

Chapter IV

Time and Value of Supply

Statutory Provision

12. Time of supply of goods

- (1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.
- (2) The time of supply of goods shall be the earlier of the following dates, namely: —
- (a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or

(b) the date on which the supplier receives the payment with respect to the supply:

Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

Explanation 1.—For the purposes of clauses (a) and (b), “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2. —For the purposes of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.

- (3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely: —
- (a) the date of the receipt of goods; or
- (b) the 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; or
- (c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

- (4) In case of supply of vouchers by a supplier, the time of supply shall be—
- (a) the date of issue of voucher, if the supply is identifiable at that point; or
 - (b) the date of redemption of voucher, in all other cases.
- (5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—
- (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
 - (b) in any other case, be the date on which the tax is paid.
- (6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

12.1 Analysis

(a) Introduction

Supply has been understood to hold the key to the incidence of GST, but it is the 'time of supply' that dictates the occasion when this incidence will come to rest. Taxable supply has been defined to mean a supply of goods and/or services which is chargeable to tax under this Act. It is interesting to note the use of the expression 'chargeable to tax' as opposed to 'leviable to tax'. It has been held that 'chargeable to tax' encompasses not only the incidence of tax but also its assessment.

The opening words in section 12(1) are very interesting and forceful as it is here that the liability to pay GST arises. The subject matter of levy – goods or services – becomes encumbered with the tax upon occurrence of the taxable event – supply. But the tax levied in terms of section 9, comes to reside only at the time determined by section 12 and 13. Accordingly, these sections play a stellar role in the imposition of GST.

The provisions state that the time of supply "shall be" and as such is a "must" to be examined closely. It signifies that "time of supply" is not a fact to be inquired by the taxable person but one that is to be admitted as the time of supply appointed by the will of legislature as declared in the section. In order to not allow any opportunity for a suggestion by the taxable person or even the tax administration as to any alternative to what could be the time of supply, the legislature retains for itself the exclusive authority to appoint the time of supply by employing the words "shall be". Therefore, the time of supply is what is stated in the law to be the time of supply and nothing else.

Invoice is commonly understood as 'proof of sale' but this common understanding is far from the truth. Invoice is a document recording the terms of an arrangement already entered - the underlying arrangement. Lease agreement, as an analogy, is a document in present evidencing the agreement reached between two parties is for the lease of property for certain duration in exchange for a certain consideration. A lease arrangement verbally entered into previously when documented by an indenture or deed does not bring into existence the lease when the document is prepared. In fact, the document merely is a record of an arrangement of

lease entered previously, albeit verbally. Verbal arrangements are no less agreements in the eyes of law. Similarly, an invoice does not bring into existence a sale agreement but merely records the terms of whatever arrangement that may have been entered into by the parties, involving the subject matter. Tax laws require the preparation of an invoice not as if the absence of an invoice defeats the levy but prescribes an unambiguous occasion when the tax may become recoverable with a proper record of the terms of the underlying arrangement. Therefore, an invoice can evidence not only a sale but every other form of supply such as transfer, barter, exchange, license, rental, lease or disposal. If issuance of an invoice is uncommon for barter or a rental arrangement, then it is to do with our own unfamiliarity and nothing to do with its impermissibility.

(b) Time of Supply – Forward Charge

Time of supply is prescribed (legislative will) to be the earlier of (a) date of issue of invoice and (b) date of receipt of payment. Date of issue of invoice requires us to examine section 31 which deals with the requirement to issue a “tax invoice”. Here two kinds of situations are contemplated, namely:

- (i) A case where the supply involves movement
- (ii) Any other case

Before proceeding, it is necessary to admit the concept of ‘person and taxable person’. Person is defined in the most familiar manner in section 2(84) but taxable person is explained in detail in section 25 (please refer to the relevant chapter for a detailed discussion). A proper reading of section 25 helps us understand – a State is the smallest registrable unit in GST – except where multiple business verticals are registered separately under section 24. A taxable person is therefore the presence of the person in a State where taxable supplies are made from in the name of such person. When a person becomes liable to be registered in a State at any place from where taxable supplies are made therein, every place in that State such person shall be a taxable person.

2(96) “removal”, in relation to goods, means –

(a) despatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier, or

(b) collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient

Now, we may return to our discussion regarding the two kinds of cases that are discussed on time of supply. It is noticeable that section 31 uses two expressions – ‘removal of goods’ and ‘movement of goods’ – which are not merely expressions of distinction without a difference. There is deliberate purpose for legislating in this manner. ‘Removal of goods’ is defined in section 2(85) and identifies the steps that may follow once the decision to supply is made. But, ‘movement of goods’ is not defined and is therefore an attribute of the goods at the time of supply. For example, machine tools on display at an exhibition in Mumbai agreed to be purchased by executives of an engineering company from Indore attending the exhibition, is a case of ‘supply involving movement’ even though the transportation is undertaken by representatives of the purchaser on their own. In the same example if the executives from

Indore were to place an order at the same exhibition with instructions for delivery to be ensured by the exhibitor (supplier) assured within six weeks, this would also be a case of 'supply involving movement' and the transportation being organised by the supplier through an independent transport agency from the factory or exhibitor site to the customer location.

It is for this reason that the language employed of seemingly similar or synonymous expressions – 'removal of goods' and 'movement of goods' – but demands to be supplied their separate and individual meanings and not be misled by their apparent similarity. To reiterate, 'removal of goods' is a question of fact to be examined from the steps that would ensue once the supply is decided whereas 'involves movement' is a question of the state-of-affairs of the goods being supplied.

Therefore, it is important even before the arrival of time of supply, that the goods to be supplied be classified into one of these two cases, that is, whether it is a case of supply that involves movement or one that does not involve movement of the goods. Only when this classification of the goods has been clearly made does section 31 come into operation. Where the supply involves movement of goods then an invoice must be issued at the exact time when the goods are about to be removed. And where the supply does not involve movement of goods then an invoice must be issued at whatever is the time when the goods are delivered or made available to the recipient. It is in this case – where supply does not involve movement – that the complexity remains even after making a proper classification. That is, determining the time when the goods are delivered or made available to the recipient. Delivery – the mode and the time – is the unilateral choice of the recipient and the supplier has no authority to decide 'how' and 'when' he will deliver the goods to the recipient. It only becomes easy in a contract for supply if it clearly records this 'choice' of the recipient regarding the mode and time of delivery. The supplier is always duty-bound to deliver in exactly the same way – manner and timing – which the recipient dictates. In fact, the supplier continues to be obligated until delivery is completed in the way it is stated by the recipient. In other words, delivery is not complete if there is any deviation in either the manner or the timing compared to that dictated by the recipient. When the delivery is to the satisfaction of the recipient, then the supplier is released from his obligation. Therefore, in all those cases (where supply does not involve movement) the additional question of fact to be determined is the mode and time of delivery dictated by the recipient and whether the same has been complied with, to the satisfaction of the recipient. It is now that section 31 comes into operation.

Unlike the case of VAT law where an invoice is required to be issued when 'transfer of property' takes place and invoice does not have to be kept pending until they are physically removed, GST requires issuance of an invoice at the time of their 'removal' or 'delivery', as the case may be, notwithstanding any delay in transfer of property. As explained earlier, an invoice does not by itself prove anything except that it is a record of the terms of understanding of the underlying transaction. Accordingly, referring back to our brief mention about 'person and taxable person', the tests requiring examination under section 31 must be administered not only in a transaction between two persons but even on all the transactions between two taxable persons even if they belong to the same person.

It is only upon undertaking a detailed enquiry into the questions of fact determined under section 31 in the respective cases, will we be able to determine one of the two elements prescribed to be the 'time of supply' under section 12. Time of supply therefore is earlier of date of invoice as per section 31 or date of receipt of payment with respect to the supply.

Exceptions:

- (i) when amount in excess of Rs. 1000 is received, the time of supply in respect of such excess at the option of the supplier shall be the date of such invoice
- (ii) supply shall be deemed to have been made to the extent the value of supply indicated in the invoice or the value of payment received by the supplier
- (iii) date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier

(c) Time of Supply – Reverse Charge

Where tax is payable on reverse charge basis, the time of supply is appointed to be the earliest of (a) date of receipt of goods, (b) date of payment or (c) 30 days from the date of issue of invoice by the supplier. If for any reason, one or these three dates cannot be determined then the time of supply will be the date of recording the supply in the books of the recipient.

Keeping in mind the definition of reverse charge in section 2(98), the above provision does not apply to payment of tax by an electronic commerce operator but only to those cases of supply which fall under sub-section 5 to section 9 of the Act.

Exceptions:

date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier

(d) Time of Supply – Vouchers

The Act introduces time of supply in respect of 'vouchers' as a separate category such that the provisions relating to time of supply of goods is made inapplicable when the supply is of such vouchers. Referring to chapter III where in the context of supply, definition of goods has been discussed at length, we find specific inclusion of 'actionable claims'.

