

INTRODUCTION AND BASIC CONCEPTS

Unit Structure

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1.1 INTRODUCTION AND OBJECTIVES :

Under Entry 82 of the Schedule VII to the Constitution of India, the Central Government is empowered to levy “Tax on income other than agricultural income in India”.

Accordingly, the parliament enacted Income Tax Act, 1961 [“The Act”] to provide for the scope and machinery for levy and collection of income tax in India.

The Act is supported by Income Tax Rules, 1962 and several other subordinate rules and regulations.

Further, the Central Board of Direct Taxes (CBDT) and the Ministry of Finance, Government of India are empowered to issue from time to time circulars and notifications dealing with various aspects of the levy of Income tax.

Unless otherwise stated, references to the sections throughout this book will be the reference to the sections of the Income Tax Act, 1961.

Section 4 is the charging section. It says that income tax is a **tax** on the **total income** of a **person** called the **assessee**, of the **previous year** relevant to the **assessment year** at the rates prescribed in the relevant Finance Act.

This phrase sets the tone and agenda of any study on income tax law including the basic framework for levy of income tax in India.

This lesson will explain various aspects, basic concepts and terms used in the income tax law, which include:-

- (a) Assessment Year
- (b) Previous Year,
- (c) Person,
- (d) Assessee,
- (e) Meaning of income i.e. What is regarded as income?
- (f) What is not regarded as income
- (g) Income chargeable to tax
- (h) Income not chargeable to income tax i.e. exempt income
- (i) How to charge tax on income,
- (j) Gross Total Income,
- (k) Total Income or Taxable Income and
- (l) Income-tax rates

1.2 ASSESSMENT YEAR – Section 2(9)

Section 2(9) defines an “Assessment year” as **“the period of twelve months starting from the first day of April every year”**

An assessment year begins on 1st April every year and ends on 31st March of the next year.

Illustrations

1. Assessment year 2018-19 means the period of one year beginning on 1st April, 2018 and ending on 31st March, 2019.
2. Assessment year 2022-23 will mean the period of one year beginning on 1st April, 2022 and ending on 31st March, 2023.

Income of an assessee during the previous year is taxed in the relevant assessment year. Assessment year is sometimes also called as the **“tax year”**

1.3 PREVIOUS YEAR- Sections. 2(34) & 3

3.1. Definition:

As per section 3 “previous year” means **“the financial year immediately preceding the assessment year”**.

The year in which income is earned is called the **“previous year”**.

The income earned by an assessee in one financial year (**previous year**) is taxed in the next financial year called the “assessment year”.

Illustrations

3. Income earned during financial year 2021-22 will be taxed in the financial year 2022-23.

Hence, 2022-23 will be the assessment year.

The financial year 2021-22 being the financial year immediately preceding the assessment year will be the previous year.

4. For the assessment year 2017-18, previous year will be 2016-17 i.e. from 1st April, 2016 to 31st March 2017.

3.2. Common previous year for all source of income:

A person is liable to pay taxes on total income earned by him during the previous year from all sources of income.

The previous year will be common for all sources of income, even if he maintains records or books of account separately for different sources of income.

Illustration

5. Particulars of income earned by Ashok during the financial year 2021-22 are :-

	Rs (lakh)
Salaries from X Limited	2.40
Salaries from Y Limited	4.80
Professional income	2.50
Dividend	1.20
Interest	1.75
Aggregate Income	12.65

Ashok has earned the aggregate income of Rs 12.65 lakh from different sources during the financial year 2021-22. Hence, the previous year for all these sources of income will be the financial year 2021-22 and the relevant assessment year will be 2022-23.

Ashok will be liable to pay tax on aggregate income of Rs. 12.65 lakh from all the sources of income for the previous year 2021-22 relevant to assessment year 2022-23.

3.3. New Business or Profession:

Where during a financial year where a

- (a) business is newly set up or
- (b) new source of income has arisen

during that financial year, the previous year will be the period (obviously less than one year) commencing from the date of setting up of the new business or the date of arising of the new source of income and ending on the 31st March next.

Illustration

6. R sets up a business on 01 March 2022. The period of one month beginning on 1st March 2022 and ending on 31st March, 2022 will be the previous year 2021-22 and taxed in the assessment year 2022-23. It is immaterial that previous year is of a period of less than 12 months.

