax
  - Tax on advertisement
  - Entertainment Tax (except by local bodies)
  - Surcharges and cesses relating to supply of Goods and Services

\* Taxes not subsumed in GST:

Alcoholic liquor for human consumption & un-denatured extra neutral alcohol or rectified spirit used for manufacture of Alcoholic liquor for human consumption

Outside GST (Power to tax remains with States)

State excise + VAT / CST  
(intra) (inter)



HM NAP

- High Speed Diesel
- Motor Spirit
- Natural Gas
- Aviation Turbine Fuel
- Petroleum Crude




GST council to decide

the date from which GST will be applicable

Central excise + VAT / CST  
(intra) (inter)

• Entertainment Tax (By Local Bodies)

Power still remains with local bodies

<ul style="list-style-type: none"> <li>Tobacco</li> </ul> 	<p>Central excise Duty + GST</p>
<ul style="list-style-type: none"> <li>Opium, Indian Hemp, Other narcotics</li> </ul> 	<p>State excise Duty + GST</p>
<ul style="list-style-type: none"> <li>Real Estate Sector</li> </ul>  <p>(Sale/Purchase of immovable property)</p>	<p>Out of GST (Stamp Duty, Property Tax)</p>

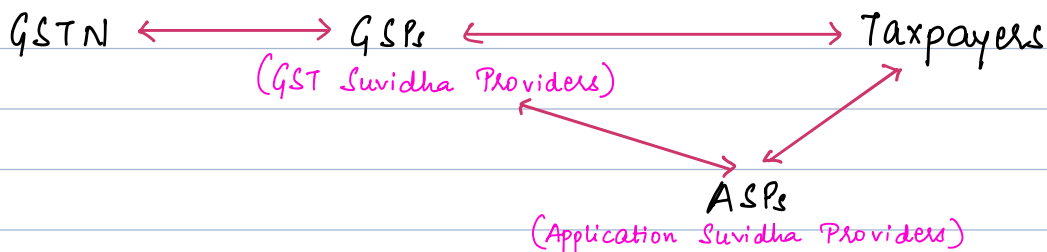
**\* GST Common Portal:**

- www.gst.gov.in → Website managed by GSTN <sup>Sec 8 company</sup> (Goods and Services Network)  
[Common portal for all services]

- www.ewaybillgst.gov.in → - National Informatics Centre  
[portal for e-way bill generation] - Ministry of Electronics and Information Technology  
- Government of India

- www.einvoice1.gst.gov.in → Managed by GSTN  
(Invoice generation portal for e-invoices)

**\* GSP/ASP:**



GSP is an additional channel being made available for facilitating the tax-payers for performing some of the functions\* and use of their services is optional. GSPs may take help of ASPs who act as a link between taxpayers and GSPs.

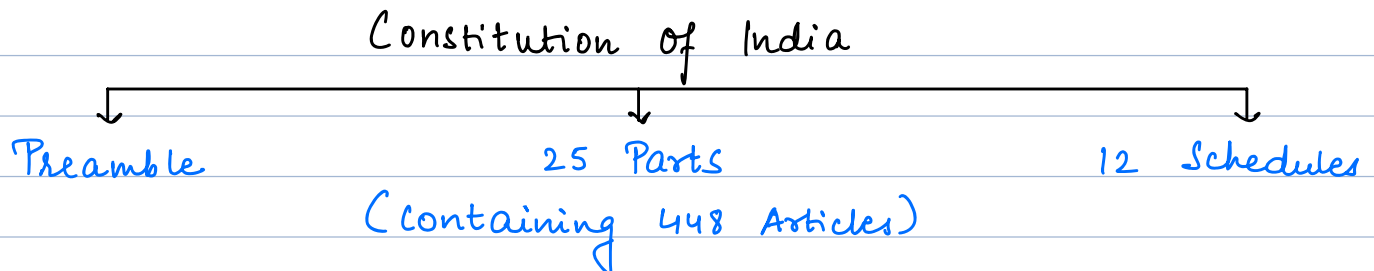
\* Functions include:

- Return filing
- Quick monitoring of GST Compliances
- Reconciliation of Purchase Register with auto populated data

\* Compensation cess:

To provide for compensation to the states for the loss of revenue arising on account of GST implementation. Imposed on specific luxury items or demerit goods  
Eg: Tobacco, pan masala, motor cars, aerated waters, etc.

\* Constitutional Provisions:



**Article 246** :- Respective authority to Union and state Government for levying tax.

**Seventh Schedule to Article 246:-**

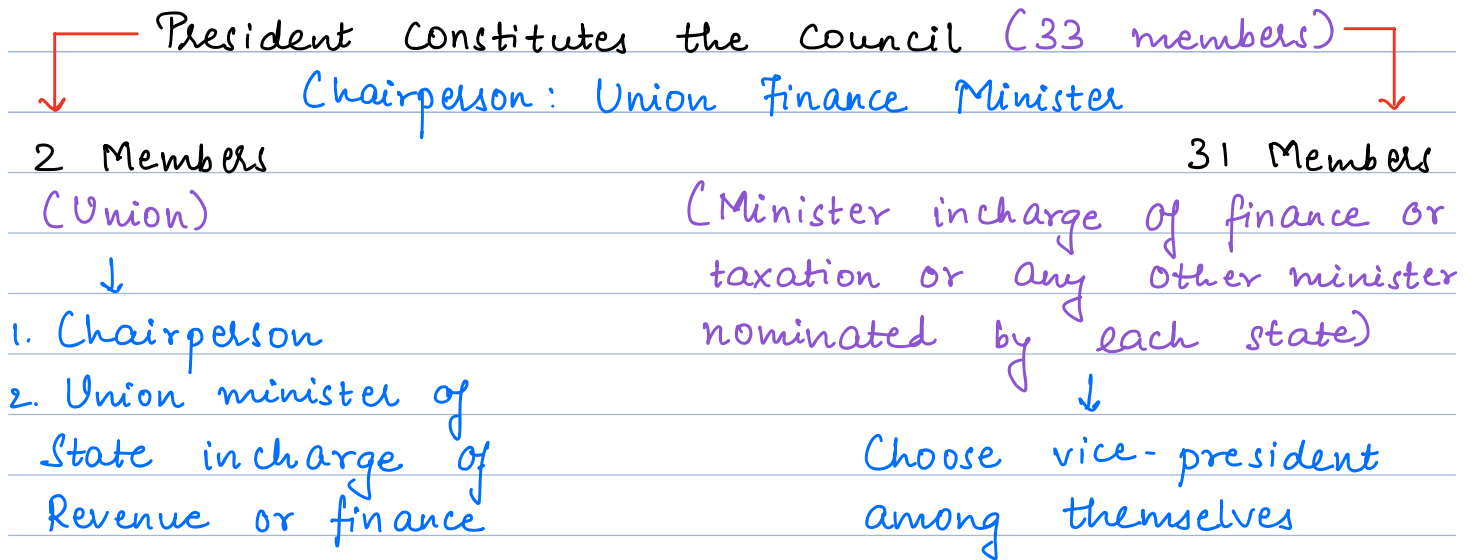
Union List List I	State List List II	Concurrent list List III
<ul style="list-style-type: none"> <li>Income Tax</li> <li>Custom Duty</li> <li>Excise Duty</li> <li>CST</li> <li>Any other Not in II/III</li> </ul>	<ul style="list-style-type: none"> <li>Taxes on agricultural income</li> <li>Excise on alcohol opium &amp; narcotics</li> <li>VAT</li> <li>Luxury entertainment, betting, gambling</li> </ul>	<ul style="list-style-type: none"> <li>Criminal Law</li> <li>Stamp Duties</li> </ul>

Need for  
Constitutional  
Amendment?