In relation to actionable claims, Courts have held as follows:

- (i) actionable claims come within the definition of goods as generally understood
- (ii) VAT laws have deliberately excluded actionable claims from the definition of goods
- (iii) actionable claims represent debt and accordingly carry a demand that can lawfully be made by one person against another
- (iv) actionable claims represent property in non-physical (incorporeal) form

But in GST, unlike VAT laws, we find that by including actionable claims within the definition of goods, they are made liable to tax. In relation to actionable claims under GST, please note the following key aspects:

- (i) Actionable claims are included specifically in the definition of goods, but this inclusion is by creating an exception from an exclusion. In other words, while excluding money and securities from the definition of goods, actionable claims have been singled out. This means such forms of actionable claims that represent property in the form of money or securities are also excluded from the definition of goods. Therefore, from a large population of actionable claims, tax is applicable only on the subset of actionable claims which do not represent property in the form of money or securities and all other forms of actionable claims representing any other property is includable in the definition of goods. A receipt for having made payment is not actionable claim because that receipt represents money and not the result of a transaction resulting in debt or demand. Similarly, promissory notes, IOU slips and all other derivatives of such instruments are also not actionable claims for the purposes of GST because of the exclusion of money from the definition.
- (ii) Actionable claims which are included within the definition of goods do not become includable in the definition of services due to the accommodative and expansive language used to define services. For this reason, the property that actionable claims represent even if they are in non-physical form will continue to remain goods and not become services. Actionable claims so understood may or may not be itself in any physical form. In other words, actionable claim is not the piece of paper carrying the detailed description of the actionable claim in question but the real property, though in nonphysical form, that is referred to in that piece of paper. In this digital age, piece of paper carrying the description of the actionable claim can even be present in electronic form and still retain the character of actionable claim within the definition of goods. So, actionable claims can be in physical or electronic form as long as they represent real property.

About 'actionable claims' discussion in chapter III would have highlighted that the incidence is limited to 'lottery, betting and gambling'. Further, it is important to note that vouchers are not always referring only to actionable claims. Vouchers being treated as a separate category for the purposes of determining time of supply will need to be first identified in relation to supply before applying the relevant provision regarding its time of supply. Vouchers are not defined in the Act but its general definition is "a small printed piece of paper that entitles the holder to a discount or that may be exchanged for goods or services" and examples of voucher are coupon, token, ticket, license, permit, pass. Given the broad nature of this general definition and examples, it is important to await the exact scope intended in GST for vouchers.

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

Now, the time of supply in the case of vouchers is stated to be:

- (i) the date of issue of voucher if the supply is identifiable at that point or
- (ii) and in all other instances, the date of redemption of the voucher

Please refer to the chapter regarding time of supply of services for detailed discussion on the overall aspect of vouchers. It is important to understand that a similar provision as specified in relation to time of supply of goods also exists in time of supply of services. It is reasonable to therefore infer that the Government in its wisdom, in all probability, will treat 'vouchers relating to goods' and 'vouchers relating to services' as distinct and separate class of transactions. What does one understand by 'vouchers relating to goods' and 'vouchers relating to services'? A layman would comprehend that vouchers relating to goods would be those class of transactions which can be exchanged for goods whereas vouchers relating to services being distinct and separate can be exchanged only for services. There can be a third class of transactions relating to vouchers, namely, a gift voucher issued by a bank which can be exchanged only for cash. But a plain reading of definition of goods and services indicates that they both exclude money. Therefore, such of those vouchers relating to cash / money can be safely assumed to be outside the ambit of GST laws.

It is possible for one to construe that a voucher relating to goods can be embedded for the provision of services also. Such class of transactions must be read with schedule II to understand whether they are to be treated as goods or as services and thereafter apply the principles laid down to the transaction as if they were goods or services. And in such situations, await until time of redemption to determine the rate of tax and class of supply.

Interesting situations arise in respect of such transactions. For instance, the points accumulated in a credit card could be used to exchange for goods or issue of an air ticket. Difficulty arises in taxing such transactions in the hands of the person issuing such points. However, the taxability or otherwise of such accumulated points would need detailed deliberations based on facts and surrounding circumstances of each case.

(e) Time of Supply – Residuary

Where none of the above provisions are able to satisfactorily answer the time of supply, it is to be determined based on the residuary provision which states that the time of supply is:

- (i) where a periodical return has to be filed, the due date prescribed for such return or
- (ii) in any other case, the date of payment of the tax

Time of supply under this residuary provision is applicable only when the other provisions are found to be inapplicable and not merely when there is some difficulty in determining the facts that are sought for by the relevant provision.

(f) Time of Supply – Special Charges

Special charges imposed for delay in payment of consideration will enjoy the facility of time of supply being date of receipt of the charges imposed, that is, cash-basis of payment of GST. The various issues involved in these special charges are discussed in detail under time of supply of services which may kindly be referred.

	Concept illustrations Section 12(2)	Invoice date	Invoice due date	Payment entry in supplier's books	Credit in bank account	Time of supply
1	Invoice raised before removal	10-Oct-17	20-Oct-17	26-Oct-17	30-Oct-17	10-Oct-17
2	Advance received	30-Oct-17	20-Oct-17	10-Oct-17	30-Oct-17	10-Oct-17

	Supply involves movement of goods Section 12(2) r/w Section 31(1)(a)	Invoice/ document date	Removal of goods	Delivery of goods	Receipt of payment	Time of supply
3	Delayed issue of invoice	26-Oct-17	20-Oct-17	26-Oct-17	26-Oct-17	20-Oct-17
4	Inter-State stock transfer	10-Oct-17	20-Oct-17	26-Oct-17	-	10-Oct-17
5	Advance received, invoice for full amount issued on same day (40% advance, 60% post supply payment)	30-Oct-17	10-Nov-17	14-Nov-17	30-Oct-17	30-Oct-17
					20-Nov-17	30-Oct-17

	Supply otherwise than by involving movement of goods Section 12(2) r/w Section 31(1)(b)	Invoice date	Receipt of invoice by recipient	Delivery of goods	Receipt of payment	Time of supply
6	Delayed issue of invoice	30-Oct-17	05-Nov-17	26-Oct-17	10-Nov-17	26-Oct-17
7	Invoice issued prior to delivery	20-Oct-17	10-Nov-17	26-Oct-17	10-Nov-17	20-Oct-17

	Continuous supply of goods Section 12(2) r/w Section 31(4)	Invoice date	Removal of goods	SoA/ payments due date	Receipt of payment	Time of supply
8	Contract provides for successive statements of account/ successive payments	01-Nov-17	15-Oct-17	05-Nov-17	01-Nov-17	01-Nov-17
			25-Oct-17			
9		11-Dec-17	08-Nov-17	05-Dec-17	11-Dec-17	05-Dec-17
			30-Nov-17			
10		08-Jan-18	14-Dec-17	05-Jan-18	01-Jan-18	01-Jan-18
			23-Dec-17			

	Reverse charge Section 12(3)	Date of invoice issued by supplier	Removal of goods	Receipt of goods	Payment by recipient	Time of supply
11	General	31-Oct-17	31-Oct-17	20-Nov-17	30-Nov-17	20-Nov-17
12	Advance paid	31-Oct-17	31-Oct-17	20-Nov-17	05-Nov-17	05-Nov-17
13	No payment made for the supply	31-Oct-17	30-Dec-17	05-Jan-18	-	30-Nov-17

	Sale on approval basis Section 12(2) r/w Section 31(7)	Removal of goods	Issue of invoice	Accepted by recipient	Receipt of payment	Time of supply
1 4	Acceptance communicated within 6 months of removal	01-Nov-17	25-Nov-17	15-Nov-17	25-Nov-17	15-Nov-17
1 5	Amount paid to supplier before informing acceptance	01-Nov-17	25-Nov-17	15-Nov-17	12-Nov-17	12-Nov-17
1 6	Acceptance not communicated within 6 months of removal	01-Oct-17	15-May-18	15-May-18	02-May-18	01-Apr-18

Statutory Provision**13 Time of Supply of Services**

(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(2) The time of supply of services shall be the earliest of the following dates, namely:—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation. —For the purposes of clauses (a) and (b)—

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:—

(a) the 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; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

(4) In case of supply of vouchers by a supplier, the time of supply shall be—

(a) the date of issue of voucher, if the supply is identifiable at that point; or

(b) the date of redemption of voucher, in all other cases.

- (5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—
- (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
- (b) in any other case, be the date on which the tax is paid.
- (6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

13.1 Analysis

(a) Time of Supply – Forward Charge

Similar to goods, time of supply of services is prescribed to be the earlier of date of issue of invoice and date of receipt of payment. Date of issue of invoice requires us to examine section 31 which deals with the requirement to issue a “tax invoice”. In relation to services, section 31 requires that a tax invoice be issued whether before or after provision of service. Further, there is a time limit beyond which tax invoice to be issued in arrears cannot be delayed after completion of the provision of service.

