

WIRC – Intensive Study Course on GST

Date & Day	:	12 th May, 2017 (Friday)
Subject	:	1) Basic concepts and applicability of GST 2) Levy, meaning and scope of Supply 3) Important definitions and concepts 4) Related transitional provisions
Venue	:	J.S. Lodha Auditorium, ICAI Bhawan, Cuffe Parade, Mumbai – 400 005
Presented by	:	CA Naresh Sheth

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Preamble

- Centre has enacted CGST Act, IGST Act, UTGST Act on **12.04.2017**
- Telangana, Bihar, Rajasthan, Jharkhand, Chhattishgarh, Uttarakhand, Madhya Pradesh and Haryana enacted SGST Act
- Other States expected to pass SGST Act soon
- Rules on public domain:

Composition Rules	Valuation Rules	Transition Rules	Input tax credit Rules	Invoice Rules
Payment Rules	Refund Rules	Registration Rules	Return Rules	

- Draft Rules on public domain:

Assessment and Audit	Electronic way Bill	Accounts and Records	Advance Ruling	Appeals and Revision
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- GST to be effective from date to be notified by Central Government [section 1(3) of CGST, IGST and UTGST Act]
- GST is all set to roll out by 1st July, 2017

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Basics

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Major Indirect Tax Levies

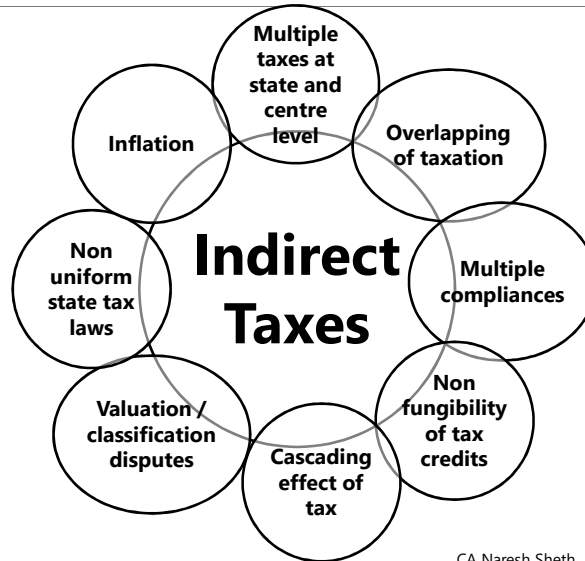
Central Taxes	State Taxes	Local body Taxes
<ul style="list-style-type: none"> • Central Excise Duty • Excise under M&TP Act • Additional Duties of Excise • Custom Duty <ul style="list-style-type: none"> ○ Basic ○ CVD ○ SAD • Service Tax 	<ul style="list-style-type: none"> • VAT/Sales Tax & CST • State Excise Duty • Entertainment Tax • Luxury Tax • Taxes on lottery, betting and gambling • Entry tax • Stamp Duty • Electricity Duty • Profession Tax 	<ul style="list-style-type: none"> • Octroi • LBT • Property Tax • Entertainment Duty • Gram Panchayat Tax

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Complexities & Issues

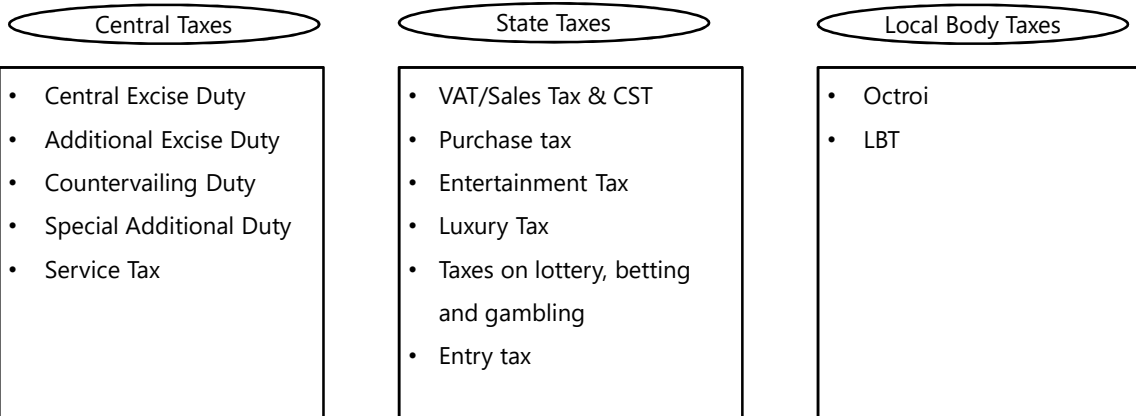


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Major Taxes to be subsumed in GST



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Major Taxes to be retained Post-GST

Central Taxes

- Central Excise on:
 - Tobacco products
 - **Petroleum Products**
- **Basic Custom Duty**

State Taxes

- State Excise on Alcohol liquor
- State VAT on:
 - Alcohol liquor
 - **Petroleum Products**
- **Stamp Duty**
- **Electricity Duty**
- Profession tax
- Road tax
- Taxes on Mineral Rights

