

Chapter-III

Levy and Collection of Tax

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Statutory Provisions

<p>7. Scope of supply</p> <p>(1) <i>For the purposes of this Act, the expression “supply” includes—</i></p> <ul style="list-style-type: none">(a) <i>all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;</i>(b) <i>import of services for a consideration whether or not in the course or furtherance of business;</i>(c) <i>the activities specified in Schedule I, made or agreed to be made without a consideration; and</i>(d) <i>the activities to be treated as supply of goods or supply of services as referred to in Schedule II.</i> <p>(2) <i>Notwithstanding anything contained in sub-section (1), —</i></p> <ul style="list-style-type: none">(a) <i>activities or transactions specified in Schedule III; or</i>(b) <i>such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,</i> <p><i>shall be treated neither as a supply of goods nor a supply of services.</i></p> <p>(3) <i>Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—</i></p> <ul style="list-style-type: none">(a) <i>a supply of goods and not as a supply of services; or</i>(b) <i>a supply of services and not as a supply of goods.</i>
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SCHEDULE I

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:
Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. Supply of goods—
 - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business

SCHEDULE II

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

1. Transfer
 - (a) any transfer of the title in goods is a supply of goods;
 - (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
 - (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods
2. Land and Building
 - (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
 - (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process
Any treatment or process which is applied to another person's goods is a supply of services.
4. Transfer of business assets
- (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;
- (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;
- (c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—
- (i) the business is transferred as a going concern to another person; or
- (ii) the business is carried on by a personal representative who is deemed to be a taxable person.
5. Supply of services
The following shall be treated as supply of services, namely:—
- (a) renting of immovable property;
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.
- Explanation.—For the purposes of this clause—
- (1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—
- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or **(20 of 1972)**

<ul style="list-style-type: none"> (ii) a chartered engineer registered with the Institution of Engineers (India); or (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority; <p>(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;</p> <ul style="list-style-type: none"> (c) temporary transfer or permitting the use or enjoyment of any intellectual property right; (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software; (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and (f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration. <p>6. Composite supply</p> <p>The following composite supplies shall be treated as a supply of services, namely:—</p> <ul style="list-style-type: none"> (a) works contract as defined in clause (119) of section 2; and (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration. <p>7. Supply of Goods</p> <p>The following shall be treated as supply of goods, namely:—</p> <p>Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.</p>

SCHEDULE III

[See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF
GOODS NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3. (a) the functions performed by the Members of Parliament, Members of State

<p>Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;</p> <p>(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or</p> <p>(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.</p> <p>4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.</p> <p>5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.</p> <p>6. Actionable claims, other than lottery, betting and gambling.</p> <p>Explanation.—For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.</p>
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Relevant circulars, notifications, clarifications issued by Government

1. Notification No. 14/2017-Central Tax (Rate), dt. 28.06.2017 to notify the supplies which shall be treated neither as a supply of goods nor a supply of service;
2. Circular No. 35/9/2018 dated 05.03.2018 regarding taxable services provided by a member of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV;
3. Circular No. 34/8/2018 dated 01.03.2018 clarifying on the taxability of certain services;
4. Circular No. 1/1/2017-IGST dated 07.07.2017 regarding Inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance;
5. Circular No. 21/21/2017 dated 22.11.2017 to clarify on Inter-state movement of rigs, tools and spares, and all goods on wheels like cranes;
6. Chapter three of the compilation of the GST Flyers as issued by the CBIT can be referred to for a gist of the statutory provisions, titled 'The Meaning and Scope of Supply'.

Related provisions of the Statute

Section or Rule	Description
Section 2(31)	Definition of Consideration
Section 2(17)	Definition of Business
Section 2(5)	Definition of Agent

Section 2(88)	Definition of Principal
Section 15	Value of taxable Supply
Section 25	Registration
Section 16	Input tax credit
Chapter IV – Rules	Determination of Value of Supply Rules

7.1 Introduction

While the definition of the word 'supply' is inclusive, the legislature has carefully chosen not to use the word/s such as "means", or "means and includes", "shall mean", or "shall include", etc. A careful consideration of the above explanation would indicate that the draftsman is uncertain about any transaction of supply that could escape the ambit of levy. It is for this reason that despite being exhaustive, the legislature has used the word "includes".

A plain reading of the definition of the word 'supply' contained in Section 7(1) would invite anybody's attention to the 8 words – sale, transfer, barter, exchange, license, rental, lease or disposal. Look at these 8 words – they are arranged in a descending order. Words 2 to 8 was a subject matter of challenge under the erstwhile State-level VAT Laws. This ambiguity has been done away with in the GST Laws. These 8 words together form a 'continuum'. The last 7 words complete the absoluteness of the word 'sale' and / or supply.

The Model GST Law released in June 2016 had included the meaning of the term 'Supply' within the clauses of the definition Section. However, in GST law, the term 'supply' is defined by way of a separate and distinct Section, Section 7. One understands that the meaning attributed to the term "Supply" is of very wide amplitude, but yet, an inclusive one. It must be noted that this term is ordinarily attributable to an 'outward supply', unless the context so requires that the term refers to an inward supply - say in case of importation of services or in respect of transactions without consideration etc.

The word 'supply' could be understood as actual or implied. Implied supplies are governed by the relevant Schedules. The three pillars of a supply would be:

- (a) subject – viz. goods, services or goods treated as services. One cannot find an instance in the GST statute where a supply of services is treated as a supply of goods.
- (b) place of supply – to identify whether the transaction is an inter-State supply or an intra-State supply
- (c) the legislature times the supply for goods as well as services.

7.2 Analysis

Supply:

- (a) **Generic meaning of 'supply':** Supply includes all forms of supply (goods and / or services) and includes agreeing to supply when the supply is for a consideration and in the course or furtherance of business (as defined under Section 7 of the Act). It specifically provides for the inclusion of the following 8 classes of transactions:

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

The word 'supply' is all-encompassing, subject to exceptions carved out in the relevant provisions. There are various ingredients that differentiate each of these eight forms of supply. On a careful consideration of the purposeful usage of these eight adjectives to enlist them as 'forms' of supply, it becomes clear that the legislature makes its intention known by the choice of words that are deliberate and unambiguous.

Barter means a "thing or commodity" given in **exchange** for another. In other words, no value is fixed- viz., bartering a wrist watch with a wall clock. While exchange means:

- ✓ Mutual grant of equal interests, the one in consideration of another.
- ✓ When two persons mutually transfer ownership inter-se, at a price agreed upon or for goods and / or services plus money.

Disposal means distribution, transferring to new hands, extinguishment of control over, forfeit or pass over control to another.

Transfer means to pass over, convey, relinquishment of a right, abandonment of a claim, alienate, each or any of the above acts, lawfully.

A tentative attempt at identifying the characteristics of each of these forms of supply is provided below for consideration:

Forms of Supply	Two Persons capable to Contract	Consideration in Money (Price)	Willing Buyer	Willing Seller	Delivery of Possession	Permanent alienation of Title	Consensus as to Identity of Object of Supply
Sale	✓	✓	✓	✓	✓	✓	✓
Transfer	✓	✓	✓	×	✓	✓	✓
Barter	✓	×	✓	✓	✓	✓	✓
Exchange	✓	✓/×	✓	✓	✓	✓	✓
License	✓	✓	✓	✓	×	×	✓
Rental	✓	✓	✓	✓	✓	×	✓
Lease	✓	✓	✓	✓	✓	×	✓
Disposal	✓	✓	×	✓	✓	✓	×

On an understanding of the above chart, one may infer that 'supply' is not a boundless word of uncertain meaning. The inclusive part of the opening words in this clause may be understood to include everything that supply is generally understood to be PLUS the ones that are enlisted. It must be admitted that the general understanding of the word 'supply' is but an amalgam of these 8 forms of supply.

Any attempt at expanding this list of 8 forms of supply, in case of goods, must be attempted with great caution. Attempting to find other forms of supply has in the normal course not yielded the desired results. However, transactions that do not amount to supply have been discovered viz., - transactions in the nature of an assignment where one person steps into the shoes of another, appears to slip away from the scope of supply, as well as transactions where goods are destroyed without a transfer of any kind taking place. Perhaps, the case of destruction of goods is not included within the meaning of 'supply' considering that the input tax credits in respect of destroyed goods is a blocked credit. However, the contradiction may continue until a clarification is issued to state whether the blocked credits is in respect of goods that have been destroyed before the availment of credits, or is applicable even in case where goods are destroyed after the credits have been availed in respect of such goods.

Now looking at 'services', we find that the adjectives used to describe the 8 forms of supply in this clause are akin to transactions involving goods and not services. Services other than licensing, rental and leasing services have not been specifically included in the meaning of the term 'supply'. However, transactions involving services are also required to be passed through the same criteria for determination of supply. In doing so, a slight adjustment in the way of looking at transactions involving services is necessary so as to substitute the object of supply from goods to services while administering the tests for determining the forms of supply involving services. In other words, the same 8 forms of supply must be applied in relation to services but with adjustment that is understood by the expression *mutatis mutandis*.

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

The word 'supply' should be understood as follows:

- It should involve delivery of goods and / or services to another person; The word 'delivery' must be understood from allied laws such as The Sale of Goods Act, 1930 or the Contract Laws; Delivery could be actual, physical, constructive, deemed etc.
- Supply will be treated as 'wholly one supply' – if the goods and / or services supplied are listed in Schedule II or could be classified as a composite supply or mixed supply;
- It should involve quid-pro-quo – viz., the supply transaction requires something in return, which the person supplying will obtain, which may be in money / monetary

terms / in any other form(**except** in cases of activities specified in Schedule I which are deemed to be supplies, even when made without consideration);

- Transfer of property in goods from the supplier to recipient is not necessary viz., lease or hiring of goods;

It is essential that all the above forms of transactions including the extended and generic meaning given to the word 'supply' should be made for a 'consideration'. The only exception for this rule of construction will be cases specified in Schedule I. Absence of consideration (as defined in Section 2(31)) will take away the character of the word 'supply' under this clause, and accordingly, the transaction will not attract tax. It is important to note supplies listed in Schedule I would nevertheless attract the wrath of tax, even when made without consideration. One has to therefore, be very careful, while analysing the tax implications in respect of supplies listed in Schedule I.

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

The expression 'in the course of' must be construed differently from 'in the course or'. The GST Laws use the expression 'in the course or' and careful analysis is therefore, essential. The expression 'in the course' appearing in Section 7(1)(a) does not appear in Section 7(1)(b) or Section 7(1)(c) or Section 7(1)(d). However, one cannot lose sight of the fact that the expression 'in the course' is used selectively in respect of transactions listed in Schedule I, II or III. The import of this would mean that the meaning attributable to the expression 'in the course' would apply only in respect of such of those transaction, so listed, in the relevant Schedules.

Let us now try to understand the meaning of the phrase 'in the course'. The expression 'in the course' implies not only a period of time during which the movement or transaction is in progress, but postulates a connected relationship. Therefore, the class of transactions needs to be analysed and cannot be randomly applies to the provisions of Section 7 or Section 8. So construed, the word 'or' appearing in the phrase or expression 'in the course **or** furtherance of business' assumes importance. When read in a proper perspective, the preposition 'or' actually bisects the entire phrase into two limbs. Therefore, the 8 forms of supply would tantamount to transaction of supply when such supplies are in the *course of business*, or in the *furtherance of business*. Therefore, the legislature has supplied huge amount of elasticity in understanding the meaning of the term 'supply'.

