

## Chapter V

# Place of Supply of Goods or Services or Both

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10. Place of supply of goods other than supply of goods imported into, or exported from India
11. Place of supply of goods imported into, or exported from India
12. Place of supply of services where location of supplier and recipient is in India
13. Place of supply of services where location of supplier or location of recipient is outside India
14. Special provision for payment of tax by a supplier of online information and database access or retrieval services

### Statutory provision

- 10. Place of supply of goods, other than supply of goods imported into, or exported from India**
- (1) *The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under, —*
- (a) *where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;*
  - (b) *where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;*
  - (c) *where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;*
  - (d) *where the goods are assembled, or installed at site, the place of supply shall be the place of such installation or assembly;*
  - (e) *where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.*

(2) *Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.*

### 10.1 Introduction

Place of supply is important to determine the kind of tax that is to be applied. When the location of supplier and the place of supply are in two different States, then it will be an inter-State supply and IGST applies. And when they are in the same State, then it will be an intra-State supply and CGST/ SGST applies. 'Place of supply' is not a phrase of common understanding, it is a legal term and as in the cases of all legal terms, their common understanding must not be applied but the meaning assigned to them in the law must be followed. Place of supply, similar to time of supply, is that which the legislature has appointed.

GST is understood as a 'destination based consumption tax' but there is no provision that declares this fact. This missing declaration is more than adequately supplied by the principle being embodied in the provisions of 'place of supply'. It is here that we find that the destination principle of GST is fully captured. The law maker has declared, in each case of supply, its destination of supply.

### 10.2 Analysis

#### (a) Place of Supply – Supplies within India

Place of supply of goods, where the supplier and the recipient are both located within India, will be determined in accordance with section 10 of the IGST Act. The phrase 'location of supplier of goods' has not been defined in the IGST Act and this is deliberate. Two very important phrases are relevant, namely:

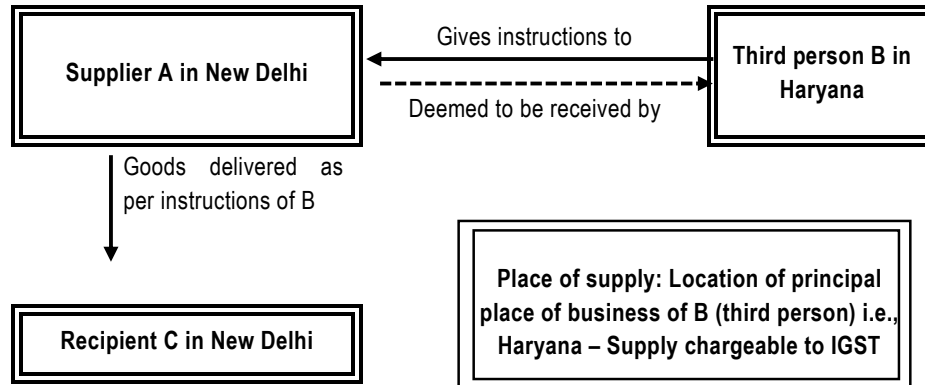
- Location of supplier – the word 'location' in this phrase refers to the site or premises (geographical point) where the supplier is situated with the goods in his control ready to be supplied or in other words it is the physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied;
- Place of supply of goods – this is a legal phrase which the section decides to be the site or premises (geographical point) as its 'place of supply'.

2(93) "recipient" of supply of goods or services or both, means—

- (a) where a consideration is payable for the supply of goods or services or both, 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 and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

Place of supply in each case is discussed below:

- (a) Where 'supply involves movement', the place of supply will be the place where the goods are located at the time at which the movement terminates for delivery to the recipient. The location of the goods is a question of fact to be ascertained by observing the journey that the goods supplied make from their origin from supplier and terminating with recipient. This movement, however, can be by the supplier or by the recipient after having disclosed the destination of their movement or journey. Movement 'terminates for delivery' requires a brief understanding about the manner of concluding delivery. Delivery – the mode and the time – is the unilateral choice of the recipient and the supplier has no authority to decide 'how' and 'when' he will deliver the goods to the recipient. It is easy to determine in a contract for supply where it records this 'choice' of the recipient regarding the mode and time of delivery. The supplier is always duty-bound to deliver in exactly the same way – manner and timing – which the recipient dictates. In fact the supplier continues to be obligated until delivery is completed in the way it is stated by the recipient. In other words, delivery is not complete if there is any deviation in either the manner or the timing as compared to that dictated by the recipient. When the delivery is to the satisfaction of the recipient, then the supplier is released from his obligation. Therefore, the additional question of fact to be determined is the mode and time of delivery dictated by the recipient and whether the same has been complied with to the satisfaction of the recipient.
- (b) Where goods are delivered by the supplier to the recipient but at the instruction of a third party, then the place of supply will be determined to be the place of supply which will be the principal place of business of such third party and not of the actual recipient. It is important to identify the two supplies involved – by supplier to third party and by third party to recipient. This provision deals only with the first limb of supply, that is, supply by supplier to third party. The question that arises is – the *locus* or authority of the third party to issue instructions to the supplier regarding its delivery. Even though the definition in section 2(93) refers to recipient as the 'payer of the consideration', in this provision, recipient is the one who actually collects the goods. And the third party is the one who enjoys privity with the supplier to be able to direct him to deliver the goods. Now, the place of supply will not be dependent on whether the movement of goods is from one State to another (if the supplier and recipient are in two different States) but as declared by the section to be dependent on the principal place of business of such third party.