Please recollect the discussion in chapter III where it has been explained that in accordance with schedule II, supplies involving goods may be treated as supply of services. In all such cases, as in the case of services ordinarily understood, this provision alone applies for determination of time of supply. One may also refer to chapter VII regarding issuance of tax invoice in all other circumstances and determine from there the fact of issuance of tax invoice.

Then when the tax invoice has been issued accordingly, the time of supply can be determined to be earlier of date of issuance of such tax invoice or date of receipt of payment.

Exceptions:

- (i) When amount in excess of Rs. 1000 is received, the time of supply in respect of such excess at the option of the supplier shall be the date of such invoice
- (ii) Supply shall be deemed to have been made to the extent the value of supply indicated in the invoice or the value of payment received by the supplier
- (iii) Date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier

(b) Time of Supply – Reverse Charge

Where tax is payable on reverse charge basis, the time of supply is appointed to be the earlier of date of payment or 60 days from the date of issue of invoice by the supplier. If for any reason, one or all of these two dates cannot be determined then the time of supply will be the date of recording the supply in the books of the recipient. In case of transactions between ‘associated enterprises’ and the supplier is located outside India, the date of recording the supply in the books of the recipient alone will be relevant.

Again, please note that in view of the definition of reverse charge in section 2(98), the above

provision does not apply to payment of tax by an electronic commerce operator under sub-section 5 to section 9 of the Act.

Exceptions:

- (i) date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier

(c) Time of Supply – Vouchers

Please refer to discussion regarding time of supply of goods for some background discussion about actionable claims. For purposes of this discussion on time of supply of services, please note the following comments:

- (i) the discussion on actionable claims being includible as vouchers is relevant vis-à-vis services for the only reason that certain transactions involving goods are deliberately treated as supply of services by schedule II and to this extent actionable claims which are a sub-set of goods need to be referred in this chapter
- (ii) vouchers are not entirely comprised only of actionable claims and services can also be included but the exact scope of vouchers is eagerly awaited when the Rules are published

Now, the time of supply in the case of vouchers is stated to be:

- (i) the date of issue of voucher if the supply is identifiable at that point or
- (ii) and in all other instances, the date of redemption of the voucher

From the provision, it can be seen that at the time of issue of voucher, it is possible that the supply is not identifiable. So, the following key statements can be considered in this regard:

- (i) Vouchers maybe issued with specific or non-specific end-use
- (ii) Vouchers are issued on payment of money
- (iii) Vouchers themselves are not legal tender
- (iv) Vouchers represent some carried value in money terms
- (v) Vouchers are accepted as substitute for payment for a supply due to their carried value
- (vi) Vouchers are not merely receipts for pre-payment received
- (vii) Vouchers must be non-cancellable such that they cannot be reconverted back into money
- (viii) Vouchers may be in physical or digital form but comprise the above characteristics

2(118) “voucher” means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;

When vouchers are issued for specific end-use, then they are taxable as supply Provided they otherwise satisfy the requirements of section 7 of the Act. Since, a specific provision exists in respect of time of supply of vouchers, they are not goods or services in themselves, but are singled out for the limited purposes of prescribing the time of their supply. And the rate of tax will be that applicable to goods or services they are issued in respect of or that applicable at the time of redemption. Vouchers are not merely receipts for pre-payment received because prescribing a specific time of supply would be redundant when time of supply already considers advance payments.

Please also note that the Government has issued the Payment and Settlement Systems Act, 2007 ('PSS Act') and accordingly, not everyone is permitted to issue instruments that may be used as a Payment System. RBI is expected to make major changes to the circulars issued in terms of the PSS Act by June 2017 but the framework or principles borrowed from the current circulars for the purposes of GST is expected to remain unaltered all though changes may come in areas of governance, ease of doing business and inclusive growth in e-payment offerings through these Pre-Paid Instruments or PPIs.

Description	Prepaid Payment Instruments (PSS Act, 2007)			Co-branded hybrid PPIs (7.4)	
	Closed	Semi-closed	Open	Semi-closed	Limited Open
Parties involved					
Issuer	Merchant	NBFC/Company	Bank	NBFC/Company	Bank
Brand	Issuer	Issuer	Issuer	Co-branded	Co-branded
Holder of PPI	Consumer	Consumer	Consumer	Consumer	Consumer
PPI usage	Issuer outlet only	Pre-defined outlets	Any or ATM	Any (or ATM)	Any (or ATM)
Description of PPI					
Card type	Physical only	e-Card only	Any	e-Card only	Any
Payment type (2.1)	Acceptance	Settlement	Settlement	Settlement	Settlement
Reload allowed	No	Yes	Yes	Yes	Yes
Is as 'payment system'	No (2.4)	Yes	Yes	Yes	Yes
Regulatory prescriptions					
RBI approval	Required	Required	Authorization	Required	Gen. permission
Stored value < Rs.100,000/-	Not allowed (7.1)	Full KYC (7.2-iii)	Full KYC (7.2-iii)	Full KYC (7.2-iii)	Full KYC (7.2-iii)
Stored value < Rs.50,000/-	OVD (7.2-ii) *	OVD (7.2-ii) *	Full KYC (7.2-iii)	OVD (7.2-ii) *	Full KYC (7.2-iii)
Stored value < Rs.10,000/-	ID only (7.2-i)	ID only (7.2-i)	Full KYC (7.2-iii)	ID only (7.2-i)	Full KYC (7.2-iii)
<small>* Officially valid document as per rule 2(d) of PML Rules, 2005</small>					
Cashflow / custody-flow steps					
Stored value paid by	Consumer	Consumer	Consumer	Consumer	Consumer
Stored value paid to	Issuer-merchant	Issuer	Issuer-bank	Issuer	Issuer-bank
Held as	Trade advance	Trade advance	Deposit	Trade advance	Deposit
Held with (8.2 & 8.3)	Any bank (escrow)	Any bank (escrow)	Issuer-bank	Any bank (escrow)	Issuer-bank
Held for (8.3-vii)	Issuer-merchant	Issuer	Consumer	Issuer	Consumer
Interest bearing account	No (8.3-xii)	No (8.3-xii)	Yes	No (8.3-xii)	Yes
'Lien or charge' of unspent value	Consumer	Consumer	No (8.2)	Consumer	No (8.2)
'Lien or charge' of spent value	Merchant	Merchant	Merchant	Merchant	Merchant
Unspent value stored (10.2 & .3)	Lapse & forfeit	Exhausts	Withdraw	Exhausts	Withdraw
Additional restrictions					
Resident of India	Yes	Yes	Any	Yes	Any
Non-commercial user	Yes	Yes	Any	Any	Any
Currency	INR only (6.3)	INR only (6.3)	Any (4.1)	INR only (6.3)	Any (4.1)
User verification	Nil (bearer use)	PIN-based	PIN-OTP	PIN-OTP-Others	PIN-OTP-Others

Source: Circular RBI/2014-2015/105 DPSS.CO.PD.PPI.No.3/02.14.006/2014-15 dated July 1, 2014 (updated as on Dec 9, 2014); relevant para references in brackets.

Please refer to some interesting discussions on vouchers in section 12 above on time of supply.

(d) Time of Supply – Residuary

Where none of the above provisions are able to satisfactorily answer the time of supply, it is to be determined based on the residuary provision which states that the time of supply is:

- (i) where a periodical return has to be filed, the due date prescribed for such return or
- (ii) in any other case, the date of payment of the tax

(e) Time of Supply – Special Charges

Sometimes there may be charges imposed by the supplier on account of some deviation or special circumstance from the expected terms of contract on the part of the recipient. These special charges may be enabled by the contract though not necessarily attracted at the time of supply of the underlying goods or service (other than these special charges) or may be agreed later – when the special circumstance occurs. These special charges are listed as interest, late fee or penalty on account of delay in payment of consideration. In these cases, the time of supply is appointed to be the date of receipt by the supplier.

Please note that even though a debit note may be issued after reaching agreement with the recipient about the special charges imposed, the time of supply continues to remain 'date of receipt' of payment towards such special charges. This is a departure from the provisions on accrual principle in section 31. As this is a special provision, the same will prevail over all other general provisions.