To enable integration of various taxes in GST and to empower both Centre and State to levy and collect it.

\* **Article 246A**: Simultaneous power with Parliament and State legislature to make laws with respect to GST.  
Exception: Parliament has exclusive powers with respect to interstate supplies

\* **Article 279A: GST Council**



- For Quorum: Half (i.e. 17) members
  - Decision: Majority not less than  $\frac{3}{4}^{\text{th}}$  of members present and voting
- weights  $\left\{ \begin{array}{l} \rightarrow \frac{1}{3}^{\text{rd}} \text{ Centre} \\ \rightarrow \frac{2}{3}^{\text{rd}} \text{ State} \end{array} \right\} \therefore \text{NO Decision unless CG Assents}$

\* Council shall make recommendation to Union/States on:

- Taxes/Cesses/Surcharge to be subsumed in GST.
- Goods/Service to be subject to/exempted from GST.
- Model laws, principles of levy, Apportionment of IGST
- Threshold limits
- Rates of GST
- Special provisions with respect to SCSs.
- Special Rates to raise additional resources during calamities/disaster.
- Any other matter as Council may decide
- Council shall also recommend the date from which GST to be levied on HMNAP.

# Important Terms

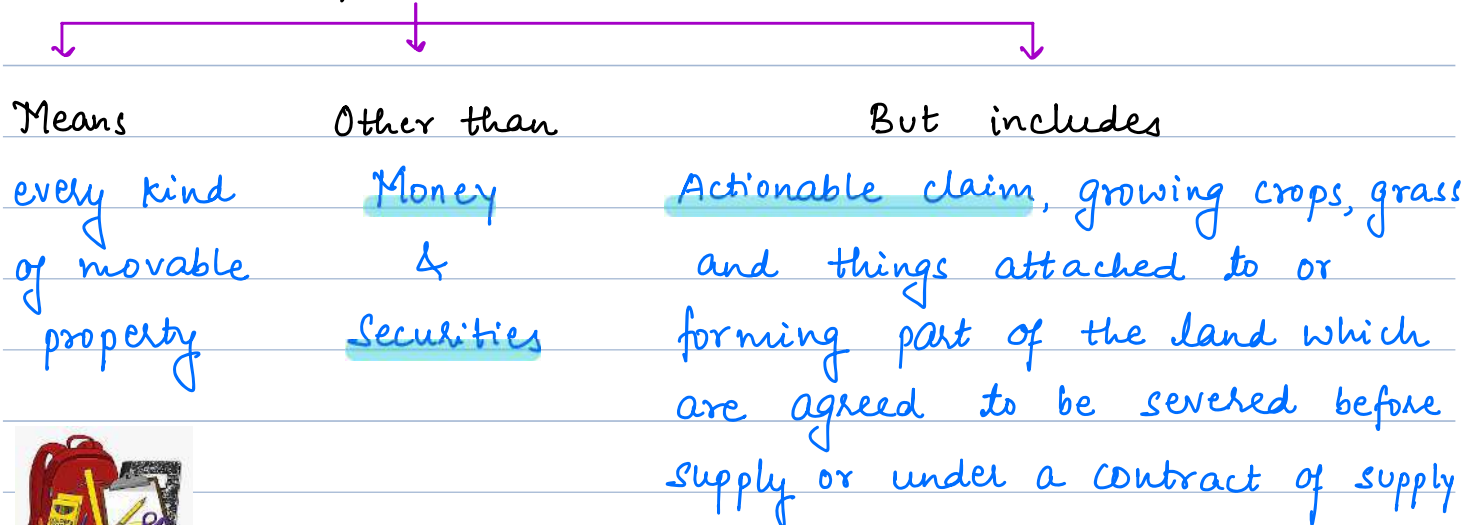
- Taxable event: Any transaction or occurrence that results in a tax consequence.

In GST, one comprehensive taxable event: SUPPLY

## • Person:



## • Sec 2(52) : Goods



## \* Money:

- (i) Indian legal tender, foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order
- (ii) Any other instrument recognised by RBI.
- (iii) But shall not include currency held for its numismatic value.

[Circular: Money includes commercial paper and Certificate of deposit].



- \* Securities
- shares, stock, bond, debentures, Mutual Fund
  - Govt. securities
  - Rights / Interest in securities



Securities Include: Derivatives }  
Forward } But, GST leviable if  
Futures } settled by delivery

## \* Actionable Claim:

means a claim to any debt (other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant) which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.



• Specified Actionable Claim [sec 2(102A)]: means the actionable claim involved in or by way of -

- (i) Betting
- (ii) Casinos
- (iii) Gambling
- (iv) Horse Racing
- (v) Lottery
- (vi) Online Money Gaming

• Sec 2(102) : Services

Means - anything  
Other than - Goods,  
money & securities

But includes: activities relating to the use of money or conversion by cash or by any other mode from one form, currency or denomination to another form, currency or denomination for which separate consideration charged.

\* Services include facilitating transactions in securities.

• Related Person: (SoFa COPEs)



So Sole Agent / Sole Distributor

Fa Family → Spouse / Children - Always  
→ Parents / Grand Parents / Brother / Sister - If dependent

C Control (2 entities controlled by same person)

O Officer / Director in one another's business

P Legally recognised Partners

E Employer and employee

S Shares  $\geq 25\%$  (including third person holding in both of them)

• Associate Enterprises shall have same meaning as assigned to it in sec 92A of Income Tax Act, 1961.

