

Place of Supply of Goods and Services & Taxability of Inter-State Supply

At the Two Days Workshop on GST
Organised by the WIRC of ICAI

Presented by CA. Aditya Surte

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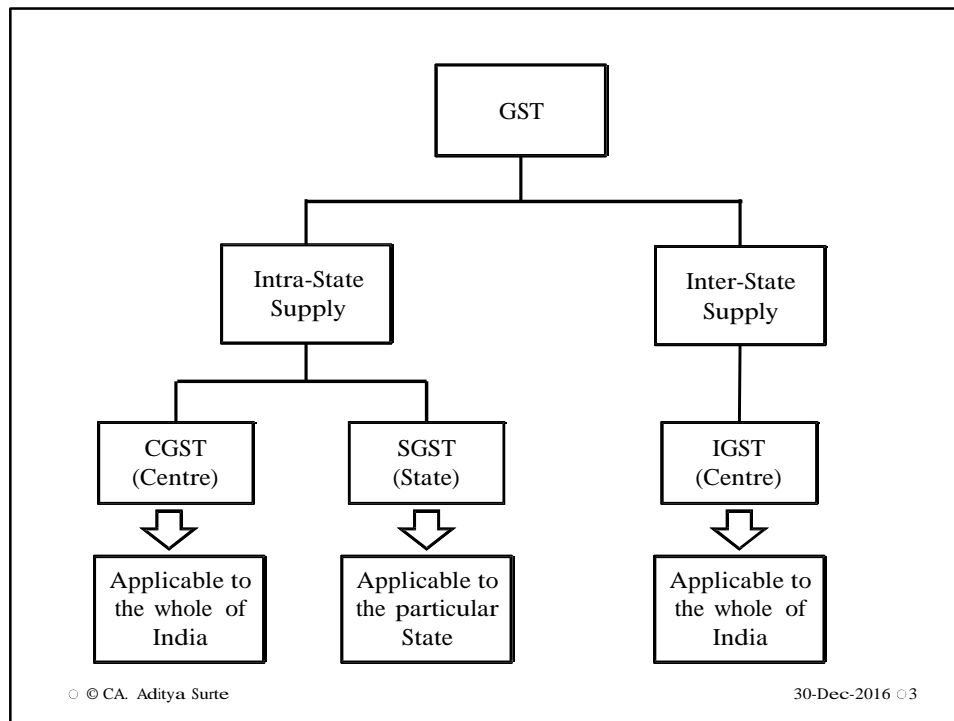
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Concept of CGST, SGST & IGST

- **Dual structure of GST**
 - o India is a federal country where both Centre and States have been assigned powers to levy and collect taxes.
 - o Dual GST in keeping with the Constitutional requirement of fiscal federalism.
- **How does it work?**
 - o The Centre and States will simultaneously levy GST on a common tax base.
 - o Intra-State supply of goods and/or services:
 - Centre will levy Central GST (CGST)
 - States will levy State GST (SGST)
 - o Inter-State supply of goods and/or services:
 - Centre will levy Integrated GST (IGST)
 - o Export of goods and/or services – zero rated

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Present structure of taxability of inter-State trade and commerce

- Central Sales Tax levied and collected on sale or purchase of goods in the course of inter-State trade or commerce by the State from which the movement of goods has commenced.
 - E.g. If M of Mumbai sells the goods to G of Gujarat and goods are dispatched from Mumbai, then State of Maharashtra shall be the appropriate State to levy tax. If in the above case goods are dispatched from Delhi then Delhi will be the appropriate State to levy tax on such inter-State although 'M' is situated in the State of Maharashtra and bill is prepared in State of Maharashtra.
- Tax on services provided anywhere in India levied and collected by the Central Government. No concept of inter-State provision of services.

Central Sales Tax – Brief History

- Prior to 1956, as per Article 286 of the Constitution, “inter-State sales” were out of the ambit of taxation. No State was able to levy tax on a sale if the purchaser was out of the State.
- Each State tried to claim to levy tax on transactions of inter-State movement by relying on some nexus. Thus, more than one State levied tax on the same transaction.
- Article 286 (2) was amended on 11-09-1956 by way of sixth amendment to the Constitution to empower the Parliament to formulate principles for determining when and where a sale or purchase of goods takes place in the course of inter-State trade or commerce.
- Article 269A inserted by 101st amendment to the Constitution also grants similar power to the Parliament to formulate the principles for determining the POS.