The term 'business' has been defined under the GST Laws to include:

- (i) a wide range of activities (being "trade, commerce, manufacture, profession, vocation, adventure, wager or any similar activity"),
- (ii) "whether or not it is for a pecuniary benefit",
- (iii) regardless of the "volume, frequency, continuity or regularity" of the activity.
- (iv) and those "in connection with or incidental or ancillary to" such activities.

A recent order of the Authority for Advance Ruling – Kerala has ruled, in a matter involving recovery of food expenses from employees for the canteen facility provided by a Company, that such recovery falls within the definition of 'outward supply' and are therefore taxable outward supplies under the GST law. In para 9 of the order, the AAR-Kerala has concluded that the supply of food by the applicant (Company) to its employees would definitely come under clause (b) of Section 2(17) as a transaction incidental or ancillary to the main business and thereby the test of 'in the course or furtherance of business' is met by the applicant. – *Order No. CT/531/18-C3 dated 26.03.2018.*

Drawing similarities from the erstwhile State-level VAT laws, it follows that the said transaction should be with a commercial motive, whether or not there is a profit motive in it or its frequency / regularity. E.g.: sale of goods in an exhibition, participation in a trade fair, warranty supplies, sale of used assets / scrap sales, etc. would be activities in the course of business.

- (c) **Import of service will be taxable in the hands of the recipient (importer):** The word 'supply' includes import of a service, made for a consideration ('consideration' as defined in Section 2(31)) and whether or not in the course or furtherance of business. This implies that import of services even for personal consumption would qualify as 'supply' and therefore, would be liable to tax. This would not be subject to the threshold limit for registration, as tax would be payable in case of import of services on reverse charge basis, requiring the importer of service to compulsorily obtain registration in terms of Section 24(ii) of the Act. However, the GST law has ensured that persons who are **not** engaged in any business activities will not be required to obtain registration and pay tax under reverse charge mechanism, and it turn, requires the supplier of services located outside India, to obtain registration for the OIDAR (online information and database access and retrieval) services only

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

- (d) **Transactions without consideration:** The law lists down, exhaustively, cases where a transaction shall be treated as a 'supply' even though there is no consideration. Such

transactions are listed in Schedule I. Once an activity is deemed to be a 'supply' under the entry listed in Schedule I, the value of taxable supply shall be determined in terms of provisions of Section 15(4) of the Act read with Chapter IV (Determination of Value of Supply) of CGST Rules, 2017.

In this regard, it may be noted that on careful consideration of the essential ingredients of a valid contract, it cannot be disputed that a contract without consideration is not a contract at all. The reference made to 'transactions without consideration' in Schedule I does not imply that a void contract is being made valid, by GST laws. It can be argued that transactions listed in Schedule I, are not contracts at all owing to lack of consideration in terms of the Contract Laws. Even though they are not contracts, by legal fiction, flowing from section 7(1)(c) read with Schedule I, they will be nevertheless regarded as a 'supply' and made taxable. As can be seen from the above, in all other clauses of section 7(1), supply exists within a valid contract, but in select circumstances supply is imputed by legal fiction in the absence of a contract. It is therefore important not to extrapolate this legal fiction beyond the specific cases to which the law imputes this fiction.

The activities specified in Schedule I are analysed in the ensuing paragraphs:

- 1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.**
 - a. Of the 8 forms of supply, the only forms that qualify as a supply, under this category are 'transfer' and 'disposal'. Other 6 forms of supply listed in section 7(1)(a) would not stand categorised in this entry, given that there is (a) an element of a consideration that is intrinsic to the form, such as the case of a sale or barter or exchange, or (b) there is no business asset that is permanently transferred such as in the case of a licence or rental or lease, or any other service for that matter.
 - b. Ordinarily, there can be no permanent transfer in case of goods sent for job work. The aspect of sending goods on job work is not a supply, has been clarified vide Circular No.38/12/2018 dated 26.03.2018. However, where a registered person has purchased any moulds, tools, etc. and has sent the same to the job worker, there is a good chance that the goods are never returned, given that the time limits specified in Section 143 for goods sent for job work does not apply to moulds, tools and other specified goods.
 - c. It may be noted that this entry looks to tax such of those permanent transfers or disposals where input tax credit has been availed on the business asset being transferred or disposed. For instance, where a capital asset has been procured, say, by a distillery for the purpose of manufacture of alcoholic beverages, no input tax credit would have been availed on such asset. Accordingly, there would be no output tax payable if the asset is permanently transferred to another entity (unrelated), if the transfer lacks consideration. However, if a consideration exists, there can be no escape from the levy.

- d. While the word 'transfer' in this Entry suggests that there should be another person who would receive the business assets, there is no requirement of another person in the case of 'disposal'. Therefore, if a business asset on which credit is claimed has been discarded, the transaction shall be regarded as a supply.
 - e. Business assets procured for the purpose of serving the requirements of 'Corporate Social Responsibility', being a statutorily imposed obligation' may be contended to be a procurement made in the course or furtherance of business, and an attempt can be made to avail input tax credit. The issue would however remain contentious and there are no precedents. However, there would be no escape from the levy of tax on the transaction, if the asset is permanently transferred. The treatment would be no different even in the case of a donation.
- 2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:**

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both

- a. The deemed supplies covered in this entry are based on a relationship between the supplier and recipient. The relationship referred are as follows:
 - i. Related persons: The meaning of this term is defined by way of an explanation to Section 15, and is limited to the following relationships, including legal persons:
 - 1. Officers or directors of one another's businesses;
 - 2. Legally recognised partners in business;
 - 3. Employer and employee;
 - 4. Persons where any third person directly / indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
 - 5. One of them directly or indirectly controls the other;
 - 6. Persons who are directly or indirectly controlled by a third person;
 - 7. Persons who directly or indirectly control a third person;
 - 8. Members of the same family; and
 - 9. Persons who are associated in one another's business where one is the sole agent or sole distributor or sole concessionaire.

- ii. Distinct person in terms of Section 25(4) and 25(5) of the Act: The term 'distinct person' is used in specific cases provided under the law, and cannot be attributed to any two different persons. Distinct persons are:
 - 1. GST registrations obtained under a single PAN (including business verticals in the same State having separate registrations);
 - 2. Establishments under a single PAN liable to be registered separately – say a registration obtained in one State and a branch located in another State that is required to obtain a registration, or SEZ registration and a non-SEZ place of business in the same State that is liable to obtain a registration;
 - 3. Establishments under a single PAN, located in different States – say a registration obtained in one State and an office located in another State from where no supplies are effected (i.e., not required to obtain a registration).
- b. Transactions with distinct persons are normally without consideration since they are part of the same entity located in different geographies, unless the accounting system is so sophisticated or so devised, that it treats the locations in each State as a separate / independent entity even for book-keeping purposes and effects payments in monetary terms. Let us take instances of transactions between distinct persons that are not traceable in the books of account, but requires attention from the perspective of this entry in the Schedule:
 - i. Stock transfers e.g., transfer of sub-assemblies, semi-finished goods or finished goods;
 - ii. Transfer of new or used capital goods/fixed assets – including movement of laptops when employees are transferred from one location to another;
 - iii. Bill-to ship-to transactions wherein the vendor issues the invoice to the corporate office and ships the goods to the branch office;
 - iv. Centralised management function like Board of Directors, Finance, Accounts, HR, Legal, procurement functions and other corporate functions at one location say corporate office and the entity having multiple registrations in various states results in supply of management services by the corporate office to distinct persons;
 - v. A transaction of sale of goods from one registration and providing after sales support or warranty services/replacement services by another registration of the same entity;
 - vi. Contract awarded by a customer to an entity at the corporate office from where the centralized billing to the customer is made but the execution of

the contract is carried out through various registrations of the same entity located in other / multiple States.

- vii. Permitting employees to make use of the office assets for personal use – say usage of motor vehicles, laptops, printers, scanners, etc.
- c. It appears that this entry, has an overriding effect on the first entry of the Schedule relating to transfer or disposal. In other words, in case a business asset in respect of which ITC has not been availed is permanently transferred to a distinct person, the transaction although out of scope of entry 1, would be treated as a supply in terms of this entry, considering that this entry does not impose any such condition on the transaction. The provisions would equally apply even in the case of assets procured in the pre-GST regime.
- d. The explanation appended to Section 15 of the CGST Act provides that an employer and employee will be deemed to be “related persons”. Accordingly, supplies by employer to employees would be liable to tax, if made in the course or furtherance of business, even though these supplies are made without consideration, except:
 - i. Gifts by an employer to an employee of value up to Rs 50,000 (to be understood as inclusive of taxes, as read with Rule 35 of the CGST Rules, 2017) in a financial year (whether this value needs to be pro-rated in the first year of implementation of GST / first year of commencement of business is a moot question; however, the presumption is that a part of the financial year would be construed as a whole year);
 - ii. Cash gifts of any value, given that the ‘transaction in money’ is not a subject matter of supply;
 - iii. Services by employee to the employer in the course of or in relation to his employment – treated as neither a supply of goods nor a supply of services.
- e. The question that arises as to what constitutes a gift is discussed in the following paras.
 - i. Gift has not been defined in the GST laws.
 - ii. In common parlance, gift when made without consideration is voluntary in nature and is normally made occasionally.
 - iii. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift. However, if any gift, by whatever name called, is a right of the employee in terms of the employment contract / employee policy of the entity, then such gift shall be treated as emoluments arising out of the employment (including perquisites), and cannot be treated as a supply.

- iv. As a corollary, one can argue that the scope and ambit of the word 'supply' also includes a transaction of a barter / exchange, in which case, the transaction may be regarded a taxable supply. In such a case, the question that would arise is as to whether a salary paid in non-monetary terms will attract GST?.
- v. The credit restriction on membership of a club, health and fitness centre [under Section 17 (5) (b) (ii)] would not apply where the employer provides the facilities to its employees, whether or not for a consideration, given that such a supply without consideration, would also be deemed to be an outward supply under this entry of the Schedule.
- vi. Where gifts are liable to tax under this Schedule, it would be fair and proper to treat such gifts as taxable outward supplies, and therefore, credit thereon may not be required to be restricted under Section 17(5)(h).
- vii. It may also be noted that a gift need not always be in terms of goods. A service can also constitute a gift, such as gift vouchers for a beauty treatment.

3. Supply of goods—

- (a) **by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or**
- (b) **by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.**

- a. The definition of the terms 'agent' and 'principal' have to be understood contextually and have been reproduced below:
 - Section 2(5) of the Act – “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 or both on behalf of another”.
 - Section 2(88) of the Act – “Principal means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both”.
- b. Where an Agent receives goods directly from the Principal, or if the Principal's vendor directly dispatches goods to the location of the agent, the Principal shall be required to treat the movement as an outward supply of goods by virtue of this clause. If understood in its proper perspective, when an agent receives goods on behalf of the Principal and thereafter issues the goods to the Principal, the transaction will be regarded as a supply by the Agent to the Principal.

