

GST Guidance Note -2

Chargeability

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Charging Event

2.01 Charging event or levy of GST

The charging event or levy is the event which determines whether an activity attracts the charge. However tax may be collected before or after the event for the sake of administrative certainty or convenience. It will be beneficial to understand the taxable events in various taxes as under:

Tax	Taxable event
Imports	Entry of goods in the territory of a country
Central Excise	Manufacture
VAT	Sale of goods
Service Tax	Provision of a service
GST	Provision of a supply

GST is leviable on-

- supply of
- goods /or services
- By a taxable person
- at such rate as may be notified by Central/State Government on recommendation of the GST Council
- and collected in the manner as prescribed.

The charging provisions for Central Tax/State Tax and Integrated Tax are similar

with the only difference that Integrated Tax is leviable on inter-State supplies while Central Tax/State Tax are leviable on intra-State supplies.

Another difference is that the charging provision of Integrated Tax also provides for levy of Integrated Tax on import of goods in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 at the point when duty of Customs are levied under the Customs Act 1962. Therefore Integrated Tax will be levied as CVD on import of goods equivalent to Integrated Tax leviable on like goods if supplied in India.

2.02 Meaning of supply under GST

Supply is defined to include all forms of supply of goods and/or services 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. It also includes importation of services for a consideration whether or not in the course or furtherance of business.

Normally a supply will involve two independent persons. However, GST makes transactions between two branches of the same legal entity in different States/ countries or two different registrations within the same State also taxable under GST.

Transactions of supply of goods between principals and agents which are not subject to tax in present regime are taxable supplies under GST as these have been treated as supplies under Schedule I of the CGST Act.

The definition of supply is inclusive and thus of the widest possible connotation.

2.03 Supplies without consideration

As a general rule, only supplies with consideration are taxable. However certain exceptions have been carved out where supplies without consideration have also been made taxable. These are-

- Permanent transfer/disposal of assets when input tax credit has been taken on such assets.
- Supply of goods or services between related persons or distinct persons (i.e. same person with different registration numbers) when made in the course or furtherance of business.

However, gifts not exceeding fifty thousand rupees in a year by an employer to an employee shall not be treated as supply.

- Supply of goods by a principal to his agent when the agent undertakes to supply such goods on behalf of the principal
- Supply of goods by an agent to his principal when the agent undertakes to receive such goods on behalf of the principal
- Importation of service by a taxable person from his related person or his establishment (e.g. branch office, marketing office) outside India, in the course or furtherance of business.

Goods and Services

2.04 Definition of goods in GST

Under GST 'goods' have been defined as 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.

The definition of goods under the existing VAT and other applicable laws has been largely retained in GST. There are two principal changes:

- a) The scope of goods has been expanded to include actionable claims; and
- b) Some of the erstwhile goods are now specifically termed as services (discussed later)

Goods are generally tangible. They can be possessed, stored, delivered, transferred, bought and sold. Services are generally intangible. However, some intangibles, like electricity, trade-mark, copy right, technical know-how have also been interpreted by Courts as 'goods' as they are capable of being possessed, stored, delivered etc. On the other hand some services can also be tangible e.g. a pre-paid card with talk time.

Although actionable claims have been included in the definition of goods, supply of actionable claims, other than lottery, betting and gambling, has been treated as neither a supply of goods or services under CGST Act as the same has been listed as a Schedule III transaction.

2.05 Meaning of money

“**Money**” means Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveler cheque, money order, postal or electronic remittance or any other instrument recognized by the Reserve Bank of India when used as 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.

2.06 Meaning of security

For defining securities, CGST Act makes reference to section 2(h) of the Securities Contracts (Regulation) Act, 1956 according to which “securities” include—

- (i) shares, scraps, 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 clause (zig) of section 2 of the Securitization 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;
- (vi) Government securities;
- (vii) such other instruments as may be declared by the Central Government to be securities; and
- (viii) rights or interest in securities”

Buying and selling of mutual funds or debentures, transactions in derivatives are transaction in securities.

Although securities have been excluded from the definition of ‘goods’ or of ‘services’, *‘transaction in securities’ have been included in the scope of exempt supplies while determining pro rata reversal of input tax credits used for making both taxable and exempt supplies.*¹

¹ Section 17(3) of the CGST Act. Explanation 2(b) to rule 45 of the CGST Rules, 2017 provides that the value of security shall be taken as one per cent of the sale value of such security.

