



Basic Concepts, Dual Model, Imp. Definitions & Concept of Supply

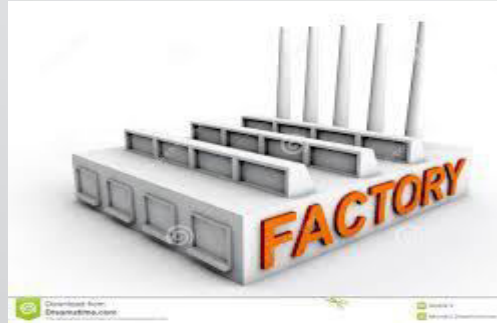
- By CA. Yash Parmar
S. B. Gabhawalla & Co.
At WIRC on 30.12.16



Basic Concepts & Dual Model

Current Indirect Tax Structure...

Excise Duty

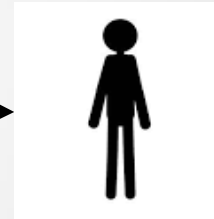


Removal of goods from factory

Service Tax



Provision of Service



Service Provider

Service Receiver

VAT/CST



Sale of Goods



Trader

Buyer

Customs Duty

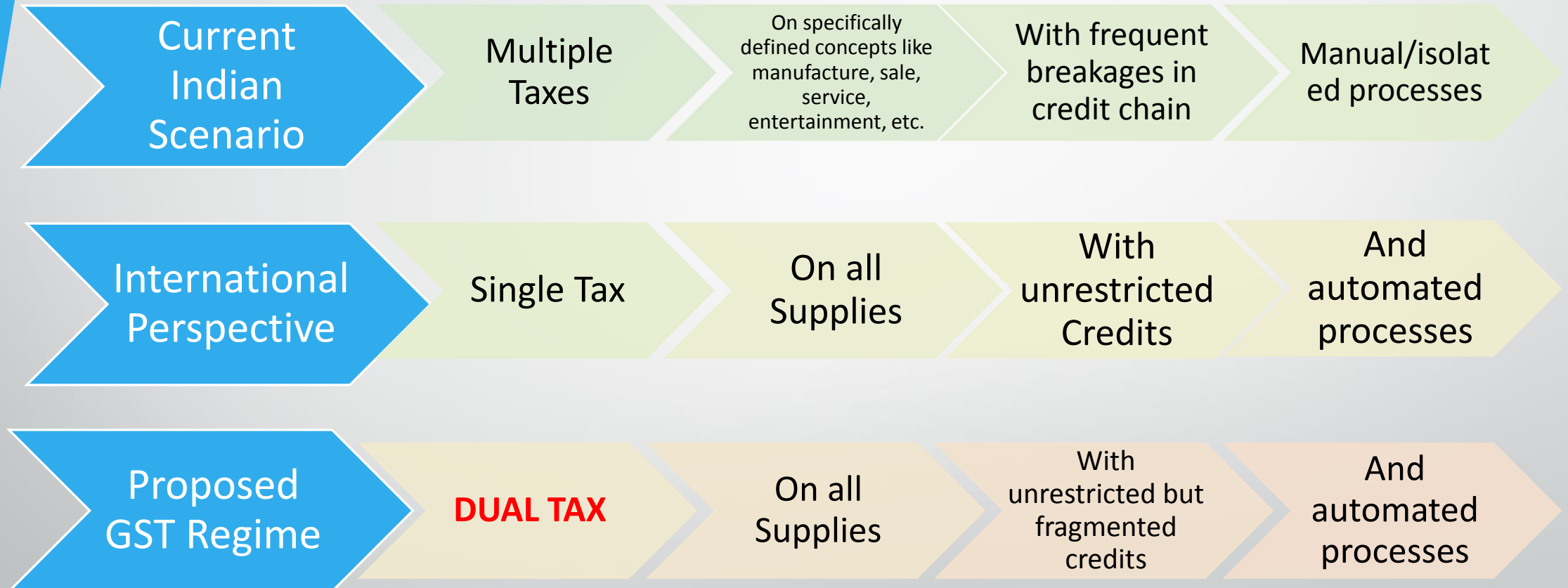


Import/Export of Goods

Shortfalls in current regime...

- Multiple taxes like Central or State Excise Duty, Value Added Tax, Central Sales Tax, Entry Tax, Entertainment Tax, Octroi, etc
- Impact of Tax on Tax
- Double Taxation on various industries like restaurants, software's, etc
- Disharmonious VAT rates and laws across various states
- Breakage of credit chain at various points

Indirect Tax: Quick Comparison



Dual GST : Scenarios



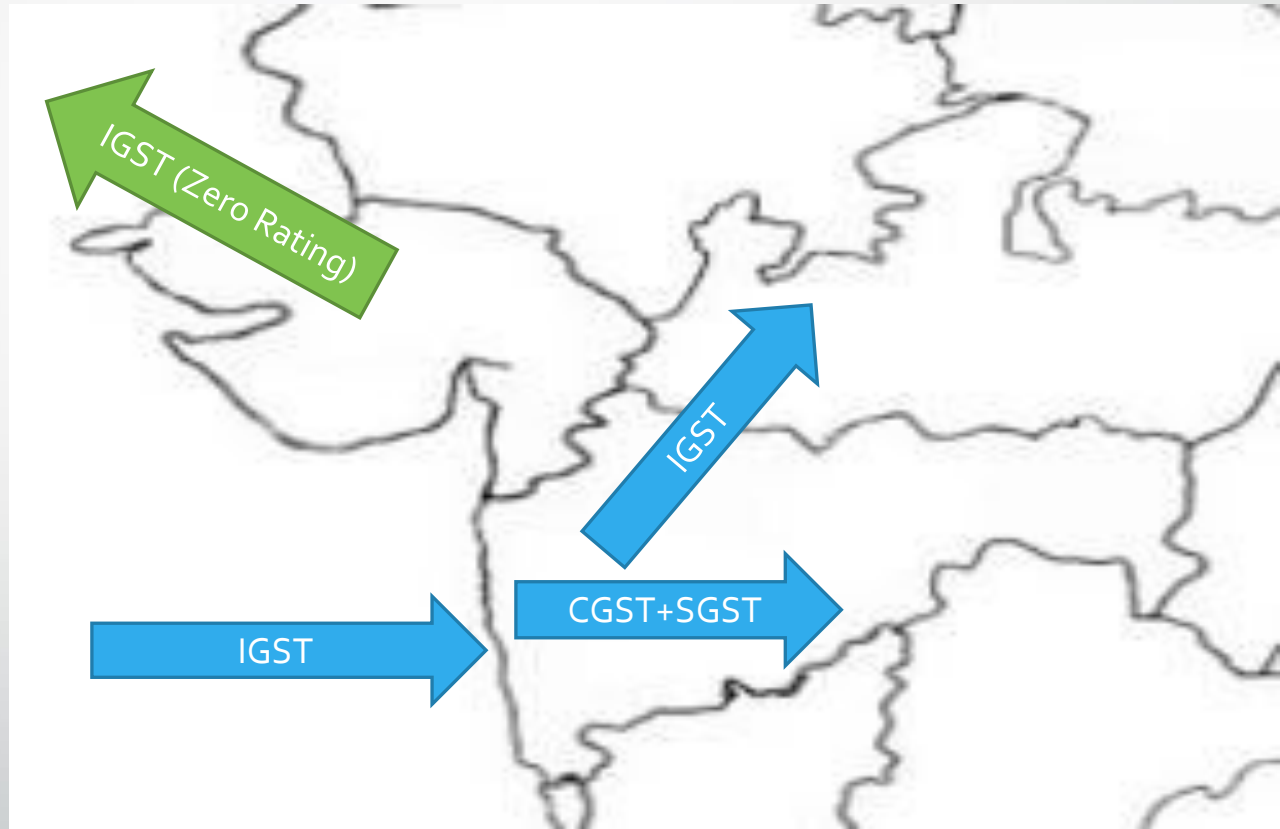
Intra-State Supplies Liabe for CGST & SGST

Inter-State Supplies Liabe for IGST

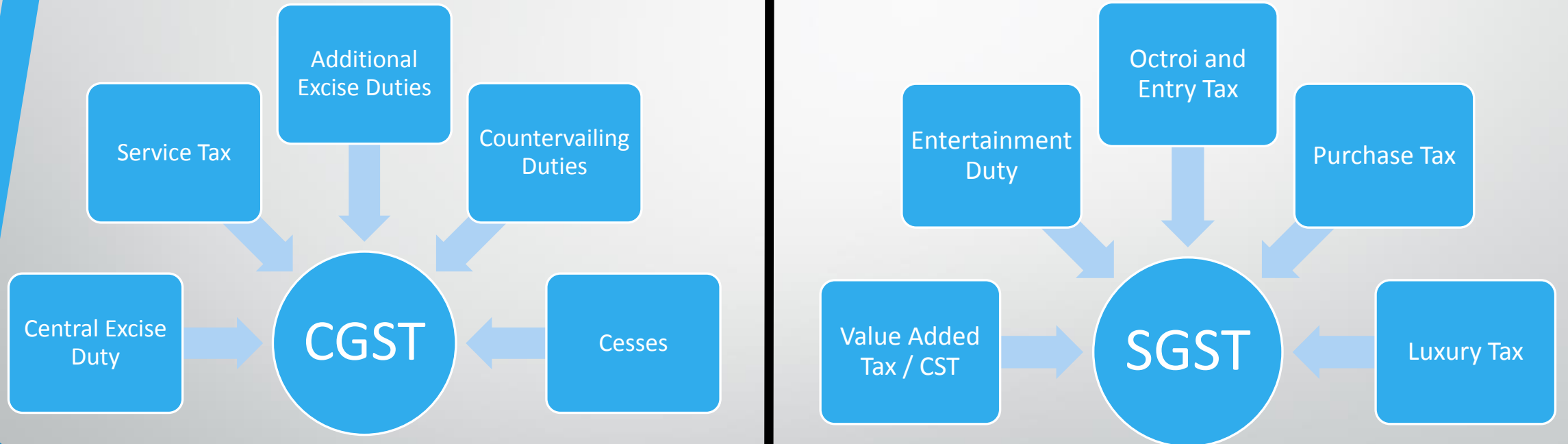
Branch Transfers Liabe for IGST

Imports Liabe for IGST

Exports entitled for Zero Rating



Important Taxes subsumed...