3.4. Exceptions

The general rule that income of the previous year is taxable in the next assessment year is subject to some exceptions and the assessee is liable to pay tax on the income in the same previous year in which he earns it. In such cases, previous year and assessment year will be the same.

These exceptional cases ensure safeguards to smooth collection of income tax from a class of taxpayers who may not be traceable until the commencement of the normal assessment year.

Some of such exceptions are as under:-

- a) Income of non-residents from shipping business-section 172
- b) Income of persons leaving India permanently or for a long period of time and not likely to return back –section 173 and section 174;
- c) Income of bodies formed for short duration for a particular event or purpose – section 174A;
- d) Income of a person trying to alienate his assets with a view to avoiding payment of tax – section 175 ,
- e) Income of a discontinued business- section 176

- f) bad debts written off allowed as deduction in earlier years is taxable in the year of realization vide section 41(1)
- g) Deemed dividend – Section- 56

1.4 PERSON –SECTION 2(31)

4.1 Definition:

As per section 2(31) “person” includes:

- a) an individual;
- b) a Hindu undivided family (HUF);
- c) a company;
- d) a firm;
- e) an association of persons(AOP) or a body of individuals,(BOI) whether incorporated or not;
- f) a local authority; and
- g) every artificial juridical person not falling within any of the preceding categories

4.2 Inclusive definition:

The definition of “person” is inclusive, not exhaustive. Accordingly an entity not falling in the above seven categories may still be treated as “person” inviting the provisions of the Act.

4.3 Profit motive not necessary:

Explanation to section 2(31) makes it clear that an entity need not be formed for profit. Absence of profit motive will not be the criteria to exclude any entity from being a “person”. Accordingly a non-profit Organisation or charitable trusts will also be covered by the definition of “person” although their income is not taxable under the Act on satisfying the certain terms and conditions.

4.4 Description of types of persons :

A brief description of these seven categories is as follows:

- a. **Individual** means any living persons of blood and flesh. Examples Aruna, Arvind, Fatima, Albert, Ibrahim, Rose etc.
- b. **Hindu Undivided Family (HUF)** or a Hindu joint family is regarded as separate tax entity in view of the specific law of succession prevalent among the Hindus.
- c. **Company** as per section 2(31), includes any

- Indian or foreign company,
- Public or private Company, or
- Charitable or non-profit company incorporated under section 8 of the Companies Act, 2013 (corresponding to old section 25 of the Companies Act, 1956). However, such company is eligible to claim exemption from tax, on compliance of the legal conditions given in other provisions of the Act.
- Any institution declared by CBDT as a company.

d. **Partnership firm** including a limited liability partnership (LLP) is regarded as distinct taxable units separate from their partners. Accordingly, a firm is taxed separately as a firm and its partners are taxed separately in their personal capacity.

e. **Body of individuals (BOI)** and **Association of Persons (AOP)** are the group of persons carrying on some activities to earn income such as joint venture.

Normally, AOPs are contractual in nature like a joint venture agreement if such venture not formed as a partnership or a company.

On the other hand, BOI may be due to circumstances such as joint owners of an estate. Clubs, societies, charitable trusts etc. are covered under this head.

f. **Local authorities** include Municipal Corporations, Panchayats, Cantonment Boards, Zila Parishads etc.

g. The seventh and final category is residual category , which covers all such persons which are not covered in any of the above six categories.

Illustration

7. Determine the category of the following entities as person as per section 2(31) of the Income Tax Act, 1961:

Person	Status
Rajul	Individual
Smita	Individual
Reliance Infra Limited	Company
Gokul Co- Op Society Ltd	AOP
Indian Red Cross Society	AOP
Legal heirs to receive property of late Shri Nusserwanji	BOI
Tata Power Ltd	Company

Virat Kohli	Individual
Board for Cricket Control in India	AOP
Family of Shri PB Hindu	HUF
Pune Cantonment Board	Local Authority
Pune University	Artificial Juridical Person
Ramu Brothers doing business in partnership	Firm

1.5 ASSESSEE–SECTION 2(7)

5.1 Definition

As per section 2(7), “assessee” means a person by whom income tax or any other sum of money is payable under the Act and it includes:

- a. every person in respect of whom any proceeding under the Act has been taken for the assessment of his income or assessment of fringe benefits or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person ;
- b. every person who is deemed to be an assessee under any provision of this Act ;
- c. every person who is deemed to be an assessee in default under any provision of this Act.