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Why is there a need to have “POS”

- Time of Supply indicates “When” the tax is payable on supply of goods and/or services.
- Place of Supply (POS) indicates “Where” the tax will be payable .
- Basic principle behind provisions relating to POS is that GST is a destination based tax. Thus, tax is finally payable where goods and services are consumed.
- POS will also reduce friction and lend clarity among the States and between States and Centre.

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Principles of determining supply in the course of inter-State trade or commerce

- Supply of goods and/or services in the course of inter-State trade or commerce means any supply where the location of the supplier and place of supply are in different States.
- Shift of focus from “sale or purchase occasioning the movement of goods from one State to another” to “location of the supplier” and “place of supply”.
- Location of the supplier of service defined in sec. 2(18).
- Place of supply of goods to be determined in accordance with provisions of sec. 7 & 8.
- Place of supply of services to be determined in accordance with provisions of sec. 9 & 10.

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Supplies of goods and/or services in the course of inter-State trade or commerce

- (1) Subject to the provisions of section 7, supply of goods in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in different States.
- (2) Subject to the provisions of section 9, supply of services in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in different States.
- (3) Supply of goods in the course of import into the territory of India till they cross the customs frontiers of India shall be deemed to be a supply of goods in the course of inter-State trade or commerce.
- (4) Supply of services in the course of import into the territory of India shall be deemed to be a supply of services in the course of inter-State trade or commerce.

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Supplies of goods and/or services in the course of inter-State trade or commerce

(5) Supply of goods and/or services, when the supplier is located in India and the POS is outside India, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

(6) Supply of goods and/or services to or by a SEZ developer or an SEZ unit, shall be deemed to be a supply of goods and/or services in the course of inter-state trade or commerce.

(7) Any supply of goods and/or services in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

Supplies of goods and/or services in the course of intra-State trade or commerce

(1) Subject to the provisions of section 7, intra-State supply of goods means any supply of goods where the location of the supplier and the place of supply are in the same State:

- Intra-State supply of goods shall not include:
 - o supply of goods to or by a SEZ developer or to or by an SEZ unit;
 - o supply of goods brought into India in the course of import till they cross the customs frontiers of India.

(2) Subject to the provisions of section 9, intra-State supply of services means any supply of services where the location of the supplier and the place of supply are in the same State:

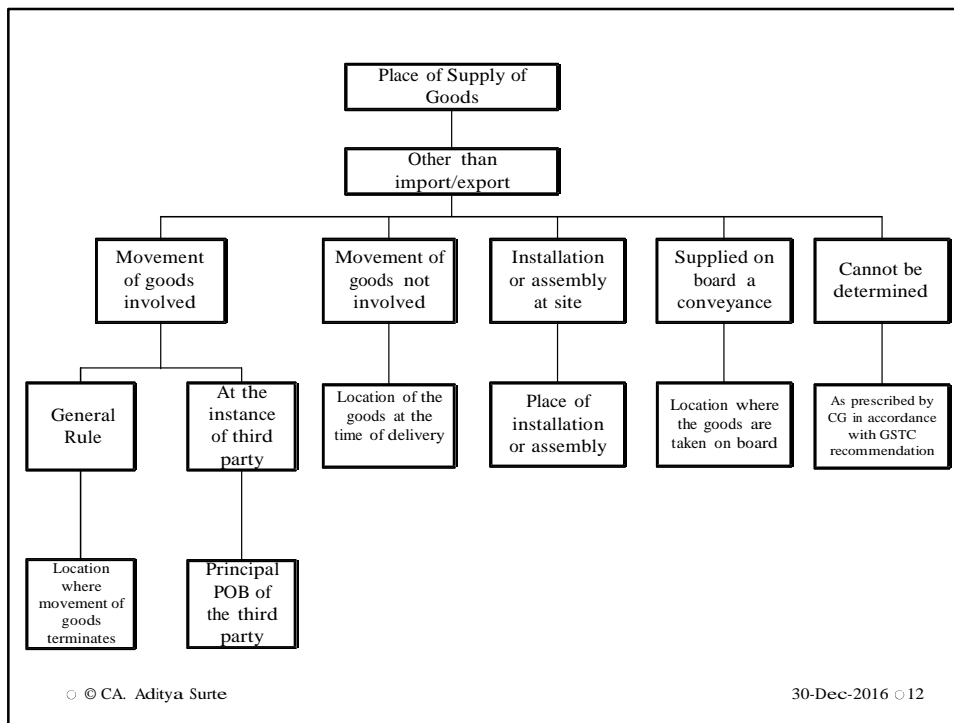
- Intra-State supply of services shall not include supply of services to or by a SEZ developer or to or by an SEZ unit.