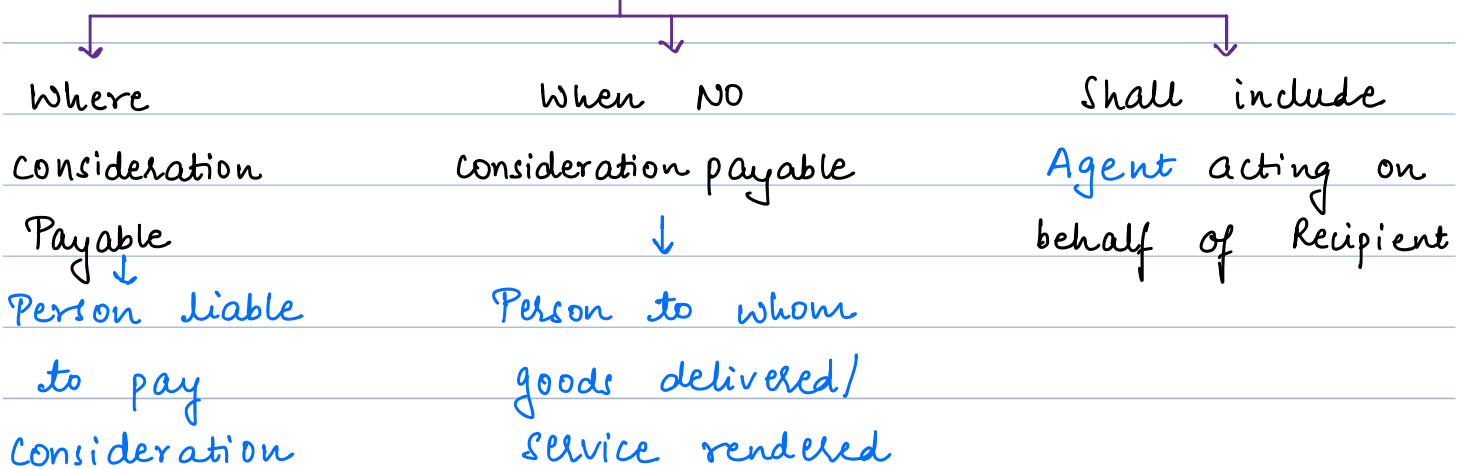
• Business →



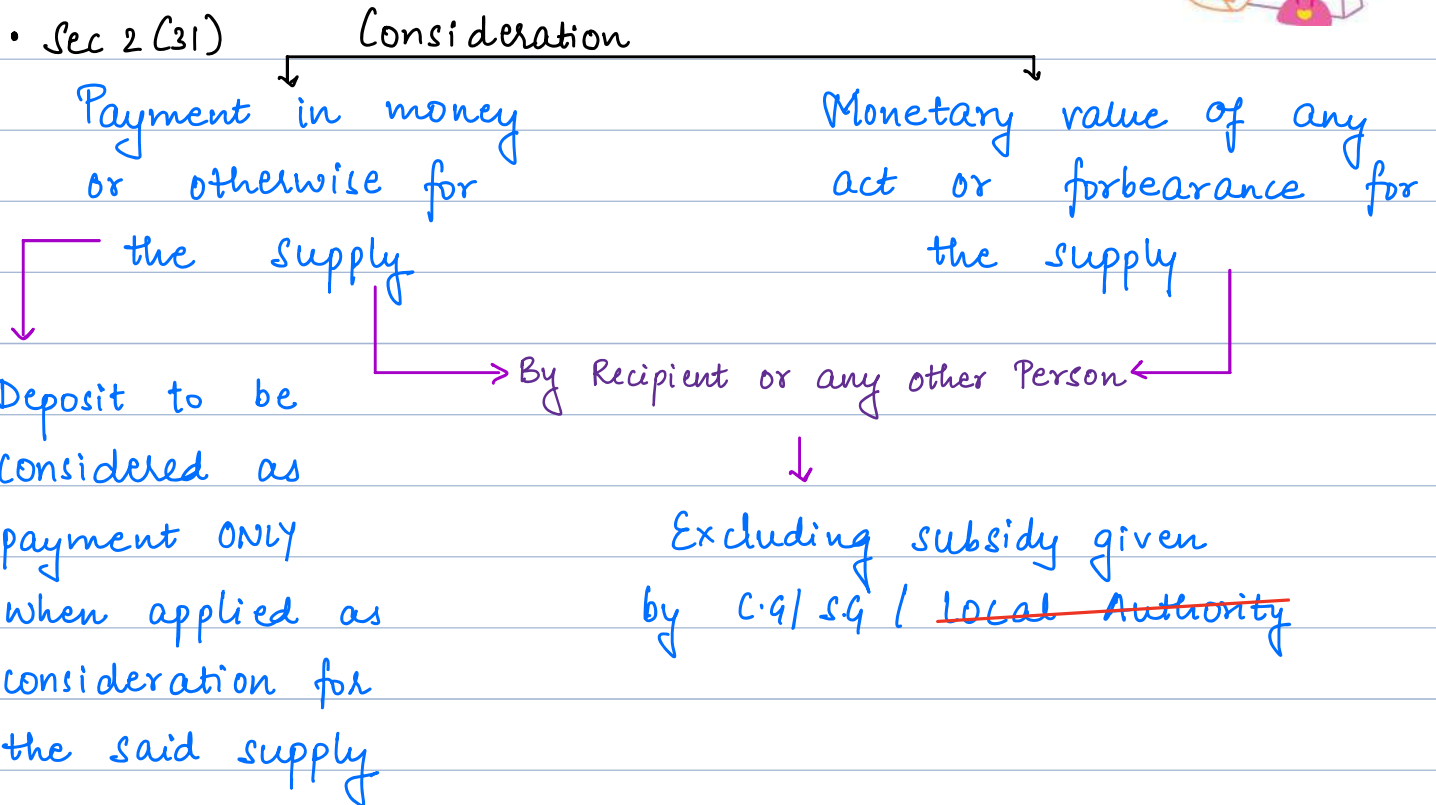
\* Frequency, Volume, Continuity, regularity is NOT a pre-requisite

• Supplier: in relation to any goods / services / both shall mean the person supplying the said goods / services / both and shall include an agent acting on behalf of such supplier in relation to the goods / services / both supplied. Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be supplier of such actionable claims, whether such actionable claims are supplied by / through him and whether consideration in money or money's worth or virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay tax in relation to the supply of such actionable claims.

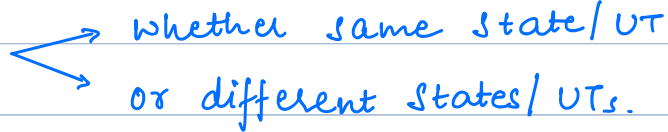
• Recipient of supply of G/S/B means :



\* Any reference to a person to whom a supply is made shall be construed as a reference made to recipient of supply.