Taxes which are not subsumed...

- Alcoholic liquor for human consumption
- Petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel

Excluded
Products



- Entertainment and Amusement tax levied and collected by panchayat/ municipality/ district council
- Basic Custom Duty
- Stamp Duty
- Electricity Duty

Excluded
Duties



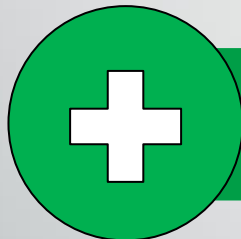
- Securities Transaction Tax/ Commodities Transaction Tax
- Toll Tax
- Property Tax

Other than
Indirect Taxes



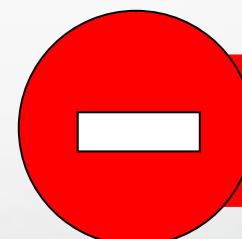
Dual GST: Kabhi Khushi, Kabhi Gham...

 Scope of Coverage

 Value for Taxation

 GST Network

 Law

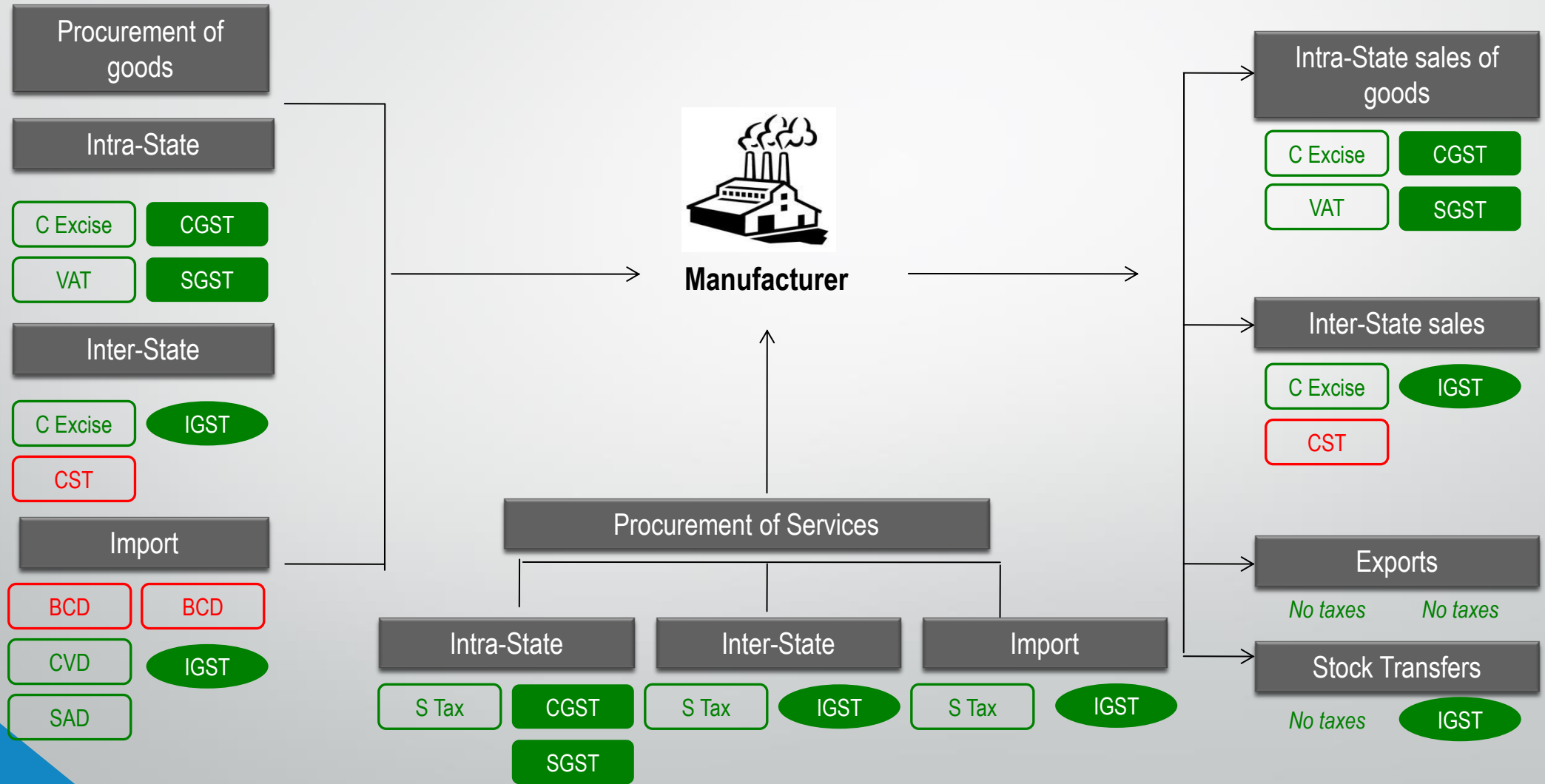
 Registrations

 Assessments

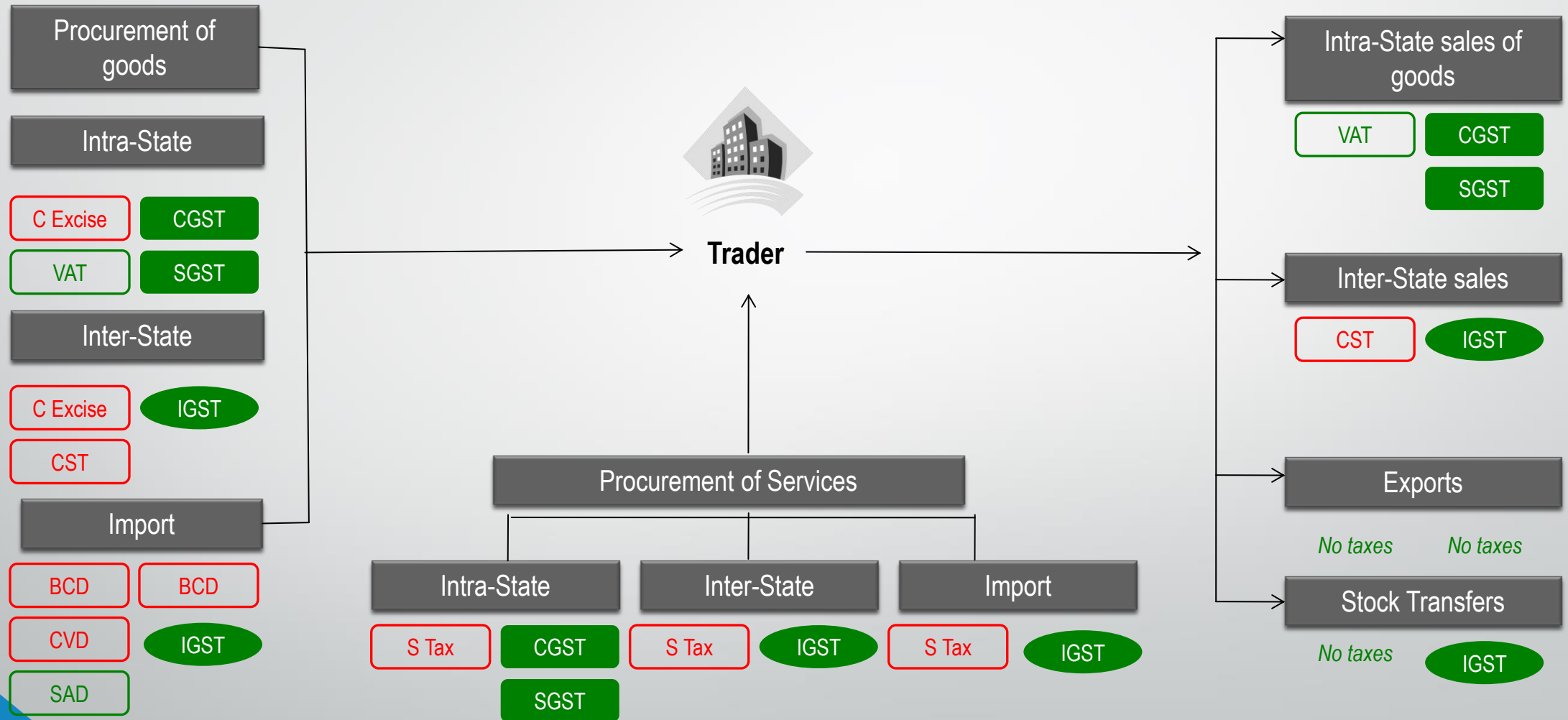
What are we headed towards?