2.07 Meaning of actionable claim

For defining actionable claim, CGST Act makes reference to section 3 of the Transfer of Property Act, 1882. ‘Actionable claim’ thus means a claim of any debt, or to any beneficial interest in movable property other than the debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, not in 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.”

A lottery ticket is actionable claim. Assignment of right of recovery of unsecured debt is actionable claim. Railway ticket is not actionable claim. Purchase of a railway ticket gives the right to a person to travel by railway. It is nothing other than a contract of carriage.

Actionable claims have been included in the definition of goods with a limited purpose of taxing ‘lottery, betting and gambling’. Schedule III provides that activities or transactions in actionable claims, other than lottery, betting and gambling shall be treated neither as a supply of goods nor a supply of services

2.08 Taxability of Actionable claim

Although actionable claims have been included in the definition of ‘goods’ in CGST Act, actionable claims other than lottery, betting and gambling have been specified as a transactions which shall be treated neither as supply of goods nor as supply of service under Schedule III of the CGST Act. Therefore, only actionable claims in the nature of lottery tickets, betting and gambling will be taxed as supply of goods under GST.

2.09 Definition of ‘goods’ in GST vis-à-vis in Sale of Goods Act and Sales Tax laws

Definition of goods under three enactments is given below in tabular form;

GST	The Sale of Goods Act, 1930	Central Sales Tax Act,1956
“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	Section 2(7) - goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale	Section 2(d) – goods includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities

The definition of ‘goods’ under Sale of Goods Act and Central Sales Tax Act excludes ‘actionable claims’ whereas under GST ‘actionable claims’ have been included (albeit only to the extent of lotteries, betting and gambling) within ambit of ‘goods’.

Certain transactions which involve supply of goods and provision of service as a single economic activity such as works contract, catering contracts, SIM cards or recharge vouchers in paper form are specifically declared as transaction in service in GST.

2.10 Definition of services in GST law

Services is defined in GST as anything other than goods.

Money and securities have specifically been excluded from the definition of services. However specified transactions in money have been included – activity relating to the use of money or 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.

Thus the meaning of service is much enlarged from the existing meaning in service tax law. There was a view that real estate can now be termed as service as it is not “goods”. However, in the CGST Act sale of land and buildings has been listed as one of the transactions that will be treated as neither a supply of goods or of service under Schedule III of the CGST Act.

2.11 Definition of 'services' in GST vis-à-vis under Service Tax law

The definition of 'service' in service tax law is restricted. It has been defined in terms of an activity carried out by a person for another for a consideration other than specifically excluded transactions like transfer of title in goods, immoveable property, transaction in money or actionable claim etc. On other hand definition of service in GST is much wider as explained above.

There were some other exclusions also from the definition of service which have been tackled differently in GST by specifying these transactions as Schedule III transactions that are treated as neither a supply of goods nor a supply of services. These are-

- (i) Services by an employee to the employer in the course of or in relation to his employment¹
- (ii) Services by any court or Tribunal established under any law²
- (iii) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities³
- (iv) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity³
- (v) 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 clause³
- (vi) Services of funeral, burial, crematorium or mortuary including transportation of the deceased⁴

¹ Excluded from the definition of 'service' under section 65B (44) (b) of Chapter V of the Finance Act, 1994

² Excluded from the definition of 'service' under section 65B (44) (c) of Chapter V of the Finance Act, 1994

³ Excluded from levy of service tax by Explanation I (A) under section 65B (44) (c) of Chapter V of the Finance Act, 1994

⁴ Excluded from levy of service tax vide. 'negative list of services' under section 66D(q) of Chapter V of the Finance Act, 1994

2.12 Whether the existing disputes regarding scope of goods and services will continue in GST?

The taxability dispute in present regime and its resolution under GST can be depicted as follows:-

Activity	Charge under State Law (VAT)	Charge under Central law (Service Tax)	Charge under GST
Works Contract relating to immovable property	On goods or specified portion as goods	On service or specified portion as service	Entirely as service
Works Contract relating to movable property	On goods or specified portion as goods	On service or specified portion as service	Depends upon which is the principal supply treating such WC as a composite supply
Transfer of right to use goods	As goods if effective control and possession transferred	As service if effective control and possession is not transferred	Service
Temporary transfer of Intellectual property rights	Disputed position whether taxable as goods	Service	Service
Catering contracts	Entirely as goods	Specified portion as service	Entirely as service
Development of Software	Disputed position whether taxable as goods	Service	Service

However the position is not fully resolved. At the same time any difference in this regard will have much lesser impact unless the rate of tax or place of provision changes the ultimate liability and that too in a case where tax credits are not fully admissible.