- c. An important question that may arise is - as to how the transaction would appear to the ultimate recipient of a supply, when effected by the Principal through the Agent, or to the supplier who effects the supply to the Principal through an Agent. An analysis of the transaction where the Principal effects a supply through an Agent is provided as follows:
- i. The Principal shall recognise the transfer of goods to the Agent as a supply, at the time of such transfer.
 - ii. When the Agent supplies such goods to the third-party recipient, the Principal would recognise revenue as a supply (sale) in his books of account.
 - iii. The Agent would, however, issue the invoice to the third-party recipient in the name of the Principal, while also incorporating the Agent's own details as the supplier, and discharge taxes on the supply.
 - iv. The third-party recipient would receive the credits on account of this supply from the GSTIN of the Agent and not the Principal.
 - v. To this extent, the Principal's supplies in the GST returns will reflect a lower value as compared to the actual revenue against the supplies, since the value of supply to an Agent would normally, be lower than the actual sale price.
 - vi. The value of supplies in the GST returns of the Agent would be much higher than the actual revenues earned, which would be limited to the commission income.
 - vii. It is pertinent to note that the Agent shall be required to issue an invoice on the Principal for the value service provided by him to earn his commission income.
- 4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.**
- a. The expression 'import of service' has been defined to bear an innate requirement of an inflow of foreign convertible currency, and therefore, excludes any form of importation of services without consideration. Therefore, this clause is inserted to encompass such of those services, that are received from related persons / their establishments outside India. It is important for one to refer to Explanation 1 to Section 8 of the IGST Act, 2017 which deems any establishment outside India as an establishment of a distinct person. By virtue of this treatment, all services received by a taxable person in India from its

branches / establishments located outside India would be considered to be a supply, even when made without consideration.

- b. For instance, say A Ltd is a holding company in USA and B Ltd a subsidiary in India. Many business operations are centralized in the USA such as accounting, ERP and other software, servers for the backup, legal function, etc. For the purpose of this clause, the back-end support provided by the holding company to the subsidiary company in India shall be regarded as a supply, whether or not there is a cross charge, even if the same is not recognised in the books, or any contracts, since it is categorized as an import of service by a taxable person from a related person without consideration, in the course of business.

(e) Activities to be treated as supply of goods or supply of services:

It is important to understand as to what constitutes a transaction of supply of goods or a transaction of supply of service. Section 7(1)(d) creates a deeming fiction under the statute and specifies 'what is' and 'what is not' either a transaction of supply of goods or a transaction of supply of service. So understood, one can list out 18 classes of transactions enlisted Schedule II of which 5 classes of transactions are listed out as supply of goods while 13 others would tantamount to supply of services. On a careful consideration of the relevant clauses, it can be noticed that all the 6 classes of transactions listed out in Article 366(29A) of the Constitution of India are covered within the scope and ambit of Schedule II. While 2 transactions, out of the 6, are treated as supply of goods, the other 4 are deemed to be supply of services.

Importantly, para 6 (a) relating to works contracts (as defined in Section 2(119)) is treated as a composite supply, of services. However, Section 2(119) has 14 distinct words, all of which are required to be read in conjunction with the words "immovable property". Contracts relating to construction of immovable property are specifically covered in Para 5(b) of Schedule II. Therefore, all works contracts other than those relating to immovable property would amount to composite supply in terms of Section 2(30) read with Section 8.

It is important for one to understand that **what is** specified/listed in Schedule II not only provides clarity but also **what has to be** treated as supply of goods or supply of services. Transactions listed out in schedule II enlarges the scope of supply as defined under Section 7(1) of the Act. Clause (d) of sub section (1) to Section 7 is part and parcel of definition of 'supply', thereby bringing within its scope and ambit, such of those activities that are not covered under the other clauses of sub section (1) to section 7.

It would be interesting to note that certain paragraphs in Schedule II specifies the requirement of "consideration" whereas several others do not. In such a situation, it is important to understand the intent of the legislature. For example, Para 5(a) of Schedule II reads "renting of immovable property". In this situation, how does one understand the taxability of the transaction where consideration is not involved? The only way to understand this lacuna is that such transactions that lack consideration

would be relegated to valuation principles, but, importantly, the transaction would be treated as a supply.

The activities pertaining to this clause are listed in Schedule II to the Act, and discussed in the following paragraphs.

Entry in Schedule II	Analysis
1. Transfer	
a. <i>Any transfer of the title in goods is a supply of goods;</i>	This would be a clear case of a transfer of goods. It may be noted that this entry covers even a plain vanilla transfer of title in goods, either by way of sale or otherwise. Accordingly, where any goods are gifted to any person, say a motor car gifted by a businessman to his successor would be a supply of goods, provided there is a transfer of “title in” such goods. In legal parlance the phrase “title in” and “title to” have different connotations.
b. <i>Any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;</i>	This entry can be construed to be a case of a temporary transfer whereas a transfer of title in goods would be a sale simpliciter. One must pay attention to the language employed in this entry which speaks of transfer of right and not transfer of title. Even though the activity is categorized as a supply of service, the rate of tax applicable on the supply has been linked to the rate of tax as applicable to the supply of same goods involving transfer of title in goods. Hence, for all practical purposes to determine the rate of tax on such services, all notifications in respect of that particular goods would merit equal consideration to determine the rate of tax for the service. Refer the entries for Heading 9971 and 9973 to the Notification 11/2017 dt. 28.06.2017 prescribing the rate of tax on services, as amended from time to time. Illustration: Notification 37/2017 Central Tax (Rate) dated 13.10.2017 was issued to reduce the rate of tax on motor vehicle to 65% of the tax rate as applicable with certain conditions. Considering the rate of tax for leasing of such motor vehicle to be same as that of the rate of tax as applicable on the motor vehicle, even the rate of tax on leasing services stands reduced if the conditions specified in the notification are met.

Entry in Schedule II	Analysis
<p><i>c. Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.</i></p>	<p>Any instalment sale or hire purchase transaction with a precondition that the possession is transferred on day one but the ownership is subject to payment of full consideration/ all instalments, would get categorized as a supply of goods at the time of transfer of possession. However, where the transaction is to be valued at the open market value, due care needs to be exercised so as to determine the value of instalments as against the value of the goods being transferred. One may also note that transactions of movables that could get covered under BOOT, BOLT, BOT etc., may also get covered under this entry.</p>
2. Land and Building	
<p><i>a. Any lease, tenancy, easement, licence to occupy land is a supply of services;</i></p>	<p>While a transfer (sale) of land is outside the scope of GST laws, the law seeks to tax certain other transfers pertaining to land, by way of this entry. Notification No. 4/2018 Central Tax (Rate) dated 25.01.2018 warrants attention in this regard. One issue which clearly emerges from the notification is that in case of a joint development agreement (JDA), the activity of providing the right to construct on a land belonging to the owner, is an independent supply in the hands of the owner and that supply, is treated as a supply of service in terms of this clause. It is inferred that such a service is independent of the construction service which the developer provides to the land owner. The challenge that arises would relate to the valuation for both these supplies. It is important to note that such transactions are vivi-sected for the purposes of levy of tax and have not been construed as a single demise.</p>
<p><i>b. Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.</i></p>	<p>The activity of leasing or letting out of complexes for the purpose of business or commerce is covered under this clause, and not those used for the purpose of residence. It may be noted that the services by way of renting of residential dwelling for use as residence is exempt vide Notification No.12/2017 – Central tax (Rate) dated 28.06.2017. While on the subject, it is pertinent to note the distinction between a transaction</p>

Entry in Schedule II	Analysis
	of rent, lease and a transaction of "letting out". A transaction of rent is what is lawfully payable by a tenant, a transaction of lease is an alienation or conveyance for the purpose of enjoyment whether or not for a specified period. The word 'Let' is to be understood as a verb meaning allow, permit, grant or hire.
3. Treatment or process	
<i>Any treatment or process which is applied to another person's goods is a supply of services.</i>	<p>While this transactions may not be pari-materia with a works contract the activity which could get categorized under this clause it appears would be "job work" as defined under Section 2(68) of the Act.</p> <p>The only difference between the definition clause in terms of section 2(68) and this entry - is that the activity would be regarded as a job work only if carried out for a registered principal. However, regardless of the registration of the principal, the activity would be categorized as service under this clause.</p> <p>Certain clarifications have been provided vide Circular No.38/12/2018 dated 26.03.2018 on job work which would be relevant and can make a useful read.</p>
4. Transfer of business assets	
a. <i>Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;</i>	<p>This clause provides for taxability of such of those transactions where business assets stand transferred. Typically, assets donated could be an example of such a transaction. One must pay attention to the fact that this clause abstains from the usage of the expression "in the course or furtherance of business" or "consideration". Thus, it is possible to infer that all such transactions which escape the attention of Section 7(1)(a) or 7(1)(c), are covered under this clause, so as to be treated as supply of goods.</p> <p>Random thought: A permanent transfer of business asset on which no ITC had been availed may be regarded as a supply of goods under this clause. However, since there exists a competing entry 1 of schedule 1, being the entry more specific would stand attracted. Courts alone can settle this understanding.</p>

Entry in Schedule II	Analysis
<p>b. <i>Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;</i></p>	<p>Any part of the business assets if put to use for private purpose of any purpose other than for business, then such usage is termed as supply of services under this clause. Therefore, where the law deems this activity as a supply and subjects the same to tax, it can be contended that there would be no requirement to reverse the input tax credit availed on the goods although the same is put to non-business use, on the premise that the activity is considered to be a taxable outward supply and subjected to tax.</p> <p>Normally, the words “private” and “personal” are used inter-changeably. But the legal connotation is that private is “non official concerning one or more individuals” while ‘personal’ does not relate to a business scenario. For example: Audio-visual equipment owned by a business can be put to private use by a group of individuals or by an individual for his or her use.</p> <p>One must exercise caution while determining what amounts to private use / non-business use, since this will have a direct bearing on the deductions claimed under the Income tax law.</p> <p>In this regard, it may be noted that a service by way of transfer of a going concern, as a whole or an independent part thereof, is an exempted service in terms of Notification 12/2017-Central Tax (Rate) dated 28.06.2017 as amended from time to time.</p>
<p>c. where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—</p> <p>i. the business is</p>	<p>The supply under this clause can be understood to be a supply of goods, although the entry does not explicitly specify so.</p> <p>Attention is drawn to Section 29(5) of the Act dealing with “Cancellation of Registration”, wherein the law provides that the person applying for cancellation of registration is required to pay an amount equivalent to the credit of input tax or the output tax payable thereon, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such</p>

Entry in Schedule II	Analysis
<p>transferred as a going concern to another person; or</p> <p>ii. the business is carried on by a personal representative who is deemed to be a taxable person.</p>	<p>cancellation, whichever is higher.</p> <p>It is important to understand the subtle usage of the expression "ceases to be a taxable person". Cessation of being a taxable person could result from either closure of business, voluntarily or otherwise, while the clause also speaks of transfer of business in the latter part. One can reasonably infer that in terms of this clause if a business is transferred on a lock, stock and barrel basis as a going concern then such transactions cannot be subjected to tax; even in situations where the transfer of business takes place and a representative (acting as a taxable person) carries on such business, the question of subjecting such a transaction to tax, as a cessation of business does not arise.</p>
<p>5. Supply of services: The following shall be treated as supply of service, namely: —</p>	
<p>a. renting of immovable property;</p>	<p>Renting wholly or partly of any immovable property is treated as a service. Therefore, unless the supply is otherwise exempted (such as renting of residential dwelling for the purpose of residence), the activity shall be regarded as a supply.</p>
<p>b. <i>Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.</i></p>	<p>Schedule III of the Act at SI No.5 reads "sale of land and, subject to clause b of paragraph 5 of schedule II, sale of building. We need to pay attention as to how this clause is to be read and understood. Let us now read the clause as follows:</p> <ul style="list-style-type: none"> ✓ Sale of land; ✓ Sale of building; ✓ Sale of land and sale of building; ✓ Sale of land and building in which an undivided share in land stands transferred. <p>It must be noted with caution, that entry 5 of schedule III is 'subject to clause b of para 5 of schedule II'. It means that, clause b of para 5 of schedule II overrides the entry 5 to schedule III. It is for this reason that development contracts in the real estate sector have been a subject matter of tax in terms of entry 5(b) of</p>