Place of Supply of Goods

- **Sec. 7:** Applicable for determining POS of goods other than goods imported or exported.
- **Sec. 8:** Applicable for determining POS of goods imported or exported.
- **Important factors to be considered**
 - o Location of supplier of goods - Not defined in the IGST Act
 - o Determining the category in which the supply falls as per Sec 7 of the IGST Act

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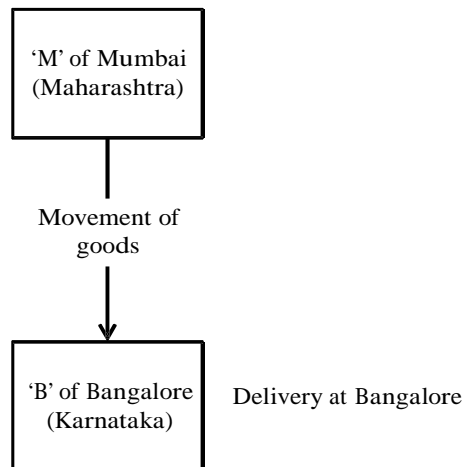
Section 7(2):

Where supply involves movement of goods, whether by the supplier or the recipient or any other person, the place of supply of goods shall be location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Illustration:

'M' supplies goods from Mumbai by way of sale to 'B' of Bangalore. The supply by 'M' will involve movement of goods from Maharashtra to Karnataka. In this case place of supply of goods shall be Karnataka, where the movement of goods terminates for delivery to the recipient 'B'.

Place of supply under section 7(2) of IGST Act



Place of supply = where movement of goods terminates for delivery = Karnataka

Section 7(3):

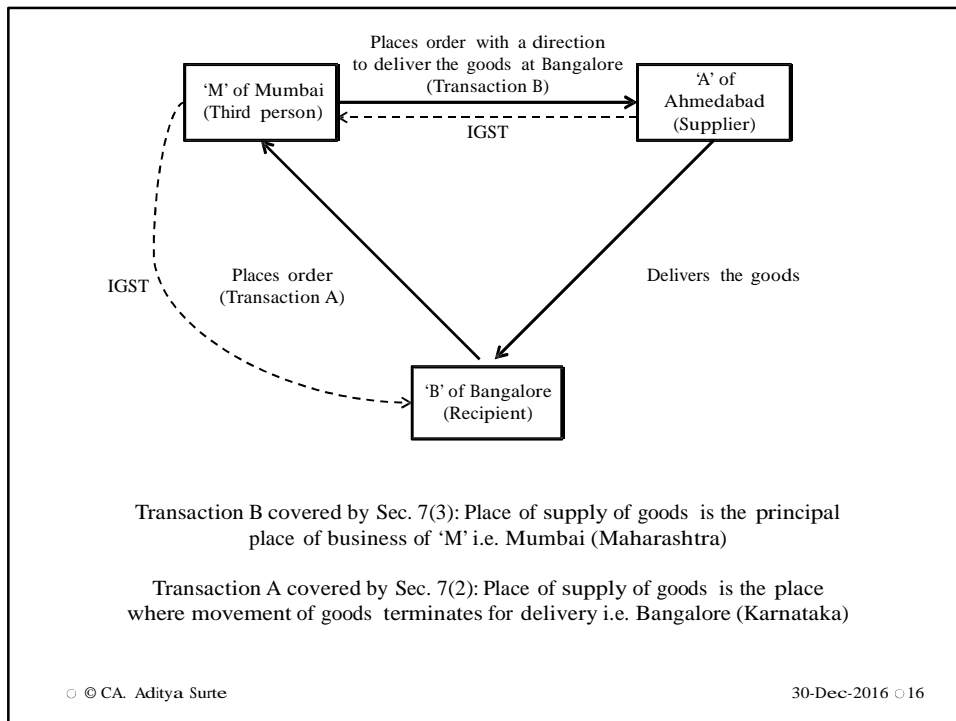
Where the goods are delivered by the supplier to a recipient or any other person, on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.