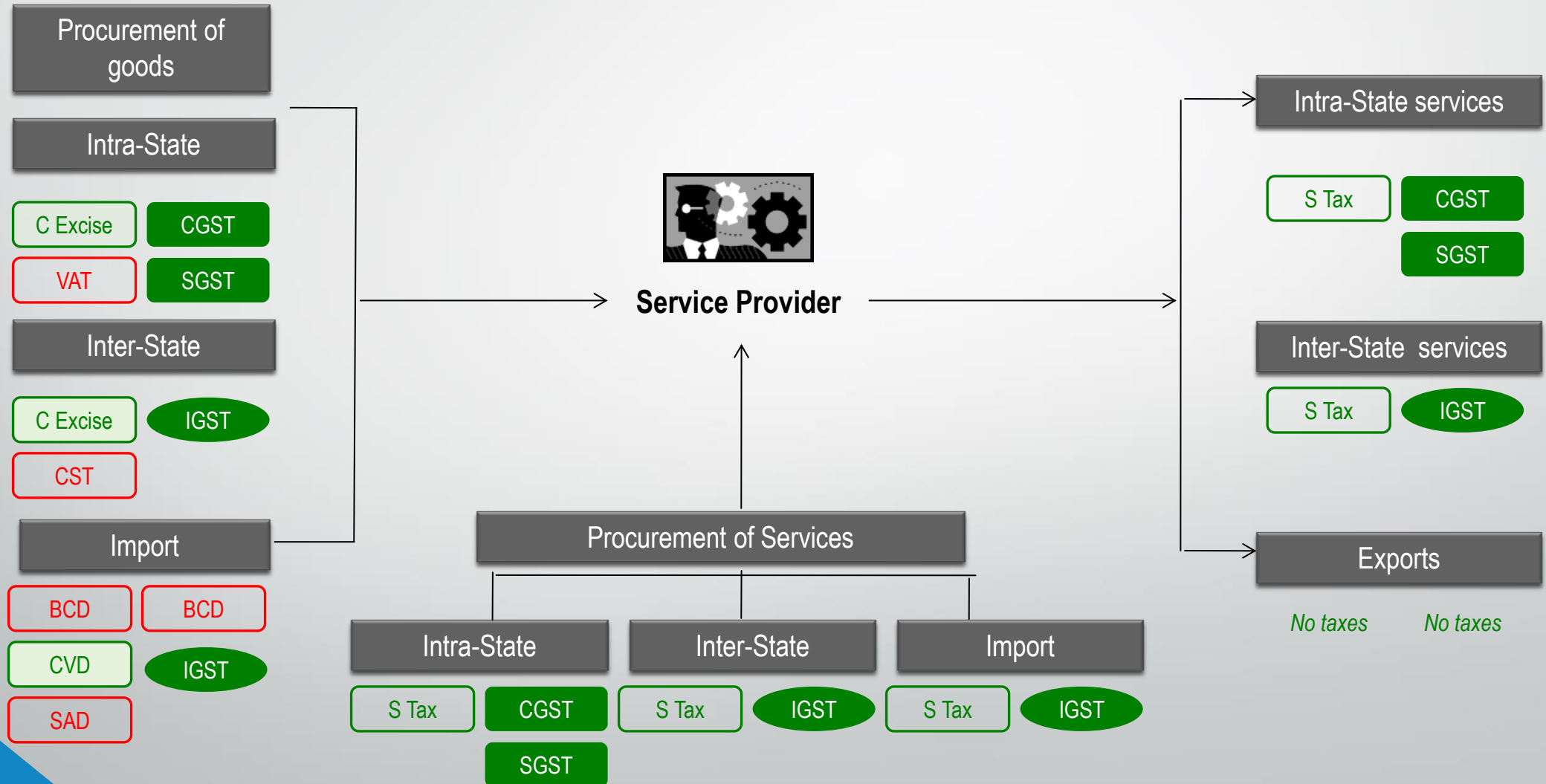
Dual GST Scenario for Manufacturers...



Dual GST Scenario for Traders...



Dual GST Scenario for Service Providers...





Important Definitions

- Goods
- Services
- Taxable Person

Definition of “Goods”

MVAT Act

- goods” means every kind of movable property not being newspapers, actionable claims, money, stocks, shares, securities or lottery tickets and includes live stocks, growing crop, grass and trees and plants including the produce thereof including property in such goods attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

Service Tax

- Goods has the meaning assigned to it in clause (7) of section 2 of the Sale of Goods Act, 1930

Goods

Sale of Goods Act

“goods” means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

GST [Section 2(49)]

- “goods” means every kind of movable property other than money and securities but includes actionable claims, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply

What is the difference?

SOGA

Includes

- Stock & Share
- Growing crops
- Grass
- Things attached to or forming part of land

Excludes

- Actionable claims
- Money

MVAT

Includes

- Live Stock
- Growing Crops
- Grass
- Trees and Plants
- Properties in such goods attached or forming part of land

Excludes

- Newspaper
- Actionable claims
- Money
- Stock
- Shares & Securities
- Lottery Tickets

GST

Includes

- **Actionable claim**
- Growing crops
- Grass
- Things attached to or forming part of the land

Excludes

- Money
- Securities

Definition of “Service”

Service means **anything other than goods**;

Explanation 1

Services include transaction in money but does not include money and securities;

Explanation 2

Services does not include transaction in money other than an activity relating to the use of money or its conversion by cash or any other mode, from one form, currency or denomination, to another form, currency or denomination **for which a separate consideration is charged**

Definition of “Taxable Person” - S. 10

- 1) Taxable Person means a person who is registered or liable to be registered under **Schedule V** of this Act.
- 2) A person who has obtained or is required to obtain more than one registration, whether in one state or more than one state, shall, in respect of each such registration, be treated as a distinct person for the purposes of this Act.
- 3) 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 shall be treated as establishments of distinct persons for the purposes of this Act.

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Schedule V- Persons liable to be registered

- 1) Every supplier shall be liable to be registered under this Act in the State from where he **makes a taxable supply** of goods and/or services if his **aggregate turnover** in a financial year exceeds **twenty lakh rupees**

PROVIDED that where such person makes taxable supplies of goods and/or services from any of the States specified in **sub-clause (g) of clause (4) of Article 279A of the Constitution**, he shall be liable to be registered if his aggregate turnover in a financial year exceeds **ten lakh rupees**.

(Other than Special Category States)

- 2) Every supplier shall be liable to be registered under this Act in the State from where he makes a taxable supply of goods and/or services if his aggregate turnover in a financial year exceeds ten lakh rupees

(Special Category States)

S. 2(6)- Aggregate Turnover (All India basis) includes:

- All taxable supplies
- Exempt supplies
- Export of Goods/Services
- Inter-State Supplies

Excludes

- Taxes charged under SGST, CGST & IGST
- Value of inward supplies on which tax is payable under RCM

S. 2(44)- "exempt supply" means supply of any goods and/or services **which are not taxable under this Act** and includes such supply of goods and/or services which attract nil rate of tax or which may be exempt under section 11

States specified in Article 279A(4)(g)

- | | |
|---------------------|---------|
| - Arunachal Pradesh | Sikkim |
| - Assam | Tripura |
| - Jammu & Kashmir | |
| - Himachal Pradesh | |
| - Manipur | |
| - Uttarakhand | |
| - Meghalaya | |
| - Mizoram | |
| - Nagaland | |

Schedule V (Contd...)

2) Following persons **shall not be liable** to registration:

- a) any person engaged exclusively in the business of supplying goods and/or services that are not liable to tax or wholly **exempt** from tax under this Act
- b) an **agriculturist**, for the purpose of **agriculture**

S. 2(8)- “agriculturist” means the person who cultivates land personally for the purpose of agriculture

S. 2(7)- “agriculture” with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, the raising of crops, grass or garden produce and also grazing, but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man made forest or rearing of seedlings or plants

Schedule V (Contd...)

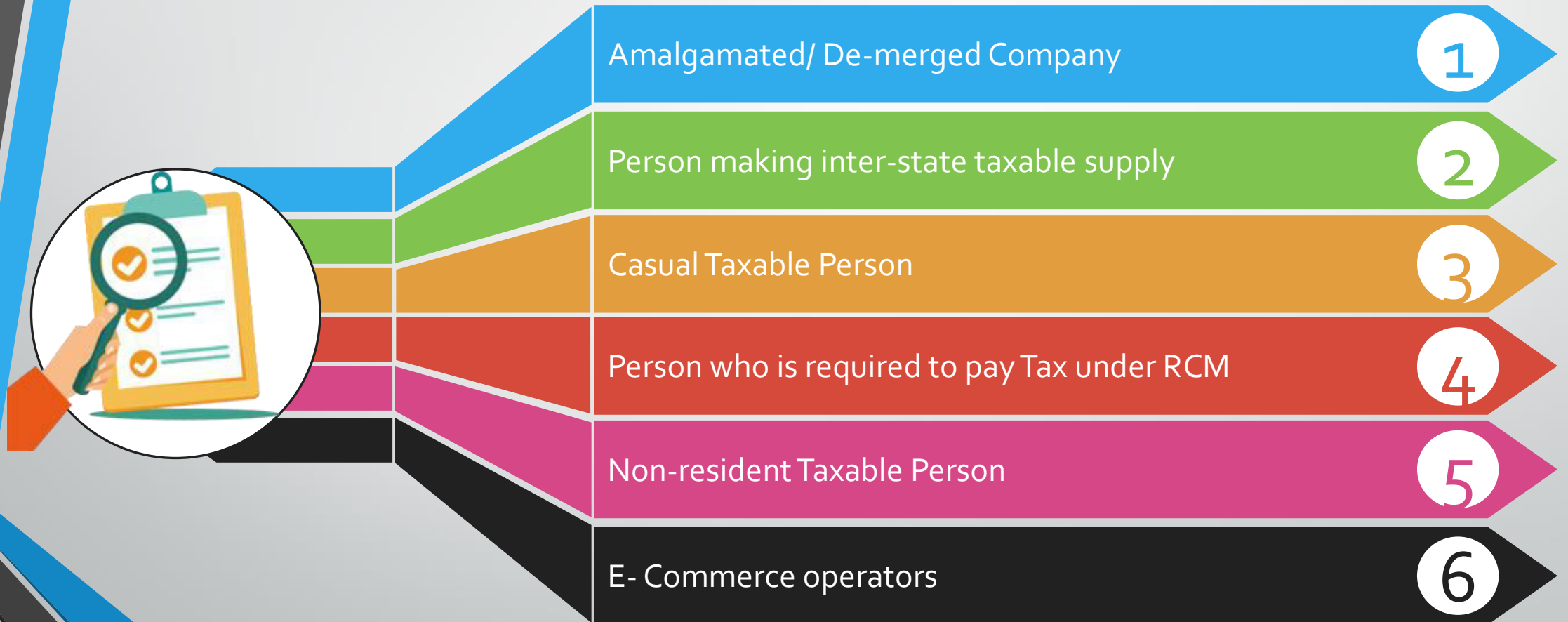
3) Subject to the provisions of paragraph 1, every person who, on the day immediately preceding the appointed day, is registered or holds a license under an earlier law, shall be liable to be registered under this Act with effect from the appointed day

4) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee, or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession

If an assessee is registered under Service Tax law or MVAT law because his turnover is exceeding Rs. 10 lakhs, he might not migrate himself under the GST law if his turnover is not exceeding or is not expected to exceed Rs. 20 lakhs

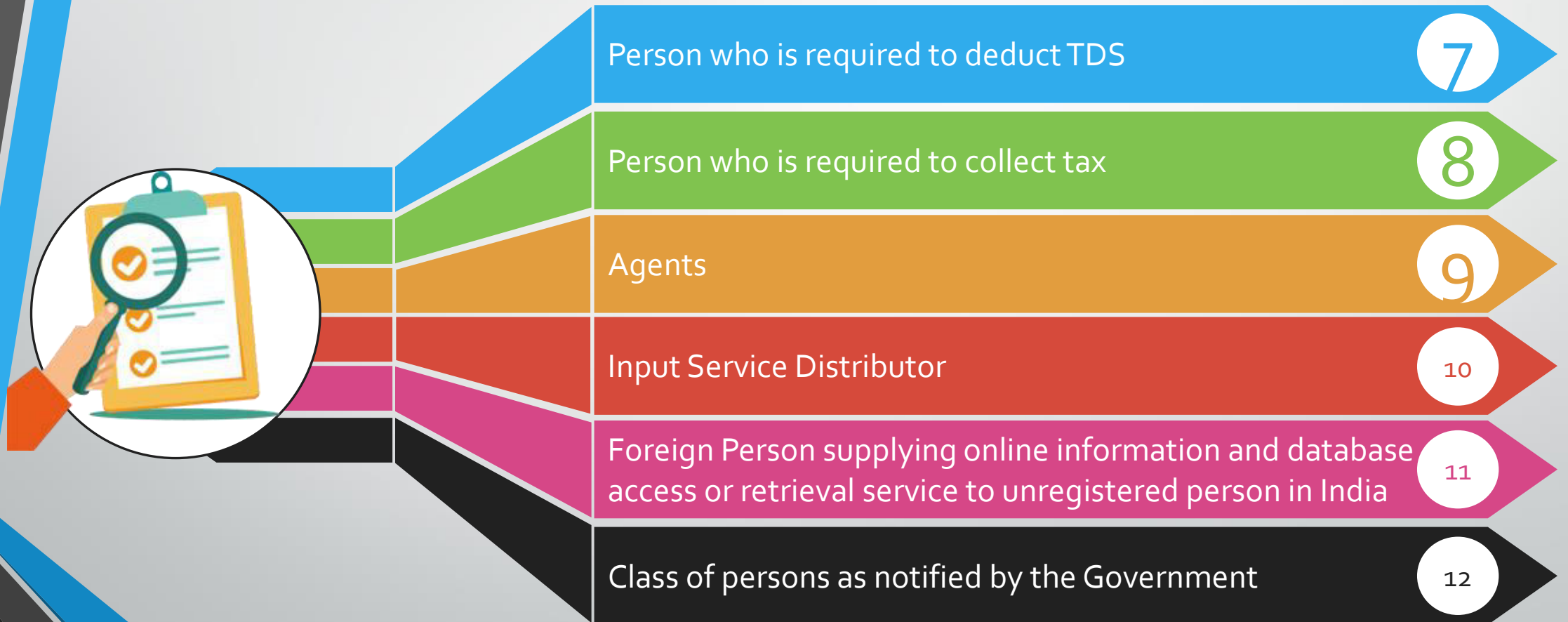
Schedule V (Contd...)

Persons required to take compulsory registration irrespective of threshold limit



Schedule V (Contd...)

Persons required to take compulsory registration irrespective of threshold limit



Definition of “Taxable Person” - S. 10

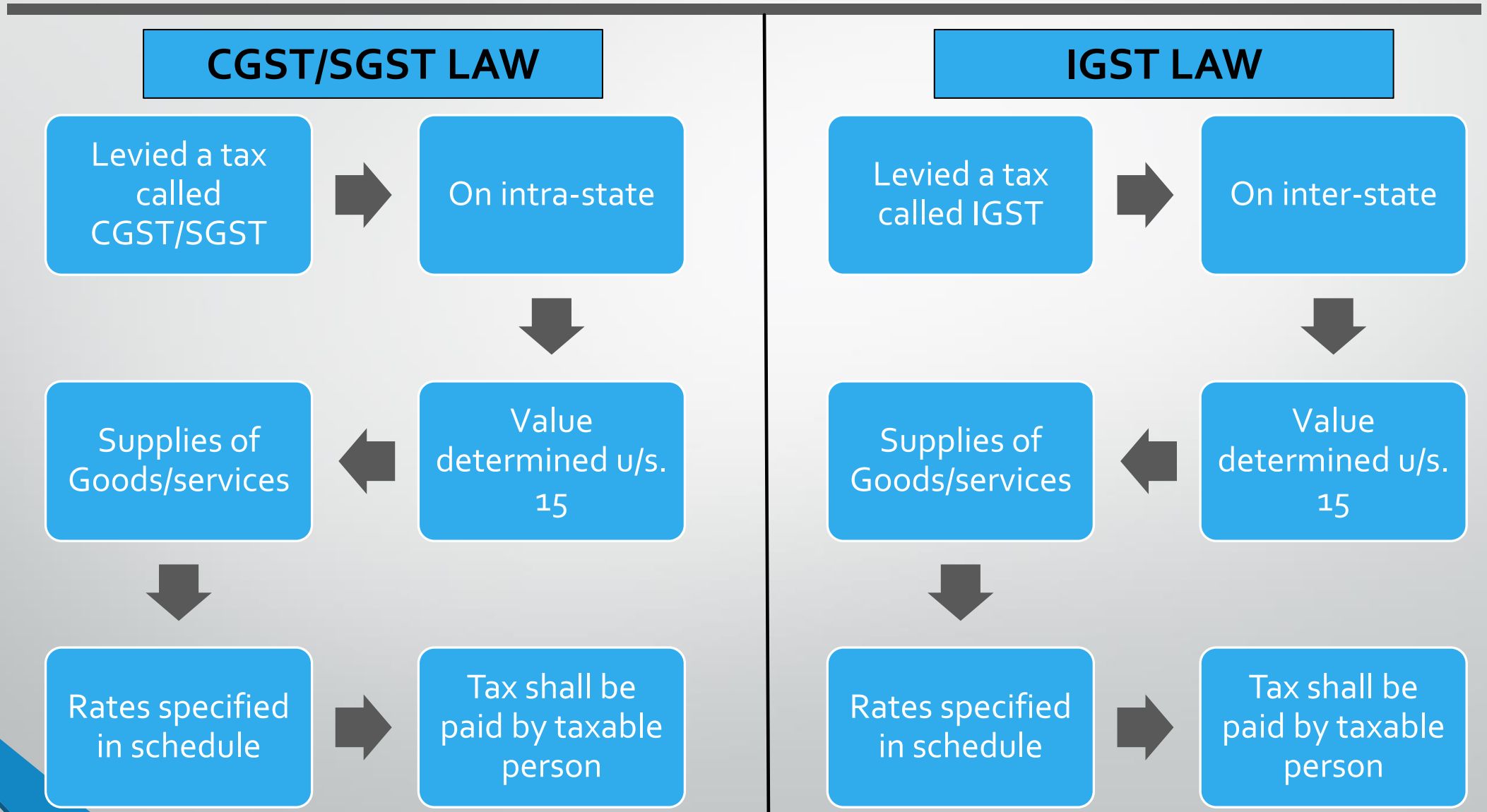
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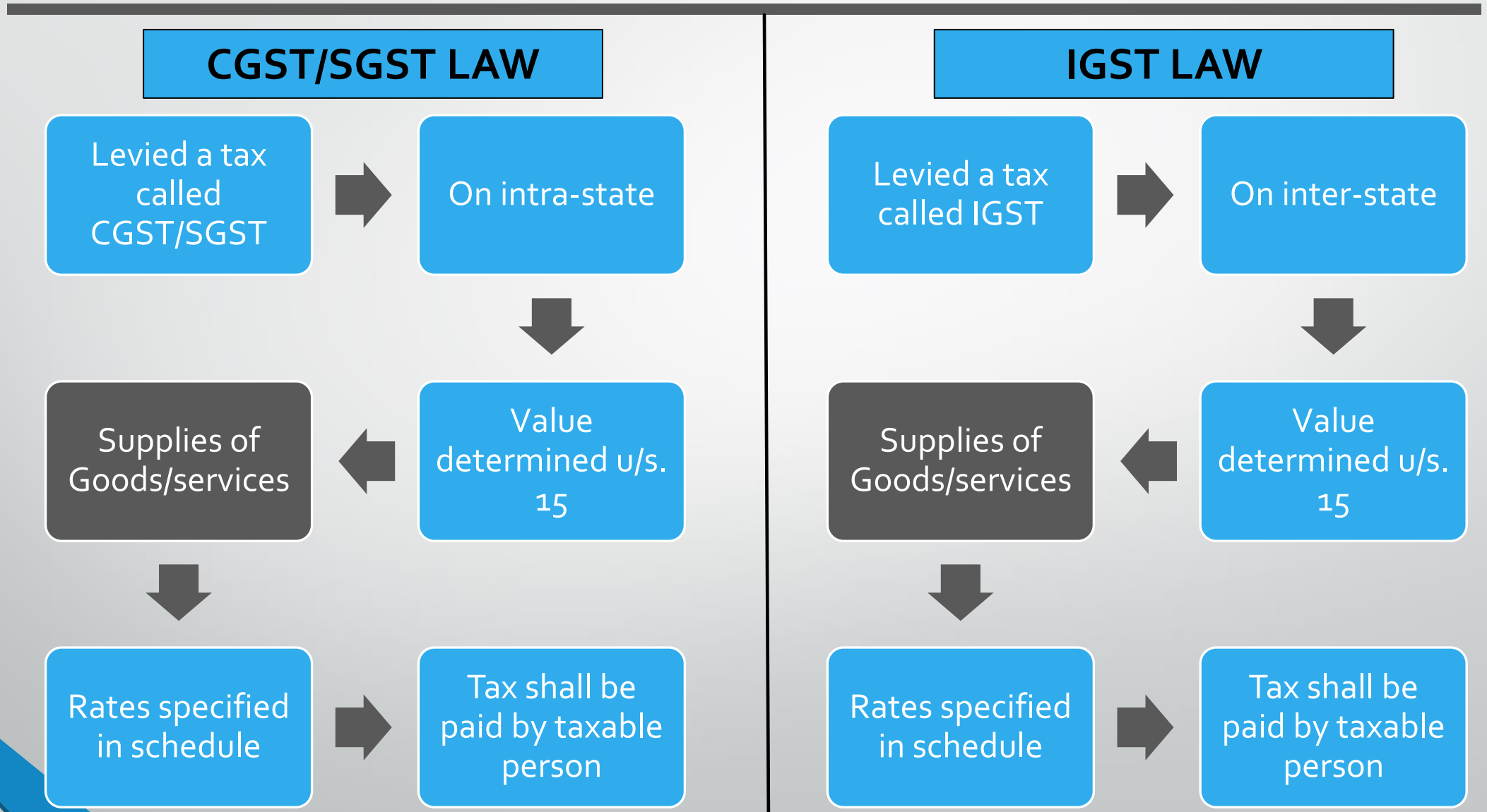
Concept of Supply

