

# Chapter I

## Preliminary

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### Statutory Provision

#### 1. Short title, extent and commencement

- (1) This Act may be called the Integrated Goods and Services Tax Act, 2017.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

#### Title

All Acts enacted by the Parliament since the introduction of the Indian Short Titles Act, 1897 carry a long and a short title. The *long title*, set out at the head of a statute, gives a full description of the general purpose of the Act and broadly covers the scope of the Act.

The *short title*, serves simply as an ease of reference and is considered a statutory nickname to obviate the necessity of referring to the Act under its full and descriptive title. Its object is identification, and not description, of the purpose of the Act.

#### Extent

Part I of the Constitution of India states: "India, that is Bharat, shall be a Union of States". It provides that territory of India shall comprise the States and the Union Territories specified in the First Schedule of the Constitution of India. The First Schedule provides for twenty-nine (29) States and seven (7) Union Territories.

Part VI of the Constitution of India provides that for every State, there shall be a Legislature, while Part VIII provides that every Union Territory shall be administered by the President through an 'Administrator' appointed by him. However, the Union Territories of Delhi and Puducherry have been provided with Legislatures with powers and functions as required for their administration.

India is a summation of three categories of territories namely – (i) States (29); (ii) Union Territories with Legislature (2); and (iii) Union Territories without Legislature (5).

The State of Jammu and Kashmir enjoys a special status in the Indian Constitution in terms of Article 370 of the Indian Constitution. The Parliament has power to make laws only on Defence, External Affairs and Communication related matters of Jammu and Kashmir. As regards the laws related on any other matter, subsequent ratification by the Government of Jammu and Kashmir is necessary to make it applicable to that State.

Therefore, the State of Jammu & Kashmir will have to pass special laws to be able to implement the Goods and Services Tax Acts as its current Constitutional status does not mandate the applicability of the Goods and Services Tax Acts in the state. Once the laws are passed by the State of Jammu & Kashmir, the Union Government will have to amend the Integrated Goods and Services Act, 2017 to delete the phrase that such provisions do not apply to the State of Jammu & Kashmir.

#### **Commencement:**

The IGST Act will come into operation on the date appointed by the Central Government by means of a notification in the Official Gazette (tentatively 1<sup>st</sup> July 2017). A provision has been made to notify different dates for commencement of different provisions of the Act.

It is expected that a notification with a prospective date of commencement of the IGST Act i.e. a specific date succeeding the date of notification in the Official Gazette would be issued. A notification providing for a retrospective date for commencement of the IGST Act cannot be issued, since that would result in simultaneous operation of two laws governing the same subject matter i.e. the existing law (s) and the IGST Act being in force during the period starting from such date of commencement until the date of notification in the Official Gazette.

#### **Statutory Provision**

##### **2. Definitions**

In this Act, unless the context otherwise requires-

(1) "Central Goods and Services Tax Act" means the Central Goods and Services Tax Act, 2017;

It refers to the Act under which tax is levied on intra-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption).

(2) "central tax" means the tax levied and collected under the Central Goods and Services Tax Act;

Tax levied under the CGST Act is referred to as "Central tax" as opposed to "CGST" as used in the model GST laws. It refers to the tax charged under the CGST Act on intra-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption). The rate of tax is capped at 20% and thereafter, the rates for goods and services will be notified by the Central Government based on the recommendation of the Council.

It is relevant to note that the term 'central tax' under the IGST Act is defined to include tax levied and collected under the CGST Act whereas the term 'central tax' under the CGST Act is defined to include tax levied only. Therefore, the phrase 'central tax' has a wider connotation under the IGST Act as it includes taxes collected in addition to what is levied under CGST Act.

(3) "continuous journey" means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

Explanation.—For the purposes of this clause, the term “stopover” means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time;

This is relevant to determine the place of supply of passenger transport services.

Continuous journey refers to a journey where:

- (a) A single or more than one ticket or invoice is issued at the same time;
- (b) Service is provided by one service provider or by an agent on behalf of more than one service providers
- (c) Journey does not involve any stopover at any of the legs of the journey for which one or more separate tickets or invoices are issued (“Stopover” means a place where a passenger disembarks from the conveyance).

The following aspects need to be noted:

- All stopovers will not cause a break in the journey. Only those stopovers for which one or more separate tickets are issued will be relevant. A travel involving Bangalore-Dubai-New York-Dubai-Bangalore on a single ticket with a halt at Dubai (onward and return) will be covered by the definition of continuous journey. However, if the passenger disembarks at Dubai or breaks his journey for a certain period in order to resume it at a later point of time, it will not be considered a continuous journey.
- All the above conditions should be cumulatively satisfied to consider the journey as continuous journey.
- A return journey will be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

(4) “customs frontiers of India” means the limits of a customs area as defined in section 2 of the Customs Act, 1962;

The customs frontiers of India include the following:

- (a) Customs Port;
- (b) Customs Airport;
- (c) International Courier Terminal;
- (d) Foreign Post Office;
- (e) Land Customs Station;
- (f) Area in which imported goods or goods meant for export are ordinarily kept before clearance by Customs Authorities

The following aspects need to be noted:

- Bonded Warehouses would now be covered under this definition.

- A person importing goods into the territory of India from an overseas exporter would be liable to pay IGST on such supply of goods.
- Where a transfer of documents of title takes place during import, the question of payment of tax by the importer would not arise since the documents of title would be transferred before the goods cross the customs frontier of India.
- Supplies made by an importer after the goods have crossed the customs frontier of India would be liable to CGST, SGST or IGST, depending on the facts of each case.

(5) "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

Export of goods will be treated as 'zero-rated supplies'. Accordingly, while no tax would be payable on such supplies, the exporter will be eligible to claim the corresponding input tax credits. It is relevant to note that the input tax credits would be available to an exporter even if the supplies were exempt supplies so long as the eligibility of the input taxes is established.

Following aspects need to be noted:

- Unlike export of services which requires fulfilment of certain conditions for a supply to qualify as 'export of services' like the nature of currency in which payment is required to be made, location of the exporter etc., export of goods doesn't require fulfilment of any such conditions.
- The movement of goods is alone relevant and not the location of the exporter/ importer.
- The exporter may utilise such credits for discharge of other output taxes or alternatively, the exporter may claim a refund of such taxes.
- The exporter will be eligible to claim refund under the following situations:
  - (i) He may export the goods under a Letter of Undertaking, without payment of IGST and claim refund of unutilized input tax credit; or
  - (ii) He may export the goods upon payment of IGST and claim refund of such tax paid.

(6) "export of services" means the supply of any service when, —

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

The concept of export of services is broadly borrowed from the provisions of the current Service Tax law.

Under the GST regime, Export of service will be treated as 'zero-rated supplies'. Accordingly, while no tax would be payable on such supplies, the exporter will be eligible to claim the corresponding input tax credits. It is relevant to note that the input tax credits would be available to an exporter even if supplies were exempt supplies as long as the eligibility of the input taxes as input tax credits is established.

The exporter may utilise such credits for discharge of other output taxes or alternatively, the exporter may claim a refund of such taxes.

The exporter will be eligible to claim refund under the following situations:

- (a) He may export the services under a Letter of Undertaking, without payment of IGST and claim refund of unutilized input tax credit; or
- (b) He may export the services upon payment of IGST and claim refund of such tax paid.

The following aspects need to be noted:

- The requirement under the Service Tax law was that the supplier should be located in the taxable territory i.e. India, excluding Jammu and Kashmir. Under the GST law, the requirement is that the supplier is located in India (which includes Jammu and Kashmir). It seems fairly reasonable to interpret that the Jammu and Kashmir is expected to pass appropriate legislations to implement the GST laws and therefore, the word 'India' finds a mention here and not 'taxable territory'. Considering this, unlike the present situation where the service tax law is not applicable to the State of Jammu and Kashmir, an exporter from Jammu and Kashmir would be able to claim input tax credit on such exports.
- However, assuming that the State of Jammu and Kashmir does not pass the necessary law, the above provisions would not be applicable in the State of Jammu and Kashmir.
- Although overseas establishment of a person in India is treated as a distinct person for purposes of levy of integrated tax, as regards export of services, this overseas establishment must demonstrate substance in its activities to qualify as recipient of the export of the services from India and establish itself as more than just a mere establishment of the person.
- Establishments will be treated as establishment of distinct persons under the following situations:

Situation	Location of one establishment	Location of the other establishment
I	India	Outside India
II	State or Union Territory	Outside that State or Union Territory
III	State or Union Territory	Business vertical registered in that State or Union Territory

Therefore, where both the establishments are located in a State/ Union Territory, the establishments will not be considered as distinct persons.

(7) "fixed establishment" means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs;

Fixed Establishment refers to a place:

- (a) Having a sufficient degree of permanence
- (b) Having a structure of human and technical resources
- (c) Other than the registered place of business

The following aspects need to be noted:

- Not every temporary or interim location of a project site or transit-warehouse will (*ipso facto*) become a fixed establishment of the taxable person.
- The person should undertake supply of services or should receive and use services for own needs
- Temporary presence of staff in a place by way of a short visit to a place or so does not make that place a fixed establishment.
- Liaison Offices meant to undertake liaison activities cannot render services that are commercial in nature, in the garb of rendering liaison services. For e.g.: If a liaison office were to render marketing service to its parent entity outside India, for a customer located in India and the said liaison office staff receive a fee/ commission, then the concept of liaison office stands to test. In such a scenario, the reimbursements received by the liaison office could be subject to tax notwithstanding the fact that the entire transaction can be subjected to valuation as a permanent establishment.

(8) "Goods and Services Tax (Compensation to States) Act" means the Goods and Services Tax (Compensation to States) Act, 2017;

The Goods and Services Tax (Compensation to States) Act (for brevity "Compensation Act") provides for compensation to the States for the loss of revenue arising on account of implementation of GST for a period of 5 years from the said date of implementation. The cess paid on the supply of goods or services will be available as credit for utilization towards payment of said cess on outward supply of goods and services on which such cess is leviable.

(9) "Government" means the Central Government;

(10) "import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;

Import of goods into India would be treated as supply of goods in the course of inter-State trade/ commerce and would be liable to integrated tax under this Act.

The following aspects need to be noted:

- The place of supply of goods in case of imports would be the location of the importer. E.g.: If goods are imported at Mumbai port but the importer is at Delhi, the place of supply shall be Delhi.;
- The integrated tax would be levied on the value of goods as determined under the Customs law in addition to the custom duties levied on such imports. In other words, levy of Basic Customs Duty (BCD) will continue and the component of Countervailing Duty (CVD) and Special Additional Duty (SAD) will be replaced by Integrated tax;
- The time at which the customs duties are levied on import of goods would also be the time when integrated tax is levied;
- The importer will be liable to pay integrated tax on a reverse charge basis and the same will have to be discharged by cash only and credit cannot be utilized for discharging such a liability;
- Merchant Trading Transactions (MTT) i.e. where the supplier of goods will be resident in one foreign country, the buyer of goods will be resident in another foreign country and the merchant or intermediary will be resident in India, would primarily not come under the ambit of GST since they do not involve entry of goods into India.

- (11) “import of services” means the supply of any service, where—
- (i) the supplier of service is located outside India;
  - (ii) the recipient of service is located in India; and
  - (iii) the place of supply of service is in India;

The phrase “import of service” is very broad and covers all such supplies where:

- (a) The supplier is located outside India,
- (b) The recipient is located in India
- (c) Place of supply is in India.