Since in CGST Act, 'works contract' is defined with reference to activities involving immovable property only, in case of works contract of movable property, such as repair of goods with material, the issues may still arise regarding the classification as supply of goods or service. If such supplies are in nature of job work, then the supply may be treated as a supply of service. If it is not in the nature of job work, then by being treated as a composite supply, the classification would be determined based on nature of the principal supply.

2.13 Principles for differentiating between 'goods' and 'services'

Neither the Constitution nor the CGST Act give water tight definition of 'goods' and 'services'. In India, Courts have consistently held that the test, to determine whether a property is 'goods' is whether the concerned item is capable of abstraction, consumption and use and whether it can be transmitted, transferred, delivered, stored, possessed, etc. After examining a transaction on the touch stone of tests laid down by Courts on what constitutes 'goods' one has to scan through Schedule II of the CGST Act to determine exact nature of activity. Schedule II specifies whether certain transactions listed therein are to be treated as supply of goods or service. Thereafter, anything which is not 'goods' becomes 'service' for the purpose of GST.

2.14 Transactions specified as supply of goods in Schedule II of the CGST Act

Following transactions are to be treated as supply of goods for the purposes of GST:

- i. Transfer of title in goods
- ii. Transfer of title in goods on a future date on payment of full consideration (e.g. hire-purchase)
- iii. Transfer/disposal of business assets with or without consideration
- iv. Sale of business assets by any other person to recover debts
- v. Goods forming part of business assets on ceasing to be a taxable person
- vi. Supply of goods by an unincorporated association to its members

2.15 Transactions specified as supply of services in Schedule II of the CGST Act

Following transactions are to be treated as supply of services for the purposes of GST:

- i. Transfer of right to use goods
- ii. Lease, tenancy, easement, license to occupy land
Lease or letting out of building
- iv. Job work on others' goods
- v. Personal use/ making available for non-business use of business assets
- vi. Renting of immovable property
- vii. 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 before its first occupation, whichever is earlier
- viii. Temporary transfer or permitting the use or enjoyment of any intellectual property right
- ix. Development, design, programming, customization, adaption, up gradation, enhancement, implementation of information technology software
- x. Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act
- xi. Works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract
- xii. Transfer of the right to use any goods for any purposes (whether or not for a specified period) for cash, deferred payment or other valuable consideration
- xiii. 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.

The services mentioned at s. no (vi) onwards, in the list above, are more or less same as Declared Services enumerated in section 66E of the Finance Act, 1994

(Service tax law). The key changes are that activities such as works contracts; transfer of right to use goods; and serving/catering of food, which are treated partly as sale of goods and partly as provision of service under the present dispensation will be treated entirety as service under GST.

2.16 Transactions that are neither supply of goods nor supply of services

The CGST Act in Schedule III lists activities or transactions which are neither supply of goods nor supply of services in the following manner:

- (i) Services by an employee to the employer in the course of or in relation to his employment.
- (ii) Services by any Court or Tribunal established under any law for the time being in force.
- (iii) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
- (iv) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity.
- (v) 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
- (vi) Services by a foreign diplomatic mission located in India or any specialized agency of the United Nations Organization or any Multilateral Financial Institution notified under the United Nations (Privileges and Immunities) Act, 1947.
- (vii) Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
- (viii) Sale of land and building (other than a building intended for sale to a buyer before issuance of completion certificate or first occupation thereof).
- (ix) Actionable claims, other than lottery, betting and gambling.

Their complete exclusion from ambit of ‘goods’ and ‘services’ provides the benefit that no tax credits are required to be reversed for any common inputs, input services or capital goods used in such supplies along with taxable supplies.

2.17 Meaning of composite supply

A composite supply means a supply comprising two or more taxable supplies of goods or services, 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.

For example, when a manufacturer has to supply goods which need to be transported up to the place of recipient, he will charge for value of goods, cost of packing, cost of transportation and in transit insurance up to the place of recipient. Here supply of goods is the principal activity. Activities of packing and transportation are necessary to complete the supply. There is nothing unusual in this transaction and hence these are naturally bundled in the ordinary course of business. Though individually some of these activities are supply of goods (value of goods and packing material) and some of them are supply of services (expense on putting the goods in packing material and transporting), the GST law will treat all these activities as a single activity, taking its character from main activity, i.e. supply of principal goods and tax will be charged accordingly.

For qualifying as composite supply, activities should be naturally-bundled.