- Levy
- Definition of Supply

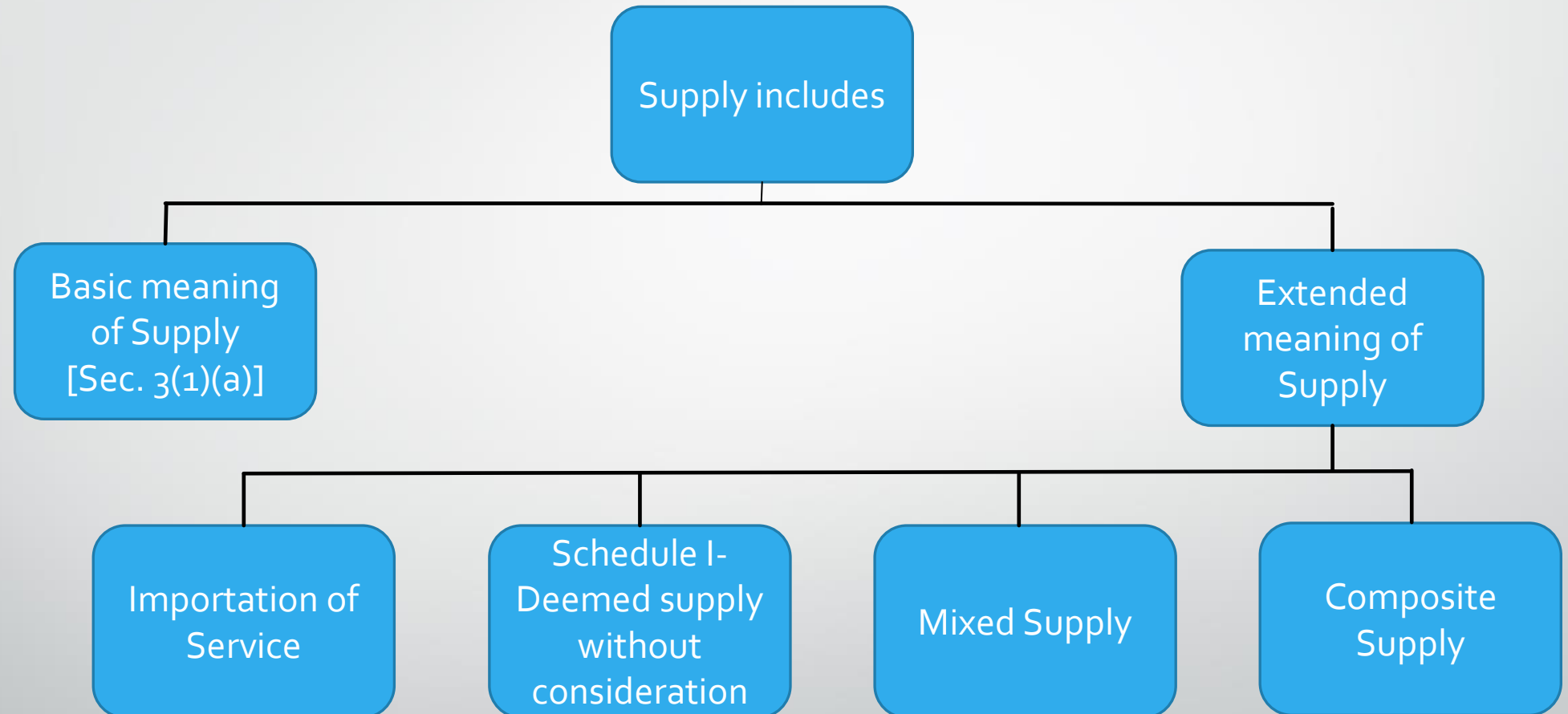
Levy...



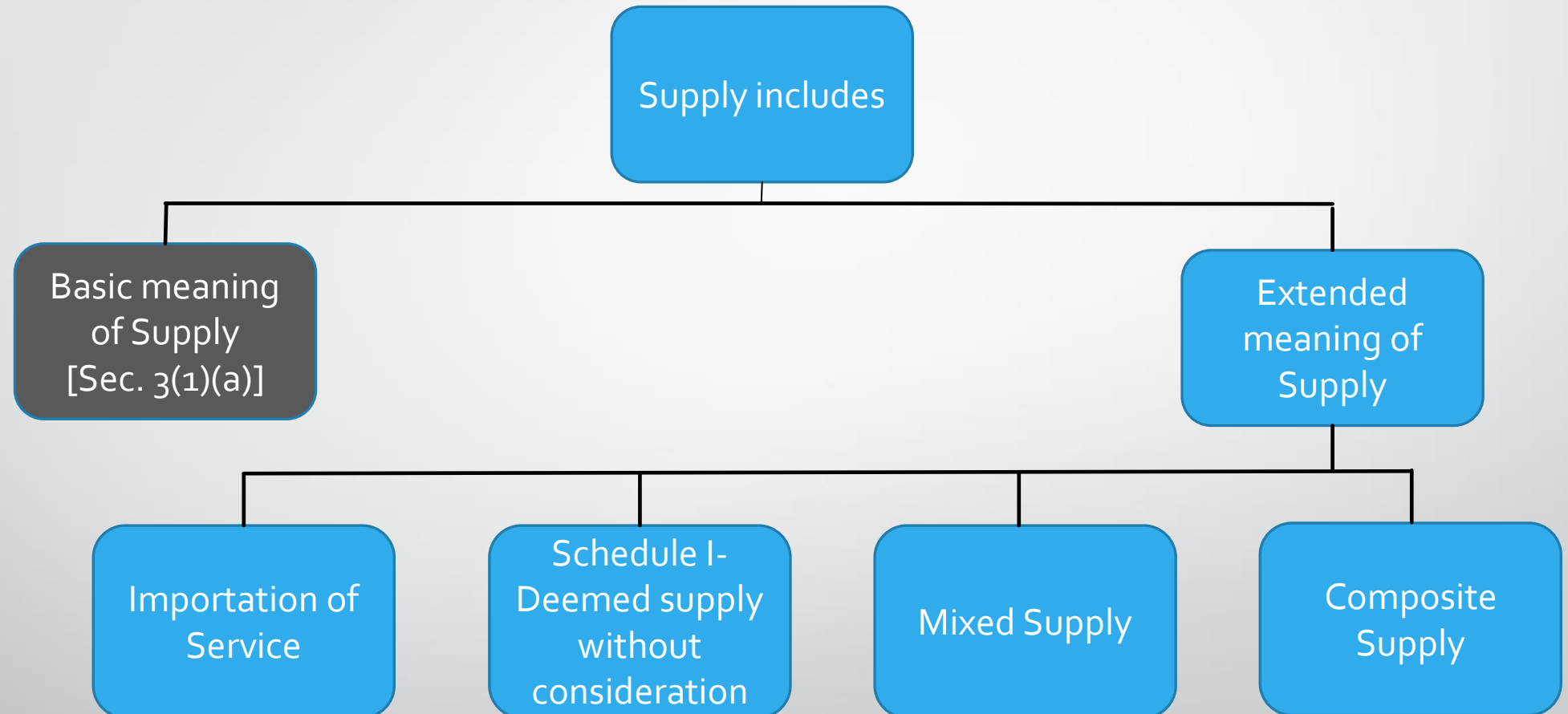
Levy...