5.2 The definition of “assessee” is also an inclusive definition. The definition is so wide in scope as to include any other person not covered in the above categories.

Further ,the definition covers not only a person but also his representative such as legal heir, trustee, liquidator of a company assessee etc.

Moreover, importance is given not only to the amount of tax payable but also to refund due and the proceedings taken.

5.3 Thus, an assessee may be :-

- (i) A person by whom income tax or any other sum of money is payable under the Act
- (ii) A person in respect of whom any proceeding under the Act has been taken for the assessment of his :
 - a. income or
 - b. loss or
 - c. the amount of refund due to him

- (iii) A person who is assessable in respect of income or loss of another person or
- (iv) A person who is deemed to be an assessee,
- (v) an assessee in default under any provision of the Act

5.4 A minor child is a separate assessee only in respect of the income generated :-

- a. out of activities performed by him like singing in radio jingles, acting in films, tuition income, delivering newspapers, etc. or
- b. from an asset assets acquired from the minor's sources of income

Other income of a minor child will be clubbed with or included in the income of the parent having the higher income subject to a maximum deduction of Rs 1500 per child under section 10 in respect of income so clubbed .

1.6 ASSESSMENT - SECTION 2(8)

The Act does not define “assessment”. Instead, section 2(8) states “**an assessment includes reassessment**”.

In common parlance, assessment is the procedure to determine the taxable income of an assessee and the tax payable by him.

Section 139, requires an assessee to file in prescribed form a self-declaration of his income and tax payable by him called “return of income”.

The Income Tax officer may accept the return summarily without making any enquiry into its contents. This is called as the ‘summary assessment’ under section 143(1).

Alternatively, the officer may call upon the assessee to explain his return of income and after making necessary enquiry, frame a reasoned order determining the total income and the tax payable by the assessee this is called the “regular assessment” under section 143(3).

Completed assessment becomes final except in certain circumstances. These circumstances are:

1.7 Under section 147, an assessment can be reopened to assess income which has escaped assessment,

1.8 Under section 263 , the Commissioner of Income Tax may ask an assessment to be redone if the assessment order is erroneous and prejudicial to the interest of the revenue ,

1.9 Under section 264, the Commissioner of Income Tax at the application of an assessee or *suo motu*, may ask an assessment to be redone. This is normally done to give relief to the assessee.

1.10 Under section 254, the Income Tax Appellate Tribunal (ITAT) in appeal proceedings may pass an order directing the assessment to be redone.

In all the above cases “reassessment” of the income is required to be done. The definition of assessment includes the regular assessment and reopened or reassessment.

1.7 INCOME- Section 2(24)

7.1 Definition:

Section 2(24) gives an inclusive definition of income. It states that Income" includes—

(i) profits and gains ;

(ii) dividend;

(iia) voluntary contributions received by

- A trust or any other legal obligation created wholly or partly for charitable or religious purposes or
- an institution established wholly or partly for such purposes or
- an association or institution referred to in section 10(21) or (23), or
- a fund or trust or institution referred to in sub-clause (iv) or (v) or
- any university or other educational institution referred to in sub-clause (iiia) or (vi) or
- any hospital or other institution referred to in sub-clause 10 (23C)(iiia) or (via) or
- an electoral trust.

(iii) the value of any perquisite or profit in lieu of salary taxable under section 17 (2) and (3) ;

(iiia) any special allowance or benefit, other than perquisite included under sub-clause (iii), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit ;

(iiib) any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living ;

(iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or

such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid;

(iva) the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in section 160(1) (iii) (iv) or by any person on whose behalf or for whose benefit ("beneficiary") any income is receivable by the representative assessee and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary ;

(v) any sum chargeable to income-tax under section 28 (ii) and (iii) or section 41 or section 59;

(va) any sum chargeable to income-tax under section 28 (iiia);

(vb) any sum chargeable to income-tax under section 28 (iiib) ;

(vc) any sum chargeable to income-tax under section 28 (iiic);

(vd) the value of any benefit or perquisite taxable under section 28 (iv);

(ve) any sum chargeable to income-tax under section 28(v);

(vi) any capital gains chargeable under section 45;

(vii) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule ;

(viiia) the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members;

(viii) [Omitted by the Finance Act, 1988, w.e.f. 1-4-1988.