While selling a car, it is natural for the car dealer to supply standard accessories such as extra set of tyres, tools necessary to replace the tyres, first aid box etc. All these supplies are naturally bundled. Car dealers generally do not engage in imparting driving training. If a dealer agrees to arrange training also and charges for it, the activity of training will not fit into the concept of composite supply as it is neither ‘naturally bundled’ nor ‘in the ordinary course of business’.

For qualifying as composite supply, composition should be in the ordinary course of business. A readymade garment is put into transparent polyethylene bag and that bag is put into a bright print card board box. This is in ordinary course of business. A FMCG company approaches the garments supplier for buying garments to be packed in a set of five pieces in an attractive, durable suit case for gifting to delegates in its upcoming sales conference. Here supply of suitcase is not in the ordinary course of business.

Here it will be in fitness of things to refer to classic case of Gannon Dunkerly & Company [9 STC 353 (SC)] wherein the Supreme Court observed that “Parties could have provided for two independent agreements, one relating to the labour and work

involved in the execution of the work and erection of the building and the second relating to the sale of the material used in the building in which case the latter would be an agreement to sell and the supply of materials thereunder, a sale. Where there was no such separation, the contract was a composite one. Education material by National Academy of Customs, Indirect Taxes & Narcotics (NAC) while discussing various activities by a hotel in 'convention centre service' has opined that "However, it will be fully justifiable for the hotel to charge individually for the services as long as there is no attempt to offload the value of one service on to another service that is chargeable as a concessional rate." The West Bengal Authority for Advance Ruling (AAR) has also opined that a composite contract is an indivisible contract.¹

2.18 Meaning of mixed 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.

A hamper consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juice when supplied for a single price is a mixed supply. Supply of shaving razor with shaving cream claimed to be given free is a mixed supply of razor and cream.

In examples discussed to explain composite supply, as the transaction of imparting training with sale of car and supply of readymade garments in suit case did not qualify to be composite supply, they will become mixed supply.

2.19 Difference in tax treatment of 'composite supply' and 'mixed supply'

In case of composite supply, the entire bundle is charged to tax in the nature and at the rate applicable to principal supply. In case of mixed supply, bundle of supply is charged to tax according to the nature and highest rate of tax applicable on any of the commodities consisted in bundle.

In the example of supply of garments in a suit case, let us assume garment attract tax at the rate of 12 percent whereas suit case attracts tax at the rate of 18 percent. Tax will be charged on whole consideration at the rate of 18 percent.

¹ Ruling dated March 21, 2018 in the case of Switching Avo Electro Power Limited 2018-TIOL-05-AAR-GST

Taxable Person

2.20 Significance of concept of 'taxable person'

GST is a tax on the activity of supply of goods and services. Levy of tax is on activity by a person. It is therefore necessary to identify the person from whom tax will be collected.

2.21 Taxable person under GST law

Taxable person means a person who is registered or is liable to be registered under the GST Act.

2.22 Significance of phrase 'liable to be registered'

The phrase is aimed to include those persons in tax system who should have obtained registration but have failed to do so.

2.23 Person liable to be registered

The CGST Act, for the purposes of requirement of registration has made two categories of States

- a. States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh, and Uttarakhand
- b. Other than above

A person, who makes supplies from any of the category 'a' States, shall become liable to registration if his aggregate turnover in a financial year exceeds ten lakh rupees.

A person, who makes supplies from any State other than category 'a' States, shall become liable to registration if his aggregate turnover in a financial year exceeds twenty lakh rupees.

A person, who makes supplies from both category 'a' States and other States shall become liable to registration if his aggregate turnover in a financial year exceeds ten lakh rupees.

Above exemptions of ten or twenty lakh rupees are available only when taxable supplies are intra-State. If supplies include inter-State supplies, no turnover based exemption is available and liability of registration will trigger at one rupee itself.

2.24 Meaning of ‘aggregate turnover’

‘Aggregate turnover’ is defined to mean aggregate value of all taxable supplies, exempt supplies, exports of goods and/or services and inter-State supplies of a person having the same Income Tax Permanent Account Number (PAN), to be computed on all India basis. Tax charged under the CGST Act, SGST Act, UTGST Act, IGST Act and Compensation Cess Act, as the case may be, will not form part of turnover. However any tax charged under any other enactments (such as Excise Duty charged by Centre on tobacco products, Mandi Fees on agricultural and dairy commodities charged in States) will form part of turnover. Value of supplies, on which tax is payable on reverse charge basis will also not form part of turnover for this purpose.

