

SEMINAR ON GST

Date : 1st April 2017

Venue : ICAI Tower, Plot No. C-40, 'G' Block, Bandra (E)

Topic : Constitutional aspects, taxes to subsume / abolish, concept of supply and all related aspects-grey areas, levy, time and place of supply.(with related transitional provision)".

By S. S. GUPTA

CHARTERED ACCOUNTANT

1. Constitutional Aspects

(a) Schedule VII of Constitution of India consists of 3 list. Central and State Governments are empowered to make laws for imposition of duty or taxes in respect of subject enumerated in List I and List II respectively. List III is concurrent list where both Central and State Governments can make rule. Following table indicate the power of Central and State Governments to levy major tax/duty.

Sr. No.	Nature of tax	Levied by	Levied on	List No.	Entry No.
1	Excise duty	Central Government	Manufacture	I	84
2	Service tax	Central Government	Rendering of service	I	97
3	Sales tax	State Governments	Sale of goods	II	52

(b) The powers are provided in Schedule VII for levy of other taxes also. The Central Government do not have power to levy tax on sale of goods and the State Governments do not have power to levy excise duty on manufacture of goods except goods containing alcohol.

In order to provide powers to both Central and State Governments, amendment in the constitution is essential. Therefore, Constitution amendment bill has been proposed in the parliament. After the amendment in the constitution as proposed is passed, both the Central and State Governments will have power to levy tax on manufacture, sale and on rendering of service.

(c) GST Council has been framed as per provision contained in article 279A of Constitution of India. The powers of GST Council are as follows:-

- a) The taxes, cesses and surcharges levied by the Union, the states and the local bodies which may be subsumed in the goods and services tax;
- b) The goods and services that may be subjected to, or exempted from the goods and service tax;
- c) Model Goods and Services Tax Law, principles of levy, apportionment of integrated Goods and Services Tax and the principles that govern the place of supply;
- d) The threshold limit of turnover below which goods and services may be exempted from goods and services tax;
- e) The rates including floor rates with bands of goods and services tax;

- e) Any special rate or rates for a specified period, to raise additional resources during any natural or disaster;
- g) Special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
- h) Any other matter relating to the goods and services tax, as the Council may decided

❖^①The goods and services tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

2. Taxes Subsumed

(a) Currently, Central & State Governments levies different type of taxes/duties like Excise duty, Service Tax, Additional duty, Central surcharge, VAT, Entertainment tax, Octroi duty, Luxury tax etc. Following different type of taxes/duties will subsume into GST.

Central Indirect Taxes

Central Excise duty under Central Excise Act, 1994

Additional Excise duty

Excise duty levied under Medicinal and Toilet Preparations (Excise Duty) Act, 1955

Service Tax under Finance Act, 1994

CVD (Additional Customs Duty)

Special Additional Duty of Customs

Central Surcharge

Central Cesses

State Indirect Taxes

State Value Added Tax/Sales Tax

Entertainment tax (other than tax levied by local bodies)

Central Sales Tax (levied by Centre and collected by State)

Octroi duty

Entry Tax

Purchase tax, State Surcharges, State Cesses

Luxury Tax

Lottery tax, Betting and Gambling tax

(b) Concept of GST

The incidence of excise duty, Service Tax and VAT is on manufacture, provision of services and transfer of movable property respectively but in case of GST the incidence of tax will be on supply of goods or services.

- ❖ The definition of GST as per Article 366(12A) of constitution of India is as follows:

“any tax on supply of goods or services or both except taxes on supply of the alcoholic liquor for human consumption”

(c) Major consequences of this would be as follows:

- a) There is no need to determine whether the process amounts to the process of manufacture. Therefore, all traders who are registered as importer, first stage dealer, second stage dealer or non-registered trader will be required to pay GST.
- b) In many cases if the goods are cleared to depots, excise registration is not taken if the credit is not required to be passed on. Such depots will have to obtain registration as supply of goods will be made from such depot.
- c) There will be no need to bifurcate the value of goods and services when in a transaction both goods and services are supplied like works contract, outdoor catering, tax will be levied on entire value.
- d) Credit on IGST will be available. Presently, there is no credit available for Central Sales Tax which is levied on inter-state sale of goods.

