

## SUPPLY UNDER GST

## Topic Referencer

- ☑ Definitions
- ☑ Scope of Supply
- ☑ Supply with Consideration in Course/ Furtherance of Business
- ☑ Import of services with Consideration whether or not in Course/ Furtherance of Business
- ☑ Supply without Consideration
- ☑ Activities or Transactions treated as Supply of Goods or Supply of Services
- ☑ Activities Neither Supply of Goods Nor Supply of Services
- ☑ Taxability of Composite Supply and Mixed Supply

## DEFINITIONS

## 1. With reference to CGST Act, 2017 define the following :

- |                                    |          |                    |                     |
|------------------------------------|----------|--------------------|---------------------|
| ⇒ Goods                            | ⇒ Person | ⇒ Taxable supply   | ⇒ Taxable territory |
| ⇒ Non-taxable territory            | ⇒ India  | ⇒ Manufacture      | ⇒ Supplier          |
| ⇒ Recipient (5 Marks, May 2018-NS) | ⇒ Money  | ⇒ Actionable claim | ⇒ Services          |

Ans: The relevant definitions are discussed as under –

Term	Definition
<b>Goods</b>	<p><b>Means</b> every kind of movable property –</p> <ul style="list-style-type: none"> <li>➤ other than – <ul style="list-style-type: none"> <li>- money, and</li> <li>- securities</li> </ul> </li> <li>➤ but <b>includes</b> – <ul style="list-style-type: none"> <li>- actionable claim,</li> <li>- growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Section 2(52)]</li> </ul> </li> </ul>
<b>Person</b>	<p><b>Includes</b> –</p> <ul style="list-style-type: none"> <li>(a) an individual;</li> <li>(b) a Hindu undivided family;</li> <li>(c) a company;</li> <li>(d) a firm;</li> <li>(e) a Limited Liability Partnership;</li> <li>(f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;</li> <li>(g) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in Section 2(45) of the Companies Act, 2013;</li> <li>(h) any body corporate incorporated by or under the laws of a country outside India;</li> <li>(i) a co-operative society registered under any law relating to cooperative societies;</li> <li>(j) a local authority;</li> <li>(k) Central or State Government</li> <li>(l) society as defined under the Societies Registration Act, 1860;</li> <li>(m) trust; and</li> <li>(n) every artificial juridical person, not falling within any of the above. [Section 2(84)]</li> </ul>

<b>Taxable supply</b>	<b>Means</b> a supply of goods or services or both which is leviable to tax under this Act. <b>[Section 2(108)]</b>
<b>Taxable territory</b>	<b>Means</b> the territory to which the provisions of this Act apply. <b>[Section 2(109)]</b> CGST Act, 2017 extends to the whole of India including the State of Jammu and Kashmir.
<b>Non-taxable territory</b>	<b>Means</b> the territory which is outside the taxable territory. <b>[Section 2(79)]</b>
<b>India</b>	<b>Means –</b> <ul style="list-style-type: none"> <li>➤ the territory of India as referred to in Article 1 of the Constitution,</li> <li>➤ its territorial waters,</li> <li>➤ seabed and sub-soil underlying such waters,</li> <li>➤ continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and</li> <li>➤ the air space above its territory and territorial waters. <b>[Section 2(56)]</b></li> </ul>
<b>Manufacture</b>	<b>Means</b> processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term “manufacturer” shall be construed accordingly. <b>[Section 2(72)]</b>
<b>Supplier</b>	In relation to any goods or services or both, shall mean – <ul style="list-style-type: none"> <li>➤ the person supplying the said goods or services or both and shall include</li> <li>➤ an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied. <b>[Section 2(105)]</b></li> </ul>
<b>Recipient</b>	Of supply of goods or services or both, <b>means –</b> <ol style="list-style-type: none"> <li>(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;</li> <li>(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and</li> <li>(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,</li> </ol> and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied. <b>[Section 2(93)]</b>
<b>Money</b>	<b>Means</b> the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value. <b>[Section 2(75)]</b>
<b>Actionable claim</b>	Shall have the meaning assigned to it in Section 3 of the Transfer of Property Act, 1882. <b>[Sec. 2(1)]</b> According to Section 3 of Transfer of Property Act, 1882, 'Actionable claim' means a claim to – <ol style="list-style-type: none"> <li>(i) any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property; or</li> <li>(ii) any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.</li> </ol> <b>Examples</b> of actionable claims are – <ol style="list-style-type: none"> <li>(a) Unsecured debts;</li> <li>(b) Right to participate in the draw to be held in a lottery.</li> </ol> <b>It must be noted that 'Actionable Claim' is specifically included in the definition of Goods. Transactions of Actionable claims, other than lottery, betting and gambling shall be treated neither as a supply of goods nor a supply of services as per Para 6 of Schedule III of CGST Act, 2017.</b>

Services	<p>Means anything –</p> <ul style="list-style-type: none"> <li>➤ other than –             <ul style="list-style-type: none"> <li>- goods,</li> <li>- money, and</li> <li>- securities</li> </ul> </li> <li>➤ but includes activities relating to –             <ul style="list-style-type: none"> <li>(a) the use of money, or</li> <li>(b) its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination</li> </ul> </li> </ul> <p>for which a separate consideration is charged. [Section 2(102)]</p> <p><b>Explanation :</b> For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities.</p>
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**SCOPE OF SUPPLY**

**2. What is taxable event in GST.**

**Ans:** Taxable Event is that event, which on its occurrence, creates or attracts the liability to tax. Under earlier system of taxation, there was a lot of litigation relating to taxable event like whether a particular process amounted to manufacture or not, whether the sale was pre-determined sale, whether a particular transaction was a sale of goods or rendering of services etc. The GST laws resolve these issues by laying down one comprehensive **taxable event i.e. : "Supply" - Supply of goods or services or both.**

Thus, there is departure from the historically understood concepts of 'taxable event' under the State VAT Laws, Excise Laws and Service Tax Laws *i.e.* sale, manufacture and service respectively.

In the GST regime, the entire value of supply of goods and /or services is taxed in an integrated manner, unlike the earlier indirect taxes, which were charged independently either on the manufacture or sale of goods, or on the provisions of services.

**3. Explain the meaning of supply as per provisions of Section 7(1) of Central Goods and Service Tax Act, 2017. (5 Marks, Nov. 2018)**

**Ans: Scope of supply [Section 7] :**

(1) Supply includes –

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a **consideration** by a **person** in the **course or furtherance of business**,

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

It is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another. [Explanation]

(b) **import of services** for a consideration **whether or not in the course or furtherance of business**; and

(c) the **activities** specified in **Schedule I**, made or agreed to be made **without a consideration**.

(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of Section 7(1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in Section 7(1),-

(a) activities or transactions specified in **Schedule III**; or

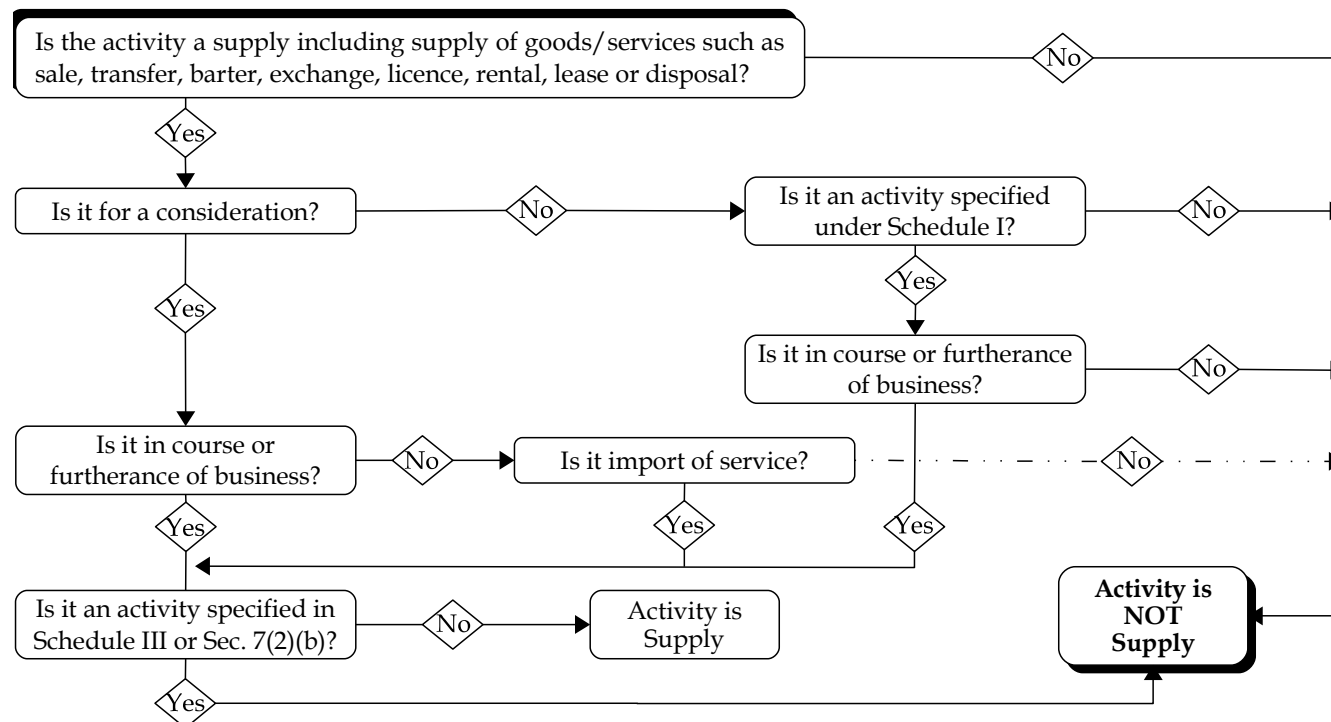
(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

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

- (3) Subject to the provisions of Section 7(1), 7(1A) and 7(2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as –
- a supply of goods and not as a supply of services; or
  - a supply of services and not as a supply of goods.

Provisions of scope of supply under CGST Act have also been made applicable to IGST Act *vide* Section 20 of the IGST Act.

**Diagram to determine whether an activity undertaken is Supply or not.**



**ANALYSIS OF SCOPE OF SUPPLY :**

**General Analysis :** The scope of supply is defined in Section 7 of the CGST Act in an inclusive manner. The modes of supply mentioned in Section 7(1)(a) are only illustrative and not exhaustive. This is substantiated by the use of words 'such as' in the definition.

The meaning and scope of supply taxable under GST can be understood in terms of following parameters, which can be adopted to characterize a transaction as supply :

- Supply should be of **goods or services**. Supply of anything other than goods or services like money, securities etc. does not attract GST.
- Supply should be made for a **consideration**.
- Supply should be made **in the course or furtherance of business**.
- Supply should be made by a **taxable person**.
- Supply should be a **taxable supply**.

Thus, the aforesaid parameters (subject to certain exceptions) are to be satisfied in a transaction to treat it as taxable supply.

Some exceptions have been carved out where a transaction is deemed to be a supply even **without consideration**. Similarly, import of services for a consideration, **whether or not in the course or furtherance of business is treated as supply**.

Further, there are also cases **where a transaction is kept out of scope of supply despite the existence of the above parameters**, *i.e.* a list of activities shall be treated as neither supply of goods nor supply of services. Thus, on the said transactions no GST is levied.

Besides, few activities are to be treated either as supply of goods or as supply of services. Government is also empowered to notify transactions that are to be treated as a supply of goods and not as a supply of services, or as a supply of services and not as a supply of goods.

SUPPLY WITH CONSIDERATION IN COURSE/ FURTHERANCE OF BUSINESS

[1] SUPPLY FOR A CONSIDERATION BY A PERSON IN COURSE OR FURTHERANCE OF BUSINESS  
[Section 7(1)(a)] :

- (1) **Inclusive meaning** : The law has provided an inclusive meaning to the word 'supply' which implies that the specific transactions which are listed in the said section are only illustrative. The word "includes" used in the statutory provisions enlarges the scope of supply. Thus, any supply of goods or services would get covered, even if it is not specified in any of the clauses of Section 7(1).
- (2) **Goods or Services** : Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.
- (3) **Generic meaning of 'supply'** : Supply includes all forms of supply of goods or services or both and includes agreeing to supply when **they are for a consideration and in the course or furtherance of business**. It specifically **includes** :

- |            |             |           |             |
|------------|-------------|-----------|-------------|
| ❖ Sale;    | ❖ Transfer; | ❖ Barter; | ❖ Exchange; |
| ❖ License; | ❖ Rental;   | ❖ Lease;  | ❖ Disposal. |

Thus, the forms of supply as contemplated in this first part have two pre-requisites :

- the supply should be for a consideration; and
- in the course or furtherance of business.