Local Body Taxes

- Property Tax
- Entertainment Duty
- Gram Panchayat Tax

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Taxable event in GST Regime vs. Existing regime

Tax	Taxable Event in Existing laws	Taxable Event in GST Regime
Service Tax	Provision of Service	Supply of goods or services or both
Excise Duty	Manufacture of excisable goods	
VAT/Sales Tax	Transfer of title in goods within state	
CST	Transfer of title in goods outside state	
Purchase Tax	Purchase of specified goods	
CVD	On import in lieu of excise duty	
SAD	On import in lieu of VAT	
Entry Tax / LBT	Entry of specified goods in the State for sale, use or consumption	
Entertainment tax	Provision of entertainment	

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GST – Model and Philosophy

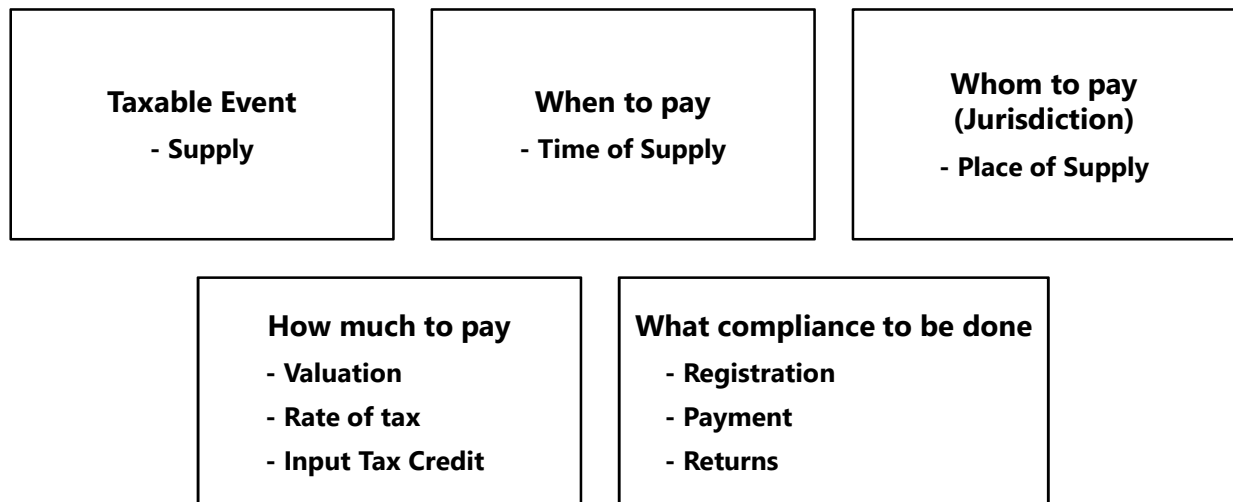
Meaning	<ul style="list-style-type: none"> Broad based and comprehensive levy on goods and services consumed in economy
Dual Model	<ul style="list-style-type: none"> Central GST (CGST) to be levied on intra state supplies by Central Government State GST (SGST) to be levied on intra state supplies by State Government Union Territory GST (UTGST) to be levied on intra state supplies by Union Territory 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

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Broad Framework of GST



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Legislative pre-requisites for tax levy

Authority under
Constitution to
levy tax

Taxable territory

Taxable event

Assesse /
Taxable person

Measure or value
of tax base

Rate of tax

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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: <table border="0" style="margin-left: 20px;"> <tr> <td style="vertical-align: middle;"> <ul style="list-style-type: none"> CGST Act applies to whole of India IGST Act applies to whole of India </td> <td style="font-size: 3em; vertical-align: middle; padding: 0 10px;">}</td> <td style="vertical-align: middle;">Except Jammu & Kashmir</td> </tr> <tr> <td colspan="3"> <ul style="list-style-type: none"> UTGST Act applies to the Union Territories of: <table border="1" style="margin-left: 20px; width: 100%;"> <tr> <td>Andaman and Nicobar Islands</td> <td>Dadra and Nagar Haveli</td> <td>Daman and Diu</td> </tr> <tr> <td>Lakshadweep</td> <td>Chandigarh</td> <td>other territory</td> </tr> </table> </td> </tr> </table> SGST Act applies to 28 States including Delhi & Puducherry 	<ul style="list-style-type: none"> CGST Act applies to whole of India IGST Act applies to whole of India 	}	Except Jammu & Kashmir	<ul style="list-style-type: none"> UTGST Act applies to the Union Territories of: <table border="1" style="margin-left: 20px; width: 100%;"> <tr> <td>Andaman and Nicobar Islands</td> <td>Dadra and Nagar Haveli</td> <td>Daman and Diu</td> </tr> <tr> <td>Lakshadweep</td> <td>Chandigarh</td> <td>other territory</td> </tr> </table> 			Andaman and Nicobar Islands	Dadra and Nagar Haveli	Daman and Diu	Lakshadweep	Chandigarh	other territory
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Presence of legislative pre-requisites under GST

