



# Important Definitions Model GST Law – November, 2016

*INDIRECT TAXES COMMITTEE*

*THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA*



# About Indirect Taxes Committee

2

We sincerely thank President, ICAI, Vice-President, ICAI and our esteemed Council Colleagues, Coopted Member, Special Invitee for their undeterred support towards the initiatives of the Committee which has helped us attain the following:

- Launching publications including BGM on Model GST Law, submitting representations, organizing programmes, seminars etc.
- Identifying more than 350 new Faculties of Indirect Taxes through FIP
- Forming 18 research study groups across the country

Committee's immediate future plans:

- ✓ Background Material on Revised Model GST Law
- ✓ Handbooks on GST for Traders, Manufacturers and Service Providers
- ✓ FAQs/ MCQs on Revised Model GST Law
- ✓ Research Papers on Unjust Enrichment, Seamless Credit etc.
- ✓ Organizing FIP & Train the Trainer in March '17



# Supply

3

## Section 2(95)

*“Supply” shall have the meaning as assigned to it in section 3;*

### Section 3: Supply includes

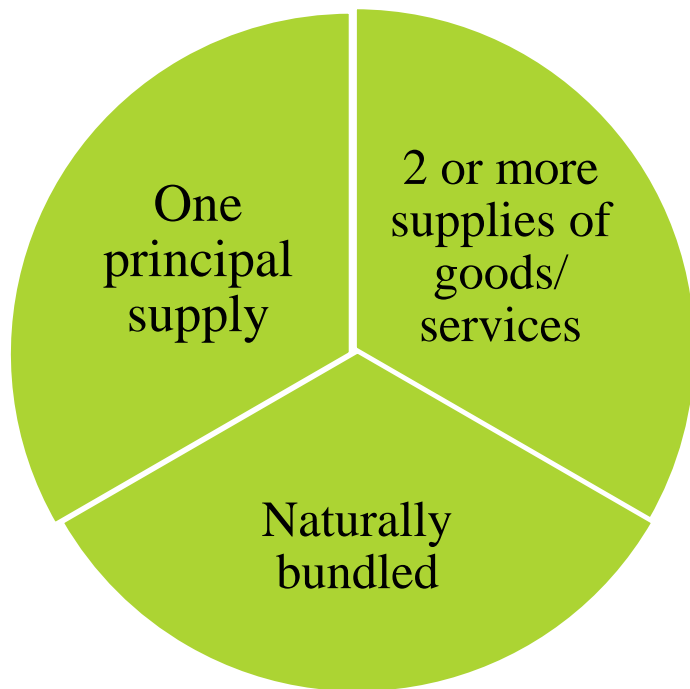
- all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business
- importation of services, for a consideration whether or not in the course or furtherance of business, and
- a supply specified in Schedule I, made or agreed to be made without a consideration
  - Permanent transfer/ disposal of business assets (only when input tax credit is availed)
  - Supply of goods or services between related persons, or between distinct persons as specified in Section 10, when made in the course or furtherance of business.
    - Distinct persons include branch offices
  - Transactions between principal and agent in the context of supply of goods
  - Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.



# Composite Supply

## Section 2(27)

*“Composite supply” means a supply made by a taxable person to a recipient comprising two or more supplies of goods or services, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a **principal supply**;*



## Section 2(78)

*“Principal supply” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary and does not constitute, for the recipient an aim in itself, but a means for better enjoyment of the principal supply;*

### **Example:**

Indian Airlines provides passenger transportation service. They also supply food on board to passengers. Supply of transportation services would be the principal supply and the service as a whole would qualify as composite supply.

