



ST- LEVY AND COLLECTION- AN OVERVIEW

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In India there were a number of indirect taxes imposed either by Central Government or State Government. The law related to taxation was different in each state. The taxes were also having cascading effect. Hence, to overcome these shortcomings, the GST was introduced w. e. f. 01.07.2017. The GST subsumed following Indirect Taxes- namely Central Taxes - Central Excise duty, Excise Duty levied under Medicinal and Toilet Preparations, Additional Excise Duty, Additional Duty of Customs (CVD), Special Additional Duty of Customs(SAD), Service Tax, Central Sur Charge and Cesses and State Taxes like - State VAT/Sales Tax/Commercial Tax, Entertainment tax(except those levied by local bodies), Central Sales Tax (levied by Central and collected by States), Purchase Tax, Luxury Tax, Entry Tax(all forms), Taxes in lotteries, betting and gambling, Octroi Duty, State Surcharges and State Cesses. GST, is the biggest tax reform in India founded on the notion of "One Nation, One Market, One Tax". GST is a Consumption-based tax, therefore, taxes are paid to the state where the goods or services are consumed, not the state in which they are produced. Any tax is levied on occurrence of specific event. For example, Income Tax can be levied on a person when the person is in receipt of taxable income. In case a person is not having any taxable income, no Income Tax can be levied. Similarly, the GST can be levied on supply. Hence, GST is not applicable in case no supply has taken place. In the light of its charging mechanism following paper is prepared.

In India, there were a number of indirect taxes imposed either by Central Government or State Government. The law related to taxation was different in each state. The taxes were also having cascading effect. Hence, to overcome these shortcomings, the GST was introduced w. e. f. 01.07.2017. The GST subsumed following Indirect Taxes-

CENTRAL TAXES

- Central Excise duty
- Excise Duty levied under Medicinal and Toilet Preparations
- Additional Excise Duty
- Additional Duty of Customs (CVD)
- Special Additional Duty of Customs(SAD)
- Service Tax
- Central Sur Charge and Cesses

STATE TAXES

- State VAT/Sales Tax/Commercial Tax
- Entertainment tax(except those levied by local bodies)
- Central Sales Tax (levied by Central and collected by States)
- Purchase Tax
- Luxury Tax
- Entry Tax(all forms)
- Taxes in lotteries, betting and gambling
- State Surcharges and State Cesses
- Octroi Duty

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GST, the biggest tax reform in India founded on the notion of “OneNation, One Market, OneTax”. GST is a Consumption-based tax; therefore, taxes are paid to the state where the goods or services are consumed,not the state in which they are produced.

Any tax is levied on occurrence of specific event. For example, Income Tax can be levied on a person only when the person is in receipt of taxable income. In case a person is not having any taxable income, no Income Tax can be levied.

Similarly, the GST can be levied on supply. Hence, GST is not applicable in case no supply has taken place. Thus to understand the applicability of GST, understanding of word “SUPPLY” is important.

SUPPLY

GST is levied on taxable supply. The tax is levied based on the place of supply as below:-

Type of Supply

Intra State Supply -

Tax Levied

Central Goods and Service Tax (CGST) and State Goods and Service Tax (SGST)

Inter State Supply-

Integrated Goods and Service Tax (IGST)

Thus, the tax to be levied is decided based on the types of supply made i.e. intra-state or inter-state. The word supply is not defined in the CGST Act’2017. Only the “scope of supply” is given in section 7 of the Central Goods and Service Tax Act’2017 (CGST Act).Section 7 of the Act is reproduced as below-

“7. (1) For the purposes of this Act, the expression “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;
- B. Import of services for a consideration whether or not in the course or furtherance of business;
- C. The activities specified in Schedule I, made or agreed to be made without a consideration; and
- D. The activities to be treated as supply of goods or supply of services as referred to in Schedule II.



(2) Notwithstanding anything contained in sub-section (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 sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- A. A supply of goods and not as a supply of services; or
- B. A supply of services and not as a supply of goods”

This section is about scope of transactions to be covered under **supply of Goods and Services**. It is interesting to note that the word supply is not defined in section 2.

Here scope of supply is defined to include:

- Supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.
- import of services for a consideration whether or not in the course or furtherance of business : It is to be noted that scope of supply includes services imported even for personal purposes.
- Activities of Schedule I without consideration.
- Activities referred in Schedule II.

Certain services are excluded from scope of supply. Activities specified in Schedule III and services provided by public authorities are excluded from scope, further government may notify services which will be excluded from scope of supply.

Government may specify the transactions which should be treated as supply of goods and not as supply of services, similarly government may specify transaction which should be considered as supply of services and not supply of goods by a notification after recommendation of the council. All the three schedules are annexed herewith.

COMPOSITE AND MIXED SUPPLY

Section 8 of CGST Act, 2017 deals with the provision related to Composite and Mix Supply as under-

A **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. The tax liability on a mixed supply comprising two or more supplies shall be treated as supply of that particular supply which attract the highest rate of tax.



A **composite supply** means a supply made by a taxable person to a recipient comprising two or more supplies of goods and service, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of trade, one of which is principal supply. The tax liability on composite supply shall be the rate applicable to the principal supply. **Principle Supply** means the pre-dominant element in composite supply.

LEVY AND COLLECTION

Section 9 of CGST Act (Section 5 of IGST Act) deals with the provisions related to levy of GST. Section 9 of CGST Act is as under:-

“(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.”



Base on above, it can be concluded that generally, the supplier of goods or services is liable to pay GST. The person who will supply the goods or services is liable to pay the tax.