The following aspects need to be noted:

- Supplies, where the supplier and recipient are mere establishments of a person, would also qualify as “import of service”.
- The importer will be liable to pay integrated tax on a reverse charge basis and the same will have to be discharged by cash only and credit cannot be utilized for discharging such a liability;
- Import of service made for a consideration alone would be taxable, whether or not in the course of business. Therefore, import of service for personal consumption for a consideration would qualify as ‘supply’ and would be liable to integrated tax. However, the recipient will not be required to obtain a registration for that purpose;
- The threshold limits for registration would not apply and the importer would be required to obtain registration irrespective of his turnover;

- Import of services from related persons or establishments located outside India without consideration also would be liable to integrated tax.

(12) “integrated tax” means the integrated goods and services tax levied under this Act;

It refers to the tax charged under this Act on inter-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption). The rate of tax is capped at 40% and will be notified by the Central Government based on the recommendation of the Council.

(13) “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

The following aspects need to be noted:

- An intermediary arranges or facilitates supply of goods or services or both, or securities between two more persons. For e.g.: Travel Agent
- Two supplies are generally involved:
  - Supply between the principal and the third party; and
  - Supply of his own service to his principal – generally for a fee or commission;
- An intermediary cannot alter the nature or value of supply, which he facilitates on behalf of his principal;
- The consideration for an intermediary’s supply is separately identifiable from the main supply that he is arranging and is in the nature of fee or commission charged by him;
- The test of agency must be satisfied between the principal and the agent i.e. the intermediary;
- The place of supply in relation to intermediary services is the location of the service provider.

(14) “location of the recipient of services” means, —

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

The phrase 'location of the recipient of services' is essential to determine the place of supply of service and can be understood in the following 4 sub-clauses:

- (a) Services received at a place of business where registration is obtained – Location of such place of business;
- (b) Services received at a fixed establishment (i.e., a place of business not registered, but having a sufficient degree of permanence involving human and technical resources) – Location of such fixed establishment;
- (c) Services received at more than one establishment – Location of the establishment most directly concerned with the receipt of the supply;
- (d) Services received at a place other than above – Location of the usual place of residence of the recipient (address where the person is legally registered/ constituted in case of recipients other than individuals).

Note: The definition uses the term "place", and not the phrase "State or Union Territory". Therefore, a view may be taken that the location of the recipient of the service could be determined under the residuary clause (i.e., usual place of residence), merely because it is received in a place of business which is neither registered as an additional place of business, nor a fixed establishment, although the place of receipt is in the same State as another place of business which is registered.

E.g.: Event management services received in the Mangalore unit of M/s. ABC Ltd. M/s. ABC Ltd has its registered office in Mumbai (having a GST registration) and has a branch office in Bangalore (having a GST registration). Mangalore unit is neither an additional place of business nor a fixed establishment. In such a case, a view may be taken that the location of the recipient of service is the Mumbai office, and not the Bangalore office, although Bangalore and Mangalore are located in the same State.

- (15) "location of the supplier of services" means, —
- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
  - (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
  - (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
  - (d) in absence of such places, the location of the usual place of residence of the supplier;

The phrase 'location of the supplier of services' is essential to determine the place of supply of service and can be understood in the following 4 sub-clauses:

- (a) Services made from a place of business where registration is obtained – Location of such place of business;

- (b) Services made from a fixed establishment (i.e., a place of business not registered, but having a sufficient degree of permanence involving human and technical resources) – Location of such fixed establishment;
- (c) Services made from more than one establishment – Location of the establishment most directly concerned with the receipt of the supply;
- (d) Other than the above – Location of the usual place of residence of the supplier (address where the person is legally registered/ constituted in case of recipients other than individuals).

Note: The definition uses the term “place”, and not the phrase “State or Union Territory”. Therefore, a view may be taken that the location of the provider of the service could be determined under the residuary clause (i.e., usual place of residence), merely because it is provided from a place of business which is neither registered as an additional place of business, nor a fixed establishment, although the place of provision is in the same State as another place of business which is registered.

Where services are provided from more than one establishment i.e. principal place of business and fixed establishment, the location of the establishment with which the service receiver is directly concerned will be considered for the purpose of determining the location of supply.

(16) “non-taxable online recipient” means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Explanation. —For the purposes of this clause, the expression “governmental authority” means an authority or a board or any other body, —

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

The phrase “non-taxable online recipient” covers the following persons:

- (a) The Central Government
- (b) Local Authority
- (c) Governmental Authority i.e. an authority established with 90% or more participation by the Government and set-up to undertake functions entrusted to a municipality under Article 243W of the Constitution like:
  - Preparation of plans for economic development,
  - Urban planning,
  - Fire Services,
  - Water supply, etc.

Following aspects need to be noted:

- In case of supply of Online Information and Database Access or Retrieval (OIDAR) services by a person located in a non-taxable territory (outside India) to a non-taxable online recipient, the supplier would be liable obtain registration and pay integrated tax by providing the details of the state of consumption;
- Examples of such services are e-downloads of games, movies by an individual from a foreign entity.

(17) “online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as, —

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming;

The definition has very wide coverage of activities/ services delivered in the digital economy and is drafted in line with the provisions under the Service Tax laws to include services like e-downloads of games, movies etc., web-hosting services, online supply of on-demand disc space, distance teaching, etc.

An indicative list of services that would not be covered under Online Information and Database Access or Retrieval (OIDAR) services are:

- Legal services or Financial services advising clients through e-mail
- Educational or professional courses, where the content is delivered by a teacher over the internet or an electronic network (using a remote link)

Following aspects need to be noted:

- Supply of Online Information and Database Access or Retrieval (OIDAR) services by a person located in a non-taxable territory (outside India) to a non-taxable online recipient, would be liable to tax in the hands of the supplier;
- The supplier would be responsible for collection and remittance of service tax to the Government of India;

- The supplier can take a single registration under the Simplified Registration Scheme (yet to be notified by the Government);
- Alternatively, a person located in India (other than J&K) representing the supplier can obtain registration and pay the tax on behalf of the supplier. If the supplier does not have a representative/ physical presence in India (other than J&K), he can appoint a person who will be liable to pay the integrated tax on such transactions by providing the details of the state of consumption;
- Business-to-Business (B2B) transactions w.r.t. OIDAR will be taxable in the hands of the recipient itself under reverse charge mechanism.

(18) "output tax", in relation to a taxable person, means the integrated tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

The output tax i.e. integrated tax chargeable on inter-State taxable supply of goods or services can be summarised as under:

Type of Supply	Reference
Supplies between 2 States (or UT with Legislature)	Section 7(1) and 7(3) of the IGST Act
Import of goods or service	Section 7(2) and Section 7(4) of the IGST Act
Supplies to/ by a SEZ developer or unit	Section 7 (5) (b) of the IGST Act
Supplies made by a person located in India and where the place of supply is outside India	Section 7 (5) (a) of the IGST Act

Following aspects need to be noted:

- While input tax is in relation to a registered person, output tax is in relation to a taxable person. Evidently, the law excludes persons who are not registered under the law from being associated with any input tax. However, where there is a liability due to the Government, the law paves the way to cover those persons who are liable to tax, but who have failed to obtain registration.
- The amount covered under this term is the amount of tax that is 'chargeable', and not the amount that is 'charged'. Therefore, in case a person wrongly charges tax, or charges an excess rate of tax, as compared to the applicable tax rate, such excess would not qualify as output tax.
  - Some experts are of the view that taxes payable by recipient of supply, on account of making inward supplies of such categories of supply as are notified for the purpose of reverse chargeability of tax, or making inward supplies from unregistered persons, would also be out of the scope of 'output tax'.
- The implication of the exclusions mentioned above is that the input tax credit cannot be utilised for making payment of any amount that does not qualify as output tax.

Discharge of liability in such cases has to be by way of cash payments (i.e., through the electronic cash ledger, on depositing money by means of cash, cheque, etc.).

- The law makes a specific inclusion in respect of supplies made by an agent on behalf of the supplier, to treat the tax paid on such supplies as output tax in the hands of the supplier.

(19) "Special Economic Zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005;

It covers two categories of zones as under:

- Zones which are existing as on 10.02.2006 i.e. the date when SEZ Act was made effective
- Zones which have been notified under Section 3(4) and Section 4(1) of the SEZ Act, 2005

Notifications under Section 3(4) are issued when the State Government wants to set up a SEZ and the Notifications under Section 4(1) are issued when any other person (except State Government) wants to set-up a SEZ. The notifications issued therein specify the SEZ area.

(20) "Special Economic Zone developer" shall have the same meaning as assigned to it in clause (g) of section 2 of the Special Economic Zones Act, 2005 and includes an Authority as defined in clause (d) and a Co-Developer as defined in clause (f) of section 2 of the said Act;

The term "Special Economic Zone developer" covers the following persons:

- Person/ State Government who has been granted a letter of approval by the Central Government
- Special Economic Zone Authority
- Co-developer

Where the State Government/ person wants to set up a SEZ, notifications are required to be issued under Sections 3(4) and Section 4(1), respectively and after fulfilment of the prescribed conditions and procedures, a letter of approval is granted. Such a person who has been granted a letter of approval is regarded as a developer.

A co-developer is a person who has been granted a letter of approval for providing infrastructure facilities or for carrying out authorized operations in a notified SEZ. The Board of Approval (BoA) may specify the facility required to be developed by such a co-developer and in such a case, the co-developer will enter into an agreement with the developer for the specified purpose.

Supplies made to SEZ developer/ unit would be regarded as zero-rated supplies.

(21) "supply" shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act;

The concept of 'supply' has been discussed in detail in the analysis of 'Supply'.

(22) "taxable territory" means the territory to which the provisions of this Act apply;

It covers the whole of India except the State of Jammu and Kashmir.

(23) "zero-rated supply" shall have the meaning assigned to it in section 16;

The following taxable supplies of goods and/or services are considered as 'zero rated supplies':

- (a) Export of goods or services or both
- (b) Supply of goods or services or both to a SEZ developer or SEZ unit

Input tax credit can be availed for making zero-rated supplies, even though such zero-rated supplies may be an exempt supply. This would however be subject to section 17 of the CGST Act.

A taxable person exporting goods or services would be eligible for refund under the following two options:

- Export under bond without payment of integrated tax and claim refund of unutilised input tax credit; or
- Export on payment of integrated tax which can be claimed as refund accordingly.

(24) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;

Certain words and expressions like person, supplier, recipient, reverse charge, time of supply, value of supply etc. defined in the CGST/ SGST/ UTGST laws will have the same meaning for the purpose of IGST law.

(25) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, shall, in relation to that State be construed as a reference to the corresponding law, if any, in force in that State.

## Chapter II

# Administration

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### Statutory Provision

#### **3. Appointment of officers**

The Board may appoint such central tax officers as it thinks fit for exercising the powers under this Act.

#### **4. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances**

Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.

#### **3.1/4.1 Introduction**

Although CGST and IGST are both taxes of the Union, it is required that lawful authority be vested in certain persons to discharge duties for purposes of Integrated Tax.

#### **3.2/4.2 Analysis**

It is for this reason that the board has been empowered to appoint Central tax officers to discharge duties under the IGST Act. Please note of appointment of officers remains with the government but confirmation of responsibility to act as integrated tax officers is left with the board.

In suitable enabling provision has also been made where by officers of State / UT Tax can be authorised to discharge functions under the IGST Act. Such a provision is necessary in order to maintain uniformity in administration of notified supplies or notified category of taxable persons which are exclusively left under the CGST act to be administered by officers of State / UT Tax. It is appreciable that careful consideration has been given to ensure that there is no duplication of administrative power at the same time sufficient flexibility is enabled to ensure smooth and seamless tax compliance experience for trade and industry in GST regime.