2.25 Scope of ‘exempt supplies’

Exempt supply is defined to mean supply of any goods /or services which are not taxable under the CGST/SGST/UTGST/IGST Acts, supplies which attract nil rate of tax and those supplies which are, by notification, declared exempt generally either absolutely or subject to conditions from whole or any part of tax leviable thereon. Supply of non-GST goods i.e. alcoholic liquor for human consumption and five specified petroleum products will be covered under ‘exempt supplies’.

The scope of ‘exempt supplies’ has been extended by section 17(3) of the CGST Act, 2017 in the context of reversal of credits attributable to exempt supplies to include the followings:-

- a. Supplies on which tax is to be discharged by the recipient under reverse charge
- b. Transaction in securities
- c. Sale of land
- d. Sale of building (except in situations covered under clause (b) of paragraph 5 of Schedule II).

2.26 Relevance of state-wise turnover for determining liability to be registered in a state

Turnover will be counted for a PAN computed on all-India basis. Thresh hold exemption is not state-wise. It is for India as a whole.

2.27 Examples on scheme of registration requirements

- a) Mr. A has a grocery business in the State of Uttar Pradesh. Value of supplies of business are not likely to exceed eighteen lakhs rupees in the financial Year.
Mr. A does not have any other business establishment in any of the other States. He will not be liable to seek registration under GST.
In next year, Mr. A opens another branch in the State of Uttarakhand (one of the category 'a' States for which prescribed threshold limit is Rs. 10 lakh). As the branch was opened at fag end of the financial year, he could achieve turnover of one lakh rupees only in that State. Since value of supplies in Uttar Pradesh and Uttarakhand put together exceeds ten lakh rupees, he will be liable to seek registration in both the States.
- b) Mr. B is engaged in the profession of brokerage for green tea leaves in the state of Sikkim. He does not operate in any of the other States. His receipts of profession in the financial year are not likely to exceed nine lakh rupees, he is not liable to registration in Sikkim.
- c) Mr. C has a set up for manufacturing of household plastic utensils in Maharashtra. He expects to achieve a turnover of twelve lakh rupees from intra-state supplies and a turnover of five lakh rupees from inter-State supplies. As he is making inter-State supplies also, basic exemption of twenty lakh rupees is not available to him. He will be liable to seek registration in Maharashtra.

2.28 Exceptions for liability of registration

Section 23 of the CGST Act, 2017 provides for persons not liable for registration. Any person engaged exclusively in the business of supplying goods and/or services that are not liable to tax (e.g. specified petroleum products) or are wholly exempt from tax under GST law is not liable to seek registration. An agriculturist is not required to seek registration for the purpose of supply of produce out of cultivation of land.

The Government has issued notifications granting relief to few such tax-payers who are not required to be registered even if they fall in the category of persons mentioned in section 24 of CGST Act.

A gist of such notifications are given below;

S N	Notification No.	Subject
1	65/2017-Central Tax, dt. 15-11-2017	Seeks to exempt persons from registration making supplies of services through an e-commerce operator and having an aggregate turnover not exceeding Rs. 20 lacs (Rs. 10 lacs in case of special category states)
2	10/2017-Integrated Tax, dt. 13-10-2017	Seeks to exempt persons from registration making inter-State supplies of taxable services and having an aggregate turnover not exceeding Rs. 20 lacs (Rs. 10 lacs in case of special category states)
3	08/2017-Integrated Tax, dt. 14-09-2017	Seeks to exempt persons from registration making inter-state supplies of handicraft goods and having an aggregate turnover not exceeding Rs. 20 lacs (Rs. 10 lacs in case of special category states)
4	07/2017-Integrated Tax, dt. 14-09-2017	Seeks to exempt job workers from registration making inter-state supply of services [not applicable to job-workers; <ul style="list-style-type: none"> - Who are liable for registration on the basis of turnover (Rs.20/10 lacs) or - who have voluntarily registered or - engaged in making supply of services in relation to 'Jewellery, goldsmiths' and silversmiths' wares and other articles']

2.29 Meaning of 'person'

'Person' is defined under section 2(84) of the CGST Act, 2017 to include individuals, Hindu Undivided Family, company including government company, firm, limited liability partnership, association of persons, body of individuals, co-operative society, local authority, government including a corporation established by or under any Central, State or provincial Act, trust and artificial juridical person. Anybody incorporated by or under the laws of a country outside India is also a person under GST law.