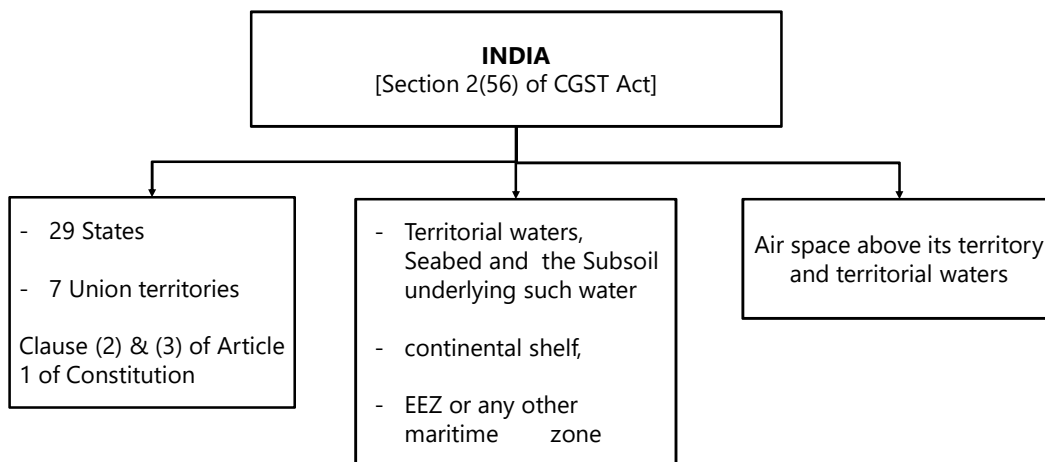
Pre-requisites	Reference in the GST law						
Taxable event	<ul style="list-style-type: none"> Supply of Goods or Services or both: <ul style="list-style-type: none"> Sec. 9 of CGST Act Sec. 5 of IGST Act Sec. 7 of UTGST Act 						
Assessee / Taxable person	<ul style="list-style-type: none"> Registered 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"> <tbody> <tr> <td>Sec. 9 of CGST Act</td> <td>Not exceeding 20%</td> </tr> <tr> <td>Sec. 5 of IGST Act</td> <td>Not exceeding 40%</td> </tr> <tr> <td>Sec. 7 of UTGST Act</td> <td>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%						

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Territorial Jurisdiction



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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.

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GST - Charging and Allied Provisions

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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

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

➤ **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 Tax means Union Territory Goods and Services Tax levied under UTGST Act

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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

Section 9(2) of CGST Act

Section 7(2) of UTGST Act

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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

➤ **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

E-commerce

- Government (on recommendation of Council) 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

➤ **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

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Charging Provision - Section 5 of IGST Act

Levy

There shall be levied a tax called **IGST**

➤ **Integrated tax u/s 2(12) of IGST Act:**

means integrated goods and services tax levied under this Act

On

All **inter-state supplies** of **goods** or **services** or both

➤ **Inter state Supplies of goods / services:**

Defined u/s 7 of IGST Act

Except

On the supply of **alcoholic liquor for human consumption**

➤ **Intra state Supplies of goods / services:**

Defined u/s 8 of IGST Act

Value

On the value determined u/s 15 of CGST Act

Rate

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

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Charging Provision - Section 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

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Charging Provision - Section 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

Section 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

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Charging Provision - Section 5 of IGST Act

E-Commerce

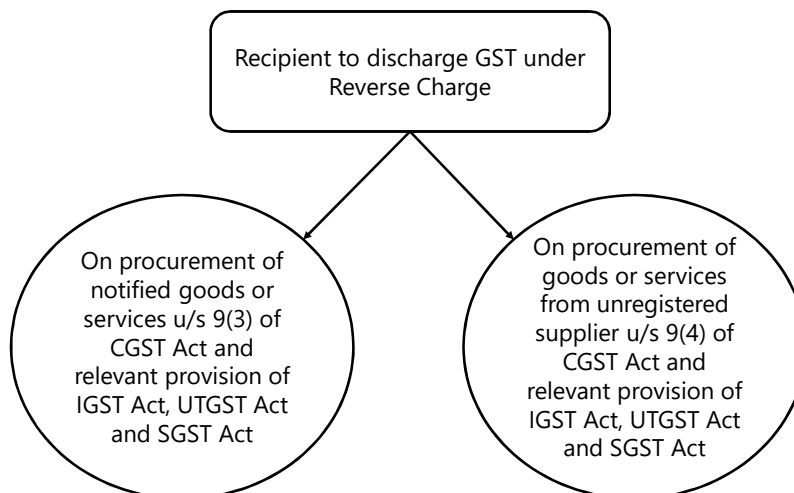
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- E-commerce operator to be person liable to pay tax
- If no physical presence in taxable territory, any person representing such operator in taxable territory shall be person liable to pay tax
- Neither physical presence nor representative, then such operator shall appoint a person in taxable territory for payment of tax