- (c) Where the supply does not involve movement of goods, the place of supply will be the location of the goods at the time of its delivery to the recipient. It is not a case where there is difficulty in movement of the goods, but a case where the supply contemplates that the goods ought not to move and when their delivery to the recipient will stand complete. For example, a generator that is bolted to the concrete floor in the basement of a building purchased by the tenant and being left behind at the time of rejecting the tenancy, the supply of the generator by the tenant to the landlord for an agreed price is a case of 'supply that does not involve movement of the goods'. In such cases, the place of supply will be where the generator stands bolted to the concrete floor and without requiring any movement. The landlord (recipient) confirms satisfactory completion of delivery. This provision comes into operation only when its applicability is established based on the facts involved in the supply, that is, they do not involve movement. Reverting to the previous sub-section where the second limb of supply – by the third party to the recipient, where the goods having already reached their destination under the first supply are supplied – is a supply that does not involve movement of goods. And the place of supply would be where the equipment is located (with the recipient) at the time of confirmation of satisfactory completion of delivery.
- (d) Where the goods are assembled or installed at site, the place of supply will be the location of such installation or assembly. It is important to note that due to the introduction of 'composite supply' and the fact that this assembly or installation is not a 'works contract', this provision refers to only one supply. In other words, supply from the place of their origin to the site 'for' assembly or installation is subsumed within this provision and merged with the supply to the recipient by virtue of such assembly or installation. This provision appoints the place of supply based on the final act of assembly or installation. There is no requirement to vivisection the entire composite supply of goods (not being works contracts) that is a supply-cum-installation into a supply-plus-installation. If such vivisection were to be done, then in every instance of supply-cum-installation, the supplier will become a 'casual taxable person' in the State where the

assembly or installation is required. Further, it is important to note that in the case of assembly or installation, it is a supply that is not 'works contract'. This is because works contracts, in GST, are treated as supply of service and that too only if the resultant is an immovable property and the provisions of this section do not apply to works contracts.

- (e) Where goods are supplied on-board a conveyance, the place of supply will be the location at which the goods are taken on-board. Here too, are two supplies – supply of the goods 'to' the operator of the conveyance and supply 'by' the operator to the passenger during the journey 'in' the conveyance. The place of supply appointed under this sub-section is in respect of the second limb which is the supply by the operator of the conveyance during its journey to the passenger. Conveyance includes vessel, aircraft, train or motor vehicle. The place of supply in respect of first limb of supply will continue to be determined by other provisions of this section and only the second limb of supply 'on-board the conveyance' will be determined by this sub-section.

Residuary provision-Where none of the above provisions are applicable to determine the place of supply of goods, the Central Government will prescribe rules (based on recommendations of the Council) regarding the manner of its determination. Please ensure that before taking recourse to this residual provision, it must be demonstrated that the supply is one which is not already covered by any of the earlier sub-sections.

#### Place of supply concept – goods or services

Supplier	Place of Supply	Whether inter-State/ intra-State
Kerala	Bihar	Inter-State (IGST)
Puducherry	Puducherry	Intra-State (CGST + Pud GST)
Chandigarh	Chandigarh	Intra-State (CGST + UTGST)
Chandigarh	Punjab	Inter-State (IGST)
Chandigarh	Daman & Diu	Inter-State (IGST)
Goa	Goa	Intra-State (CGST + Goa GST)
Karnataka (SEZ)	Karnataka (non-SEZ)	Inter-State (IGST)

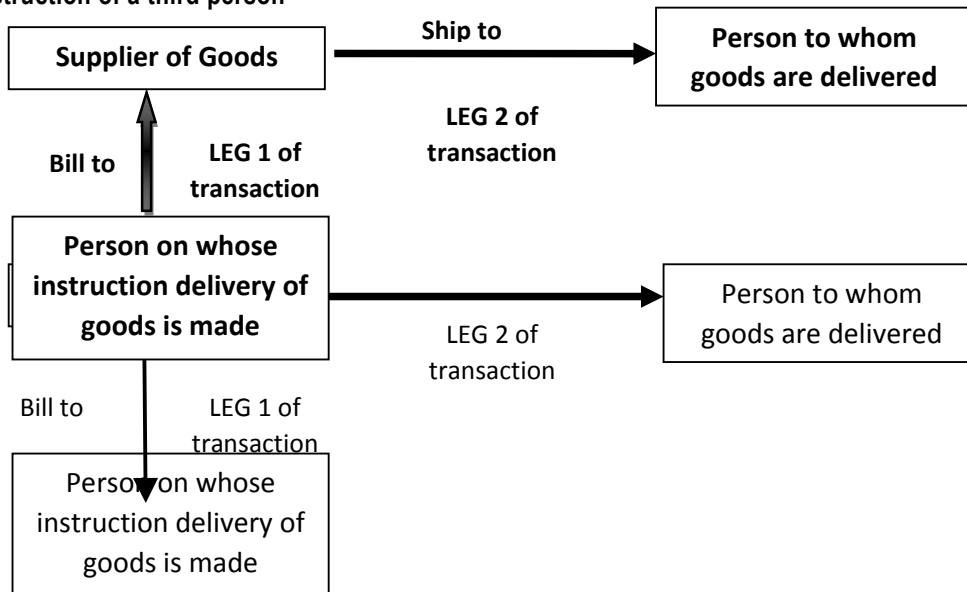
#### Place of supply of goods, other than supply of goods imported into, or exported from India

##### Section 10(1)(a): Supply involves movement of goods

Particulars	Supplier's factory from where goods are removed	Termination of movement for delivery	Place of supply	Tax Payable
Movement of goods by the supplier (goods dispatched by	Orissa	Assam	Assam	IGST payable at Orissa

supplier) [Section 10(1)(a) read with section 2(96)(a) of CGST Act]	Orissa	Orissa	Orissa	CGST / SGST payable at Orissa
Movement of goods by the recipient (goods collected by recipient) [Section 10(1)(a) read with section 2(96)(b) of CGST Act]	Kerala	Goa	Goa	IGST payable at Kerala
	Kerala	Kerala	Kerala	CGST / SGST payable at Kerala

**Section 10(1)(b): Supply involves movement of goods, and delivered to a person on the instruction of a third person**



Leg 1: Supply from the supplier of goods (Seeta) to the person to whom the goods are delivered (Ram) on the instruction of a third person (Lakshman) – Place of supply shall be the principal place of business of the person on whose instruction goods are delivered to the receiver of goods:

Case	Location of Supplier - Seeta	Place of delivery of goods - Office of Ram	Principal place of Lakshman who instructed delivery to Ram	Place of supply for Seeta	Type of tax payable by Seeta
1	Ahmedabad	Ahmedabad	Amritsar	Amritsar	IGST at Ahmedabad
2	Ahmedabad	Amritsar	Amritsar	Amritsar	IGST at Ahmedabad
3	Ahmedabad	Bangalore	Bangalore	Bangalore	IGST at Ahmedabad
4	Ahmedabad	Chandigarh	Udaipur	Udaipur	IGST at Ahmedabad