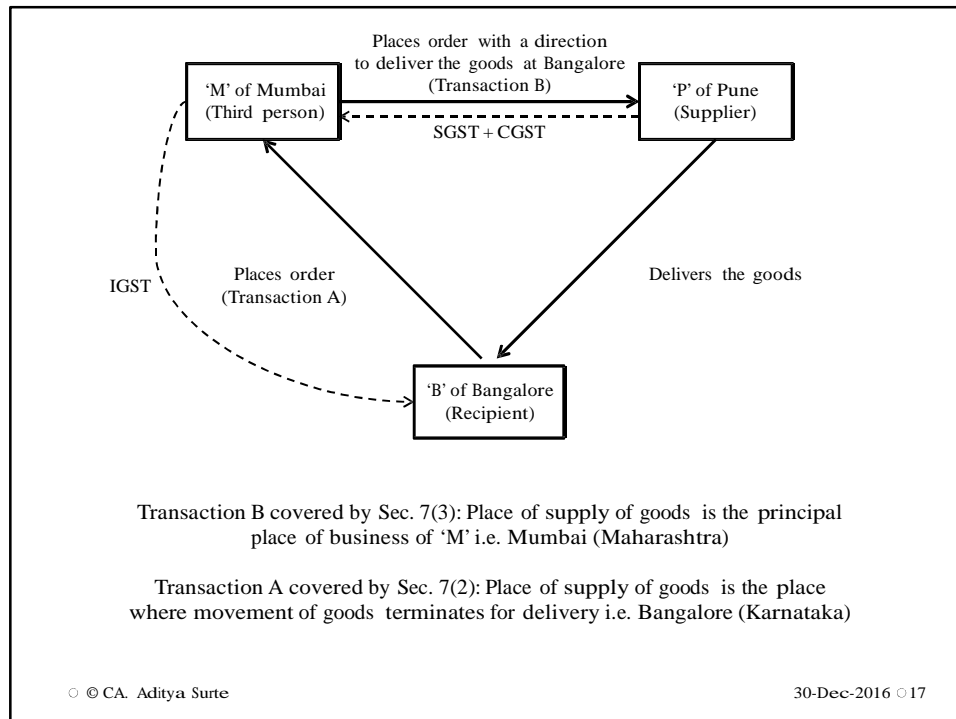
Illustration:

'M' of Mumbai requests 'A' of Ahmedabad to deliver goods to 'B' of Bangalore. In this situation, the place of supply shall be the principle place of business of 'M' of Mumbai for 'A' of Ahmedabad.

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Section 7(4):

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

Illustration:

In case of a counter sale or where the goods are delivered on counter by a supplier in Mumbai, the place of supply in such cases shall be location of the goods at the time of the delivery to the recipient i.e. Mumbai.

Section 7(5):

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

Works contract has been considered as supply of service under Schedule II. So when supply involves assembly or installation, it must be for other than works contract.

Illustration:

A water purifier, sold in knocked down condition which is required by supplier to be assembled at the place of recipient, the place of supply will be the place of recipient where goods are assembled.

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Section 7(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.

Illustration:

Souvenirs, perfumes and other articles taken on board an aircraft or a cruise at Mumbai and sold on board. The place of supply of such goods shall be Mumbai.

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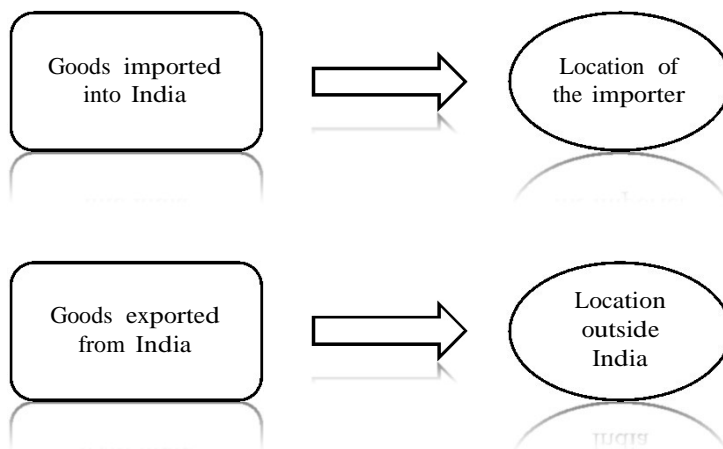
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Section 7(7):

Where the place of supply cannot be determined in terms of aforesaid sub-sections, the same shall be determined in a manner prescribed by the Central Government on the recommendation of the Council.