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Reverse Charge Mechanism



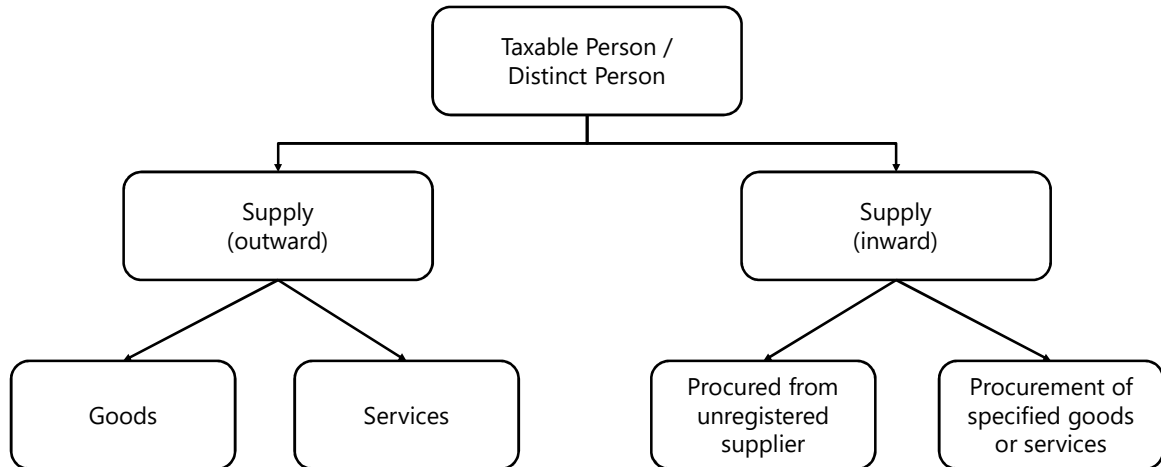
- Recipient to discharge GST under RCM as if he is the person liable for paying the tax on supply
- Recipient to make payment on his own account and on own GSTIN number
- It is not TDS paid on behalf of supplier
- Recipient is entitled to ITC subject to ITC provisions

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GST levy – Trigger points



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Taxable person &
Distinct person

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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	

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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

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Distinct Person

➤ **Distinct person u/s 25(4) and (5) of CGST Act:**

- A person having registration in more than one state or union territory to be treated as distinct person in respect of each such registration
- Different establishments of same person in more than one state or union territory to be treated as establishments of distinct persons

➤ **Distinct person means** [explanation 1 to section to section 8 of IGST Act]:

- An establishment in India and any other establishment outside India
- An establishment in a State or Union territory and any other establishment outside that State
- An establishment in a State or Union territory and business vertical registered within that state or union territory

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Persons liable to be registered – Section 22

Every supplier	<p>Aggregate turnover exceeds Rs. 20 lakh (Rs 10 lakhs for special category states)</p> <p>Aggregate Turnover for this section includes:</p> <ul style="list-style-type: none"> • all supplies made whether on own his own account or on behalf of all his principals • supply of goods after completion of job-work by registered job-worker and value of such goods not to be included in aggregate T/O of registered job worker
Existing assesses	Assesses under excise, service tax, VAT and other laws which are to be subsumed in GST w.e.f. appointed day
Transferee or successor of business	Where business is transferred as a going concern w.e.f. date of such transfer or succession
Transferee of business	In case of amalgamation / demerger by order of HC w.e.f. date on which ROC gives certificate of incorporation giving effect to order of HC

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Compulsory registration – Section 24

Persons making inter-state supply	Casual taxable person	Persons required to pay tax under RCM
Agent	Input service distributor	Non resident taxable person
Electronic commerce operator liable to pay tax u/s sec 9(5)	Every E-commerce operator	Person who supplies through E-commerce operator [other than supplies u/s 9(5)] who are required to collect tax u/s 52
Every person supplying online information and database access or retrieval services from outside India to unregistered taxable person in India	Persons required to deduct TDS u/s 51	such other person or class of persons as may be notified by CG or SG on recommendation of Council

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Persons not liable to be registered – Section 23

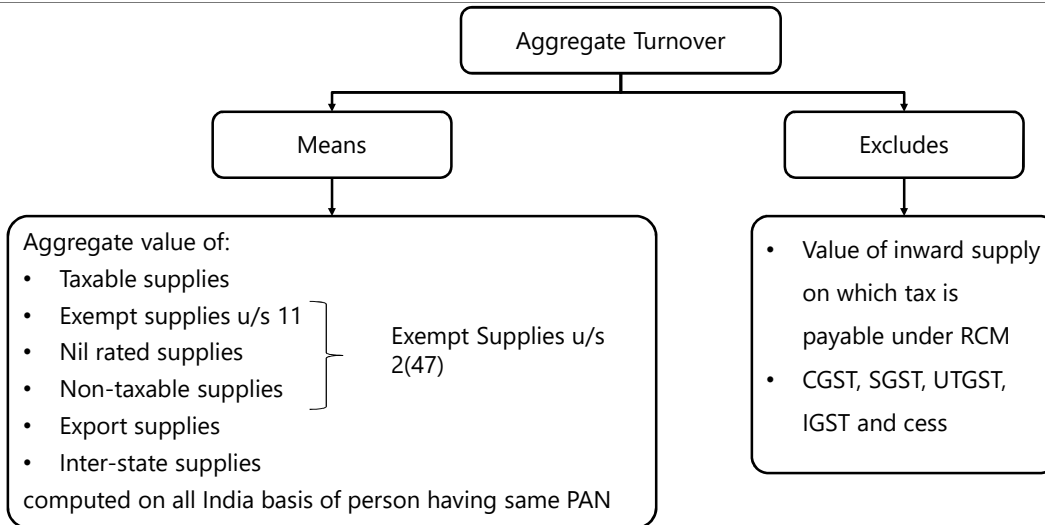
- Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or are wholly exempt from tax under CGST Act or under IGST Act
- **Agriculturist, to the extent of supply of produce out of cultivation of land**
 - **Agriculturist means** an individual or HUF who undertakes cultivation of land [section 2(7) of CGST Act]:
 - By own labour; or
 - By the labour of family; or
 - By servants on wages payable in cash or kind or by hired labour under personal supervision or personal supervision of any member of the family
 - Term 'agriculture' was earlier defined under RMGL to include floriculture, horticulture, sericulture, raising of crops, grass or garden produce and grazing
 - Whether 'cultivation of land' includes floriculture, horticulture, sericulture, grass or garden produce and grazing?