## Chapter III

# Levy and Collection of Tax

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### Statutory provision

#### 5. Levy and collection of Integrated Goods and Services tax

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

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

- (2) The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.
- (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- (4) The integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- (5) The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

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

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

### 5.1 Introduction

The Constitution mandates that no tax shall be levied or collected by a taxing Statute except by authority of law. While no can be taxed by implication, a person can be subject to tax in terms of the charging section only.

This is the charging provision of the IGST Act. It provides that all inter-State supplies would be liable to IGST at rate recommended by the council and notified subject to a ceiling rate of 40%. The provision of this section is comparable to the provision under Section 9 of the CGST Act and Section 7 of the UTGST Act.

The levy is on all goods or services or both except alcoholic liquor for human consumption. Further, GST may be levied in supply of petroleum crude, high spirit diesels, motor spirit (petrol), natural gas and aviation turbine fuel with effect from the date notified by the Government on the recommendation of GST Council.

The levy of tax on supply of goods and / or services is in three parts - (i) in the hands of the supplier and (ii) in the hands of the recipient of goods / services under reverse charge mechanism and, (iii) in case of specified services, in the hands of electronic commerce operator

### 5.2 Analysis

In terms of Section 2(24) of the Act, any words or expression which are used in this Act, but are not defined should be assigned the meaning as given to such words or expressions in the CGST Act, the UTGST Act, and the GST (Compensation to States) Act.

With specific reference to this Section, the following words / expressions would be relevant.

- Supply
- Inter-State supply
- Goods
- Services
- Taxable person

The meaning to the expression 'inter-State supply' can be understood from Section 7 of this Act. However, the meaning of 'supply' and 'taxable person' should be borrowed from the CGST Act. Reference may be made to the CGST Act for an in-depth understanding of such expressions and words.

**Levy of tax:** Every inter-State supply will be liable to tax, if:

- (i) There is a Supply either of goods or services or both, even when a supply involves goods or services or both the law provides that such supply would be classifiable only as goods or services in terms of Schedule II of the Act.

- (ii) The supply is an inter-State supply – viz. ordinarily, the location of the supplier and the place of supply are in different States. (Refer Section 7 of the IGST Act to understand the meaning of inter-State supply);
- (iii) The tax shall be payable by a 'taxable person' as explained in Section 2(107) read with Section 22 and Section 24 of the CGST Act.

**Supply:** Refer discussion under Section 7 the CGST Act for a detailed understanding of the expression 'supply'. Additionally, the comments relating to 'composite supply' and 'mixed supply' will equally apply for supplies taxable under IGST Act.

**Tax shall be payable by:** The tax shall be payable by a 'taxable person' as defined under Section 2(107) read with Section 22 and Section 24 of the CGST Act. Broadly, a taxable person is one who is registered or who is required to be registered under the GST law. Please refer to the discussion under the CGST Act for a thorough understanding of this concept.

**Tax payable:** Every inter-State supply falling under Section 7 of the IGST Act will attract IGST, if gets covered by section 5.

**Tax on import of goods:** This Act provides that IGST shall be levied on import of goods in terms of Section 3 of the Customs Tariff Act, 1975. It implies that on such importation of goods IGST will be payable in addition to the Basic Customs Duty (BCD). The proviso to Section 5(1) of the IGST Act also clarifies that the value and point at which IGST would payable will be determined in accordance with Section 12 of the Customs Act, 1962.

**Rate and value of tax:** The rate of tax will be notified separately, but shall not exceed 40%, and the value of supplies would be as determined under Section 15 of the CGST Act.

**Applicability in respect of e-commerce operators:** Refer discussion under section 9(5) of the CGST Act for an understanding of the applicability of this provision for e-commerce operators.

**Reverse charge mechanism:** Normally, the supplier of goods and / or services will be liable to discharge tax on the supplies effected. However, the Central Government is empowered to specify categories of supplies in respect of which the recipient of goods and / or services will be liable to discharge the tax.

Similarly, registered person shall be liable to discharge the tax in respect of supply of taxable and / or services by unregistered person.

Accordingly, all other provisions of this Act and CGST Act, as applicable, will apply to the recipient of such goods and / or services, as if the recipient is the person liable to pay tax in relation to supply of such goods and / or services.

**E-commerce:** Where any supply of services is effected through e-commerce operators, the law provides that the Central Government may on recommendation of the Council notify that the e-commerce operator will be liable to discharge the tax on such supplies. In case where the e-commerce operator:

- (a) Does not have a physical presence then the person who represents the e-commerce operator will be liable to pay tax.

- (b) Does not have a physical presence or a representative, then the e-commerce operator is mandatorily required to appoint a person who will be liable to pay tax.

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

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

### 5.3 Comparative review

Under the current tax laws, Central Excise is on ‘manufacture of goods’, VAT / CST is on ‘sale of goods’ and Service tax is on ‘provision of service’. Unlike different industries under current law in a GST regime, ‘it is supply which is a taxable event’. Further, free supplies would be liable to excise duty, while under the VAT laws, free supplies would require reversal of input tax credit; Unlike different incidences, under the GST law, it is ‘supply’ which would be the taxable event. Under the current law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT / CST. However, under the GST law, it would be taxable as a ‘supply’.

Under the current law, there are multiple transactions which apparently qualify as both ‘sale of goods’ as well as ‘provision of services’. E.g. license of software, providing a right to use a brand name, etc. Unlike this situation, GST clarifies as to whether a transaction would qualify as a ‘supply of goods’ or as ‘supply of services’. A transaction would either qualify as goods or as services, under the GST law. Even in respect of composite contracts, it has been clarified under Schedule II, Definition of composite supply and mixed supply in the CGST law.

The payment of VAT by the purchaser (registered dealer) on purchase of goods from an unregistered dealer and the circumstances where the Service Tax is payable under the reverse charge mechanism, in respect of say, import of services, sponsorship services etc., are comparable to the 'reverse charge mechanism' prescribed herein. However, under GST law, the Central Government can notify class of goods which are subject matter of reverse charge.

#### 5.4 Related provisions

Statute	Section	Description
IGST	Section 7	Meaning of inter-State supplies
CGST	Section 9	Levy and collection of CGST /SGST
CGST	Section 7 read with Schedule I II and III	Definition of 'supply'
CGST	Section 2(107) read with Section 22 and Section 24	Meaning of 'taxable person'
CGST	Section 2(17)	Definition of 'Business'

#### 5.5 FAQs

Q1. Will sale of business as a whole be liable to tax?

Ans. Clause (d) of Section 2(17) of the CGST Act provides that supply or acquisition of goods including capital goods and services in connection with commencement or closure of business is also included in the term "business". Therefore, the goods element in the sale of business, would be regarded as 'supply' and therefore, liable to tax.

One may also refer to Schedule II which specifies listed number of issues when it will not be taxable.

Q2. Is the reverse charge mechanism applicable only to services?

Ans. No, Section 5(3) or 5 (4) of the IGST Act and Section 9(3) or (4) of the CGST Act does not limit reverse charge to services, it applies to goods also.

Q3. What will be the implications in case of purchase of goods from unregistered dealers?

Ans. The recipient of supply will be the person liable to pay the tax – i.e., reverse charge mechanism would operate.

Q4. In respect of exchange, will the transaction be taxable as two different supplies or will it be taxable only in the hands of the main supplier?

Ans. Taxable as two different supplies. Exchange from point of view of each party will need to be examined if it attracts the requirements of levy of tax.

Q5. In respect of exchange or barter, if one supply is intra-State and another is inter-State, how will the taxes be applicable?

Ans. As two separate supplies and taxes as applicable (as inter-state and / or intra-state respectively)

Q6. What are examples of 'disposals' as used in supply?

Ans. Sale of old furniture by a garment manufacturer.

Note: Disposal is where the articles are being cleared up and not necessarily as the main object of the business)

Q7. Will recovery towards food and conveyance from employees be liable to tax as supply by the employer to the employee?

Ans. Yes, as the exclusion in Schedule-III is only in respect of services 'by employee' to the employer and not other way around.

Q8. Will a Bank qualify as a taxable person for sale of hypothecated / pledged goods (auction)?

Ans. Yes. Nature of business as a bank does not affect tax liability. GST is payable if there is any supply of taxable goods or services even by a bank

Q9. Will an Insurance company be a taxable person for sale of repossessed goods?

Ans. Yes. Although not the principal source of income, sale of repossessed goods is key aspect of insurance business

Q10. Will a "not for profit entity" be liable to tax on any sales effected by it – e.g.: sale of assets received as donation?

Ans. Yes. NPEs do not distribute profit to promoters but that does not exclude from doing activities that conform to definition of business.

### Statutory provision

#### 6. Power to grant exemption from tax

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

Explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

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

### 6.1 Introduction

This provision states that the Central Government may grant exemptions for inter-State supply of certain goods and / or services. Reference may also be made to Section 11 of the CGST Act and Section 8 of the UTGST Act for a better understanding.

### 6.2 Analysis

The Central Government will be empowered to grant exemptions from payment of IGST on inter-State supplies, subject to the following conditions:

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

With specific reference to the fourth condition indicated above, it is important to note that the exemption would only be in respect of goods and / or services, and not specifically for classes of persons.

E.g.: An absolute exemption could be granted in respect of supply of fertiliser. A conditional exemption could be supply of fertiliser subject to the condition that no Input tax credit has been claimed in respect of inputs and capital goods.

Exemption by way of special order is where the exemption is issued for a specific purpose. E.g. Exemption to imports made for a defence project during the times of emergency.

Mandatory nature of absolute exemptions has been litigated in the past and where tax is paid even though exemption is available, credit becomes admissible. For this reason, absolute exemptions have been made compulsory. As such, credit denial also becomes absolute. No plea of equity or revenue neutrality becomes admissible.

There is generally not much doubt about exemptions – whether absolute or conditional – because the condition associated may be examined at one-time or continuously to be satisfied. Conditional exemptions abate if the associated condition is not complied. Care should be taken not to mistake conditional exemption with absolute exemption having specific applicability.

From the explanation provided after sub-Section (2), there is one school of thought wherein it is opined / understood that in case of conditional exemptions, there is an option available to the taxable person to pay the tax (by which way, there would be no requirement for input tax credit reversals). However, an absolute exemption is required to be followed mandatorily. The other view is that exemptions would never be optional, and would be mandatory automatically when the conditions relating to the exemption are satisfied. This provision does not bring in any clarity on this issue.

In terms of sub-Section (2), the Government may issue a special order on a case-to-case basis. The circumstances of exceptional nature would also have to be specified in the special order. While this provision is welcome, industry is apprehensive that this could be used without necessary superintendence.

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

The law mandates that when the exemption is absolute (i.e., if whole or part of tax leviable is exempt) the registered person cannot collect taxes in excess of the effective rate.

#### **Exemption under section 11 of the CGST/SGST Act equally applicable**

Any exemption notification or special order issued under Section 11 of the CGST Law will apply equally for inter-State supplies, viz., any supply of goods or services or both which are exempt under CGST Law will be exempt even under the IGST Law

#### **Effective date of the notification or special order**

The effective date of the notification or the special order would be date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would come into force on the date of its issue by the Central Government for publication in the Official Gazette. It follows that such notification/ order shall be made available on the official website of the department of the Central Government.

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

### **6.3 Comparative review**

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

### **6.4 Related provisions**

Statute	Section	Description
CGST	Section 11	Exemption from payment of CGST / SGST
UTGST	Section 8	Power to grant exemption from tax

**6.5 FAQs**

Q1. Can an exemption be granted for inter-State supplies when such an exemption is not granted for intra-State supplies?