Earlier provision of determination by law made by Parliament removed.

**POS of goods imported or exported
(Sec. 8)**



Place of Supply of Services

Sec. 9: Where location of supplier and location of recipient of service is in India

MAP OF INDIA



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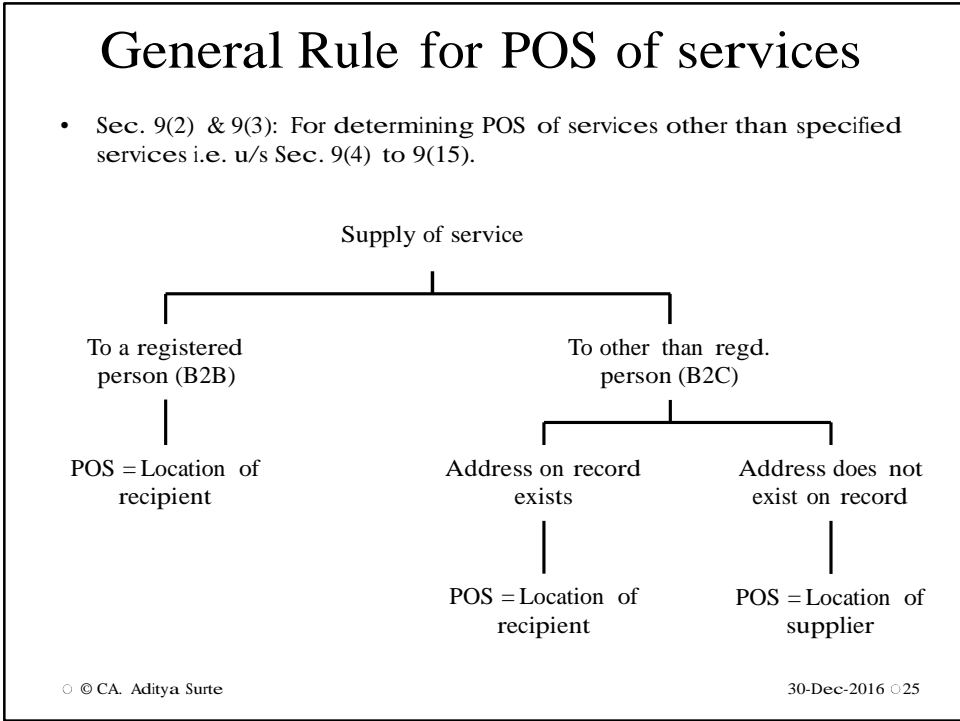
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Important definitions

- Location of recipient of services [Sec. 2(17) of IGST Act]
 - o Where a supply is received at a POB for which regn has been obtained, location of such POB;
 - o Where a supply is received at a fixed establishment elsewhere (not being a POB for which regn is obtained), location of such fixed establishment;
 - o Where a supply is received at more than one establishment, whether POB or fixed establishment, the location of the establish most directly concerned with the receipt of supply; and
 - o In absence of such places, the usual place of residence of the recipient.
- Location of supplier of services [Sec. 2(18)]
 - o On same principals as that of recipient of services.

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POS of specified services

Sec. 9(4)	Immovable property related services
Sec. 9(5) & (6)	Performance based services
Sec. 9(7)	Services by way of admission to events and places
Sec. 9(8)	Services by way of organising events
Sec. 9(9)	Goods transportation services
Sec. 9(10)	Passenger transportation service
Sec. 9(11)	Services on board a conveyance
Sec. 9(12)	Telecommunication services
Sec. 9(13)	Banking and other financial services
Sec. 9(14)	Insurance services
Sec. 9(15)	Advertisement services to the Central Govt., etc.

