

Chapter-III

Levy and Collection of Tax

Statutory Provision

7. Scope of supply

- (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, licence, 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.

8. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: —

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

9. (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.

9.1 Introduction

- (i) Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by the authority of law. The Charging Section is a must in any taxing statute for levy and collection of tax. Before imposing any tax, it must be shown that the transaction falls within the ambit of the taxable event and that the person on whom the tax is so imposed also gets covered within the scope and ambit of the charging Section by clear words used in the Section. No one can be taxed by implication.
- (ii) Section 9 is the charging provision of the CGST Act. It provides that all intra-State supplies would be liable to CGST. The levy is on supply of all goods or services or both except on the supply of alcoholic liquor for human consumption. Besides, supply of petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel are also included in GST. However, the tax will be levied on these goods

only with effect from such date as may be notified by the Government after recommendation of the Council. It also provides for the value on which tax shall be paid, the maximum rate of tax that can be levied on such supplies, the manner of collection of tax by the Government and the person who will be liable to pay such tax.

- (iii) Under the GST law, the levy of tax is as follows:
 - (a) In the hands of the supplier - on the supply of goods and / or services (referred to as tax under forward charge mechanism);
 - (b) In the hands of the recipient – on receipt of goods and / or services (referred to as tax under reverse charge mechanism)
- (iv) In the normal course, the tax would be payable by the supplier of goods and / or services. However, in specific cases (as may be notified), the onus of payment of tax is shifted to the recipient of goods and / or services. To impose tax on reverse charge basis, the following conditions would be mandatory:
 - (a) Notification to be issued by the Central Government specifying the categories of supply of goods and / or services.
 - (b) Should be notified only on recommendation of the Council.
- (v) When the goods/ services are supplied by a supplier, who is un-registered person to a receiver, who is registered person, the liability to pay tax on such supplies will be on recipient under reverse charge basis. Thus, a registered person would be required to pay GST on all supplies received by it from un-registered persons. Note: This is applicable to both, goods as well as, services.
- (vi) Additionally, where any supply of services is effected through e-commerce operators (commonly known as services Provided by aggregators), the law provides that the Central / State Government may on recommendation of the Council specify (notify) that the e-commerce operator will be liable to discharge the tax on such supplies. It is important to note that, in such supplies, the e-commerce operator is neither the actual supplier of service/s nor does he actually receive the services. The actual supplier of services is a third party who provides such service to the customer through e-commerce operator. Instead of levying tax on such actual supplier, the law has imposed levy on e-commerce operator. Therefore, this would be an exception to the imposition of tax as specified in para supra. It is important to note that this exception is carved out only in respect of supply of services through an e-commerce operator and will not be applicable / relevant to supply of any goods through an e-commerce operator.

Further, where the e-commerce operator does not have a physical presence in the taxable territory, the representative (being agent / any other person) of the operator (if any) shall be the person liable to pay tax. Where such representative also does not have presence in such territory, the operator should appoint a person specifically for this purpose.

9.2 Analysis

Levy of tax: Every supply will be liable to tax. The nature of tax would depend upon the nature of supply, viz., inter-State supplies will be liable to IGST and intra-State supplies will be liable to CGST and SGST (UTGST).

- (i) Supply should involve goods and / or services – viz., either as wholly goods or wholly services. Even where a supply involves both, goods and services, the law provides that such supplies would be classifiable either as, wholly goods or wholly services. Schedule II of the Act provides for this classification.
- (ii) Where a supply involves multiple (more than one) goods or services, or a combination of goods and services, the treatment of such supplies would be as follows:
 - (a) **If it involves more than one goods and / or services which are naturally bundled together:** These are referred to as composite supply of goods and / or services. It shall be deemed to be a supply of those goods or services, which constitutes the principal supply therein.

Illustration (Provided in Section 2(27)): Where goods are packed, and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply. **This implies that the supply will be taxed wholly as supply of goods.**

Other examples: If a contract is entered for (i) supply of certain goods and erection and installation of the same thereto or (ii) supply of certain goods along with installation and warranty thereto, it is important to note that these are naturally bundled and therefore would qualify as 'composite supply'. Accordingly, it would qualify as supply of the goods therein, which is essentially the principal supply in the contract. Thus, the value attributable to erection and installation or installation and warranty thereto will also be taxable as if they are supply of the goods therein.

- (b) **If it involves supply of more than one goods and / or services which are not naturally bundled together:** These are referred to as mixed supply of goods and / or services. It shall be deemed to be a supply of that goods or services therein, which are liable to tax at the highest rate of GST.

A supply of more than one goods and / or services as a bundle will be reckoned as 'mixed supply' if: (i) such goods and / or services are supplied together for a single price (ii) they are not naturally bundled together and (iii) it does not qualify as composite supply.

Illustration (Provided in Section 2(66)): A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately. **This implies that the supply will be taxed wholly as supply of those goods which are liable to the highest rate of GST.**

Other examples: If a tooth paste (say for instance it is liable to GST at 12%) is bundled along with a tooth brush (say for instance it is liable to GST at 18%) and is sold as a single unit for a single price, it would be reckoned as a mixed supply. This would therefore be liable to GST at 18% (higher of 12% or 18% applicable to each of the goods therein).

While there are no infallible tests for such determination, the following guiding principles could be adopted to determine whether a supply would be a composite supply or a mixed supply. However, every supply should be independently analysed.

