

## **GST Guidance Note 9**

### **Inter-State Supplies**

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#### **9.01 Significance of taxing inter-State supplies**

GST is primarily a destination-based consumption tax. The place of supply of a particular transaction, coupled with the location of the supplier, will determine the nature of the tax to be paid by a tax payer.

If the location of the supplier and place of supply are in the same State (including UTs with legislature) the transaction will be an intra-State transaction and the tax payer will be liable to pay State + Central Tax. If they are in different States the transaction will become inter-State transaction and the tax payer will be liable to pay Integrated Tax and part of the Integrated Tax collected transferred to the State where the consumption takes place i.e. the State where the place of supply is located.

Transactions between two UTs and transactions to/from UT from/to another State are also treated as inter-State transactions liable to Integrated Tax. Transactions within a UT without legislature would be charged to UT GST or UT Tax.

The inter-State supplier will be allowed to avail credit of various GST taxes paid on his purchases. This will allow maintenance of uninterrupted ITC chain at all-India level.

## 9.02 Meaning of inter-State supply

Section 7 of the IGST Act provides that following supplies will be inter-State supplies:

- a) Supply of goods and/or services where location of the supplier and place of supply are in two different States; or two different Union territories; or a State and a Union territory.
- b) Supply of goods and/or services where location of the supplier is in India and the place of supply is outside India (normally referred to as exports).
- c) Supply of goods imported into the territory of India, till they cross the customs frontier of India
- d) Supply of services imported into the territory of India.
- e) Supply of goods and/or services to or by a SEZ developer or a SEZ unit.
- f) Any supply of goods and/or services in the taxable territory, not being an intra-State supply and not covered above (e.g. supply from a State to a place/location to a place located in EEZ/Continental shelf and vice-versa)

## 9.03 Meaning of intra-State supply

Section 8 of the IGST Act provides that intra-State supply means any supply of goods and/or services where location of the supplier and place of supply are in the same State or same Union territory.

However, supply of goods and/or services to or by a SEZ developer or to or by an SEZ unit will not be considered as intra-State supply despite the fact that both supplier and recipient are located in the same State. Proviso to rule 8(1) of the CGST Rules makes it mandatory for SEZ unit (s) or SEZ developer to obtain separate registration as a business vertical distinct from its other units located outside the SEZ.

Supply of goods brought into India in the course of import till they cross the customs frontiers of India will also not be considered as intra-State supply despite the fact that both supplier and recipient are located in the same State.

Supplies of goods to a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes (tourist) will also not be treated as intra-State supply, provided the tourist takes those goods out of India. This special provision is made to enable the tourist to claim refund of tax paid on such supply from the Central Government.

## 9.04 Location of supplier of goods

Unlike in the case of services, the location of supplier of goods and location of recipient of goods are not defined either in the CGST Act or the IGST Act. These terms are to be understood certainly not as the location of their registered office but as the place where the supplier holds control over the goods ready to deliver. In other words, location of supplier may be understood as the location of goods ready for supply. The word 'location' in this phrase refers to the site or premises (geographical point) where the supplier is situated, with the goods in his control, ready to be supplied.

While for tangible goods, application of above rule will not pose much challenge, for intangible goods such as copyright, trademark, literary work etc. the legal maxim 'Mobilia Sequuntur Personam' has emerged as a means to determine the situs of property. In the situation of legislative vacuum, the internationally accepted principle of 'mobilia sequuntur personam' would apply, i.e., the situs of the owner of an intangible asset would be the closest approximation of the situs of his intangible asset.

## 9.05 Location of recipient of services

Services are capable of being contracted from one place, supplied from another and paid for at yet another. Moreover a service can be partially received at multiple locations. This introduces unique complexity in identifying the true location of the recipient in case of services. Determining location of recipient of services is pre-requisite for identifying the jurisdiction where consumption either by a B2B recipient or by a B2C recipient happens.

Location of recipient of services has been defined in section 2(14) of the IGST Act to mean:

- (i) Where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
- (ii) Where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (iii) Where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- (iv) In absence of such places, the location of the usual place of residence of the recipient.

Usual place of residence, in case of an individual means, the place where the person ordinarily resides. In other cases it means the place where the person is incorporated or otherwise legally constituted.

## 9.06 Illustration of location of recipient of service

A Bangalore based supplier is engaged in providing advertising services. Its customer has business establishment in Delhi and a branch in Bangalore which is a fixed establishment. Although day-to-day contact on routine administrative matters is between the Bangalore supplier and the Bangalore branch of recipient, it's the Delhi establishment's services that are being advertised. The supplies are received at the Delhi establishment.