Entry in Schedule II	Analysis
	<p>the second schedule.</p> <p>Any agreement for sale of an immovable property (being in the nature of transfer if UDI in land plus building or in case of revenue share agreements which equally stipulates transfer of UDI in land plus constructed port) would be subject to tax as a service. In this backdrop, it is important to note that some experts are of the view, that the legislature intends to overcome the constitutional bench decision of the Supreme Court in the Larsen & Toubro's case (65 VST 1). So understood, any part of the consideration if received, prior to obtaining completion certificate or first occupation in a building would stand to be taxed while all transactions entered into thereafter, would be construed as a sale of immovable property.</p>
<p>c. <i>Temporary transfer or permitting the use or enjoyment of any intellectual property right;</i></p>	<p>The words 'or' in this clause is to be understood as a disjunctive particle that carves out alternatives. So understood, this clause envisages three separate classes of transactions which could be read as follows:</p> <ul style="list-style-type: none"> ✓ Temporary transfer of any IPR; ✓ Permitting the use of any IPR; ✓ Permitting the use or enjoyment of any IPR. <p>In respect of temporary transfer or usage of IPRs one needs to travel to the relevant notification to understand their import. The scheme of classification of services for the heading 9973 provides for temporary as well as permanent transfer of IPR in respect of goods.</p> <p>However, with effect from 15.11.2017, the rate notification for goods has also incorporated an entry for the permanent transfer of IPR in respect of goods and there has been no corresponding deletion of the words "or permanent" in the rate notification for services.</p> <p>Due care needs to be exercised by the registered person in order to determine whether supply is of goods or services.</p>

Entry in Schedule II	Analysis
d. <i>Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;</i>	<p>The dichotomy which prevailed in the erstwhile service tax and VAT regime (i.e., the question of whether software should suffer service tax or VAT or both) has been put to rest under GST.</p> <p>While this entry takes care of certain activities in respect of IT software, it must be noted that the supply of pre-developed or pre-designed software in any medium/storage (commonly bought off-the-shelf), or making available of software through the use of encryption keys, is treated as a supply of goods, classifiable under heading 8523.</p>
e. <i>Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;</i>	<p>Some examples that may get covered under this clause are as under:</p> <ul style="list-style-type: none"> • Non-compete agreement for a fee; • Notice period recovery; • Additional amount agreed upon for settlement of any dispute/matter etc. • Look at a situation where a supplier would supply product 'A' only if the recipient agrees to buy product 'B'- readers can think as to whether such transactions would amount to supply of goods or supply of services?;
f. <i>Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.</i>	<p>Transfer of 'right to use goods' is treated as a supply of service and taxed at par, with the rate of tax as applicable to the goods involved in the transaction. (Refer discussion under clause 1(a) of Schedule II).</p>
6. Composite supply: The following composite supplies shall be treated as a supply of services, namely: —	
a. <i>Works contract as defined in clause (119) of section 2;</i>	<p>Our understanding of works contract under the erstwhile VAT / sales tax / service tax laws has no relevance in the GST regime. In the GST regime, only such of those contract that results in an immovable property is a 'works contract'. Every other contract which was understood to be a 'works contract' under the erstwhile laws will be treated as a composite / mixed supply under the Act. In such cases, the</p>

Entry in Schedule II	Analysis
	transaction may be treated as goods or services, based on the principles laid down in Section 8 (discussed separately in this Chapter).
<p>b. <i>Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.</i></p>	<p>The Law categorises the supplies referred to in this clause as a composite supply, given that there are multiple goods and/or services which are essentially involved in such a transaction culminating into a composite supply of service.</p> <p>Under this clause both restaurant and outdoor catering services get covered. It may also be contended that the clause also covers other forms such as parcels, take-away, home-delivery, etc.</p> <p>Irrespective of the rate of tax as applicable on independent goods or services that are being supplied, the rate of tax as applicable to a restaurant service or outdoor catering service would be applicable to the goods being supplied. E.g.: Aerated drink which is served in a restaurant would be subject to tax at the rate applicable to the entire supply (restaurant service) regardless of the fact that aerated drinks are otherwise subjected to a higher rate of tax as well as cess. By this logic, some experts argue that tobacco products which are sold in a restaurant and billed along with the supply of food/beverage must also be taxed at the rate as applicable to restaurant services - as a composite supply. The test that one needs to apply in the given situation is find out as to whether tobacco products are “food” or “an article for human consumption”. A plain reading would imply that tobacco products are certainly not “food”. However, the phrase “any other article for human consumption” must be construed in a sense as to how a common man would understand. Meaning, the test of common parlance must be applied. So understood, in plain and simple terms tobacco products cannot get classified under this clause.</p> <p>This entry is not purely for restaurants / outdoor caterers, and is applicable to any person who is engaged in the supply of food / beverages. It may be noted that there is no requirement that such a supply</p>

Entry in Schedule II	Analysis
	is in the course or furtherance of business. It would be sufficient if the supply is for a consideration. Circular No.28/02/2018 dated 08.01.2018 has provided clarifications regarding GST on college hostel / mess which reads: <i>"It is immaterial whether the service is provided by the educational institution itself or the institution outsources the activity to an outside contractor"</i> .
7. Supply of Goods: The following shall be treated as supply of goods, namely: —	
<i>Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration</i>	The definition of the term 'business' under Section 2(17) includes "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;" In order to clarify that the supply of goods by such association etc., to its members is to be treated as a supply of goods and not as a service of providing facilities, this clause has been included.

- (f) **Certain supplies will be neither a supply of goods, nor a supply of services:** The law lists down matters which shall not be considered as 'supply' for GST by way of Schedule III. Since these are transactions that are not regarded as 'supply' under the GST Laws, there is no requirement to report the inward / outward supply of such activities in the returns.

Activities listed in Schedule III	Analysis
Services by an employee to the employer in the course of or in relation to his employment.	The entry includes only services and not goods. Further, the entry only covers those services provided by an employee to the employer and not vice versa. Therefore, services such as serving of beverages in the office may possibly be regarded as a supply of service under Entry 2 of Schedule I.
Services by any Court or Tribunal established under any law for the time being in force; The term "court" includes District Court, High Court and Supreme Court.	

Activities listed in Schedule III	Analysis
Functions performed by MPs, MLAs, etc.; the duties performed by a person who holds any post in pursuance of the provisions of the Constitution in that capacity; the duties performed by specified persons in a body established by the Central State Government or local authority, not deemed as an employee;	
Services of funeral, burial, crematorium or mortuary including transportation of the deceased.	
Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building (i.e., excluding sale of under-construction premises where the part or full consideration is received before issuance of completion certificate or before its first occupation, whichever is earlier);	It is intriguing as to why two activities being (i) sale of land and (ii) sale of building, have been clubbed into a single entry. However, one may expand the entry to read the two activities as distinct activities, so as to treat a sale of land without the sale of building, also to be outside the purview of GST. Refer to discussions schedule II para 5(b) supra.
Actionable claims, other than lottery, betting and gambling	A plain reading of this entry would mean that actionable claims are neither a supply of goods nor a supply of services. However, the three classes of actionable claims listed in this entry warrant attention. The definition of the word 'goods' includes the words 'actionable claims'. It has to therefore, be necessarily understood that the three classes of actionable claims viz. lottery, betting and gambling, if and when subjected to tax, must be taxed as goods. The irony is, while lottery is subject to tax as goods, betting and gambling have been subjected to tax as services under the heading 9996.

Activities listed in Schedule III	Analysis
	It appears that this <i>faux pas</i> can be set-right only through a legislative amendment.

(g) **To be notified:** The Government has vested in itself the powers to notify 'activities or other transactions' which shall neither be treated as supply of goods nor a supply of services in terms of section 7(2). Such notification would be issued from time to time based on the recommendations of the GST Council.

- The Government has notified the following supplies in this regard:

Services by way of any activity in relation to a function entrusted to Panchayat under Article 243G of the Constitution

(*Inserted vide Notification No. 14/2017- Central Tax (Rate) dated 28.06.2017*)

- The inter-State movement of goods like movement of various modes of conveyance, between 'distinct persons' as explained in this Chapter, including trains, buses, trucks, tankers, trailers, vessels, containers & aircrafts, carrying goods or passengers or both, or for repairs and maintenance, would also not be regarded as supplies except in cases where such movement is for further supply of the same conveyance.(Clarified vide *Circular No. 1/1/2017-IGST dated 07.07.2017*).
- The above logic would apply to the issue pertaining to inter-State movement of jigs, tools and spares, and all goods on wheels like cranes, except in cases where movement of such goods is for further supply of the same goods, and consequently no IGST would be applicable on such movements.(Clarified vide *Circular No. 21/21/2017-GST dated 22.11.2017*).

(h) The Government is also empowered to specify what shall be treated as a supply of goods / services, as is the function of Schedule II, based on the recommendation of the GST Council, by specifying that a supply is to be treated as:

- A supply of goods and not a supply of service;
- A supply of service and not a supply of goods.

(i) In summary, supply can be understood as follows:

Section	Specified 'forms' of supply	Furtherance of Business	Presence of Consideration	Supply	
				'made'	'agreed to be made'
7(1)(a)	✓	✓	✓	✓	✓
7(1)(b)	✓	✓/x	✓	✓	x
7(1)(c)	✓	✓	x	✓	✓
7(1)(d)	✓	If required by each entry in Sch II		✓	✓

- (j) The GST Law also treats certain transactions to be supplies by way of a deeming fiction imposed in the statute.
- (a) The law expressly uses the phrase 'deemed supply' in Section 19(3) and 19(6) in respect of inputs/capital goods sent to a job worker but are not returned within the time period of 1 year/ 3 years permitted for their return.
- (b) The bill-to-ship-to transactions wherein the supply is deemed to have been made to the person to whom the invoice is issued, imposes an intrinsic condition that such person who receives the invoice should in turn issue an invoice to the recipient unless the transaction demands a treatment otherwise. For instance, where an order is placed on a vendor based on an order received from a customer, the registered person may request the vendor to directly ship the goods to the customer. In this case, although there is a single movement of goods, there is a dual change of title to goods, and therefore, there would be 2 supplies.

Statutory Provisions

8. Tax liability on composite and mixed supplies

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

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

Relevant circulars, notifications, clarifications issued by Government

1. Circular No. 34/8/2018 dated 01.03.2018 clarifying on the taxability of certain services;
2. Circular No. 13/13/2017 dated 27.10.2017 regarding unstitched salwar suits;
3. Circular No. 11/11/2017 dated 20.10.2017 regarding taxability of printing contracts;
4. Chapter four of the compilation of the GST Flyers as issued by the CBIT can be referred to for a gist of the statutory provisions, titled '*Composite Supply and Mixed Supply*'.

Related provisions of the Statute

Section or Rule	Description
Section 2(30)	Definition of Composite Supply
Section 2(90)	Definition of Principal Supply
Section 2(74)	Definition of Mixed Supply
Schedule II	Activities to be treated as a supply of goods or a supply of services

8.1. Introduction

Every supply should involve either goods, or services, or a combination of goods or a combination of services, or a combination of both. The law provides that such supplies would be classifiable for the purpose of tax treatment, either as wholly goods or wholly services, in the case of all such combinations. Schedule II of the Act provides for this classification in some of the listed instances thereunder.