Ans. Yes.

Q2. Can the Central Government issue a special order for exemptions that are only meant for transactions liable to IGST?

Ans. Yes.

Q3. Is the State Government empowered to grant exemption by way of a special order for inter-State supplies?

Ans. No. The State Government is not empowered to grant exemptions on any inter-State supplies.

## Chapter IV

# Determination of Nature of Supply

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### Statutory provision

#### **7. Inter-State Supplies**

- (1) Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in—
  - (a) two different States;
  - (b) two different Union territories; or
  - (c) a State and a Union territory,shall be treated as a supply of goods in the course of inter-State trade or commerce.
- (2) Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.
- (3) Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in—
  - (a) two different States;
  - (b) two different Union territories; or
  - (c) a State and a Union territory,shall be treated as a supply of services in the course of inter-State trade or commerce.
- (4) Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.
- (5) Supply of goods or services or both, —
  - (a) when the supplier is located in India and the place of supply is outside India;
  - (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
  - (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

#### **7.1 Introduction**

Having examined levy and the scope and coverage of supply, the next aspect to determine is the nature of supply so as to identify the right kind of tax applicable in a given case. It is important to note that nature of supply is not a question of fact but the result of application of

the law to the fact, which provides us the answer. Concluding the answer about the nature of tax is paramount not only for the selection of the right kind of tax but also to recognise the departure of GST from the well understood principles under the current law.

Nature of supply does not refer to 'place of supply'. The next chapter deals with place of supply but before getting to place of supply it is important to understand the nature of supply. There are very specific principles laid down that need to be identified from the facts in each transaction in order to determine the nature of supply that is involved.

## 7.2 Analysis

### *Inter-State supply of goods*

At the outset one may need to bear in mind the treatment extended to the subject matter of supply, that is, whether the supply is of goods or services or both or supply involving goods but treated as supply of services in terms of the fiction specified in schedule II. In respect of goods (treated as goods), if the **location of the supplier** and the **place of supply** are in two different States or UT or either, then the supply will be in the course of inter-State trade or commerce.

We need to pause here and examine the two terms that have been used, namely:

- (a) **Location of supplier** – Unlike in the case of services, location of supplier of goods is a term that is not defined in the law. This is not an oversight of the draughtsman but a deliberate intention of the lawmaker to leave it to the facts of each case to determine the 'location of supplier of goods'. For example, If a company incorporated in Delhi were to place purchase order on a manufacturer in Maharashtra to produce certain articles and sell it on Ex-Works basis with instructions to retain it until further instructions. This would be a case where the manufacturer in Maharashtra would like to charge IGST because the purchase order is from a customer in Delhi. In this supply, the location of supplier is Maharashtra and place of supply in is also Maharashtra. Therefore, the manufacturer is required to charge CGST-SGST because these goods do not involve any movement and after lapse of time the delivery is deemed to be complete in Maharashtra itself. Now, instructions are received to dispatch the goods to a warehouse in Madhya Pradesh, the supply by the manufacturer having been completed long before these dispatch instructions are received, there is a new supply emerging from Maharashtra to Madhya Pradesh caused by the Company in Delhi. In this new supply, the location of supplier can either be Delhi – registered place of business – or Maharashtra – the physical point where the goods are situated. The location of the registered place of business cannot be guiding the nature of supply to such an extent that transactions that ought to be taxed when the goods somehow escape the incidence. The point where goods are situated more accurately represents the location of supplier. The location of supplier is therefore the physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied. This interpretation augurs well with the concept of casual taxable person. The company in Delhi that collects delivery of the goods in Maharashtra and supplies

them from Maharashtra to Madhya Pradesh must be regarded as casual taxable person in Maharashtra liable to pay IGST on this supply.

If however, the delivery by the manufacturer is not completed Ex-Works but retained to be delivered to Madhya Pradesh at the instruction of the customer in Delhi then it would be a case of supply from Maharashtra to Delhi and from Delhi to Madhya Pradesh. We can identify the examples where the location of supplier of goods is more accurately determined by the physical point where the goods are located under the control of the person wherever incorporated or registered, ready to be supplied instead of relying on a superfluous fact of the registered place of business.

- (b) **Place of supply** – It appears to be a phrase that is easily understandable but due to the presence of chapter V (i.e. place of supply of goods or services or both) in this Act demands that the commonsense understanding be avoided but the meaning ascribed to place of supply from section 10 to 13 of this Act be applied. Place of supply, therefore, is a phrase of legal significance whose meaning is to be determined by examining the respective section in chapter V and brought to bear while determining nature of supply. For example, manufacture in Maharashtra and supply to a company in Delhi on Ex-Works basis, its place of supply has to be the location of completion of delivery. And in respect of the new supply from Maharashtra to Madhya Pradesh, the place of supply is where the movement terminates for delivery – Madhya Pradesh.

It is therefore important to identify the location of supplier of goods and not based on a statutory definition but by inquiring into the facts of a transaction of supply and comparing this with the place of supply appointed by the statute in chapter V. Now, if these two are situated in different States or UTs or either, then the nature of supply is declared by section 7 to be in the course of inter-State trade or commerce.

This provision is subject to the provisions of section 10 because any interpretation or application of this section 7 cannot be in derogation of the place of supply dictated by section 10. Section 7 can be correctly interpreted only by identifying the location of supplier of goods based on the physical point where the goods are situated and comparing that with the answer from referring to section 10 regarding place of supply of goods.

2(10) import of goods with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;

With regard to supply of goods that are imported into the territory of India, by legislative override it is declared that if the goods crossed the customs frontiers of India, the supply will always be in the course of inter-State trade or commerce. Reference may be made to the definition of import of goods (s. 2(10)) which adverts to the physical movement of goods into India from a place outside India by the active efforts on the part of any person (who may be situated in India or outside India).

The use of the word 'bringing' in sec 2(10) excludes naturally and involuntarily occurring phenomena causing the relocation of goods into India from a place outside India. There may be any number of supplies taking place between persons who are incorporated outside India

and persons who are incorporated and even registered in India – they will all be transactions of supply in the course of inter-State trade or commerce – till such time the goods cross the customs frontiers of India.

### **Import of goods**

We need to pause here again and examine two kinds of transactions – those that commence outside the territory of India and are concluded also outside territory of India and those that commence outside but conclude by entering the territory of India. For example, company in Germany supplies goods from Germany to another company in Sri Lanka – this is not a supply in the course of inter-State trade or commerce because it commences and concludes outside the territory of India. It would be so, even if the goods were supplied by the company in Germany from Germany to a customer incorporated in India if the goods are not 'brought' into India but sold in high seas to yet another company in Singapore. In order for every supply to come within the operation of subsection 2 to section 7 it requires that the resultant effect of the supply must cause the goods to enter the territory of India. This Act does not enjoy extraterritorial jurisdiction and is limited to imposing tax if the goods are imported into the territory of India.

2(4) customs frontiers of India mean the limits of a customs area as defined in section 2 of the Customs Act, 1962;

Further, if goods have been brought into India but have not left the customs frontiers of India, that is, the limits of a customs area, any supplies that are taking place after being brought into India until they cross the customs frontiers of India even though the place of entry into India and the place that comprises the customs frontier may be in the same State will continue to be supply is in the course of inter-State trade or commerce. For example, goods have been imported from France by a company incorporated and registered in Nasik have landed at Mumbai port but during their clearance are supplied by the Nasik company to a company in Pune, this supply continues to be in the course of inter-State trade or commerce. Even though the supplier is in Nasik and the recipient is in Pune, since the goods have not yet crossed the customs frontiers of India at the time of supply. This supply comes within the operation of sub-section 2 of section 7. A test that can be applied to determine whether the supply has been concluded before the goods crossed the customs frontiers of India or not crossed the customs frontiers of India is – who has filed a bill of entry in respect of the goods imported as required under the Customs Act. In the above example, a bill of entry is filed by the company in Nasik then the supply must be understood to have taken place just after they have crossed the customs frontiers of India. But if the company in Pune has filed a bill of entry then the goods supplied by the importer (Nasik company) must be understood to have taken place before they crossed the customs frontiers of India. It merits mention here that the concept of 'sale in the course of import' recognised under the CST Act stands obliterated by this subsection 2 to section 7. Reference may be made to The Taxation Laws (Amendment) Act, 2017 wherein section 3 of the Customs Tariff

The Taxation Laws (Amendment) Act, 2017 amending Customs Act, Customs Tariff Act, Central Excise Act and Central Excise Tariff Act received Presidential assent on \_\_\_\_\_

Act, 1975 has been amended by substitution of sub sections 7 and 8 to require the imposition of IGST on all goods imported into India. Corresponding changes have also been made to the Central Excise Act, 1944 where duty is imposed only on those articles not subsumed into GST.

***Inter-State supply of services***

Continuing with interstate supply, but in respect of services, it is firstly important to recollect that this provision will apply not only in respect of supply of services but also in respect of transactions involving goods which are treated as supply of services by the fiction in schedule II. The discussion regarding location of supplier of goods and place of supply of goods will be applicable in the context of services but only to a limited extent for the reason that location of supplier of services has been defined in this Act.

The location of supplier of services and the place of supply of services are in two different States or UTs or either, such as supply of services shall be in the course of inter-State trade or commerce. It is interesting to note that interstate trade is not simply called 'intrastate trade' but is prefixed with 'in the course of'. This prefix is not without reason, because such prefix is missing in relation to intra-State supply. The significance of 'in the course of' is well explained in the decision of State of Bihar Vs TELCO LTD 27 STC 127 at pg. 148 where the Hon'ble Supreme Court has held that it signifies a series of activities that are all interrelated in an unbroken chain of events so intimately linked to each other that all of them are bound together 'in the course of' such an inter-State trade transaction.

Location of supplier of services is defined to mean 'place of business from where supply is made and duly registered for the purpose'. It also includes other places 'from where' supplies are made being a fixed establishment – a place with sufficient degree of permanence and suitable structure to supply services. And lastly, the usual place of residence of the service provider. It is interesting to note that the location of supplier of services has nothing to do with the business premises 'wherefrom' supply is made.

For example, a company incorporated in Chennai engaged in the business of investment in immovable property and letting them out on rent may have such investments in Chennai and in Hyderabad. By the definition of location of supplier of services being the 'place of business', the company has its place of business where its 'seat of management' is located – Chennai. Accordingly, the location of service provider in relation to the transaction involving renting of immovable property is not where the property let out is situated but the registered office of the company where the management has its seat for decision making. Therefore, in relation to property in Chennai that is let out, it is an intra-State supply because location of supplier of services and place of supply both in Chennai. In respect of its property located in Hyderabad, it is an inter-State supply because the location of supplier of service is in Chennai but the place of supply is Hyderabad. Surely, there is no argument to support the view that in every place where property is located the decision to let out such property is taken in each such location. On the contrary, all decisions are taken where the seat of management is located and therefore, the location of supplier of service remains Chennai wherever the let-out properties may be situated. This view may not be acceptable to all but merits attention.