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

- (iii) Supply will be an intra-State supply if the location of the supplier and the place of supply are within the same State and the transaction will be an inter-State supply if the location of the supplier and the place of supply are in different States: To be determined under Section 10 to 13 of the IGST Law. (Refer Section 7 & 8 of the IGST Law to understand the meaning of inter-state supply and intra-State supply).

Tax shall be payable by a 'taxable person': The tax shall be payable by a 'taxable person' i.e. person/ separate establishments of persons registered or liable to be registered under sections 22 and 24 of the CGST Act. *Please refer to the discussion under Section 25 for a thorough understanding of this.*

Tax payable: Every intra-State supply will attract CGST as well as SGST, as follows:

- Imposition of CGST by the Government of India,
- Imposition of SGST by the respective State or (UTGST by Central Government through Administrator in case of specified Union Territories and other territories as defined)

Rate and value of tax: The rate of tax will be as specified in the notification that would be issued in this regard, subject to a maximum of 20%. The rates would be determined based on the recommendation of the Council and the rate of tax so notified will apply on the value of supplies as determined under Section 15.

Supply:

- Generic meaning of 'supply':** Supply includes all forms of supply (goods and / or services) and includes agreeing to supply when they are for a consideration and in the course or furtherance of business (as defined under Section 7 of the Act). It specifically includes:

- (i) Sale
- (ii) Transfer
- (iii) Barter
- (iv) Exchange
- (v) License
- (vi) Rental
- (vii) Lease
- (viii) Disposal

The word 'supply' is all-encompassing, subject to exceptions carved out in the relevant provisions.

E.g.:

Supplies mentioned in Schedule III of the Act

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 Government on recommendation of the Council.

The law has Provided an inclusive meaning to the word 'supply' which implies that the specific transactions which are listed in the said section are only illustrative.

Supply should be by a person engaged in business: It is essential that such supplies should be by the supplier who is engaged in business. ('Business' as defined in Section 2(17) of the Act). However, in case of import of services for a consideration, even if such services are imported otherwise than in the course or furtherance of business, it would be deemed to be a supply.

The word 'supply' should be understood as follows:

- It should involve delivery of goods and / or services to another person;
- The supply will be treated as wholly one supply – goods, or services, based on Schedule II and the provisions pertaining to composite supply and mixed supply;
- It should involve quid-pro-quo – viz., there should be something in return which the person supplying will obtain from the recipient (except in cases of matters specified in Schedule I where it is deemed to be a supply, even if it is made without consideration). It is not important that what is received in return is 'money'; it can be money's worth;
- Transfer of property in goods from the supplier to recipient is not necessary;

Under this clause, it is essential that all the above forms of transactions including the extended and generic meaning given to 'supply' should be made for a 'consideration'. Only exception for this will be cases specified in Schedule I. Absence of consideration (as defined in Section 2(31)) will take away the character of 'supply' under this clause.

- (b) **Supply should be in the course or furtherance of business:** For a transaction to qualify as 'supply', it is essential that the same is 'in the course or furtherance of business'. This implies that any supply of goods and / or services by a business entity would be liable to tax, so long as it is in the course or furtherance of business. Supplies which are not in the course of business (or in furtherance of business) will not qualify as 'supply' for the levy of tax, except in case of import of service for consideration, where the service is a supply whether or not it is made in the course or furtherance of business.

Drawing similarities from the existing State level VAT laws, it follows that the said transaction should be with a commercial motive, whether or not there is a profit motive in it or its frequency / regularity. E.g.: sale of goods in an exhibition, participation in a trade fair, warranty supplies, supply of free samples to induce customers to purchase other goods, sale of used assets, etc. would be in the course of business.

- (c) **Import of service will be taxable in the hands of the recipient (importer):** The word 'supply' includes import of a service, made for a consideration (as defined in Section 2(31)) and whether or not in the course or furtherance of business. This implies that import of services even for personal consumption would qualify as 'supply' and therefore would be liable to tax. This would not be subject to the threshold limit as tax is expected to be payable on reverse charge basis, and the threshold limits do not apply in case of supplies attracting tax on reverse charge basis.

Note: Import of services is included within the meaning of 'supply' under the CGST / SGST Acts. However, it would be liable to IGST since it would not be an intra-State supply. In fact, Section 2(21) of IGST Act has adopted the meaning of 'supply' from CGST/SGST Act.

- (d) **Transactions without consideration:** The law provides that in certain cases, even though there is no consideration, the same would be treated as 'supply'. Such cases are listed in Schedule I.

- (i) Permanent transfer of business assets where input tax credit has been availed: The word 'transfer' in this clause suggests that there should be another person who would receive the business assets at the other end.

The use of the words 'permanent transfer' implies that the goods should be transferred without any intention or requirement of having to receive the goods back. However, even in these types of transactions, it is essential that there is delivery of the business assets.

E.g.: Goods sent on job work or goods sent for testing or goods sent for certification would not qualify as 'supply' under this clause since there is no permanence in transfer.

Typically, donation of business assets or scrapping or disposal in any other manner (other than as a sale – i.e., for a consideration) would qualify as 'supply' under this clause, where input tax credit has been claimed on the same.

The law requires that such transactions should be treated as supply only when any input tax has been availed on the business assets. For instance, in case of cars purchased by the company for use by directors would not qualify for input tax credit and such input tax credit would therefore, not have been claimed. Say, after a few years, the same car is transferred to such director on a free of cost basis - this would not be treated as a supply for Schedule I as no input tax credit was availed on such car.