Leg 2: Deemed supply of goods by the person on whose instruction (Lakshman) the goods were delivered by the original supplier (Seeta) to the receiver of goods (Ram) – *Place of supply shall be the location of the goods at the time of delivery to the recipient.*

Case	Location of Supplier - Seeta	Place of delivery of goods - Office of Ram	Principal place of Lakshman who instructed delivery to Ram	Place of supply for Lakshman	Type of tax payable by Lakshman
1	Ahmedabad	Ahmedabad	Amritsar	Ahmedabad	IGST at Punjab
2	Ahmedabad	Amritsar	Amritsar	Amritsar	CGST + Punjab GST at Punjab
3	Ahmedabad	Bangalore	Bangalore	Bangalore	CGST + Kar GST at Karnataka
4	Ahmedabad	Chandigarh	Udaipur	Chandigarh	IGST at Rajasthan

#### Section 10(1)(c): Supply does not involve movement of goods

Particulars	Location of supplier	Location of recipient	Location of goods	Place of supply	Tax Payable
Sale of pre-installed DG Set	Delhi	Bhopal	Bhopal	Bhopal	IGST payable at Delhi
Manufacture of moulds by job-worker (supplier), sold	Tamil Nadu	Kerala	Tamil Nadu	Tamil Nadu	CGST + TN GST

to the Principal, but retained in job worker's premises					payable at Tamil Nadu
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**Section 10(1)(d): Supply of goods assembled/ installed at site**

Particulars	Location of supplier	Registered office of recipient	Installation/ Assembly Site	Place of supply	Tax Payable
Installation of weigh bridge	Delhi	Bhopal	Bhopal	Bhopal	IGST payable at Delhi
Servers supplied and installed at the office of a marketing firm	Karnataka	Goa	Karnataka	Karnataka	CGST + Kar GST payable at Karnataka
Supply of work-stations	Gujarat	Gujarat	Kerala	Kerala	IGST payable at Gujarat

**Section 10(1)(e): Supply of goods supplied on board a conveyance**

Particulars	Location of supplier	Loading of goods	Passenger boards at	Place of supply	Tax Payable
Supply of canned aerated drinks on a flight	Punjab	Punjab	Delhi	Punjab	CGST + Pun GST payable at Punjab
Sale of Haldirams mixtures during the journey	Pune	Goa	Hyderabad	Goa	IGST payable at Pune
Sale of sun-glasses on a ship	Bangalore	Chennai	Cochin	Chennai	IGST payable at Bangalore

**Statutory provision****11. Place of Supply of Goods Imported into, or Exported from India**

The place of supply of goods, —

- (a) imported into India shall be the location of the importer;  
 (b) exported from India shall be the location outside India.



### 11.1 Analysis

#### Place of Supply – Supplies outside India

Place of supply of goods where the goods are imported into or exported from India will be determined in accordance with section 8 of the IGST Act. Import of goods is defined in section 2(5) of the IGST Act and export of goods is defined in section 2(10) of the IGST Act. With these definitions, which are with reference to the movement of goods and not the location of the supplier or recipient. In this case, the place of supply will be:

- (a) In the case of import of goods, the location of the importer and
- (b) In the case of export of goods, the location outside India where the goods are exported.

2(5) “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

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

It is important to recognize that payment in convertible foreign exchange is not at all a criterion for determining whether it is export or import in respect of goods. Whereas payment in foreign exchange is relevant for services including transactions involving goods treated as services. Transactions of merchanting trade – where the goods are procured from one country and are directly dispatched without entering India will not be a supply in the ‘taxable territory’. Financial effect of such transactions alone will be reflected in the books of accounts without incidence of GST. Another form of international supply – high sea sales – is also a transaction that transpires outside the taxable territory and does not attract incidence of GST. Re-import of export goods will also be liable to GST in the same manner.

Imports will be liable to IGST in addition to basic customs duty and exports will be zero-rated with benefit of refund of input tax credit or rebate of tax paid. Please refer to The Taxation Amendment Act, 2017 for the necessary amendments made to Customs Tariff Act, 1975 and Central Excise Act, 1944 to enable imposition of BCD+IGST on import of goods liable to GST.

Taxation of High Sea Sales: As clarified vide *Circular No. 33 /2017-Customs dated 01-08-2017*

High Sea Sales of imported goods is a term used to denote a transaction whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. Since all transactions entered within the territory of India for sale and purchase of goods is taxable under GST, there were doubts on the levy of GST on High Sea Sales. More so, when such ‘High Sea Sales were categorised as Inter-State Supplies. Accordingly, Government has clarified the position of levy of GST on High Sea Sales vide *Circular No. 33/ 2017-Cus dated August 1<sup>st</sup>, 2017*. It has been clarified that IGST on High Sea Sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. In other words, the buyer of High Sea Sales shall be

disposing IGST on such imports and as part of Customs. Further, value addition accruing in each such High Sea Sale shall form part of the value on which IGST is collected at the time of clearance i.e. Buyer shall pay IGST on the final purchase value as per last High Sea Transaction envisaging all margins earned by all persons who made High Sea Sales of such Goods.

### Place of supply of goods imported into, or exported from India

#### Section 11(a): Import of goods

Case	Location of supplier	Location of goods before supply	Goods supplied to	Location of recipient	Place of supply
1	Thailand	Thailand	Assam	Assam	Assam
2	China	China	Kashmir	Haryana	Kashmir
3	Sri Lanka	Sri Lanka	Kerala	Kerala	Kerala
4	Karnataka	Iran	Dubai	Karnataka	Not an import

#### Section 11(b): Export of goods

Case	Location of supplier	Location of goods	Goods supplied to	Location of recipient	Place of supply
1	Assam	Assam	Thailand	Assam	Thailand
2	Tamil Nadu	Kashmir	China	Texas	China
3	Sri Lanka	Kerala	Sri Lanka	Sri Lanka	Sri Lanka
4	Maharashtra	Dubai	Iran	Iran	Not an export