It is important to understand that due to time of supply being prescribed, whether the imposition of these special charges is itself a supply or not? Please see the following comparative discussion:

Special Charges 'are' Supply	Special Charges 'are not' Supply
Special charges are also supply being agreeing to an act or forbear an act or to tolerate an act (entry 5(e) of sch II) read with sec 2(31)	There is no 'supply' in the case of interest, late fee or penalty as these special charges are a consequence of a departure from the agreed terms of contract and not in fulfilment thereof
Interest, late fee or penalty are illustrations only and such special charges by any other name would also be liable to GST but on receipt-basis	By accepting such an expansive interpretation, damages awarded by a Court, LD imposed in a contract, forfeiture of a EMD, etc. can become liable to GST as these are all in some way 'in the course or furtherance of business'
Special charges paid is liable to GST whether agreed before or agreed subsequently as satisfaction of the limited non-performance	Other than the three special charges listed, any other charges arising from a transaction is not liable to GST as it is not contemplated in the arrangement of supply all though not imposed in all cases
Delay in payment is a primary deviation that gives rise to special charges but even	Only 'delay in payment' gives rise to GST incidence on the special charges. Any other

deviation in time or quantity of supply can entail some other form of special charges, GST on those cannot be avoided as the these listed are only illustrative	deviation would be a variation of contract to be independently examined if it satisfies definition of 'supply'
Special charges are 'linked' to an underlying supply (original supply) and therefore all forms of special charges would also be liable to GST	Special charges are 'linked' to an original supply as such GST cannot be imposed on special charges without an original supply

From the above discussion, several necessary conclusions need to be reached, namely:

- (i) whether the three listed charges are exhaustive or only illustrative?
- (ii) whether delay in payment is the only occasion when this provision is attracted or special charges imposed for any other default linked to the original supply will also attract this provision?
- (iii) whether special charges imposed for any other default (not delay in payment) is liable to GST but not on receipt basis but accrual basis or are special charges for these cases not at all liable to GST?

It appears that the three listed cases are exhaustive not by the three cases listed but the circumstance for their imposition – delay in payment of consideration. So, any form of special charges imposed is liable to GST on receipt basis but only if it is due to delay in payment of consideration. Special charges imposed due to any other default by the recipient is then to be examined if it is linked to an 'original supply' or is it by itself a supply? If linked to an original supply, it is also liable to tax but not during enjoying flexibility to pay tax on receipt basis and tax being payable based on the date of debit note. If not linked to an original supply, GST would not be applicable if it does not satisfy the requirements of levy.

The issues raised in respect of special charges may be considered as matter of discussion and does not carry a procurement of an opinion on view. Readers are free to connect or these discussions and evaluate each such situation after giving it adequate consideration or thought.

S. No.	Concept illustrations Section 13(2)	Invoice date	Invoice due date	Payment entry in supplier's books	Credit in bank account	Time of supply
1	Invoice raised before completion of service	10-Oct-17	20-Oct-17	26-Oct-17	30-Oct-17	10-Oct-17
2	Advance received	30-Oct-17	20-Oct-17	10-Oct-17	30-Oct-17	10-Oct-17
	Based on due date for invoicing Section 13(2) r/w Section 31(2) r/w Invoice Rule - 2	Invoice date	Commencement of service	Completion of service	Receipt of payment	Time of supply

3	Delayed issue of invoice	26-Dec-17	20-Oct-17	16-Nov-17	28-Jan-18	16-Dec-17
4	Advance received, invoice for full amount issued on same day (40% advance, 60% post supply payment)	30-Oct-17	30-Oct-17	30-Dec-17	30-Oct-17	30-Oct-17
					04-Dec-17	30-Oct-17

	Continuous supply of services Section 13(2) r/w Section 31(5)	Invoice date	Date as per contract	Receipt of payment	Entry of provision of services in books	Time of supply
5	Section 31(5)(a) Contract provides for payments monthly on the 10 th of succeeding month	02-Nov-17	10-Nov-17	15-Nov-17	31-Oct-17	02-Nov-17
		17-Dec-17	10-Dec-17	15-Dec-17	30-Nov-17	10-Dec-17
		10-Jan-18	10-Jan-18	06-Jan-18	31-Dec-17	06-Jan-18
6	Section 31(5)(c) Contract provides for payments on completion of event. Recipient to pay within 1 month from date of completion	12-Nov-17	10-Nov-17	25-Nov-17	12-Nov-17	10-Nov-17
		24-Apr-18	24-Apr-18	20-Apr-18	24-Apr-18	20-Apr-18

	Reverse charge Section 13(3)	Date of invoice issued by supplier	Date of completion of service	Payment by recipient	Entry of receipt of services in recipient's books	Time of supply
7	General	31-Oct-17	31-Oct-17	20-Nov-17	30-Nov-17	20-Nov-17
8	Advance paid	31-Oct-17	31-Oct-17	05-Nov-17	31-Oct-17	05-Nov-17
9	Delay in payment (Max. 60 days from date of invoice)	31-Oct-17	31-Oct-17	10-Jan-18	31-Oct-17	31-Dec-17
10	Service received from associated enterprise located	31-Oct-17	30-Nov-17	05-Apr-18	31-Mar-18	31-Mar-18

	outside India (No time extension allowed)					
11	Service by unregistered person, no payment made	-	30-Nov-17	-	05-Dec-17	05-Dec-17

	Issue of vouchers Section 13(4) [or Section 12(4)]	First service/ delivery of goods	Issue of voucher	Redemption of voucher	Last date for acceptance of voucher	Time of supply
12	Voucher issued to a recipient after supply of a service [or specific goods], for the same service - valid for 1 year	01-Nov-17	01-Nov-17	14-Dec-17	30-Oct-18	01-Nov-17
13	Voucher issued to a recipient of machinery along at the time of delivery, for availing repair services [or specific goods] worth Rs. 5,000 - valid for 1 year	01-Nov-17	01-Nov-17	14-Dec-17	30-Oct-18	01-Nov-17
14	Voucher issued to a recipient after supply of a service, for any other services or goods across India, - valid for 1 year	01-Nov-17	01-Nov-17	14-Dec-17	30-Oct-18	14-Dec-17
15	Gift voucher for Rs. 1,500 for services [or goods]- valid for 6 months	-	01-Nov-17	25-Dec-17	31-Mar-18	01-Nov-17

Statutory Provision**14. Change in rate of tax in respect of supply of goods or services**

Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely: —

- (a) in case the goods or services or both have been supplied before the change in rate of tax, —
- (i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or
 - (ii) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or
 - (iii) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;
- (b) in case the goods or services or both have been supplied after the change in rate of tax, —
- (i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or
 - (ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or
 - (iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:

Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

Explanation. —For the purposes of this section, “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

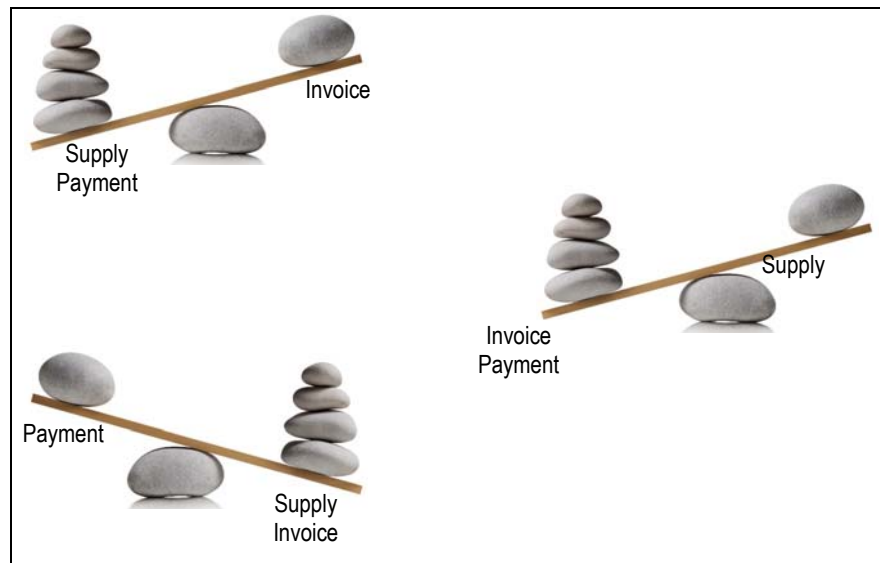
14.1 Analysis

Payment of tax requires the presence of all the following events:

- (i) supply of goods or services
- (ii) issue of invoice
- (iii) payment for the supply

When there is a change in the rate of tax during the occurrence of these three events, there may be some concern about the applicability of the correct rate of tax. Section 14 addresses this aspect clearly.

Where the supply takes place after the change in the rate of tax, the time of supply may be as follows:



Applicable tax rate	
Tax rate = X %	Tax rate = Y %
Prevailing tax rate is X %	Tax rate of Y % notified with effect from this date →
Supplies effected BEFORE change	
Invoice issued	Payment made
X% applicable*	
Invoice issued	X% applicable
	Payment made
Payment made	X% applicable
	Invoice issued
	Invoice issued
	Payment made
	Y% applicable*
Supplies effected AFTER change	
Invoice issued	Payment made
X% applicable*	
Invoice issued	
	Payment made
Payment made	
	Invoice issued
	Y% applicable
	Invoice issued
	Payment made
	Y% applicable*

*Note: Where both invoice and payment are issued/received before the effective date of change in rate, or are issued/received after the effective date of change in rate, the time of supply would be earlier of the two dates.