(d) The levy of GST will be operationalise by enacting following

Acts:

- A. CGST Act IGST UT-GST Compensation Act by Central Government. (4 Acts)
- B. Each state government will pass SGST Act. Delhi and Pondhicharry will also pass SGST Act. (Total 31 Acts)

Thus they will be 35 Acts for levy and collection of taxes.

CGST and SGST will be levied for where location of supplier of goods or services and place of supply is in same state. IGST will be levied when location of supplier and place of supply is in different state. Currently CST is levied when goods moves inter-state in pursuance of contract.

3. Definition of Supply and related Aspect:

(a) **Definition of supply:** Section 3 defines the scope of supply which is reproduced below:

(1) Supply includes—

- (a) all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,
- (b) importation of services, for a consideration whether or not in the course or furtherance of business, and
- (c) a supply specified in Schedule I, made or agreed to be made without a consideration.

SCHEDULE - I

(b) MATTERS TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

[IN TERMS OF CLAUSE (c) OF SUBSECTION (1) OF SECTION 3]

1. Permanent transfer/disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services between related persons, or between distinct persons as specified in section 10, when made in the course or furtherance of business.
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. 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 III

(c) 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 Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
(b) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
(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.
4. Services by a foreign diplomatic mission located in India.
5. Services of funeral, burial, crematorium or mortuary ¹²including transportation of the deceased.

SCHEDULE IV

(d) ACTIVITIES OR TRANSACTIONS UNDERTAKEN BY THE CENTRAL GOVERNMENT, A STATE GOVERNMENT OR ANY LOCAL AUTHORITY WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services provided by a Government or local authority to another Government or local authority excluding the following services:

3. Services provided by a Government or local authority or a governmental authority by way of:

- (i) any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution;
- (ii) any activity in relation to any function entrusted to a Panchayat under article 243 G of the Constitution;
- (iii) health care; and

6. Services provided by a Government or a local authority by way of-

(i) tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract; or

(ii) assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016.

PROVIDED that the exemption shall apply only to service tax payable on one time charge payable, in full upfront or in instalments, for assignment of right to use such natural resource:

7. Services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import or export of cargo on payment of Merchant Overtime Charges (MOT).

8. Services provided by Government or a local authority by way of-

(i) registration required under any law for the time being in force; or

(ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force.

Definitions:

1. **Governmental Authority** means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W or a Panchayat under article 243G of the Constitution.

2. **Health care services** means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

3. **Education services** means services by way of—

i. pre-school education and education up to higher secondary school or equivalent;

ii. education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force; or

iii. education as a part of an approved vocational education course.

(e) **2. Transitional Provision**

❖ **Treatment of long term construction / works contracts**

The goods and/or services supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act. (Section 186)

❖ **Progressive or periodic supply of goods or services**

Notwithstanding anything contained in section 12 and 13, no tax shall be payable on the supply of goods and/or services made on or after the appointed day where the consideration, whether in full or in part, for the said supply has been received prior to the appointed day and the duty or tax payable thereon has already been paid under the earlier law. (Section 187)

❖ **Taxability of supply of services in certain cases**

Notwithstanding anything contained in section 13 or 14, the tax in respect of the taxable services shall be payable under the earlier law to the extent the point of taxation in respect of such services arose before the appointed day.

Explanation: Where the portion of the supply of services is not covered by this section, such portion shall be liable to tax under this Act. (Section 188)

❖ **Taxability of supply of goods in certain cases**

Notwithstanding anything contained in section 12 or 14, the tax in respect of the taxable goods shall be payable under the earlier law to the extent the point of taxation in respect of such goods arose before the appointed day.

Explanation: Where the portion of the supply of goods is not covered by this section, such portion shall be liable to tax under this Act. (Section 189)

4. Levy and Collection of Central/State Goods and Services Tax

(1) There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services on the value determined under section 15 and at such rates as may be notified by the Central/State Government in this behalf, but not exceeding fourteen percent, on the recommendation of the Council and collected in such manner as may be prescribed.