- (ii) Supply of goods and / or services between related person, or between distinct persons as specified in Section 25(4) or 25(5), when made in the course or furtherance of business: Any supply of goods and / or services in the course of business or furtherance of business by a taxable person to a related person (as defined by way of explanation below Section 15(5)), or by one taxable person to another taxable person (as Provided in Section 25 of the Act), when made without consideration, would qualify as 'supply'.

E.g.; Free supplies to related persons, stock transfers to a unit outside the State/ a different business vertical, etc. will be reckoned as supplies.

- (iii) Supply of goods by a principal to his agent, where the agent undertakes to supply such goods on behalf of the principal: E.g. A company is located in the suburbs and employs an agent in the city to undertake sales on behalf of the company. Goods transferred by the company to the premises of the agent in the city would be qualify as a 'supply'.
- (iv) Supply of goods by an agent to his principal, where the agent undertakes to receive such goods on behalf of the principal: E.g. A company is located in the suburbs and employs an agent in the small town nearby to undertake purchases on behalf of the company. Goods procured and transferred by the agent to the company would qualify as a 'supply'.
- (v) 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: Importation of services as covered by the definition does not include importation without consideration. Therefore, this clause is inserted to rope in such services that are received from related persons / their establishments outside India. E.g.: ABC Inc. is incorporated in the US by A Ltd in India, for its operations in the US. A Ltd. together with B Ltd. in India, holds C Ltd. Where services are imported by B Ltd from ABC Inc. in the US without consideration, the import will be deemed to be a supply for Schedule I.

- (e) **Certain supplies will be neither a supply of goods, nor a supply of services:** The law lists down matters which shall not be considered as 'supply' for GST. This list includes:

- (a) Activities/ transactions in Schedule III:
- (i) Services by an employee to an employer in the course or in relation to his employment;

- (ii) Services by any Court or Tribunal established under any law for the time being in force;
 - (iii) Functions performed by MPs, MLAs, etc.; the duties performed by a person who holds any post in pursuance of the provisions of the Constitution in that capacity; the duties performed by specified persons in a body established by the Central State Government or local authority, not deemed as an employee;
 - (iv) Sale of land and Sale of Building (except sale of under-construction premises where the part or full consideration is received before issuance of completion certificate or before its first occupation, whichever is earlier.;
 - (v) Actionable claims, other than lottery, betting and gambling and
 - (vi) Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
- (b) An employer and employee are treated as “related persons” and hence any supply of goods or services by employer to employee without consideration would be considered as supply as per schedule I. However, gifts not exceeding Rs. 50,000 in value in a financial year by an employer to employee shall not be treated as supply of goods or services or both.
- (f) **To be notified:** The Central Government or the State Government may notify such other transactions to either qualify as ‘supply of goods’ or as ‘supply of services’ This notification must be issued only upon recommendations from the Council.

In summary, supply can be understood as follows:

Section 3 - Meaning and scope of supply			
Section 7(1)(a)	Section 7(1)(b)	Section 7(1)(c)	Other matters – Section 8
All forms of supply of goods and/ or services, <ul style="list-style-type: none"> • for a consideration • in the course or furtherance of business • such as: <ul style="list-style-type: none"> • sale, • transfer, • barter, • exchange, • license, • rental, 	Import of service, <ul style="list-style-type: none"> • for a consideration • whether or not in the course or furtherance of business 	Supplies specified* To be treated as supplies made without consideration *Schedule I: 1. Permanent transfer/ disposal of business assets for which ITC availed on such assets 2. Supplies between related	<ul style="list-style-type: none"> • Composite Supply • Mixed Supply

<ul style="list-style-type: none"> • lease or • disposal 		<p>persons/ distinct persons (as specified in section 25) in the course or furtherance of business</p> <p>3. Supply of goods by principal (or agent) to agent (or principal)</p> <p>4. Import of service from a related person in the course or furtherance of business.</p>	
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Reverse charge mechanism: Normally, the supplier of goods and / or services will be liable to discharge tax on the supplies effected. However, the Central or State Governments upon recommendation of the GST Council are empowered to specify by notification the categories of supplies in respect of which the recipient of goods and / or services will be liable to discharge the tax.

All other provisions of this Act will apply to the recipient of such goods and / or services, as if the recipient is the supplier of such goods and / or services – viz., for the limited purpose of such transactions, the recipient would be deemed to be the 'supplier'.

Similarly, when any registered taxable persons receive any supply from unregistered person, he shall be required to pay tax on such inward supplies under reverse charge mechanism. *Ex: Mr A is not registered in GST as his aggregate turnover of taxable supplies is below threshold limit. Mr. B purchased goods from Mr. A. In such case, Mr. A would be required to pay tax under reverse charge on value of such goods. It therefore appears that, threshold exemption for not-obtaining registration given under section 22(1) is only an administrative relief given to small business entities and it would not render the supplies made by them exempt.*

It's also important to note that, a taxable person who is eligible for payment of tax under composition scheme under section 10 of CGST/SGST Act, is also under obligation to pay tax under normal rates in respect of supply of goods/service received by him from unregistered persons, failing which benefit of composition scheme would not be applicable to him.

Applicability in respect of e-commerce operators: Refer discussion under para 9.1 (vi) of the CGST Act for an understanding of the applicability of this provision for e-commerce operators.

