

BASIC CONCEPTS - GOODS & SERVICES TAX

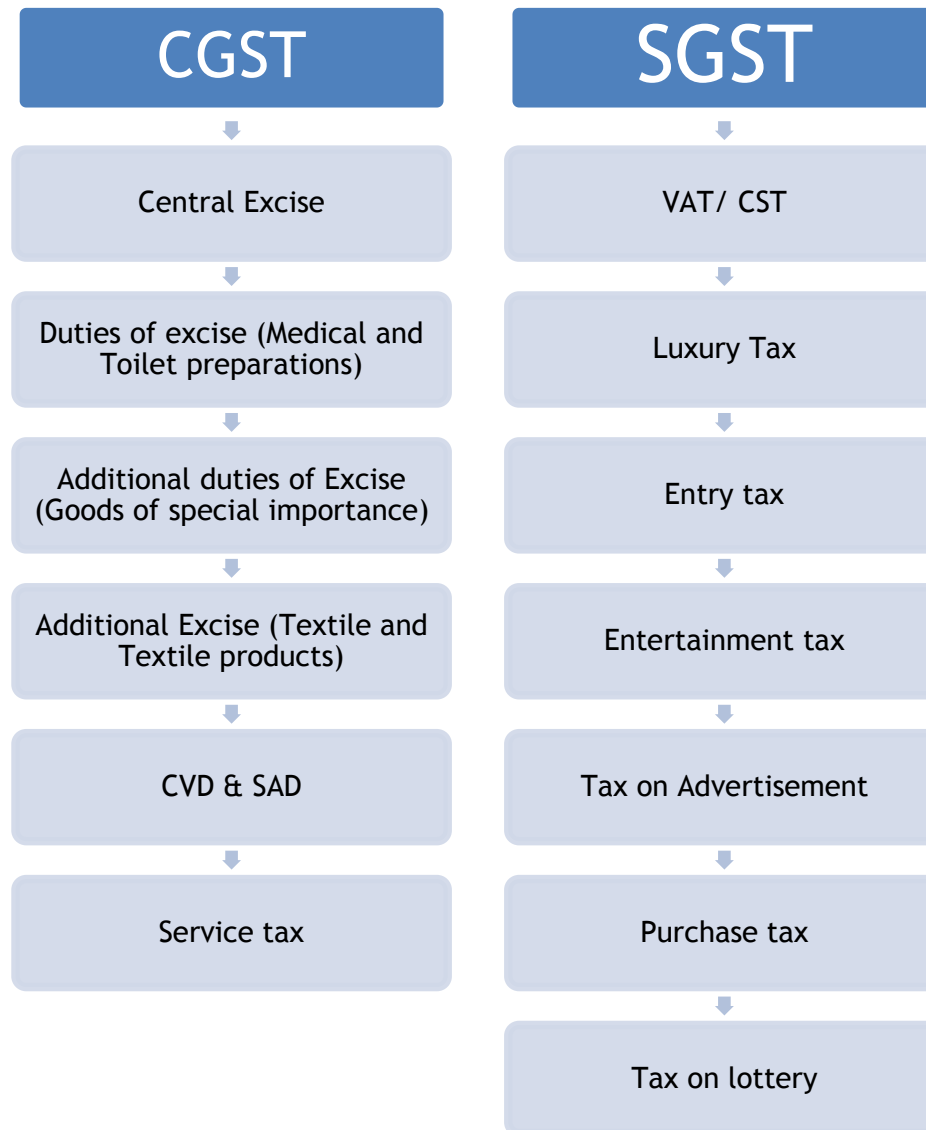
REFRESHER COURSE - WIRC ICAI

5 July, 2017

OVERVIEW

- ◉ Destination based tax on consumption of goods and services
- ◉ Levied on all stages upto final consumption with credit of taxes paid at previous stages
- ◉ Tax accrued to the state which consumes i.e. Place of supply

TAXES SUBSUMED



GST - MODEL AND PHILOSOPHY

Meaning	<ul style="list-style-type: none">• Broad based and comprehensive levy on goods and services consumed in economy
Dual Model	<ul style="list-style-type: none">• Central GST (CGST) to be levied on intra state supplies by Central Government• State GST (SGST) to be levied on intra state supplies by State Government. <p>Union Territory GST (UTGST) to be levied on intra state supplies by Union Territory</p> <ul style="list-style-type: none">• CGST & SGST or CGST & UTGST would be levied simultaneously on intra-state supply• Integrated GST (IGST) to be levied on inter state supplies by Central Government and to distributed between Centre and States or Union Territory
Destination Based Consumption Tax	<ul style="list-style-type: none">• At present VAT is collected and retained by originating state• Under GST, tax to accrue to the taxing authority which has jurisdiction over the place of consumption also termed as place of supply• Supplies imported into country to attract GST• Supplies exported outside country not to attract GST