**Special category of inter-State supplies**

Fiction in law is no stranger to taxation and GST law indulges in use of fiction without any hesitation. The following categories of supplies of goods or services or both, are treated as being in the course of inter-State trade or commerce:

(a) *when the supplier is located in India and the place of supply is outside India*

2(105) supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

Here it is extremely important to note that usage of the 'supplier is located' is not to be equated with 'location of supplier'. From the previous discussion, it is learnt that location of supplier of goods is – physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied. But, the deliberate departure in usage of the same set of words is almost misleading. Supplier is located in India does not refer to location of supplier. Instead, it is a simple question of fact as to where the supplier is located. Please note, that the 'supplier' is none other than the '**one who supplies**' and not his agent or representative or any other person. The question that arises is – what is the GST impact in case the supplier is located outside India and the place of supply is outside India? The Act applies to supplies within the taxable territory and when both – supplier as well as place of supply – being located outside India, the Act does not enjoy any jurisdiction to impose tax even if the recipient is located in India. The destination of consumption being decided by the place of supply provisions and not location of the recipient

(b) *where the supply is 'to' or 'by' an SEZ developer or unit*

Here, it is important to note that supply to SEZ (developer or unit) is treated as inter-State supply. Supply 'by' SEZ (developer or unit) will also be treated as inter-State supply. Further, the implication of this provision is also that supply by SEZ's *inter se* – one SEZ unit (or developer) to another SEZ unit (or developer) – will also be treated as a supply in the course of inter-State trade or commerce. Let us take a few examples to illustrate the implications from this provision:

- Taxable person (non-SEZ) located in Jaipur supplying goods to an SEZ unit located in Jodhpur is a supply in the course of inter-State trade or commerce.
- SEZ unit in Kolkata supplying services to another SEZ unit in Kolkata is a supply in the course of inter-State trade or commerce.
- Lease of premises by SEZ developer in Chennai to SEZ unit in that same zone in Chennai will be a supply in the course of inter-State trade or commerce.
- non-SEZ Sales by SEZ unit in Kochi to a non-SEZ in Kochi will be a supply in the course of inter-State trade or commerce.
- Disposal of scrap by an SEZ developer in Mumbai to a scrap dealer in Mumbai (outside the zone) is a supply in the course of inter-State trade or commerce.

- Export of goods by an SEZ unit to a customer in Italy is a supply in the course of inter-State trade or commerce.

(c) *Any supply not being an intra-State supply*

Here it is to be considered that any supply that falls outside the scope of intra-State supply will not escape GST but would be an inter-State supply due to this residual provision in the Act

### 7.3 Comparative Review

There is no such proposition in the existing laws as the concept of supply is unique to our tax system and considered as a 'taxable event' for the first time in indirect tax regime. As mentioned earlier, Section 7 must be read alongside Sections 10,11,12 & 13 and whenever a conflict arises between the said provisions, Section 7 should make way for the provisions of such Sections, which is signified by usage of the words "subject to the provisions of Section 10/12".

However, broadly this can be compared with the provisions of CST Act, 1956 which provides for determining when a sale will be an inter-State sale or when a sale in outside the State.

### 7.4 Related Provisions

Statute	Section / Rule / Form	Description
IGST	Section 8	Meaning of intra-State supplies
IGST	Section 10	Place of supply of goods
IGST	Section 12	Place of supply of services
IGST	Section 5	Levy and collection
CGST	Section 9	Levy and collection of CGST / SGST

### Statutory provision

#### 8. Intra-State Supplies

- (1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be treated as intra-State supply, namely: –

- (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
  - (ii) goods imported into the territory of India till they cross the customs frontiers of India; or
  - (iii) supplies made to a tourist referred to in section 15.
- (2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

*Explanation 1.* —For the purposes of this Act, where a person has, —

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory,

then such establishments shall be treated as establishments of distinct persons.

*Explanation 2.* —A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

### 8.1 Introduction

With the background discussion on inter-State supplies, it would be appropriate to contrast this understanding with a discussion on intra-State supplies.

Analysis

#### ***Intra-State supply of goods***

In relation to goods, section 8 provides that where the location of the supplier and the place of supply are in the same State or UT, such a supply will be treated as an intra-State supply. Reference may be had to the discussion on location of supplier of goods in the context of section 7 which may be relied upon for the purpose of this discussion. This provision too, is made subject to the provisions of section 10, that is, reference must be had to section 10 regarding the place of supply and the conclusion reached by applying section 10 is required to be read into this section for the purpose of determination of the intra-State nature of the supply. The two factors – location of supplier and place of supply – must at the conclusion of a supply be in the same State or UT. And when it is so, the supply would be an intrastate supply of goods.

For example, a company incorporated in Uttar Pradesh having purchased certain goods in Odisha and supplying the same to the customer also in Odisha under two separate transactions of supply, both of them will be intra-State supplies. The company in Uttar Pradesh will be a casual taxable person in Odisha as regards the outward supply made.

Therefore, it is important to bear in mind that the place of incorporation of the supplier in any transaction is not relevant as the location of the supplier which has been explained earlier as – physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied.

Three exceptions have been carved out in this provision, namely:

- supply 'to' or 'by' an SEZ developer or unit
- supply involving goods imported into India but not beyond the customs frontiers
- supply to outbound tourist as per section 15

These three exceptions make it abundantly clear that they have been treated to be an intrastate supply, expressly under section 7. This proviso excludes any opportunity to question the probable intrastate nature of the said supply. As discussed in the various examples where even though the movement may be within the same State but due to the fiction in section 7 – these supplies being treated as in the course of intrastate trade or commerce – cannot be disturbed by section 8. The express exclusion is evidence of a suspect inclusion – with this proviso, there is no question of the inter-State nature of the supplies listed.

Please note that the supplies are not three specific supplies but three classes of supplies. Examples of supply to or by an SEZ developer or unit has already been discussed in detail earlier the same may be referred. Supply involving goods imported into India also been discussed and the same may be referred. For examples regarding supplied to tourist, kindly refer discussion under section 15.

#### ***Intra-State supply of services***

With regard to supply of service, if the twin factors – location of supplier of services and place of supply of services – are in the same State or UT, then such supply will be treated as intra-State supply. Location of supplier of services has been defined in the Act to mean 'place of business from where supply is made and duly registered for the purpose'. It also includes other places and reference may be had to the discussion in respect of inter-State supply of services for the implications of this definition. To provide some additional illustration, please consider movement of goods from Delhi to Noida under a lease arrangement. This arrangement being a month-to-month lease, would be inter-State supply in the first month but after that the lessee does not return the leased goods to the lessor but retains it at the end of the month only to take it back on lease from the beginning of the second month. Here, the transaction for the first month would be an inter-State supply but thereafter from the second month onwards, it would be an intra-State supply (lease being a service) requiring the lessor to obtain

2(15) location of supplier of services means –

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- (d) in the absence of such places, the location of the usual place of residence of the supplier;

registration in the State of Uttar Pradesh. Please refer to more detailed discussion under section 10.

Further, here too we find caution exercised in expressly excluding supply of services 'to' or 'by' SEZ developer or unit from the scope of intra-State supply of services. The two explanations provided are significant as the concept of distinct persons in section 25(4) of CGST Act is further clarified in stating that the following will also be distinct persons, namely:

- establishment in India and an establishment outside India
- establishment in a State or UT and an establishment outside that State or UT
- establishment in a State or UT and a business vertical (registered separately) in the same State of UT

Please note that the term 'establishment' may be interpreted as being similar to 'fixed establishment' which is defined in this Act in identical manner with the definition in section 2(50) of CGST Act. It refers to it being 'a place with sufficient degree of permanence and suitable structure to supply services or to receive and use the services'.

2(7) fixed establishment means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs:

### 8.2 Comparative Review

There is no such proposition in the existing laws as the concept of supply is unique to our tax system and considered as a 'taxable event' for the first time in indirect tax regime. Section 8 has to be read alongside Sections 10 and 12 and whenever a conflict arises between the said provisions, Section 8 has to make way for Section 10/12, which is signified by usage of the words "subject to the provisions of Sections 10/12".

However, broadly this can be compared with the provisions of CST Act, 1956 which provides for determining when a sale will be an inter-State sale or when a sale in outside the State.

### 8.3 Related Provisions

Statute	Section / Rule / Form	Description
IGST	Section 7	Meaning of inter-State supplies
IGST	Section 5	Levy and collection of IGST
IGST	Section 10	Place of supply of goods
IGST	Section 12	Place of supply of services
CGST	Section 9	Levy and collection of CGST / SGST

**Statutory provision****9. Supplies in Territorial Waters**

Notwithstanding anything contained in this Act, —

(a) where the location of the supplier is in the territorial waters, the location of such supplier; or

(b) where the place of supply is in the territorial waters, the place of supply,

shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

**9.1 Introduction**

GST being a destination based consumption tax (discussed in greater detail in section 10), the actual place of supply may sometimes be in the territorial waters of India. And it could also be where the supplier is required to travel into the territorial waters to supply goods or services. While the nature of supply in these cases may be inter-State supplies, it will be decided by section 7 but the ambiguity about the exact location – either of the supplier or of the place of supply – requires to be addressed by statute. For this reason, clear provisions are laid down as to where on the land mass of India, will the actual location be linked to. Please note the statute uses the expression ‘deemed to be’ which would supply an artificial meaning. Also, this provision does not seek to violate exclusive jurisdiction of the Union on matters of territorial waters but merely establishes a link to the land mass of India to overcome judicial intervention or assumptions by industry.

**9.2 Analysis**

The provision identifies two facts that have been discussed at length in the context of section 7 and 8, namely:

- Location of supplier of goods or services or both
- Place of supply of goods or services or both

By applying the provisions of section 10 and 12, if it is established that the ‘place of supply’ is in the territorial waters and not on the land mass, there can be ambiguity as to the applicability of the provisions of section 7 and 8 in these cases. Similarly, if the location of the supplier is found to be in the territorial waters and not on the land mass, there can be a doubt, if not about the applicability of section 7 and 8, at least about the manner of their applicability. To address these situations, the statute lays down, by a deeming fiction, that such locations – supplier or place of supply – will be the most proximate State or UT. For example, if repair services are provided by a company in Delhi on a ship moored off the coast of Kochi for a shipping company from United Kingdom, the place of supply being the location of the ship will create doubt about the applicability of GST. Now, by the provisions in section 9, it is clear that the place of supply of the repair services will not be the waters but Kochi. With this doubt having been resolved, it would be an inter-State supply albeit to the UK company. Another example: lease of ocean exploration equipment by a company in Chennai to a company incorporated in Mumbai to carry out oil exploration off the coast of Andhra Pradesh. The

location of supplier being guided by location of goods at the time of supply can create doubt. With the application of section 9, the location of supplier will be Andhra Pradesh, albeit of a Chennai company, especially in the second and subsequent months.

The non-obstante clause at the beginning of this section is important to overcome any alternative interpretations that may be attempted by reading other provisions of the Act.

### **9.3 Comparative Review**

Under the current tax laws, Central Excise is on 'manufacture of goods', VAT / CST is on 'sale of goods' and Service tax is on 'provision of service'. Unlike different incidences, under the GST law, it is 'supply' which would be the taxable event. Under the current law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT / CST. However, under the GST law, it would be taxable as a 'supply'. Further, free supplies would be liable to excise duty, while under the VAT laws, free supplies would require reversal of input tax credit; under the GST law, the treatment would be similar to the present VAT laws, where the supplies are made without any consideration (monetary/ otherwise).

Under the current law, there are multiple transactions which apparently qualify as both 'sale of goods' as well as 'provision of services'. E.g.: license of software, providing a right to use a brand name, etc. Unlike this situation, GST clarifies as to whether a transaction would qualify as a 'supply of goods' or as 'supply of services'. A transaction would either qualify as goods or as services, under the GST law. Even in respect of composite contracts, it has been clarified under the GST law (Schedule II of the Act, concept of composite supply and mixed supply).