- (i) In so far as e-commerce operators are concerned, care must be exercised to determine the nature of business of such operators. Essentially, there are four models of e-commerce business:

- (ii) Market-place – the question of supply by the e-commerce operator does not arise. For this reason, they are liable for TCS under section 52.
- (iii) Fulfillment center – here States have been contesting that this model is one involving ‘buy-sell’ and accordingly liable to GST. The test here is to establish the fact that the supply is by supplier directly to the end customer and not ‘through’ the e-commerce operator.
- (iv) Hybrid (of above 2) – all though not widely prevalent, this is a case where both buy-sell as well as market-place models are employed. It is important for such business to clearly demarcate the two lines-of-business or choose to merge into either of the two so that the respective incidence of tax follows.
- (v) Agency – this is employed by few business involving supply of industrial inputs. The *modus operandi* is that the principal logs-in to the portal and routes the supplies to the end customer. The agreements are so framed that the e-commerce operator becomes responsible for the delivery and collection of payment. This renders the e-commerce Operator to constitute an agency involving handling of the inventory themselves. Such arrangements may be reviewed to ensure the inference of agency . And where such transactions inter se come within the operation of entry 3 of Schedule I of the CGST Act states that transactions between Principal and Agent are treated be a supply and liable to tax. This consequence may be borne in mind even by e-commerce businesses.

9.3 Comparative review

Under the current tax laws, Central Excise is levied on ‘manufacture of goods’, VAT / CST is levied on ‘sale of goods’ and service tax is charged on ‘service Provided or agreed to be Provided’. Unlike such different incidences, under the GST law, it is ‘supply’ which would be the taxable event. Under the current law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT / CST – however, under the GST law, it would be taxable as a ‘supply’ if such supplies are between distinct persons under section 25(4) or 25(5). Further, free supplies would be liable to excise duty, while under the VAT laws, free supplies would require reversal of input tax credit; under the GST law, the treatment would be similar to the present VAT laws, where the supplies are made without any consideration (monetary/ otherwise). However, where the free supplies are made between distinct persons or between related persons then such supplies may be regarded as supply under schedule I, para 2.

In the current law, there are multiple transactions which apparently qualify as both ‘sale of goods’ as well as ‘provision of services’. E.g.: license of software, providing a right to use a brand name, etc. To avoid this situation, GST law clarifies as to whether a transaction would qualify as a ‘supply of goods’ or as ‘supply of services’ by introducing a deeming fiction. A transaction composite contracts would either qualify as goods or as services, under the GST law (Schedule II of the Act, concept of composite supply and mixed supply).

The payment of VAT in the hands of the purchaser (registered dealer) on purchase of goods from an unregistered dealer and the circumstances where the Service Tax is payable under the reverse charge mechanism in respect of say, advocate services, import of services, sponsorship services etc. are comparable to the 'reverse charge mechanism' prescribed herein. However, the concept of partial reverse charge/ joint charge is not expected to continue in the GST regime, viz., every supply will be liable either to forward charge or full reverse charge. Further, under existing law, the concept of reverse charge only exists in relation to services. The GST law, however, permits the supply of goods also to be subjected to reverse charge.

9.4 Related provisions

Section	Description
Section 7 read with Schedule I, II and III	Definition of 'supply'
Section 2(17)	Definition of 'business'
Section 2(107) read with 25 (4) & (5)	Meaning of 'taxable person' and distinct persons
Section 2(31)	Meaning of consideration
Section 2(30) read with Section 2(90)	Meaning of composite supply to be read with Principal supply
Section 2(74)	Meaning of mixed supply
Section 49	Payment of tax
Section 8	Meaning of intra-State supplies
Section 5	Levy and collection of IGST

9.5 FAQ

Q1. Is the reverse charge mechanism applicable only to services?

Ans. No, reverse charge applies to supplies of both goods and services.

Q2. What will be the implications in case of purchase of goods from unregistered dealers?

Ans. The receiver of goods would be liable to pay tax under reverse charge.

Q3. In respect of exchange of goods, namely gold watch for restaurant services, will the transaction be taxable as two different supplies or will it taxable only in the hands of the main supplier?

Ans. Yes, the transaction of exchange is specifically included in the scope of "supply" under Section 7. Thus, exchange could be taxable both ways. (A different view can also be possible depends on the facts of the case).

Q4. Whether money is included in service?

Ans. No, money is not included in definition of service.

Q5. What are examples of 'disposals' as used in 'supply'?

Ans. "Disposals" could include donation in kinds or supplies in a manner other than sale.

Q6. Will a not-for-profit entity be liable to tax on any supplies effected by it – e.g.: supply of assets received as donation?

Ans. Yes, it would be liable to tax on value as may be determined under Section 15, for said sale of donated assets.

9.6 MCQ

Q1. As per Section 9, which of the following would attract levy of CGST?

- (a) Inter-state supplies
- (b) Intra-state supplies
- (c) Any of the above
- (d) None of the above

Ans. (b) Intra-state supplies

Q2. Which of the following forms of supply are included in Schedule I?

- (a) Permanent transfer of business assets on which input tax credit has been claimed
- (b) Agency transactions
- (c) Barter

Ans. (a) Permanent transfer of business assets on which input tax credit has been claimed

Q3. Who can notify a transaction to be supply of 'goods' or 'services'?