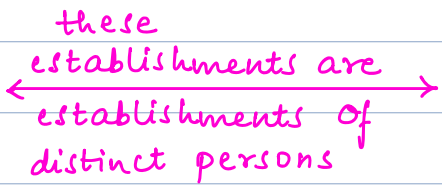
• Sec 25 Distinct Persons :

Separate Registration  
(same PAN) 

Eg: ① Stock transfer from Ahmedabad to Surat Branch under same Registration — NOT Distinct Person

② If Surat and Ahmedabad were separately registered (even though same State) — Distinct person

• Establishments of Distinct Persons :

One registered establishment in a State/UT  Another establishment in diff. State/UT (not necessarily Registered)

Eg: A Registered Restaurant in Surat and an unregistered liquor shop in Goa.

• Export of Goods: Taking goods out of India to a place outside India.

• Export of services:

(i) LOS - In India (ii) LOR - o/s India (iii) POS - o/s India

(iv) Payment received by supplier in convertible Forex/ INR wherever permitted.\*

(v) Supplier & Recipient are not mere establishment of Distinct Person.

\* If export proceeds are paid in INR from special Rupee Vostro A/c of correspondent bank(s) of the partner trading country, opened by AD Banks, the same shall be considered to fulfill the conditions of clause (iv) (subject to FTP & RBI circulars)

- Online Gaming [sec 2(80A)] : means offering of a game on the internet or an electronic network and includes online money gaming.
- Online money gaming [sec 2(80B)] : means online gaming in which players pay/deposit money or money's worth, including virtual digital assets in the expectation of winning money/money's worth/VDA, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.
- Goods Transport Agency - means any person who provides service in relation to transport of goods by road and issues a consignment note by whatever name called, but does not include ECO (electronic commerce operator) by/through whom services of local delivery are provided.

# Supply under GST

## Sec 7: Scope of Supply

Sec 7(c): Supply includes

### If for a consideration

7(c)(a) All forms of supply of Goods/ services/ both such as sale, transfer, barter, exchange, licence, rental, lease or disposal - made or agreed to be made by a person - in the course or furtherance of business.

7(c)(b) Importation of services  
- Business OR  
- Personal purpose

### 7(c)(aa) Activity / Transaction

BY → TO  
Person its  
Other than members/  
individual) constituents

FOR: Cash, Deferred Payment or other valuable consideration

Expl<sup>n</sup>: Person and its constituents treated as separate persons.

### Without Consideration

7(c)(c) Activities specified in Schedule I

1) Permanent Transfer/ disposal of business Asset (ITC must be availed on such business Asset)

Eg: Holding Co. Asset transf. for Nil consider<sup>n</sup>. → Subsidiary Co.

2) Supply between related/ distinct person; only if business purpose

Eg: Stock transfer between branches  
Exception: Employer → Employee gifts upto ₹ 50,000

3) Goods transferred between Principal and Agent  
(Only goods, not services)

4) Import of services from related person/ own establishment in course or furtherance of business

\* Sale: Transfer of ownership of or title to property from one person to another for a price Eg: A shopkeeper selling a pen ₹ 20 to the buyer. This is sale transaction, after sale seller has no right on the pen.

\* Transfer: Pass possession or control Eg: Company transferring goods from factory to depot, for the purpose of sale. Sale has not taken place yet.

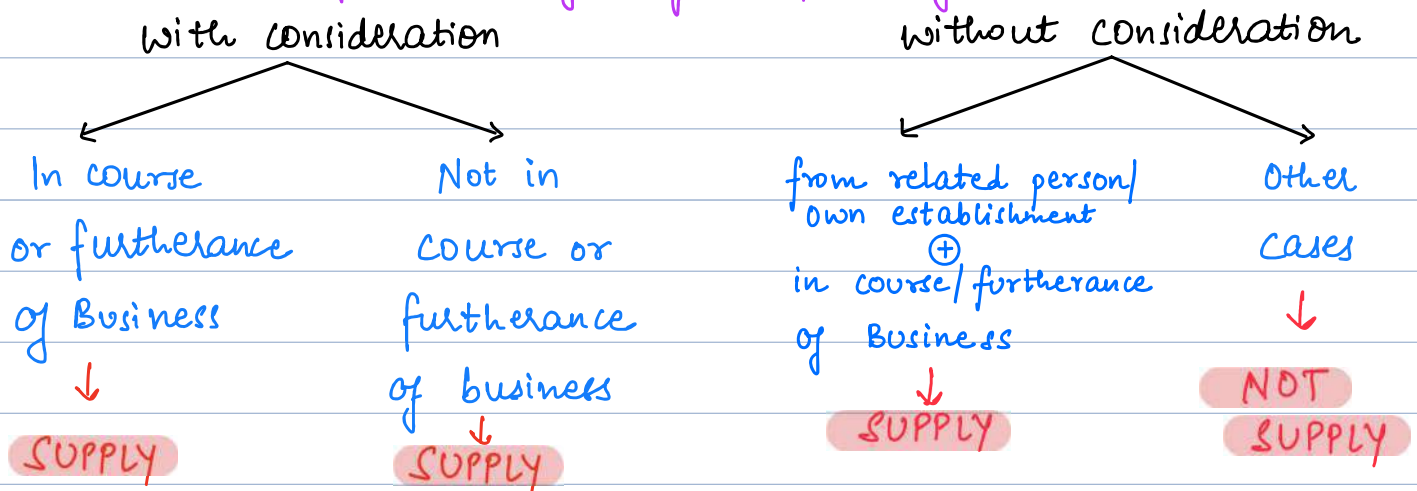
\* Barter: Goods/services for goods/services Eg: Doctor providing medical consultancy to a barber for haircut in return.

\* Exchange: (Goods/services + Money) for (Goods/services OR Goods/services + Money)

Eg: New car worth ₹ 10,00,000 sold in exchange of ₹ 700,000 and an old car.

\* Licence: Permission granted by competent authority to engage in a business/occupation/activity.

\* Clarification regarding Import of Services: ~~[Goods]~~



**Examples:** (i) Interior Design service received for residential house from Japan for ₹ 10,000 - Supply u/s 7(1)(b)

(ii) Legal service taken for office from USA for \$ 100 - Supply u/s 7(1)(b)

(iii) Kriti obtained consultancy service from her son staying in Germany for her office purpose without consideration - Supply u/s 7(1)(c)

(iv) Capture Digital Studio donated its old camera to charity (ITC was taken on such camera) - Supply u/s 7(1)(c)

(v) Latika gifted an old car [ITC blocked u/s 17(5)] which was used for business purpose to her friend - NO SUPPLY

(vi) Richie Rich Pvt. Ltd. sold old car for ₹ 5 lakh - Supply u/s 7(1)(a)

(vii) Priyanka gifted an outfit worth ₹ 60,000 to her husband Nick - NO SUPPLY (related person but no business purpose)

## Sec 7(1A): Supply of Goods or Services (Schedule II)

1) Transfer

- Title in goods - Goods
- Right/undivided share in goods without transfer of title - Services
- Title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration Eg: Hire purchase, Sale on Return Basis - Goods

2) Land & Building → Lease, tenancy, easement, licence, letting out - Services

3) Treatment/Process applied on another person's goods - Services  
Eg: Job work

- 4) Transfer of Business Assets
- Permanent Transfer/ disposal - Goods
  - Temporary transfer for use - Services
  - Deemed transfer when person ceases to be taxable person - Goods
  - Exception: (i) Transfer as going concern  
(ii) Business carried on by representative who is deemed to be taxable person.