Now, we will analyse the various modes of supply mentioned herein :

- **Sale and Transfer** : The dictionary meaning of term 'sale' is the act of selling; specifically: the transfer of ownership of and title to property from one person to another for a price. As per the Sale of Goods Act, 1930, a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.

Further, the term '**transfer**' has been defined in the Black's Law dictionary as to convey or remove from one place, person, etc., to another; pass or hand over from one to another; specifically, to make over the possession or control of.

- **Barter and Exchange** : While barter may deal with a transaction which only includes an exchange of goods/services, exchange may cover a situation where the goods are partly paid for in goods and partly in money.

By making a specific inclusion in the definition of supply, all barters and exchanges would be leviable to GST.

**Example :**

- (i) Buying a new refrigerator in exchange of old refrigerator.
- (ii) A Chartered Accountant supplies accounting and auditing services in consideration of dry cleaning services supplied by dry-cleaner.

- **Licence, Lease, Rental etc.** : The dictionary meaning of the term '**licence**' is a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful.

Black's law dictionary defines **disposal** as the sale, pledge, giving away, use, consumption or any other disposition of a thing.

The dictionary meaning of '**rental**' is an arrangement to rent something, or the amount of money that you pay to rent something and that of 'lease' is to make a legal agreement by which money is paid in order to use land, a building, a vehicle, or a piece of equipment for an agreed period of time.

- Under GST, such licenses, leases and rentals of goods with or without transfer of right to use are covered under the supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule-II of CGST Act.

- (4) **Supply should be for Consideration** : Supply of goods and services for consideration is always taxable.

"**Consideration**" means everything received or recoverable in return for supply of goods or services or both.

It should involve *quid-pro-quo* - viz., there should be something in return which the person supplying will obtain from the recipient (**except in cases of activities specified in Schedule I where it is deemed to be a supply, even if it is made without consideration**).

Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person.

The term consideration has been defined in CGST Act, 2017 as under :

“Consideration” in relation to the supply of goods or services or both includes -

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person **but shall not include** any subsidy given by the Central Government or a State Government;
- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person **but shall not include** any subsidy given by the Central Government or a State Government. [Section 2(31)]

**Deposit not a consideration unless appropriated by Supplier :** However, a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. [Proviso to Section 2(31)]

**The following aspects need to be noted:**

- It refers to the payment received by the supplier in relation to the supply, whether from the recipient or any other person. Therefore, a third party to a contract can also contribute towards consideration;
- Consideration, therefore, is not the amount that the recipient pays but the amount that the supplier collects whether from the recipient or any third party. This would be particularly relevant in dealing with complex arrangements in digital economy and new-age business;
- Consideration can be in the form of money or otherwise. *E.g.:* Under a JDA model, the flats handed by the developer to the landowner will be considered as ‘consideration’ for the development rights given to the developer by the landowner;
- Clause (b) appears to cast the net so wide to leave nothing to escape its grasp. Sufficient to state here that every act or abstinence that is a motivation to induce a person is already consideration and there is no requirement for it to be in monetary form. Transactions that involve negative consideration or abstinence from doing anything are all examples of consideration due to the language in this clause. Consideration can therefore be—increase in cash or other assets, increase in debt or other liabilities or abstinence/ tolerance of any act;
- Deposits, as such, are not liable to tax. However, where such deposits have been applied as consideration for the supply it would tantamount to making of advances and in such cases, will be liable to tax. Merely altering the nomenclature of the payment as ‘deposit’ would not change the nature of the receipt. However, trade practices and the terms, used to play an important role in identifying whether an amount is a ‘deposit’ or an ‘advance’ or any payment as consideration for the supply;
- The suppliers may have to place the deposits in a separate bank account in case of refundable deposits, to comply with this provision. However, whether the amount is refundable or not is not a criterion to determine whether such amount is a ‘deposit’.

<p><i>Circular No. 22/22/2017-GST dated 21-12-2017</i></p>	<p><b>Supply of art work to galleries – Not regarded as supply and not liable to GST :</b> It is further clarified that in case of supply by artists through galleries, there is no consideration flowing from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply.</p> <p><b>On selection by buyer – GST is leviable :</b> It is only when the buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.</p>
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- (5) **Supply should be in the Course or Furtherance of Business :** Section 7(1)(a) provides that supply shall be made for a consideration by a person in the course or furtherance of business.

The scope of term 'business' and 'in the course or furtherance of business' is discussed as under :

- “Business” includes—
  - (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
  - (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
  - (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) activities of a race club including by way of totalisator\*\* or a license to book maker or activities of a licensed book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities. [Section 2(17)]

**Note :** \*\* Totalisator is a computerised device that pools the wagers/bets (after deduction of charges and statutory taxes) of various punters [person who places the bet] and also divides the total wager amount to be distributed to the winning punters.

Thus, business includes any activity/transaction which is incidental or ancillary to any trade, commerce, manufacture, profession, vocation, adventure, wager [bet] or any other similar activity. In addition, any activity undertaken by the Central Govt. or a State Govt. or any local authority in which they are engaged as public authority shall also be construed as business. For any trade, commerce, or any other similar activity to qualify as business, frequency, volume, continuity or regularity of such transaction is not a pre-requisite.

- **In course of or furtherance of business :** For a transaction to qualify as 'supply', it is essential that the same is 'in the course or furtherance of business'. This implies that any supply of goods and / or services by a business entity would be liable to tax, so long as it is in the course or furtherance of business. Thus, any activity undertaken included in the definition of business for furtherance or promoting of a business could constitute a supply under GST law.

Supplies which are not in the course of business (or in furtherance of business) will not qualify as 'supply' for the levy of tax, **except in case of importation of service for consideration, where the service is considered to be a supply whether or not it is made in the course or furtherance of business.** Thus, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of 'business'.

#### Examples :

- Sale of goods in an exhibition, participation in a trade fair, warranty supplies, supply of free samples to induce customers to purchase other goods, sale of used assets, etc. would be in the course of business.
- When an individual who buys a car for personal use and after a year sells it to a car dealer, the transaction will not be supply, because supply is not made by the individual in the course or furtherance of business. Further, no input tax credit was admissible on such car at the time of its acquisition as it was meant for non-business use.
- Nidhi sold her old gold bangles and earrings to 'Tansukh Jewellers'. Sale of old gold jewellery by an individual to a jeweller will not constitute supply as the same cannot be said to be in the course or furtherance of business of the individual.
- Kartik, a famous actor, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust - 'Ramashram'. The sale of paintings by the actor qualifies as supply even though it is a one-time occurrence.
- Royal Turf Race Club is engaged in facilitating the wagering (betting) transactions on horses placed through totalisator. For providing the service of facilitating wagering transactions, Royal Turf Race Club gets commission which is deducted and retained by the club from the total bet value. Said services amount to supply as the activities of a race club are included in business.
- A Resident Welfare Association provides the service of depositing the electricity bills of the residents in lieu of some nominal charges. Provision of service by a club or association or society to its members is treated as supply as this is included in the definition of 'business'.
- Services by way of admission to circus, cinema halls, amusement parks including theme parks, water parks, etc. are considered as supply as these are services by way of admission of persons to any premises for a consideration.

- (6) **Supply should be made by a Taxable Person** : To attract GST, supply has to be made by a taxable person. Hence, a supply between two non-taxable persons does not constitute taxable supply under GST.

The restriction of being a taxable person is only on the supplier whereas the recipient can be either taxable or non-taxable. Further, there is no condition that supply needs to be made to another person, *i.e.* supplies made to self are also taxable.

“**Taxable person**” means a person who is registered or liable to be registered under Section 22 or Section 24. [Section 2(107)]

Hence, even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered, but has taken voluntary registration and got himself registered is also a taxable person.

- (7) **Supply should be Taxable Supply** : For a supply to attract GST, the supply must be taxable. Taxable supply has been broadly defined and means any supply of goods or services or both which, is leviable to tax under the GST Law. Exemptions may be provided to the specified goods or services or to a specified category of persons/ entities making supply.

[2] **ACTIVITIES/ TRANSACTIONS INVOLVING SUPPLY OF GOODS OR SERVICES BY ANY PERSON, OTHER THAN AN INDIVIDUAL, TO ITS MEMBERS/ CONSTITUENTS OR VICE-VERSA [Section 7(1)(aa)] :**

The term ‘supply’ includes the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

It is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions *inter se* shall be deemed to take place from one such person to another. [Explanation]

The intent of the above amendment is to put an end to the ambiguity whether activities/transactions involving supply of goods/services, by any person, other than an individual, to its members or vice-versa fall within the purview of supply or not. The amendment brings in the certainty that said activities/transactions are covered within the scope of supply under GST and ensures the levy of GST on such activities/transactions. Thus, concept of mutuality is not prevalent in GST law.

**IMPORT OF SERVICES WITH CONSIDERATION WHETHER OR NOT  
IN COURSE/ FURTHERANCE OF BUSINESS**

[3] **IMPORT OF SERVICES COVERED IN SCOPE OF SUPPLY [Section 7(1)(b)] :**

The term ‘supply’ includes **import of services for a consideration whether or not in the course or furtherance of business.**

Section 7(1)(b) has the following essential ingredients :

- (a) It is applicable **only for services and not for goods.**
- (b) Services should be provided for a consideration.
- (c) Services may be in course of furtherance of business or not. This implies that import of services even for personal consumption would qualify as ‘supply’ and therefore would be liable to tax.

**Example** : Mr X, a proprietor, has received the architect services for his house in Jaipur from an architect located in London at an agreed consideration of ₹ 10,000. The import of services by Mr X is supply under section 7(1)(b) though it is not in course or furtherance of business.

**SUPPLY WITHOUT CONSIDERATION**

[4] **ACTIVITIES SPECIFIED IN SCHEDULE I, MADE OR AGREED TO BE MADE WITHOUT A CONSIDERATION COVERED IN SCOPE OF SUPPLY [Section 7(1)(c)] :**

**Supply without consideration - Deemed Supply** : This includes all supplies made by a person to a taxable/non-taxable person, **even if the same is without consideration.** The law provides that in certain activities, even though there is no consideration, the same would be treated as ‘supply’. Such activities are listed in **Schedule I.**



As per **Schedule I**, in the following four cases, supplies made without consideration will be treated as supply under Section 7 of the CGST Act :

- (1) **Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.**
- (2) **Supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business.**  
However, gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
- (3) **Supply of goods –**
  - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
  - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
- (4) **Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.**

The same are discussed as under :

- (1) **Permanent transfer or disposal of business assets where ITC has been availed on such Assets :** The word 'transfer' in this clause suggests that there should be another person who would receive the business assets at the other end.

Any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration qualifies as supply. This clause is wide enough to cover transfer of business assets from holding to subsidiary company for nil consideration.

The law requires that such transactions should be treated as supply only when any input tax credit has been availed on the business assets. In view of this condition stipulated, permanent transfer/disposal of following business assets, without consideration, will not be covered within this para and thus will not be deemed as supply:

- Business assets on which ITC is blocked/not available under GST.
- Business assets though eligible for ITC, ITC has not been availed by the registered person.

*For example*, if any organization undertakes renovation of office and on that account transfers its old furniture, on which input tax credit has been availed, without consideration to a charitable institution, the same would amount to permanent transfer or disposal of business asset and will be covered in the scope of supply.