(2) The CGST/SGST shall be paid by every taxable person in accordance with the provisions of this Act.

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

(4) The Central or a State Government may, on the recommendation of the Council, by notification, specify categories of services the tax on 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 person 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.

5. Time of Supply

(a) The Provision are made in section 12 and 13 of GST Act for determination of time when liability to pay the tax arises. The separate provision are made determination of time of supply of goods and time of supply of service. Section 12 and Section 13 make separate provision for determination time of supply for tax payable under reverse charge, supply through vouchers and other normal supply. The provisions are

(b) Time of supply of goods

Section 12(2)

- (2) The time of supply of goods shall be the earlier of the following dates, namely,-
- a) the date of issue of invoice by the supplier or the last date on which he is required, under section 28, to issue the invoice with respect to the supply; or
 - b) the date on which the supplier receives the payment with respect to the supply: PROVIDED that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess shall, at the option of the said supplier, be the date of issue of invoice.

Explanation 1.- For the purposes of clauses (a) and (b), the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2.—For the purpose of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of accounts or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely—

- a) the date of the receipt of goods, or
- b) the date on which the payment is made, or
- c) the date immediately following thirty days from the date of issue of invoice by the supplier:

PROVIDED that where it is not possible to determine the time of supply under clause (a), (b) or (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

Explanation.— For the purpose of clause (b), “the date on which the payment is made” shall be the date on which the payment is entered in the books of accounts of the recipient or the date on which the payment is debited in his bank account, whichever is earlier.

(4) In case of supply of vouchers, by whatever name called, by a supplier, the time of supply shall be-

- a) the date of issue of voucher, if the supply is identifiable at that point; or
- b) the date of redemption of voucher, in all other cases;

(5) In case it is not possible to determine the time of supply under the provisions of sub-section (2), (3) or (4) the time of supply shall

- c) in a case where a periodical return has to be filed, be the date on which such return is to be filed, or
- d) in any other case, be the date on which the CGST/SGST is paid.

(c) Time of supply of services

Section 13(2)

(2) The time of supply of services shall be the earlier of the following dates, namely: -

- a) the date of issue of invoice by the supplier or the last date on which he is required, under section 28, to issue the invoice with respect to the supply; or
- b) the date on which the supplier receives the payment with respect to the supply:

PROVIDED that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess shall, at the option of the said supplier, be the date of issue of invoice.

Explanation 1.- For the purposes of clauses (a) and (b), the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2.- For the purpose of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of accounts or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely-

- a) the date on which the payment is made, or
- b) the date immediately following sixty days from the date of issue of invoice by the supplier:

PROVIDED that where it is not possible to determine the time of supply under clause (a) or (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

PROVIDED FURTHER that in case of ‘associated enterprises’, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

Explanation.- For the purpose of clause (a), “the date on which the payment is made” shall be the date on which the payment is entered in the books of accounts of the recipient or the date on which the payment is debited in his bank account, whichever is earlier.

(4) In case of supply of vouchers, by whatever name called, by a supplier, the time of supply shall be-

- a) the date of issue of voucher, if the supply is identifiable at that point; or
- b) the date of redemption of voucher, in all other cases;

(5) Where it is not possible to determine the time of supply of services in the manner specified in sub-sections (2), (3) or (4), the time of supply shall

- c) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
- d) in any other case, be the date on which the CGST/SGST is paid.