PRESENCE OF LEGISLATIVE PRE-REQUISITES UNDER GST

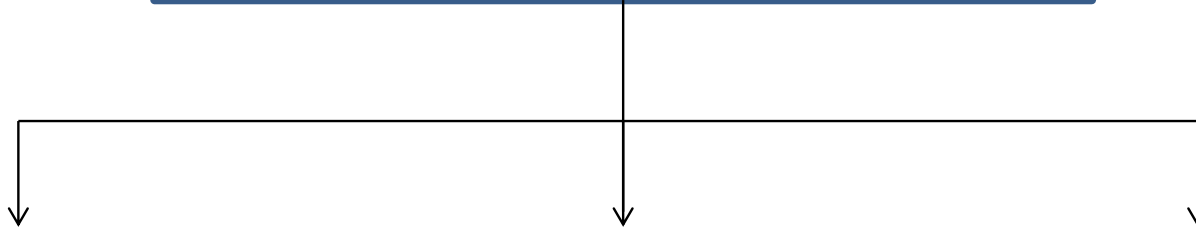
Pre-requisites	Reference in the GST law						
Constitutional power to levy tax	<ul style="list-style-type: none"> • Article 246 A empowers Centre, State and Union Territory to levy and collect GST 						
Taxable territory - Section 1(2) of CGST Act, IGST Act and UTGST Act	<ul style="list-style-type: none"> • Territory to which the provisions of this Act apply: <ul style="list-style-type: none"> <input type="checkbox"/> CGST Act applies to whole of India <input type="checkbox"/> IGST Act applies to whole of India <input type="checkbox"/> UTGST Act applies to the Union Territories of: <table border="1" data-bbox="552 1029 1686 1239"> <tbody> <tr> <td data-bbox="552 1029 929 1160">Andaman and Nicobar Islands</td> <td data-bbox="935 1029 1311 1160">Dadra and Nagar Haveli</td> <td data-bbox="1317 1029 1686 1160">Daman and Diu</td> </tr> <tr> <td data-bbox="552 1165 929 1239">Lakshadweep</td> <td data-bbox="935 1165 1311 1239">Chandigarh</td> <td data-bbox="1317 1165 1686 1239">Other Territory</td> </tr> </tbody> </table> <input type="checkbox"/> SGST Act applies to 28 States including Delhi and Puducherry 	Andaman and Nicobar Islands	Dadra and Nagar Haveli	Daman and Diu	Lakshadweep	Chandigarh	Other Territory
Andaman and Nicobar Islands	Dadra and Nagar Haveli	Daman and Diu					
Lakshadweep	Chandigarh	Other Territory					

PRESENCE OF LEGISLATIVE PRE-REQUISITES UNDER GST

Pre-requisites	Reference in the GST law						
Taxable event	<ul style="list-style-type: none"> ▪ Supply of Goods or Services or both: <ul style="list-style-type: none"> • Sec. 9 of CGST Act • Sec. 5 of IGST Act • Sec. 7 of UTGST Act 						
Assessee / Taxable person	<ul style="list-style-type: none"> • Registered person as defined u/s 2(94) of CGST Act • Taxable person as defined u/s 2(107) of CGST Act 						
Measure or value of tax Base	<ul style="list-style-type: none"> • Section 15 of CGST Act • Determination of Value of Supply Rules 						
Rate of Tax	<ul style="list-style-type: none"> • Rate to be notified: <table border="1" data-bbox="645 1088 1678 1316"> <tbody> <tr> <td data-bbox="645 1088 1163 1165">Sec. 9 of CGST Act</td> <td data-bbox="1163 1088 1678 1165">Not exceeding 20%</td> </tr> <tr> <td data-bbox="645 1165 1163 1239">Sec. 5 of IGST Act</td> <td data-bbox="1163 1165 1678 1239">Not exceeding 40%</td> </tr> <tr> <td data-bbox="645 1239 1163 1316">Sec. 7 of UTGST Act</td> <td data-bbox="1163 1239 1678 1316">Not exceeding 20%</td> </tr> </tbody> </table> 	Sec. 9 of CGST Act	Not exceeding 20%	Sec. 5 of IGST Act	Not exceeding 40%	Sec. 7 of UTGST Act	Not exceeding 20%
Sec. 9 of CGST Act	Not exceeding 20%						
Sec. 5 of IGST Act	Not exceeding 40%						
Sec. 7 of UTGST Act	Not exceeding 20%						

TERRITORIAL JURISDICTION

INDIA
[Section 2(56) of CGST Act]



- 29 States
- 7 Union territories

Clause (2) & (3) of
Article
1 of Constitution

- Territorial waters,
Seabed and the Subsoil
underlying such water

- Continental shelf,

- EEZ or any other
maritime zone

Air space above
its territory
and territorial
waters

GST - PROPOSED RATE STRUCTURE

- Proposed Rates in GST Council Meeting held on 03rd - 04th October 2016

Description	Rates
Exports, Deemed Exports, Essential items (vegetables, food grains)	0%
Common use items / necessity items (bulk drugs, etc)	5%
Standard rates	12% and 18%
Demerit rate (tobacco products, luxury item, aerated beverages)	28% (Act provides 40%)

- No abatement prescribed till date
- No special tax rate prescribed till date
- The Council has proposed a broad rate of 15% as cess on demerit goods.

CHARGING PROVISION: SEC 9 OF CGST ACT, SEC 7 OF UTGST ACT

LEVY

There shall be levied a tax called **CGST/ UTGST**

ON

All intra-state supplies of goods or services or both

EXCEPT

On the supply of alcoholic liquor for human consumption

VALUE

On the value determined u/s 15 of CGST Act

RATE

As such rates as may be notified by CG in this behalf but not exceeding **20%** on recommendation of council

CHARGING PROVISION: SEC 9 OF CGST ACT, SEC 7 OF UTGST ACT

- ◉ **Section 2(21) of CGST Act:** Central Tax means Central Goods and Services Tax levied under CGST Act
- ◉ **Section 2(9) of UTGST Act:** Union Territory Goods and Services Tax levied under UTGST Act

CHARGING PROVISION: SEC 9 OF CGST ACT, SEC 7 OF UTGST ACT

COLLECTED

Collected in manner prescribed

**PAYABLE
BY**

Taxable Person

**Petroleum &
petroleum
products**

Government (on recommendation of GST council) shall levy CGST / UTGST on following w.e.f. such date as may be notified:

- Petroleum crude
- High speed diesel
- Motor spirit (Petrol)
- Natural gas
- Aviation turbine fuel

Sec 9(2) of CGST Act
Sec 7(2) of UTGST Act

CHARGING PROVISION: SEC 9 OF CGST ACT, SEC 7 OF UTGST ACT



RCM

- Government (on recommendation of GST council) may specify categories of goods or services covered under RCM
- CGST / UTGST in respect of supply by unregistered person to registered person shall be paid by registered person under RCM



E-commerce

- Government (on recommendation of GST council) may specify categories of services on which tax to be paid by E- commerce operator
- If no physical presence in taxable territory, any person representing such operator in taxable territory shall be person liable to pay tax
- Neither physical presence nor representative, then such operator shall appoint a person in taxable territory for payment of tax

CHARGING PROVISION: SEC 9 OF CGST ACT, SEC 7 OF UTGST ACT CONTD..