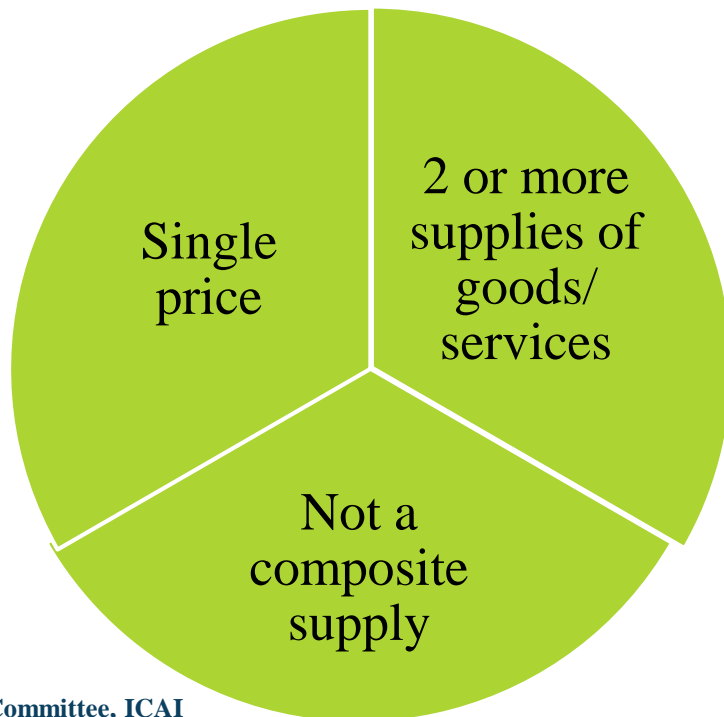


# Mixed Supply

5

## Section 2(66)

*“Mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply*



**Examples:** Supply of soap bars where soap boxes are given free of cost; supply of wheat for which a bottle of honey is given free of cost.

In the above example of honey being supplied with wheat, both wheat and honey will be taxed at the rate of tax applicable for honey (being commodity taxed at higher rate).



# Continuous Supply

6

## Section 2(30)

“**Continuous supply of goods**” means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the **supplier invoices the recipient on a regular or periodic basis**

**Example:** Open purchase orders with an understanding of fortnightly billing, Supply of gases through pipelines with a weekly billing schedule

## Section 2(31)

“**Continuous supply of services**” means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with **periodic payment obligations** and includes supply of such service as the Central or a State Government may, whether or not subject to any condition, by notification, specify

**Example:** Annual maintenance contracts, Licensing of software or brand names, Renting of electronic goods

Continuous supply of goods - periodicity of invoices  
Continuous supply of services - periodicity of payments



# Inward Supply

7

## Section 2(60)

*“Inward supply” in relation to a person, shall mean receipt of goods and/or services whether by purchase, acquisition or any other means and whether or not for any consideration*

### **Notes:**

The term ‘purchases’ has been replaced by inward supply under GST.

Details of inward supplies are to be furnished in GSTR-2 by a registered taxable person by 15<sup>th</sup> of the succeeding tax period





# Outward Supply

8

## Section 2(72)

*“Outward supply” in relation to a person, shall mean supply of goods or services, whether by sale, transfer, barter, exchange, license, rental, lease or disposal or any other means made or agreed to be made by such person in the course or furtherance of business*

Sale

Transfer

Barter

Exchange

Disposal

Rental

Lease

License

### **Notes:**

The term ‘sales’ has been replaced by outward supply under GST.

Details of outward supplies are to be furnished in GSTR-1 by a registered taxable person by 10<sup>th</sup> of the succeeding tax period





# Goods

9

## Section 2(49)

*“Goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;*

### **Would the following be goods?**

- Electricity
- Carbon credits
- DEPB/ SFIS Scrip
- Brand Name
- Customized Software



# Actionable claim

10

## Section 2(1)

*“Actionable Claim” shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882;*

Section 3 of the Transfer of Property Act, 1882:

*“Actionable Claim” is a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in possession either actual or constructive, of the claimant, which the civil courts recognise as affording grounds of relief whether such debt or beneficial interest be existent, accruing or conditional or contingent. “*

## **Illustration:**

A borrows INR 5000/- on 01-Apr-2016 from B at interest of 12% per annum and promises to pay back the amount with interest before 01-Jul-2016. Until 01-Jul-2016, the debt would be an actionable claim

- Actionable claim is money equivalent
- Is excluded in the definition of service under the current law
- May impact securitization of debt



## Section 2(92)

*“Services” means anything other than goods.*

### **Explanation:**

- Excludes money and securities
- Includes transactions in money relating to use of money/ conversion by cash/ any other mode from one form to another for which a separate consideration is charged