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

## 9.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
IGST	Section 7	Meaning of inter-State supplies	Defines intra-State supplies of goods and / or services for the purposes of levy of tax under the CGST Act
CGST	Section 9	Levy and collection of GST	Charging Section under CGST Act
CGST	Section 7 read with Schedule I, II and III	Definition of 'supply'	Every supply of goods or services would be liable to tax. Thus, it becomes essential to understand the meaning of 'supply'.
CGST	Section 22	Persons liable for registration	Liability to tax is on every taxable person. Thus, it becomes essential to understand the meaning of 'taxable person'.
CGST	Section 49	Payment of tax	Provides for method and timelines for remittance of tax by the registrant.

## Chapter VII

# Zero Rated Supply

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### Statutory provision

#### 16. Zero Rated Supply

- (1) “zero rated supply” means any of the following supplies of goods or services Zero rated or both, namely: —
  - (a) export of goods or services or both; or
  - (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit
- (2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
- (3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely: —
  - (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or
  - (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

#### 16.1 Introduction

Exports have been the area of focus in all policy initiatives of the Government for more than 30 years. Now with the Make in India initiative, exports continue to enjoy this special treatment because exports should not be burdened with domestic taxes. On the other hand, GST demands that the input-output chain not be broken and exemptions have a tendency to break this chain. Zero-rated supply is the method by which the Government has approached to address all these important considerations.

#### 16.2 Analysis

Zero-rated supply does not mean that the goods and services have a tariff rate of ‘0%’ but the recipient to whom the supply is made is entitled to pay ‘0%’ GST to the supplier. In other words, as it has been well discussed in section 17(2) of the CGST Act that input tax credit will not be available in respect of supplies that have a ‘0%’ rate of tax. However, this disqualification does not apply to zero-rated supplies covered by this section. It is interesting that section 7(5) (and even proviso to section 8(1)) declares that supplies ‘to’ or ‘by’ SEZ developer or unit will

be treated as an inter-State supply. So, when two SEZ units or one SEZ developer and another SEZ unit supply goods or services to each other (among themselves within the zone) and the zone being located within the same State or UT, such supplies will always be inter-State supplies. But, it important to note that this – being treated as inter-State supplies always – by itself does not mean that non-SEZ sales by SEZ unit will be liable to IGST in all cases. Please refer to the below of supplies involving suppliers in the zone that is covered by the provisions of section 7(5) and proviso to section 8(1):

Supply 'by'	Supply 'to'
SEZ unit	Outside India
SEZ unit	Another SEZ unit
SEZ developer	SEZ unit
Non-SEZ unit	SEZ unit
SEZ unit	Non-SEZ unit
Non-SEZ unit	SEZ developer
SEZ developer	Non-SEZ unit

*Note: Physical location within the political boundaries of a State are irrelevant*

Exemption from the incidence of tax can be ensured either by *ab initio* exemption or by granting exemption-by-way-of-refund. Both these alternatives have been enabled in this section. Zero-rated supplies may be undertaken in either of the following ways:

Taxable person to avail input tax credit required for use in the preparation of the outward supply of goods or service or both and carry out the zero-rated supply	
<ul style="list-style-type: none"> <li>Without any payment of IGST on such outward supply by executing LUT (Letter of Undertaking)</li> </ul>	<ul style="list-style-type: none"> <li>Make payment of IGST on the outward supply by debit to 'electronic credit ledger' but without collecting this tax from the recipient</li> </ul>
<ul style="list-style-type: none"> <li>Claim refund of input tax credit used in the outward supply</li> </ul>	<ul style="list-style-type: none"> <li>After completing the outward supply, claim refund of the IGST so debited (unjust enrichment having been duly satisfied)</li> </ul>
Subject to fulfilment of all associated conditions and safeguards that may be prescribed in either case	

Physical exports are well understood due to the vast experience from Customs Act. Physical exports, as discussed under section 11, are not determined or defined by realization of foreign exchange (unlike export of services). SEZ is defined in section 2(20) to have the meaning from 2(g) of SEZ Act, 2005. Supply of goods by SEZ to non-SEZ area is governed by Customs Act in terms of Rule 47 in Chapter V of SEZ Rules, 2006. Accordingly, all though the supply is 'treated as inter-State supply of goods' in terms of section 7(5), no tax is to be charged by the SEZ supplier but instead, the non-SEZ recipient is to pay IGST at the time of assessment of the bill of entry filed for such goods in terms of Customs Tariff Act, 1975 duly amended by the

Taxation Laws Amendment Act, 2017 wherein section 3 of the Customs Tariff Act, 1975 has been substantially altered to enable imposition of additional customs duties only on goods not subsumed into GST and for the imposition of IGST on goods subsumed into GST by sub-section 7, 8 and 9. However, with respect to supply of services by SEZ to non-SEZ area, though not prohibited, is not expressly dealt with by this Chapter V, of SEZ Rules as to the taxes / duties applicable. Hence, when services are supplied from SEZ to non-SEZ area, the following implications arise:

- It may be an import of services by the non-SEZ recipient in terms of section 7(1)(b) liable for payment of IGST on reverse charge basis by the recipient. Support for this view may be found in the SEZ Act which states in section 53 that 'zone shall be deemed to be a territory outside the customs boundaries of India'. And as such, the zone would be a location 'outside India' and this supply appears to satisfy all the requirements in the definition in section 2(11) of 'import of services'
- It may very simply be an inter-State supply of services liable to payment of IGST on forward charge basis by the SEZ unit because there is no reference in IGST to borrow the operation of section 53 from SEZ Act. Further, though the definition of 'import of services' is satisfied by the non-SEZ recipient, the zone can be treated as lying within the 'taxable territory' so as to make the SEZ supplier liable to pay IGST

The former interpretation appears to be more reasonable construction to follow. Accordingly, certain examples have been discussed below.

This provision is introduced in the statute on the basis of the prevalent Central Excise and Service Tax laws. It is widely believed that introduction of this provision will alleviate the difficulty of a supplier who exempts goods or services or both in terms of export competitiveness. This provision also specifically expresses that taxes are not exported. Care must be exercised that while paying taxes, such taxes are not collected from the recipient of goods or services or both. This would result unjust enrichment.

The following illustrations may be considered:

**Table A – Physical Exports**

<b>Zero-rated supply</b> (Physical exports)	<b>Option A</b>	<b>Option B</b>
ABC from Chennai supplies goods required by PQR in Delhi to effect exports to Germany	<ul style="list-style-type: none"> <li>• ABC to charge IGST (Rs.100) to PQR</li> <li>• PQR to avail input tax credit</li> <li>• PQR to issued invoice for €15</li> <li>• PQR to ensure no IGST is charged in the Euro invoice</li> </ul>	<ul style="list-style-type: none"> <li>• ABC to charge IGST (Rs.100) to PQR</li> <li>• PQR to avail input tax credit</li> <li>• PQR to issued, invoice for €15</li> <li>• PQR to ensure no IGST is charged in the Euro invoice</li> </ul>

	<ul style="list-style-type: none"> <li>• PQR to bring proof-of-export and satisfy all other conditions prescribed</li> <li>• PQR to claim refund of input tax credit of Rs.100 being maximum amount related to the outward export supply</li> </ul>	<ul style="list-style-type: none"> <li>• But, PQR to debit electronic credit ledger with IGST applicable of Rs.180 on the export (assume sufficient balance in credit ledger from all other inputs, input service and capital goods)</li> <li>• PQR to bring proof-of-export and satisfy all other conditions prescribed</li> <li>• PQR to claim refund of Rs.180 debited in electronic credit ledger in respect of export</li> </ul>
XYZ from Delhi supplies services required by PQR in Delhi to effect export of services to USA	<ul style="list-style-type: none"> <li>• XYZ to charge CGST-SGST (Rs.250) to PQR</li> <li>• PQR to avail input tax credit</li> <li>• PQR to issued invoice for \$20</li> <li>• PQR to ensure no IGST is charged in the USD invoice</li> <li>• PQR to bring proof-of-export and satisfy all other conditions prescribed</li> <li>• PQR to claim refund of input tax credit of Rs.250 being maximum amount related to the outward export supply</li> </ul>	<ul style="list-style-type: none"> <li>• XYZ to charge CGST-SGST (Rs.250) to PQR</li> <li>• PQR to avail input tax credit</li> <li>• PQR to issue invoice for \$20</li> <li>• But, PQR to debit electronic credit ledger with IGST applicable of Rs.230 on the export</li> <li>• PQR to bring proof-of-export and satisfy all other conditions prescribed</li> <li>• PQR to claim refund of Rs.230/- in respect of export (though actual relatable credit is much higher at Rs.250/-)</li> </ul>

Table B – Supply 'to' SEZ

Zero-rated supply (supply 'to' SEZ)	Option A	Option B
ABC from Hyderabad supplies goods required by PQR in Kolkata for onward supply to XYZ in Kolkata-SEZ (for use in authorized operations)	<ul style="list-style-type: none"> <li>• ABC to charge IGST (Rs.100) to PQR</li> <li>• PQR to avail input tax credit</li> <li>• PQR to supply goods to XYZ (SEZ) for Rs.1500</li> <li>• PQR to ensure no IGST is charged in invoice to XYZ</li> <li>• PQR to obtain proof-of-admittance from SEZ officer and satisfy all other conditions prescribed</li> <li>• PQR to claim refund of input tax credit of Rs.100 being maximum amount related to the supply to XYZ (SEZ)</li> </ul>	<ul style="list-style-type: none"> <li>• ABC to charge IGST (Rs.100) to PQR</li> <li>• PQR to avail input tax credit</li> <li>• PQR to issued invoice to XYZ (SEZ) for Rs.1500</li> <li>• PQR to ensure no IGST is charged in invoice to XYZ</li> <li>• But, PQR to debit electronic credit ledger with IGST applicable of Rs.270 on the export (assume sufficient balance in credit ledger from all other inputs, input service and capital goods)</li> <li>• PQR to obtain proof-of-admittance from SEZ officer and satisfy all other conditions prescribed</li> <li>• PQR to claim refund of Rs.270 debited in electronic credit ledger in respect of supply to XYZ (SEZ)</li> </ul>
XYZ from Surat supplies goods required by PQR in Rajkot for onward supply of services to MNO in Ahmedabad-SEZ (for use in authorized operations)	<ul style="list-style-type: none"> <li>• XYZ to charge CGST-SGST (Rs.250) to PQR</li> <li>• PQR to avail input tax credit</li> <li>• PQR to supply services to MNO (SEZ) for Rs.2000</li> <li>• PQR to ensure no IGST (even though within</li> </ul>	<ul style="list-style-type: none"> <li>• XYZ to charge CGST-SGST (Rs.250) to PQR</li> <li>• PQR to avail input tax credit</li> <li>• PQR to issued invoice to MNO (SEZ) for Rs.2000</li> <li>• But, PQR to debit electronic credit ledger with IGST applicable of</li> </ul>

	<p>same State, it is inter-State supply) is charged in invoice to MNO</p> <ul style="list-style-type: none"> <li>• PQR to obtain proof-of-receipt-of-service (as specified by SEZ officer) and satisfy all other conditions (proviso to Rule 1 of Refund Rules)</li> <li>• PQR to claim refund of input tax credit of Rs.250 being maximum amount related to the supply to MNO (SEZ)</li> </ul>	<p>Rs.240 (say, 12%) on the export</p> <ul style="list-style-type: none"> <li>• PQR to obtain proof-of-receipt-of-service (as specified by SEZ officer) and satisfy all other conditions (proviso to Rule 1 of Refund Rules)</li> <li>• PQR to claim refund of Rs.240/- debited in electronic credit ledger in respect of supply to MNO (SEZ) (though actual relatable credit is much higher at Rs.250/-)</li> </ul>
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Table C – Supply 'by' SEZ