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Sec. 9(4): Immovable property related services

Nature of service supplied	POS
(a) Directly in relation to immovable property, including services provided by architects, interior decorators, surveyors, engineers, other related experts, estate agents, grant of rights to use immovable property or co-ordination of construction work	Location where immovable prop. is located or intended to be located
(b) Lodging accommodation by a hotel, inn, guest house, homestay, club, campsite, houseboat or any other vessel, by whatever name called	Location where such hotel, inn, guest house, houseboat, etc. is located or intended to be located
(c) Accommodation in any immovable property for arranging any marriage, reception, matters related therewith, official, social, cultural, religious, business function including services provided for such function at such property	Location of the venue
(d) Any services ancillary to above referred services	Location of immovable property

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Sec. 9(4): Immovable property related services

- If the location of the immovable property or boat or vessel is located or intended to be located outside India, the POS shall be the location of the recipient.
- If such immovable property or boat or vessel is situated/located in more than one State, supply shall be treated as made in each State and would be proportionately valued as per contract or if not available then on reasonable basis as may be prescribed.

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Sec. 9(5) & (6): Performance based services

Sec.	Nature of service supplied	POS
9(5)	Restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery	Location of actual performance
9(6)	(a) Training and performance appraisal service to a registered person	Location of recipient
	(b) Training and performance appraisal service to other than a regd. person	Location of actual performance

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- Sec. 9(7): Services by way of admission to events & places**
- Services provided by way of -
 - o Admission to a cultural, artistic, sporting, scientific, educational or entertainment event, amusement park or any other place
 - o Services ancillary to above
 - POS will be the place where such event is held or where such park or other place is located.
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Sec. 9(8): Services by way of organising events

- Organisation 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
- Services ancillary to organisation of any of the above events or services, or
- Assigning of sponsorship of any of the above events
- POS -
 - B2B - Location of the recipient
 - B2C - Place where the event is actually held
- If event is held outside India – POS shall be the location of recipient
- If event is held in more than one State and a consolidated amount is charged for such supply – POS would be taken as being in each State proportionate to the value of service in each State as per the contract. In absence of such a contract – on reasonable basis as may be prescribed.

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Sec. 9(9): Goods transportation services

- Services by way of transportation of goods, including by mail or courier.
- POS -
 - B2B – Location of recipient
 - B2C – Location at which goods are handed over for transportation.

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Sec. 9(10): Passenger transportation service

Type of person to whom supply is made	POS
B2B	Location of recipient
B2C	Place where the passenger embarks on the conveyance for a continuous journey
If right to passage given for future use and point of embarkation is not known at the time of issue of right to passage - POS determined as per general rules [Sec.9(2) & 9(3)]	
B2B	Location of recipient
B2C	Location of recipient (if address exists on record) Location of supplier (if address does not exist on record)

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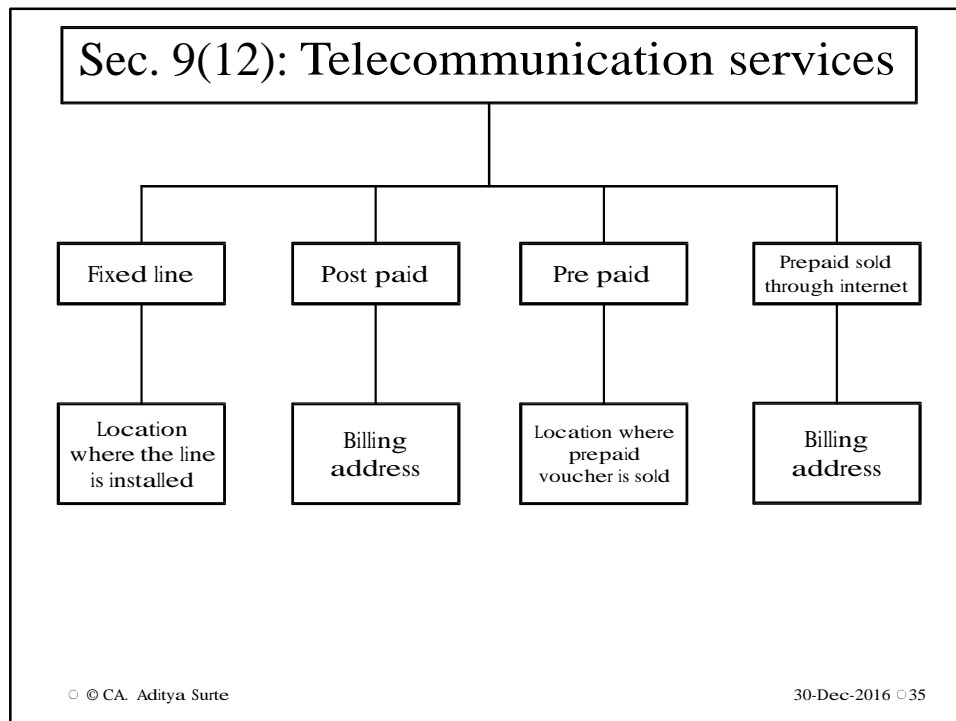
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Sec. 9(11): Services on board a conveyance