- (2) **Supply of goods and/or services between Related Persons or Distinct Persons :** Supply of goods or services or both between –

- related persons; or
- distinct persons as specified in Section 25,

when **made in the course or furtherance of business.**

However, gifts **not exceeding ₹ 50,000** in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

The above point has been discussed as under :

**Related persons [Explanation to Section 15] :**

- (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 **25% 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.
- “Family” means, –
- (i) the spouse and children of the person, and
- (ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person. [Section 2(49)]

**Supply of goods or services or both between an employer and employee :** By virtue of aforesaid definition of related person, employer and employee are related persons. *However, services provided by an employee to the employer in the course of or in relation to his employment shall not be treated as supply of services [Schedule III].*

**Gifts by Employer to Employee :** Further, **Schedule I** provides that gifts **not exceeding ₹ 50,000** in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. However, **gifts of value more than ₹ 50,000** made without consideration are subject to GST, when made in the course or furtherance of business.

The term ‘gift’ has not been defined in the GST law. In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift.

**Perquisites by employer to employee :** It must be noted that the services by an employee to the employer **in the course of or in relation to his employment** is outside the scope of GST (neither supply of goods nor supply of services).

It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST.

If services such as membership of a club, health and fitness centre etc. are provided free of charge to all the employees by the employer, the same will not be subjected to GST.

The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to company.

Therefore, if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer.

Further, the Input tax credit (ITC) Scheme under GST does not allow ITC of membership of a club, health and fitness centre [Section 17(5)(b)(ii)].

**Distinct persons as specified in Section 25 :** Under GST law, a supplier is required to obtain State-wise registration. He has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover exceeds a specified threshold limit. Thus, he is not required to obtain registration from a State/UT from where he makes a non-taxable supply.

Since registration in GST is PAN based, once a supplier is liable to register, he has to obtain registration in each of the States/UTs in which he operates [and makes a taxable supply] under the same PAN. Further, he is normally required to obtain single registration in a State/UT. However, where he has multiple places of business in a State/UT, he has the option either to get a single registration for said State/UT or to get separate registrations for each place of business in such State/UT.

- **Separate registration make Distinct Person [Section 25(4)] :** A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

*For example :* Roy, a Chartered Accountant, has a registered head office in Delhi. He has also obtained registration in the State of Madhya Pradesh in respect of his branch office. Roy shall be treated as distinct persons in respect of registrations in Madhya Pradesh and Delhi.

- **Establishment in another state is a Separate Person [Section 25(5)]** : Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.  
*For example* : Maheshwari Enterprises, a registered supplier, owns an air-conditioned restaurant in Jaipur, Rajasthan. It has opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption. Since supply of alcoholic liquor for human consumption in Uttarakhand is a non-taxable supply, Maheshwari Enterprises is not required to obtain registration with respect to the same in Uttarakhand. In this case, air-conditioned restaurant in Rajasthan and liquor shop in Raipur [though unregistered] shall be treated as establishments of distinct persons. Supply by Rajasthan office to Uttarakhand office, in course or furtherance of business even without consideration will qualify as supply.
- **Stock Transfers or Branch Transfers** : Thus, transactions between different locations (with separate GST registrations) of same legal entity (*Eg.*, stock transfers or branch transfers) will qualify as 'supply' under GST which is in contrast to the existing regime.  
*For example* : Acopic faishons transfers 5000 jackets from his factory located in Bhilwara to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Acopic faishons are registered in the States where they are located. Although no consideration is charged, supply of goods from factory to retail showroom constitutes supply.
- **However**, transfer between two units of a legal entity under single registration (apparently within same State) will not be considered as supply. This can be understood with the help of the following example :  
*For example* : BSL transfers 1000 shirts from his factory located in Bhilwara (Rajasthan) to his retail showroom in Jaipur (Rajasthan) so that the same can be sold from there. It has taken one registration in the State of Rajasthan declaring Bhilwara factory as its principal place of business and Jaipur showroom as its additional place of business. Since no consideration is charged, supply of goods from factory to retail showroom in same State under single registration does not constitute supply.

<b>Circular No.</b> 47/21/2018 GST dated 08-06-2018	Moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer (the two not being related persons or distinct persons) does not constitute a supply as there is no consideration involved.
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- (3) **Supplies by Principal to Agent or Vice Versa** : Supply of goods –
- (a) by a **principal** to his **agent** where the agent undertakes to supply such goods on behalf of the principal; or
  - (b) by an **agent** to his **principal** where the agent undertakes to receive such goods on behalf of the principal.
- Thus, supply of goods by principal to his agent or by agent to his principal even if made without consideration will be considered as supply.

It must be noted here that only supply of goods is covered here.

**"Agent"** means a person, including a factor, broker, commission agent, arhatia, *del credere* agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another. [Section 2(5)]

**"Principal"** means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both. [Section 2(88)]

**Examples:**

- (a) A company is located in the suburbs and employs an agent in the city to undertake sales on behalf of the company. Goods transferred by the company to the premises of the agent in the city would qualify as 'supply'.
- (b) HML Motors Ltd. engages Bhagwati Cars Ltd. as an agent to sell cars on its behalf. For the purpose, HML Motors Ltd. has supplied 20 cars to the showroom of Bhagwati Cars Ltd. located in Haryana. Supply of cars by HML Motors Ltd. to Bhagwati Cars Ltd. will qualify as supply.

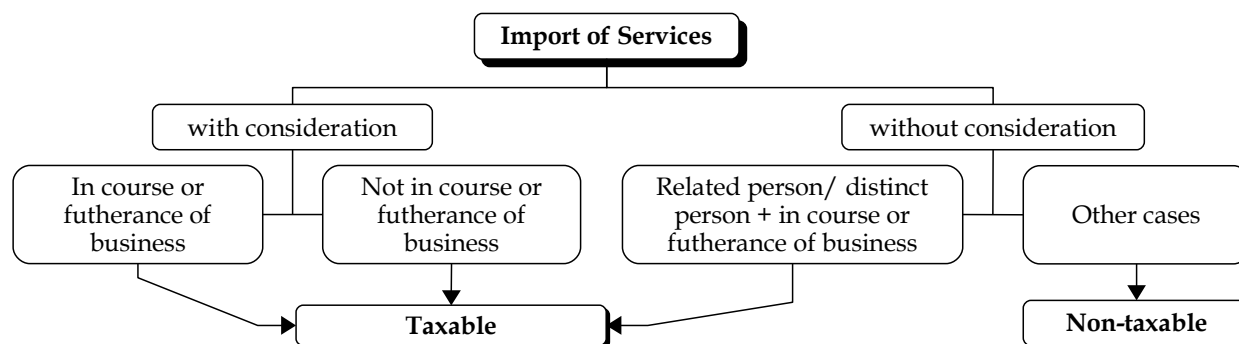
<i>Circular No. 57/31/2018 GST dated 04-09-2018</i>	<b>Scope of Principal-agent relationship in the context of Schedule I of the CGST Act.</b>
<p><b>Issue of invoice by agent for the further supply of goods on behalf of the principal - Deciding Criteria :</b> In order to determine whether a particular principal agent relationship falls within the ambit of the Para 3. of Schedule I as discussed above or not, the deciding factor is whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not? In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.</p> <ul style="list-style-type: none"> <li>➤ Where the <b>invoice for further supply is being issued by the agent in his name</b> then, any provision of goods from the principal to the agent would fall within the fold of Para 3. above. However, it may be noted that in cases where the <b>invoice is issued by the agent to the customer in the name of the principal</b>, such agent shall not fall within the ambit of Para 3. above.</li> <li>➤ Similarly, where the goods being procured by the agent on behalf of the principal are <b>invoiced in the name of the agent</b> then further provision of the said goods by the agent to the principal would be covered by Para 3. above.</li> </ul>	
<p><b>The above clarification can be understood with the help of following scenario based examples :</b></p>	
1.	Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Mr. A, and asks the supplier (Mr. C) to send the goods and issue the invoice directly to Mr. A. In this scenario, Mr. B is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr. B is not an agent of Mr. A for supply of goods in terms of Para 3. of Schedule I.
2.	M/s. XYZ, a banking company, appoints Mr. B (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s. XYZ. The invoice for the supply of the goods is issued by M/s. XYZ to the successful bidder. In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mr. B is not an agent of M/s. XYZ for the supply of goods in terms of Para 3. of Schedule I.
3.	Mr. A, an artist, appoints M/s. B (auctioneer) to auction his painting. M/s. B arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s. B on the behalf of Mr. A but in his own name and the painting is delivered to the successful bidder. In this scenario, M/s. B is not merely providing auctioneering services, but is also supplying the painting on behalf of Mr. A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr. A. This scenario is covered under Para 3. of Schedule I.
4.	A C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F commission agent is an agent of the principal for the supply of goods in terms of Para 3. of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.
5.	Mr. A sells agricultural produce by utilizing the services of Mr B who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Mr B identifies the buyers and sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr. A. As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction. In cases where the invoice is issued by Mr. B to the buyer, the former is an agent covered under Para 3. of Schedule I. However, in cases where the invoice is issued directly by Mr. A to the buyer, the commission agent (Mr. B) doesn't fall under the category of agent covered under Para 3.

- (4) **Importation of services :** Import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business shall be treated as "supply".

Importation of services as covered by Section 7(1)(b) does not include importation without consideration. Therefore, this clause is inserted to cover such services that are received from related persons/their establishments outside India without consideration, in the course or furtherance of business shall be treated as “supply”. Thus, even if no amount is paid in such case the value have to be determined as per the rules and tax is required to be paid.

**For example :** Vakil Associates received legal consultancy services from its head office located in Singapore. The head office has rendered such services free of cost to its branch office. Since Vakil Associates and the branch office are related persons, services received by Vakil Associates will qualify as supply even though the head office has not charged anything from it.

**Taxability of import of services :**



**Illustration 1 - Importation of service :** Mr. Prakash received legal advice for the personal problems & paid 1,000 pound as a legal fees to Mr. Akash of U.K. (London). Explain whether the above activity of import of service would amount to supply under section 7 of the CGST Act, 2017? If in above case Prakash is son of Akash & no consideration is paid then will it change your answer? Further in the above case father and son relationship exists & Mr. Prakash receives legal advice for his business & he didn't paid any consideration then what will be your answer?

**Ans:** As per **Section 7(1)(b)**, the term ‘supply’ includes import of services for a consideration whether or not in the course or furtherance of business. Thus, legal advice received by Mr. Prakash for his personal services for a consideration will be covered under the ambit of supply.

**In case Prakash is son of Akash & no consideration is paid :** As per Section 7(1)(c) read with Schedule I, Import of services by person from a related person or from any of his other establishments outside India, in the course or furtherance of business will be treated as supply.

In this case though Prakash and Akash are related person, legal service received will not be covered under the ambit of supply, since the said services are not received by him in course or furtherance of business.

In case Mr. Prakash receives legal advice from his father for his business without consideration, since it is in course or furtherance of business, it will be covered under the ambit of supply as per Section 7(1)(c) read with Schedule I of CGST Act, 2017.

**ACTIVITIES OR TRANSACTIONS TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

**[5] ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES AS REFERRED TO IN SCHEDULE II [Section 7(1A)] :**

Section 7(1A) of the CGST Act stipulates that where certain activities or transactions, constitute a supply in accordance with the provisions of section 7(1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II. Thus, it refers to Schedule II for determining whether a particular transaction is a supply of goods or supply of service. This helps in mitigating the ambiguities which existed in earlier laws.

Prior to introduction of GST, there was a lot of controversy that whether a transaction can be regarded as sale of goods or it will be regarded as provision of services. To remove such ambiguities, Section 7(1A) of the Act refers to Schedule II for determining whether a particular transaction is a supply of goods or service.

**For example :** Under earlier laws, the restaurants used to charge both service tax and VAT on the value of food served. This was so because both sale of goods and provision of services were involved and therefore taxable event under both the Statutes *i.e.* respective VAT law and service tax law got triggered.

Under GST, the supply by a restaurant is treated as composite supply as food and service is naturally bundled in ordinary course of business. However, Para 6(b) of Schedule II to the CGST Act specifically provides that such composite supply shall be treated as supply of service. Hence, the entire value of invoice shall be treated as value of service and leviable to GST accordingly.