2.30 Whether a taxable person in one State will automatically become taxable person in other State?

No. Taxable person will have to apply for registration in each of the States from where supplies are made/to be made if he crosses specified exemption limit. As stated earlier the turnover for the purpose of registration would be the turnover on all India basis and not the turnover in a particular State.

2.31 Separate registration in each State

India has federal form of governance with separate taxation powers to Centre and States. GST will subsume both Central and State taxes. However, the component of GST (State Tax) will be levied, collected and administered by the States and part of Integrated Tax although levied, by Centre will also flow to the State where the subject goods or services are consumed. Therefore for assessment and payment of State Tax and also for determining the quantum of Integrated Tax that has to flow to a State, State wise registration is required. Separate registration would also be required for union territories.

For supplies made to or from maritime zones up to 12 nautical miles, the jurisdiction of the adjacent State would apply. However, for activities in exclusive economic zone beyond 12 nautical miles, a separate registration is required as such zone is treated as 'other territory' at par with Union territories.

An establishment of a person in one state and his other establishment(s) in other state(s) are called 'distinct persons' for the purpose of GST. As establishment in every state is a distinct person, separate registration is required in each of the state.

First proviso to rule 8(1) of the CGST Rules, 2017 makes it mandatory for a Special Economic Zone unit or Special Economic Zone developer to seek separate registration in the State for DTA and SEZ establishment.

2.32 Criteria for determining if a person need to be registered in a State

The person shall be liable to register in a State from where he makes a taxable supply of goods and/or services.

Example: ABC has a manufacturing facility in the State of Maharashtra and depots in the States of Maharashtra, Madhya Pradesh, West Bengal, Haryana and

Tamil Nadu. ABC will be required to take registrations in the states of Maharashtra, Madhya Pradesh, West Bengal, Haryana and Tamil Nadu as he is making taxable supplies from his establishments in all these states. It may also be noted that the establishments of ABC in all these States are treated as distinct persons for the purpose of GST and supplies between distinct persons are taxable even if they are without consideration. Therefore stock transfers from the manufacturing facility in Maharashtra to the depots located in other states would also be taxable.

2.33 In case of services how is it to be determined if a person is making taxable supply from a particular State?

If a person has a fixed establishment in the State from where he is making a taxable supply of services he is liable to be registered in that State. As already stated, an establishment of a person in every State is a distinct person.

2.34 Meaning of ‘fixed establishment’

Fixed establishment is defined to mean a place, other than the registered place of business, which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs.

Fixed establishment should be of a certain minimum size and both the human and technical resources necessary for provision of services must be permanently present.

2.35 Whether a person can have two registrations in a State?

A person having multiple business verticals in a state may obtain separate registration for each business vertical. Obtaining two registrations on the basis of business vertical is optional for the taxpayer.

2.36 I have a small manufacturing set up in the State of Madhya Pradesh with a turnover of approx. one crore rupees. Being SSI I am not liable for any Excise Duty. What will be my status under GST?

Under GST, the current SSI exemption scheme under Central Excise will be discontinued. As explained above the normal threshold for registration in States other than category ‘a’ states is Rs. 20 lakh. Therefore you will be liable to take

registration if you have a turnover of Rs. one crore. You may also like to know that there is a concept of composition levy for those taxable persons, whose aggregate turnover in a financial year does not exceed fifty lakh rupees.

2.37 I have a manufacturing set up in the State of Madhya Pradesh with a turnover of approx. three crore rupees. I am registered under Excise, VAT and CST Act in Madhya Pradesh. I stock transfer goods of approx. seventy five lakh rupees to commission agents for sale in other States for which I receive form 'F' under the CST Act from agents. What will be my status under GST?

You are not required to take GST registration in the States where you do business through agents. The agents will be required to take registration if their turnover is over the threshold limit of Rs 20 lakh. Goods transferred to inter- State agents will be treated as taxable supply under GST. You need to dispatch goods to such agents on tax invoice after charging IGST. Agent will be eligible to take input tax credit of IGST. No form like present form 'F' will need to be exchanged.