- Services supplied on board a conveyance such as vessel, aircraft, train or motor vehicle.
- POS shall be the first scheduled point of departure of that conveyance for the journey.
- Illustration: Ready to eat food is loaded at Ratlam on Rajdhani train running from Mumbai to Delhi. The place of supply shall be Mumbai (Maharashtra). In this case, even if the food is loaded from more than one place, the place of supply of all such services shall be Mumbai.

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Sec. 9(13): Banking & other financial services including stock broking services

- POS – Location of the recipient of services on the records of the supplier of services
- If location of recipient is not on the records: POS shall be the location of supplier of services.

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Sec. 9(14): Insurance services

- To a registered person – Location of such person
- To a person other than a regd. person – Location of the recipient of services on the records of the supplier of services.

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Sec. 9(15): Advertisement services to the Central Govt., etc.

- Advertisement services to the Central Govt., a State Govt., a statutory body or a local authority meant for identifiable States.
- POS 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 for the purpose of dissemination in the respective States as may be determined in terms of the contract or on such other reasonable basis as may be prescribed in this behalf.

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Place of Supply of Services

Sec. 10: Where location of supplier or location of recipient of service is outside

India

MAP OF INDIA



Location of Supplier

Location of recipient

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Sec. 10(2): General rule

- POS **except** services specified in sec. 10(3) to 10(13) shall be the location of recipient of service.
- If location of recipient of service is **not available** in the ordinary course of business, POS shall be the location of the **supplier** of service.

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Sec. 10(3) to 10(13)

POS of specified services

Sec. 3(a): Services supplied in respect of goods that are required to be made physically available by the recipient to the supplier or to a person acting on behalf of the supplier in order to provide the service – POS shall be the location where the services are actually performed.

- o Provided that when such services are performed from a remote location by way of electronic means, POS shall be the location of goods at the time of supply.
- o Provided further that this clause shall not apply in 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 other use i.e. POS in such case shall be location of recipient of service.

Sec. 3(b): Services supplied to an individual, whether recipient himself or a person acting on behalf of the recipient, which require physical presence of the recipient/his representative – POS shall be location of actual performance of service.

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Sec. 10(3) to 10(13)

POS of specified services

4. Services directly in relation to an immovable property – POS will be the place where the immovable property is located or intended to be located.
5. Services by way of admission to, or organisation of, a cultural, artistic, sporting, scientific, educational or entertainment event or a celebration, conference, fair, exhibition, or similar events, and ancillary services – POS is the place where event is actually held.
6. Where any service referred to in (3), (4) or (5) is supplied at more than one location, including a location in the taxable territory – POS is the location in the taxable territory where the greatest proportion of the service is provided.

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Sec. 10(3) to 10(13) POS of specified services

7. Where the services referred to in (3), (4), (5) or (6) are supplied in more than one State, POS shall be taken as being in each State in proportion to the value of services provided in such State with regard to the terms of the contract entered into, or in absence of such contract, on such other reasonable basis as may be prescribed.
8. POS of following services shall be location of the supplier of service –
 - o Services by a banking co. or a financial institution or a NBFC to account holders
 - o Intermediary services
 - o Services consisting of hiring of means of transport other than aircrafts and vessels except yachts, up to a period of one month.
9. Transportation of goods, other than by way of mail or courier – POS shall be the place of destination of goods.
10. Passenger transportation service – The place where the passenger embarks on the conveyance for a continuous journey.

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Sec. 10(3) to 10(13) POS of specified services

11. Services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed on board – First scheduled point of departure of that conveyance.
12. Online information and database access or retrieval services – Location of recipient of service.
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 the place of effective use and enjoyment of a service.

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