- (a) Board
- (b) Central Government
- (c) GST Council
- (d) None of the above

Ans. (b) Central Government

Statutory Provision

10. Composition levy

(1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding, —

- (a) one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,

- (b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and
- (c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers, subject to such conditions and restrictions as may be prescribed:
 Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council.
- (2) The registered person shall be eligible to opt under sub-section (1), if: —
- (a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;
- (b) he is not engaged in making any supply of goods which are not leviable to tax under this Act;
- (c) he is not engaged in making any inter-State outward supplies of goods;
- (d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and
- (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:
- Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.
- (3) The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).
- (4) A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.
- (5) If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, *mutatis mutandis*, apply for determination of tax and penalty.

10.1 Introduction

This provision deals with the composition scheme for payment of tax by eligible taxable persons, subject to certain conditions. The conditions, restrictions, procedures and the documentation would be contained in the Rules, to be prescribed.

10.2 Analysis

Composition scheme is an option:

Tax payment under this scheme is an option available to the taxable person. This scheme would be available only to certain eligible taxable persons (conditions / criteria discussed). The taxable person should make an application exercising his option to pay tax under this scheme. There are three possibilities in which such option can be exercised:

- (a) Taxable Person migrating from existing registration to GST registration: Exercising Option in Form GST CMP 01 prior to appointed date or within 30 days after the appointed date. In this case, the option to pay tax under composition scheme shall be effective from the appointed date.
- (b) Taxable Person obtaining new registration under GST laws: Such option can be exercised at the time of obtaining registration under section 22 in Part B of Form GST-REG-1. In this case, the option to pay tax under composition scheme shall be effective from the effective date of registration.
- (c) Taxable Person paying tax under normal levy in one financial year and wants to opt for composition scheme in next financial year, under the GST regime – Such option can be exercised by filing intimation in Form GST CMP 02 prior to commencement of the year for which the option to pay tax under composition scheme is exercised. In this case, the option to pay tax under composition scheme shall be effective from the beginning of the financial year. In such case, provisions of section 18(4) shall become applicable and person shall be required to file statement containing details of stock and inward supply of goods received from un-registered persons, held in stock, on the immediately preceding the date from which he opts for composition levy, in Form GST CMP 03 within 60 days of the date from which such option is exercised.

Once granted, the eligibility would be valid unless the permission is cancelled or is withdrawn or the person becomes ineligible for the scheme.

Scheme will be applicable for all goods:

Composition scheme may be opted for by taxable persons, in respect of supply of any goods (without any reference to classification or type of goods). The option of the scheme will be qua-taxable person and not qua-class of goods – once opted it will be applicable for all supplies by the taxable person; it must be noted that a taxable person **cannot** opt for payment of taxes under composition scheme, say for supply of one class of goods and opt for regular scheme of payment of taxes for supply of other classes of goods or services.

Suppliers who are engaged in making any supply of goods which are not leviable to tax under CGST/SGST (UTGST) Act are not entitled to avail composition scheme. Hence, suppliers supplying alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel, or making inter-state outward supply of goods on which tax is levied under IGST Act are apparently not eligible for composition scheme. Besides, supplier engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52 is also not

eligible for this scheme. The scheme is also not applicable to the manufacturers of notified goods (i.e. goods which are notified by the Government on recommendations of the Council).

Composition scheme is not available for services:

Suppliers of services are excluded from opting to pay tax under composition scheme, except composite supply, by way of or as a part of any service, 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) which is deemed to be a service under Schedule II, Para 6 (b) (i.e. food/restaurant services)

Rate of tax:

The rate of tax would be as under:

- (a) 2% (CGST+SGST) of the turnover in the State/UT in case of manufacturers.
- (b) 5% (CGST+SGST) of the turnover in the State/UT in case of food/restaurant services.
- (c) 1% of the turnover in the State/UT in case of other suppliers (like traders / agents)

Eligibility to pay tax under composition scheme:

Only taxable persons whose 'aggregate turnover' (aggregate of turnover in all States) does not exceed ₹ 50 lacs in the preceding financial year will be eligible to opt for payment of tax under the composition scheme.

Since the composition scheme is applicable only in respect of persons making intra-state supply, in terms of Section 2(6) of the CGST Act, 2017 'aggregate turnover in a State' means 'Value of all (Taxable supplies + Exempt supplies) – (GST Value of inward supplies taxable under reverse charge) of all persons having the same PAN. The permission granted for paying tax under this scheme would stand withdrawn from the day on which this threshold limit is exceeded.

The Government, by notification and with recommendation of Council, is empowered to increase this threshold limit up to Rs.1 crore.

The threshold of ₹ 50 lacs would be applicable to a person having the same PAN and should be understood as follows:

- All taxable persons covered by the same PAN shall be under composition across India. Any intimation of option to avail composition scheme in respect of any place of business in any State or UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN;
- Goods supplied by the person which are chargeable to tax on reverse charge basis will not be includable in computing the aggregate turnover; such inward supplies will be liable to tax in the hands of the composition dealer, as it will be liable to tax when received by non-composition taxable persons.
- Will include value of supply of goods in all forms (supply of goods simplicitor and mixed and composite supplies which are taxed as supply of goods);
- Will include value of supplies of all business verticals of the same taxable person.

Conditions for opting to pay tax under composition scheme:

(i) **Restricted from making supply of goods which are not liable to GST:** Certain goods are not liable to GST, e.g. petroleum, alcohol for human consumption, etc. - a person opting for composition scheme shall not be entitled to make any supply of non-GST goods. A plain reading of the proviso to Section 9(1) would imply that the restriction on supplies would be applicable only to sales / dispatches (outwards supplies).