Sl. No.	Case	Date of supply of goods/ services	Invoice date	Payment by recipient	Time of supply	Applicable tax rate
1	Case I	10-Jul-18	20-Jul-18	10-Aug-18	20-Jul-18	18%
2	Case II	10-Jul-18	05-Sep-18	25-Jul-18	25-Jul-18	18%
3	Case III	10-Jul-18	05-Aug-18	10-Aug-18	05-Aug-18	12%
4	Case IV	10-Aug-18	25-Jul-18	05-Aug-18	05-Aug-18	12%
5	Case V	10-Aug-18	05-Sep-18	25-Jul-18	05-Sep-18	12%
3	Case VI	10-Aug-18	20-Jul-18	25-Aug-18	20-Jul-18	18%

Although supply has not yet taken place, the time of supply determined as above is valid and not in violation of the levy of GST for the following reasons:

- (i) Supply is defined in section 7(1)(a) as '.....made or agreed to be made.....'
- (ii) Levy of GST in section 9 is on such supply, that is, 'made or agreed to be made'

Prescribing the time of supply anterior to the time of actual supply is well accommodated in the language of the Act.

Statutory Provision

15. Value of taxable supply

- (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.
- (2) The value of supply shall include—
 - (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;
 - (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
 - (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
 - (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
 - (e) subsidies directly linked to the price excluding subsidies Provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.
- (3) The value of the supply shall not include any discount which is given—
 - (a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
 - (b) after the supply has been effected, if—
 - (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
 - (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.
- (4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.
- (5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of

such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this Act,—

- (a) persons shall be deemed to be “related persons” if—
- (i) such persons are officers or directors of one another’s businesses;
 - (ii) such persons are legally recognised partners in business;
 - (iii) such persons are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family;
- (b) the term “person” also includes legal persons;
- (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

15.1. Introduction

Consideration is *quid pro quo* in a contract and price is the consideration expressed in money terms. Value is the price prevalent when a transaction takes place under controlled conditions. Valuation is the study of all those circumstances and assessment of steps to reverse or rectify the effect of contractual or other arrangements that may suppress or understate the value of the transaction.

15.2. Analysis

This section applies to both goods and services supplied for purposes of valuation of the taxable supply.

Although contained in the CGST Act, the valuation method Provided in this section applies to UTGST, SGST, CGST and IGST. Valuation must be as Provided exclusively in this section.

‘Transaction value’ has not been defined but is Provided in the section itself as the ‘price’. Price is consideration in money terms. Value, as stated earlier, is price that would be prevalent under controlled conditions. These conditions being:

- Transaction having a price
- Between persons not related
- And that price being the sole consideration

“transaction value” which is the price actually paid or payable for the said supply of goods and/or services where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

In other words, the exercise of valuation is aimed to recreate the above conditions and take any given transaction through to see the result – price – that would emerge. In addition to this price, certain express inclusions are Provided:

- Taxes levied under any other law(s)- this clause provides for exclusion of GST from the value and therefore all other taxes charged must be included in the value before quantifying GST. Taxes other than GST will cause cascading and this is deliberate;
- Any amounts paid by recipient that are obligation of supplier to pay- this clause removes any doubt about the inclusion of costs paid by the recipient to a third party in the value of supply by the supplier. The prescription in this clause is to identify any occasion where costs – in respect of which the supplier is the principal creditor / obligor – are diverted away from the principal such that the recipient directly makes the payment resulting in lowering the rightful value of supply. At the same time, this clause does not authorize every payment where the recipient is the principal creditor / obligor and require these also to be included in the value of supply. This point may be illustrated by an example of – payment of commission to agent for facilitating the supply. If the payment is 'buying commission' which is paid by the recipient, then the obligation to pay the agent is always of the recipient and does not require to be included in the value of supply. But if the payment is 'selling commission' which happens to be paid by the recipient, then the obligation to pay the agent being that of the supplier is required to be included in the value of supply. In this case (of selling commission), the underlying obligation is that of the supplier because it is the supplier who engages the agent to identify customers to make a supply. And if, somehow, the supplier manages to pass this obligation to pay the agent (the amount towards selling commission) to the recipient, then the price paid to supplier is not the true value of supply. Had the recipient refused to pay this selling commission to the agent, then the supplier would have paid the agent and made a corresponding increase in the price of the supply. It is this objective that is being achieved by this clause. There are several other examples that can be considered, please also refer to the discussion on value of supply for further illustration on this point.

- Incidental expenses charged by the supplier- this clause addresses a completely different aspect compared to the previous clause. Here, costs that the supplier incurs 'at' or 'before' supply is liable to be included in the value of supply. For example, cost of packing and transportation has been debated under the VAT laws whether they are incurred before or after the 'transfer of property'. In GST, the point when title passes is irrelevant. To address the issues that had been so vigorously debated under VAT laws, this clause lays down that any cost that the supplier incurs including commission and packing which is charged to the recipient will be included in the value of supply. With this clause there is no opportunity the claim that certain charges recovered by the supplier 'after supply' are not to be included in the value of supply. If it is a charge recovered from the recipient, then the same is includible in the value of supply provided it is not incurred 'after' the completion of supply. An example of cost incurred after date of supply yet not liable to be included in the value of supply could be amount of input tax credit, considered as eligible in pricing of supply, but denied to the supplier by (say) section 16(4). And an example of a cost incurred by the supplier after the date of time and includible could be cost of in-warranty parts (actual or scientifically estimated provision) supplied after the date of supply is not to be excluded from the value of supply.
- (a) "open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.*
- Interest, late fee or penalty for delayed payment- – this would also have been a charge recovered by the supplier 'after' the supply that would not be includible in the value of supply but due to the express words of this clause will be included. Please refer detailed discussion regarding this clause under time of supply as 'special charges'
 - Subsidy realized by supplier on the supply- this clause expressly provides for the limited exclusion of subsidy from value of supply, that is, subsidy given by the Government alone is excluded from value of supply. This clause makes an interesting requirement that any transaction where there is any form of price-intervention that behaves like a 'subsidy' is liable to be included in the value of supply. In today's economy, there are many transactions that 'behave like subsidy'. For example, contribution of consideration by third party to contract, incentive to supplier given by brand holder linked to each supply, etc. Please note, extended credit terms to one customer and upfront payment terms to another customer cannot be interfered with by relying on this cause. There appears to be no room to accommodate include 'notional additions' by this clause because unlike Central Excise which relies upon 'assessable value' for quantifying the duty, GST relies upon 'transaction value' for quantification. Also, please note 'no cost EMI' and 'cash back' are a form of price-intervention by third party but not included in this clause because these forms of price-intervention is reaching the recipient of supply and not the supplier.

The value of supply will not include discount Provided:

- It is allowed before supply
- It is allowed after supply Provided that it is established in agreement linked to specific supplies and corresponding credit is reversed by recipient

If and only if the transaction value cannot be determined as above is reference to Valuation Rules permitted. Hence, recourse to the Valuation Rules is permitted only in the following circumstances:

- Supplies not covered by section 7(1)(a)
- Supplies covered by section 7(1)(a) but between related persons
- Supplies covered by section 7(1)(a) and not adjusted for aspects Provided by sub-section 2

Government is free to notify tariff values in specific cases to determine the tax payable on such cases. This would prevail over the valuation Provided for in sub-section 1.

(a) Consideration not wholly in money

It is important to consider the difference between 'free' and 'no consideration'. It is probably common to consider that these two are synonymous. At the outset, there can be no contract without consideration. Experts in Contract Law will see the gross illegality if one were to say that there is a contract but has no consideration in it. If the contract is valid, then there is non-monetary consideration which is erroneously stated as having 'no consideration'. It is impermissible that a contract subsists but lacks consideration. It is just impossible. Now, if there is a contract with non-monetary consideration, Rule 1 of the Valuation Rules comes into operation. Although this rule states that it applies when 'consideration is not wholly in money', it applies when the consideration is partly in money or wholly in non-monetary form. This rule provides that the value of supply "shall be" and not be "based on" or "guided by", so that mandatory nature of the prescription of this rule can be appreciated. The value of supply shall therefore be:

- (i) Open market value (OMV)– which is the 'full value in money payable by an unrelated person as its sole consideration at the same time as the supply under inquiry. OMV is a new phrase but not too far from its scope and covered from its explanation. Transaction value is price of the supply under inquiry and open market value is the price of the same supply but without the circumstances that impairs the use of transaction value for quantification of tax. OMV is not comparable price to unrelated customer. The definition of OMV does not allow comparison of supplies in comparable circumstances. It only requires supply 'at the same time'. So, OMV is not price in another 'comparable' supply at a close proximity in time. This provision does not provide the manner of adjustments to be made to overcome the effect of those disqualifying circumstances present but simply states that OMV 'shall be' the value of the supply. As such, this clause is not of much avail in addressing the deficiency which was the reason for arriving at the Rules as no resolution was possible in the section itself.