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Aggregate Turnover [Section 2(6) of CGST Act]



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Goods and Services

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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

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

➤ In addition to above, Schedule II deems certain supply to be that of goods

➤ **Whether electricity is liable to GST?**

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'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 recognised 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

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'Actionable claims'

- **Actionable claim** [Section 2(1) of CGST Act] shall have the same meaning assigned to it in section 3 of Transfer of Property Act, 1882
- Whether factoring of debts is an actionable claim? Is it taxable?
- Whether winning of lottery is actionable claim? Is it taxable?
- Recently, **High Court of Sikkim in case of M/s Future Gaming and Hotels Services Pvt Ltd [2017-TIOL-589-HC-Sikkim-ST]** upheld the constitutional validity of levy of service tax on lottery services. However, it struck down the levy on the ground of absence of valuation mechanism for lottery services. Whether this decision will be valid in GST also?

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Definition of 'Service'

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

Goods	Money	Security
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- **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 services

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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?

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Supply

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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

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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

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Relevant extracts of definition of "Supply" under foreign laws

➤ **Australia GST Act u/s 9 and 10 defines "Supply" to mean:**

- 1) **A supply is any form of supply whatsoever**
- 2) Without limiting subsection (1), supply includes any of these.....

➤ **United Kingdom u/s 5(2) of VAT Act, 1994:**

- Subject to any provisions made by that Schedule and to Treasury orders under sub-sections (3) to (6) below-
 - a) **"supply" in this Act includes all forms of supply,**

➤ **Malaysian GST Act u/s 4 defines "Supply" to mean:**

- **All forms of supply**, including supply of imported services, done for a consideration and anything which is not a supply of goods but is done for a consideration is a supply of services

➤ **Canadian GST Act defines "Supply to mean:**

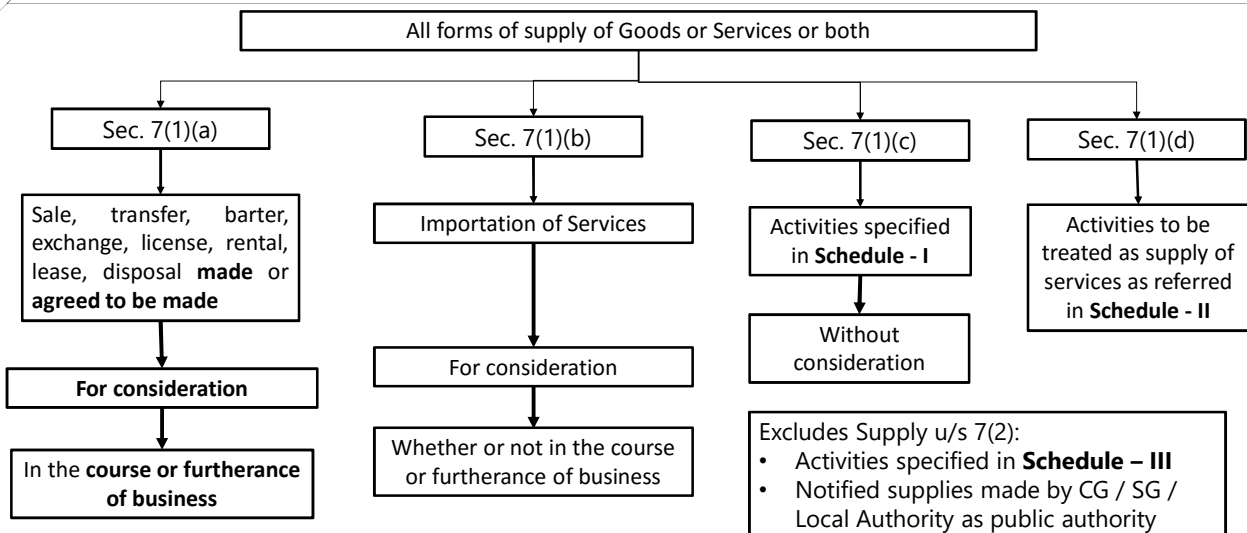
- Subject to sections 133 and 134, **the provisions of property or a service in any manner**, including sale, transfer, barter, exchange, license, rental, lease, gift or disposition

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Supply u/s 7(1) of CGST Act



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'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 ?