Zero-rated supply	Option A	Option B
<b>Supply between two SEZ units:</b>		
<p>ABC-SEZ in Indore supplies goods manufactured in the zone to PQR-SEZ in Mumbai (for use in authorized operations)</p> <p>Supply by ABC-SEZ to PQR-SEZ is inter-State supply (whether in same State/UT or in different States/UTs)</p>	<ul style="list-style-type: none"> <li>• Goods or services received by ABC-SEZ from various suppliers will be as stated in Table B (above)</li> <li>• ABC-SEZ to issue invoice to PQR-SEZ without any IGST</li> <li>• No input tax credit that needs to be availed by PQR-SEZ</li> <li>• ABC-SEZ to obtain proof-of-admittance from SEZ officer with assistance of PQR-SEZ and satisfy all other conditions prescribed</li> <li>• There is no refund to claimed either by ABC-SEZ or PQR-SEZ as no IGST has been paid in this chain</li> </ul>	<ul style="list-style-type: none"> <li>• NOTHING TO DISCUSS IN THIS OPTION</li> </ul>

<p>XYZ-SEZ developer in Noida provides lease of premises to MNO-SEZ for its authorized operations</p> <p>Note: This applies to all supplies by developer to unit – premises lease, premises maintenance and other value added services</p>	<ul style="list-style-type: none"> <li>• Goods or services received by XYZ-SEZ from various suppliers will be as stated in Table B (above)</li> <li>• XYZ-SEZ to issue invoice to MNO-SEZ without any IGST</li> <li>• No input tax credit that needs to be availed by MNO-SEZ</li> <li>• XYZ-SEZ to obtain proof-of-admittance from SEZ officer with assistance of MNO-SEZ and satisfy all other conditions prescribed</li> <li>• There is no refund to claimed either by XYZ-SEZ or MNO-SEZ as no IGST has been paid in this chain</li> </ul>	<ul style="list-style-type: none"> <li>• NOTHING TO DISCUSS IN THIS OPTION</li> </ul>
<p><b>Supply by SEZ into non-SEZ:</b></p>		
<p>ABC-SEZ in Gurugram supplies goods to PQR (non-SEZ unit) in Delhi (with necessary non-SEZ supply permission obtained by ABC from SEZ officer)</p> <p>Note: All supplies 'by' SEZ is treated as inter-State supply</p>	<ul style="list-style-type: none"> <li>• ABC-SEZ to supply goods to PQR</li> <li>• No IGST to be charged by ABC-SEZ to PQR</li> <li>• PQR to file bill of entry for import of goods from SEZ to non-SEZ</li> <li>• Bill of entry filed by PQR will be assessed for BCD + IGST on reverse charge basis</li> <li>• PQR can then claim input tax credit of IGST paid on reverse charge basis</li> <li>• PQR to utilize IGST credit</li> </ul>	<ul style="list-style-type: none"> <li>• NOTHING TO DISCUSS IN THIS OPTION</li> </ul>

<b>Supply of goods by SEZ to non-SEZ but physically exported outside India:</b>		
<p>XYZ-SEZ in Andhra Pradesh supplies goods to MNO (non-SEZ) in Ranchi but directly dispatches the goods outside India</p> <p>Note:</p> <p>a. All supplies 'by' SEZ is treated as inter-State supply.</p> <p>b. Place of supply in case of export of goods shall be the location outside India</p> <p>c. This illustration does not apply to services because of the peculiar nature of definition of 'export of services'</p>	<ul style="list-style-type: none"> <li>• XYZ-SEZ to supply goods from Andhra Pradesh to port-of-export</li> <li>• XYZ-SEZ to issue invoice to MNO (non-SEZ) without any IGST</li> <li>• MNO will not file bill of entry for the SEZ-cargo and no IGST payable on RCM</li> <li>• MNO to file shipping bill at port for export to overseas customer</li> <li>• Necessary transit security to be provided by XYZ-SEZ to Customs</li> </ul>	<ul style="list-style-type: none"> <li>• NOTHING TO DISCUSS IN THIS OPTION</li> </ul>

All refunds are subject to the 'due process' prescribed in section 54 of CGST Act including verification of unjust enrichment. Care must be taken not to include the refundable amount in the price charged to overseas customer. This may be checked by looking into:

- If the refundable amount is expensed directly or carried forward as a current asset
- If overseas customs is given credit in any subsequent invoice to the extent of refund
- If the reversal of refundable amount from the credit ledger is charged to P&L or not

Further, all supplies to SEZ developer or unit being zero-rated does not mean that the entire company can enjoy this form of *ab initio* exemption. For example, Company incorporated in Delhi may have established an SEZ unit in Jaipur. All goods and services supplied to SEZ in Jaipur will enjoy the *ab initio* exemption but the goods and services supplied to Delhi will be liable to tax. Now, if the incorporated address of the Company were also in Jaipur and inside the zone, the Company must be cautious to differentiate the supplies that are not related to the authorized operations in the zone but related to the other affairs of the Company and instruct the suppliers to charge applicable GST on such non-SEZ supplies. If is for this reason that proviso to Rule 1(1) of the Registration Rules provides for SEZ unit to secure separate registration as a distinct business vertical, apart from the rest of the Company. Complete use of this zero-rated exemption will invite recovery action against the SEZ developer or unit. The supplier who supplied as a zero-rated supply is not responsible for this misuse because the

SEZ developer or unit would have issued the GSTIN of the zone. Further, in case GST is paid on the non-zone operations of the Company and these costs are included in the export billing, there may be some aspects to be taken care of in case post-export refund of this GST paid is sought to be claims. Please note that all supplies to SEZ developer or unit alone is treated as an inter-State supply but the supply to the Company relating to non-SEZ activities will continue to be inter-State or intra-State supply as the case may be. With all information, available online through GSTN, misuse is not difficult to identify. Care must be taken to diligently use the provisions of zero-rated supply.

### 16.3 Comparative Review

The concept of zero rated supplies is there in the VAT laws with credit benefit and refund. As far as Central Excise law is concerned there is a rebate mechanism in place. That apart the accumulated unutilised credit is available as refund to the exporters of services/goods under rule 5 of the Cenvat Credit Rules, 2004.

### 16.4 Related Provisions

Statute	Section / Sub Section	Description	Remark
CGST	17(2)	Apportionment of credit and blocked credits	Restrictions on credit attributable to exempt supplies.
IGST	2(23)	Zero-rated supply	Adopts the provisions of section 16 IGST Act

## Chapter VIII

# Apportionment of Tax and Settlement of Funds

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### Statutory provision

#### **17 Apportionment of tax and settlement of funds**

- (1) Out of the integrated tax paid to the Central Government, —
- (a) in respect of inter-State supply of goods or services or both to an unregistered settlement of person or to a registered person paying tax under section 10 of the Central Goods and Services Tax Act;
  - (b) in respect of inter-State supply of goods or services or both where the registered person is not eligible for input tax credit;
  - (c) in respect of inter-State supply of goods or services or both made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;
  - (d) in respect of import of goods or services or both by an unregistered person or by a registered person paying tax under section 10 of the Central Goods and Services Tax Act;
  - (e) in respect of import of goods or services or both where the registered person is not eligible for input tax credit;
  - (f) in respect of import of goods or services or both made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received,
- the amount of tax calculated at the rate equivalent to the central tax on similar intra-State supply shall be apportioned to the Central Government.
- (2) The balance amount of integrated tax remaining in the integrated tax account in respect of the supply for which an apportionment to the Central Government has been done under sub-section (1) shall be apportioned to the, —
- (a) State where such supply takes place; and
  - (b) Central Government where such supply takes place in a Union territory:
- Provided that where the place of such supply made by any taxable person cannot be determined separately, the said balance amount shall be apportioned to, —
- (a) each of the States; and

(b) Central Government in relation to Union territories, in proportion to the total supplies made by such taxable person to each of such States or Union territories, as the case may be, in a financial year:

Provided further that where the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as State tax or, as the case may be, Union territory tax, by the respective State or, as the case may be, by the Central Government during the immediately preceding financial year.

- (3) The provisions of sub-sections (1) and (2) relating to apportionment of integrated tax shall, *mutatis mutandis*, apply to the apportionment of interest, penalty and compounding amount realized in connection with the tax so apportioned.
- (4) Where an amount has been apportioned to the Central Government or a State Government under sub-section (1) or sub-section (2) or sub-section (3), the amount collected as integrated tax shall stand reduced by an amount equal to the amount so apportioned and the Central Government shall transfer to the central tax account or Union territory tax account, an amount equal to the respective amounts apportioned to the Central Government and shall transfer to the State tax account of the respective States an amount equal to the amount apportioned to that State, in such manner and within such time as may be prescribed.
- (5) Any integrated tax apportioned to a State or, as the case may be, to the Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be apportioned under this section, to such State, or Central Government on account of such Union territory, in such manner and within such time as may be prescribed.

### 17.1 Introduction

GST is a destination based consumption tax – this principle is evident in the Place of Supply provisions. Therefore, GST is to be paid to the State where the destination or consumption takes place. And registration of each tax payer in every destination-State is impossible to comply or administer. It is for this reason that IGST is applicable on supplies whose destination is outside the home-State. Therefore, IGST is not actually a tax but an equitable tax revenue transfer mechanism from the State of origin of supply to the State of its destination where revenue rightly belongs. With IGST having been collected as if it were a tax, it now needs to be transferred to the destination-State. This is provided by section 17 and discussed below.

## 17.3 Analysis

Inter-State Supply (to)	IGST Paid (on)	Quantum of IGST	Transfer (to)
Unregistered recipient	IGST paid on inter-State supplies IGST paid on import of goods or services	Equivalent Central tax applicable on said supplies in intra-State supply	Union
Composition taxable person			
Registered taxable person not eligible to input tax credit		Balance amount of IGST	State, its respective share of inward supplies@
Registered taxable person eligible to input tax credit but does not avail it within period specified			Union, share of inward supplies to UTs@

@ If this amount cannot be reliably allocated, then rule-of-proportion – total supplies of that State/UT compared to total inter-State supplies during the financial year

Please note the following further aspects:

- Above formula applies to interest, penalty and compounding amount collected in respect of inter-State supplies
- Any apportioned IGST is found to be refundable, then the same will be recouped from the subsequent transfers
- Time and manner of transfer to States/UTs will be prescribed

**Statutory provision**

<p><b>18. Transfer of input tax credit</b></p> <p>(1) On utilization of credit of integrated tax availed under this Act for payment of, —</p> <p>(a) central tax in accordance with the provisions of sub-section (5) of section 49 of the Central Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the central tax account in such manner and within such time as may be prescribed;</p> <p>(b) Union territory tax in accordance with the provisions of section 9 of the Union Territory Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the Union territory tax account in such manner and within such time as may be prescribed;</p>
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- (c) State tax in accordance with the provisions of the respective State Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and shall be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the appropriate State Government in such manner and within such time as may be prescribed.

*Explanation.* —For the purposes of this Chapter, “appropriate State” in relation to a taxable person, means the State or Union territory where he is registered or is liable to be registered under the provisions of the Central Goods and Services Tax Act.

### 18.2 Introduction

After apportionment of IGST paid, it leaves credit of IGST availed to be accounted for on its utilization. This section addresses the apportionment on utilization of IGST credit.