However, in specified cases like imports and other notified supplies, the liability may be cast on the recipient under the reverse charge mechanism (RCM). Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply. There are two type of cases where reverse charge is applicable-

i) In the first case, the tax shall be paid on reverse charge basis by the recipient of such goods or services or both which are specified by the notification. All the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. Some of the services which are covered under section 9(3) on which tax is payable under RCM are payment of legal fee to advocate, payment to transporter, sponsorship fee, payment to arbitral tribunal, some service provided by Government, Director remuneration, payment to insurance agent, recovery agent, services by an author, music composer etc. in relation to transfer or permitting the use of copyright etc.

ii) In second case, if an unregistered person makes supply to registered person, the tax is payable by registered person on reverse charge basis as the recipient. All the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. However, supplies where the aggregate value of such supplies of goods or services or both received by a registered person from any or all the unregistered suppliers is less than five thousand rupees in a day are exempted. This provision is postponed till 31.03.2018.

COMPOSITION SCHEME

With a view to ease and comply lower formality to the small businessman, composition scheme is introduced in GST under Section 10 of CGST Act, 2017. The basic features of the scheme are as under-

1. Businesses with annual **turnover up to Rs1.00crore** can opt for composition scheme. (Turnover of all businesses with same PAN has to be added up to calculate turnover for the purpose of composition scheme.)
2. The taxable person should not be engaged in intra state outward supply
3. He should not be engaged in the supply of services other than supply of food and beverages
4. He should not be engaged in the supply of any goods which is not taxable
5. He should not be engaged in the supply through e commerce operator
6. He will not avail the ITC of inward supply
7. He will not charge the GST from the customer



Rate for Composition Scheme:

Composition Scheme – Applicable GST Rate			
<u>Type of Business</u>	<u>CGST</u>	<u>SGST</u>	<u>Total</u>
<u>Manufacturer and Traders (Goods)</u>	<u>0.5%</u>	<u>0.5%</u>	<u>1%</u>
<u>Restaurant not serving Alcohol</u>	<u>2.5%</u>	<u>2.5%</u>	<u>5%</u>
<u>Service Providers are not eligible for Composition Scheme</u>			

Power to Grant Exemption from tax:

The central is empowered, on the recommendation of the Council, to exempt goods or services generally or absolutely or subject to some condition by issuing notification in this behalf.

TIME OF SUPPLY:

Time of supply means the point in time when **goods/services are considered supplied**. Time of supply enables us to determine the rate of tax, value, and due dates of payment of taxes. In order to calculate and discharge tax liability, it is important to know the date on which the charging event has occurred. In GST law, it is known as Time of Supply. Time of Supply is the point when the supply is liable to GST. One of the factor relevant for determining time of supply is the person who is liable to pay tax. In reverse charge, the recipient is liable to pay GST. Thus, time of supply for supplies under reverse charge is different from the supplies which are under forward charge. The provisions of Act related to Time of supply as explained by department is as under-

- 1) Time of supply of goods will be the earliest of the following dates:
 - Date of issue of invoice by the supplier. If the invoice is not issued, then the last date on which the supplier is legally bound to issue the invoice with respect to the supply or
 - Date on which the supplier receives the payment

- 2) Time of supply of services will be the earliest of the following dates:
 - Date of issue of invoice by the supplier (If the invoice is issued within the legally prescribed period under section 31(2) of the CGST Act) or the date of receipt of payment, whichever is earlier



- Date of provision of service (If the invoice is not issued within the legally prescribed period under section 31(2) of the CGST Act) or the date of receipt of payment, whichever is earlier
 - Date on which the recipient shows the receipt of service in his books of account, in case the aforesaid two provisions do not apply
- 3) Time of supply of goods when tax is to be paid on reverse charge basis will be the earliest of the following dates:
- Date of receipt of goods
 - Date on which the payment is entered in the books of accounts of the recipient or the date on which the payment is debited in his bank account, whichever is earlier
 - Date immediately following 30 days from the date of issue of invoice or any other legal document in lieu of invoice by the supplier

However, if it is not possible to determine the time of supply in aforesaid manner, then the time of supply is the date of entry of the transaction in the books of accounts of the recipient of supply.

- 4) Time of supply of services when tax is to be paid on reverse charge basis will be the earliest of the following dates:
- Date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier
 - Date immediately following 60 days from the date of issue of invoice or any other legal document in lieu of invoice by the supplier

However, if it is not possible to determine the time of supply in aforesaid manner, then the time of supply is the date of entry of the transaction in the books of accounts of the recipient of supply.

However, the provision of payment of GST on advance receipt is postponed.



SCHEDULE-I

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

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:

Provided that gifts not exceeding fifty thousand rupees 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 taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.



SCHEDULE- II

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

1. Transfer

- (a) any transfer of the title in goods is a supply of goods;
- (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
- (c) any 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, is a supply of goods.

2. Land and Building

- (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
- (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process

Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets

(a) where 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, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a 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.



5. Supply of services

The following shall be treated as supply of services, namely:—

(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 after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation.—For the purposes of this clause—

(1) 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:—

(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)the expression “construction” includes additions, alterations, replacements or remodeling of any existing civil structure;

(c)temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d)development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software;

(e)agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f)transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:—

(a)works contract as defined in clause (119) of section 2; and

(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.

7. Supply of Goods

The following shall be treated as supply of goods, namely:—

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.



SCHEDULE III
ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS
A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

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.
 - (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.
Explanation.—for the purposes of paragraph 2, the term “court” includes District Court, High Court and Supreme Court.

References:

- i. **Central Goods and Service Tax Act, 2017**
- ii. **Central Goods and Service Tax Rules, 2017**
- iii. **Various Notifications/Circular/FAQ issued by Board**