- 5) (a) Renting of immovable property - Services  
 (b) Construction of complex, building, civil structure - Services  
 consideration should be received before:

- issuance of completion certificate
  - first occupation
- ↑ w.e. is earlier

\* Here "before" word is important as "after" would be treated as sale of land/ bldg which is outside scope of GST.

- (c) Temporary transfer or permitting use or enjoyment of intellectual property right - Services  
 (d) Development, Design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software - Services  
 (e) Agreeing to obligation to refrain from an act or to tolerate an act or situation or to do an act Eg: Non compete agreements, Late delivery charges, Notice pay recovered from employee for leaving job before agreed period. - Services  
 (f) Transfer of Right to use any goods for any purpose for consideration - Services

6) Composite Supplies  $\left\{ \begin{array}{l} \rightarrow \text{works contract} \\ \rightarrow \text{Restaurant} \end{array} \right\}$  Services

Sec 7(3) Govt. may, on recommendation of council, notify transactions to be treated as  
Supply of goods & not supply of services OR Supply of services & not supply of goods

Sec 7(2) Supply Excludes

7(2)(a) Negative list (Schedule III) [FB CHANGES]

- F Services of funeral, mortuary, Burial, crematorium (including transportation of deceased)
- B Bond to Bond Transfer - Supply of warehoused goods to any person before clearance for home consumption
- C Apportionment of co-insurance premium by the lead insurer to the co-insurer for jointly supplied insurance services in co-insurance agreements, subject to condition that lead insurer pays C/S/U/IGST on entire premium paid by insured
- C Services by insurer to re-insurer, for which ceding commission or re-insurance commission is deducted from re-insurance premium paid by insurer to reinsurer, subject to condition that C/S/U/IGST paid by reinsurer on gross reinsurance premium payable by insurer to reinsurer, inclusive of said ceding commission or re-insurance commission.
- C Services by any Court/Tribunal established under any law for time being in force.

\* Any amount/fees charged by consumer disputes Redressal Commission not leviable to GST as it is deemed as Tribunal.

H High sea sale - Supply of goods by consignee to any other person after goods have been dispatched from port of origin located outside India but before clearance for home consumption.

A Actionable Claims, other than specified actionable claims.

[Lottery, Betting, Gambling, Horse Racing, Online Money Gaming, Casino]

N Supply of goods from Non-Taxable Territory to another Non-taxable Territory without such goods entering into India.

Govt. • Functions performed by Members of Parliament, State legislature, Panchayat, Municipality, local authorities  
• Duties performed by constitution post holders  
• Duties performed by any person as Chairperson/ Member/ Director in a body established by CG/SA/LA (not deemed to be employee)

E Services by employee to employer in course or relation to employment (includes premature termination compensation, wages to casual workers)

\* Does not include services provided outside ambit of employment i.e. principal-to-principal basis.

S Sale of Land/Building (subject to Sch. II)

S Supply of goods warehoused in SEZ or in a Free Trade warehousing zone to any person before clearance for exports or to the Domestic Tariff Area

7(2)(b) Govt. may notify on recom. of council, certain activities undertaken by CG/SG/LA as neither supply of goods nor services

Two Activities notified upto now

- Activities in article 243G (Panchayat) & 243W (Municipality)
- Grant of Alcoholic liquor licence by State Govt.

### \* Clarifications & Circulars:

① Donations received by charitable institutions from individual donors without quid pro quo i.e. nothing is to be done by donee in return

GST not leviable when following 3 cumulative conditions satisfied

Gift/donation is made to charitable organization

Payment has the character of gift or donation

Purpose is philanthropic and not advertisement (No commercial gain)

\* Merely displaying name plate for gratitude is no consideration  $\therefore$  NO GST.

② Art works sent by artists to galleries for exhibition NOT a supply as no consideration flows from gallery to artists. Actual supply takes place when buyer selects the art work at exhibition.

③ Clarity on course or furtherance of business :

GST is essentially a tax on commercial transactions

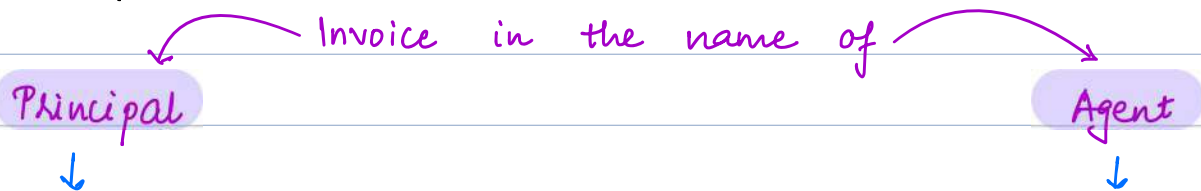
- Selling personal car after use — NOT SUPPLY
- Selling old jewellery after use — NOT SUPPLY
- A famous actor paints paintings & sells them and donates the earnings to a trust - SUPPLY (Donating will have no impact)

④ Perquisites by employer to employee:

Services by an employee to employer in course of or in relation to employment is outside the scope of GST.

Any facility/perquisite/payment provided in terms of contract between employer-employee and is part & parcel of cost-to-company c2c shall not be leviable to GST.

⑤ Principal-Agent (Para 3 - Schedule I)

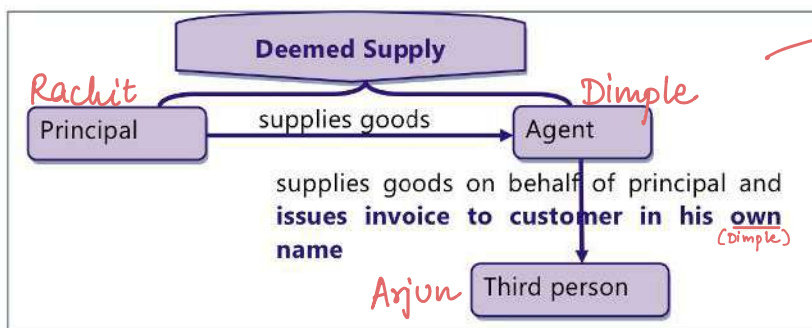


No Agent

∴ Normal provisions to apply

Agent covered under Sch. I.