6. Place of Supply

- Section 7 to 10 of IGST Act makes provision for determining place of supply. The provision made in different section are

Section	Description of heading of Section
7	Place of supply of goods other than supply of goods imported into, or exported from India
8	Place of supply of goods imported into, or exported from India
9	Place of supply of services where the location of supplier of service and the location of the recipient of service is in India
10	Place of supply of services where the location of the supplier or the location of the recipient is outside India

The provision of section 7 and section 8 relates to determination of place of supply of goods and section 9 and

Sr. No.	Description of Service	Sub-section	Place of Supply
1	In relation of immovable property	4	Location of immovable property
2	By restaurant, catering, etc.	5	Where services we performed
3	In relation to training and performance	6	(i) In case of registered person, location of such person (ii) In other case where services are performed
4	Admission to cultural event	7	Where event is held
5	Organization of any event	8	(i) In case of registered person, location of such person (ii) In other case where event is held
6	Transportation of goods including mail or courier	9	(i) In case of registered person, location of such person (ii) In other case where goods are handed over
7	Transportation of passengers	10	(i) In case of registered person, location of such person (ii) In other case where passenger embarks on journey

Sr. No.	Description of Service	Sub-section	Place of Supply
8	Services on board a conveyance	11	First Schedule point of departure
9	Telecommunication services	12	Refer sub-section (12)
10	Banking Services	13	Location of recipient of service. In case location, not available, location of supplier
11	Insurance Services	14	(i) In case of registered person, location of such person (ii) In other case location of recipient of service
12	Advertisement services to Governments, statutory bodies, etc.	15	Refer sub-section (15)
13	Other than above (i) Registered person (ii) Unregistered person	2 3	Location of registered person (a) Location of recipient (b) If address of recipient not known, location of supplier

❖ The Summary of provision contained in Section 10 form are

Sr. No.	Description of Service	Sub-section	Place of supply is
1. (i)	Services on goods made physically available by recipient	3(a)	Where services are performed
1. (ii)	Services on goods temporally imported	2nd proviso to 3(a)	Recipient of service
1. (iii)	Services provided from remote location	1st proviso to 3(a)	Location of goods
1. (iv)	Services requiring physical presence of individual	3(b)	Where services are performed
2	In relation to immovable property	4	Location of immovable property
3	Admission to or organization of event	5	Where event is held
4	Above services performed in taxable territory	6	Location of taxable territory
5	Above service performed in more than one State	7	Each State
6. (i)	Services to Account holder by Banking company or financial institution or NBFC	8	Location of supplier

Sr. No.	Description of service	Sub - Section	Place if supply is
6.(ii)	Intermediary services	8	Location of supplier
6.(iii)	Hiring means of transport up to one month	8	Location of supplier
7.	Transportation of goods other than mail or courier.	9	Destination of goods
8.	Transportation of passenger	10	Where passenger embarks on journey
9.	On Board a conveyance	11	First schedule points of departure
10.	Online information and database access or retrieval services	12	Refer Sub-section (12)
11.	Services other than mentioned above in Sr. Nos. 1 to 10 to registered person	2	(a) Location of recipient (b) If location of recipient not known, location of supplier

The Importance of undertaking the provision of place of supply is to determine the payment of SGST/CGST or IGST. In case of IGST, the Name of State can also be determined.

The provision of section 7 to section 10 are reproduced below:

× Section 7

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

1. The provisions of this section shall apply to determine the place of supply of goods other than supply of goods imported into, or exported from India.
2. Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.
3. Where the goods are delivered by the supplier to a recipient or any other person, on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.

4. Where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient.

5. Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

6. Where the goods are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

7. Where the place of supply of goods cannot be determined in terms of subsection (2), (3), (4), (5) or (6), the same shall be determined in a manner prescribed by the Central Government on the recommendation of the Council.

❖ **Section 8**

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

1. The place of supply of goods imported into India shall be the location of the importer.

2. The place of supply of goods exported from India shall be the location outside India.

Section 9

Place of supply of services where the location of supplier of service and the location of the recipient of service is in India

- (1) The provisions of this section shall apply to determine the place of supply of services where the location of supplier of service and the location of the recipient of service is in India.
- (2) The place of supply of services, except the services specified in subsections (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15), made to a registered person shall be the location of such person.
- (3) The place of supply of services, except the services specified in subsections (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15), made to any person other than a registered person shall be
 - a) the location of the recipient where the address on record exists, and
 - b) the location of the supplier of services in other cases.
- (4) The place of supply of services, -
 - a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work, or

- b) by way of lodging accommodation by a hotel, inn, guest house, homestay, club or campsite, by whatever name called and including a house boat or any other vessel, or
- c) by way of accommodation in any immovable property for organizing any marriage or reception or matters related therewith, official, social, cultural, religious or business function including services provided in relation to such function at such property, or
- d) any services ancillary to the services referred to in clause (a), (b) and (c), shall be the location at which the immovable property or boat or vessel is located or intended to be located:

PROVIDED that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Explanation: Where the immovable property or boat or vessel is located in more than one State, the supply of service shall be treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(5) The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery, shall be the location where the services are actually performed.