Another aspect to be carefully considered here is 'bill to-ship to' arrangements involving cross-border trade. It is not important for the supply is 'billed to' a person outside India but the supply is the 'shipped to' a person outside India. In fact, it is not at all relevant where the billing is done 'to' for the transaction to come within the operation of section 11. As mentioned earlier, payment of foreign exchange is not a criterion that determines whether the supply is an export or not. Reference may be had to discussion under section 16 regarding 'supply by way of export' which qualifies for zero-rated benefit. It is sufficient to mention here that in the export – goods shipped to a place outside India – would qualify as an export eligible for zero rated benefit. Exports, therefore, are always determined based on their 'ship to' location being a place outside India whether or not the additionally qualify for the zero rated benefit under section 16. Similarly, import of goods also are determined based on the 'ship to' location being the place within India with a journey or originating outside India. However, with the *proviso* to section 5(1) imposing GST not under the IGST Act but under the Customs Tariff Act, as soon as the goods supplied to qualify as import of goods under section 11, they are attracted the

incidence of additional customs duty equivalent to IGST. It is important to note that the similarity in the definition of import of goods and export of goods and the dissimilarity in the treatment of GST in these cases.

### Statutory provision

<p><b>12. Place of Supply of Services where Location of Supplier and Recipient is in India</b></p> <p>(1) <i>The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.</i></p> <p>(2) <i>The place of supply of services, except the services specified in sub-sections (3) to (14)</i></p> <p style="margin-left: 20px;">(a) <i>made to a registered person shall be the location of such person;</i></p> <p style="margin-left: 20px;">(b) <i>made to any person other than a registered person shall be, —</i></p> <p style="margin-left: 40px;">(i) <i>the location of the recipient where the address on record exists; and</i></p> <p style="margin-left: 40px;">(ii) <i>the location of the supplier of services in other cases.</i></p> <p>(3) <i>The place of supply of services, —</i></p> <p style="margin-left: 20px;">(a) <i>directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or</i></p> <p style="margin-left: 20px;">(b) <i>by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or</i></p> <p style="margin-left: 20px;">(c) <i>by way of accommodation in any immovable property for organizing any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or</i></p> <p style="margin-left: 20px;">(d) <i>any services ancillary to the services referred to in clauses (a), (b) and (c), shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:</i></p> <p style="margin-left: 20px;"><i>Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.</i></p> <p style="margin-left: 20px;"><i>Explanation. —Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.</i></p>
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- (4) *The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.*
- (5) *The place of supply of services in relation to training and performance appraisal to, —*
- (a) *a registered person, shall be the location of such person;*
  - (b) *a person other than a registered person, shall be the location where the services are actually performed.*
- (6) *The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.*
- (7) *The place of supply of services provided by way of, —*
- (a) *organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or*
  - (b) *services ancillary to organization of any of the events or services referred to in clause (a), or assigning of sponsorship to such events, —*
    - (i) *to a registered person, shall be the location of such person;*
    - (ii) *to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.*
- Explanation.—Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.*
- (8) *The place of supply of services by way of transportation of goods, including by mail or courier to, —*
- (a) *a registered person, shall be the location of such person;*
  - (b) *a person other than a registered person, shall be the location at which such goods are handed over for their transportation.*
- (9) *The place of supply of passenger transportation service to, —*
- (a) *a registered person, shall be the location of such person;*
  - (b) *a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:*

*Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2).*

*Explanation. —For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.*

(10) *The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.*

(11) *The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall, —*

(a) *in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;*

(b) *in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;*

(c) *in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means, —*

(i) *through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or*

(ii) *by any person to the final subscriber, be the location where such pre-payment is received or such vouchers are sold;*

(d) *in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:*

*Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services:*

*Provided further that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.*

*Explanation.—Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such*

*circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.*

- (12) *The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:*

*Provided that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.*

- (13) *The place of supply of insurance services shall, —*
- (a) *to a registered person, be the location of such person;*
  - (b) *to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.*

- (14) *The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.*

### 12.1 Important Definitions

#### (a) Location of Recipient of Services:

Section 2(14) of the IGST Act, 2017 defines “location of the recipient of services” as:

- (a) where a supply is received at a place of business for which the 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 (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.

#### (b) Location of the Supplier of Services:

Section 2(15) of the IGST Act, 2017 defines “location of the supplier of services” as:

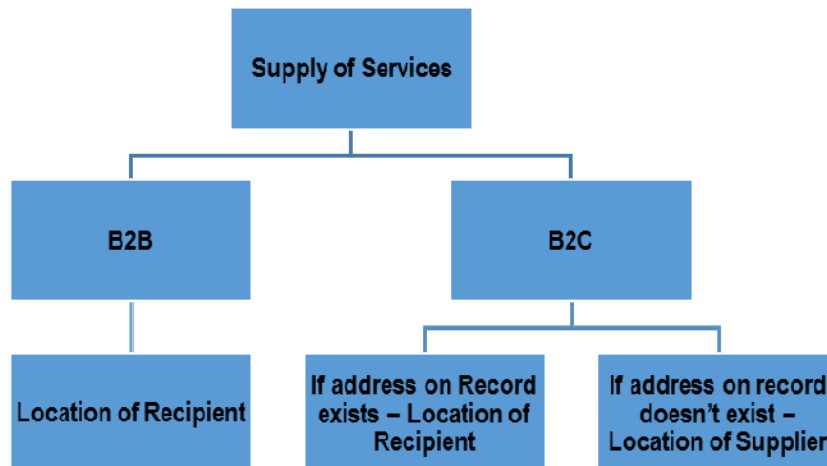
- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location 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;

## 12.2 Analysis

### (a) Place of Supply – Supplies within India

Place of supply of services where both the supplier and recipient are located within India will be determined in accordance with section 12 of the IGST Act.