“Supply” - Section 3



“Supply” - Section 3



Meaning of Supply... Supply "includes"

all forms of supply of goods and/or services

sale, transfer,
barter,
exchange,
license,
rental, lease,
disposal

Made or
agreed to be
made

For a
consideration

By a person

In the course
or
furtherance
of business

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Such as....

Term	Meaning
Sale	A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.
Transfer	The movement of property from one person or entity to another
Barter	The exchange of goods or services without the use of money
Exchange	To exchange is defined as to give something and receive something in turn
License	Official permission to do something or a document, plate or tag showing proof of permission
Rental	A stated return or payment for the temporary possession or use of a house, land, or other property, made, usually at fixed intervals, by the tenant or user to the owner
Lease	A contract by which one party (landlord, or lessor) gives to another (tenant, or lessee) the use and possession of lands, buildings, property, etc. for a specified time and for fixed payments
Disposal	Disposal is defined as getting rid of or giving away

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Analysing Consideration



Includes:

- 1) Payments made or to be made
- 2) Monetary as well as non-monetary
- 3) Payments by 3rd party
- 4) Act or forbearance
- 5) Inducement of supply or in response of
- 6) Deposits identifiable towards supply

Excludes:

- 1) Subsidy granted by the Central or State Government
- 2) Deposits which are not identifiable towards supply

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Person includes...

- Individual/ Hindu Undivided Family
- Company
- Firm/ Limited Liability Partnership
- AOP/BOI, whether incorporated or not
- Corporation established under Central, State or Provincial Act or a Government Company
- Body incorporated under the laws outside India
- Co-operative Society/ Society/ Trust
- Local Authority/ Government
- Every artificial juridical person

Meaning of Supply... Supply "includes"

all forms of supply of goods and/or services

sale, transfer,
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Made or
agreed to be
made

For a
consideration

By a person

In the course
or
furtherance
of business

In the course or furtherance of “business”

Section 2(17) “Business” includes

- a) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit
- b) Any activity or transaction in connection with or incidental or ancillary to (a) above
- c) Any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction
- d) Supply or acquisition of goods including capital assets and services in connection with commencement or closure of business
- e) Provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be
- f) Admission, for a consideration, of persons to any premises; and
- g) 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, profession or vocation;
- h) Services provided by a race club by way of totalizator or a license to book maker in such club;

Explanation- Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged in public authorities shall be deemed to be business

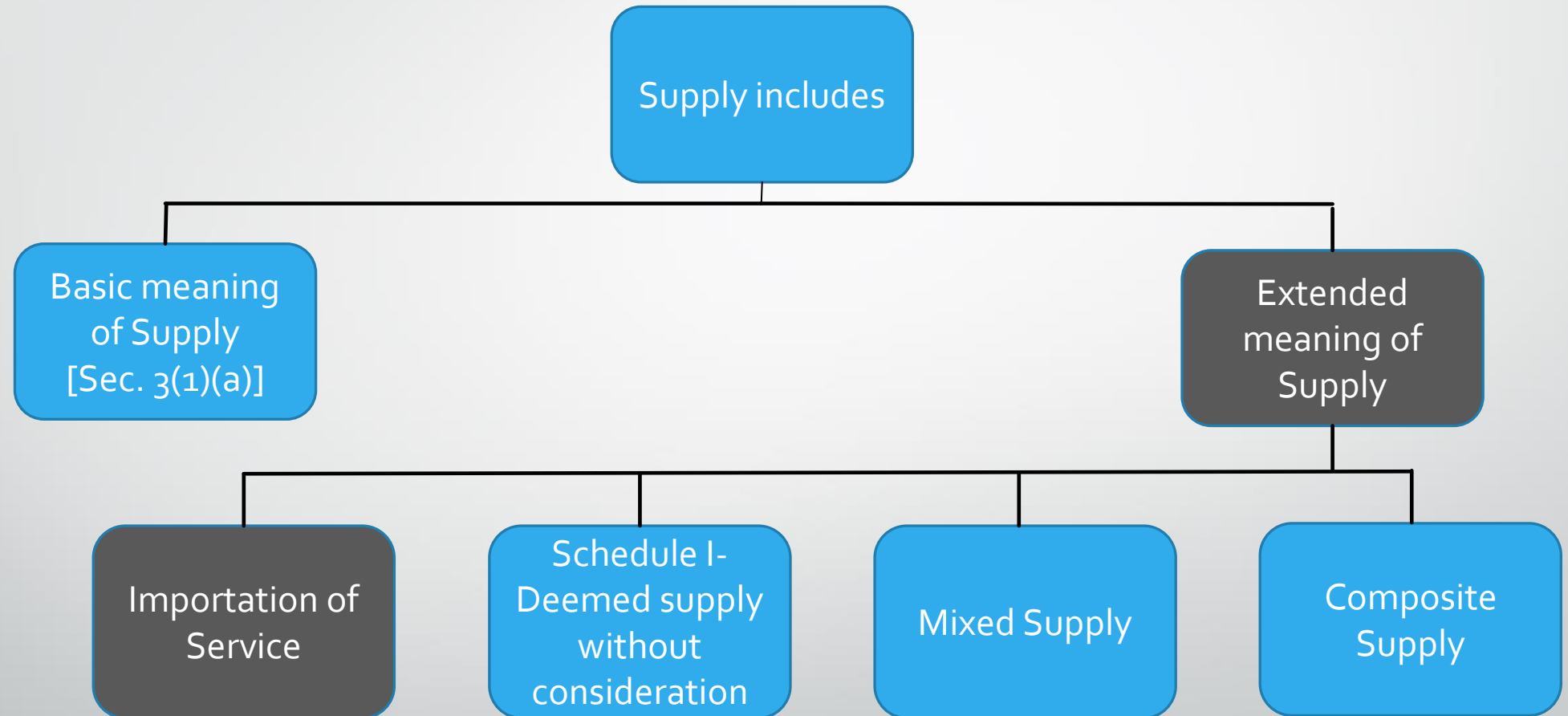
“Business”

Terms	Meaning
Trade	Trade in its primary meaning is the exchanging of goods for goods or goods for money
Commerce	If a person purchases goods with a view to selling them at a profit, it is an ordinary case of trade. If such transactions are repeated on a large scale, it is called commerce
Manufacture	Making of articles or materials by physical labour or mechanical power
Profession	Profession implies professed attainments in special knowledge and distinguished from mere skill
Vocation	A regular occupation, especially one for which a person is particularly suited or qualified
Any other similar activity	Ejusdem Generis.....Need to follow what is prior

Issues to discuss...

- Renting of commercial property by a house wife
- A housing society organizing get together for its members for some nominal charges
- Gifting a car by father to son
- Scrapping of household goods/newspapers
- Professional sells car which is capitalized in his personal balance sheet

“Supply” - Section 3



Importation of Service...

S. 3(1)(b)- **Importation of services, for a consideration whether or not in the course or furtherance of business**

S. 2(18) of IGST Act- "location of supplier of service" means:

- a) Where a supply is made from a place of business for which registration has been obtained, the location of such place of business
- b) Where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment
- c) Where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of establishment most directly concerned with the provision of the supply
- d) In absence of such places, the location of the usual place of residence of the supplier

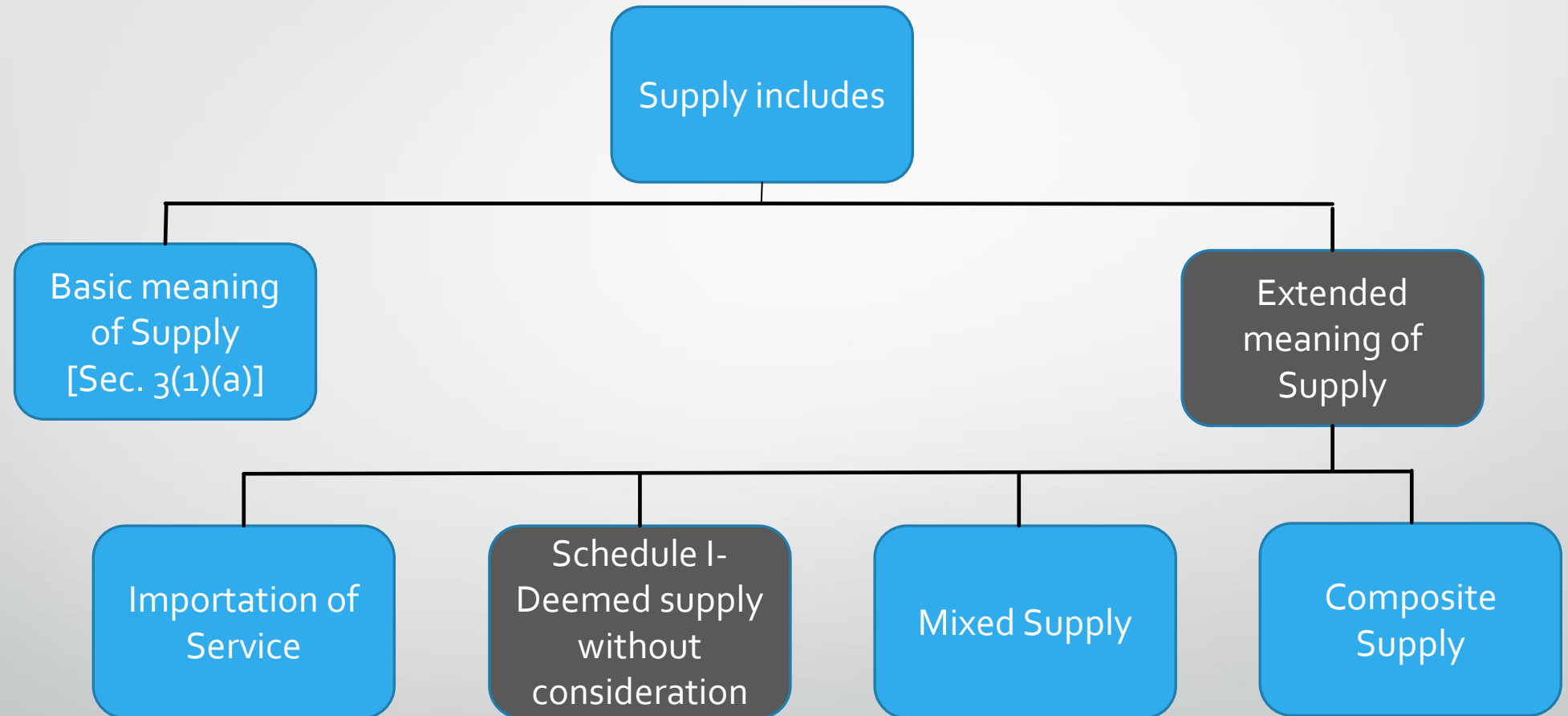
S. 2(11) of IGST Act- "import of service" means the supply of service, where