### **Note:**

Under current laws, certain transactions are classified as goods and services. Under GST, a transaction would strictly be classified as goods **OR** services



# Person

12

## Section 2(73)

*“Person” includes –*

- a) an individual;
- b) a Hindu undivided family;
- c) a company;
- d) a firm;
- e) a Limited Liability Partnership;
- f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- g) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in Section 2(45) of the Companies Act, 2013;
- h) any body corporate incorporated by or under the laws of a country outside India;
- i) a co-operative society registered under any law relating to cooperative societies;
- j) a local authority;
- k) government;
- l) society as defined under the Societies Registration Act, 1860;
- m) trust; and
- n) every artificial juridical person, not falling within any of the preceding sub-clauses;



# Related persons

13

## Section 2(84)

Person shall be deemed to be “*related persons*” if only –

- a) they are officers or directors of one another's businesses;
- b) they are legally recognized partners in business;
- c) they are employer and employee;
- d) any person directly or indirectly owns, controls or holds twenty five per cent or more of the outstanding voting stock or shares of both of them;
- e) one of them directly or indirectly controls the other;
- f) both of them are directly or indirectly controlled by a third person;
- g) together they directly or indirectly control a third person; or
- h) they are members of the same family;

Explanation I. - The term "person" also includes legal persons.

Explanation II. - Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.



**Note:**

Supply of goods/ services between related persons when made in the course of business will be treated as supply even if made without consideration



# Associated enterprise

15

## Section 2(13)

*“Associated enterprise” shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961*

- (a) one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise; or
- (b) any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; or
- (c) a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise; or
- (d) one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise; or
- (e) more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or
- (f) more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or
- (g) the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or





# Associated enterprise contd..

16

## Section 2(13)

- (h) ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or
- (i) the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or
- (j) where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or
- (k) where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or
- (l) where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals; or
- (m) there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.



# Casual taxable person

17

## Section 2(20)

*“Casual taxable person” means a person who occasionally undertakes transactions involving supply of goods and/or services in the course or furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business*

Section 2(47) defines “fixed establishment” means a place, other than the 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

## **What would the impact be on:**

- Events
- Road shows
- Onsite training
- Performance based services such as surgery



# Agent

18

## Section 2(5)

*“Agent” means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services on behalf of another, whether disclosed or not;*

## **Section 128:**

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall be jointly and severally liable to pay the tax payable on such goods under the Act

## **Would the following be regarded as agents of supplier:**

- Flipkart or Amazon [Market Place]
- Uber or Ola [Aggregators]
- Vedantu [Online coaching]
- Quikr [C2C]

### Used in:

- non-resident taxable person – Section 2(68)
- Related party – Section 2(84)
- Supplier – Section 2(94)
- Electronic commerce not being an agent – Section 56

- Between principal and agent, who are located in the State, the Principal ought to be principally liable



## Section 2(17)

*“Business” includes –*

- a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
- b) any activity or transaction in connection with or incidental or ancillary to (a) above;*
- c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;*
- d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;*
- e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;*
- f) admission, for a consideration, of persons to any premises;*
- g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*
- h) services provided by a race club by way of totalisator or a licence to book maker in such club;*



Trade, commerce, manufacture, profession, vocation, adventure, wager including ancillary and incidental activities – **regardless of monetary consideration and regularity**

Supply or acquisition of goods

Provision of facilities by a club, association or society

Admission of persons to a premises on payment of consideration

Services provided by a race club – totalisator or license to book maker

Deemed business - activities undertaken by CG/ SG or any local authority being engaged as public authorities



# Place of business

21

## Section 2(74)

*“Place of business” includes*

- a) *a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, provides or receives goods and/or services; or*
- b) *a place where a taxable person maintains his books of account; or*
- c) *a place where a taxable person is engaged in business through an agent, by whatever name called*

Place where  
business is  
ordinarily carried  
on

Includes warehouse,  
godown, place of storage/  
provision/ receipt of  
goods/ services

Place where the  
books of accounts  
are maintained

Premises of the  
agent

**Note:** Section 2(78) - Principal place of business will be the one mentioned in the certificate of registration.



# Business vertical

22

## Section 2(18)

*“**Business vertical**” means a distinguishable component of an enterprise that is engaged in supplying an individual product or service or a group of related products or services and that is subject to **risks and returns that are different** from those of other business verticals;*

### **Example:**

ABC Ltd is a conglomerate company having divisions in petrochemicals, retail business, telecommunications etc. Each such divisions / business verticals may be registered.