- (i) General provision regarding place of supply will be as follows:
  - Services supplied to a recipient who is registered, POS will be the location of such person
  - Services supplied to a recipient who is not registered, POS will be the address-on-record of such person and where such address is not available, it will be the location of supplier

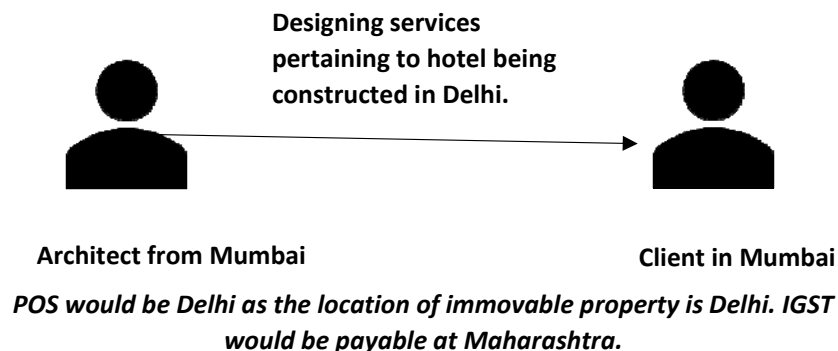


There could be a scenario where multiple POS in the same invoice to a particular customer because of supply of distinct goods and goods; services and services or goods and services may get covered. In such a case, the supplier has to issue a separate invoice where each invoice has only one POS. Eg: servicing of a motor vehicle wherein there is independent

service element and also spare parts getting replaced. Services are charged at 18% tax and spare parts majorly are taxed at 28%. Considering this case to be a B2C, for invoicing of services we have to go by address on record which could be other state hence POS is that other state. However, in case of goods since there is no evidence on record to the supplier that the goods which are replaced would be leaving the state of origin and would travel to the other state, the service provider would treat POS as his own state. This method is also supported by the fact that GSTR-1 (Outward supply) returns does not allow to key in 2 different POS for the same invoice.

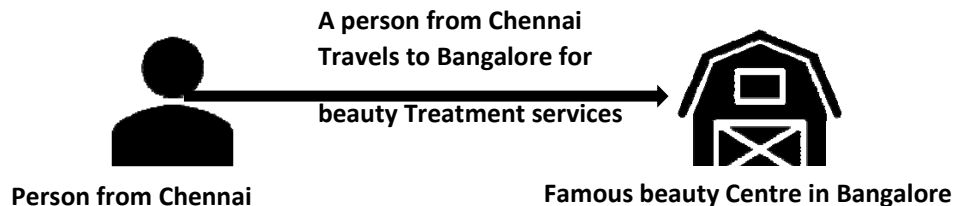
(ii) Specific provisions regarding place of supply that will apply in priority over the general provisions will be as follows:

- Services directly in relation to immovable property will be the location of such property. The expression 'in relation to' encompasses a wide range of services that have a proximate nexus with the immovable property. The provision lists these services – architects, interior decorators, surveyors, engineers and other related experts or estate agents, grant of rights to use immovable property or carrying out/ coordination of construction work. As can be seen, this list is not exhaustive and therefore – 'in relation to' – test will continue to be applicable to identify the services that will have the location of the property as its place of supply. Also, the location of the supplier or recipient is irrelevant in such cases. Further, there are other services that have proximity to immovable property that are 'by way of' accommodation. Such services too have, as their place of supply, the location of such property. Such property may be a hotel, inn, guest house, homestay, club or campsite including houseboat. The use of such property may be accommodation or for organizing a function such as marriage. The end-use will not alter the applicability of this provision but the proximity of the property vis-à-vis the services. Services that are ancillary to such services would also be covered by this provision. Further, goods required in construction activity received as stock before being assigned to any particular site will not be determined by this provision but the general provision. For example, steel purchased in bulk and sent to a central warehouse being deployed to any specific site.





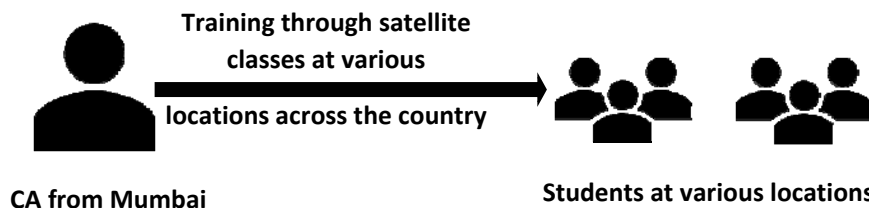
- Services of restaurant and catering, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery will be the location where these services are actually performed. The services listed in this provision do not carry a common thread so as to allow expanding this list. At the same time, each of these services themselves are a broad description of various specific services that may be performed under that umbrella. Services, must be examined very carefully to fall with the scope of this provision. It is important to understand POS will not help you to determine in which state you have to take registration, it only determines which is the state where supply is consumed in to determine the nature of tax. For understanding registration requirement one has to determine the same basis of Chapter VI of CGST Act within the scope of this provision.



***POS would be Bangalore as that is the place where service is performed.***

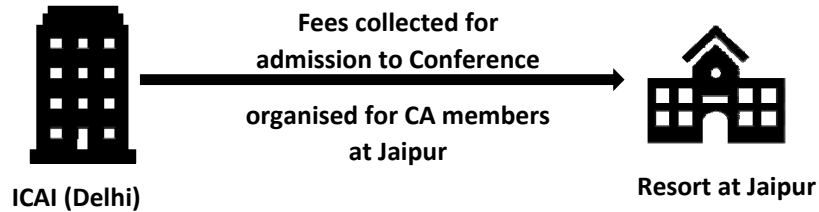
***CGST + Karnataka GST would be payable at Bangalore.***

- Services of training and performance appraisal supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the location where services are actually performed. Recipient here being the 'person liable to pay the consideration' is not to be misconstrued to be the 'trainee' or 'person appraised'. Eg: a corporate training organized by a training institute in Mumbai for a registered corporate client in Bangalore. The amount of consideration is paid by the corporate through the individual participants. Here the liability to pay the consideration is on the corporate entity in Bangalore and not on individual participants. Hence, POS has to be determined on the basis of location of the recipient being corporate entity and not based on the place where the services are actually performed.



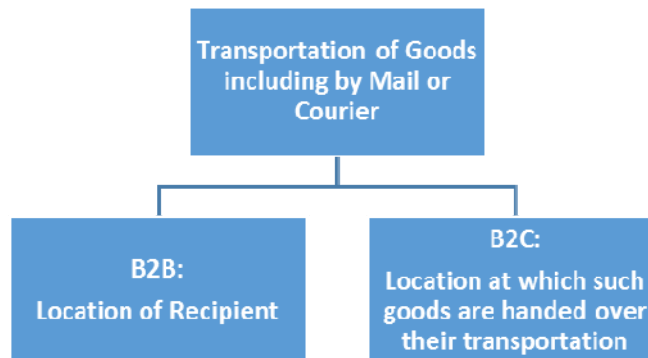
***POS would be Mumbai as that is the place where service is performed. CGST + Maharashtra GST would be payable at Mumbai.***

- Services of admission to a venue will be the location of the venue. The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment or an amusement park including ancillary services. Services referred to here are only 'admission' and not for organizing the event at the venue.