- (a) **The recipient of service is located in India, and**
- (b) **The supplier of service is located outside India**
- (c) The place of supply of service is in India

S. 2(17) of IGST Act- location of the recipient of services" means

- a) Where a supply is received at a place of business for which registration has been obtained, the location of such place of business
- b) Where a supply is received from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment
- c) Where a supply is received from more than one establishment, whether the place of business or fixed establishment, the location of establishment most directly concerned with the provision of the supply
- d) In absence of such places, the location of the usual place of residence of the recipient;

“Supply” - Section 3



Schedule I- Deemed Supplies

Matters to be treated as supply even if made without consideration:

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 I- Deemed Supplies (Contd..)

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

S. 2(84) of the CGST/SGST Act-

Persons shall be deemed to be "related person" if only-

- a) They are officers or directors of one another's business
- b) They are legally recognized partners in business
- c) They are employer and employee
- d) Any person directly or indirectly owns, controls or holds, twenty five per cent or more of the outstanding voting stock or shares of both of them
- e) One of them directly or indirectly controlled by a third person
- f) Both of them are directly or indirectly controlled by a third person
- g) Together they directly or indirectly control a third person
- h) They are members of the same family

Explanation I- The term "person" also includes legal persons

Explanation II- Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related

S. 10 of the CGST/SGST Act- (Distinct Persons)

2) A person who has obtained or is required to obtain more than one registration, whether in one state or more than one state, shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act

3) 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 shall be treated as establishments of distinct persons for the purposes of this Act

Some issues...

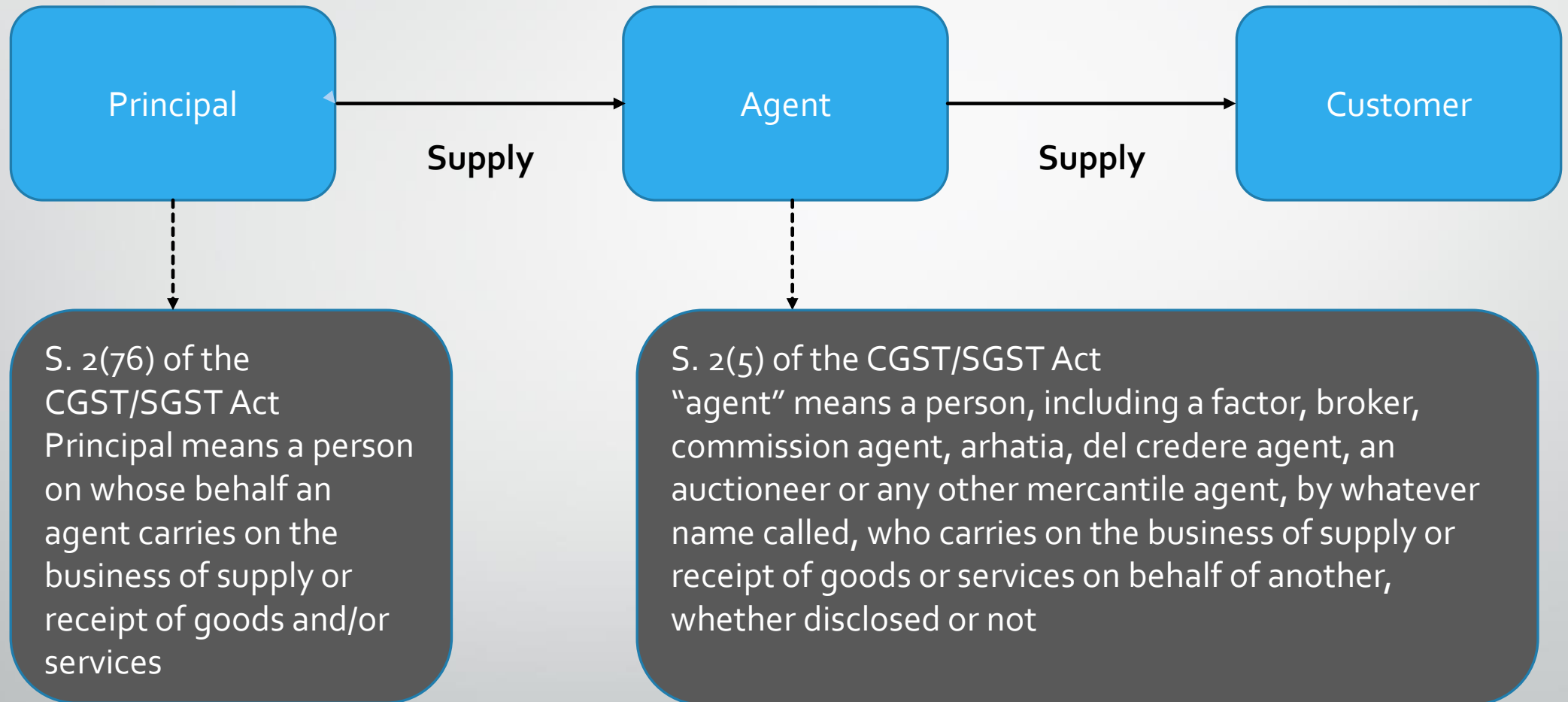
- A CFO of group company is providing its technical expertise to all the group companies, however he is on the payroll of holding company
- A company providing uniform to its employees
 - Returnable once the employee leaves the company
 - Not returnable
- An MNC having contract with a Audit firm to conduct audit on all India basis but billing is done to HO
- Food provided by company to its employees at subsidized rates