(ix) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.

For this purpose—

(i) "lottery" includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;

(ii) "card game and other game of any sort" includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game ;

(x) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the

provisions of the Employees' State Insurance Act, 1948 , or any other fund for the welfare of such employees ;

(xi) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

(xii) any sum referred to in section 28(va);

(xiia) the fair market value of inventory referred to in section 28(via)

(xiii) any sum referred to inspection (2) (v);

(xiv) any sum referred to in section 56 (2) (vi) ;

(xv) any sum of money or value of property referred to in section 56 (2) (vii) or (viia);

(xvi) any consideration received for issue of shares as exceeds the fair market value of the shares referred to in 56 (2)(viib);

(xvii) any sum of money referred to in 56 (2) (ix);

(xviiia) any sum of money or value of property referred to in 56 (2) (x);

(xviib) any compensation or other payment referred to in section 56 (xi);

(xviii) assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than,—

(a) the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions section 43(1) explanation 10,

(b) the subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, as the case may be;

7.2. Section 2(24) gives an inclusive definition of “income”., which covers income in its natural and general sense and also several items not otherwise considered as income.

Income means not only the revenue receipts arising or accruing regularly but also capital receipts like gifts and even donations and gifts. On the other hand, certain revenue receipts like agricultural income are left out from the scope of the term income.

Some of the principles that have emerged out as a result of customs, practices and judicial pronouncements to ascertain as to what does or does not constitute income are as follows.

1. Ordinarily Income is a regular periodical receipt, received or derived from a certain source.

2. The source of income must be external. No one can earn income by or from himself.
3. On this principle, income accruing to clubs, societies etc. from their own members are not taken as taxable income on the ground of mutuality.
4. Normally, only revenue receipts are regarded as income unless specifically exempted.
5. On the other hand, capital receipts are not treated as income unless the law specifically provides e.g. capital gains, gifts, maturity proceeds of keyman insurance policy, sales tax subsidy, voluntary contribution by a donor to a trust, which are included in income in spite of being capital receipts.

Income is like the fruit of a tree, where tree is the source, or the capital asset.

6. Income may be in cash or kind.
7. Income need not be legal. It may even be derived from illegal sources like, smuggling, theft, bribery, corruption etc.
8. It is the receipt, which is income not its application or use.
9. Any receipt diverted at the origin or the source by overriding title will not be regarded as income.
10. Any dispute in the title of the income does not take away its nature as income.
11. A gift is a capital receipt given for personal considerations. However, the is no longer valid proposition as the law specifically provides for taxation of gifts, e.g.:-
 - Gift by an employer to an employee is deemed to be taxable salary u/s 17.
 - Gift by a client or customer is deemed as the income under the head profits and gains from business or profession u/s 28. Hence, a gift given by a client to his lawyer or chartered accountant or a patient to his doctor, or a disciple or pupil to his guru, will be taxable as the income of the recipient (donee) from business or profession u/s 28 .
 - Personal gifts in excess of Rs. 50,000, from all sources are taxable as income from other sources u/s 56 subject to certain exceptions. Further. Inadequate consideration on transfer of immovable or movable assets is also considered as taxable gift u/s 56. This aspect is dealt with in great detail in the lesson relating to income from other sources

12. Income may be recognised either on receipt basis or on accrual basis depending upon the facts and circumstances of and the method of accounting applied in each case.
13. Income must be certain. Contingent income is not regarded as income unless and until such contingency occurs and the income arises to the assessee.
14. Income is the sum total of all receipts from all the sources and considered accordingly.
15. Pin money received by a woman for personal expenses or even the savings made by her from such receipts is not considered as income. However, the husband will not get any credit from his income for these payments.
16. Income may be received in lump sum or in instalments. Thus, arrears of salary received by a person in lump sum are regarded as his income.
17. Awards received by a professional sportsperson would be income, unless the award is in nature of a gift for personal consideration.
18. Income of wife is be taxable in the hands of the husband if the assets out of which the income is arising have not been acquired out of the sources of the wife or from an asset gifted by the husband except as consideration for living apart.
19. Income of minor children is be taxable in the hands of the parents having higher income [mother or father] except when the income is arising from the efforts of the minor child say modeling charges.