This can be explained by way of example in the following table :

Position under existing Laws		Position under GST	
Food Value = ₹ 100		Food Value = ₹ 100	
Service Charges = ₹ 10		Service Charges = ₹ 10	
VAT @ 14% on food value = ₹ 14	VAT was charged on full value of food	GST @ 18% = ₹ 19.8	The entire supply would be treated as a single composite supply under GST. The same is taxable as per supply of service @ 18% on the entire value of supply assuming it is an airconditioned restaurant.
Service Tax @ 6% on food value = ₹ 6	Service tax at abated rate was charged on food value		
Service Tax @ 15% on service charges = ₹ 1.5			
Total Taxes paid VAT = ₹ 14 Service Tax = ₹ 7.5 Total = ₹ 21.5	In nutshell, food was taxed twice under VAT laws and service tax laws and service tax was levied on service charges		

The Central Government in order to avoid disputes regarding whether a particular activity/transaction is a activity/transaction in goods or services, has now, in **Schedule II** specified various activities/transactions which will be considered either as supply of goods or as supply of services. Thus, thereby leaving no scope for dispute regarding considering a activity/transaction as supply of goods or supply of service.

The activities/ transactions to be treated as supply of goods or supply of services are as under :

	Activity/ Transaction	Type	Nature of Supply
1.	Transfer	(a) Transfer of the title in goods	Supply of Goods
		(b) Transfer of right in goods or of undivided share in goods without the transfer of title thereof	Supply of Services
		(c) Transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed. <i>For example,</i> ➤ Mr. X provides certain goods to Mr. Y and he permits Mr. Y to use the goods, provided Mr. Y pays for the goods at the end of one month, when the property of goods will be transferred to Mr. Y. In this case, the ownership is transferred in future. Such transactions will be considered as a transaction in goods and not services. ➤ Plasto Manufacturers supplies plastic items to retailers on 'sale or return basis'.	Supply of Goods
2.	Land and Building	(a) Lease, tenancy, easement, licence to occupy land	Supply of Services
		(b) Lease or letting out, either wholly or partly, of the building including a commercial, industrial or residential complex for business or commerce. <i>For example:</i> Rentals collected from letting of building shall be taxable as supply of services under GST.	Supply of Services
3.	Treatment or Process	Treatment or process which is applied to another person's goods. <i>For example:</i> If the job-worker carries out any process on input belonging to others, it will be carried out as a service by him.	Supply of Services

4.	Transfer of Business Assets	(a) Goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets. <i>For example :</i> Mr. X is carrying on the business of consumer durable products. He disposed of a defective refrigerator for ₹ 50,000 to G whereas its normal price is ₹ 3,50,000. Aforesaid disposal shall be considered as supply of goods by Mr. X.	Supply of Goods
		(b) Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/under directions of person carrying on the business. <i>For example:</i> Managing Director of a company is using car provided by the company for personal purpose for a consideration of ₹ 50,000.	Supply of Services
		(c) Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless – (i) the business is transferred as a going concern to another person; or (ii) the business is carried on by a personal representative who is deemed to be a taxable person. <i>For example: (i)</i> Mr. X & Mr. Y are running a partnership firm and having goods A & B in stock. Mr. X & Mr. Y decide to dissolve the partnership and the goods A & B are taken over by Mr. X and Mr. Y respectively. The business is not continued further. The said clause provides that taking over of goods A & B will be considered as a supply of goods. <i>(ii)</i> Ramesh, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him.	Supply of Goods
5.	(a) Renting of immovable property; (b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received <b>after issuance of completion certificate</b> , where required, by the competent authority <b>or after its first occupation, whichever is earlier.</b> <b>Explanation:</b> (1) " <b>Competent authority</b> " means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely: – (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or (ii) a chartered engineer registered with the Institution of Engineers (India); or (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority; (2) " <b>Construction</b> " includes additions, alterations, replacements or remodelling of any existing civil structure; <i>For example:</i> Mr. X, a promoter, sells a flat in his new building to Mr. Y. Date of completion certificate- 11-3-2023. Part of consideration is received on 10-3-2023 by Mr. X. It will be treated as supply. If entire consideration is received after 11-3-2023, then it would not qualify as a supply. (c) Temporary transfer or permitting the use or enjoyment of any intellectual property right; <i>For example:</i> Pizza Bakers allows the use of its patented process to Domino's Pizza against consideration of ₹ 15 crore.	Supply of Services	

	<p>(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software; <i>For example:</i> A company pays programmers to develop an in house accounting software against payment of ₹ 25 lakhs.</p> <p>(e) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; <i>For example:</i> Mr. X, an employee of Z Ltd. agrees not to work in the same industry for at least 2 years by signing a non-compete agreement and against payment of ₹ 15 lakhs. This refers to refraining from an act.</p> <p>(f) Transfer of the right to use any goods for any purpose (<i>whether or not for a specified period</i>) for cash, deferred payment or other valuable consideration.</p>	
6.	<p>Following composite supplies –</p> <p>(a) works contract as defined in Section 2(119); and</p> <p>(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.</p> <p><b>“Works contract”</b> means a contract for –</p> <ul style="list-style-type: none"> <li>➤ building,                    ➤ construction,            ➤ fabrication,            ➤ completion,</li> <li>➤ erection,                   ➤ installation,            ➤ fitting out,            ➤ improvement,</li> <li>➤ modification,           ➤ repair,                   ➤ maintenance,        ➤ renovation,</li> <li>➤ alteration or commissioning</li> </ul> <p><b>of any immovable property</b> wherein transfer of property in goods (<i>whether as goods or in some other form</i>) is involved in the execution of such contract. [Section 2(119)]</p>	Supply of Services

Circular No. 44/18/2018 CGST dated 02-05-2018	<p><b>Taxability of ‘tenancy rights’/pagadi under GST :</b> It is a form of lease or renting of property and thus is squarely covered under the scope of supply and taxable <i>per se</i> under the CGST Act, 2017.</p>
<ul style="list-style-type: none"> <li>❑ <b>System prevalent :</b> In Pagadi system, the tenant acquires tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property, but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.</li> <li>❑ <b>Transfer of tenancy right - Supply of service and liable to GST :</b> The activity of transfer of tenancy right against consideration [<i>i.e.</i> tenancy premium] is squarely covered under supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in Para 2. of Schedule II <i>i.e.</i> any lease, tenancy, easement, licence to occupy land is a supply of services.</li> <li>❑ <b>GST is attracted even though stamp duty and registration charges is levied on such premium :</b> Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST since merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the ‘scope of supply’ and from payment of GST.</li> <li>❑ <b>Transfer of tenancy rights - Cannot be regarded as sale of land or building :</b> The transfer of tenancy rights cannot be treated as sale of land/ building in para 5. of Schedule III. Thus, it is not a negative list activity [this concept is discussed under next heading] and consequently, a consideration for the said activity shall attract levy of GST. To sum up, transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.</li> </ul>	



Further, services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

- ❑ **Grant of tenancy rights in a residential dwelling against tenancy premium - Exempt from tax :** As per Entry No. 12 of Notification No. 12/2017-CT (R), any renting of a residential dwelling for use as a residence is exempt. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against premium or periodic rent or both is exempt.

#### ACTIVITIES NEITHER SUPPLY OF GOODS NOR SUPPLY OF SERVICES

#### [6] CERTAIN ACTIVITIES WILL BE NEITHER A SUPPLY OF GOODS, NOR A SUPPLY OF SERVICES [Section 7(2)] :

Section 7(2) lists down activities which shall not be considered as 'supply' for GST. The said activities can be termed as **Negative List under GST regime**. They are as under –

- (a) **Activities or transactions specified in Schedule III :** The activities or transactions which shall be treated neither as a supply of goods nor a supply of services as per **Schedule III** are as follows:

- (1) Services by an employee to the employer in the course of or in relation to his employment.
- (2) Services by any court or Tribunal established under any law for the time being in force.  
*Explanation 1 :* The term "court" includes District Court, High Court and Supreme Court.
- (3)
  - (a) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
  - (b) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
  - (c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
- (4) Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
- (5) Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
- (6) Actionable claims, other than lottery, betting and gambling.
- (7) Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
- (8)
  - (a) Supply of warehoused goods to any person before clearance for home consumption;
  - (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

The term "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.  
*[Explanation 2]*

- (b) **Notified activities or transactions undertaken by the Government or local authority in which they are engaged as public authorities :** Such activities or **transactions** undertaken by –

- the Central Government,
- a State Government; or
- any local authority

in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

**"Local authority"** means –

- (a) a **"Panchayat"** as defined in Article 243(d) of the Constitution;
- (b) a **"Municipality"** as defined in Article 243P(e) of the Constitution;
- (c) a **Municipal Committee, a Zilla Parishad, a District Board**, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

- (d) a **Cantonment Board** as defined in Section 3 of the Cantonments Act, 2006;
- (e) a **Regional Council** or a **District Council** constituted under the Sixth Schedule to the Constitution;
- (f) a **Development Board** constituted under article 371 and article 371J of the Constitution; or
- (g) a **Regional Council** constituted under article 371A of the Constitution. [Section 2(69)]

The Central Government *vide* Notification No. 14/2017-CT (Rate) dated 28-6-2017 w.e.f. 1-7-2017 as amended by **Notification No. 16/2018-CT (Rate) dated 26-07-2018 w.e.f. 27-07-2018** has notified that Services by way of any activity in relation to a function entrusted to a **Panchayat under Article 243G** of the Constitution or to a **Municipality under article 243W** of the Constitution undertaken by the **Central Government or State Government or Union Territory** or any local authority in which they are engaged as public authority shall be treated neither as a supply of goods nor a supply of service.

The Central Government *vide* **Notification No. 25/2019-CT(Rate) dated 30-09-2019 w.e.f. 30-09-2019** has notified that Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called when undertaken by the State Governments in which they are engaged as public authorities, shall be treated neither as a supply of goods nor a supply of service.

**Circular No. 121/40/2019-GST dated 11-10-2019** has clarified that the above special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

It may be noted that services provided by the Government to business entities including by way of grant of privileges, licences, mining rights, natural resources such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST. Tax is required to be paid by the business entities on such services under reverse charge.

**The activities or transactions which shall be treated neither as a supply of goods nor a supply of services as per Schedule III are explained as under –**

- (1) **Services by an employee to the employer in the course of or in relation to his employment** : Paragraph I of **Schedule III** of the CGST Act, 2017 specifies that Services by an employee to the employer in the course of or in relation to his employment as neither supply of goods nor supply of services. Any service supplied by an employee to his employer in the course of or in relation to his employment is outside the ambit of GST.

Exclusions under this paragraph shall operate only if there exists an employer and employee relationship between the payer and payee and payment is made in the course of or in relation to his employment. Thus, the amount earned by the employees for supplying services in the course of or in relation to his employment will not be considered as supply, hence will not be liable for GST.

**The following aspects are to be noted in this regard :**

- (a) **Services supplied outside employment for a consideration - Taxable** : Services supplied outside employment for a consideration would be covered under the scope of supply'.  
**Example** : If an employee supplies his service on contract basis to an associate of the employer, it would be covered under 'supply'.
- (b) **Services supplied on contract basis - Taxable** : Services supplied on contract basis *i.e.* principal to principal basis are not services in the course of employment and therefore are covered within the ambit of supply.
- (c) **Amounts received by an employee from the employer on premature termination of contract of employment - Not regarded as supply** : Such amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amount so paid would not be chargeable to GST.
- (d) **Non competing fees - Taxable** : Any amount paid for not joining a competing business would be liable to be taxed as it is paid for supplying the service of forbearance to act.
- (e) **Directors of the company** : A whole time director or an executive director is generally regarded as the employee of the company. However, independent directors, nominee directors or non executive directors cannot be regarded as the employees of the company. Hence, activities carried by them for consideration are not excluded from scope of supply.

Accordingly, remuneration paid to such directors shall be liable for GST. It must be noted that services provided by the directors to its company are chargeable to GST under reverse charge basis *i.e.* the company receiving the service is liable to pay GST thereon.

**(f) Status of services supplied by casual workers or contract labour :**

If.....	Then.....
Services supplied by casual worker to employer who gives wages on daily basis to the worker	These are services supplied by the worker in the course of employment.
Casual workers are employed by a contractor, like a building contractor or a security services agency, who deploys them for execution of a contract or for provision of security services to a client	Services supplied by the workers to the contractor are services in the course of employment and hence not taxable. However, services supplied by the contractor to his client by deploying such workers would not be a service supplied by the workers to the client in the course of employment. The consideration received by the contractor would therefore be taxable if other conditions of taxability are present.