(6) The place of supply of services in relation to training and performance appraisal to—

- a) a registered person, shall be the location of such person;
- b) a person other than a registered person, shall be the location where the services are actually performed.

(7) The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

(8) The place of supply of services provided by way of—

(a) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events, or

(b) services ancillary to organization of any of the above events or services, or assigning of sponsorship of any of the above events,

to

(i) a registered person, shall be the location of such person;

(ii) a person other than a registered person, shall be the place where the event is actually held:

PROVIDED that if the event is held outside India, the place of supply shall be the location of the recipient.

Explanation: Where the event is held in more than one State and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in the each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(9) The place of supply of services by way of transportation of goods, including by mail or courier to,

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

(10) The place of supply of passenger transportation service to

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey;

PROVIDED that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in the manner specified in sub-sections (2) or (3), as the case may be.

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

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

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

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

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

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

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

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

(d) in other cases not covered in (b) and (c) above, shall be the address of the recipient as per records of the supplier of the service:

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

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

Explanation: Where the leased circuit is installed in more than one State and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

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

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

(14) The place of supply of insurance services shall:

(a) to a registered person, be the location of such person;

(b) to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.

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

❖ **Section 10**

Place of supply of services where the location of the supplier or the location of the recipient is outside India

- (1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of service or the location of the recipient of service is outside India.
- (2) The place of supply of services except the services specified in subsections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13) shall be the location of the recipient of service:

PROVIDED that in case the location of the recipient of service is not available in the ordinary course of business, the place of supply shall be the location of the supplier of service.

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

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

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

PROVIDED FURTHER that this clause shall not apply in the case of a service supplied in respect of goods that are temporarily imported into India for repairs and are exported after repairs without being put to any use in India, other than that which is required for such repairs;

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

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

(5) The place of supply of services supplied by way of admission to, or organization of, a cultural, artistic, sporting, scientific, educational, or entertainment event, or a celebration, conference, fair, exhibition, or similar events, and of services ancillary to such admission, shall be the place where the event is actually held.

(6) Where any service referred to in sub-sections (3), (4), or (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory where the greatest proportion of the service is provided.

(7) Where the services referred to in sub-sections (3), (4), (5) or (6) are supplied in more than one State, the place of supply of such services shall be taken as being in each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(8) The place of supply of following services shall be the location of the supplier of service:-

(a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(b) intermediary services;

(c) services consisting of hiring of means of transport other than aircrafts and vessels except yachts, upto a period of one month.

Explanation.- For the purpose of this section, the expression “goods” shall include ‘securities’ as defined in sub-section (90) of section 2 of the CGST Act, 2016.

(9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of the goods.

(10) The place of supply in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

(11) Place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

(12) (a) The place of supply of the “online information and database access or retrieval services” services shall be location of recipient of service.

(b) For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory if any two of the following non-contradictory conditions are satisfied, namely:—

(i) the location of address presented by the recipient of service via internet is in taxable territory;

(ii) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of service settles payment has been issued in the taxable territory;

(iii) the billing address of recipient of service is in the taxable territory;

(iv) the internet protocol address of the device used by the recipient of service is in the taxable territory;

(v) the bank of recipient of service in which the account used for payment is maintained is in the taxable territory;

(vi) the country code of the subscriber identity module (SIM) card used by the recipient of service is of taxable territory;

(vii) the location of the fixed land line through which the service is received by the recipient is in taxable territory.

(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of supply shall be

BALANCED VIEW **THANK YOU**

PRESENTED BY

S.S.GUPTA

Chartered Accountant