1.8 GROSS TOTAL INCOME- Section 14

Section 14 of the Act defines the gross total income as the aggregate of the incomes computed under the five heads after adjusting for set-off and carry forward of losses. The five heads of income are as follows namely:

1. Income from salaries
2. Income from house property
3. Profits and gains from business & profession
4. Capital gains
5. Income from other sources

From the above it appears that:-

- The Gross Total Income is the aggregate of income computed under the five heads in accordance with the provisions of the Act

- Any income exempted from tax u/s 10 or other provisions E.G., conveyance allowance, capital gains on sale of personal effects, dividend income, etc. is not considered or excluded from the income computed under the respective heads.
- The aggregate income is before making any deduction under chapter VIA i.e. sections 80C to 80U.

1.9 TOTAL INCOME:

The total Income of an assessee is computed by deducting from the Gross Total Income all permissible deductions available under the Chapter VI A of the Income Tax Act, 1961. This is also referred to as the “Net Income” or “Taxable Income”.

1.10 SCHEME OF CHARGING INCOME TAX

Income tax is a tax on the total income of an assessee for a particular assessment year. This implies that;

- Income-tax is an annual tax on income.
- Income of previous year is chargeable to tax in the next following assessment year at the tax rates applicable for the assessment year This rule is, however, subject to some exceptions discussed above.
- Tax rates are fixed by the annual Finance Act and not by the Income-tax Act. For instance, the Finance Act, 2022 fixes tax rates for the financial year 2021-22 relevant to assessment year 2022-23. Tax rates are given in the lesson dealing with computation of income.
- Tax is charged on every person if the total income exceeds the minimum income chargeable to tax.

1.11 SELF ASSESSMENT QUESTIONS

1. Income of a previous year is chargeable tax in the immediately following assessment year. Is there any exception to this rule?
Discuss
2. Define the term “person”
3. How would you calculate income tax for the assessment year 2018-19 in the case of different assesses?
4. Explain how education cess will be computed for the assessment year 2022-23? [Ans: 4%]
5. What will be the previous year for X, who starts his business on April 6, 2021[Ans: A.Y. 2022-23]

6. Will the answer to Q 5 be different, if X starts his business on 28th March, 2021? [Ans: A.Y. 2021-22]
7. Explain that a financial year is a previous year and also an assessment year. Every financial year can also be an assessment year,
8. Previous year is a financial year immediately preceding the Assessment year Comment
9. What will be the status of University of Mumbai?
[Ans: Artificial juridical person]
10. Indicate whether the following persons will be taxed as individuals:
 - a) X a partner of a firm
 - b) Y, a managing director of A Ltd;”
 - c) Z is the member of Z HUF
 - d) Municipal Commissioner of Mumbai in respect of the Income of the Municipal Corporation
 - e) Municipal Commissioner of Mumbai in respect of his salary from the Municipal Corporation
 - f) A minor acting in TV commercials

[Ans: All except (d) will be taxed, Firm X , A Ltd , Z HUF , Mun Corpn. Separate tax entities]



REGISTRATION UNDER GST

Unit Structure

- 2.1 Introduction and Objectives
- 2.2 Need and Advantages of Registration
- 2.3 Liability for Registration
- 2.4 Registration Procedures
- 2.5 Amendment of Registration
- 2.6 Cancellation of Registration
- 2.7 Self- Examination Questions

2.1 INTRODUCTION AND OBJECTIVES

GST is a destination-based tax which is levied at each stage of supply chain comprising of manufacturer, distributor, retailer and consumer. Liability for payment of tax to the Government is on the supplier of goods or service at each stage.

At each stage of the supply chain, the supplier of goods or services or both can claim credit for tax paid on inputs (ITC) at the previous stage. The credit for tax paid can be claimed only against his liability for payment of tax to the government at that stage.

The actual consumer is the final destination of goods, services or both. Obviously, the actual consumer can not claim credit for tax paid by him as he has no liability of making payment to the government. Hence, the actual consumer has to bear the burden of GST. Thus, actual and factual taxpayers are different persons.

Registration establishes the chain between the government and the consumer. The registration of suppliers not only helps the government to identify the taxpayers but also enables the taxpayer to collect tax from the consumers. Further, it establishes a seamless flow for claiming credit of tax paid on inputs (ITC).