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'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

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'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

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Supply in the course or 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

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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

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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.

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Schedule II – Matters to be treated as 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 } Without transfer of title	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	3

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Schedule II – Matters to be treated as deemed supply of 'goods' or 'services' u/s 7

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

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Schedule II – Matters to be treated as deemed supply of 'goods' or 'services' u/s 7

Transaction	Nature of Supply	Clause
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)
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 bifurcating above transactions as goods or services:**

- Place of supply
- Time of supply
- Rates

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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

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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**

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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.

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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

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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

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Whether following are supply as defined u/s 7?

- Long term lease of land / building
- Insurance claim received against loss of business assets
- Sale of business as a going concern
- Lease / renting of residential house
- Services provided by co-operative housing societies to its members
- Statutory functions carried out by various government departments
- Activities carried out by charitable trust and NGOs
- Personal assets or articles sold through OLX, Quickr, etc
- Partner working for the firm for remuneration
- Personal assets brought to firm / LLP / company as capital
- Lost, stolen and destroyed goods

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Applicable Levy

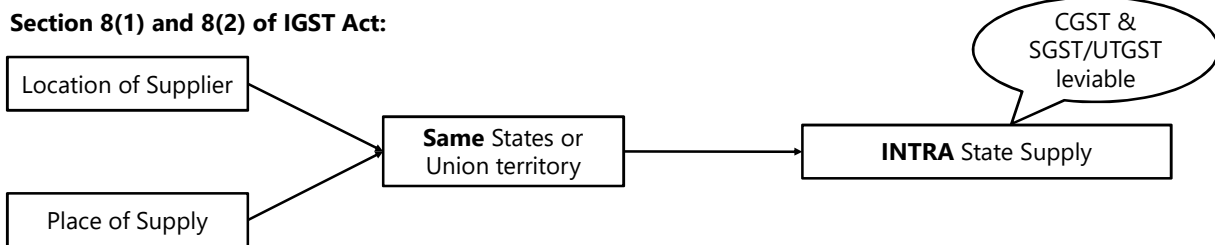
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'Intrastate' – Section 8 of IGST Act

Section 8(1) and 8(2) 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

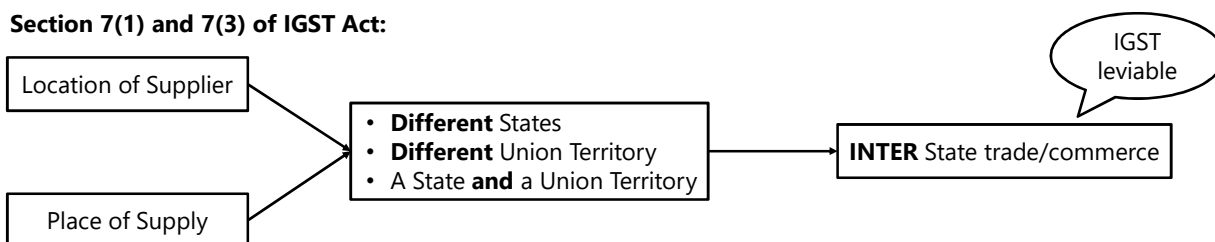
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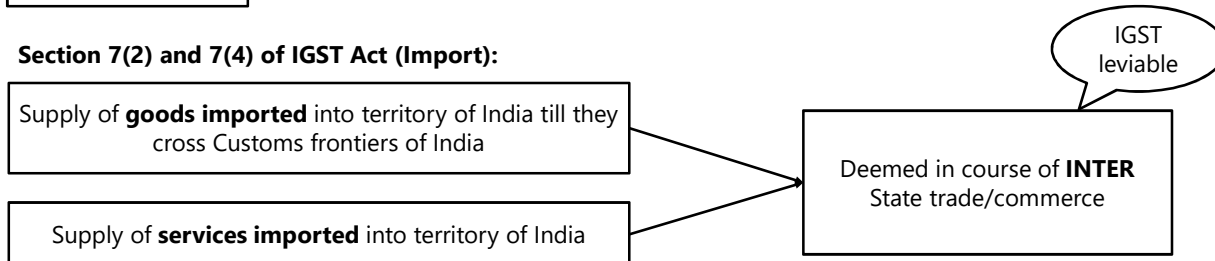
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'Interstate' – Section 7 of IGST Act

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



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



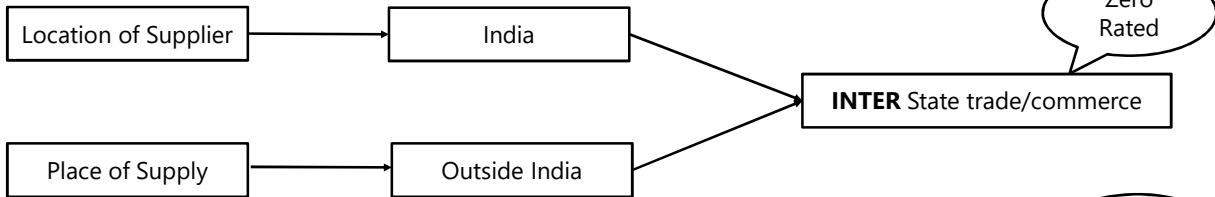
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'Interstate' – Section 7 of IGST Act