- (ii) Sum total of monetary consideration and 'money-equivalent' to consideration not in money – here two aspects are involved – one, to establish that OMV is not available (a task that will be discussed shortly) and two, to arrive at the money value of the non-monetary consideration. Having identified that OMV is not very specific to be able to clearly be determined, it becomes more acute to establish that OMV is not available before proceeding to clause (ii). Onus lies on the one who asserts – the taxable person would have admitted that the circumstances of section 15(1) are not fulfilled and warrants recourse to the Rules but having arrived at the rules, the onus remains with the taxable person to establish that OMV is not available. OMV is not comparable alternate price. Supplies to unrelated persons are always taking place although in different 'commercial circumstances' which is not Provided in the definition of OMV. As such, overcoming the first aspect – OMV not available – is a challenge which tax administration can be stubborn about. Then, arriving at money value of non-monetary consideration is not guided by requirement to use standards of Cost Accounting, etc. Rule of reasonableness is the only guide for arriving at the value which can be shot down by tactic of arbitrariness of the tax administration. Suitable guidance is much needed in this entire exercise
- (iii) Value of supply of 'like kind and quality' – here again two aspects are involved – one, to establish that clause (a) and (b) are not determinable and two, to identify 'likeness' of kind and quality. This is a salutary method where there is much experience in Customs Valuation in successfully arriving at the comparable value. Subjectivity must be overcome which is possible by applying data that is reliably substantiated rather than arbitrary factors. The definition provides guidance on the manner of finding this 'likeness' for identifying whether the comparable are really comparable without being subject to any arbitrariness in tax compliance or tax administration
- (b) "supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.*
- (iv) Sum total of monetary consideration and value determined by rule 4 or rule 5 in respect of consideration not in money – similar to the previous clause, the first of the two aspects – value is not determinable as above – is the one that presents the greatest difficulty. Expect that it is crude to import values from rule 4 or 5, the rest of this clause is simple in its application. Please note that rule 4 must be applied first and then rule 5, more on that in the discussion of those rules. Some illustrations are Provided in rule 1 that may be referred for understanding its application

Now, reverting to the discussion on a valid contract but having non-monetary consideration, it is important to understand some of the common instances when the supply is claimed of this nature, namely:

- Warranty supply of parts to end customer through a dealership – the parts are supplied ‘free’ to the end customer. At first, it is important to determine whether the parts replaced are actually covered by warranty in the supply contract or whether there is any replacement request entertained for out-of-warranty equipment for brand building exercise. Then, the warranty obligation lies only with the original equipment manufacturer (OEM) but the actual replacement is carried out at the dealership. When a warranty claim is made with the dealership by the end customer, the dealer seeks approval from OEM. Only after ‘in-warranty approval’ is received from OEM does the dealer replace the part. Now, the warranty replacement between OEM to end customer is not liable to GST not because it is free but because the price for the replacement is built into the price of the equipment originally supplied and therefore tax has already been paid by OEM. However, the dealer who replaces the part does not carry any role in the warranty fulfilment. In fact, the dealer ‘delivers’ the part to customer but ‘supplies’ it to OEM. Hence, there is another supply embedded here between dealer to OEM because dealer uses a tax-paid part from his inventory to replace it for the end customer. Alternatively, the OEM issues credit note to dealer for the part used in the warranty replacement. Reference may be had to Mohd. Ekram Khan’s decision of SC in 144 STC 542. As such, warranty involves two supplies and neither of which are free. One is tax pre-paid and another is currently taxed not involving end customer
- Physician’s sample of drugs Provided through sales representatives – these drugs are distributed by the physician during clinical consultation with patients. As such, the fee paid by patient to physician is one supply (whether taxable or exempt in GST) but the supply by pharmaceutical company to physician is another supply. If the company includes the cost of such samples in the price of units sold, then there may be no requirement to again impose GST based on OMV on the samples. If it is established that there is a non-monetary consideration flowing to the supplier then, samples will be liable to GST as determined by rule 1. This would be true not only of drugs but samples of any kind that are permanently given away. As regards physician’s samples, there is raging debate that Courts are currently engaged in addressing due to the far reaching implications and no final outcome has yet been reached in this regard
- Defaced samples of garments given to supplier by brand-holder – in comparison with physician’s samples, defaced samples are those which are ‘not suited’ for resale or end-use. Such kinds of samples are given in B2B transactions for helping suppliers to study the expected final product to prepare quotation for further orders. As these samples have been deliberately defaced and rendered unsuited for resale or end-use, there can be no argument that consideration flows from recipient of defaced samples back to brand-holder
- Impairment of assets accounted in books – as per AS 28 (Ind AS 36) where impairment provision is to be made or reversed every time the assessment is done, the implication in GST needs to be kept in mind as to whether there is a supply and whether there is any corresponding impact of credit denial u/s 17(5)(h) in respect of these assets. No view on the liability of impairment is stated in this background material. Readers may cautiously consider this issue.

- Leased car Provided by employer disclosed in Form 12BA as perquisite – the reporting of perquisites admits a personal element involved in the enjoyment of the company car and the supply that is excluded in sch III is the service 'by' employee 'to' employer. But the present case is of supply of leased car 'by' employer 'to' employee which is not covered by sch III. By this admission in Form 12BA, GST becomes applicable but the valuation will not be as adopted in Rule 3 of Income-tax Rules but by GST Valuation Rules
- Free-issue-material Provided by client to contractor – is admittedly not a supply in itself, but the question that arises is whether there is any consideration flowing from the client to the contractor vis-à-vis the free-issue-material (FIM). Care should be taken in the drafting of the contract whether the work was awarded for a full rate and then deductions are made towards FIM by reducing the running-account-bill of the contractor or whether the contract itself was awarded for the reduced rate. Reference may be had to NM Goel's decision 1989 AIR 285 (SC) in relation to sales tax and Bhayana Builders decision 2013 (9) TMI 294 (CESTAT) in the context of service tax. Please note that FIM is not a open-shut case of having no GST impact due to the changes made in the Act compared to the Model Law published earlier but needs to be carefully considered to ensure that this is not regarded as extraneous consideration to be included in valuation

These illustrations do not cover all possible scenarios but lay down some pointers that need to be considered while determining the valuation and GST impact of various transactions.

(b) Supply between related persons (Rule 2)

A supply between related persons or between distinct persons (with same PAN) is *prima facie* not fulfilling the requirements of section 15 to admit the transaction value for quantification of GST. In such cases, the value of supply will be:

- (i) Open market value – please refer to previous discussion
- (ii) Value of supply of 'like kind and quality' – please refer to previous discussion
- (iii) Value determined by rule 4 or rule 5 – please refer to subsequent discussion

The proviso to this rule is of significance where it is the recipient, who are entitled to credit, the value declared in the invoice is deemed to be OMV. In other words, in a case of supply eligible by this rule – related parties or distinct persons – the supplier is entitled to unquestioned admittance of 'any price' that may be charged. This provision appears to accommodate internal preferences of the parties where the tax paid is revenue neutral. However, caution is advised in taking recourse of this proviso and charging a price lower than cost.

In the case of inter-branch supply of services, valuation of these supplies will involve additional tax due to costs such as salary, amortization, etc which do not involve any input tax credit. For example, if a Head Office incurs certain entity-level expenses that are common to all registered taxable persons in other States, it is not permissible for the HO to retain the whole of these common credits due to the limitation in the language of section 16(1) – used by

him in his business – although a portion of this credit may still be available. Currently, such HOs are registered as ISD under service tax but this may not be the case in GST. Please refer to discussion in section 19 for some analysis of these issues. Now, surely the HO is not 'merely an office receiving invoice for services' but is actually the 'seat of management and control' performing very significant services that are supplied to all branches. HOs ought not to continue as ISD but recognize the nature of the supply of services to all branches. And on this basis, apply these Rules for quantifying tax to be discharged. The proviso in this rule does not authorize payment of tax on cost because the value to be determined under this rule is OMV or else like-kind-and-quality or else rule 4 / 5 value. Hence, HO may be required to invoice for its services appropriately and not distribute credit as ISD.