(ii) **Restricted from effecting inter-State outward supplies:** The taxable person should not affect any inter-State outward supplies. This means that even stock transfers to branches outside the State would not be permitted. However, insofar as it relates to inter-State inward procurements / receipts, there is no restriction.

To explain further, where a taxable person effects inter-State barter transaction (supply) or inter-State warranty contract (supply), he will not be eligible to opt for composition scheme.

(iii) **Restricted from making supplies through an e-commerce operator:** A person opting for composition scheme is not allowed to affect any supply of goods through an e-commerce portal, unless such portal is owned by the same person.

(iv) **Restriction on manufacture of notified goods:** The person opting for the scheme should not be a manufacturer of certain goods as are notified in this regard. However, there is no restriction in case the person is engaged in trading of such goods.

(v) **Would be applicable for all transactions under the same PAN:** Composition scheme would become applicable for all the business verticals having separate registrations within the State and all other registrations outside the State which are held by the person with same PAN.

To clarify further, if a taxable person has multiple business verticals and if he has opted for separate registrations for each such vertical, composition scheme would become applicable for all the business verticals and it cannot be applied for select verticals only.

e.g.: If a taxable person has the following businesses separately registered:

- Sale of footwear (Registered in Karnataka)
- Sale of mobiles (Registered in Karnataka)
- Franchisee of McDonalds (Registered in Kerala)

In the above scenario, the composition scheme would be applicable for all the 3 units. Taxable person will not be eligible to opt for composition scheme say for sale of footwear and sale of mobiles and opt to pay taxes under the regular scheme for franchisee of McDonalds.

(vi) **Shall not collect tax:** Taxable person opting to pay tax under the composition scheme is prohibited from collecting tax on the outward supplies.

(vii) **Not entitled to input tax credit:** Taxable person opting to pay tax under the composition scheme will not be eligible to claim any input tax credits.

However, if the taxable person becomes ineligible to remain under composition scheme, the taxable person will become entitled to take input tax in respect of inputs held in stock (as inputs, contained in semi-finished or finished goods) on the day immediately preceding the date from which he becomes liable to pay tax under Section 9. (Refer Section 18(1)(c) for the provision. A statement of stock shall be filed in Form GST ITC-1 within 30 days from the date from which the option is withdrawn or the order cancelling the composition option is passed).

- (viii) **Additional conditions under the Rules:** The following additional conditions are prescribed in the Composition Rules, in order to be eligible for the composition scheme
- Not applicable to persons who are casual taxable persons or non-resident taxable persons.
 - In case of migration of existing registration into registration under GST, option to avail composition scheme under GST can be exercised only if the goods held in stock by such taxable person, on the appointed day have not been purchased in the course of inter-state trade or commerce or imported from a place outside India or received from his branch situated outside the State, or from his agent or principal outside the State.

Composition scheme not applicable for tax payable under RCM: It is important to note that for any tax payable under reverse charge mechanism, the option of payment under this scheme will not be available. In other words, a taxable person opting for composition scheme will be required to pay tax on supplies taxable under RCM at regular rates and not the composition rate.

Withdrawal of application under composition scheme:

The registered taxable person who intends to withdraw from the composition scheme shall before the date of such withdrawal, file an application in Form GST CMP 04. Where the option of composition scheme is lapsed due to non-compliance of any of the eligibility conditions under Section 10 or rules made thereunder, then taxable person shall file an intimation of withdrawal in the same Form GST CMP 04 within 7 days of the occurrence of event leading to disability under the scheme. An intimation for withdrawal or cancellation of permission in respect of any place of business in a State or UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

Cancellation of permission:

Where the proper officer has reasons to believe that the taxable person was not eligible to the composition scheme, the proper officer may cancel the permission and demand the following:

- Differential tax and interest – viz., tax payable under the other provisions of the Act after deducting the tax paid under composition scheme
- Penalty determined based on the demand provisions under Section 73 or 74.

However, it is essential that a show cause notice is issued and the taxable person is afforded an opportunity of being heard before proceeding with the demand. Such show cause notice shall be issued in Form GST CMP 05. The reply to such notice shall be filed in Form GST

CMP 07. On receipt of such reply, the proper officer shall within 30 days of receipt of such reply, either accept the reply or deny the option to pay tax under section 10 from the date of option or from the date of event occurring the contravention of section 10 or rules thereunder, by passing an order in Form GST CMP 07.

Please note:

Exemption under CGST Act	Deemed to exempt under SGST Act
	Deemed to exempt under UTGST Act
Exemption under IGST Act	No auto-application of exemption

10.3 Comparative review

Under the current tax laws, the scheme of composition is Provided for in most State level VAT laws. The conditions prescribed under the GST law for composition scheme is broadly comparable to the conditions / restrictions under the State level VAT laws.

10.4 Related provisions

Section	Description	Remarks
Section 9(3) & (4)	Levy of CGST	This is the other charging Section for levy of tax payable on reverse charge by person receiving goods and/ or services and is not withstanding the regular tax payable under Section 9
Section 2(6)	Meaning of 'aggregate turnover'	Only if the value of aggregate turnover is less than ₹ 50 lacs, composition scheme can be opted for
Section 2(112)	Meaning of 'turnover in a State'	The composition rate of tax will be payable on the 'turnover in a State'
Sections 73, 74	Demand provisions	These provisions would determine the quantum of penalty, if any

10.5 FAQ

Q1. Can the composition tax be lower than 1%?

Ans. No. Composition tax cannot be lower than 1%.

Q2. Will a taxable person be eligible to opt for composition scheme only for one out of 3 business verticals?