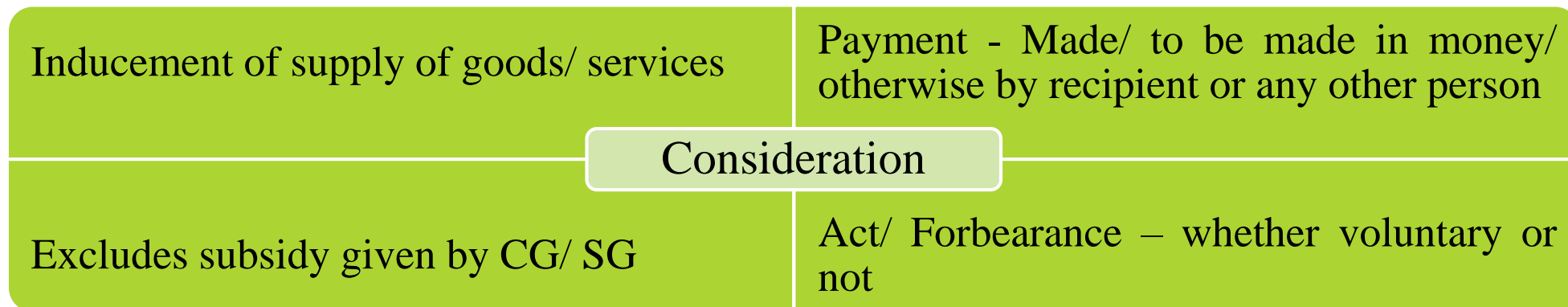


# Consideration

## Section 2(28)

*“Consideration” in relation to the supply of goods or services includes*

- a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;*
- b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government*





# Aggregate turnover

24

## Section 2(6)

*“Aggregate turnover” means the aggregate value of all taxable supplies, exempt supplies, exports of goods and/or services and inter-State supplies of a person having the same PAN, to be computed on all India basis and excludes taxes, if any, charged under the CGST Act, SGST Act and the IGST Act, as the case may be;*



**(Computed on an all India basis)**

\*Exempt supplies are those which are not taxable under the Act - Includes supplies taxed at NIL rate and supplies exempted by way of notification u/s 11

**Note:** Aggregate turnover will determine liability to register and option to pay tax under composition scheme





# Capital Goods

26

## Section 2(19)

*“Capital goods” means goods, the value of which is capitalised in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business”.*

### **Example:**

1. Plant and machinery capitalized in the books of accounts could be considered as capital goods for claiming credit of tax paid.
2. Input tax credit on furniture and fixture capitalized in the books of accounts could be restricted if they are not used in the course of business.
3. Impact of financial lease



# Inputs

27

## Section 2(52)

*“Input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business”.*

### **Would the following purchases be regarded as inputs**

- Stationery
- Mobile phones not capitalized
- Marketing material
- Leased capital goods (operating or financial lease)



# Input service

28

## Section 2(53)

*“Input Service” means any service used or intended to be used by a supplier in the course or furtherance of business”.*



# Input Tax

29

## Section 2(55)

*“Input tax” in relation to a taxable person, means the Integrated Goods and Services Tax, including that on import of goods, Central Goods and Services Tax or State Goods and Services Tax, as the case may be, charged on any supply of goods and/or services to him and includes the tax payable under sub-section (3) of section 8, but does not include the tax paid under section 9;*



### **Note:**

The same definition has been used under the IGST Act as well.