A customer has a business establishment in Lucknow and fixed establishments in a number of other States. The customer contracts to buy accounting and planning software maintenance service through its Bangalore branch, making all payments from there. However, the software maintenance services are used by the customer at all of its branches throughout the States. The establishment most closely connected to the supply will be the business establishment in Lucknow. This is because the services are not for the needs of a specific branch. Ideally ISD mechanism needs to be used for distribution of credit to all the States where the services are used.

## 9.07 Location of supplier of services

Location of supplier of services as defined in section 2(15) of the IGST Act is the mirror image of location of recipient of services. For better understanding, it is reproduced below through strikethrough

- (i) Where a supply is ~~received at~~ made from a place of business for which the registration has been obtained, the location of such place of business;
- (ii) Where a supply is ~~received at~~ made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (iii) Where a supply is ~~received at~~ made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- (iv) In absence of such places, the location of the usual place of residence of the ~~recipient~~ supplier

## 9.08 Illustration of location of supplier of services

'J' a telecom operator provides mobile services to a subscriber residing in Jharkhand. Jharkhand is part of Chhattisgarh-Jharkhand Telecom Circle and 'J' circle headquarters are in Raipur, capital of Chhattisgarh. 'J' also has an office in the State of Jharkhand. The towers and equipment from where services are provided are also located in Chhattisgarh. In this case the location of service provider shall be the State of Jharkhand as the 'J' has a fixed establishment in Jharkhand from where the services are being provided.

### **9.09 Import of services**

Import of service means the supply of any service, where:

- (a) the supplier of service is located outside India,
- (b) the recipient of service is located in India, and
- (c) the place of supply of service is in India

### **9.10 Export of services**

Export of service means the supply of any service, when

- (a) the supplier of service is located in India;
- (b) the recipient of service is located outside India;
- (c) the place of supply of service is outside India;
- (d) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (e) the supplier of service and recipient of service are not merely establishments of a distinct person (same PAN)

### **9.11 Treatment of supplies to and by SEZ units/SEZ developers**

Please turn to the chapter on Imports and Exports

### **9.12 Establishment of distinct person**

Explanation 1 in section 8 of the IGST Act provides that

- (i) An establishment of a person in India and any of his other establishments outside India; or
  - (ii) An establishment of a person in a State and any of his other establishments outside that State<sup>1</sup>
  - (iii) An establishment in a State and any other establishment being a business vertical registered within that State
- are establishments of a distinct person.<sup>2</sup> Explanation 2 clarifies that a branch office or an agency or a representation office is also an establishment.

### **9.13 Meaning of establishment**

Word 'establishment' is not defined under GST law. In common parlance an establishment means a place of business through which the business of an enterprise is wholly or partly carried on. It includes a place of management, a branch, an office, a factory, a workshop, a mine, a quarry or any other place of extraction of natural resources. It also encompasses a building site, a construction, assembly or installation project. Engaging sufficient human and

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<sup>1</sup> See sub-sections (4) and (5) of section 25 of the CGST Act also

<sup>2</sup> See sub-sections (2) of section 25 of the CGST Act also

technical resources are key characteristics of an establishment. European Courts have taken a view that there is no requirement to own the resources in question and that an establishment could be created through the use of resources belonging to a third party. However simply owning immovable property does not denote presence of an establishment.

#### 9.14 Distinct person

Distinct persons are persons that have the same legal identity (PAN) but a distinct identity under GST by virtue of being located in different States (or in same State if separate Registration) or, by constitution, in different country.

#### 9.15 Some examples which do not constitute exports of services

Facts	Whether exports and reason
Provision of service by an entity located in India to its establishment in London	No exports; being same entity
Provision of service to an independent entity in Nepal and receiving payment in INR	No; payment not in convertible foreign exchange
Provision of service to an independent entity abroad relating to an exhibition held in India	No; place of supply is in India

#### 9.16 Time limit for receipt of payment in convertible foreign exchange

GST Law does not envisage any time limit for receipt of payment in convertible foreign exchange. However the law does not use the words 'is receivable or has been received' meaning thereby that for being eligible to be covered under the expression 'export of services' payment must be received within a reasonable time. What is reasonable time will be decided on case-to-case basis depending upon terms of the contract and foreign exchange regulations, if any. Normally the period prescribed by RBI, or such extended period as RBI may allow, will be reasonable period.

#### 9.17 Import of goods

Import of goods means bringing goods into India from a place outside India. The definition is same as in the Customs Act, 1962.