∴ Supply of goods (not services) without consideration treated as supply



→ Eg: Miss Dimple sold goods to Mr. Arjun on behalf of Mr. Rachit by issuing invoice in own name. Supply b/w Dimple & Rachit covered under Sch I.



Invoice of Original Supply in whose name?

Principal

Agent

Loan given by Agent is an independent supply and thus outside purview of GST

Interest on loan will form part of value of original goods supplied and not considered as a separate supply.

⑦ Sale Promotion:

- Free samples & gifts - NO consideration, no supply (Except Sch. I)
- Buy one get one free offer - This is not without consideration as two or more goods supplied at single price. (Apply provisions of Composite & Mixed Supply)

⑧ Tenancy Rights: Transfer of tenancy rights against consideration (i.e. Tenancy Premium) shall be treated as supply of service.

⑨ Clarification regarding Distinct Persons:

Same PAN, Separate Registration - Distinct Person ✓

If two establishments in same state under same registration, they are not treated as Distinct Persons.

Eg: Pune Factory stock transfer → Mumbai Shop } Both in Maharashtra

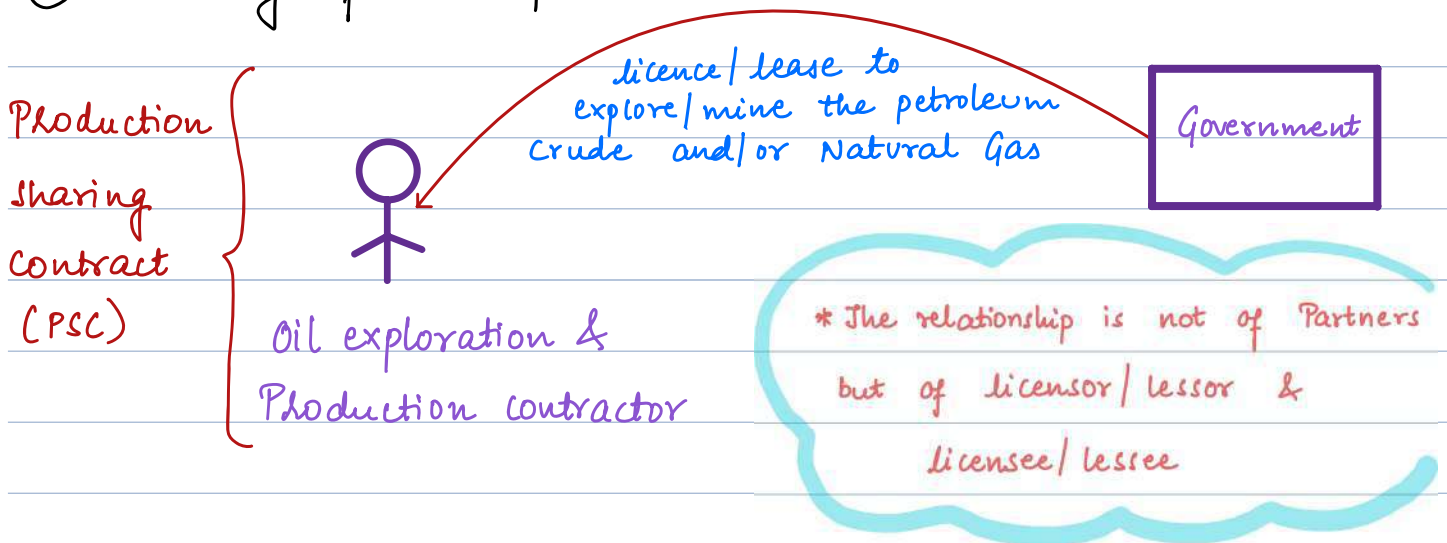
• But if both are separately registered - Deemed Supply

• SEZ unit is always a distinct person even if in same state

(10) Moulds/Dies owned by Original Equipment manufacturer [OEM]  $\xrightarrow[\text{cost to}]{\text{sent free of}}$  Component Manufacturer

This is not a supply as no consideration charged and both are not related/distinct person also.

(11) Taxability of cost petroleum:



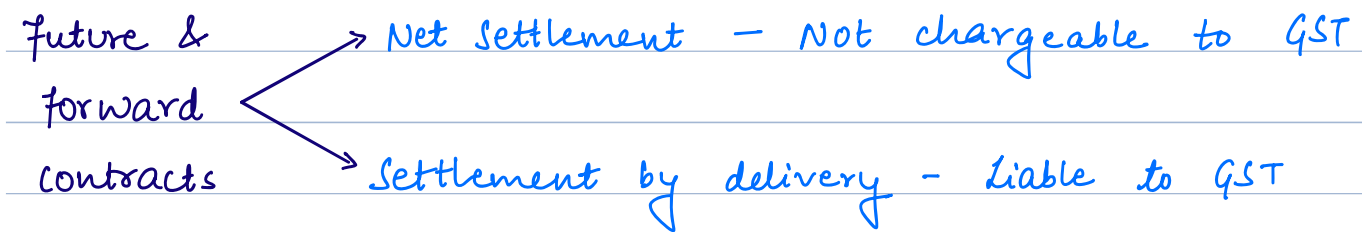
\* The value of petroleum which contractor is entitled to take in a year for recovery of contract costs is called "Cost Petroleum". It is not a consideration received and hence not taxable per se. It is not a service to Govt.

\* Total value of petroleum produced & saved from contract area  $(-)$  Cost Petroleum = Profit Petroleum

Govt's share of profit petroleum is exempt from GST

## (12) Financial Transactions:

- Definition of goods and services exclude money and securities. But, GST would be levied on service charges charged for transactions in money. Eg: Issuance charge for letter of credit, charges for making drafts, etc.



### \* Lending of securities under security lending scheme:

- lending is not disposal of securities  
∴ lending fees paid by borrower to lender is a consideration and taxable under GST.
- Commission charged by approved intermediaries is also taxable under GST.