# Output Tax

30

## Section 2(71)

“**Output tax**” in relation to a taxable person, means the CGST/SGST chargeable under the Act on taxable supply of goods and/or services made by him or his agent and excludes tax payable by him on reverse charge basis;

$$\begin{array}{ccc} \text{CGST/SGST paid} & + & \text{CGST/SGST paid} \\ \text{by taxable person} & & \text{by agent} \\ & & - \\ & & \text{CGST/SGST paid} \\ & & \text{under reverse} \\ & & \text{charge} \end{array}$$

**Note:**  
The same definition has been used under the IGST Act as well except that CGST/SGST is replaced by IGST.



# Deemed Exports

31

## Section 2(37)

*“Deemed exports”, as notified by the Central Government/State Government on the recommendation of the Council, refer to those transactions in which the **goods supplied do not leave India**, and payment for such supplies is received either in Indian Rupees or in convertible foreign exchange*

**Note:** Deemed exports have been defined in accordance with the definition under Foreign Trade Policy (FTP).

Examples of deemed exports under FTP – supply of goods to EOU/ STP/ EHTP/ BTP



# Electronic commerce operator

32

## Section 2(42)

*'Electronic commerce operator' means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce*

### **Notes:**

- Electronic commerce has been defined as supply of goods and services over digital/ electronic network.
- E-commerce operators are required to collect tax at source at 1%.

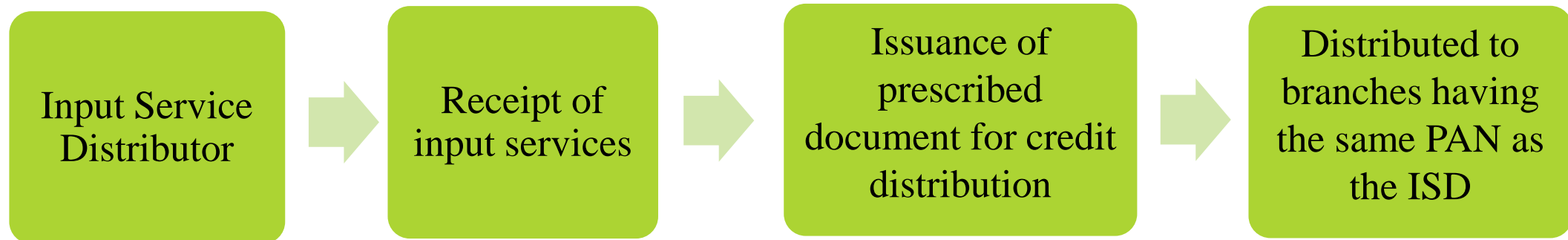


# Input Service Distributor

33

## Section 2(54)

*"Input Service Distributor" means an office of the supplier of goods and / or services which receives tax invoices issued under section 28 towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST paid on the said services to a supplier of taxable goods and / or services having same PAN as that of the office referred to above*



**Note:** Section 21 lays down the manner of distribution of credits



# Job-work

34

## Section 2(61)

*“Job work” means undertaking any treatment or process by a person on goods belonging to another registered taxable person and the expression “job worker” shall be construed accordingly*

**Note:** Input tax credit can be availed on goods sent for job work subject to certain conditions and restrictions



# Recipient

35

## Section 2(81)

“**Recipient**” of supply of goods and/or services means-

- a) where a consideration is payable for the supply of goods and/or services, the person who is liable to pay that consideration,
- b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and
- c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply



<b>Situation</b>	<b>Recipient</b>
Consideration is payable	Person liable to pay consideration
No consideration payable	<u>Supply of goods</u> Person to whom goods are delivered/ made available or to whom possession/ use of goods is given  <u>Supply of services</u> Person to whom service is rendered





# Reverse Charge

37

## Section 2(87)

*“Reverse charge” means the liability to pay tax by the recipient of supply of **goods or services** instead of the supplier of such goods or services in respect of such categories of supplies as notified under subsection (3) of section 8*

### **Notes:**

- Section 8(3) provides that CG/ SG may by notification specify categories of supply of goods and/or services on which tax is payable on reverse charge basis;
- Under current laws, tax is payable on reverse charge basis only on certain services. In GST, reverse charge mechanism may apply to supply of goods also.



# Works Contract

38

## Section 2(110)

*“Works contract” means a contract wherein transfer of property in goods is involved in the execution of such contract and includes contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property;*

## In relation to an immovable property

Building/  
Construction

Fabrication/  
Completion

Erection/  
Installation/  
Fitting out

Improvement/  
modification

Repair/  
Maintenance

Renovation/  
Alteration/  
Commissioning

**Note:** Schedule II specifies that works contracts will be treated as supply of services and accordingly, provisions of time of supply and place of supply of services shall apply to works contract transactions.