Supply for a Consideration

2.38 Consideration for a supply – a pre-condition or not

Normally a supply of goods and/or services becomes taxable supply if it is made for a consideration. Some transactions specified in Schedule I are taxable even though these are without consideration (Refer point no. 2.03). The concept of 'supply for a consideration' involves an element of contractual relationship wherein the person making a supply does so at the desire of the person to whom the supply is made. Supply out of love, affection, reverence, spiritual influence are not supplies under GST law as these are supplies without consideration and are not specifically included in Schedule I

2.39 Meaning of consideration

Consideration is - defined under section 2(31) of the CGST Act, 2017 thus:

“**consideration**” in relation to the supply of goods or services 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, 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, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit, given in respect of the supply of goods or services or both shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the said supply;

2.40 Is consideration only in terms of ‘money’?

Generally consideration remains in the form of money. However consideration can be in kind also. If the consideration for a supply is not in money (as in a barter transaction) or the consideration is partly in money and partly something else (as in exchange offers), the tax value of the supply is the monetary equivalent of the consideration. Monetary equivalent will have to be determined according to the manner prescribed by rules.

The best example of consideration not entirely in the form of money is seen in exchange offers in retail trade of consumer durables. When you go to buy a new television set, you are offered two bargains. You can pay money and take television home. Alternatively, you may exchange your old television set and pay lesser money to the extent of value determined for old television set. Here money equivalent value of old television agreed between supplier and recipient will also be part of consideration of new television on which GST will need to be paid by the supplier.

In the course or furtherance of business

2.41 Significance of ‘in the course or furtherance of business’

Barring importation of services, other supplies are treated as supply under GST law only when they are made in the course or furtherance of business. If the supplier is not engaged in the business, supplies made by him will not be a supply as understood under GST law.

The phrase restricts (by excluding non-business activities) as well as expands (by including activities ancillary to the business) the ambit of supply.

2.42 Meaning of 'in the course or furtherance of business'

The word 'business' has been defined in the GST law. Broadly it means any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity whether or not it is for pecuniary benefits. Any activity ancillary or incidental to these activities are also covered as business. It has also been provided that any activity or transaction falling in above categories would be business whether or not there is volume, frequency, continuity or regularity in transactions.

Considering that pecuniary benefit is not the determining criterion, issues will arise whether charitable or philanthropic activities would get covered. This would depend on facts and circumstances of each case. To give an example if a charitable medical diagnostic lab provides facilities free of cost, it would not fall in the ambit of GST as services are being provided without consideration. However, if the services are provided at subsidized rates so as to recover only the cost or part of the cost, the activities will fall in the ambit of GST as the activity need not necessarily be carried out for pecuniary benefit.

Supply of goods free of cost to a charitable organization by a business house for free distribution to meet its CSR obligations will not get covered as a taxable supply as the same is without consideration. However, this activity would be in the course of business for the business house as meeting CSR obligations is an activity ancillary or incidental to its main business. On the other hand if the charitable organization is a related person of the business house then the supply of goods free of cost to such organisation would be taxable as supplies to related persons without consideration are taxable under Schedule I.

An activity, which is carried out mainly as a hobby, such as stamp collecting, or any other personal or private activity is not a business. However, if you start to sell items you collect, or have made, on a regular and continuing basis, then your hobby could become a business for GST purposes.

There is no definite yardstick to find out whether some activity is being carried as a business or not. A body whose main activities are non-business may still have some activities which count as business for GST purposes, such as selling goods to raise funds, running a staff canteen etc. Each case would need to be examined on its facts on the touchstone of definition of 'business'. Supplies made not as a main activity of business gets covered under ambit of supply by use of words 'course or furtherance'. A banking company selling hypothecated vehicles due to default in payment of instalments by borrowers sells them in the course or furtherance of business. An insurance company selling waste paper generated in its office does so in the course or furtherance of its business of insurance.

2.43 Meaning of ‘money or otherwise’

Money is a defined term under the CGST Act and refers to legal tender, negotiable instruments, electronic payment modes etc. Word ‘otherwise’ is used to expand the scope of consideration to include consideration paid in the form of goods (barter or exchange) or immovable property (such as a flat given in consideration for redeveloping a house into a multi-storeyed building). A contract for reciprocal supply of service such as a doctor agreeing to treat a chartered accountant in consideration of that chartered accountant filing his/her return of income will also get covered under the word ‘otherwise’

2.44 Meaning of ‘monetary value of any act or forbearance’

Term ‘monetary value of any act’ aims to cover provision of service in satisfaction of payment obligation for supply of goods and vice-versa. A promises to give a car to B in exchange of promise by B for appearance in a sales promotion event.

‘Forbearance’ is agreeing for not doing something. A agrees not to open dry clean shop in B’s neighborhood for which B agrees to make a payment (non- compete agreements).

2.45 Meaning of ‘whether by the recipient or by any other person’

It signifies that for being covered under taxable event, it is not necessary that consideration should necessarily flow from recipient of supply. M orders N, a flowers bouquet supplier, to deliver a bouquet to O on his/her birthday. Here supply is to O whereas consideration will flow from M.