### \* Priority sector lending Certificate [PSLC]:

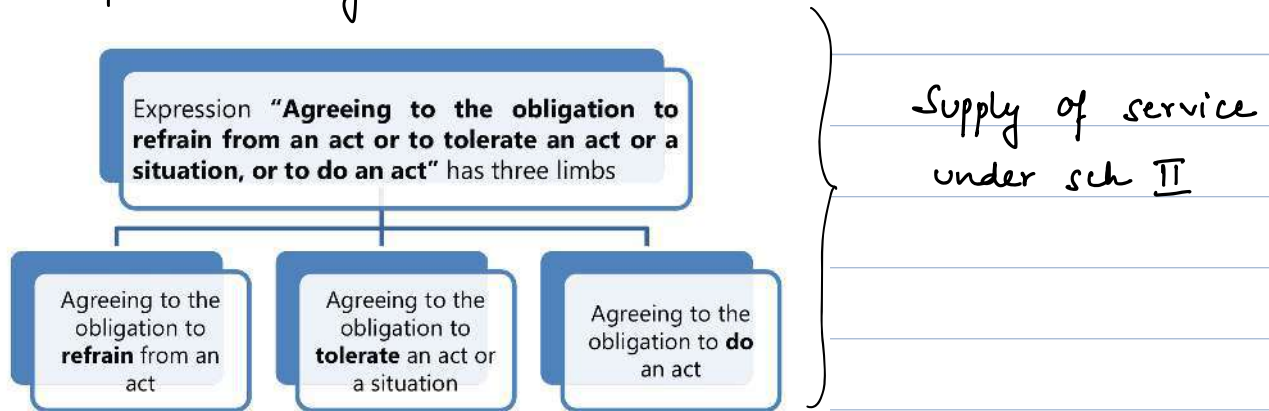
- PSLCs are goods, not services
- Taxable @ 12%, always interstate - IGST
- GST Payable by recipient under RCM.

## (13) Joint Venture: Cash call (i.e. Capital Contribution) by members to J.V. is a mere transaction in money.

∴ Not Taxable

If contribution is given to operating member who uses its own machinery, it is providing services to J.V. & other members for contribution.  $\therefore$  Taxable Supply

(14) Clarification regarding liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law:



Eg: Non-Compete agreements, even after having permission builder not building more floors against compensation from neighbours

Eg: Shopkeeper allowing Hawker to operate for a monthly payment, Society tolerating loud speakers for compensation

Industry agrees to install zero emission equip (no legal requirement) against a sum paid by neighbours

There should be Contract (Express/Implied) + consideration

\* Taxability of some transactions in this regard:

(A) Liquidity Damages: Compensation payable to aggrieved party for breach of contract.

- Where amount is paid only to compensate for injury, loss or damage suffered by aggrieved party, there is no agreement by aggrieved and hence not taxable.

Eg: i) Damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright

2) Penalty stipulated in a contract for delayed construction of houses.

3) Forfeiture of earnest money by a seller in case of breach of an "agreement to sell" an immovable property by the buyer or by Govt. or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources.

\* Penal Charges levied by Regulated Entities (Bank/NBFC) as per RBI directions for non-compliance with loan terms are in nature of liquidated damages -  $\therefore$  NO GST

These penal charges are levied in place of penal interest. (Not applicable to credit cards, ECB, trade credits, structured obligation - covered under product specific directions)

On the contrary, consider the following examples: [Supply Taxable @ principal Rate]

(1) A contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty.

(2) A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up.

(3) A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer.

(4) A contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty.

(5) Some banks similarly charge pre-payment penalty if the borrower wishes to repay the loan before the maturity of the loan period.

(B) Cheque Dishonor fine/ Penalty:

Not taxable, no contract (∵ Supplier wants to receive payment, there is no implied/express willingness of supplier)

(C) Penalty imposed for violation of laws: Not taxable

Eg: Traffic/ Pollution violation

(D) Forfeiture of salary or payment of bond amount in the event of employee leaving employment before minimum agreed period:

Not taxable, (∵ imposed to discourage non-serious employees & also the employee does not get anything in return against payment of such amount)

(E) Late Payment surcharge/ fees charged by the supplier: Taxable @ same rate as of Principal supply Eg: late payment fees for water bill.

(F) Fixed Charges for power:

Minimum amount payable even if '0' units electricity consumed. Not taxable as electricity is exempt from GST.

(13) Clarification regarding applicability of GST on sale of land after levelling, laying down of drainage lines, etc. - Land may be sold either as it is or after some development, it is covered by Sch. III

and accordingly does not attract GST.

However, it may be noted that any service provided for development of land like levelling, laying of drainage pipes, etc. shall attract GST at applicable rate for such service.

⑩ Interstate movement of various modes of conveyance between distinct persons including Trains, Buses, Trucks, Tankers, Trailers, Vessels, Containers, Aircrafts -

a) Carrying passengers/goods/both OR

b) for repairs and maintenance

(Except in cases where such movement is for further supply of the same conveyance) shall be neither treated as supply of goods nor services. ∴ No GST However, applicable CGST/SGST/IGST as the case may be shall be leviable on repairs and maintenance done for such conveyance.

\* Above circular mutatis mutandis apply to inter state movement of rigs, tools, spares and all goods on wheels (like cranes)

⑪ Taxability of share capital held in subsidiary company by the parent company:

The activity of holding shares of subsidiary company by holding company cannot be treated as supply of service and cannot be taxed under GST as securities are neither goods nor services.

## ⑱ Taxability of personal guarantee by Director

(i) Personal Guarantee provided by Director of a Company to Bank/ FI for sanctioning of credit facilities to said company without any consideration



Treated as supply of service as per schedule I since director and company are related persons.

But as per RBI guidelines directors cannot charge any remuneration for providing such guarantee and hence value of such supply will be treated as ZERO and therefore no tax payable.

(ii) However if director is no longer connected with management but guarantee still continues



Remuneration/ consideration charged for providing such guarantee directly or indirectly shall be value of supply

⑲ Taxability of Employee Stock Option Plan (ESOP)/ Employee Stock Purchase Plan (ESPP) / Restricted Stock Unit (RSU) provided by foreign holding company to employees of Indian subsidiary company where cost of such shares reimbursed by domestic subsidiary company.

• If reimbursed on actual cost-to-cost basis: no supply as "securities" are neither goods nor services.

• If additional amount over and above the cost of shares/ securities is charged by foreign holding co. from domestic

subsidiary co. - GST would be leviable on RCM basis for supply of facilitating/arranging transaction in shares/securities.

②① Taxability of salvage/wreck value earmarked in claim assessment of damage caused to motor vehicle:

If value of salvage/wreckage is deducted from the claim amount paid to the insured, the salvage remains property of insured

∴ Insurance co. not liable to discharge GST on same.

If full amount of claim is paid, without deducting value of salvage/wreckage, the salvage becomes property of insurance company

∴ Insurance co. obligated to discharge GST on supply of salvage to salvage buyer.

②② Replacement of Goods/Repair services during warranty period:

SCENARIO 1: Original Equipment manufacturer replaces goods or provides repair services to customer without any consideration - NO GST payable as the original supply would have included the likely cost of repair already & GST would have paid at the original TOS. (No ITC to be reversed by supplier)

However, if any additional consideration charged - GST would be payable on such additional Amt.

## SCENARIO 2: Distributor provides warranty replacement/Repair services to customer on behalf of Manufacturer

(A) No consideration charged by distributor from customer then no GST payable. (No ITC Reversal to be done by distributor)

• If any additional consideration charged - GST payable on such additional Amt.