- ◉ **Electronic Commerce u/s 2(44) of CGST Act:** means supply of goods or services or both including digital products over digital or electronic network
- ◉ **Electronic Commerce Operator u/s 2(45) of CGST Act:** means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce

CHARGING PROVISION: SEC 5 OF IGST ACT

LEVY

There shall be levied a tax called IGST

ON

All inter-state supplies of goods or services or both

EXCEPT

On the supply of alcoholic liquor for human consumption

VALUE

On the value determined u/s 15 of CGST Act

RATE

As such rates as may be notified by CG in this behalf but not exceeding 40% on recommendation of council

CHARGING PROVISION: SEC 5 OF IGST ACT

- ⦿ **Integrated tax u/s 2(12) of IGST Act:** means integrated goods and services tax levied under this Act
- ⦿ **Inter state Supplies of goods / services:**
Defined u/s 7 of IGST Act
- ⦿ **Intra state Supplies of goods / services:**
Defined u/s 8 of IGST Act

CHARGING PROVISION: SEC 5 OF IGST ACT

COLLECTED

Collected in manner prescribed

**PAYABLE
BY**

Taxable Person

**On import of
goods**

- IGST to be levied and Collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975
- On the value as determined under said Act
- At the point when duties of customs are levied on the said goods u/s 12 of the Customs Act, 1962

CHARGING PROVISION: SEC 5 OF IGST ACT

Petroleum & petroleum products

Government (on recommendation of GST council) shall levy IGST on following w.e.f. such date as may be notified:

- Petroleum crude
- High speed diesel
- Motor spirit (Petrol)
- Natural gas
- Aviation turbine fuel

Sec 5(2) of IGST Act

RCM

- Government (on recommendation of GST council) may specify categories of goods or services covered under RCM
- IGST in respect of supply by unregistered person to registered person shall be paid by registered person under RCM

CHARGING PROVISION: SEC 5 OF IGST ACT



E-commerce

- Government (on recommendation of GST council) may specify categories of services on which tax to be paid by E-commerce operator
- E-commerce operator to be person liable to pay tax
- If no physical presence in taxable territory, any person representing such operator in taxable territory shall be person liable to pay tax
- Neither physical presence nor representative, then such operator shall appoint a person in taxable territory for payment of tax

REVERSE CHARGE MECHANISM

Recipient to discharge GST under Reverse Charge

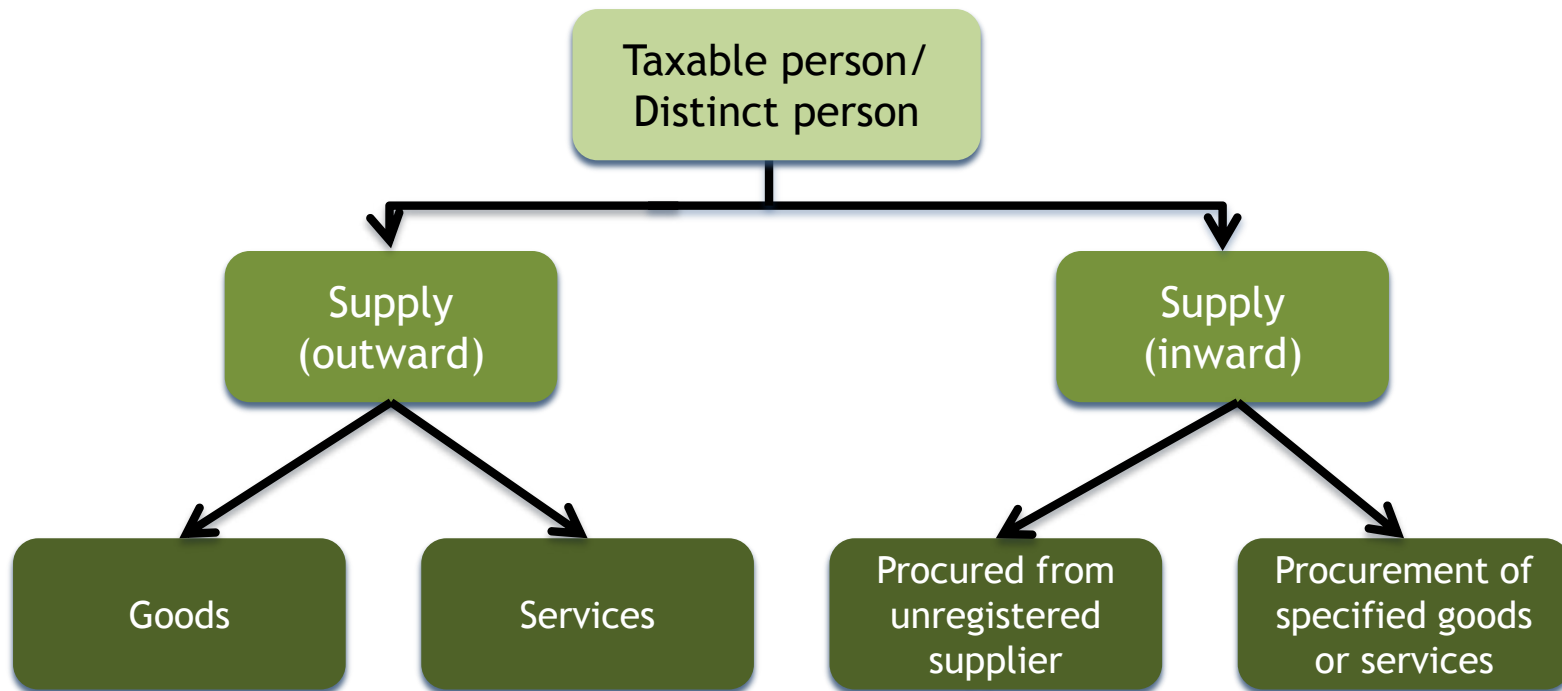
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graph TD; A[Recipient to discharge GST under Reverse Charge] --> B((On procurement of notified goods or services u/s 9(3) of CGST Act and relevant provision of IGST Act, UTGST Act and SGST Act)); A --> C((On procurement of goods or services from unregistered supplier u/s 9(4) of CGST Act and relevant provision of IGST Act, UTGST Act and SGST Act));
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On procurement of notified goods or services u/s 9(3) of CGST Act and relevant provision of IGST Act, UTGST Act and SGST Act