8.2. Analysis

Where a supply involves multiple (more than one) goods or services, or a combination of goods and services, the treatment of such supplies would be as follows:

(a) If it involves more than one goods and / or services which are naturally bundled together and supplied in conjunction with each other in the ordinary course of business and one such supply would be a principal supply:

- (i) These are referred to as composite supply of goods and / or services. It shall be deemed to be a supply of those goods or services, which constitutes the principal supply therein. Only where all of the conditions specified for a supply of a combination of goods and/or services to be treated as a composite supply are satisfied, the supply can be regarded as a composite supply. The conditions are as follows:
 1. The supply must be made **by a taxable person**: This condition presumes that composite supplies can only be effected by a taxable person.
 2. The supply must comprise 2 / more **taxable** supplies: The law merely specifies that the supplies included within a composite supply must contain 2 or more taxable supplies. A question may then arise as to what would be the treatment in case of a supply that fulfils all the conditions, but involves an exempt supply – say, purchase of fresh vegetables from a store which offers home delivery for an added charge. Fresh vegetables are exempt from tax, whereas the service of home delivery would attract tax. No clarification has been issued in this regard. However, on a plain reading of the provision, it appears that this condition would not be satisfied where the composite supply involves an exempt supply.
 3. The goods and / or services involved in the supply must be **naturally bundled**: The concept of natural bundling needs to be examined on a case to case basis. What is naturally bundled in one set-up may not be regarded as naturally bundled in another situation. For instance, stay with breakfast is naturally bundled in the hotel industry, while the supply of lunch and dinner, even if they form part of the same invoice, may not be considered as naturally bundled supplies along with room rent.
 4. They must be supplied in conjunction with each other in the **ordinary course**

of business: Where certain supplies could be naturally bundled, it is essential that they are so supplied in the ordinary course of business of the taxable person. For instance, it is possible to consider the supply of a water purifier along with the first-time installation service as a naturally bundled supply. However, if a supplier of water purifiers does not ordinarily provide the installation service, and arranges for a person to provide the installation service in the case of an important business customer, the supply would not satisfy the said condition.

5. Only one of the supplies involved must qualify as the **principal supply**: In every composite supply, there must be only one principal supply. Where a conflict between the various components of the supply, as to which of those qualify as the principal supply, cannot be resolved and results in multiple predominant supplies, the supply cannot be regarded as a composite supply.
- (a) A principal supply is defined to mean the predominant element of a composite supply to which any other supply forming part of that composite supply is ancillary.
 - (b) Therefore, mere identification of the predominant element would not suffice, and it must be ascertained that all other supplies composed in the composite supply are ancillary to that predominant element of the supply.
 - (c) Consider the case of a supply of dining table with chairs. There would normally be no issue in this regard if both the components are made of the same material. However, if the dining table is made of granite, while the chairs are made of superior quality wood, there would be a conflict. Normally, the dining table would be regarded as the principal supply to which the supply of chairs is ancillary. However, in this case, it may not be possible to determine which of the two make the principal supply.

Where any of the aforesaid conditions are not satisfied, the transaction cannot be treated as a composite supply.

- (ii) The matters such as time of supply, invoicing, place of supply, value of supply, rate of tax applicable to the supply, etc. shall all be determined in respect of the principal supply alone, since the entire supply shall be deemed to be a supply of the principal supply alone.
- (iii) Some Illustrations and cases of composite supplies have been discussed in the following paragraphs:
 - ✓ *Illustration (provided in Section 2(27)):* Where goods are packed, and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply. This implies that the supply will be taxed wholly as supply of goods.

- ✓ *Para 5(3) of Circular No.32/06/2018-GST dated 12.02.2018 clarifies that “food supplied to the in-patients as advised by the doctor/nutritionists is a **part of composite supply of health care** and not separately taxable”. It also goes on to clarify further that supplies of food by hospital to patients (not admitted) or their attendants or visitors are taxable.*
- ✓ *Circular No.11/11/2017-GST dated 20.10.2017 has provided clarification on treatment of printing contracts. It is clarified that:*
 - ❖ *In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing of the content supplied by the recipient of supply is the principal supply.*
 - ❖ *In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, the predominant supply is that of goods and the supply of printing of the content supplied by the recipient of supply is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.*
- ✓ *Circular No. 34/8/2018-GST dated 01.03.2018 provides a clarification on some matters including the following:*
 - ❖ *The activity of bus body building is a composite supply. As regards which of the components is the principal supply, the Circular directs that it be determined on the basis of facts and circumstances of each case.*
- ✓ *Re-treading of tyres– In re-treading of tyres, which is a composite supply, the pre-dominant element is the process of re-treading which is a supply of service, and the rubber used for re-treading is an ancillary supply. The Circular also specifies that “Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature to the composite supply”.*
- ✓ *Other examples: If a contract is entered for (i) supply of certain goods and erection and installation of the same thereto or (ii) supply of certain goods along with installation and warranty thereto, it is important to note that these are naturally bundled and therefore would qualify as ‘composite supply’. Accordingly, it would qualify as supply of the goods therein, which is essentially the principal supply in the contract. Thus, the value attributable to erection and installation or installation and warranty thereto will also be taxable as if they are supply of the goods therein.*

(b) **If it involves supply of more than one goods and / or services which are not naturally bundled together but sold for a single price:**

- (i) These are referred to as mixed supply of goods and / or services. It shall be deemed to be a supply of that goods or services therein, which are liable to tax at the highest rate of GST. The characteristics of a mixed supply is as follows:
1. It involves 2 / more **individual supplies**: It may be noted that the term used in the case of mixed supply is “individual supplies” as against “taxable supplies”. Therefore, a mixed supply can include both taxable and non-taxable supplies
 2. It is made by a **taxable person**;
 3. The supply is made for a **single price**: The fact that a composite supply does not include this condition merits consideration. Where a supply of 2 / more goods or services is made for different prices, the supplies cannot be regarded as mixed supplies.
 4. The supply does **not constitute a composite supply**: The expression “constitute” has a large ambit to include cases where the supply results in a composite supply, as well as a case where some of the components together make a composite supply, whereas the bundle together would make a mixed supply. While the condition as such is not explicit, given that there is no provision for treatment of a bundled supply where only some components together qualify as a composite supply, it may be safe to interpret that a mixed supply is one which is not regarded as a composite supply.
- (ii) The matters such as time of supply, invoicing, place of supply, value of supply, rate of tax applicable to the supply, etc. shall all be determined in respect of that supply which attracts the highest rate of tax. However, the law remains silent on what is the treatment required to be undertaken where more than one component is subjected to the highest rate of tax. For instance, consider a case where a commercial complex is let out for a consideration of monthly rentals, and the owner of the complex also supplies parking lots to those tenants who opt for the facility. While both the supplies attract tax @ 18%, the law does not prescribe for treatment of the transaction as that of only one of the two supplies.
- (iii) Some Illustrations and cases of mixed supplies have been discussed in the following paragraphs:
- ✓ *Illustration (provided in Section 2(66)): A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately. This implies that the supply will be taxed wholly as supply of those goods which are liable to the highest rate of GST.*

- ✓ Other examples: If a tooth paste (say for instance it is liable to GST at 12%) is bundled along with a tooth brush (say for instance it is liable to GST at 18%) and is sold as a single unit for a single price, it would be reckoned as a mixed supply. This would therefore be liable to GST at 18% (higher of 12% or 18% applicable to each of the goods therein).
- (c) While there are no infallible tests for such determination, the following guiding principles could be adopted to determine whether a supply would be a composite supply or a mixed supply. However, every supply should be independently analysed.

Description	Composite Supply	Mixed Supply
Naturally bundled	Yes	No
Each supply available for supply individually	No	Yes / No
One is predominant supply for recipient	Yes	Yes / No
Other supply(ies) are ancillary or they are received because of predominant supply	Yes	No
Each supply priced separately	Yes / No	No
Supplied together	Yes	Yes
All supplies can be goods	Yes	Yes
All supplies can be services	Yes	Yes
A combination of one / more goods and one / more services	Yes	Yes

Statutory Provisions

9. Levy and Collection

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

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both

(4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

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

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

Relevant circulars, notifications, clarifications issued by Government

1. All rate notifications issued under the law;
2. Circular No. 34/8/2018 dated 01.03.2018 clarifying on the taxability of certain services;
3. Circular No. 32/06/2018 dated 12.02.2018 clarifying on the taxability of certain services;
4. Circular No. 30/4/2018 dated 25.01.2018 regarding supplies made to the Indian Railways classifiable under any chapter other than Chapter 86;
5. Circular No. 29/3/2018 dated 25.01.2018 regarding applicability of GST on Polybutylene feedstock and Liquefied Petroleum Gas retained for the manufacture of Poly Iso Butylene and Propylene or Di-butyl para Cresol;
6. Circular No. 28/02/2018 dated 08.01.2018 regarding GST on College Hostel Mess Fees;
7. Circular No. 27/01/2018 dated 04.01.2018 regarding levy of GST on accommodation services, betting and gambling in casinos, horse racing, admission to cinema, homestays, printing, legal services etc.;
8. Circular No. 21/21/2017 dated 22.11.2017 regarding Inter-state movement of rigs, tools and spares, and all goods on wheels [like cranes];
9. Circular No. 20/20/2017 dated 22.11.2017 regarding classification and GST rate on Terracotta idols;

10. Circular No. 19/19/2017 dated 20.11.2017 regarding taxability of custom milling of paddy;
11. Circular No. 16/16/2017 dated 15.11.2017 regarding applicability of GST on certain services;
12. Circular No. 13/13/2017 dated 27.10.2017 regarding unstitched Salwar Suits;
13. Circular No. 12/12/2017 dated 26.10.2017 regarding applicability of GST on the superior kerosene oil [SKO] retained for the manufacture of Linear Alkyl Benzene [LAB]
14. Circular No. 11/11/2017 dated 20.10.2017 regarding taxability of printing contracts;
15. Circular No. 6/6/2017 dated 27.08.2017 regarding classification and rate of GST on lottery tickets.

Related provisions of the Statute

Section or Rule	Description
Section 1	Short title, extent and commencement
Section 2(84)	Definition of Person
Section 2(107)	Definition of Taxable Person
Section 2(108)	Definition of Taxable Supply
Section 2(45)	Definition of Electronic Commerce Operator
Section 2(98)	Definition of Reverse Charge
Section 10	Composition levy
Section 11	Power to grant exemption from tax
Section 7 (IGST)	Inter-State supply
Section 8 (IGST)	Intra-State supply
Section 15	Value of supply
Section 25	Registration

9.1. Introduction

Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by the authority of law. The charging section is a must in any taxing statute for levy and collection of tax. Before imposing any tax, it must be shown that the transaction falls within the ambit of the taxable event and that the person on whom the tax is so imposed also gets covered within the scope and ambit of the charging Section by clear words used in the Section. No one can be taxed by implication. The scope of the taxable event being 'supply' has been discussed in the earlier part of this Chapter. This Section will provide an insight into

the chargeability of tax on a supply. Section 9 is the charging provision of the CGST Act. It provides the maximum rate of tax that can be levied on supplies leviable to tax under this law, the manner of collection of tax and the person responsible for paying such tax.

It is interesting to note that the 4 pillars of taxation that together constitute the cornerstone for levy are couched in Section 9(1). The taxable event, tax rate, collection or levy, and the person to pay are so worded that there is no escape. It appears that the law laid down by the Honourable Supreme Court in Govind Saran Ganga Saran's Case has been carried to its logical end.

9.2. Analysis

The IGST Law provides the basis for determination of a supply as an intra-State supply or an inter-State supply – simply put, if the location of the supplier and the place of supply are within the same State, the transaction will be an intra-State supply, barring the case of supplies made by / to SEZ, and all other supplies will be regarded as inter-State supplies. Please refer to the discussion in the IGST Chapters for a holistic understanding of 'Levy' as a concept under the GST law.