(c) Supply through agent (Rule 3)

Every supply involving an agent is not a taxable supply. As discussed in chapter III, supply by principal and agent *inter se* all though merely a channel to supply to the end customer is treated as a supply in sch I where the goods are handled by the agent or principal. Please note that this rule is applicable only in case of 'supply of goods' and not 'supply of services' or 'supply involving goods treated as supply of services'. When this rule is applicable, the value of supply will be:

- (i) open market value or 'at the option' of supplier 90% of the price charged for goods of 'like kind and quality' by the agent– this rule provides for an ad hoc reduction of 10% from the price otherwise charged to accommodate the incentive or margin left for the agent in pricing. Where margins are lower than 10%, this rule can cause great anguish. But, discarding the use of this clause is not permitted freely.
- (ii) value determined by rule 4 or rule 5 – please refer to subsequent discussion

Transactions treated as supply by Schedule I of the CGST Act, which need to be subjected to tax requires a valuation mechanism. Principal and agent do not *ipso facto* become related persons for rule 2 to be applicable to them.

Please note that agency cannot be inferred but must be express or implied. Agency may be understood as 'delegated authority' and 'detached consequences'. Within the scope of agency, the Principal will be obligated to third parties without any limit by actions of the Agent. As such, the authority to of the Agent to act is delegated by the Principal and the Agent is not obliged to the consequences arising from his actions, provided they are within the scope of the agency. Undisclosed Principal still obligates the Principal because the lack of disclosure is to the third party and not that the Principal is unaware of the possible obligations accruing.

(d) Cost based value (Rule 4)

Where cost is used as a base for determining the value of supply and when any of the more specific methods prescribed are unavailable for specific reasons, this rule may be applied. It provides that the value will be 'cost plus 10%'. Please note that this rule applies to both goods and services supplied.

Every supply claimed to be free but involving non-monetary consideration faces the threat of tax being determined on this method. Cost Accounting Standards may be relied upon to determine cost for purposes this rule. Please refer to the few illustrations discussed in previous sections such as warranty replacement, physician's samples, etc., tax administration

may be kept at bay if valuation is not lower than 'cost plus 10%'. Although this method appears simple, it is important to note that only when it is established that the other more specific rule and the specific methods under those rules are unable to yield an acceptable value for the supply under inquiry.

In respect of supply of services (also transactions involving goods treated as supply of services), the supplier is permitted to apply rule 5 instead of rule 4, if that were more favourable.

(e) Residual valuation (Rule 5)

Where value cannot be determined by any other method, this rule authorizes the use of 'reasonable means to arrive at the value. It is important to consider that these reasonable means must be commensurate with the principles of section 15.

Supplies which are currently under some form of abatement of value are found in this rule. Where cost is used as a base for determining the value of supply and when any of the more specific methods prescribed are unavailable for specific reasons, this rule may be applied. It provides that the value will be 'cost plus 10%'. Please note that this rule applies to both goods and services supplied.

(f) Specific supplies (Rule 6)

Supplies which are currently under some form of abatement of value are found in this rule, namely:

- (i) supply of services involving sale/purchase of foreign currency, the value of supply will be:
 - (a) option a – difference between buying-selling rate and the reference rate published by RBI. Where reference rate is not available, 1% of gross Indian Rupee value of the transaction. And where the conversion is not into Indian Rupees, then 1% of the lesser of the Indian Rupee equivalent of each currency exchanged
 - (b) option b – 1% of gross amount upto Rs.1 lac, 1/2% after Rs.1 lac upto Rs.10 lacs and 1/10% after Rs.10 lacs. This option (b) once exercised cannot be withdrawn during the financial year
- (ii) supply of services by travel agent of booking of tickets for air-travel, the value of supply will be 5% of basic domestic fare or 10% of basic international fare. Please note that commission to the travel agent may flow from passenger or airline or any other person and the value determined here will be the tax for all the sources of commission
- (iii) supply of services in relation to life insurance, the value of supply will be gross premium reduced by investment allocation, in the case of single premium policy will be 10% of premium and in all other cases will be 5% of first year's premium and 12.5% for other year's premia. This rule will not apply to premium related to coverage for risk-of-life
- (iv) supply of services of person dealing in second-hand goods, the value of supply will be difference between purchase price and selling price. Please note 'second-hand goods'

refers to goods used or otherwise employed in some process without causing any change in their nature. Used goods and not the same as pre-owned goods which need not have been put to use. For example, a motor car where mark of registration has been assigned by RTO, even if left unused for long time will not be able to satisfy that it has not been used. And similarly, the odometer reading showing '0 kms' but duly registered by RTO will not override the conclusion that it is used. Please note that most appropriate tests for identifying whether the goods have been used or not may be examined. Also, this rule does not apply only to 'supply of second-hand goods' but to supply of services of person dealing in second-hand goods. In other words, disposal of leased car will also come within the operation of this rule

- (v) supply of voucher, the value will be the redemption value of the voucher. Please note voucher includes coupon, stamp, token, etc. Please refer to the discussion on vouchers under section 13 for the various forms that voucher can take including digital vouchers to which this rule will apply
- (vi) supply of services between distinct persons, that are notified by Government and where no input tax credit is availed will be NIL. Please note that the implications of denial of credit u/s 17(2) in case of supply being exempt will be attracted in these cases

(g) Service of pure agent (Rule 7)

Agency supplies are different from 'pure agent' in relation to valuation. This rule applies only to supply of services. It provides for the exclusion from valuation of any supply of certain costs and expenses if and only if the following tests are satisfied:

- (i) contract of supply (actual or implied) subsists between a third party and beneficiary of supply
- (ii) actual recipient uses the supply for the purposes of the beneficiary
- (iii) beneficiary of supply liable to pay third party (due to contract)
- (iv) beneficiary authorizes (actual or implied) payment to third party by actual recipient
- (v) beneficiary aware that supply is by such third party and not by actual recipient claiming reimbursement
- (vi) invoice of actual recipient indicates separately the reimbursement claim
- (vii) actual recipient claims actuals only from beneficiary
- (viii) actual recipient supplies (goods or services or both) independent of the reimbursement-supplies

Please note that these eight clauses appear to overlap each other in some way but the following key aspects may be considered:

- there is a payment made to third party by a payer
- payer is a supplier of goods or services or both to a beneficiary (client)
- underlying obligation to pay third party is of the beneficiary (client)

- payment by payer is to discharge beneficiary's obligation toward third party
- third party enjoys recourse to beneficiary in case of non-payment by payer

For example, income-tax liability of a client is paid by the CA, the above test is satisfied as follows:

• there is a payment made to third party by a payer	CA pays the income-tax amount to the tax department
• payer is a supplier of goods or services or both to a beneficiary (client)	CA is otherwise providing tax consultancy services to the client (tax assessee)
• underlying obligation to pay third party is of the beneficiary (client)	Obligation to pay the income-tax amount is always of the client (tax assessee)
• payment by payer is to discharge beneficiary's obligation toward third party	Payment of income-tax amount to tax department is deposited against PAN of client (tax assessee) even though the amount may be transferred from CA's bank account
• third party enjoys recourse to beneficiary in case of non-payment by payer	In case CA defaults in the payment to tax department, recovery action will lie only against the client (tax assessee) and never against the CA however much the CA may have contractual accepted with the client to pay tax promptly

Now, the above example may be re-examined against the clauses referred to in this rule:

(i) contract of supply (actual or implied) subsists between a third party and beneficiary of supply	Only an obligation exists between client (beneficiary) and Government (third party)
(ii) actual recipient uses the supply for the purposes of the beneficiary	CA (recipient) uses the discharge of tax for benefit of client (beneficiary)
(iii) beneficiary of supply liable to pay third party (due to contract)	Client (beneficiary) liable to pay Government (third party)
(iv) beneficiary authorizes (actual or implied) payment to third party by actual recipient	Client (beneficiary) authorizes payment to Government (third party) by CA (recipient)
(v) beneficiary aware that supply is by such third party and not by actual recipient claiming reimbursement	Client (beneficiary) aware that tax belongs to Government (third party) and not CA (recipient)
(vi) invoice of actual recipient indicates separately the reimbursement claim	CA (recipient) issues invoice for tax consultancy PLUS taxes paid
(vii) actual recipient claims actuals only from beneficiary	CA (recipient) issues invoice for taxes paid at actuals from client (beneficiary)
(viii) actual recipient supplies (goods or services or both) independent of the reimbursement-supplies	CA (recipient) supplies tax consultancy independent of reimbursement of tax claimed

Due to the overlap of the eight clauses in this rule, there appears to be some concern but the result will not vary however it is applied. Now, take another example of travel expense claimed by CA from a client where the travel is incurred exclusively for the benefit of the client

• there is a payment made to third party by a payer	CA pays the travel agent for tickets of audit-team staff who travelled to client's factory
• payer is a supplier of goods or services or both to a beneficiary (client)	CA is otherwise providing audit services to the client
• underlying obligation to pay third party is of the beneficiary (client)	Obligation to pay travel agent is of the CA and not of the client
• payment by payer is to discharge beneficiary's obligation toward third party	Payment to travel agent is to discharge the bills issued to CA
• third party enjoys recourse to beneficiary in case of non-payment by payer	Travel agent cannot claim payment from client in case of delay / default by CA

As such, travel cost incurred by CA even though claimed as actuals will not be excluded from valuation as a pure agent. Now in the same example, if the travel agent is identified by the client with instructions to CA to send travel details for making necessary bookings, the above tests may be applied and since the bill for the tickets will be issued in the name of the client by the travel agent, there is no question of CA claiming any travel cost and this application of this rule does not arise.