**(2) Services by any court or Tribunal established under any law for the time being in force :** Fees taken in any Court or tribunal established under any law for the time being in force is outside the scope of supply'.

The Court or Tribunal supplies judicial services to the appellant who file appeals, petitions, special leave petitions. Fees is charged at the time of filing of appeal, petition etc. The quantum of fees is specified in the statutes. Thus, on such fees no GST will be payable.

As per Explanation to **Schedule III**, "court" includes District Court, High Court and Supreme Court. Thus any amount collected by them under any law for the time being in force will not be subject to GST as it is neither supply of goods nor supply of services.

**(3) Functions or duties performed by Constitutional Authorities :** As per Paragraph 3 of Schedule III the following transactions or activities shall be regarded neither as supply of goods nor supply of services.

**(a) Functions performed by MP's, MLA's etc. :** The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

**(b) Duties performed by Constitutional Functionaries :** The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

**Example :** Duties performed by President of India, Vice President of India, Prime Minister of India, Chief Justice of India, Speaker of the Lok Sabha, Chief Election Commissioner, Comptroller and Auditor General of India, Chairman of Union Public Service Commission, Attorney General of India, in that capacity.

**(c) Duties performed by Chairperson/ Members of Government Bodies :** The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

**(4) Services of funeral burial etc. :** Paragraph 4 of **Schedule III** specifies services of funeral, burial, crematorium or mortuary including transportation of the deceased shall not be regarded as supply of services, hence will be outside the purview of GST.

**(5) Transactions of Sale of land and Sale of building :** As per paragraph 5 of **Schedule III** sale of land and, subject to Paragraph 5(b) of Schedule II, sale of building is neither supply of goods nor a supply of service and thus not liable to GST.

As per Paragraph 5(b) of **Schedule II**, construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, **except where the entire consideration** has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier shall be regarded as supply of service.

**Explanation :** For the purposes of this clause –

- (i) the expression "**competent authority**" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely: –
- (ii) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
- (iii) a chartered engineer registered with the Institution of Engineers (India); or
- (iv) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (v) the expression "**construction**" includes additions, alterations, replacements or remodelling of any existing civil structure;

When the premises are sold during construction of building, it is considered as a supply of service by builder to the prospective buyer and thus, will be liable to GST. However, if it is sold after obtaining Occupation Certificate, it is considered as a transaction in sale of immovable property which is not leviable to tax.

- (6) **Actionable claims :** As per paragraph 6 of **Schedule III**, Transactions in Actionable claims, other than lottery, betting and gambling shall be regarded neither as supply of goods nor supply of services.  
Actionable claims are covered in the ambit of goods. However, transactions in actionable claims other than lottery, betting and gambling shall not be liable for GST. Supply of lottery tickets will be liable for GST. Similarly GST will be payable on supply of betting and gambling.
- (7) **'Out and out supplies/ Merchant trading Transactions :** As per paragraph 7 of Schedule III, Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India shall be regarded neither as supply of goods nor supply of services.  
As an example, a person registered in India procuring goods from China and sending the same directly to the customer in United Kingdom shall not be liable to pay tax on the said supply in view of the above inserted Para.
- (8) (a) **Supply of warehoused goods before clearance for home consumption :** As per Paragraph 8(a) of Schedule III, Supply of warehoused goods to any person before clearance for home consumption shall be regarded neither as supply of goods nor supply of services.  
(b) **High sea sale transactions :** As per Paragraph 8(b) of Schedule III, supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption shall be regarded neither as supply of goods nor supply of services.

**Clarification in respect of levy of GST on Director's remuneration [Circular No. 140/10/2020-GST dtd 10-06-2020]**

	Issue	Clarification
1.	Leviability of GST on remuneration paid by companies to the independent directors defined in terms of section 149(6) of the Companies Act, 2013 or those directors who are not the employees of the said company.	<b>Remuneration paid to independent/non-employee directors - covered under the ambit of supply- liable to GST under RCM :</b> In respect of such directors who are not the employees of the said company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable. In terms of entry at Sl. No. 6 of Notification No. 13/2017-CT (Rate) dated 28-06-2017, the recipient of the said services <i>i.e.</i> the Company, is liable to discharge the applicable GST on it on reverse charge basis. Accordingly, it is hereby clarified that the remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the said company, is taxable in hands of the company, on reverse charge basis.
2.	Leviability of GST on remuneration paid by companies to the whole-time directors including managing director who are employees of the said company.	<b>Remuneration to employee director - if services are provided in course of employment - liable to TDS under section 192 of the Income-tax Act, 1961 - covered in Schedule - III - not liable to GST. Other services - outside service contract of employment - liable for TDS under section 194J - covered in the scope of supply - liable for GST under RCM :</b>

	<p>Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (<i>i.e.</i> a "contract of service") or is there any element of "contract for service". The issue has been deliberated by various courts and it has been held that a director who has also taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, <i>i.e.</i> under a contract of service (employment) entered into with the company.</p> <p>It is also pertinent to note that similar identification and treatment of the Director's remuneration is also present in the Income-tax Act, 1961 wherein the salaries paid to directors are subject to 'TDS' u/s 192 of the Income Tax Act, 1961. However, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction u/s 194J of the IT Act.</p> <p>It is clarified that the part of Director's remuneration which are declared as "Salaries" in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.</p> <p>It is further clarified that the part of employee Director's remuneration which is declared separately other than "salaries" in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable.</p> <p>Further, in terms of Notification No. 13/2017-CT (Rate) dated 28-06-2017, the recipient of the said services <i>i.e.</i> the Company, is liable to discharge the applicable GST on it on reverse charge basis.</p>
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**[7] OTHER TRANSACTIONS TO BE NOTIFIED - WHICH QUALIFIES AS 'SUPPLY OF GOODS' OR AS 'SUPPLY OF SERVICES' [Section 7(3)] :**

The Central Government may notify such other transactions to either qualify as 'supply of goods' or as 'supply of services'. This notification must be issued only upon recommendations from the Council.

Section 7(3) is subject to section 7(1), 7(1A) and 7(2) of CGST Act. Thus, notification issued under section 7(3) of CGST Act cannot override any provision of section 7(1), 7(1A) or section 7(2) of CGST Act.

**[8] OTHER ASPECTS OF SUPPLY :**

- (1) **Self supplies :** Inter-state self-supplies such as stock transfers, branch transfers or consignment sales shall be taxable under IGST even though such transactions may not involve payment of consideration. Every supplier is liable to register under the GST law in the State or Union territory from where he makes a taxable supply of goods or services or both in terms of Section 22 of the CGST Act, 2017. However, intra-State self-supplies are not taxable subject to not opting for registration as business vertical.
- (2) **Job work :** Goods sent on job work by Principal to job-worker are not liable to GST subject to fulfillment of certain conditions as specified in the CGST Act, 2017. However, any treatment or process which is applied to another person's goods is a supply of service and will be liable for GST.
- (3) **Goods supplied under free warranty :** Where parts are provided to the customer without consideration under warranty, no GST is chargeable on such replacement. Though supply is in course of business, but there is no consideration. The value of supply made earlier includes the charges to be incurred during warranty period. Therefore, the supplier who has undertaken the warranty replacement is not required to reverse input tax credit on the parts/ components replaced.

**4. Whether transfer of title and/or possession is necessary for a transaction to constitute supply of goods?**

**Ans:** Title as well as possession both have to be transferred for a transaction to be considered as a supply of goods. In case title is not transferred, the transaction would be treated as supply of service in terms of **Schedule II(1)(b)** of the CGST Act. In some cases, possession may be transferred immediately but title may be transferred at a future date like in case of sale on approval basis or hire purchase arrangement. Such transactions will also be termed as supply of goods.

**Other Aspects:**

<p><b>Circular No.</b> <b>1/1/2017 IGST</b> <b>dated 07-07-2017</b></p>	<p><b>Inter-state movement of various modes of conveyance, carrying goods or passengers is not regarded as supply. However, if it is for repairs and maintenance, it shall be regarded as supply.</b></p> <p><b>Issue :</b> Whether inter-state movement of various modes of conveyance carrying goods or passengers or both, or for repairs and maintenance, between distinct persons as specified in Section 25(4) of the CGST Act [except in cases where such movement is for further supply of the same conveyance], is leviable to IGST?</p> <p><b>Clarification :</b> Inter-state movement of goods like movement of various modes of conveyance including Trains, Buses, Trucks, Tankers, Trailers, Vessels, Containers, Aircraft, between distinct persons as specified in Section 25(4) of the CGST Act, may not be treated as supply and consequently IGST will not be payable on such supply.</p> <p>However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance.</p> <p>The CBEC <i>vide</i> <b>Circular No. 21/21/2017-GST dated 22-11-2017</b> has clarified that Circular No.1/1/2017-IGST shall <i>mutatis mutandis</i> apply to inter-state movement of rigs, tools and spares, and all goods on wheels [like cranes], and except in cases where movement of such goods is for further supply of the same goods, such inter-state movement shall be treated 'neither as a supply of goods or supply of service,' and consequently no IGST would be applicable on such movements.</p> <p>It is also reiterated that applicable CGST/SGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods.</p>			
<p><b>Circular No.</b> <b>16/16/2017-GST</b> <b>dated 15-11-2017</b></p>	<p><b>Inter-State transfer of aircraft engines, parts and accessories for self use by airlines- liable to GST, however ITC admissible :</b></p> <ul style="list-style-type: none"> <li>➤ <b>Inter-State transfer between related/ distinct persons attracts GST :</b> Under Schedule I of the CGST Act, supply of goods or services or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business, even if, without consideration, attracts GST.</li> <li>➤ <b>ITC admissible of GST so paid :</b> It is hereby clarified that credit of GST paid on aircraft engines, parts &amp; accessories will be available for discharging GST on inter-state supply of such aircraft engines, parts &amp; accessories by way of inter-state stock transfers between distinct persons as specified in Section 25 of the CGST Act, notwithstanding that credit of input tax charged on consumption of such goods is not allowed for supply of service of transport of passengers by air in economy class at GST rate of 5%.</li> </ul>			
<p><b>Circular No.</b> <b>11/11/2017-GST</b> <b>dated 20-10-2017</b></p>	<p><b>Taxability of printing contracts.</b></p> <p><b>Issue :</b> Whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies, would constitute supply of goods or supply of services –</p> <table border="1" data-bbox="418 1771 1541 2012"> <tr> <td data-bbox="418 1771 470 2012">(i)</td> <td data-bbox="470 1771 765 2012"><b>Content owned by publisher/ author - Paper and printing by printer - is supply of service</b></td> <td data-bbox="765 1771 1541 2012">In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service.</td> </tr> </table>	(i)	<b>Content owned by publisher/ author - Paper and printing by printer - is supply of service</b>	In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service.
(i)	<b>Content owned by publisher/ author - Paper and printing by printer - is supply of service</b>	In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service.		