On procurement of goods or services from unregistered supplier u/s 9(4) of CGST Act and relevant provision of IGST Act, UTGST Act and SGST Act

- Recipient to discharge GST under RCM as if he is the person liable for paying the tax on supply
- Recipient to make payment on his own account and on own GSTN number
- It is not TDS paid on behalf of supplier
- Recipient is entitled to ITC subject to ITC provisions

GST LEVY - TRIGGER POINTS



PERSON [SECTION 2(84) OF CGST ACT]

- “Person” includes -

Individual	HUF	Company	Firm
LLP	AOP or BOI, whether incorporated or not, in India or outside India	Corporation established by or under Central, State or Provincial Act	Government company
Local Authority	body corporate incorporated by or under the laws of a country outside India	co-operative society registered under any law relating to cooperative societies	society as defined under the Societies Registration Act, 1860 (21 of 1860)
Trust	Central or state government	every artificial juridical person, not falling within any of the preceding sub-clauses	

TAXABLE PERSON AND REGISTERED PERSON

- ◉ **Taxable person means [Section 2(107) of CGST Act]:**
 - a person who is registered; or
 - liable to be registered under section 22 or section 24;

- ◉ **Registered person means [Section 2(94) of CGST Act]:**
 - a person who is registered u/s 25 of CGST Act; but
 - does not include a person having a Unique Identity Number

DEFINITION OF 'GOODS'

- Goods means [section 2(52) of CGST Act]:
 - Every kind of movable property
 - Other than:
 - Money [Sec. 2(75)]
 - Securities [Sec. 2(101)]
 - But includes
 - Actionable claim [sec 2(1)];
 - Growing crops, grass and things attached to or forming part of land which are agreed to be severed before supply or under contract of supply
- In addition to above, Schedule II deems certain supply to be that of goods
- Whether electricity is liable to GST?

Clause 6 of Schedule III:
Actionable claims other than lottery, betting and gambling are neither to be treated as supply of goods or nor supply of service

‘MONEY’

- Money means [Section 2(75) of CGST Act]:

Indian legal tender	Foreign currency	Cheque	Promissory note
Bill of exchange	Letter of credit	Draft	Pay order
Traveller cheque	Money order	Postal or electronic remittance	Any other instrument recognized by RBI

When used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination;

but shall not include any currency that is held for its numismatic value

DEFINITION OF 'SERVICE'

- Services means anything other than [section 2(102) of CGST Act]:

Goods

Money

Security

- Includes:

- activities relating to the use of money; or
- its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination

for which a separate consideration is charged

In addition to above, Schedule II deems certain supply to be that of service.

DEFINITION OF 'SERVICE'

- ◉ Whether 'works contract', 'construction contracts' and other deemed sales can be treated as 'Service' when constitution considers it to be deemed sales under Article 366(29A)?
- ◉ Whether Intangible property is 'Goods' or 'Service' ?
 - Whether distinction between temporary transfer and permanent transfer will still be relevant?
 - Whether permanent transfer of package software, brand, trade mark, copyright, patent, theatrical rights, non theatrical rights etc. will be supply of 'Goods' under GST ?
 - Clause 5(c) of Schedule II includes temporary transfer of Intangible property as supply of 'service'?
- ◉ Whether immovable property (other than land and building) not being goods is now service?
 - Clause 5 of Schedule III provides that sale of land and sale of building (after receipt of CC or first occupation) are neither supply of goods nor supply of service
 - Whether development right / FSI / TDR, etc. is land?
 - Whether structure / plant embedded in Earth is building?

SUPPLY - BROAD CONCEPT

- ◉ **Concept of a supply is broader than a sale :**
 - Transfer of title in goods is required for Sales
 - Supply doesn't require transfer of title in goods
- ◉ **Presence of two persons for “taxable supply”:**
 - Pre-requisite for VAT and Service tax
 - Not pre-requisite for Excise
 - Will not be a pre-requisite for GST
 - Even self-supplies may be a taxable supply in GST
- ◉ **Presence of Consideration for “taxable supply”:**
 - Pre-requisite for VAT and Service tax
 - Not pre-requisite for Excise
 - Will not be a pre-requisite for GST

DEFINITION OF SUPPLY

- Section 7 defines “Supply” to Include.....
- Definition of “Supply” is inclusive definition and hence one has to understand normal meaning of Supply
- Apart from what is provided in the section 3, the transactions covered under the general meaning of supply can also be covered
- **Dictionary meanings of “Supply”:**
 - “Make(something needed or wanted) available to someone; provide”- Oxford Dictionary
 - “To provide materials, goods and services- an act of providing something” - Cambridge Dictionary
 - “To make (something) available to be used : to provide someone or something with : To make available”- Merriam-Webster Dictionary