- (i) **Taxable supply:** Every taxable supply will be subjected to GST. A taxable supply refers to any supply of goods or services or both, which qualifies as a supply in terms of Section 7. The exception to this rule would be all supplies that the levy Section forgoes to tax, as also all those supplies that have been notified to be nil-rated or exempted from tax. The provisions imposing GST are phrased in such a manner so as to **exclude the supply of alcoholic liquor for human consumption** from the scope of levy itself. However, the law specifies certain other goods whereby the levy of GST has been deferred until such time the goods are notified in this regard to be taxable supplies (by the Government, based on the recommendation of the GST Council):
- (1) petroleum crude
 - (2) high speed diesel
 - (3) motor spirit (commonly known as petrol)
 - (4) natural gas and
 - (5) aviation turbine fuel
- (ii) **Tax payable:** The nature of tax would depend upon the nature of supply, viz., inter-State supplies will be liable to IGST and intra-State supplies will be liable to CGST and SGST/UTGST (i.e., UTGST in case intra-State supplies within a particular Union Territory). Every intra-State supply will attract CGST as well as SGST, as follows:
- (1) Imposition of CGST by the Union Government of India
 - (2) Imposition of SGST by the respective State Government or (in case of UTGST, by the Central Government through the appointed Administrator)

- (iii) **Tax shall be payable by a 'taxable person'**: The tax shall be payable by a 'taxable person' i.e., a person who is liable to obtain registration, or a person who has obtained registration. Please note that there can be multiple taxable persons for a single person. It comprises separate establishments of persons registered or liable to be registered under sections 22 or section 24 of the CGST Act. *Please refer to the discussion under Section 25 for a thorough understanding of this concept.* Under the GST law, the person liable to pay the tax levied on a supply under the Statute would be one of the following:
- (1) The supplier, in terms of Section 9(1)–Referred to as forward charge. This is ordinarily applicable in case of all supplies unless the supplies qualify under the other two categories, i.e., this would be the residual category of supply wherein the supplier would be liable to pay tax. (In this regard, it must be noted that the term 'supplier' is attributed to an establishment, and not to the PAN as a whole. Therefore, if the supply is effected from an establishment in Karnataka, the establishment of the same entity located in say Delhi, cannot discharge the liabilities);
 - (2) The recipient – Referred to as tax under reverse charge mechanism; In such a case, all the provisions of the Act as are applicable to the supplier in a normal case, would apply to the recipient of supply (being a taxable person, and not the PAN as explained above). A supply would be subjected to tax in the hands of the recipient only in the following cases:
 1. Notified supplies under Section 9(3): The supply of goods or services is notified as a supply liable to tax in the hands of the recipient vide Notification No. 4/2017-Central Tax (Rate) in case of goods and Notification No. 13/ 2017-Central Tax (Rate) in case of services, as amended from time to time. Please note that the supplier discharging this liability would not render the liability discharged, since the law imposes the obligation on the recipient. The recipient of supply would nevertheless be liable to discharge the taxes, and the relief available to the supplier would be only by way of an application for refund;
 2. Supplies received from unregistered persons under Section 9(4): The supply is an inward supply of goods and / or services effected by a registered person from an unregistered supplier. In this regard, it may be noted that the levy under this clause has been exempted upto 30.06.2018. It is important to note that a supply which has been notified under Section 9(3) will be categorised as a notified supply attracting tax under reverse charge mechanism even if the supply is effected by an unregistered supplier, thereby requiring the recipient to remit taxes thereon, although supplies received from unregistered persons are exempted from tax upto the said date.
 - (3) The e-commerce operator, in terms of Section 9(5): The Government is empowered to notify categories of services wherein the person responsible for payment of taxes would neither be the supplier nor the recipient of supply, but the e-commerce operator through which the supply is effected. It is important to note that, in case of

such supplies, the e-commerce operator is neither the supplier nor does it receive the services. The e-commerce operator is merely the person who owns, operates or manages digital or electronic facility or platform for e-commerce purposes. Under the erstwhile service tax law, the e-commerce operator in such an arrangement was referred to as an 'aggregator'.

1. The Government has notified certain services in this regard vide Notification No. 17/2017-Central Tax (Rate) as amended from time to time, including services by way of transportation of passengers by a radio-taxi, motor cab, maxi cab and motor cycle, etc.
 2. Where the e-commerce does not have a physical presence in the taxable territory, any person representing his in the taxable territory would be liable to pay the taxes. If no such representative exists, the e-commerce operator is liable to appoint such a person in order to discharge this obligation.
 3. All other provisions of the Act will apply to the e-commerce operator or his representative (as the case may be) in respect of such services, as if he is the supplier liable to pay tax on the services.
 4. In this regard it may be noted that liability to pay tax on the supply by the e-commerce operator is not another provision imposing tax on the reverse charge basis. Reference to the definition of reverse charge in section 2(98) makes it clear that reverse charge is limited to tax payable under section 9(3) and 9(4). It is very important to note that the language employed in Section 9(5) makes it clear that the liability to pay tax on the supply is placed on the e-commerce operator, "as if" the e-commerce operator were the "supplier liable to tax". The marked departure of the language from that used in case of the reverse charge provisions suggests that:
 - a. The tax that is applicable on the supply is to be paid by the e-commerce operator "as if" such e-commerce operator was the supplier liable to tax. The provisions require the e-commerce operator to step into the shoes of the actual supplier, for the limited purpose of discharging his liability, and the supply by the e-commerce operator to the actual supplier (facilitation services, commission services or by any service *inter se*) will be taxable separately, in the hands of the e-commerce operator as a supplier of service to the actual supplier.
 - b. The actual supplier is no longer liable to pay any tax. This means that the suppliers will not be the persons liable to pay tax on such services effected through an e-commerce operator, even if they have obtained registration.
- (iv) **Rate of tax:** The rate of tax will be applicable as specified in the Notification No. 1/2017- Central Tax (Rate) for goods and Notification No. 11/2017- Central Tax (Rate) for services issued in this regard, and read with other Rate Notifications which may be

issued to partially exempt any other goods or services from payment of tax. The rates of tax contained in these notifications cannot exceed 20% under each limb (i.e., 20% under CGST Law and 20% under SGST), as amended from time to time. These rates would be notified based on the recommendation of the GST Council. In order to determine the applicable rate of tax, the following approach is to be adopted:

- (i) Identify whether the supply is an intra-State supply;
 - (ii) Identify whether the supply is a plain supply / composite supply / mixed supply and adopt the treatment accordingly;
 - (iii) Identify HSN of the goods or services and applicable rate of tax as per rate notification;
 - (iv) Identify whether the HSN applies to more than one description-line. If yes, analyse which of the description is most specific to the supply in question;
 - (v) Once classification is ascertained, identify whether such goods or services qualify for any exemption (partially or wholly) from payment of tax.
- (v) **Taxable value:** The rate of tax so notified will apply on the value of supply as determined under Section 15. The transaction value would be accepted subject to inclusions / exclusions specified in the said Section, where the price is the sole consideration for the supply and the supplier and recipient are not related persons. In all other cases, the value of supply will be that value which is determined in terms of the valuation rules (i.e., Chapter IV of the CGST Rules, 2017).

9.3 Comparative review

Under the erstwhile tax laws, Central Excise is levied on 'manufacture of goods', VAT / CST is levied on 'sale of goods' and service tax is charged on 'service provided or agreed to be provided'. Unlike such different incidences, under the GST law, it is 'supply' which would be the taxable event. Under the erstwhile law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT / CST on production of necessary forms – however, under the GST law, it would be taxable as a 'supply' if such supplies are between distinct persons under section 25(4) or 25(5). Further, free supplies were liable to excise duty, while under the VAT laws, free supplies would require reversal of input tax credit; under the GST law, we have to be careful to analyse whether there is any non-monetary consideration (inducement) present in the supplies (free-marketed as), if yes then we have to get into valuation of such free supplies to arrive at a transaction value. If not, then the treatment would be similar to the erstwhile VAT laws, where the supplies are made without any consideration (monetary/ otherwise). However, where the free supplies are made between distinct persons or between related persons then such supplies may be regarded as supply under Schedule I, para 2.

In the erstwhile law, there are multiple transactions which apparently qualify as both 'sale of goods' as well as 'provision of services'. E.g.: license of software, providing a right to use a

brand name, etc. To avoid this situation, GST law clarifies as to whether a transaction would qualify as a 'supply of goods' or as 'supply of services' by introducing a deeming fiction. A transaction of supply under composite contracts would either qualify as supply of goods or as services, under the GST law (Schedule II of the Act, concept of composite supply and mixed supply).

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

9.4 Issues and concerns

1. While the law lays down that the intent of Schedule II is to clarify whether the supplies listed in the Schedule is a supply of goods or a supply of services, it must also be noted that the Schedule II is provided in terms of clause (d) to Section 7(1) which reads "For the purposes of this Act, the expression "supply" includes –". Therefore, a reader of the statute must pay attention to the dual implications of the Schedule.
2. The activity of import of service is subjected to tax, whether or not such import is in the course or furtherance of business. While the relaxation from obtaining registration is provided to a 'non-taxable online recipient' who imports OIDAR services, there is no relaxation to other persons who import services for personal use, and they shall be mandated to obtain registration regardless of the turnover, given that the service is listed as a supply attracting tax on reverse charge basis. For instance, say a person engages an artist from a different country to send designs for apparel manufacture, which he wishes to gift, the transaction would be a taxable supply, and liable to tax in the hands of such person importing the service.
3. The phrase 'in the course or furtherance of business' has not been defined in the Act. The meaning that can be derived from this phrase is so wide that it can include every activity undertaken by a business concern, including activities in the course of employment, since employment is a subset of the activities undertaken in the course of business.
4. A plain reading of the meaning of the terms 'composite supply' and 'mixed supply' suggests that the concepts pre-suppose a condition that they are effected by taxable persons. Say in case of a supply effected by a non-taxable person to a registered person attracting tax under reverse charge, the supply would not be regarded as a composite supply even where all the conditions are satisfied, and cannot be regarded as a mixed supply either, for the same reason. Such an understanding would defeat the very purpose of the legislative intent. Therefore, in case of reverse charge transactions,

the supply must be understood to have been made by the registered person who is the recipient of supply, i.e., even supplies effected by unregistered persons may be qualified to be termed 'composite supply' or mixed supply', subject to the normal conditions which would otherwise apply.

5. While the concept of 'mixed supplies' requires that the goods and / or services supplied in the mixed supply must be supplied for a single price, there is no such requirement in the case of composite supplies. Therefore, a person effecting a mixed supply of goods would certainly have an option to strategically alter the bundle of supplies so that all the goods / services included in the mixed supply would not all be subjected to the highest rate of tax applicable on the said supplies.

On the other hand, a supplier who effects a composite supply wishes to charge for the supply of two or more goods or services separately, which otherwise constitute a composite supply, a question may arise as to whether the rate of tax applicable on all the supplies would continue to be the rate applicable to the principal supply. Say, a supplier of air conditioners (taxable @ 28%) who always effects the supply along with the installation service, now chooses to split the cost of the service in order to tax such service portion at the rate of 18%. Such a split-up may be questioned, given that there is no escape from treatment as a composite supply merely because the values are ascertained separately. Generally, transactions that are intentionally broken up with an intent to minimise the impact of tax would be subject to scrutiny / valuation.