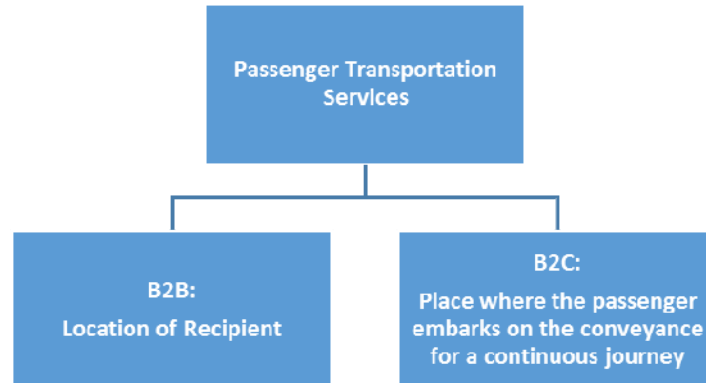


**POS would be Jaipur as that is the place where event is actually held. IGST would be payable at Delhi.**

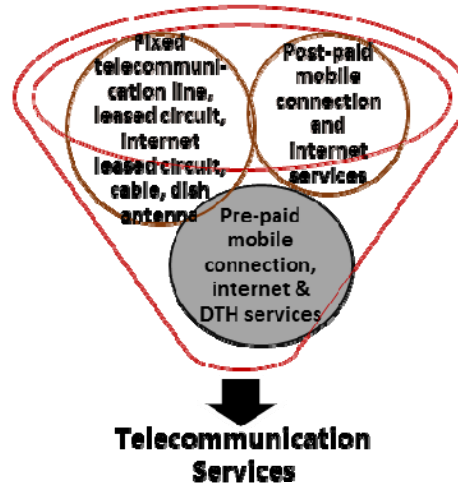
- Services of organizing an event including ancillary services supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the location of the venue itself. The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment. Services referred to here are 'by way of' organizing the event at the venue. Where the event is organized in a ground or field being an immovable property, the service of securing the location has, as its place of supply, determined by a foregoing provision but the rest of the services of organizing the event alone will fall in this provision. If you look at this provision along with the previous for admission to an event, in case of B2B transaction admission to an event would have POS as the location of the event whereas services of organizing the event is based on the location of the registered recipient.
- Services of transportation of goods supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the location where goods are handed over for such transportation. Transportation of goods may be by any mode including mail or courier.



- Services of transportation of passenger will be the location of the recipient when supplied to a registered person. When the recipient is not registered, the place of supply will be the location of embarkation. Return journey is regarded as separate bookings and where the point of embarkation is unknown then the place of supply will be based on the general provisions prescribed.



- Services supplied on-board a conveyance, will be the first scheduled point of departure. Irrespective of whether the supplies are B2B or B2C the POS is determined based on the first scheduled point of departure. The registered recipient receiving any services on board through its employees/directors would lose the ITC on the said transaction in case if the location of the registered recipient and the first schedule point of departure are in two different states.
- Telecommunication services are provided in various forms and the place of supply will depend on the mode of providing the services. Where the services involve an in situ device installed to enable the service, the place of supply will be the location where such device is installed. This device may be a dish antenna, telephone line, etc. Where the services involve portable device, the place of supply will be the billing address if the same is on post-paid basis. Where it is on pre-paid basis, the place of supply will be the location of any intermediary who facilitates the supply or location where payment is received. Where none of the situations provide an appropriate location, then the place of supply will be the address-on-record of the recipient. If address is not available, then the location of supplier will be the place of supply.



- Banking and financial services including stock broking services will be the location of the address-on-record of the recipient. And if address is not available, then the location of supplier will be the place of supply. The services referred in this provision are not services 'by' a banking or financial institution but services 'of' banking and financial services. As such, the service is to be examined and not the service provider. Classification of services to identify the applicability of this provision is an important exercise that is to be undertaken.
  - Insurance services supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the address-on-record of the recipient.
  - Advertisement services involving 'dissemination' of the material supplied to the Government or a statutory body will be the location of such dissemination. Where it is identifiable to a specific State, then that would be the place of supply and where it is disseminated over number of States, then a rule of proportion or any other reasonable basis is to be applied.
- (iii) Considering that place of supply has been so specifically covered in the various provisions discussed, it is to be borne and recollected that identifying the place of supply is for purposes of determining whether it is an inter-State supply or an intra-State supply. After must resistance to let go of the experience from erstwhile tax laws, it would dawn upon each of us to eschew seeking registration in every State where their services constitute a place of supply, but rather rely upon this section to open the doors to choose to effect inter-State supplies from one (or few) State only instead of multi-State registration that may be necessitated under erstwhile tax laws. Another important aspect especially when a recipient is a registered person which comes out on analysis of Section 12 is that where ever the POS is based on location of the recipient the ITC is

intact and wherever the POS is not based on location of the recipient but based on some other criterion as discussed above, then there is high probability of losing out on ITC in the hands of a registered person. Eg: immovable property related services, admission to an event, services on board an aircraft etc.

### Statutory provision

#### **13. Place of Supply of Services where Location of Supplier or Location of Recipient is outside India**

(1) *The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.*

(2) *The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:*

*Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.*

(3) *The place of supply of the following services shall be the location where the services are actually performed, namely: —*

(a) *services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:*

*Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:*

*Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, then that which is required for such repairs;*

(b) *services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.*

(4) *The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.*

(5) *The place of supply of services supplied by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational or entertainment event, or a*

celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organization, shall be the place where the event is actually held.

- (6) Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.
- (7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.
- (8) The place of supply of the following services shall be the location of the supplier of services, namely: —
- (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
  - (b) intermediary services;
  - (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

*Explanation.* —For the purposes of this sub-section, the expression, —

- (a) “account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
  - (b) “banking company” shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);
  - (c) “financial institution” shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);
  - (d) “non-banking financial company” means, —
    - (i) a financial institution which is a company;
    - (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or
    - (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.
- (9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.