Ans. No. Composition scheme would become applicable for all the business verticals / registrations which are separately held by the person with same PAN.

Q3. Can composition scheme be availed if the taxable person effects inter-State supplies?

Ans. No. Composition scheme is applicable subject to the condition that the taxable person does not affect inter-state outward supplies.

Q4. Can the taxable person under composition scheme claim input tax credit?

Ans. No. Taxable person under composition scheme is not eligible to claim input tax credit.

Q5. Can the customer who buys from a taxable person who is under the composition scheme claim composition tax as input tax credit?

Ans. No. customer who buys goods from taxable person who is under composition scheme is not eligible for composition input tax credit.

Q6. Can composition tax be collected from customers?

Ans. No. The taxable person under composition scheme is restricted from collecting tax.

Q7. What is the threshold for opting to pay tax under the composition scheme?

Ans. The threshold for composition scheme is upto 50 Lakhs of aggregate turnover in the preceding financial year.

Q8. How to compute 'aggregate turnover' to determine eligibility for composition scheme?

Ans. The methodology to compute aggregate turnover is given in Section 2(6). However, since composition scheme is applicable only to suppliers making intra-state supplies, 'aggregate turnover' means 'Value of all (taxable supplies + Exempt supplies) – (Taxes + Value of inward supplies taxable under reverse charge) of a person having the same PAN (i.e., across India).

Q9. What does a person having the same PAN mean?

Ans. "Person having the same PAN" means all the units across India having the same PAN as is issued under the Income Tax Law.

Q10. What are the penal consequences if a taxable person is not eligible for payment of tax under the Composition scheme?

Ans. Taxable person who is not eligible for the said scheme, could be imposed penalty as determined under Section 73 or 74.

Q11. What happens if a taxable person who has opted to pay taxes under the composition scheme crosses the threshold limit of ₹ 50 lakhs during the year?

Ans. In such case, from the day the taxable person crosses the threshold, the permission granted earlier is deemed to stand withdrawn, and he shall be liable to pay taxes under the regular scheme i.e. section 9 from such day.

10.6 MCQ

Q1. What is the minimum rate of tax prescribed for composition scheme?

- (a) 4%
- (b) 2%
- (c) 1%
- (d) 5%

Ans. (c): 1%

Statutory Provision**11. Power to grant exemption from tax**

- (1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.
- (2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.
- (3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an *explanation* in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such *explanation* shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

11.1 Introduction

This provision confers powers on the Central Government to exempt either absolutely or conditionally goods or services or both of any specified description from whole or part of the central tax, on the recommendations of the Council. It also confers power on the Central Government to exempt from payment of tax any goods or services or both, by special order, on recommendation of the Council.

11.2 Analysis

The Central or the State Governments are empowered to grant exemptions from tax, subject to the following conditions:

- (i) Exemption should be in public interest
- (ii) By way of issue of notification
- (iii) On recommendation from the Council
- (iv) Absolute / conditional exemption may be for any goods and / or services
- (v) Exemption by way of special order (and not notification) may be granted by citing the circumstances which are of exceptional nature.

- (vi) The registered person supplying the goods or services or both shall not collect the tax more than the effective rate as exempted by the Government.

With specific reference to the fourth condition indicated above, it is important to note that the exemption would be in respect of goods or services or both, and not specifically for any classes of persons. E.g.: An absolute exemption could be granted in respect of supply of water. A conditional exemption could be supply of goods to canteen stores department.

From the explanation Provided, there is one school of thought wherein it is opined / understood that in case of conditional exemptions, there is an option available to the taxable person to pay the tax (by which way, there would be no requirement for input tax credit reversals). However, an absolute exemption is required to be followed mandatorily. The other view is that neither of the exemptions are optional but are mandatory when the conditions relating to the exemption are satisfied.

In terms of sub-Section (2), the Government may issue a special order on a case-to-case basis exempting from payment of tax. The circumstances of exceptional nature would also have to be specified in the special order.

To provide more clarity to explain the exemption notification or the special order, it is Provided that the Government may issue an "Explanation" at any time within a period of 1 year from the date of notification or special order. The effect of this "Explanation" would be retrospective, viz., from the effective date of the relevant notification or special order.

Effective date of the notification or special order:

The effective date of the notification or the special order would be date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would be:

- Date of its issue for publication in the official gazette;
- Date on which it is made available on the official website of the Government Department

Illustrations for Absolute Exemptions:

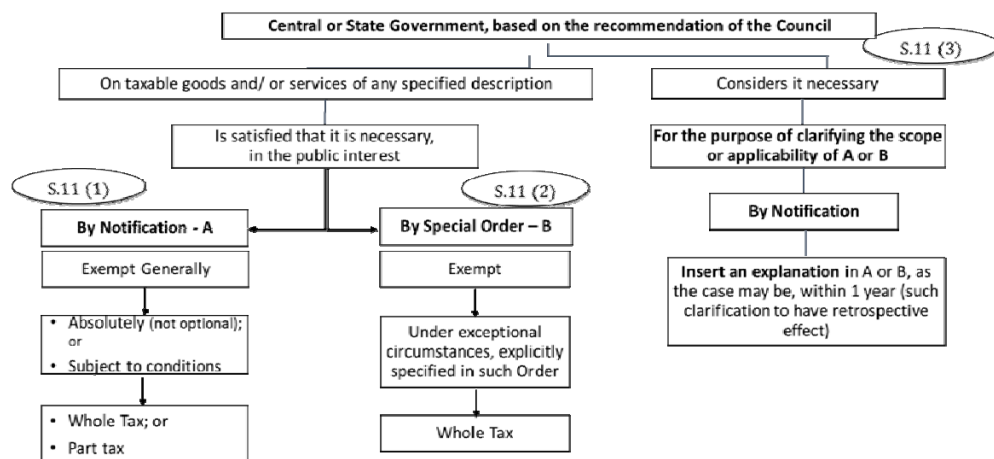
1. The Central Government may exempt the tax payable under the CGST / UTGST / IGST Acts by any taxable person on supply of "salt" with effect from 01.10.2017
2. All kinds of training services with effect from 01.04.2018