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



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



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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

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'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

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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

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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

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Tax levies in GST regime for Supply of Goods/Services - Relevant extract of tax invoice

Intra-State Supply

Particulars	Amount (Rs.)	Amount (Rs.)
Value of Goods / Services		100,000
CGST(9% of 100,000)	9,000	
SGST(9% of 100,000)	9,000	18,000
Total Amount		118,000

Inter-State Supply

Particulars	Amount (Rs.)	Amount (Rs.)
Value of Goods / Services		100,000
IGST (18% of 1,00,000)		18,000
Total Amount		118,000

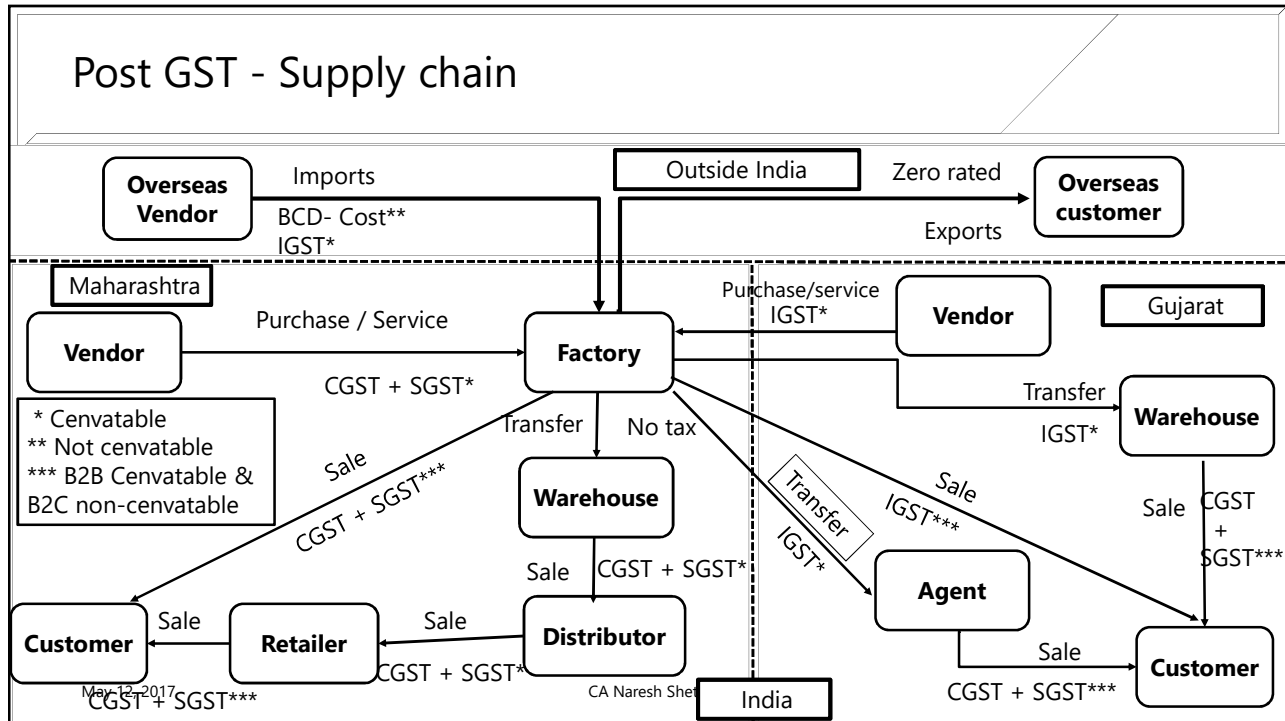
Following details will be mandatory:

1. Name and address of Supplier
2. Name and address of Buyer
3. 15 digit GST Identification no. of dealer as well as buyer

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Other Supplies

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Agent [Section 2(5)]

➤ Agent means a person:

- Including
 - Factor
 - Broker
 - Commission agent
 - Arhatia
 - Del credere agent
 - Auctioneer
 - Any other mercantile agent by whatever name called
- **who carries on** business of supply or receipt of goods or services on behalf of another

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Agent receiving or supplying goods on behalf of principal -Taxability

- Consignment Agent and C&F agents usually handles the goods of principal
- Principal and such agents are two different taxable persons
- *Entry 3 of Schedule I – matter to be treated as supply :*
 - *Supply of goods by principal to its agent where agent undertakes to supply such goods on behalf of principal*
 - *Supply of goods by agent to its principal where agent undertakes to receive such goods on behalf of principal*
- Supply by principal to Consignment agent and/or other such agents (whether inter-state or intra-state) or vice-versa will be a taxable supply liable to GST