	(ii) <b>Supply of printed envelopes, letter cards etc using design supplied by recipient - is supply of goods</b>	In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods.									
Circular No. 35/9/2018-GST 05-03-2018	<p><b>Joint Venture - taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and <i>inter se</i> between the members of the JV.</b></p> <p>(1) <b>Joint- Venture :</b> JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame, a comprehensive examination of the various JV agreements (at times, there could be number of <i>inter se</i> agreements between members of the JV) holds the key to understanding of the taxation of transactions involving taxable services between the JV and its members or <i>inter-se</i> between the members of a JV.</p> <p>(2) <b>Supply of services by JV to members - Regarded as supply :</b> Supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services. The above entry in Schedule II is analogous to and draws strength from the provision in Article 366(29A)(e) of the Constitution according to which a tax on the sale or purchase of goods includes a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.</p> <p>(3) <b>Supplies between JV and members or members <i>Inter Se</i> - liable to GST :</b> Service supplied by member of an unincorporated joint venture (JV) to the JV or to other members of the JV, or by JV to the members, for a consideration are liable to GST.</p> <p>(4) <b>Cash calls/Capital - mere flow of money - Taxable if by way of advance towards supplies:</b></p> <ul style="list-style-type: none"> <li>➤ <b>'Cash calls'</b> are raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture (unincorporated) to meet the expenditure on the operations to be carried out as per the approved work programme and budget. Cash calls are capital contributions made by members to the Joint Venture. If cash calls are merely flow of money, it is not supply.</li> <li>➤ <b>Payments out cash calls for supplies - Liable to GST :</b> Payments made out of cash calls pooled by a JV, towards taxable services received from a member or a third party is in the nature of consideration and hence attracts GST.</li> </ul> <p><b>Taxability of cash calls can be further explained by the following illustrations :</b></p> <table border="1" data-bbox="487 1477 1531 2006"> <thead> <tr> <th data-bbox="487 1477 534 1521"></th> <th data-bbox="534 1477 1003 1521">Particulars</th> <th data-bbox="1003 1477 1531 1521">Supply whether liable to GST</th> </tr> </thead> <tbody> <tr> <td data-bbox="487 1521 534 1749">A</td> <td data-bbox="534 1521 1003 1749">There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member purchases machinery for ₹ 400 for the JV to be used in oil production.</td> <td data-bbox="1003 1521 1531 1749">It will not be the subject matter of 'GST' for the reason that the operating member is not carrying out an activity for another for consideration. The money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.</td> </tr> <tr> <td data-bbox="487 1749 534 2006">B</td> <td data-bbox="534 1749 1003 2006">There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.</td> <td data-bbox="1003 1749 1531 2006">The operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.</td> </tr> </tbody> </table>			Particulars	Supply whether liable to GST	A	There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member purchases machinery for ₹ 400 for the JV to be used in oil production.	It will not be the subject matter of 'GST' for the reason that the operating member is not carrying out an activity for another for consideration. The money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.	B	There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.	The operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.
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<p><i>Circular No. 34/8/2018-GST dated 01-03-2018 &amp; Circular No. 93/12/2019-GST dated 8-3-2019</i></p>	<p><b>Priority Sector Lending Certificates (PSLCs) are in nature of goods and liable to GST.</b>  <b>Issue :</b> Whether Priority Sector Lending Certificates (PSLCs) are outside the purview of GST and therefore not taxable?  <b>Concept :</b> Lending by a commercial bank for specified sectors which have been identified as "priority sector" by RBI is called as Priority Sector Lending. Priority Sector Lending Certificates (PSLCs) are a mechanism to enable banks to achieve the priority sector lending target and sub-targets by purchase of these instruments in the event of shortfall. This also incentivizes surplus banks as it allows them to sell their excess achievement over targets thereby enhancing lending to the categories under priority sector. Under the PSLC mechanism, the seller sells fulfilment of priority sector obligation and the buyer buys the obligation with no transfer of risk or loan assets.  <b>Clarification :</b> In Reserve Bank of India FAQ on PSLC, it has been mentioned that PSLC may be construed to be in the nature of goods, dealing in which has been notified as a permissible activity under Section 6(1) of the Banking Regulation Act, 1949.  PSLC are not securities. PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which attracted VAT. In GST there is no exemption to trading in PSLCs.  Thus, PSLCs are taxable as goods. GST payable on the certificates would be available as ITC to the bank buying the certificates.  <b>Inter-State supply :</b> The nature of supply of PSLC between banks may be treated as a supply of goods in the course of inter-State trade or commerce. Accordingly, IGST shall be payable on the supply of PSLC traded over e-Kuber portal of RBI. However, where the bank liable to pay GST has already paid CGST/SGST or CGST/UTGST as the case may be, such banks for payment already made, shall not be required to pay IGST towards such supply.</p>
<p><i>Circular No. 177/09/2022-TRU dated 03-08-2022</i></p>	<p><b>GST is applicable on payment of honorarium to the Guest Anchors.</b>  <b>Issue :</b> Applicability of GST on honorarium paid to Guest Anchors.  <b>Clarification :</b> It is clarified that supply of all goods &amp; services are taxable unless exempt or declared as 'neither a supply of goods nor a supply of service'. Services provided by the guest anchors in lieu of honorarium attract GST liability. However, guest anchors whose aggregate turnover in a financial year does not exceed ₹ 20 lakhs (₹ 10 lakhs in case of special category states) shall not be liable to take registration and pay GST.</p>
<p><i>Circular No. 177/09/2022-TRU dated 03-08-2022</i></p>	<p><b>Sale of land after levelling, laying down of drainage lines etc., is covered in schedule III and is not taxable under GST.</b>  <b>Issue :</b> Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST.  <b>Clarification :</b> As per Sl no. (5) of Schedule III of the CGST Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.  Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the CGST Act, 2017 and accordingly does not attract GST.  However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.</p>
<p><i>Circular No. 172/04/2022 GST dated 06-07-2022</i></p>	<p><b>Perquisites provided in terms of contractual agreement to employee are not liable to GST :</b>  <b>Issue :</b> Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST.  <b>Clarification :</b> Schedule III to the CGST Act provides that "<i>services by employee to the employer in the course of or in relation to his employment</i>" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.  Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee will not be subjected to GST.</p>



**GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law. – Circular No. 178/10/2022-GST dated 03-08-2022**

**Clarification:** “Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5(e) of Schedule II to the CGST Act, 2017 if the same constitutes a “supply” within the meaning of the CGST Act. The said expression has following three limbs: -

**(i) Agreeing to the obligation to refrain from an act :**

Example of activities that would be covered by this part of the expression would include non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.

Another example of such activities would be a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

**(ii) Agreeing to the obligation to tolerate an act or a situation :**

This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

**(iii) Agreeing to the obligation to do an act :**

This would include the case where an industrial unit agrees to install equipment for zero emission/ discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

**Above three activities must comply with the following conditions:**

**(1) There must be an expressed or implied agreement or contract must exist :**

Above three activities must be under an “**agreement**” or a “**contract**” (whether express or implied) to fall within the ambit of para 5(e) of Schedule II. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain or (b) tolerate or (c) do.

Such contractual arrangement must be an **independent arrangement** in its own right. Such arrangement/agreement can take the form of an **independent stand- alone contract or may form part of another contract**. Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

Such a contract cannot be imagined or presumed to exist just because there is a flow of money from one party to another. There must be an expressed or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him.

**(2) Consideration must flow in return to this contract/ agreement :**

Some “**consideration**” must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing.

**Taxability of some of the transactions has been discussed in detail as under:**

**(A) Liquidated Damages :**

It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Black’s Law Dictionary defines ‘Liquidated Damages’ as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.

The taxability or otherwise of liquidated damages is clarified as under:

It is argued that performance is the essence of a contract. **Liquidated damages** cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance.

Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not restate the aggrieved person.

A contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.

Where the amount paid as '**liquidated damages**' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are merely a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

**Examples of such cases are:**

- (1) 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 Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources.

**The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' irrespective of by what name it is called, otherwise it is not a "supply".**

If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'.

**On the contrary, consider the following examples:**

- (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.

In the above examples, amounts paid for acceptance of late payment, early termination of lease or for prepayment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of prepayment of loan and of making arrangements for the intended supply by the tour operator respectively.

Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable.

Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Naturally, such payments will not be taxable if the principal supply is exempt.

**(B) Cheque dishonor fine/ penalty :**

The supplier wants payment to be received on time and does not want cheque to be dishonoured. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty.

The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.

**(C) Penalty imposed for violation of laws :**

Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also not consideration for any supply received and are not taxable.

Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit.

Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration.

In short, fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to tax.

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

The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment.

The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation.

Further, the employee does not get anything in return from the employer against payment of such amounts.

Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

**(E) Late payment surcharge or fee :**

The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc.

Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty.

Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply.

Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply.

However, the same cannot be said of cheque dishonor fine or penalty as discussed earlier.

**(F) Fixed charges for power :**

The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge.

The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.

Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.

**(G) Cancellation charges :**

It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee.

Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal.

All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.

The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business.

Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply.

*For example*, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (*i.e.*, 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

Accordingly, the **amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.**

However, as discussed earlier, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

Circular No. 186/18/2022-GST dated 27-12-2022 :

Issue	Clarification
<p><b>Whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s)?</b></p>	<p>As per practice prevailing in the insurance sector, the insurance companies deduct No Claim Bonus from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy, and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of No Claim Bonus.</p> <p>It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company</p>

**Illustrations - Scope of supply :**

	Illustration	Answer
2.	<p><b>Business dealings - Section 7(1)(a):</b> An electronics dealer sells a laptop for ₹ 50,000 to earn a profit. Does it qualify as a supply.</p>	<p><b>Yes.</b> As per Section 7(1)(a) of CGST Act, 2017, Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Hence, in the above case it will be treated as supply and liable to GST.</p>
3.	<p><b>Import of service :</b> Mr. X (an unregistered person) plans to pursue his higher education in US. He receives career consultancy services from a US based consultant for ₹ 5,00,000. Does it qualify as a supply?</p>	<p><b>Yes.</b> As per Section 7(1)(b) of CGST Act, 2017, Supply includes import of services for a consideration <b>whether or not in the course or furtherance of business.</b> Hence, in the above case it will be treated as supply.</p>
4.	<p><b>Permanent transfer of business assets :</b> XYZ &amp; Co. a manufacturer of goods donated old computers to Charitable Schools on account of renovation of office. The company has taken input tax credit on the computers so donated. Does it qualify as a supply?</p>	<p><b>Yes.</b> As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, Permanent transfer or disposal of business assets where input tax credit has been availed shall be treated as supply even if made without consideration. Hence, donation of old computers to charitable schools shall qualify as supply since input tax credit has been availed by XYZ &amp; Co.</p>
5.	<p><b>Transactions between related persons :</b> Happy Ltd. provides management consultancy services without charge to Joy Ltd in which Happy Ltd. has controlling rights. The said consultancy has been provided for benefit of entire group. Does it qualify as a supply?</p>	<p><b>Yes.</b> As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, Supply of goods or services between related persons is treated as supply even if it is without consideration. As per Explanation to Section 15 of CGST Act, 2017, persons shall be deemed to be "related persons" if "one of them directly or indirectly controls the other". Since Happy Ltd. has controlling rights of Joy Ltd., they will be treated as related person and the said transaction will qualify as supply.</p>

6.	<p><b>Transaction between employer and employee :</b> XYZ Ltd. gives gift worth ₹ 5,00,000 to an employee. Does it qualify as a supply? Would your answer be different if gifts of ₹ 45,000 has been given to the employee?</p>	<p><b>Yes.</b> As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, Supply of goods or services between related persons is treated as supply even if it is without consideration when made in course or furtherance of business. As per Explanation to Section 15 of CGST Act, 2017, persons shall be deemed to be “related persons” if such persons are employer and employee. Thus, gift to an employee worth ₹ 5,00,000 will qualify as supply and such supply would be leviable to GST.</p> <p>If gift of ₹ 45,000 is given instead of ₹ 5,00,000, the same will not qualify as supply since it has been specifically provided that gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.</p>
7.	<p><b>Transaction between Principal &amp; Agents :</b> ABC Motors Ltd. engages Sunshine Cars Ltd. as an agent to sell cars on its behalf. For the purpose, ABC Motors Ltd. has supplied 200 cars to the showroom of Sunshine Cars Ltd. located in Rajasthan. Does it qualify as supply?</p>	<p><b>Yes.</b> As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, Supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal shall be treated as supply even if made without consideration. In view of the same supply of cars by ABC Motors Ltd. to Sunshine Cars Ltd. will qualify as supply.</p>
8.	<p><b>Import of service from HO :</b> ABC Associates received management consultancy services from its head office located in Malaysia. The head office has rendered such services free of cost to its branch office. Does it qualify as supply?</p>	<p><b>Yes.</b> As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business will be treated as supply even if made without consideration. Thus, management consultancy services received by ABC Associates will qualify as supply even though the head office has not charged anything from it and will be liable to GST.</p>
9.	<p><b>Import of service for personal use :</b> Archean Constructions Ltd. (a registered taxable person) receives architectural design supplied by a foreign architect to design a residential house to be built in Hyderabad for a consideration of ₹ 50,00,000. Does it qualify as supply?</p>	<p><b>Yes.</b> As per Section 7(1)(b) of CGST Act, 2017, Importation of services for a consideration whether or not in the course or furtherance of business is covered under supply. In the above case it will be treated as supply and will be liable to GST.</p>
10.	<p><b>Business :</b> Mr. B, a famous actor, recorded a song sung by him for a music company and sold the audio CD. The consideration for such sale was to be donated to a Charitable Trust - ‘Being Human’. Will the sale of CD to music company by the actor qualify as supply?</p>	<p><b>Yes.</b> Any activity undertaken in course/for furtherance of business would constitute a supply. Since ‘business’ includes vocation, sale of goods or service even as a <b>vocation</b> is a supply under GST. Hence, the sale of CD to music company by the actor will qualify as supply.</p>
11.	<p><b>Transaction in Securities :</b> XYZ Ltd. was amalgamated with ABC Ltd. On account of amalgamation Mr. X a shareholder received 10,000 shares of ABC Ltd. in exchange of 5,000 shares of XYZ Ltd. Does it qualify as supply?</p>	<p><b>No.</b> Transaction in securities is neither supply of goods nor services. Securities are excluded from the definition of both goods as well as services. Hence, such transaction will not qualify as supply.</p>