SUPPLY U/S 7(1) OF CGST ACT

All forms of supply of goods or services or both

Sec 7(1) a

Sale, Transfer, Barter, exchange, license, rental, lease, disposal made or agreed to be made

For consideration

In the course or furtherance of business

Sec 7(1) b

Importation of Services

For consideration

Whether or not in the course or furtherance of business

Sec 7(1) c

Activities specified in Schedule I

Without consideration

Excludes Supply u/s 7(2):

- Activities specified in Schedule III
- Notified supplies made by CG / SG / Local Authority as Public Authority

Sec 7(1) d

Activities to be treated as supply of services as referred in Schedule - II

‘CONSIDERATION’

Consideration [section 2(31) of CGST Act] includes:

- ⦿ Any payment made / to be made in money or otherwise
- ⦿ The monetary value of any act or forbearance
- ⦿ Deposit (refundable or not) to be treated as consideration only when adjusted against supply

In respect of /
in response to or
for the
inducement of the
supply of goods
and/or
services
whether by
recipient or by
any other person

Consideration excludes:

- ⦿ Subsidy given by Central or State Government

Issues under deliberation:

- What is the meaning of term ‘otherwise’? Does it include consideration in kind?
- Whether mere book entry would amount to payment made ?

‘BUSINESS’

- ◉ **Business includes** [section 2(17) of CGST Act]:
 - Whether or not for pecuniary benefit and **irrespective of volume, frequency, continuity or regularity of following:**

Trade	Commerce	Manufacture	Profession
Vocation	Adventure	Wager	Or any other similar activity

- Supply / acquisition of goods (Including capital assets) and services in connection commencement or closure of business
 - Provision of facilities / benefits to its members by:
 - Club
 - Association
 - Society
 - Or any such body
- For subscription / other consideration

‘BUSINESS’

- **Business includes** [section 2(17) of CGST Act]:
 - Admission of person(s) to any premises for consideration
 - Services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade commerce or vocation
 - Services provided by a race club by way of totalisator or a licence to book maker in such club
 - Any activity undertaken by CG or SG or local authority in which they are engaged as public authorities

SUPPLY IN THE COURSE OF FURTHERANCE OF BUSINESS - AS PER FAQ

- ◉ **Person making a supply in the personal capacity is not considered as a supply:**

- Q 10 on Page 48 of FAQ released on 31/03/2017:

An individual buys a car for personal use and after a year sells it to a car dealer. Will the transaction be a supply in terms of MGL?

Ans.: No, because supply is not made by the individual in the course or furtherance of business. Further, no input tax credit was admissible on such car at the time of its acquisition as it was meant for non-business use

SUPPLIES WITHOUT CONSIDERATION UNDER SCHEDULE I

- ◉ **Permanent transfer / disposal of business assets where ITC has been availed on such assets**
 - Assets transferred on succession of business,
 - conversion of entity (firm to LLP, company to LLP, firm to company, LLP to company),
 - Amalgamation or merger,
 - Disposal of computer to charitable organization
 - Proprietor/ partners transferring goods for personal use
 - Can GST be levied when ITC was claimed under earlier Law?

- ◉ **Supply of goods or services between related persons or between distinct persons specified u/s 25 when made in course or furtherance of business:**
 - Branch / Depot transfer
 - Services provided by Head Office/ corporate office to its Branch offices or regional offices

SUPPLIES WITHOUT CONSIDERATION UNDER SCHEDULE I

- Supply by employer to employees -
 - gifts not exceeding Rs. 50,000 in value in a financial year shall not be treated as supply
- ◉ **Supply of goods by or to agent:**
 - by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or
 - by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
- ◉ **Importation of services by a taxable person from:**
 - a related person or
 - from any of his other establishments outside India in the course or furtherance of business

SCHEDULE II -DEEMED SUPPLY OF 'GOODS' OR 'SERVICES' U/S 7

Transaction	Nature of Supply	Clause
Transfer of title in goods	Goods	1(a)
Transfer of: <ul style="list-style-type: none"> • rights in goods; or • undivided share in goods 	Service	1(b)
Transfer of title in goods at future date upon payment of full consideration	Goods	1(c)
Lease, tenancy, easement, license to occupy land	Service	2(a)
Lease or letting out of building including commercial, industrial or residential complex (wholly or partly) for business or commerce	Service	2(b)
Treatment or processing of other's goods (job work)	Service	2(c)

SCHEDULE II -DEEMED SUPPLY OF 'GOODS' OR 'SERVICES' U/S 7

Transaction	Nature of Supply	Clause
<p>Transfer of business assets:</p> <ul style="list-style-type: none"> • Transfer / disposal of goods forming part of business asset (with or without consideration) <p>When a person ceases to be a taxable person except when:</p> <ul style="list-style-type: none"> • Business transferred as going concern • Business carried on by a personal representative (deemed to be a taxable person) 	Goods	4(a)
		4 (c)
Business assets put to private use or for any purpose other than business (With or without consideration)	Service	4(b)
Renting of immovable property	Service	5(a)

SCHEDULE II -DEEMED SUPPLY OF 'GOODS' OR 'SERVICES' U/S 7

Transaction	Nature of Supply	Clause
Sale of under construction flats / units (money received before CC or First occupation certificate)	Service	5(b)
Temporary transfer or permitting use or enjoyment of IPR	Service	5(c)
Development, design, programming, customization etc. of IT Software	Service	5(d)
Agreeing to the obligation to: <ul style="list-style-type: none"> • Refrain from an act; or • Tolerate an act or situation; or • Do an act 	Service	5 (e)
Transfer of right to use any goods for any purpose whether or not for specified period for consideration	Service	5(f)