### 18.3 Analysis

IGST	Appropriation	Allocation (to)
Credit of IGST paid availed	Utilized to pay CGST	Union – Central tax account
	Utilized to pay SGST	State – State tax account@
	Utilized to pay UTGST	Union – UT tax account@

@ of respective State or UT

### Statutory provision

#### 19. Tax wrongfully collected and paid to Central Government or State Government

- (1) A registered person who has paid integrated tax on a supply considered by Tax him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.
- (2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

### 19.1 Introduction

Payment of tax based on erroneous determination of ‘nature of supply’ is not permitted to be adjusted because of the above appropriation of payments. Remedy lies in refund.

### 19.2 Analysis

Taxable person who has paid tax in error is entitled to refund by first restoring the discharge of the correct tax due so that the incorrect tax paid reflects on the Common Portal as ‘paid in excess’ and:

- IGST paid in error will be refunded subject to conditions prescribed
- IGST payable due to payment of CGST-SGST/UTGST is exempted from payment of interest on IGST due

Provisions of section 54 of CGST Act have not been extended to this refund although the conditions to be prescribed would not be too far from the requirements in section 54

## Chapter IX

# Miscellaneous

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### Statutory provision

#### **20. Application of provisions of Central Goods and Services Tax Act**

Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—

(i) scope of supply; (ii) composite supply and mixed supply; (iii) time and value of supply; (iv) input tax credit; (v) registration; (vi) tax invoice, credit and debit notes; (vii) accounts and records; (viii) returns, other than late fee; (ix) payment of tax; (x) tax deduction at source; (xi) collection of tax at source; (xii) assessment; (xiii) refunds; (xiv) audit; (xv) inspection, search, seizure and arrest; (xvi) demands and recovery; (xvii) liability to pay in certain cases; (xviii) advance ruling; (xix) appeals and revision; (xx) presumption as to documents; (xxi) offences and penalties; (xxii) job work; (xxiii) electronic commerce; (xxiv) transitional provisions; and (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

Provided that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent. from the payment made or credited to the supplier:

Provided further that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies:

Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.

#### **20.1. Introduction**

Certain provisions of CGST Act in relation to levy of tax would be applicable to IGST Act also.

#### **20.2. Analysis**

The following provisions of CGST Act shall apply to IGST Act:

— scope of supply;

- composite supply and mixed supply;
- time and value of supply;
- input tax credit;
- registration;
- tax invoice, credit and debit notes;
- accounts and records;
- returns, other than late fee;
- payment of tax;
- tax deduction at source;
- collection of tax at source;
- assessment;
- refunds;
- audit;
- inspection, search, seizure and arrest;
- demands and recovery;
- liability to pay in certain cases;
- advance ruling;
- appeals and revision;
- presumption as to documents;
- offences and penalties;
- job work;
- electronic commerce;
- transitional provisions; and
- miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

The following exceptions are provided:

- (a) In case of TDS (tax deducted at source) the deductor shall deduct tax at the rate of two per cent. from the payment made or credited to the supplier.
- (b) In case of TCS (tax collected at source), the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies.

- (c) The value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.
- (d) In cases where the penalty is leviable under the CGST Act and the SGST Act or the Union UTGST Act, the penalty leviable under this Act shall be the sum total of the said penalties.

### 20.3. Comparative Review

Under IGST Act	Corresponding Section under present Central Sales Tax Act, 1956	Comparison
Section 20 providing CGST Act provisions which would be applicable to IGST Act.	Section 9(2) of CST Act which provides that all provisions of General tax law of each State shall apply in respect of CST to dealers registered in that state, except those provided in CST Act and Rules. These include procedural aspects such as returns, assessment, offences, etc.	Section 9(2) of CST Act does not include aspects such as registration, valuation, credit, etc. which are included in Section 20 of IGST

### 20.4 FAQs

Q1. What are the provisions under CGST which would be applicable to IGST also?

Ans: The provisions relating to scope of supply, composite supply and mixed supply, time and value of supply, input tax credit, registration, tax invoice, credit and debit notes, accounts and records, returns, other than late fee, payment of tax, tax deduction at source, collection of tax at source, assessment, refunds, audit, inspection, search, seizure and arrest, demands and recovery, liability to pay in certain cases, advance ruling, appeals and revision, presumption as to documents, offences and penalties, job work, electronic commerce, transitional provisions and miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall apply, in relation to the levy of tax under this Act as they apply in relation to levy of tax under the CGST Act, 2016.

Q2. What is the percentage of tax to be deducted or collected in case of tax deducted at source and tax collected at source?

Ans: The percentage of tax to be deducted by the deductor from the payment made or credit to the supplier is 2% in case of tax deduction at source.

In case of tax collection at source the operator should collect 2% tax on the value of net supplies.

**Statutory provision****21. Import of services made on or after the appointed day**

Import of services made on or after the appointed day shall be liable to tax under the provisions of this Act regardless of whether the transactions for such import of services had been initiated before the appointed day:

Provided that if the tax on such import of services had been paid in full under the existing law, no tax shall be payable on such import under this Act:

Provided further that if the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under this Act.

Explanation.—For the purposes of this section, a transaction shall be deemed to have been initiated before the appointed day if either the invoice relating to such supply or payment, either in full or in part, has been received or made before the appointed day.

**21.1. Introduction**

This provision deals with taxability of import of services made after the appointed day.

**21.2. Analysis**

- (a) It provides that import of services made on or after the appointed day shall be liable to tax under the provisions of IGST Act even if the transactions for such import of services had been initiated before the appointed day.
- (b) However if the tax on such import of services had been paid in full under the pre-GST regime, no tax shall be payable on such import under the IGST Act.
- (c) That apart if the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under this Act.
- (d) As per the explanation appended to the section a transaction shall be deemed to have been initiated before the appointed day if either the invoice or payment, either in full or in part, has been received or made before the appointed day.

**21.3. FAQ**

Q1. Whether import of services made after appointed day is liable to tax under this Act?

Ans. Yes. Any import of services made after appointed day is liable to tax under this Act. However, the taxability is subject to the provisos in section 21 of IGST Act.

Q2. What would be the status of import of services, where the tax on the said transaction is paid in full under earlier laws?

Ans. Not Liable to Tax Under This Act. As per the proviso (1) of section 21 of IGST Act, where the tax on import of services is paid in full under earlier laws, no tax under this Act would be made applicable though such import takes place after the appointed day.

Q3. What would be the status of import where the tax on the said transaction is paid in part under earlier laws?

Ans. As per the second proviso to section 21 of IGST Act, where the tax is paid in part for import of services under the earlier laws, only the balance amount of tax would be payable under this Act.

Q4. When would be the transaction be deemed to have been initiated before the appointed day?

Ans. Under any of the following circumstances it would be deemed that the transaction is initiated before the appointed day.

(i) Where invoice relating to such supply; or

(ii) Payment, either in full or in part;

has been received or made before the appointed day.

#### 21.4 MCQ

Q1. Where the tax is fully paid under earlier laws, amount of tax payable for import of services made after appointed day is?

(a) No tax payable under this Act

(b) Tax as per this Act, to be paid again

Ans: (a) No tax payable under this Act

Q2. Where the tax is paid in part under earlier laws, amount of tax payable for import of services made after appointed day is?

(a) No tax payable under this Act

(b) Balance amount of tax payable on such import of services

Ans: (b) Balance amount of tax payable on such import of services

#### Statutory provision

##### 22 Power to make rules

(1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

(4) Any rules made under sub-section (1) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

**22.1. Introduction**

- (i) It provides power to the Central Government to make Rules for the purposes of IGST Act upon recommendation by the GST Council.

**22.2 Analysis**

- (i) Power to make rules by the Central Government is discussed hereunder:
- The Central Government may make rules for carrying out the purposes of this Act, by notification on the recommendation of the Council.
  - The Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
  - The power to make rules shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the appointed day.
  - Any rules made may provide for penalty upto Rs.10,000 for contravention thereof.
  - “Council” would mean the Goods and Services Tax Council established under Article 279A of the Constitution.

**22.3 Comparative review**

<b>Under IGST Act</b>	<b>Corresponding Section under present Central Sales Tax Act, 1956</b>
Section 22 of IGST Act which deals with powers of Central Government to make rules	Section 13 authorizes Central Government to make rules. However, specific scenarios for making rules have been specified like manner of application for registration, form of declaration or certificate.

**22.4 FAQs**

Q1. Who is given the power to make rules under IGST Act?

Ans: The Central Government may, by notification, make rules for carrying out the purposes of this Act on the recommendation of the Council.

**22.5 MCQs**

Q1. Under Section 22, the Central Government has power to make rules on recommendation of whom of the following?

- (a) Ministry of Finance
- (b) GST Council
- (c) CBEC
- (d) None of the above

Ans: (b) GST Council

**Statutory provision****23 Power to make regulations**

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

**23.1. Introduction**

This provision refers to the Board's power to make regulations.

**23.2. Analysis**

To carry out the provisions of the IGST Act, the Board is empowered to make regulations, which would be notified. Such regulations should not be inconsistent with the provisions of the IGST Act and the Rules made thereunder.

**Statutory provision****24. Laying of rules, regulations and notifications**

Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

**24.1. Introduction**

This Section lays down the general procedure of laying delegated legislations before the Parliament for a prescribed duration.

**24.2 Analysis**

- (a) The Act permits making of rules by Government, issuance of regulation by Board and issuance of notification by the Government.
- (b) Such rule, regulation and notification, which is a part of delegated legislation is placed before the Parliament.
- (c) It is laid before the Parliament, as soon as may be after it is made or issued, when the Parliament is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions
- (d) Before the expiry of the session or successive sessions both Houses may make suitable modifications and would have effect in such modified form.

- (e) However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

### 24.3. Comparative Review

Similar provisions are there in the existing tax laws as well.

### Statutory provision

#### 25 Removal of Difficulties

- (1) If any difficulty arises in giving effect to any provision of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:
- Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.
- (2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

#### 25.1. Introduction

The responsibility to implement the legislatures' will is of the appropriate Government. In doing this, the Act empowers the appropriate Government with the necessary power to remove any difficulty that may arise.

#### 25.2. Analysis

- (i) If the Government identifies that there is a difficulty in implementation of any provision of the GST Legislations, it has powers to issue a general or special order, to carry out anything to remove such difficulty.
- (ii) Such activity of the Government must be consistent with the provisions of the Act and should be necessary or expedient.
- (iii) Maximum Time limit for passing such order shall be 3 years from the date of effect of the IGST Act.

#### 25.3. Comparative review

The above provisions are present in all tax legislations, to ensure that any practical difficulties in implementation can be addressed.

#### 25.4. Related provisions

This is an independent Section and would be applicable for implementation of the GST Law.

**25.5. FAQs**

Q1. Will the powers include the power to notify the effective date for implementation of particular provisions?

Ans: Yes. All powers regarding implementation of any provision of the GST law is covered.

Q2. Will the powers include bringing changes in any provision of law?

Ans: No. The Government has power only to decide on the practical implementation of law. But it cannot amend the legislation through this Section.

Q3. What is the maximum time limit for exercising the powers under Section 25?

Ans: The maximum time limit is 3 years from the date of effect of CGST Act.

Q4. Whether the reasons be mentioned in the order?

Ans: The order is issued only when there is a necessity or expediency for it. Specific reasons may not be mentioned in the order.

**25.6. MCQs**

Q1. Whether Prior approval of the Parliament is necessary?

(a) Yes

(b) No

Ans: (b) No

Q2. What is the maximum period for exercising this power?

(a) 4 years

(b) 3 years

(c) 2 years

(d) 1 year

Ans: (b) 3 years