## 9.18 Export of goods

Export of goods means taking goods out of India to a place outside India. The definition is same as in the Customs Act.

(For detailed discussion on imports and exports please turn to the chapter on Imports and Exports)

## 9.19 Supplies between two Union territories without legislature

Currently there are seven Union territories in India:

- Andaman and Nicobar Islands.
- Chandigarh.
- Dadra and Nagar Haveli.
- Daman and Diu.
- Delhi (National Capital Territory of Delhi)
- Lakshadweep.
- Puducherry.

The National Capital Territory of Delhi and Union territory of Puducherry each has a legislative assembly and council of ministers. Other five union territories are Union territories without legislature. As per clause (26B) of section 366 of the Constitution of India, for the purposes of GST 'State' includes a Union territory with legislature. Therefore UTs without legislature will not be treated as a State. For UTs without legislature Union Territory Goods and Services Tax Act will apply.

Areas which do not constitute any specific State but are a part of Union of India (e.g. continental shelf and EEZ) will also be treated as Union territories for the purpose of GST law. These have been collectively given the nomenclature of 'other territories' and treated as Union territories. However, a person supplying goods or services from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of appropriate base line is located. Where the location of the supplier or the place of supply is in the territorial waters, their respective location will be deemed to be in coastal State or Union territory where the nearest point of appropriate base line is located.

The manner of administration of levy of Integrated Tax/UT Tax on supplies from or within other territories like continental shelf and EEZ is not clear at the moment.

## 9.20 Definition of India and status of area beyond 12 nautical miles

India means the territory of the Union as referred to in clauses (2) and (3) of Article 1 of the Constitution, its territorial waters, 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. It also includes the seabed and the subsoil underlying the territorial

waters; the air space above its territory and territorial waters;

Area beyond 12 nautical miles, till the limits of continental shelf/EEZ is also included in the definition of India.

## **9.21 Small scale exemptions on inter-State supplies**

A taxable person who makes inter-State outward supplies of goods is not eligible to opt for composition levy or avail threshold exemption. However there is no restriction on receipt of goods or services from inter-State suppliers.

## **9.22 Consequences if tax on intra-State supply is paid treating it as inter-State supply and vice-versa**

Section 19 of the IGST Act provides that a taxable person who has paid Integrated Tax on a supply considered by him to be an inter-State supply, but which is subsequently found to be an intra-State supply, shall be granted refund of the amount of IGST so paid.

Section 77 of the CGST Act provides that a taxable person who has paid Central and State Taxes on a supply considered by him to be an intra-State supply, but which is subsequently found to be an inter-State supply, shall be granted refund of the amount of the said tax.

The taxable person will have to deposit correct tax with appropriate authority. There is no provision for inter-authority tax adjustment. However no interest liability will arise in the name of short/non-payment of tax.

## **9.23 High-seas sales**

### **9.23.1 What is High-seas sale?**

If a buyer wants to sell his consignment to a third party before arrival of goods but after sailing vessel from load port, such sale is known as high sea sale. In simple words, the ownership of goods is transferred, when goods are in transit.

'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the High sea sale of the goods, the Customs declarations i.e. Bill of Entry etc is filed by the person who buys the goods from the original importer during the said sale.

### **9.23.2 Which taxes will be levied at the time of high-seas sale?**

As per Sec 7(2) of the IGST Act, supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be an inter-State supply. Thus such a transaction of sale/transfer will be subject to IGST under the IGST Act.

Besides the Custom duty, the sale of goods on high seas basis will also be subjected to IGST.

### 9.23.3 When will IGST be levied on imported goods?

As per Circular No.33/2017- Customs dated 1st August, 2017, the GST council has decided that IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.

The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original invoice, high-seas-sales-contract, details of service charges/commission paid etc. to establish a link between the first contracted price of the goods and the last transaction.

### 9.23.4 Applicability of IGST on goods transferred/sold while being deposited in a warehouse

As per Section (8A) of the Customs Tariff Act, 1975, where goods deposited in a customs warehouse are sold to any person before clearance for home consumption or export, the value of such goods for the purpose of payment of IGST will be;

- the value for which Bill of Entry (BOE) for warehousing was submitted or
- the transaction value of such goods,  
whichever is higher.

Thus if the warehoused goods are sold at a value lower than the value for which BOE for warehousing was filed, IGST will be payable on the value for the BOE for warehousing was filed.

The similar scheme will apply for payment of compensation cess, wherever applicable. [Section (10A) of the Customs Tariff Act, 1975]

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