SCHEDULE II -DEEMED SUPPLY OF 'GOODS' OR 'SERVICES' U/S 7

Transaction	Nature of Supply	Clause
Works Contract including transfer of property in goods	Service	6(a)
Supply of food as a part of service (Outdoor catering and restaurant sale)	Service	6(b)
Supply of goods by an unincorporated association to its members	Goods	7

Relevance of deeming above transactions into goods/ service:

- Time of supply
- Place of supply
- Rates

SCHEDULE III - ACTIVITIES OR TRANSACTIONS NOT TO BE TREATED AS SUPPLY

- **Services by employee to employer in the course of or in relation to his employment**
 - Supply of goods by employee to employer – taxable supply
 - Supply of goods/ services by employer to employee – taxable supply [not taxable up to Rs. 50,000]

- **Services by any Court or Tribunal established under any law for the time being in force (court includes district court, High Court and Supreme Court)**

- **Functions or duties performed by:**
 - Members of Parliament
 - Members of State Legislature
 - Members of Panchayats
 - Members of Municipalities

SCHEDULE III - ACTIVITIES OR TRANSACTIONS NOT TO BE TREATED AS SUPPLY

- Members of other local authorities.
- any person who holds any post in pursuance of the provisions of the Constitution in that capacity.
- 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.
- Services of funeral, burial, crematorium or mortuary including transportation of the deceased
- Sale of land and sale of building [subject to clause 5(b) of Schedule II]
- Actionable claims, other than lottery, betting and gambling

COMPOSITE SUPPLY

- **Composite supply means [sec 2(30) of CGST Act] :**
 - a supply made by a taxable person to a recipient consisting of two or more supplies of goods or services or both or any combination thereof
 - which are naturally bundled and supplied in conjunction with each other
 - in the ordinary course of business
 - one of which is a principal supply

Illustration : 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.

COMPOSITE SUPPLY

- **Composite supply means [sec 2(30) of CGST Act] :**
 - a supply made by a taxable person to a recipient consisting of two or more supplies of goods or services or both or any combination thereof
 - which are naturally bundled and supplied in conjunction with each other
 - in the ordinary course of business
 - one of which is a principal supply

Illustration : 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.

MIXED SUPPLY

➤ **Mixed supply means [sec 2(74) of CGST Act] :**

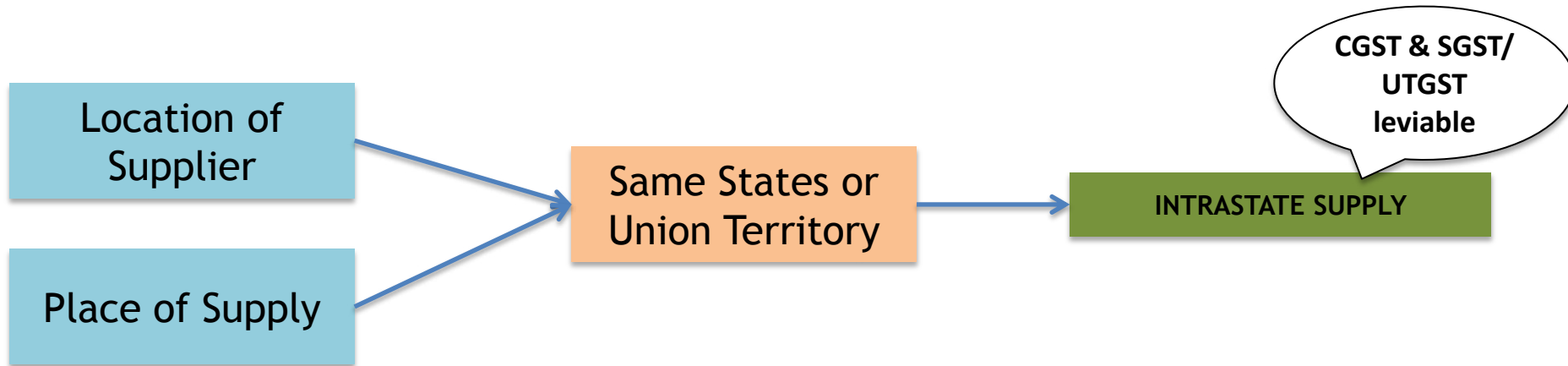
- two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other
- by a taxable person
- for a single price
- where such supply does not constitute a composite supply

Illustration: 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.

COMPOSITE SUPPLY & MIXED SUPPLY - TAXABILITY [SECTION 8 OF CGST ACT]

- 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.
- A mixed supply comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax.

INTRASTATE' - SECTION 8 OF IGST ACT

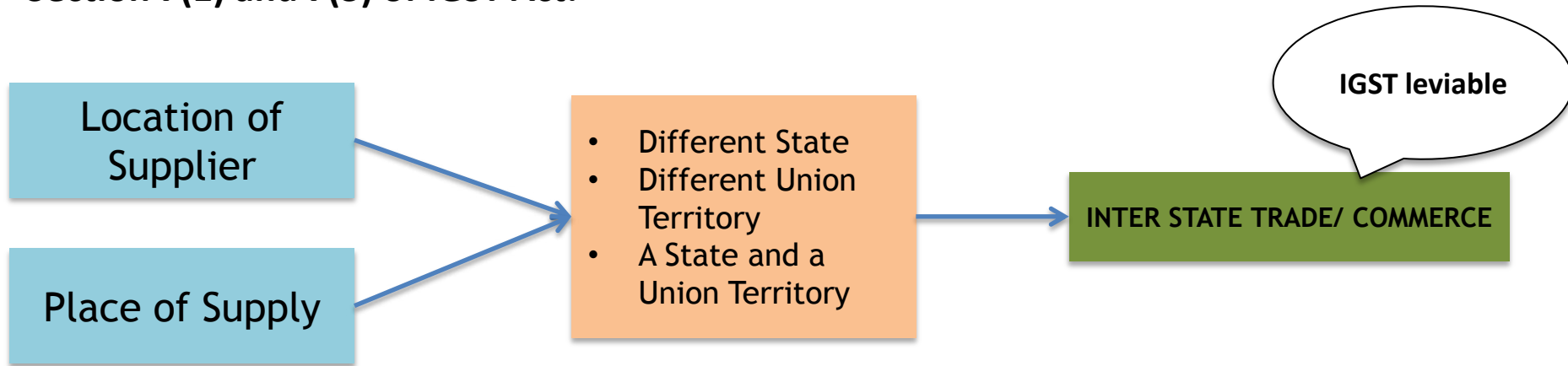


Intra-state supply of goods or service shall not include [proviso to section 8(1) and 8(2)]:

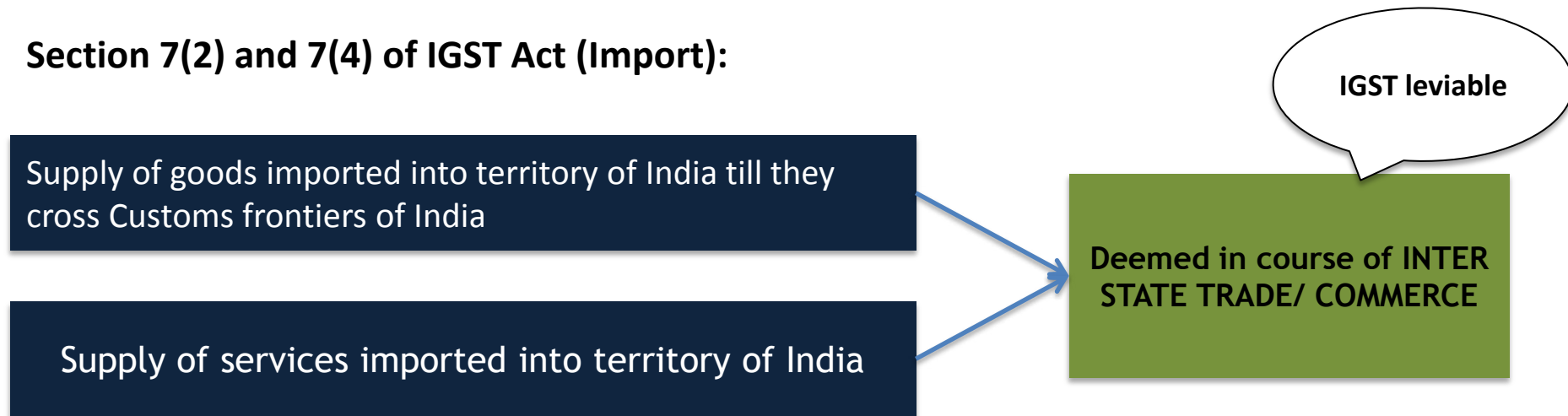
- Supply of goods or services to or by SEZ developer or SEZ unit
- Supply of goods imported into territory of India till they cross the customs frontiers of India
- Supply of goods made to tourist referred to in section 15 of IGST Act:
 - Any supply made to non-resident tourist in India who takes such goods outside India will be liable to IGST and said IGST will be refunded to him in manner to be prescribed

INTERSTATE' - SECTION 7 OF IGST ACT

Section 7(1) and 7(3) of IGST Act:

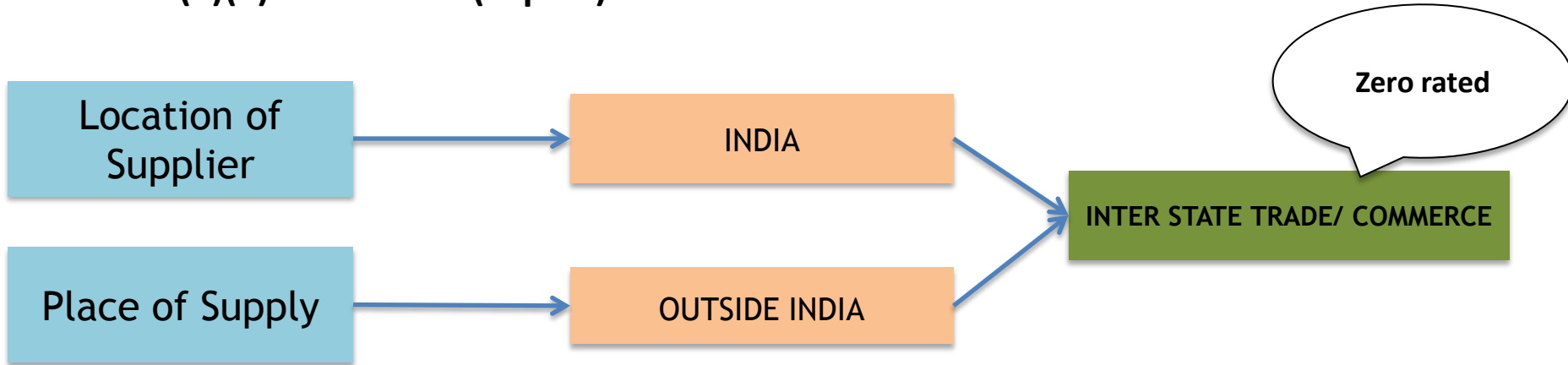


Section 7(2) and 7(4) of IGST Act (Import):



INTERSTATE' - SECTION 7 OF IGST ACT

Section 7(5)(a) of IGST Act (Export):



Section 7(5)(b) of IGST Act:



ZERO RATED SUPPLIES [SEC 2(23) AND SECTION 16 OF IGST ACT]