# Important Definitions Model IGST Law – November, 2016



# Exports

40

## Section 2(5)

*“Export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India*

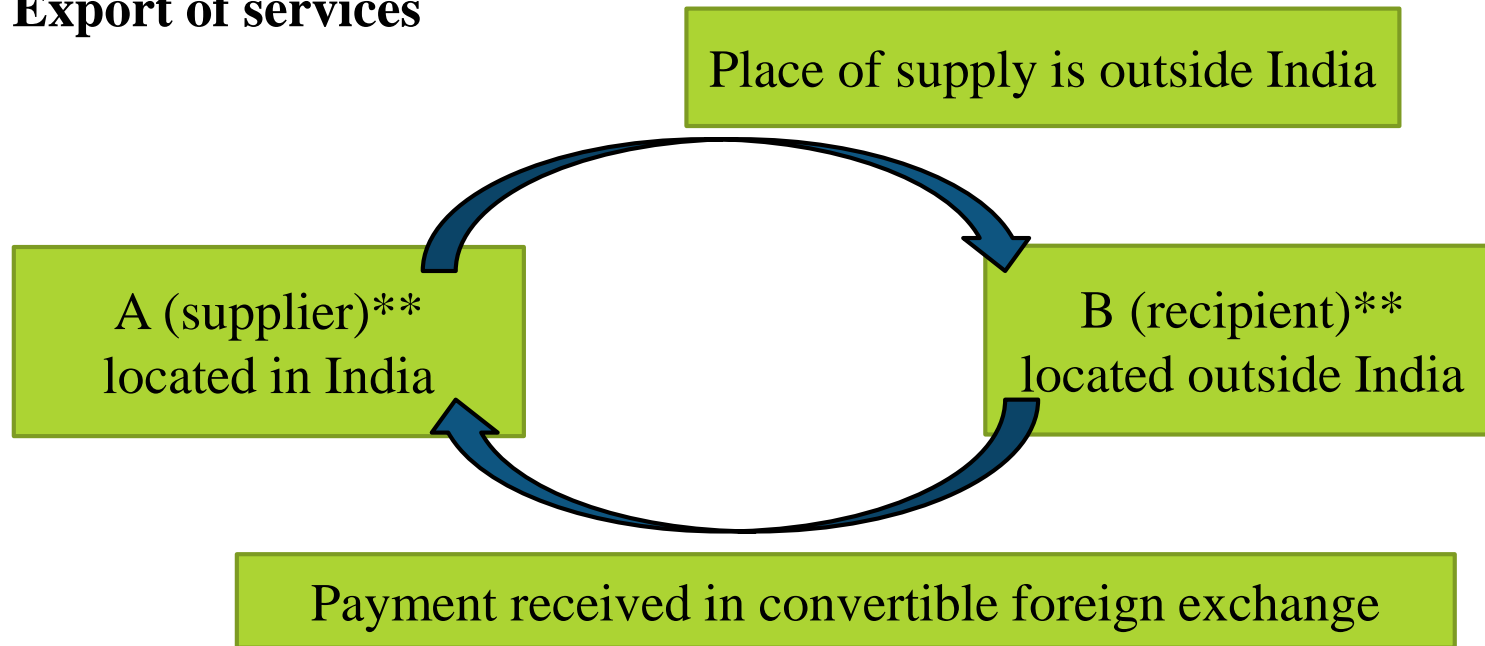
## Section 2(6)

*“Export of services” means the supply of any service when*

- a) the supplier of service is located in India,*
- b) the recipient of service is located outside India,*
- c) the place of supply of service is outside India,*
- d) the payment for such service has been received by the supplier of service in convertible foreign exchange, and*
- e) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 5*



### Export of services



\*\* A and B are not merely establishments of the same person

### Notes:

- Export of goods and services are deemed to be inter-State supplies;
- Exports of goods and services will be classified as zero-rated supplies, which means that while no tax is payable on such supplies, the supplier is eligible to claim corresponding input tax credit.