9.5 FAQs

- Q1. In respect of exchange of goods, namely gold watch for restaurant services, will the transaction be taxable as two different supplies or will it taxable only in the hands of the main supplier?
- Ans. Yes, the transaction of exchange is specifically included in the scope of "supply" under Section 7. Thus, exchange could be taxable both ways. Provided the person exchanging gold watch is in the business of selling watches (A contrary view could also be taken. It depends on the facts of each and every case).
- Q2. What are examples of 'disposals' as used in 'supply'?
- Ans. "Disposals" could include donation in kinds or supplies in a manner other than sale.
- Q3. Will a not-for-profit entity be liable to tax on any supplies effected by it – e.g.: sale of assets received as donation?
- Ans. Yes, it would be liable to tax on value as may be determined under Section 15, for said sale of donated assets.
- Q4. Is the levy under reverse charge mechanism applicable only to services?
- Ans. No, reverse charge applies to supplies of both goods and services.
- Q5. What will be the implications in case of purchase of goods from unregistered dealers?

Ans. The receiver of goods who will be registered under this Act would be liable to pay tax under reverse charge. However, the provisions have been deferred till June 30, 2018.

9.6 MCQs

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

- (a) Inter-State supplies, in respect of supplies within the State to SEZ;
- (b) Intra-State supplies;
- (c) Both of the above;
- (d) Either of the above.

Ans. (b) Intra-State supplies

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

- (a) Permanent transfer of business assets on which input tax credit has been claimed
- (b) Agency transactions for services
- (c) Barter
- (d) None of the above

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

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

- (a) CBIT
- (b) Central Government on the recommendation of GST Council
- (c) GST Council
- (d) None of the above

Ans. (b) Central Government on the recommendation of GST Council

Statutory Provisions

10. Composition levy

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

- (i) *one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,*
- (ii) *two and a half per cent. of the turnover in State or turnover in Union territory in case*

of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and

- (ii) half per cent. of the turnover of Taxable Supplies in State or turnover in Union territory in case of other suppliers,*

subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council

- (2) The registered person shall be eligible to opt under sub-section (1), if:—*
- (a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;*
 - (b) he is not engaged in making any supply of goods which are not leviable to tax under this Act;*
 - (c) he is not engaged in making any inter-State outward supplies of goods;*
 - (d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and*
 - (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:*

Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

- (3) The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).*
- (4) A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.*
- (5) If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.*

Extract of the CGST Rules, 2017

3. Intimation for composition levy.

- (1) Any person who has been granted registration on a provisional basis under clause (b)*

of sub-rule (1) of rule 24 and who opts to pay tax under section 10, shall electronically file an intimation in FORM GST CMP-01, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, prior to the appointed day, but not later than thirty days after the said day, or such further period as may be extended by the Commissioner in this behalf:

Provided that where the intimation in FORM GST CMP-01 is filed after the appointed day, the registered person shall not collect any tax from the appointed day but shall issue bill of supply for supplies made after the said day.

- (2) Any person who applies for registration under sub-rule (1) of rule 8 may give an option to pay tax under section 10 in Part B of FORM GST REG-01, which shall be considered as an intimation to pay tax under the said section.
- (3) Any registered person who opts to pay tax under section 10 shall electronically file an intimation in FORM GST CMP-02, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 within a period of sixty days from the commencement of the relevant financial year.
- (3A) Notwithstanding anything contained in sub-rules (1), (2) and (3), a person who has been granted registration on a provisional basis under rule 24 or who has been granted certificate of registration under sub-rule (1) of rule 10 may opt to pay tax under section 10 with effect from the first day of the month immediately succeeding the month in which he files an intimation in FORM GST CMP-02, on the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the 31st day of March, 2018, and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 within a period of one hundred and eighty days from the day on which such person commences to pay tax under section 10:

Provided that the said persons shall not be allowed to furnish the declaration in FORM GST TRAN-1 after the statement in FORM GST ITC-03 has been furnished.

- (4) Any person who files an intimation under sub-rule (1) to pay tax under section 10 shall furnish the details of stock, including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts to pay tax under the said section, electronically, in FORM GST CMP-03, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within a period of ninety days from the date on which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf.

<p>(5) Any intimation under sub-rule (1) or sub-rule (3) or sub-rule (3A) in respect of any place of business in any State or Union territory shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.</p>
<p>4. Effective date for composition levy.</p> <p>(1) The option to pay tax under section 10 shall be effective from the beginning of the financial year, where the intimation is filed under sub-rule (3) of rule 3 and the appointed day where the intimation is filed under sub-rule (1) of the said rule.</p> <p>(2) The intimation under sub-rule (2) of rule 3, shall be considered only after the grant of registration to the applicant and his option to pay tax under section 10 shall be effective from the date fixed under sub-rule (2) or (3) of rule 10.</p>
<p>5. Conditions and restrictions for composition levy.</p> <p>(1) The person exercising the option to pay tax under section 10 shall comply with the following conditions, namely:-</p> <p>(a) he is neither a casual taxable person nor a non-resident taxable person;</p> <p>(b) the goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, where the option is exercised under sub-rule (1) of rule 3;</p> <p>(c) the goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under sub-section (4) of section 9;</p> <p>(d) he shall pay tax under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both;</p> <p>(e) he was not engaged in the manufacture of goods as notified under clause (e) of sub-section (2) of section 10, during the preceding financial year;</p> <p>(f) he shall mention the words –composition taxable person, not eligible to collect tax on supplies// at the top of the bill of supply issued by him; and</p> <p>(g) he shall mention the words –composition taxable person// on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.</p> <p>(2) The registered person paying tax under section 10 may not file a fresh intimation every year and he may continue to pay tax under the said section subject to the provisions of the Act and these rules.</p>
<p>6. Validity of composition levy.</p> <p>(1) The option exercised by a registered person to pay tax under section 10 shall remain valid so long as he satisfies all the conditions mentioned in the said section and under these rules.</p>

- (2) *The person referred to in sub-rule (1) shall be liable to pay tax under sub-section (1) of section 9 from the day he ceases to satisfy any of the conditions mentioned in section 10 or the provisions of this Chapter and shall issue tax invoice for every taxable supply made thereafter and he shall also file an intimation for withdrawal from the scheme in FORM GST CMP-04 within seven days of the occurrence of such event.*
- (3) *The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in FORM GST CMP-04, duly signed or verified through electronic verification code, electronically on the common portal.*
- (4) *Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 or has contravened the provisions of the Act or provisions of this Chapter, he may issue a notice to such person in FORM GST CMP-05 to show cause within fifteen days of the receipt of such notice as to why the option to pay tax under section 10 shall not be denied.*
- (5) *Upon receipt of the reply to the show cause notice issued under sub-rule (4) from the registered person in FORM GST CMP-06, the proper officer shall issue an order in FORM GST CMP-07 within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.*
- (6) *Every person who has furnished an intimation under sub-rule (2) or filed an application for withdrawal under sub-rule (3) or a person in respect of whom an order of withdrawal of option has been passed in FORM GST CMP-07 under sub-rule (5), may electronically furnish at the common portal, either directly or through a Facilitation Centre notified by the Commissioner, a statement in FORM GST ITC-01 containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied, within a period of thirty days from the date from which the option is withdrawn or from the date of the order passed in FORM GST CMP-07, as the case may be.*
- (7) *Any intimation or application for withdrawal under sub-rule (2) or (3) or denial of the option to pay tax under section 10 in accordance with sub-rule (5) in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.*

7. Rate of tax of the composition levy.

The category of registered persons, eligible for composition levy under section 10 and the provisions of this Chapter, specified in column (2) of the Table below shall pay tax under section 10 at the rate specified in column (3) of the said Table:-

Sl. No.	Category of registered persons	Rate of tax
1	Manufacturers, other than manufacturers of such goods as may be notified by the Government	half per cent. of the turnover in the State or Union territory
2	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	two and a half per cent. of the turnover in the State or Union territory
3	Any other supplier eligible for composition levy under section 10 and the provisions of this Chapter	half per cent. of the turnover of taxable supplies of goods of the turnover in the State or Union territory

Relevant circulars, notifications, clarifications issued by Government

1. Notification No. 1/2018-Central Tax dated 23.01.2018 issued for revision of Rules and for reduction of rate of composition tax;
2. Notification No. 46/2017- Central Tax dated 13.10.2017 issued to increase the threshold limit on aggregate turnover to opt for composition scheme (1 crore / 75 Lakhs);
3. Order No. 11/2017-GST dated 21.12.2017 issued to extend the time limit to furnish intimation for opting into the Composition Scheme;
4. Order No. 01/2017-Central Tax being the CGST (Removal of Difficulties) Order, 2017 dated 13.10.2017 issued to clarify that outward supply of services for which the consideration is in the form of interest, shall not be taken into account for composition taxpayers;
5. Chapter eleven of the compilation of the GST Flyers as issued by the CBIC can be referred to for a gist of the statutory provisions, titled 'Composition Levy Scheme in GST'.

10 Related provisions of the Statute

Section	Description
Section 9	Levy and collection
Section 2(6)	Definition of Aggregate turnover
Section 2(102)	Definition of Services
Section 2(78)	Definition of Non-taxable supply
Section 2(112)	Meaning of Turnover in a State
Section 52	Collection of tax at source

10.1 Introduction

This Section provides for a registered person to opt for payment of taxes under a scheme of composition, the conditions attached thereto and the persons who are entitled, but not mandated, to make payment of tax under this Scheme. The conditions, restrictions, procedures and the documentation in respect of this scheme are contained in Chapter II of the Central Goods and Service Tax Rules, 2017 from Rule 3 to Rule 7 (Composition Rules).

10.2 Analysis

Tax payment under this scheme is an option available to the taxable person. This scheme would be available only to certain eligible persons.

- (a) **Payment of tax:** The composition scheme offers to a registered person, the option to remit taxes on the turnover as against outward supply-wise payment of taxes. In other words, the registered person opting to pay tax under the composition scheme needs only to ascertain the aggregate value of outward taxable supplies, and compute the tax thereon at a fixed rate, regardless of the actual rate of tax applicable on the said outward supply. The rate of tax prescribed in this regard is as under:
- i. In case of manufacturers: 1% (0.5% CGST+ 0.5% SGST) of the turnover in the State/UT (Note: The rate applicable has been reduced from 2% to 1% vide Notification No. 1/2018-Central Tax dated 23.01.2018 effective 01.01.2018);
 - ii. In case of food/restaurant services: 5% (2.5% CGST+ 2.5% SGST) of the turnover in the State/UT (i.e., in case of composite supply of service specified in Entry 6(b) of Schedule II);
 - iii. In case of other suppliers: 1% (0.5% CGST+ 0.5% SGST) of the turnover of taxable supplies in the State/UT (such as like traders, agents for supply of goods, etc.)
- (b) **Eligibility to pay tax under composition scheme:** The conditions for eligibility to opt for payment of tax under the composition scheme is as follows:
- i. Registered persons having an 'aggregate turnover' as defined under Section 2(6) of the Act (i.e., aggregate of turnovers across all States under the same PAN, including exempt supplies, supplies specified under Schedule I, etc.) does not exceed the prescribed limit in the preceding financial year will be eligible to opt for payment of tax under the composition scheme. *Please refer to the discussion on aggregate turnover as explained in the definitions Chapter for a better understanding of the expression.* In this regard, the following may be noted:
 1. The prescribed threshold limit is Rs. 1 crore (and Rs. 75 lacs in case of Special Category States being Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Himachal Pradesh);
 2. The aggregate turnover of the registered person should not exceed the said prescribed limit during the financial year in which the scheme has been availed;