Illustrations for Conditional Exemptions:

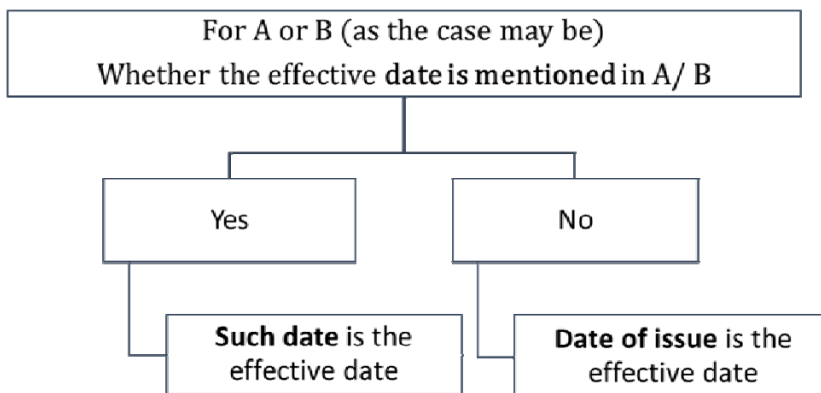
1. The Central Government may exempt the tax payable under the CGST / UTGST / IGST Acts by any taxable person on supply of "footwear costing less than Rs. 100" with effect from 01.04.2018
2. The Central Government may exempt the tax payable under the CGST / UTGST / IGST Acts by any taxable person on sale of goods or services or both with effect from 01.12.2017 in respect of all hotels located in Patna in Bihar, for a period of 3 months with effect from 01.01.2018 to 31.03.2018 in view of the flash floods.

The analysis of above provision in a pictorial form is summarised as follows:

Power to grant exemptions: Sec. 11



For the purpose Section 11, the effective date or date of issue of the Notification or Order, is determined as under:



Sec. 11 – Illustration I

Notification issued u/s 11(1): Conditional, partial exemption

- The tax payable by a registered taxable person under Section 9, on the supply of aluminium ingots, sows, billets and wire rods made, in the course of inter-State trade or commerce, to a recipient, being a registered taxable person, shall be calculated @ 1% subject to the condition that the recipient uses such goods as inputs in the manufacture of other goods

Notification dt. 01.05.2017

Sec. 11 – Illustration II

Notification issued u/s 11(1): Absolute exemption

- Exemption to following taxable services from tax leviable thereon:
- Services Provided to the United Nations or a specified international organization
- Services by a veterinary clinic in relation to health care of animals or birds
- This notification shall come into force on the 1st day of June 2018

Notification No. 25/2018 dt. 20.05.2018

Sec. 11 – Illustration III

Special Order issued u/s 11(2)

Order: Whereas the recent floods and landslides has caused extensive damage to public and private property in the State of Assam and has adversely affected the life of the common man in the State. There is a need to provide support to ensure sustenance for the local population by revival of the hospitality industry; And whereas taxable supply in the State of Assam is chargeable to GST; Now therefore, in exercise of the powers conferred by sub-Section (2) of Section 11 of the CGST Act, the Central Government being satisfied that it is necessary so to do, that the circumstances of exceptional nature as mentioned above, hereby exempts the following taxable services supplied to any person in the State of Assam, from the whole of GST leviable thereon under Section 9 of the said Act, namely:-

- Services by way of renting of a room in a hotel, inn, guest house, club, campsite or other commercial place meant for residential or lodging purposes
- Services Provided in relation to serving of food or beverages by a restaurant

This exemption order is applicable for the above mentioned taxable services supplied during the period 1st July 2017 to 31st July 2017.

Exemption Order dt.17.09.2017

11.2 Comparative review

The provisions relating to exemption are broadly similar to the exemption provisions under the current tax regime. There are no significant differences.

11.3 FAQ

Q1. When exemption from whole of tax leviable on goods and/or services has been granted unconditionally, can taxable person pay tax?

Ans. No, the taxable person providing goods and/or services shall not pay the tax on such goods and/or services in respect of those supplies which are notified for absolute exemptions.

Q2. Under what circumstances can a special order be issued?

Ans. The Government may in public interest, issue a special order on recommendation of

GST council, to exempt from payment of tax, any goods and/or services on which tax is leviable. The circumstances of exceptional nature would also have to be specified in the special order.

11.4 MCQ

Q1. Which of the following can be issued by Central Government/ State Government to exempt goods and/or services on which tax is leviable in exceptional cases?

- (a) Exemption Notification
- (b) Special order
- (c) Other notifications
- (d) None of the above

Ans. (b) Special Order

SCHEDULE-I

[See Section 7]

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

[See Section 7]

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 service, 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 remodelling of any existing civil structure;
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, 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

Schedule-II

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

[See Section 7]

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.