# Imports

42

## Section 2(10)

*“Import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India*

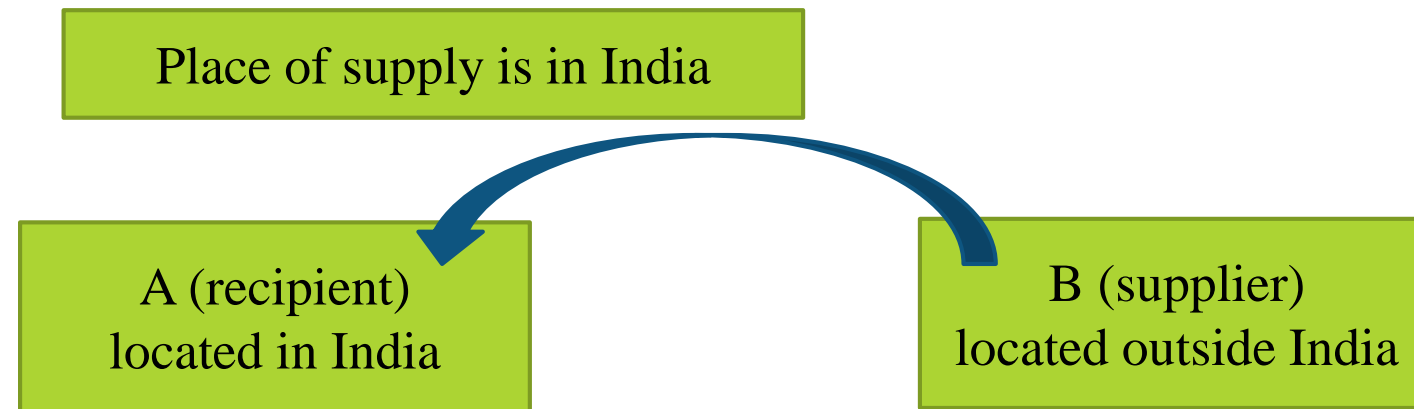
## Section 2(11)

*“Import of service” means the supply of any service, where*

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



## Import of services



### Notes:

- Import of goods and services are deemed to be inter-State supplies
- Under current laws, imports are subject to basic customs duty, countervailing duty, customs cess and special additional duty. Under the GST regime, imports would be subject to Basic Customs Duty and IGST



## Section 2(12)

**“India”** means,-

- a) *the territory of the Union as referred to in clauses (2) and (3) of Article 1 of the Constitution;*
- b) *its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976);*
- c) *the seabed and the subsoil underlying the territorial waters;*
- d) *the air space above its territory and territorial waters; and*
- e) *the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof*





# Intermediary

45

## Section 2(13)

*“**Intermediary**” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of a service (hereinafter called the ‘main’ service) or the supply of goods, between two or more persons, but **does not include a person who supplies the main service or supplies the goods on his account***

Broker

Agent

Any person who  
arranges/ facilitates  
supply

**Note:** Supplier of the main service will not be regarded as an Intermediary



# Location of recipient

46

## Section 2(17)

*“Location of the recipient of services” means:*

- a) where a supply is received at a place of business for which registration has been obtained, the location of such place of business;*
- b) where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;*
- c) 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*
- d) in absence of such places, the location of the usual place of residence of the recipient*



# Location of supplier

47

## Section 2(18)

**“Location of the supplier of services”** means:

- a) where a supply is made from a place of business for which 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, that is to say, 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



# Location of recipient and supplier contd..

48

<b>Place where supply is received/ made</b>	<b>Location of recipient/ supplier</b>
Place of business for which registration is obtained	Location of such place of business
Fixed establishment (Other than place of business)	Location of such fixed establishment
More than one location	Location of the establishment most directly concerned with the receipt of supply
Absence of such a place	Usual place of business of recipient



# Zero-rated Supplies

49

## Section 2(29)

“**Zero-rated supply**” shall have the meaning assigned to it under section 16

Section 16 provides that the following will be classified as zero-rated supplies :-

Export of goods and services

Supply of goods and services to a SEZ developer/ SEZ unit

### **Note:**

Credit of input tax can be availed on such zero-rated supplies and either utilized towards discharge of other output taxes or can be claimed as refund.



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50

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