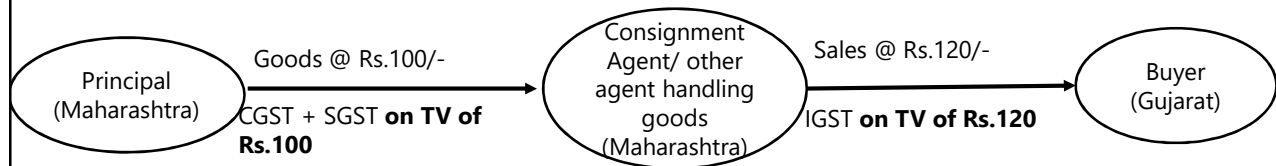
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Agent receiving or supplying goods on behalf of principal - Taxability

➤ Example: Base price is Rs.100/- , Agent's Commission is Rs. 20/- and the sales price is Rs.120/-



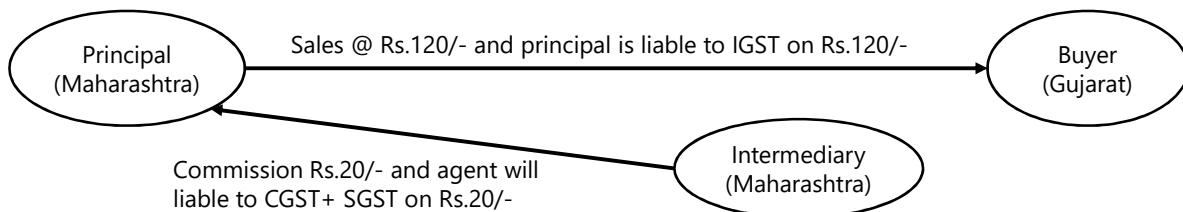
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Intermediary not physically handling the goods - Taxability

- It appears that Entry 3 of Schedule I applies to agent physically handling goods
- It seems it does not apply to intermediary not physically handling the goods
- It appears that above provision deems only transaction between principal and agent as supply only when the agent is in physically receiving and supplying goods
- Where agent (intermediary) does not physically supply/ receives any goods, such transaction may not be a deemed supply
- GST implication and Valuation thereof would be as under:



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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

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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

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Composition & Exemption

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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

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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

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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**

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Exemptions

Section	Explanation
11(1)	Power to grant exemption by way of notification: The Central or a State Government in the public interest, it may on the recommendation of the Council, grant exemption by a Notification
11(2)	Power to grant exemption by way of Special Order: The Central or a State Government in the public interest may grant exemption by a Special Order
11(3)	Power to grant exemption by Inserting an explanation: The Central or a State Government can Insert an Explanation for Clarifying Scope/applicability of any Notification issued u/s10(1) or order issued u/s 10(2)
Explanation to section 11	Where an absolute exemption has been granted, the registered person shall not collect tax, in excess of effective rate, on such supply of goods / services

Notification / Order (as the case may be) shall come into force from:

- Date of its issue by CG/ SG for publication in official Gazette; or
- Date available on the official website of the CG/ SG

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Relevant Transitional Provisions

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Ongoing contracts – Taxability [Section 142(10) of CGST Act]

- Contract entered prior to appointed day:
 - Goods or services or both supplied pursuant to such contract **after appointed day**
 - Such supply shall be liable to tax under CGST / SGST Act

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Return of goods [Section 142(1)]

Return of **tax/duty, if any, paid goods** (supplied prior appointed day) to **place of business** on or after appointed day

Where goods are returned by person **other than registered taxable person**

- Where such goods were removed within period of 6 months prior to appointed day
- Such goods are returned within 6 months from appointed day
- Such goods are identifiable to the satisfaction of proper officer

Registered person is eligible for refund of duty / tax paid under existing law on such goods

Where goods are returned by **registered taxable person**

Such return of the goods shall be deemed to be a supply

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VAT and Service tax both paid prior to appointed day

Section	Provision
142(11)(c)	<p>Where VAT and Service Tax has been paid on any supply under both State VAT Act and Finance Act, 1994:</p> <ul style="list-style-type: none"> • tax shall be payable under CGST / SGST / UTGST Act to the extent supplies made after appointed day • taxable person will be entitled to credit of VAT or service tax paid under existing law to the extent supplies made after appointed day • Such credit to be calculated in such manner as may be prescribed

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Taxability in case of levy under existing law

Section 142(11)(a) of CGST Act	No tax shall be payable on goods under CGST Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State prior to appointed day
Section 142(11)(b) of CGST Act	No tax shall be payable on services under CGST Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994 prior to appointed day
Section 20(10)(a) of UTGST Act	No tax shall be payable on goods under UTGST Act to the extent the tax was leviable on the said goods under the existing law prior to appointed day
Section 20(10)(b) of UTGST Act	No tax shall be payable on services under UTGST Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994 prior to appointed day

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Words of Caution

- Presentation is based on CGST Act, IGST Act and UTGST Act
- Views expressed are the personal views of faculty based on his interpretation of GST Act
- Presentation is done in educational meeting. Such meeting is arranged with a clear understanding that neither the Faculty nor WIRC of ICAI will be responsible for any error, omission, commission and result of any action taken by a member or anyone on the basis of this presentation.

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THANK YOU

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