Schedule I- Deemed Supplies

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Principal- Agent

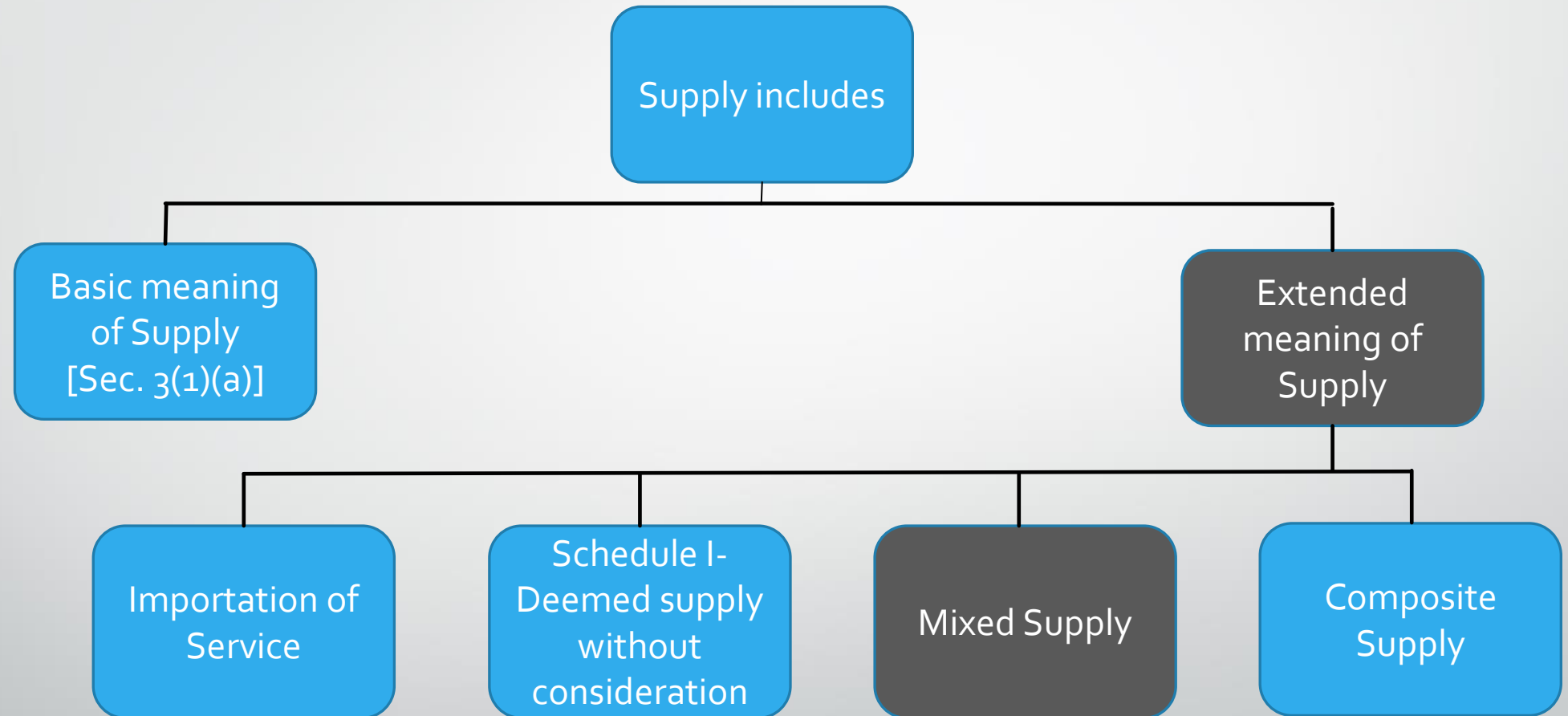


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“Supply” - Section 3



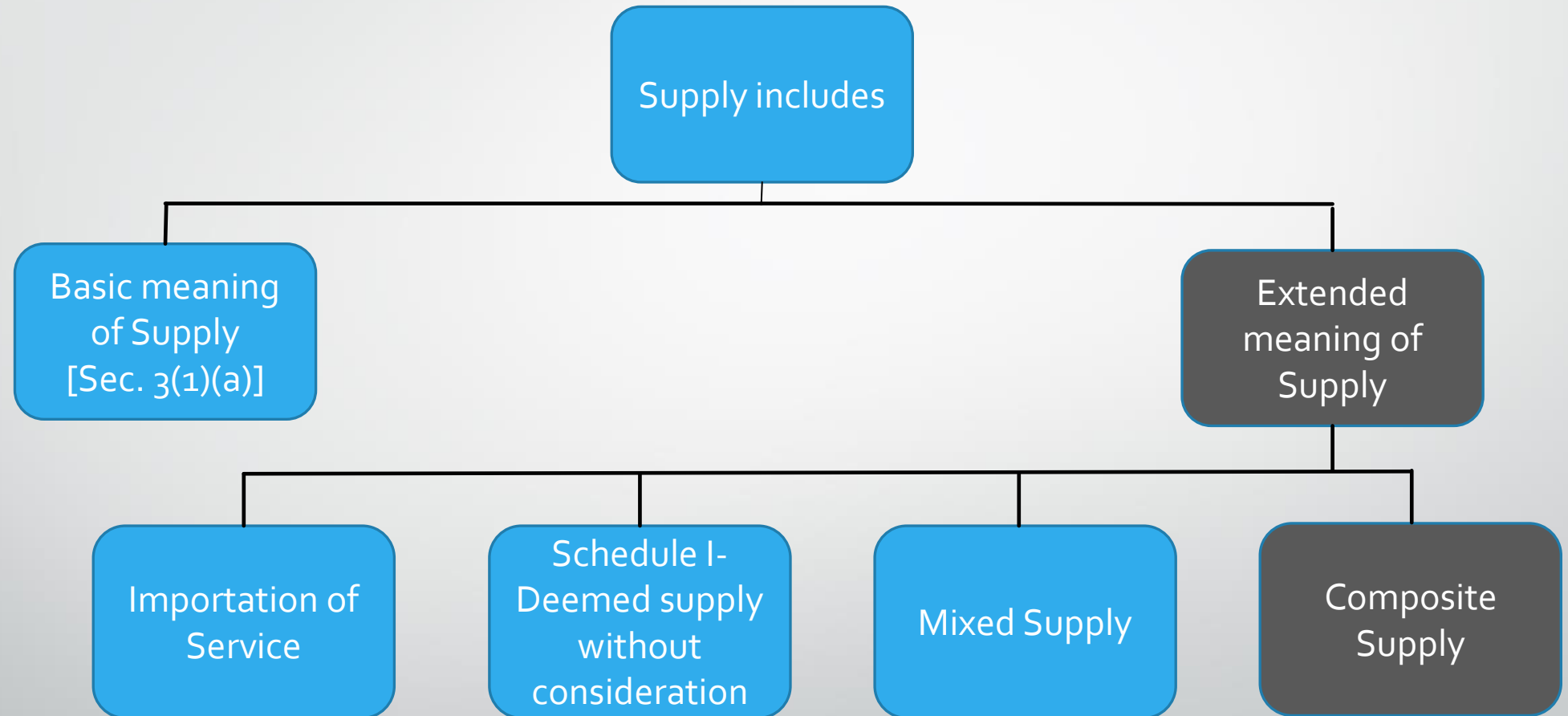
Mixed Supply...

S. 3(5)(b) of the CGST/SGST Act states that a **mixed supply** comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax

S. 2(66) of the CGST/SGST states that a 'mixed supply' means 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 drinks 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

“Supply” - Section 3



Composite Supply...

S. 3(5)(a) of the CGST/SGST Act states that 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

S. 2(27) of the CGST/SGST states that a “composite supply” means a supply by a taxable person to a recipient comprising two or more supplies of goods or services, 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

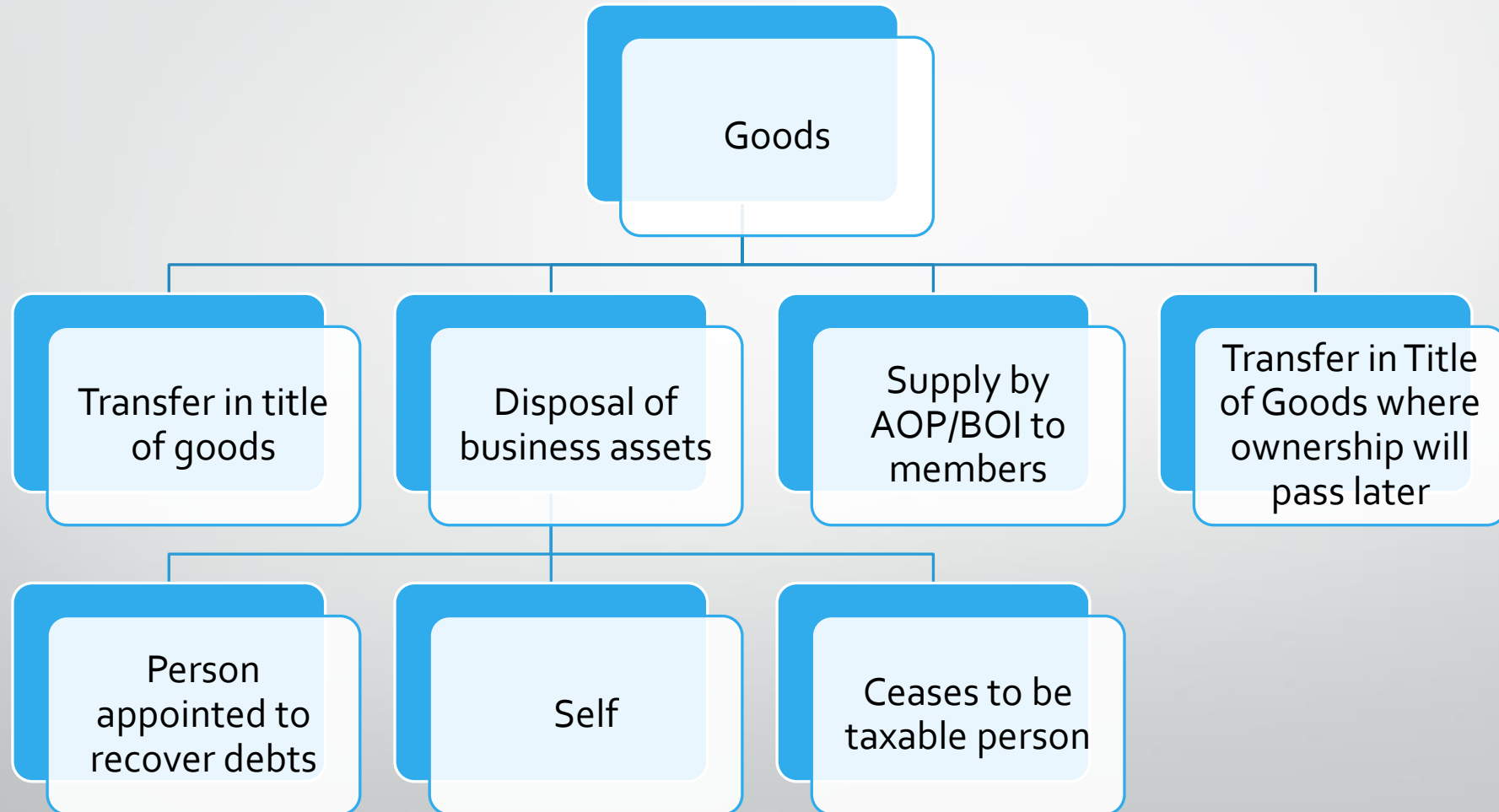
Illustration:

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

Activities not to be treated as supply (Sch-III)

- Services by an employee to the employer in the course of or in relation to his employment
- Services by any Court or Tribunal established under any law for the time being in force
- The functions performed by the MPs, members of state legislature, panchayats, municipalities and other local authorities, etc
- Services by foreign diplomatic mission located in India
- Services by funeral, burial, crematorium or mortuary including transportation of the deceased
- Activities performed by the Central or State Government as specified in Schedule IV of the Act

Supplies to be treated as Goods... (Sch-II)



Supplies to be treated as Services... (Sch-II)





Thank You

CA. Yash Parmar