(B) Distributor replaces goods from own stock or by purchasing from third party & then raises invoice on manufacturer charging consideration - GST payable

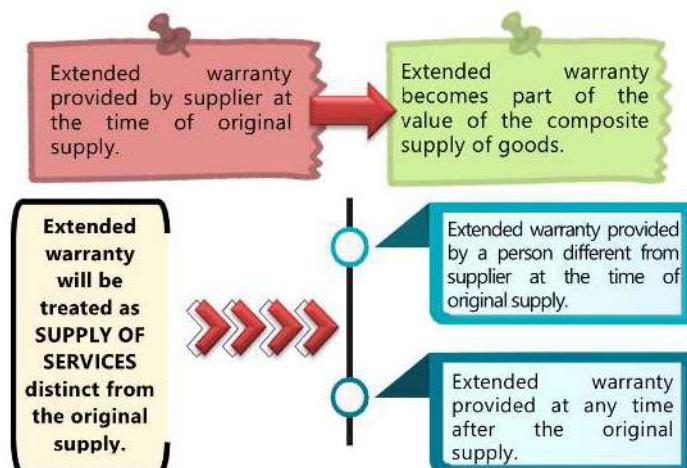
• Manufacturer provides goods to distributor, without charging any consideration, for the purpose of replacement - NO GST payable (No ITC Reversal to be done by Manufacturer)

• Distributor replaces the goods out of supply already received from manufacturer & manufacturer issues credit note - Tax liability may be adjusted by manufacturer subject to reversal of ITC availed.

(C) Distributor provides repair services on behalf of manufacturer & then charges the manufacturer for such repair by issuing tax invoice/Debit Note - GST would be payable.

## SCENARIO 3:

### Extended warranty



## ② Treatment of vouchers:

- Prepaid vouchers which are Recognized by RBI as medium of transaction  $\therefore$  It falls within scope of "Money".
- Other vouchers - Creates obligation on supplier to receive it as consideration against certain G/s -  $\therefore$  It can be considered as Actionable Claim (sch III)

Therefore, transactions in voucher - No supply of G/s/B.

However underlying G/s/B may be taxable.

- Distribution of vouchers through distributors/sub distributors/Agents

When distributed on  
Principal to Principal Basis



Pure trading of vouchers  
not leviable to GST.

When distributed on  
Commission/fees basis



GST payable on commission/fees  
as supply of service to voucher  
issuer

- Any service fee/affiliate charge or other amount for supply of additional services to voucher issuer - liable to GST
- No GST payable on any unredeemed voucher (breakage) as there is no supply of G/s/B.

## \* Supply leviable to GST (Two conditions)

Supply must be made  
by taxable person

Supply must be a  
taxable supply

(Recipient may be taxable/non taxable)

- Supply between 2 non-taxable person - NO GST

## Composite and Mixed Supply

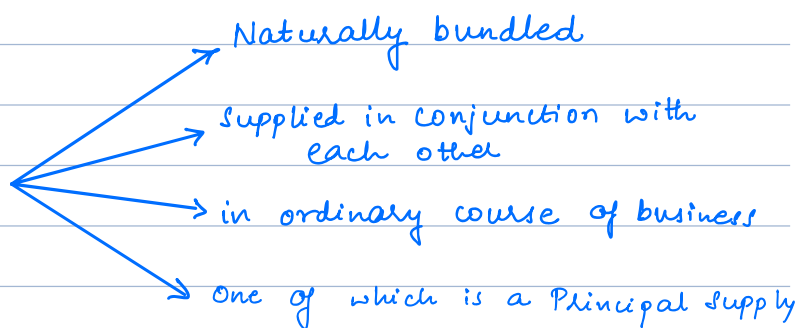
- When goods or services are supplied in combination, each individual component may attract a different rate of tax, creating challenges for decision of rate of tax.
- GST law identifies composite and mixed supplies and provides certainty in respect of tax treatment.

### Sec 8(a) Composite Supply

Supply made by taxable person to recipient



Comprising two or more taxable supplies of G/S/B or any combination thereof



Treated as supply of **Principal supply** & taxed @ applicable to Principal supply

\* **Principal Supply**: means supply of G/S which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

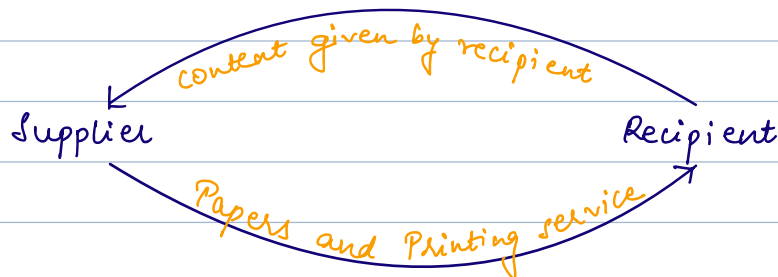
\* How to determine whether bundled in ordinary course of business?

- Large number of customers/ recipients have such perception
- Majority suppliers provide similar bundle
- Nature is such that incidental service helps in better enjoyment of main services
- Other indicators like elements normally advertised as package, not available separately, etc.

- Examples:
- i) Television set with mandatory warranty
  - ii) Travel tickets with food service on board
  - iii) Stay in hotel with breakfast
  - iv) A laptop (taxed @ 18%) worth ₹ 50,000 supplied with laptop bag (taxed @ 28%) worth ₹ 3000. As laptop is principal supply and both are naturally bundled, entire ₹ 53000 will be charged @ 18%.

### \* Clarifications:

#### ① Printing Services:



##### CASE 1

Books, pamphlets, reports, brochures, etc. where content is principal



Supply of service

##### CASE 2

Envelopes, logos, tissues, etc. where logo/design is ancillary to supply of physical inputs



Supply of Goods

② Activity of Bus body building - Determined on the basis of facts and circumstances of each case.

#### ③ Retreading of Tyres

Tyre belongs to recipient



Supply of service

Tyre belongs to Supplier



Supply of Goods

#### ④ Supply of food/beverages in cinema hall

If food/beverages are supplied by way of / as a part of service AND supplied independent of cinema exhibition service



It is taxable as "Restaurant service" independently.

Where the sale of cinema ticket and supply of food/beverages are clubbed together, then

such bundled supply is composite supply chargeable @ of exhibition of cinema service.

*"Restaurant Service" means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied."*

#### ⑤ Applicability of GST on supply of electricity by real estate companies, malls, airport operators, from lessees/occupants

Whenever electricity is bundled with renting of immovable property and/or maintenance of premises



It is composite supply, even if electricity is billed separately, GST Rate as on renting of immovable property/  
Maintenance shall be applicable

Where electricity is supplied by real estate owners/developers, Resident welfare associations as pure agents - charging on actual basis as the same amount charged by Electricity board/ DISCOMS



It will not form part of value of supply.

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