12.	<b>Actionable claims</b> : Sahara Ltd., an NBFC transfers bad loans (unsecured) to Vasooli Capital Advisors Ltd. Does it qualify as supply?	<b>No.</b> Actionable claims are covered in definition of goods. However, Schedule III excludes actionable claims other than lottery, gambling and betting from the scope of supply. Transfer of unsecured loans, therefore, would not amount to supply.
13.	<b>Inter branch transaction</b> : XYZ Ltd. having head office in Mumbai (Maharashtra) supplied goods worth ₹ 10,00,000 to its branch office in Jaipur (Rajasthan). Does it qualify as supply?	<b>Yes.</b> As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, Supply of goods or services or both between distinct persons as specified in Section 25, when made in the course or furtherance of business will be treated as supply even if made without consideration. As per Section 25(5) of CGST Act, 2017, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act. Hence, branch transfer of goods worth ₹ 10,00,000 from Maharashtra to Rajasthan will qualify as supply.

**Illustration 14 - Scope of supply** : Examine whether the following activities would amount to supply under section 7 of the CGST Act :

- (1) Hitkari Charitable Trust, a trust engaged in providing medical relief free of cost, donates books and stationery to children living in slum area.
- (2) Karishma Manufacturers have a factory in Jaipur and a depot in Delhi. Both these establishments are registered in respective States. Finished goods are sent from the factory to the depot without consideration so that the same can be sold.
- (3) Manan is an Electronic Commerce Operator in Delhi. His son who is settled in London is a well-known lawyer. Manan has taken legal consultancy from him free of cost with regard to his family dispute.  
Would your answer be different if in the above case, Manan has taken advice in respect of his business unit in Delhi?

**Ans:**

- (1) Section 7 of the CGST Act, provides that supply must be made for a consideration except the activities specified in Schedule I and in course or furtherance of business. Since, both these elements are missing, donation of books and stationery to children living in slum area would not amount to supply under Section 7 of the CGST Act.
- (2) Schedule I of CGST Act, provides that supply of goods or services or both between related persons or between distinct persons as specified in Section 25, is supply even without consideration **provided it is made in the course or furtherance of business.**

According to Section 25(5) of the CGST Act, 2017, where a person who has obtained or is required to obtain registration in a State in respect of an establishment, has an establishment in another State, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act. In view of the same, factory and depot of Karishma Manufacturers are establishments of two distinct persons. Therefore, supply of goods from factory to depot without consideration, but in course of or in furtherance of business, is supply under Section 7 of the CGST Act.

- (3) Schedule I of CGST Act, provides that import of services by person from a related person located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business. In the given case, Manan has received legal consultancy from his son free of cost in a personal matter and not in course or furtherance of business. Hence, services provided by Manan's son to him would not be treated as supply under Section 7 of the CGST Act.

In the above case, if Manan has taken advice with regard to his business unit, services provided by Manan's son to him would be treated as supply under Section 7 of the CGST Act as the same are provided in course or furtherance of business though received from a related person.

**Illustration 15 - Scope of Supply :** Sahab Sales, an air-conditioner dealer in Janakpuri, Delhi, needs 4 air-conditioners for his newly constructed house in Safdarjung Enclave. Therefore, he transfers 4 air-conditioners [on which ITC has already been availed by it] from its stock, for the said purpose. Examine whether the said activity amounts to supply under section 7 of the CGST Act, 2017.

Further, a Janakpuri resident, Aakash, approached Sahab Sales. He sold an air-conditioner to Sahab Sales for ₹ 5,000. Aakash had bought the said air-conditioner 6 months before, for his residence. Does sale of the air conditioner by Aakash to Sahab Sales amount to supply under section 7 of the CGST Act, 2017? (*RTP May 2018*)

**Ans:** Section 7 of the CGST Act, 2017 stipulates that in order to qualify as supply:

- (a) Supply should be of goods and/or services.
- (b) Supply should be made for a consideration.
- (c) Supply should be made in the course or furtherance of business.

Further, Schedule I of the CGST Act, 2017 illustrates the activities to be treated as supply even if made without consideration. One such activity is permanent transfer or disposal of business assets where input tax credit has been availed on such assets, *i.e.* said activity is to be treated as supply even if made without consideration. In view of said provisions, permanent transfer of air conditioners by Sahab Sales from its stock for personal use at its residence, though without consideration, would amount to supply.

However, sale of air-conditioner by Aakash to Sahab Sales will not qualify as supply under section 7 of the CGST Act, 2017 as although it is made for a consideration, but its not in the course or furtherance of business.

**5. With reference to provisions of the CGST Act, 2017 discuss in brief, when "Importation of services" is to be considered as supply and when it is not to be considered as supply. (5 Marks, Nov. 2020)**

**Ans:** Importation of services for a consideration whether or not in the course or furtherance of business is to be considered as supply.

Importation of services by a person without consideration is deemed as supply provided the following two conditions are satisfied:-

- (a) such import is from related person or from his establishments located outside India, and
- (b) such import is in the course or furtherance of business.

In case any or both of the above two conditions is/are not satisfied, the import of services without consideration shall not be deemed as supply.

**Illustration 16 - Scope of Supply :** Examine whether the following activities would amount to "supply" under GST law?

- (i) Glory Ltd. is engaged in manufacturing and selling of cosmetic products. Seva Trust, a charitable organisation, approached Glory Ltd. to provide financial assistance for its charitable activities. Glory Ltd. donated a sum of ₹ 2 lakh to Seva Trust with a condition that Seva Trust will place a hoarding at the entrance of the trust premises displaying picture of products sold by Glory Ltd. (*2 Marks, May 2022*)
- (ii) Mr. Swamy of Chennai is working as a manager with ABC Bank. He consulted M/s. Jacobs and Company of London and took its advice for buying a residential house in Mumbai and paid them consultancy fee of 200 UK Pound for this import of service. (*2 Marks, May 2022*)

**Solution:**

- (i) An activity qualifies as supply under GST only if it is for a consideration and is in course/furtherance of business. Donations received by the charitable organizations are treated as consideration only when there's an obligation on part of the recipient of the donation to do anything.

Since in the given case, the display of products sold by the donor - Glory Ltd. - in charitable organization's premises aims at advertising/promotion of its business, it is supply for consideration in course/furtherance of business and thus, qualifies as supply under GST law.



- (ii) Supply includes importation of services, for a consideration whether or not in the course/furtherance of business. Thus, in the given case, the import of services by Mr. Swamy amounts to supply although it is not in course/furtherance of business.

#### ANALYSIS OF DEFINITION OF GOODS AND SERVICES

#### 6. What do you mean by goods under CGST Act, 2017.

**Ans:** The term goods has been defined in Section 2(52) of CGST Act, 2017 as under –

- (1) **Goods [Section 2(52)] :** “Goods” means every kind of movable property –

- other than –
  - money, and
  - securities
- but **includes** –
  - actionable claim,
  - growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

- (2) **Essential Ingredients :** The essential ingredients in definition of goods are –

- (a) **It should be movable property :** The definition of goods itself provides that only movable property shall be considered as goods. In *UOI v. Delhi Cloth Mills [1977] ELT 199 (SC)* and in *South Bihar Sugar Mills v. UOI [1978] ELT 336 (SC)*, the Supreme Court enunciated the principle that to be called goods, the articles must be such as are capable of being bought and sold in the market. The articles must be something, which can ordinarily come or can be brought to the market to be bought and sold. Thus, immovable properties that are attached to earth, cannot be considered as goods.

- (b) **Money is specifically excluded :** The definition of goods specifically excludes Money. The term “Money” has been defined in CGST Act, 2017 as under –

**Money [Section 2(75)] :** “Money” means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value.

- (c) **Securities is specifically excluded :** The definition of goods specifically excludes Securities.

The implication of exclusion of securities from the definition of goods is that activities that are in the nature of transfer of title by way of sale, redemption, purchase or acquisition of securities on principal-to-principal basis are outside the ambit of supply.

**Securities [Section 2(101)] :** “Securities” shall have the same meaning as assigned to it in Section 2(h) of the Securities Contracts (Regulation) Act, 1956. The meaning assigned in said Act is as follows :

‘Securities’ includes –

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- (ii) derivative;
- (iii) units or any other instrument issued by any collective investment scheme to the investors in such schemes;
- (iv) security receipt as defined in Section 2(zg) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (v) units or any other such instrument issued to the investors under any mutual fund scheme;

**Explanation :** “Securities” shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in Section 2(9) of the Insurance Act, 1938.

- (d) **Actionable claim is specifically included** : The definition of goods specifically includes Actionable Claim. The term 'Actionable claim' has been defined in Section 2(1) as follows :

**Actionable claim [Section 2(1)]** : "Actionable claim" shall have the same meaning as assigned to it in Section 3 of the Transfer of Property Act, 1882.

Accordingly, 'Actionable claim' means a claim to –

- (i) any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property; or
  - (ii) any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief,
- whether such debt or beneficial interest be existent, accruing, conditional or contingent.

*Examples* of actionable claims are –

- (a) Unsecured debts;
- (b) Right to participate in the draw to be held in a lottery.

However, as per Schedule III of CGST Act, 2017 actionable claims, other than lottery, betting and gambling shall be treated neither as a supply of goods nor a supply of services.

[**Note**: Only those debts which can be enforced through Court of Law, can be said to be actionable claims.]

Case	Tax Treatment
If an unsecured debt is transferred to a third person for a consideration	Since unsecured debt is an actionable claim, the activity be treated as goods. However, as per Schedule III of CGST Act, 2017, actionable claims, other than lottery, betting and gambling shall be treated neither as a supply of goods nor a supply of services. Hence, such transfer of unsecured debt will not be subject to GST.

- (e) **Growing crop etc.** : The definition of goods specifically includes growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

The element of severability is important while deciding on the nature of the property, and this element can be established by ascertaining the nature of the property, intention of the parties and the terms of the contract between them.

Standing trees are not goods and not taxable. However, standing timber falls under the ambit of "goods" because timber trees are severed from the land for the purpose of sale and hence they become a commercial commodity.

#### 7. What do you mean by services under CGST Act, 2017.

*Ans*: The term services has been defined in Section 2(102) of CGST Act, 2017 as under –

- (1) "Services" means anything –

➤ **other than –**

- goods,
- money, and
- securities

➤ **but includes** activities relating to –

- (a) the use of money, or
- (b) its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination

for which a separate consideration is charged.

**Explanation** : For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities.

- (2) **Meaning of Service in common parlance** : Service is a type of economic activity that is intangible, is not stored and does not result in ownership. A service is consumed at the point of sale. The benefit of service may last longer.

(3) **Activities regarded as transaction only in money – Not Service** : The following are some of the activities which fall under this category –

- (a) Principal amount of deposits in, or withdrawals from a bank;
- (b) Advancing or repayment of principal sum on loan to some one;
- (c) Conversion of, say ₹ 2,000 currency notes into one rupee coins (to the extent amount is received in money form).

Thus, transaction in money *per-se* would be outside the ambit of service.

(4) **Activities relating to use of money or its conversion into another form/ currency/ denomination for consideration included in definition of service** : While the transaction in money, *per-se*, would be outside the ambit of service, the related activity for which a separate consideration is charged would not be treated as a transaction in money and would be chargeable to tax if other elements of taxability are present.