- **Zero Rated Supply [sec 2(23) of IGST Act]** shall have meaning assigned to it in Section 16
- **Section 16 of IGST Act:**
 - “zero rated supply” means any of the following supplies of goods or services or both -
 - Export of goods or services or both; or
 - Supply of goods or services or both to a SEZ developer or an SEZ unit
 - Subject to provisions of sub section (5) of section 17 of the CGST Act, credit of input tax may be availed for making zero rated supplies, even if that supply is an exempt supply

'INTERSTATE' - SECTION 7 OF IGST ACT

- **Section 7(5)(c) of IGST Act:**

- Supply of goods or services or both in the taxable territory,
 - not being an intra-state supply; and
 - not covered elsewhere in section 7

Shall be deemed to be a supply of goods / service in course of inter-state trade or commerce

- **Above provision will take care of taxability of following:**

- Supply to or from EEZ or Installations beyond 12 nautical miles such as Bombay High
- High sea transactions

IMPORT OF GOODS U/S 2(10) R.W. SEC 5 OF IGST ACT

- ◉ Term “Import of goods” is defined u/s 2(10) of IGST Act to mean bringing goods into India from a place outside India
- ◉ Goods imported into territory of India **till they cross Customs frontiers of India** deemed to be in course of inter-state trade or commerce [section 7(2) of IGST Act]
- ◉ Basic Customs Duty will continue to be leviable on CIF value declared as per Customs Valuation Rules
- ◉ IGST will be payable on import of goods in accordance with the provisions of section 3 of the Customs Tariff Act, 1975
 - **At the point** when duties of customs are levied on the said goods u/s 12 of the Customs Act, 1962
 - **On the value** as determined under Customs Act

IMPORT OF SERVICE U/S 2(11) OF IGST ACT

- ◉ Section 2(11) of IGST Act provides that a supply will be considered as an **“Import of service”** if:
 - a) The supplier is located outside India,
 - b) The recipient is located in India,
 - c) The place of supply of service is in India, and
- ◉ Supply of services in course of import into territory of India deemed to be in the course of inter-state trade or commerce [Section 7(4) of IGST Act]
- ◉ IGST will also be payable on import of services for consideration whether such import is :
 - in course or furtherance of business
 - for personal use
- ◉ IGST will be payable by recipient of services under Reverse Charge

BRANCH/ STOCK TRANSFER- TAXABILITY

- ◉ Section 25 of CGST Act deems an establishment of a person who has obtained or is required to obtain registration in a State, and any of his other establishments in another State as establishments of distinct persons
- ◉ Clause 2 of Schedule I provides:
 - Supply of goods or services between related persons, or between distinct persons as specified in section 25, when made in the course or furtherance of business is deemed to be supply
- ◉ Thus, transfer of goods/ services between HO and branch is a transaction between two taxable persons
- ◉ FAQ dated 31/03/2017 at Q7 of Chapter 4 - Inter-state self-supplies such as stock transfers will be taxable even if there is no consideration
- ◉ **Inter state stock transfer between HO and Branch will be a taxable supply**
- ◉ **Intra state stock transfer between HO and Branch:**
 - single registration in a state and hence HO and Branch are not two taxable persons and hence not taxable

FREE SAMPLES- TAXABILITY

- Classic case is of the physician samples in the Pharma industry:
 - Presently excise is leviable on physician samples on MRP basis (pro-rata)
 - VAT not leviable on physician samples
- Will distribution of samples be taxable even if there is no consideration?
 - Supply u/s 3(1) includes supply made or agreed to be made for consideration in course or furtherance of business
 - Schedule 1(2) covers Supply of goods and / or services only between related persons or distinct persons as defined u/s 25 of CGST Act
- Hence, free samples will not be liable to tax
- However, corresponding ITC needs to be reversed for free samples

COMPOSITION LEVY

- ◉ Composition scheme is **optional** and is prescribed for:
 - Trader having turnover **less than Rs. 50 lakhs**
 - Specified manufacturers having turnover **less than Rs. 50 lakhs**
 - Restaurant and caterers having turnover **less than Rs.50 lakhs**
- ◉ Service providers (**other than restaurant and catering**) are not eligible for composition scheme
- ◉ Prescribed rate for composition would **not be more than**:
 - 2% (1% CGST + 1% SGST/ UTGST) of turnover for manufacturer
 - 5% (2.5% CGST + 2.5% SGST/ UTGST) of turnover for restaurant and catering service providers
 - 1% (0.5% CGST + 0.5% SGST/ UTGST) of turnover for others

COMPOSITION LEVY

- ◉ Registered person (having same PAN) opting composition scheme for one registration is obliged to opt for composition for all his registrations
- ◉ **Supplier of following supply are not eligible for composition:**
 - Supply of services (other than restaurant and catering)
 - Manufacturer of notified goods
 - Supply of goods not leviable to GST
 - Interstate supply of goods
 - Supply of goods through an E-commerce operator
- ◉ Composition supplier is not entitled to avail input tax credit
- ◉ Composition supplier cannot charge GST on supplies made by him
- ◉ Composition supplier buying goods/ services from unregistered supplier will have to discharge GST under RCM and such tax will not be available as ITC

COMPOSITION LEVY

- ◉ Option exercised u/s 10 to remain valid as long as all conditions are satisfied
- ◉ Option shall lapse w.e.f. day on which aggregate turnover during financial year exceeds threshold limit of Rs. 50 lakhs or such prescribed limit
- ◉ In case of existing assesses who have migrated to GST and opt for composition scheme, goods held in stock as on appointed day **should not contain stock** [Rule 3 of Composition Rules]:
 - Purchased in course of inter-state trade or commerce
 - Imported from a place outside India
 - Received from branch / agent / principal situated outside the state
- ◉ Composition supplier 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
- ◉ 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 every additional place of business

**Not
provided
in the Act**

THANK YOU

REFRESHER COURSE - WIRC ICAI

Ashish Kedia