- (10) *The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.*
- (11) *The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.*
- (12) *The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.*
- Explanation. —For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely: —*
- (a) *the location of address presented by the recipient of services through internet is in the taxable territory;*
  - (b) *the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;*
  - (c) *the billing address of the recipient of services is in the taxable territory;*
  - (d) *the internet protocol address of the device used by the recipient of services is in the taxable territory;*
  - (e) *the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;*
  - (f) *the country code of the subscriber identity module card used by the recipient of services is of taxable territory;*
  - (g) *the location of the fixed land line through which the service is received by the recipient is in the taxable territory.*
- (13) *In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.*

### 13.1 Analysis

Place of supply of services where either the supplier or recipient are located outside India will be determined in accordance with section 13 of the IGST Act. In other words, this provision applies for the determination of export of services as well as for import of services.

International supplies involving services are not verifiable similar to goods. GST, in certain cases, treats supplies involving goods as 'supply of services'. In such cases too, this provision will apply for determination of their export and import. Given the definition of export of services and import of services and on comparing them to goods, it will be evident that there is really

no comparison. Matters such as location of supplier, location of recipient, currency of compensation, etc., assume importance in relation to services including goods that are treated as supply of services. In this background, we may analyze place of supply of services where either one – supplier or recipient – is located outside India.

Then the place of supply determined by application of this provision may be carried into the definition to determine whether the international supply meets the requirements to be regarded as 'export of services' or 'import of services'. This may be somewhat unnatural but that is the correct approach because location of recipient outside India and payment in foreign currency are tests that the GST law does not appreciate. In this time and age of forex surplus, when two enterprises which are both located within India transacting in foreign currency is not impermissible.

Place of supply of international supplies is as follows:

(i) General provision regarding place of supply will be the location of the recipient of the services. But, it will be the location of the supplier of services if the location of the recipient is not known without employing any extraordinary means. Recipient is defined as 'person liable to pay consideration' in section 2(93) of the CGST Act

(ii) Specific provisions regarding place of supply that will apply in priority over the general provision will be as follows:

- Services that are 'in respect of' goods made available 'by' recipient 'to' supplier or persons representing supplier for performance of those services will be the location where the services are actually performed. It is worthwhile to note here that the goods must be made available only by the recipient and **not his representative** but whereas person to whom it is made available could be supplier or his representative. It is also noteworthy that the services to which this provision is to apply are not expressly listed here and left to an application of – made available for performance – test to determine its applicability. Services that are supplied by remotely accessing the goods, the place of supply will be the location of the goods, without prejudice to goods that are imported for 'repair and return'. In cases where services are supplied at multiple locations, including a

2(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 recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8;

2(11) "import of service" 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;



location in the taxable territory, PoS is location in the taxable territory. Further, rule of proportion is to be applied in case the services are carried out in different States.

- Services 'directly in relation to' immovable property will be the location of such property. The expression 'in relation to' encompasses a wide range of services that have a proximate nexus with the immovable property. Such property may be a hotel, inn, guest house, homestay, club or campsite including houseboat. The end-use will not alter the applicability of this provision but the proximity of the property vis-à-vis the services. Services that are ancillary to such services would also be covered by this provision. This provision is identical to Section 12 (3) discussed in earlier. In cases where services are supplied at multiple locations, including a location in the taxable territory, PoS is location in the taxable territory. The rule of proportion is to be applied in case the services are carried out in different States. Services required in construction activity which are received before being assigned to any particular site will not be determined by this provision but the general provision. For example, lease of construction equipment sent to a central warehouse before being deployed to any specific site.
- Services of admission to a venue will be the location of the venue. The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment or an amusement park including ancillary services. Services referred to here are admission or organizing the event at the venue. In cases where services are supplied at multiple locations, including a location in the taxable territory, PoS is location in the taxable territory. Further, rule of proportion is to be applied in case the services are carried out in different States.
- Services in the following three cases deviates from the 'destination' principle and appoints the place of supply to be the location of the supplier:
  - Services of a banking company or a financial institution or NBFC – reference to services 'of' indicate that this specific provision will encompass all activities by such a service provider performed in their capacity as such.
  - Intermediary services – defined in section 2(13) provide for a broad set of activities. It is important to examine whether the role of an intermediary is limited in any manner to marketing (proliferation of information to potential customers), pre-sale (submitting quotations) and post-sale (assisting in delivery, installation and after-sales support).
  - Hiring of transport for a period upto one month – all services attendant to securing such limited duration. This excludes aircraft and vessel other than yacht.
- Services of transportation of goods will be the destination of the goods. Transportation of goods may be by any mode but not mail or courier.

- Services of transportation of passenger will be the location where the passenger embarks for the journey.
  - Services supplied on-board a conveyance, will be the first scheduled point of departure. Services are to be supplied during the journey and substantially consumed on-board. Any deviation from this condition will result in it getting classified under the general rule.
  - Services of online information and database access or retrieval will be location of recipient. Please refer to detailed discussion under section 14 on OIDAR. Further, such recipient will be considered as situated in a taxable territory if any two of the following conditions are fulfilled:
    - Address of recipient in taxable territory
    - Card of recipient that is used to pay for the services is issued in taxable territory
    - Billing address is in taxable territory
    - Internet protocol address in taxable territory
    - Bank of recipient in taxable territory
    - Country code of SIM card is of taxable territory
    - Fixed line used by recipient is in taxable territory
- (iii) Where there is any occasion for double taxation or non-taxation, the Central Government is empowered to notify the place of supply with respect to service of any specific description, wherein the place of supply will be the place of effective use and enjoyment of a service.

#### Statutory provision

#### **14. Special Provision for Payment of Tax by a Supplier of Online Information and Database Access and Retrieval (OIDAR) Services**

- (1) *On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:*

*Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:—*

<p>(a) <i>the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;</i></p> <p>(b) <i>the intermediary involved in the supply does not authorize the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;</i></p> <p>(c) <i>the intermediary involved in the supply does not authorize delivery; and</i></p> <p>(d) <i>the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.</i></p> <p>(2) <i>The supplier of online information and database access or retrieval services referred to in sub-section (1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:</i></p> <p><i>Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:</i></p> <p><i>Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.</i></p>
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#### 14.1 Introduction

This is a new transaction that is brought within the tax net only from 1 Dec 2016 under Service Tax. The experience of less than 6 months has been more than encouraging in the amount of tax that has been collected. OIDAR is in a class of its own as regards taxable person and place of supply. Everything discussed until now must be given a go-bye and OIDAR understood clearly.