(h) Exchange rate to be used (Rule 8)

Transactions undertaken in foreign currency must be translated into Indian Rupees. Due to the availability of multiple exchange rates such as RBI rate, SBI rate, FIDAI rate, Customs rate, etc. this rule prescribes that rate of exchange will be 'RBI rate' and the date of the rate of exchange will be the time of supply under section 12 and 13, respectively.

Transaction value: Recourse to Rules

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| <p>A. Where value cannot be determined u/s 15(1), i.e., when:</p> <ol style="list-style-type: none"> 1. Price is not the sole consideration 2. Supplier-recipient are related persons: Recourse to Rules even if the Supplier-Recipient relationship: <ul style="list-style-type: none"> • Did not influence the price; • Precedes agreement to the supply; • Has no bearing on pricing; • Has no bearing on Agreement to the Supply; • Has no relevance to the Supply; • Was to meet with different criteria or purpose; <p>(Rules will apply both ways – supplier to recipient and recipient to supplier)</p> <p>B. In case of notified supplies</p> |
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15.3. Comparative Review

Valuation Rules in Customs, Central Excise and Service Tax have been tested for applicability in various circumstances. All that experience and judicial interpretation may be brought to provide a good understanding of the words used in these Rules and the purpose for such usage. They are:

- Customs Valuation (Determination of Price of Imported Goods) Rules, 2007
- Customs Valuation (Determination of Price of Export Goods) Rules, 2007
- Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000
- Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008
- Service Tax (Determination of Value) Rules, 2006

Illustrations on Section 15 read with valuation rules:

Q1. Mrs. Jaya purchases a Samsung television set costing Rs. 85,000 from Giriyas, in exchange of her existing TV set. After an hour of bargaining, the shop manager agrees to accept Rs.78,000 instead of his quote of Rs.81,000, as he would still be in a profitable position (the old TV can be sold for Rs.8,000).

Ans. Where the price is not the sole consideration for the supply, the 'open market value' would be the value of the supply. Therefore, Rs. 85,000 would be the value of the supply. The supplier Giriyas would also be liable for paying tax on receipt of the old TV from Mrs. Jaya, as it would amount to an inward supply from an unregistered person. Thus, he would be liable to pay tax on the open market value applicable on such TV i.e., on Rs. 8,000.

[Section 15(4) r/w Rule 1(a) of Valuation Rules]

Q2. Mr. Mohan located in Manipal purchases 10,000 Hero ink pens worth Rs.4,00,000 from Lekhana Wholesalers located in Bhopal. Mr. Mohan's wife is an employee in Lekhana Wholesalers. The price of each Hero pen in the open market is Rs.52. The supplier additionally charges Rs.5,000 for delivering the goods to the recipient's place of business.

Ans. Mr. Mohan and Lekhana Wholesalers would not be treated as related persons merely because the spouse of the recipient is an employee of the supplier, although such spouse and the supplier would be treated as related persons. Therefore, the transaction value will be accepted as the value of the supply. The transaction value includes incidental expenses incurred by the supplier in respect of the supply up to the time of delivery of goods to the recipient. This means, the transaction value will be: Rs.4,05,000 (i.e., 4,00,000 + 5,000).

[Section 15(1) r/w Section 15(2)]

Q3. Sriram Textiles is a registered person in Hyderabad. A particular variety of clothing has been categorised as non-moving stock, costing Rs.5,00,000. None of the customers

were willing to buy these clothes in spite of giving big discounts on them, for the reason that the design was too experimental. After months, Sriram Textiles was able to sell this stock on an online website to another retailer located in Meghalaya for Rs.2,50,000, on the condition that the retailer would put up a poster of Sriram Textiles in all their retail outlets in the State.

Ans. The supplier and recipient are not related persons. Although a condition is imposed on the recipient on effecting the sale, such a condition has no bearing on the contract price. This is a case of distress sale, and in such a case, it cannot be said that the supply is lacking 'sole consideration'. Therefore, the price of Rs.2,50,000 will be accepted as value of supply.

[Section 15(4) r/w Rule 1(d) r/w Rule 5 of Valuation Rules]

Q4. Rajguru Industries stock transfers 1,00,000 units (costing Rs.10,00,000) requiring further processing before sale, from Bijapur in Karnataka to its Nagpur branch in Maharashtra. The Nagpur branch, apart from processing units of its own, engages in processing of similar units by other persons who supply the same variety of goods, and thereafter sells these processed goods to wholesalers. There are no other factories in the neighbouring area which are engaged in the same business as that of its Nagpur unit. Goods of the same kind and quality are supplied in lots of 1,00,000 units each time, by another manufacturer located in Nagpur. The price of such goods is Rs.9,70,000.

Ans.: In case of transfer of goods between two registered units of the same person (having the same PAN), the transaction will be treated as a supply even if the transfer is made without consideration, as such persons will be treated as 'distinct persons' under the GST law. The value of the supply would be the open market value of such supply. If this value cannot be determined, the value shall be the value of supply of goods of like kind and quality. In this case, although goods of like kind and quality are available, the same may not be accepted as the 'like goods' in this case would be less expensive given that the transportation costs would be lower. Therefore, the value of the supply would be taken at 110% of the cost, i.e., Rs. 11,00,000 (i.e., 110% * 10,00,000).

[Section 15(4) r/w Rule 2(b) & (c) r/w Rule 4 of Valuation Rules]

Q5. M/s. Monalisa Painters owned by Vasudev is popularly known for painting the interiors of banquet halls. M/s. Starry Night Painters (also owned by Vasudev) is engaged in painting machinery equipment. A factory contracts M/s. Monalisa Painters for painting its machinery to keep it from corrosion, for a fee of Rs.1,50,000. M/s. Monalisa Painters sub-contracts the work to M/s. Starry Night Painters for Rs.1,00,000, and ensures supervision of the work performed by them. Generally, M/s/ Starry Night Painters charges a fixed sum of Rs.1,000 per hour to its clients; it spends 120 hours on this project.

Ans.: Since M/s. Monalisa Painters and M/s. Starry Night Painters are controlled by Mr.

Vasudev, the two businesses will be treated as related persons. Therefore, Rs.1,00,000 being the sub-contract price will not be accepted as transaction value. The value of the service would be the open market value being Rs. 1,20,000 (i.e., Rs. 1,000 per hour * 120 hours) *.

Note: This view is based on the grounds that there are no comparables to this supply.

[Section 15(4) r/w Rule 2(a) of Valuation Rules]

- Q6. Prestige Appliances Ltd. (Bangalore) has 10 agents located across the State of Karnataka (except Bangalore). The stock of chimneys is dispatched on Just-In-Time basis from Prestige Appliances Ltd. to the locations of the agents, based on receipt of orders from various dealers, on a weekly basis. Prestige Appliances Ltd. is also engaged in the wholesale supply of chimneys in Bangalore. An agent places an order for dispatch of 30 chimneys on 22-Sep-2017. Prestige had sold 30 chimneys to a retailer in Bangalore on 18-Sep-2017 for Rs. 2,80,000. The agent effects the sale of the 30 units to a dealer who would effect the sales on MRP basis (i.e., @ Rs.10,000/unit).

Ans.: The law deems these supplies between the principal and agent to be supplies for the purpose of GST. Therefore, the transfer of goods by the principal (Prestige) to its agent for him to effect sales on behalf of the principal would be deemed to be a supply although made without consideration. The value would be either the open market value, or 90% of the price charged by the recipient of the intended supply to its customers, at the option of the supplier. Thus, the value of the supply by Prestige to its agent would be either Rs. 2,80,000, or 2,70,000 (i.e., 90%*10,000 * 30), based on the option chosen by Prestige.

[Section 15(5) r/w Rule 3(a) of Valuation Rules]

- Q7. Mr. & Ms. Mehta purchase 10 gift vouchers for Rs. 500 each from Crossword, and 5 vouchers from Four Fountains Spa costing Rs. 1,000 each, and gives them as return gifts to children and their parents for their son's birthday party. The vouchers from Four Fountains Spa had a special offer for couples – services for both persons at the price chargeable to one.

Ans. The value of the supply would be the money value of the goods redeemable against the voucher. Thus, in case of vouchers from Crossword, the value would be Rs. 5,000 (i.e., Rs.500 * 10) and the value of vouchers in case of Four Fountains Spa would be Rs. 10,000 (i.e., Rs. 1,000 * 2 * 5).

[Section 15(5) r/w Rule 6(6) of Valuation Rules]