A pharmaceutical company asking its distributor to place sample medicines with doctor for which distributor is separately compensated, a new brand of perfumes asking its dealers to sell at below their purchase price and compensating the loss through credit notes are examples of consideration for taxable supplies being paid wholly or partly by a third person.

2.46 Why importation of service even not in the course or furtherance of business is included in supply?

GST is primarily a destination based consumption tax. Taxing import of service is necessary so that indigenous suppliers are not put to a disadvantageous situation vis-à-vis overseas supplier. Levying tax on import of services in recipient country is a world-wide phenomenon agreed between countries. In case of import of

services by individuals or other non-business recipients, adequate provisions have been made in IGST Act for levy and recovery of tax from overseas supplier of service.

2.47 Significance of supplies of goods between agents and principal being treated as supply.

An agent is a person employed to do any act for another or to represent another in dealing with third person. The person for whom such act is done, or who is represented, is called the 'principal'. No consideration is necessary to create an agency. As in the eyes of common law, principal and agent are one and the same so far their dealing with third persons is concerned, a special deeming provision has been brought into GST law by way of Schedule I so that transaction in goods or services between principal and agent have been made taxable even in the absence of consideration. The move is aimed to ensure seamless movement of goods through supply chain without need of exchange of various forms in the course of intra-State and inter-State movement of goods between principal and agent or vice-versa.

2.48 Reverse Charge

Reverse charge means payment of tax on supply of goods or services or both by the recipient rather than by the supplier as is normally done. As per section 9(3) of the CGST Act, 2017 and section 5(3) of the IGST Act, 2017 the Government may, on the recommendations of Council, notify categories of supply of goods or services or both tax on which shall be paid on reverse charge basis.

Notification No. 4/2017-Central Tax (Rate) dated 28th June 2017 specifies the goods which will be liable to tax on reverse charge basis. Notification No. 13/2017-Central Tax (Rate) dated 28th June 2017 notifies the services which will be liable to tax on reverse charge basis. Notification No. 10/2017-Integrated Tax (Rate) dated 28th June 2017 notifies the services which will be liable to tax on reverse charge basis, when provision of service is in the course of inter-State trade or commerce.

- Services supplied by persons located in non-taxable territory
- Goods Transport agency services
- Services by advocates to any business entity
- Services by arbitral tribunal to any business entity
- Sponsorship services
- Service by a Director to company

- Insurance agent to insurance company, recovery agent to bank or FI, NBFC
- Author, music composer, photographer.....

2.49 Payment of tax by registered person for supplies by un-registered person

As per the provisions of section 9(4) of the CGST Act/ 5(4) of the IGST Act in addition to specified/ notified goods and services discussed in para 2.48 above, taxable supplies by a person who is not registered, to a registered person are liable to tax in the hands of recipient on reverse charge basis.

Later, Notification No. 8/2017-Central Tax (Rate) dated 28th June 2017 provides for exemption from such tax if the aggregate value of such supplies received by the registered person from any or all the unregistered suppliers, does not exceed five thousand rupees in a day.

However, by way of subsequent Notification no. 38/2017- Central tax (Rate) dated 13.10.2017, the Central Government omitted the limit of five thousand rupees a day and extended the exemption of payment of tax under reverse charge under 9(4) till 31.03.2018. Another Notification no. 10/2018- Central Tax (Rate) dated 23.03.2018 further extended the above exemption till 30.06.2018.

Similar exemption is provided by in Integrated Tax via. Notification no. 11/2018- Integrated Tax (Rate) dated 23.03.2018

A person engaged in inter-State taxable supply was mandatorily required to get registration under GST law, irrespective of the level of threshold exemption of ten or twenty lakh rupees. This is a provision with far reaching implications by which tax becomes payable on supplies by un-registered person like small scale suppliers etc. The only condition is that the supply should be a taxable supply which has been defined as a supply of goods or services or both chargeable to tax under GST Acts. However, CBIC via. Notification no. 10/2017- Integrated Tax dated 13.10.2018 provided exemption to persons making inter-State supplies of taxable services and having an aggregate turnover not exceeding an amount of Rs. 20 lacs (Rs.10 lacs in case of special category states).As a matter of procedural simplification, in terms of first proviso to Rule 46 of CGST Rules, 2017, a registered person is allowed to issue a consolidated invoice at the end of the month for all supplies received from unregistered persons.