3. The 'aggregate turnover' as computed for a composition taxpayer shall not include any interest income, which is earned by way of supply of services such as extending deposits, etc. where such interest or discount is exempted under the GST Law.
- ii. The scheme cannot be opted for during the middle of a financial year, except in the case where the person obtains registration, and opts for composition scheme at the time of applying for registration under the GST Law:
 1. **Taxable Person obtaining a new registration under GST laws:** Such option can be exercised at the time of obtaining registration under section 22 in Part B of Form GST-REG-1. Such new application may also include cases of migration from the erstwhile laws. In both cases, the option to pay tax under composition scheme shall be effective from the effective date of registration. [Refer Rule 3 of CGST Rules]
 2. **Registered person switches over to composition scheme:** A person is required to file an intimation before the commencement of the financial year for which he opts to pay tax under the scheme. In such cases, the provisions of section 18(4) shall stand attracted and the registered person shall be required to file a statement containing details of stock and inward supply of goods received from un-registered persons, held in stock, on the date immediately preceding the date. Please refer to the discussion in Section 18 for a better understanding.
- iii. In order to be eligible to opt for the scheme, the registered person must not be in possession of stock of goods which has been purchased from unregistered persons. In any such case, due tax ought to have been paid thereon under Section 9(4);

Note: In case of migrated registrations from the erstwhile laws, the GST Law imposes an additional condition that the stock of goods held on the GST appointed day (01.07.2017) does not include any goods which have been procured in the course of inter-State trade or commerce or received from his branch / his agent / his principal situated outside the State or imported from a place outside India.
- iv. The registered person would **not** be eligible to effect any:
 1. Supply of goods **through an e-commerce operator** who is liable to collect tax at source (TCS) – while there is no restriction on goods supplier through a portal owned and operated by the same person;

In this regard, it may be noted that the provision for TCS has not been notified as yet. Therefore, it appears that composition suppliers are not restricted from effecting supplies through an e-commerce portal, regardless of who owns/ operates the portal.
 2. Supply of **non-taxable goods**, i.e., alcoholic liquor for human consumption,

petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel;

3. Supply of **services**, other than services specified in Entry 6(b) to Schedule II. This would mean, a trader opting for composition scheme will not be entitled to provide any after-sales support services, howsoever trivial they may be (unless such supply is a composite or mixed supply of goods). In this regard, it must be noted that the Government has issued an order for the removal of difficulties to clarify that any services provided by a composition taxpayer shall not be taken into account where the consideration for the said service is by way of “interest” which is exempted from tax under the GST Law.
4. **Inter-State outward supplies**, including supplies to SEZ unit / developer. Please note that this condition implies that the registered person will not be in a position to effect inter-State stock transfers to its own establishments located outside the State. It is also important to note that the condition is not limited to taxable supplies alone, and extends to exempt supplies as well.
- v. The registered person must **not** be:
 1. A manufacturer of such goods as may be notified by the Government (based on the recommendations of the GST Council), in the year for which he opts for the scheme, or in the preceding financial year (E.g. Ice cream, pan masala, tobacco). However, there is no restriction in trading of such goods, i.e., where the person has not manufactured the goods.
 2. A casual taxable person;
 3. A non-resident taxable person;
- vi. All the registrations obtained under a single PAN are also mandated to opt for payment under the composition scheme, i.e., all the registered persons under the PAN will also be mandated to comply with all the conditions mentioned above, including the business verticals having separate registrations within the same State under the same PAN. The scheme would become applicable for all the registrations and it cannot be applied for select verticals only. E.g.: Say a company has the following businesses separately registered:
 - Sale of mobile devices (Registered in Kerala)
 - Franchisee of branded restaurant (Registered in Goa)The scheme would be applicable for the said 2 units. The company cannot opt for composition scheme for the registration in Kerala and opt to pay taxes under the regular scheme for the registration in Goa.
- vii. The scheme will be applicable to all the outward supplies. The option of the scheme will be qua-person and not qua-class of goods – once opted it will be applicable for all supplies by effected by the registered person; it must be noted that a taxable

person **cannot** opt for payment of taxes under composition scheme for supply of one class of goods and opt for regular scheme of payment of taxes for supply of other classes of goods or services.

(c) **Conditions applicable on a composition supplier:** Once a person has opted to pay tax under the composition scheme, the following conditions would stand attracted:

- i. Every notice or signboard in every registered place of business, displayed at a prominent place, shall carry the words "Composition taxable person";
- ii. Every bill of supply issued by the composition suppliers shall carry the declaration "Composition taxable person, not eligible to collect tax on supplies" on top of the bill;
- iii. RCM on inward supplies: The composition supplier shall be liable to make payment at the rate applicable on the supply in respect of every inward supply liable to tax under the reverse charge mechanism, regardless of the rate of tax that is applied by him on the outward supplies effected by him. It may be noted that the value of such inward supplies would not be included in the aggregate turnover of the composition taxpayer although the liability is discharged by him on such inward supplies;
- iv. Not entitled to collect tax: The composition taxpayer is prohibited from collecting any GST / Cess applicable on the outward supplies effected by him. Accordingly, the recipients of supply would also not be eligible to claim any credits where the inward supply is from a composition taxpayer;
- v. Not entitled to claim credit of taxes paid: The composition taxpayer is not entitled to claim credit in respect of taxes paid by him on any of the inward supplies effected by him, including inward supplies on which he pays tax under reverse charge mechanism.

However, if the composition taxpayer switches over to become a regular taxpayer, he will be entitled to take input tax in respect of inputs held in stock (as inputs, contained in semi-finished or finished goods) on the day immediately preceding the date from which he becomes liable to pay tax under Section 9 (regular taxpayer. Refer the discussion in Section 18(1)(c) for a better understanding of the provisions.

(d) **Important Note:** The option to pay tax under the composition scheme will remain valid so long as the registered persons comply with all of the aforesaid conditions in (b) and (c) above. The composition suppliers will be treated as any other registered supplier with effect from the date on which any of the said conditions cease to be complied with. The composition suppliers would not be entitled to re-enter the scheme until the expiry of the financial year.

- i. The registered person would be required to file an intimation (*suo motu*) for withdrawal from the scheme within 7 days of the non-compliance;
- ii. The registered person may also file an intimation if he wishes to withdraw from the

scheme, before the effective date of withdrawal, and such withdrawal can be applied for anytime during the financial year.

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

- iii. **Cancellation of permission:** Where the proper officer has reasons to believe that the taxable person was not eligible to the composition scheme, the proper officer may cancel the permission and demand the following:
- a. Differential tax and interest – viz., tax payable under the other provisions of the Act after deducting the tax paid under composition scheme;
 - b. Penalty determined based on the demand provisions under Section 73 or 74.
- (e) **Comments specific to migration cases (transition from the erstwhile law to the GST regime):** In case of migration of old registration into registration under GST, option to avail composition scheme under GST Laws can be exercised only if the goods held in stock by such taxable person, on the appointed day have not been purchased in the course of inter-state trade or commerce or imported from a place outside India or received from his branch situated outside the State, or from his agent or principal outside the State.
- (i) As per rule 3(1) of the CGST Rules, in cases involving migration, there is need to exercise such Option for composition in Form GST CMP 01 prior to appointed date or within 30 days after the appointed date. In this case, the option to pay tax under composition scheme shall be effective from the appointed date. This date has further been extended to 16.08.2017. Such person would be required to file stock statement under Rule 3(4) in Form GST-CMP03 within a period of 90 days (extended from 60 days to 90 days by Notification No.22/2017) from the date on which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf. However, the due date was extended further till 31.01.2018 vide Order No. 11/2017-GST dated 21.12.2017.
 - (ii) A new sub-rule (3A) was inserted by Notification No.34/2017 – Central Tax dtd.15.09.2017 which has an overriding effect on provisions of sub-rule (1), (2) and (3). It may be noted that, the purpose of rule (3A) is only to enable the persons to opt for composition scheme in the first year of GST implementation, without making them to wait up to the next financial year. This is on account of the fact that, the threshold limit for the purposes of Composition scheme u/s 10 was enhanced twice i.e. once on 27.06.2017 and then again on 13.10.2017. Hence, sub-rule (3A) would only cover cases, where the application is made prior to 31.03.2018. For all applications made during the financial year 2018-19, the matter would be governed by Rule 3(3).

10.3 Comparative review

Under the erstwhile tax laws, the scheme of composition is provided for in most State level

VAT laws. The conditions prescribed under the GST law for composition scheme is broadly comparable to the conditions / restrictions under the State level VAT laws.

10.4 Issues & concerns

1. While it is clear that a composition supplier is not entitled to effect a supply of services, there is no specific provision in case of a composite supply / a mixed supply which are taxed as supply of goods. Therefore, based on the principles specified in Section 8 of the Act, it may be safe to infer that a supplier opting for composition scheme would be entitled to effect a composite supply containing services, where the principal supply is goods, considering that the **“supply shall be treated as a supply of such principal supply”**. On the other hand, a mixed supply shall be treated as a **“supply of that particular supply which attracts the highest rate of tax”**. Given this position, there is no clear case for mixed supplies wherein both services and goods contained in the mixed supply suffer the highest rate of tax, from amongst the rates of tax applicable on each of the individual supplies contained in the mixed supply. Due care must be exercised in this regard.
2. An amendment of the rate applicable to the supplies effected by composition suppliers was made with effect from 01.01.2018. In this regard, attention is drawn to the rate applicable to traders which reads as follows – “half per cent of the turnover **of taxable supplies of goods** in the State or Union territory”. It must be noted that the highlighted expression, more specifically, **“of taxable supplies”** is missing in the rate entries applicable to manufacturers and restaurant service providers. Therefore, the said 2 classes of persons would be liable to pay tax on the turnover in State, whether or not the supplies are exempted from tax.

10.5 FAQs

- Q1. Will a taxable person be eligible to opt for composition scheme only for one out of 3 business verticals?
- Ans. No. Composition scheme would become applicable for all the business verticals / registrations which are separately held by the person with same PAN.
- Q2. Can composition scheme be availed if the taxable person has inter-State inward supplies?
- Ans. Yes. Composition scheme is applicable subject to the condition that the taxable person does not engage in making inter-state outward supplies, while there is no restriction on making any inter-State inward supplies.
- Q3. Can the taxable person under composition scheme claim input tax credit?
- Ans. No. Taxable person under composition scheme is not eligible to claim input tax credit.
- Q4. Can the customer who buys from a taxable person who is under the composition scheme claim composition tax as input tax credit?
- Ans. No. customer who buys goods from taxable person who is under composition scheme is not eligible for composition input tax credit.

Q5. Can composition tax be collected from customers?

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

Q6. What is the threshold for opting to pay tax under the composition scheme?

Ans. The threshold for composition scheme is up to 1 crore of aggregate turnover in the preceding financial year and ` 75 lakhs for special category states except for Uttarakhand.

Q7. How to compute 'aggregate turnover' to determine eligibility for composition scheme?

Ans. The methodology to compute aggregate turnover is given in Section 2(6). However, since composition scheme is applicable only to suppliers making intra-state supplies, 'aggregate turnover' means 'Value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies (except interest income as discussed above), exports of goods or services or both or inter-state supplies of a person having the same PAN (i.e., across India) excluding CGST, IGST, SGST, UGST and cess.

Q8. What does a person having the same PAN mean?

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

Q9. What are the penal consequences if a taxable person is not eligible for payment of tax under the Composition scheme?

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

Q10. What happens if a taxable person who has opted to pay taxes under the composition scheme crosses the threshold limit of `75 lakhs/1 crore during the year?

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