*For example*, a foreign exchange dealer while exchanging one currency for another also charges a commission (often inbuilt in the difference between the purchase price and selling price of forex). The activity of exchange of currency, *per-se*, would be a transaction only in money, the related activity of providing the services of conversion of forex, documentation and other services for which a commission is charged separately or built in the margins would be very much a 'service'.

### 8. What are the different types of supplies under the GST law?

**Ans:** The different types of supplies under GST law are as under –

- (i) Taxable and exempt supplies;
- (ii) Inter-State and Intra-State supplies;
- (iii) Composite and mixed supplies; and
- (iv) Zero rated supplies.

### 9. Define the following: (i) Exempt Supply; (ii) Taxable Supply; (iii) Non-taxable supply; (iv) Inward supply; and (v) Outward supply

**Ans:** The different types of supplies under GST law is discussed as under –

- (i) **“Exempt supply”** means supply of any goods or services or both –
  - which attracts nil rate of tax, or
  - which may be wholly exempt from tax under Section 11, or under Section 6 of the IGST Act, and
  - includes non-taxable supply. [Section 2(47)]

**Exempt supplies comprise the following three types of supplies :**

- (a) Supplies taxable at a 'NIL' rate of tax;
- (b) Supplies that are wholly exempted from CGST or IGST, by way of a notification;
- (c) Non-taxable supplies as defined under Section 2(78) – supplies that are not taxable under the Act (viz. alcoholic liquor for human consumption).

**The following aspects need to be noted :**

- Zero-rated supplies such as exports would not be treated as supplies taxable at 'NIL' rate of tax;
- Input tax credit attributable to exempt supplies will not be available for utilisation/set-off.

- (ii) **“Taxable supply”** means a supply of goods or services or both which is leviable to tax under this Act. [Section 2(108)]

**For a transaction to qualify as a taxable supply, the following components are compulsory :**

- The transaction must involve either goods or services, or both of them;
- Such goods or services should not be specified under Schedule III (neither a supply of goods nor a supply of services);
- The transaction should fall within the meaning of 'supply' in terms of Section 7 of the CGST Act;
- The supply should be leviable to GST .

(iii) “Non-taxable supply” means –

- a supply of goods or services or both
- which is not leviable to tax :
  - under this Act or
  - under the Integrated Goods and Services Tax Act. [Section 2(78)]

A transaction must be a ‘supply’ as defined under the GST law, to qualify as a non-taxable supply under the GST law.

**The following aspects need to be noted :**

- Supplies that are excluded from the scope of taxation under GST are covered by this definition - *i.e.*, alcoholic liquor for human consumption.
- Stock transfers to unit within the State for which no separate registration is obtained, which does not qualify as a ‘supply’ as defined under Section 7 of the CGST Act, cannot be said to be a non-taxable supply.
- Transactions specified in Schedule III which are treated as neither a supply of goods nor a supply of services, would also not qualify as non-taxable supplies.
- Supplies that enjoy the benefit of being wholly exempted from taxes, nil-rated supplies and zero-rated supplies are also not covered under the ambit of ‘non-taxable supplies’ given that the goods or services are in fact liable to tax, and such tax is exempted by virtue of an exemption notification, or the tax rate is nil.

(iv) “Inward supply” in relation to a person, shall mean receipt of goods or services or both –

- whether by purchase, acquisition or any other means
- with or without consideration. [Section 2(67)]

**Inward supplies may be of goods or of services, or of both.**

- **Definition do not use term supply :** The key in this definition is to note that ‘inward supply’ is not necessarily a supply and has a larger scope by covering ‘receipt’ of goods or services.
- **Definition uses term Person and not registered or taxable person :** It may be questioned as to whether an inward supply is not particular to a registration, or whether an inward supply can be associated with any of the registered persons having the same pan, on the premise that it is in relation to “a person”. However, that would not be the intent of the law; it is to enable correlation with a person, whether or not he is a taxable person. In other words, reference to inward supply may be in relation to any person, whether he is registered, or unregistered taxable person, or person not liable to tax.

(v) “Outward supply” –

- in relation to a **taxable person**,
- means supply of goods or services or both, whether by –
  - sale, transfer, barter, exchange,
  - licence, rental, lease or
  - disposal or
  - any other mode,
- made or agreed to be made by such person in the course or furtherance of business. [Section 2(83)]

**Analysis:**

- (a) **Transaction or activity must be supply first :** For any transaction or activity to qualify as an outward supply, it must first be a ‘supply’ in terms of the GST law, unlike inward supplies, which could merely be receipts, not amounting to supply.
- (b) **Person must be taxable person :** Further, an outward supply is closely associated with a ‘taxable person’ being, a unit of a person that has, or is required to have, a separate registration.
- (c) **It must be in course or furtherance of business :** The phrase ‘outward supply’ can be applied to a supply only when such supply is made in the course or furtherance of business. Say, for instance, business assets are put to personal use. In such a case, even if the transaction is deemed to be a supply (*made without consideration*), it cannot be treated as an ‘outward supply’, since the application of the business asset for personal use was neither in the course nor furtherance of business.

**The following aspects need to be noted :**

- Supplies not qualifying as outward supplies would also be included for the purpose of computing the 'aggregate turnover';
- In case of a composition supplier, where he engages with a recipient outside the State, and if the transaction does not result in an 'outward supply', (say, sending goods for job work outside the State), the conditions imposed on him as a composition supplier would not be violated (*i.e.*, making inter-State outward supplies);
- Details of supplies on which tax is payable, but which do not amount to 'outward supplies' would also have to be declared in the return for outward supplies (GSTR-1);
- By treating goods or services agreed to be supplied as 'outward supply', the law authorises imposition of GST on advance payments.

**10. What is the need of distinction between supply of goods and supply of services.**

**Ans:** Though tax is payable whether supply falls under supply of goods or services, distinction has been made in some cases. This is given in Schedule II.

This distinction is relevant to determine –

- place of supply;
- time of supply;
- valuation; and
- applicability of composition schemes.

**TAXABILITY OF COMPOSITE SUPPLY AND MIXED SUPPLY**

**11. Explain the provisions relating to tax liability on "composite supply" and "mixed supply".**

**Ans:** The relevant provisions are discussed as under –

- (1) **Need for determination of composite and mixed supply :** The levy of GST is on individual goods or services or both at the rates applicable to them. There is no difficulty in calculating GST liability if the supply is of individual goods or individual services, which is clearly identifiable and such goods or services are subject to a particular rate of tax.

However, in certain cases, supplies are a combination of goods or combination of services or combination of goods and services both, where each individual component of such supplies may attract a different rate of tax, which poses problem regarding the rate of tax that is to be levied. It is for this reason, that the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies.

In order to determine whether the supplies are 'composite supplies' or 'mixed supplies', one needs to determine whether the supplies are naturally bundled or not naturally bundled in ordinary course of business.

- (2) **"Composite supply"** means a supply –
- made by a taxable person
  - to a recipient
  - consisting of two or more taxable supplies of goods or services or both, or any combination thereof, –
    - which are naturally bundled, and
    - supplied in conjunction with each other in the ordinary course of business,
    - one of which is a **principal supply**. [Section 2(30)]

This means that in a composite supply, goods or services or both are bundled owing to natural necessities. The elements in a composite supply are dependent on the 'principal supply'.

**Illustration :**

- (a) Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.
- (b) When a consumer buys a television set and he also gets warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance service are ancillary.

- (3) “Principal supply” means the supply of goods or services –
- which constitutes the predominant element of a composite supply, and
  - to which any other supply forming part of that composite supply is ancillary. [Section 2(90)]
- (4) “Mixed supply” means –
- two or more individual supplies of goods or services, or any combination thereof,
  - made in conjunction with each other
  - by a taxable person
  - for a single price
  - where such supply does not constitute a composite supply. [Section 2(74)]

Thus, the individual supplies are independent of each other and are not naturally bundled. As a corollary it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business then it would be a mixed supply.

Once it is proved that the transaction is not a composite supply, it would be a mixed supply, classified in terms of supply of goods or services attracting highest rate of tax.

**Illustration :**

- (a) A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other items. It shall not be a mixed supply if these items are supplied separately.
- (b) A shopkeeper selling storage water bottles along with refrigerator. Bottles and the refrigerator can easily be priced and sold separately.

- (5) **Guiding principles for determining whether a supply is a composite supply or mixed supply :** While there are no infallible tests for such determination, the following guiding principles could be adopted to determine as to whether it would be a composite supply or a mixed supply.

However, every supply should be independently analysed.

Description	Composite Supply	Mixed Supply
Naturally bundled	Yes	No
Supplied together	Yes	Yes
Can be supplied separately	No	Yes
One is predominant supply for recipient	Yes	No
Other supply is not ‘aim in itself’ of recipient	Yes	No
Each supply priced separately	No	No
All supplies are goods	Yes	Yes
All supplies are services	Yes	Yes
One supply is goods and other supply is services	Yes	Yes

- (6) **Tax liability in case of composite and mixed supply [Section 8] :** The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: –
- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a **supply of such principal supply**; and
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts **the highest rate of tax**.

**12. What is the manner of determining whether the services are bundled in the ordinary course of business?**

**Ans: Manner of determining whether the services are bundled in the ordinary course of business :** Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below,–

- (1) **The perception of the consumer or the service receiver :** If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package, then, such a package could be treated as naturally bundled in the ordinary course of business.

- (2) **Majority of service suppliers** in a particular area of business supplies similar bundle of services.

*For example*, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.

- (3) **The nature of the various services** in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of the main service.

*For example*, Service of stay in a hotel is often combined with a service of laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

- (4) **Other illustrative indicators**, not determinative but indicative of bundling of services in ordinary course of business are –

- (a) There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
- (b) The elements are normally advertised as a package. The different elements are not available separately.
- (c) The different elements are integral to one overall supply - if one or more is removed, the nature of the supply would be affected.

- (5) **No straight jacket formula** can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.

**13. Explain the composite supply and mixed supply. If a trader launches a package sales for marriage contained double bed, refrigerator, washing machine, wooden wardrobe at a single rate. He is issuing of invoice showing value of each goods separately, whether this is case of mixed supply of composite supply. Explain. (4 Marks, July 2021)**

*Ans:* Composite supply comprises of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Items such as double bed, refrigerator, washing machine and wooden wardrobe are not naturally bundled and also the invoice for the supply shows separate values for each item i.e., the package is not supplied for a single price.

Therefore, supply of such items as a package will neither constitute a composite supply nor a mixed supply. Thus, the various items of the package will be treated as being supplied individually.

**Note :** The question specifies that the various items are supplied at a 'single rate'. The "single rate" expression is construed as single rate of tax in the above answer. Further, the "single rate" may also be construed as single price as given in the below mentioned answer.

Items such as double bed, refrigerator, washing machine and wooden wardrobe are not naturally bundled. Therefore, supply of such items as a package will not constitute composite supply. Further, a single price has been charged for the package.

Consequently, supply of such items as a package will be treated as mixed supply.

**Illustration 17 - Taxability of mixed supply :** From the following information determine the nature of supply and tax liability.

XYZ Ltd. a manufacturer of cosmetic products supplied a package consisting of hair oil (GST Rate - 18%), sun screen cream (GST Rate - 28%), shampoo (GST Rate - 28%) and hair comb (GST Rate - 12%). The price per package is ₹ 500 (exclusive of taxes). 10,000 packages were supplied by the company to its dealers. Determine the nature of supply and its tax liability.

**Solution:** This supply would be regarded as mixed supply, since in this case each of the goods in the package have individual identity and can be supplied separately, but are deliberately supplied conjointly for a single consolidated price. The tax rates applicable in case of mixed supply would be the rate of tax attributable to that one supply (goods, or services) which suffers the highest rate of tax from amongst the supplies forming part of the mixed supply.

## 2.40

Therefore, the package will be chargeable to 28% GST.

The tax liability will be arrived as under :

Value of taxable supply per package	₹ 500
No. of packages	10,000
Total Taxable Value of supply	₹ 50,00,000
Applicable GST Rate	28%
<b>Total Tax liability</b>	<b>₹ 14,00,000</b>

■ ■ ■

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