#### 14.2 Analysis

Online Information and database access or retrieval (OIDAR) is defined in a specific manner and may be simplified as follows:

2-step definition	Services (and not goods) supplied
	Delivered over continuous internet connectivity
2-step clarification	Involves minimal human intervention
	Impossible to ensure in absence of information technology

Six illustrations in the definition and some explanation about inclusions and exclusions:

Illustration	Includes	Excludes
Online advertising E.g. Google	<ul style="list-style-type: none"> <li>• Banner ads, pop-up ads, sponsored ads, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Preparation of content for online display like production, distribution and services of intermediaries</li> <li>• Advertisement in newspaper, on posters and on television</li> </ul>
Cloud services E.g. Amazon Web services	<ul style="list-style-type: none"> <li>• Webhosting</li> <li>• Data warehousing</li> </ul>	<ul style="list-style-type: none"> <li>• Software license issued by delivery of key number to remotely download via FTP</li> </ul>
e-books, movies, music, software and other intangibles E.g. Gaana.com & Netflix	<ul style="list-style-type: none"> <li>• Access to content permitted only 'online' even if stored in cache on user-end device but not allowing (official) permanent download</li> </ul>	<ul style="list-style-type: none"> <li>• Downloadable e-books, movies, music, etc. which are available for offline viewing without any mandatory e-check of the user credentials</li> <li>• Content provided through dedicated user-end device for use of content</li> <li>• Supply of physical books, newsletter, newspaper or journals</li> <li>• Booking services or tickets to entertainment events, hotel accommodation or car hire</li> <li>• Educational or professional courses, where the content is delivered by a teacher over the internet or electronic network</li> </ul>
Online data or information E.g. LinkedIn, Taxindiaonline.com	<ul style="list-style-type: none"> <li>• Paid websites that provide information</li> <li>• Free sites with valuable information – if not treated as 'supply', ITC will not be available but if treated as 'supply, output tax will apply on like-kind-and-quality or cost-plus basis</li> </ul>	<ul style="list-style-type: none"> <li>• Net banking where banking information is accessed online but merely incidental to offline banking transactions</li> <li>• Electronic commerce</li> <li>• Non-commerce and information portals</li> <li>• C2C portals</li> </ul>

Online supply of digital content E.g. Setmax online, YouTube	TV programs and movies supplied over the internet like monitored by issuing user login / password	<ul style="list-style-type: none"> <li>• Auditors report sent to client via email. It is merely a form in which the offline services are communicated. Services of auditor is not the email of report issued but the opinion expressed about the financial position of the auditee</li> <li>• Online order processing in respect of offline supply of goods</li> <li>• Services of lawyers and financial consultants who advise clients through email</li> </ul>
Data storage E.g. Amazon	<ul style="list-style-type: none"> <li>• Webservers – shared or dedicated, with/ without support, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Lease of server with redundancy</li> </ul>
Online gaming E.g. Zapak.com	<ul style="list-style-type: none"> <li>• Live-gaming</li> <li>• Collaborative gaming</li> </ul>	<ul style="list-style-type: none"> <li>• Computer/ mobile games to be used after downloading to user-end device</li> </ul>

Like every transaction done over the internet is not e-commerce, everything delivered online is not OIDAR. The acid-test is to see- 'always on'-status of internet connectivity for the continuous supply of the underlying service. Mere use of internet for delivery of services that can otherwise be provided offline through some media like CD, pen-drive, etc. all though less-securely will not be OIDAR. The use of file-transfer-protocol (FTP) for delivery of software or music or games is only to ensure integrity in the delivery of these high-volume files and the use of internet for FTP does not become OIDAR.

To summarise, the following table depicts the ingredients prescribed in this section:

Supplier	Supplier of Services in non-taxable territory		
<b>Recipient</b>	B2C (non-taxable online recipient – NTOR)	Intermediary@ (deemed to be recipient re-supplying to NTOR)	B2B# (all others)
<b>Tax Payer</b>	Overseas supplier	Recipient	Recipient
<b>Tax Payment</b>	Forward Charge (through representative)	Forward Charge	Reverse Charge

*@ issues invoice, authorizes charge for services, responsible to collect payment, authorizes delivery and controls terms and conditions of supply. Else, not an intermediary liable to pay*

*# B2B may be registered taxable person for any output supply*

### **14.3 Comparative Review**

In Service Tax, erstwhile law similar provision was added with effect from 1<sup>st</sup> December 2016.

### **14.4 Related Provisions**

1. For the purposes of the definition of 'non-taxable online recipient, "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 Government,with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;
2. **Section 13(12)-IGST Act:** The place of supply of the "online information and database access or retrieval services" shall be location of recipient of service.
3. Reverse charge payment under inter-State supplies

IGST is levied on all interstate purchases. However, in case any supplier makes any inter-State supply, he is required to obtain registration irrespective of his turnover. However, when a person who makes purchases from an unregistered supplier even in case of inter-State supplies has been fastened with the responsibility to pay tax as recipient on such transactions vide section 5(4) of IGST Act (exempted upto March 31, 2018 through a notification). Accordingly, wherever the supplier who was to levy IGST but is unregistered, the responsibility to pay such IGST shall lie on the recipient of supplies. Further, the place of supply under this case is immaterial as IGST can be paid by the registered person for any State under his registration. However, it is also important to note that while the tax is to be discharged by the recipient, the basic levy of tax shall be determined from the perspective of the supplier and whether the transaction shall be inter-State or intra-State shall be determined by the location of supplier and not recipient. Thus, any supply received from the supplier of Maharashtra by recipient of Delhi shall be inter-State supply even when he is required to pay tax under reverse charge. In case the place of supply is supplier's location and recipient is not registered in such state, then recipient is not liable to pay tax in such State as the transaction is an intra-State supply and recipient is not a registered person for the purpose of such intra-State supplies. Eg: immovable property related services.