This lesson takes a detailed look at the provisions relating to Registration, its need, advantages, liability for registration, exemption from registration, procedural aspect for registration and its modification or cancellation etc.

2.2 NEED AND ADVANTAGES OF REGISTRATION

Registration is a process for obtaining a unique number from the Government by a supplier of goods or service or both. It enables

or authorizes the supplier to collect tax from the consumer of goods or services or both on behalf of the Government and avail Input tax credit for the taxes on his inward supplies.

Without registration, a supplier cannot collect tax from his customers nor can he claim any input tax credit of tax paid by him.

Registration confers the following advantages on a taxpayer:-

- a. Registration grants official recognition to a person as the supplier of goods or services or both.
- b. Only a registered supplier is authorised to collect tax from the consumers.
- c. The supplier may pass on credit in respect of the taxes paid on the goods or services or both supplied to the consumer.
- d. The supplier may claim and utilise input tax credit of taxes paid towards the discharge of his liability for taxes due on supply of goods or services or both.
- e. Registration establishes a supply chain at the national level with a seamless flow of Input tax credit from the suppliers to the consumers.

2.3 LIABILITY FOR REGISTRATION

3.1. Liability for Registration by a supplier of goods and/or services in four ways, viz.:-

- a. Registration Migration of existing taxpayers from the old law to the GST,
- b. Registration based on minimum turnover of supply of goods and/or services,
- c. Compulsory Registration irrespective of the turnover limit and
- d. Voluntary Registration irrespective of the turnover limit.

3.2. Migration of the existing taxpayers from the old law to the GST

When the GST came in to force on 01 July, 2017, as a transitory measure all the existing suppliers/ dealers who were registered or holding a license under any of the existing laws such as central excise, service tax or VAT etc. were required to migrate to GST and obtain Provisional Registration under the GST latest by 30th June 2017 vide section 22(2) of the CGST Act, 2017 and submit declaration of stocks and unavailed input credit on 30th June 2017 to facilitate smooth transition to the new regime.

The Provisional Registration was subject to final registration upon submission of requisite documents and information.

3.3. Registration based on turnover of taxable supply

3.3.1. As per section 22(1) of the CGST Act, 2017, every supplier, whose aggregate turnover of taxable supply of goods or services or both exceeds the threshold limit during a financial year, is liable for registration in the State or Union Territory, **from where** he makes a taxable supply of goods or services or both.

3.3.2. The threshold or the specified limit of aggregate turnover:

Threshold Turnover limits for Registration		
Type of Supplier	Special Category States except UT of Jammu & Kashmir, Ladakh and Assam)	Non-Special Category States, (except Puducherry)
For any taxable person engaged in supply of goods only	Twenty lakh rupees	Forty lakh rupees
For any taxable person engaged in supply of goods or services or both	Ten lakh rupees	Twenty lakh rupees

Notes:

1. Special Category States include States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram Nagaland and Tripura and Himachal Pradesh, Sikkim and Uttarakhand and UTs of Jammu & Kashmir & Ladakh
2. After 05-08 2019 State of Jammu & Kashmir have been reorganized into the Union Territories of Jammu & Kashmir and Union Territory of Ladakh. Both the UTs fall in Special Category State but it has opted for threshold limit of Rs 40 lakh not 20 lakh.
3. Among the Non-Special Category States, State of Puducherry opted for threshold limit of Rs.20 lakh in respect of goods NOT Rs.40 lakh.
4. As per proviso to section 22(1) of the CGST Act the threshold limit of turnover for a taxable person in a Non-Special Category State, having a branch in Special Category State will be Rupees 20 lakh, not Rupees 40 lakh.

3.3.3. Meaning of Aggregate turnover

- A.** “Aggregate turnover” as per section 2(6), means the aggregate value of-
- i. all taxable supplies,
 - ii. exempt supplies,
 - iii. exports of goods or services or both, and
 - iv. inter-State supplies

- B. Aggregate turnover of supply of goods or services or both is computed
 - a. for a supplier having the same Permanent Account Number on the principle of one PAN- one person,
 - b. for the whole of India taken together,
 - c. with reference to the financial year i.e. April to March
- C. The value of aggregate turnover *excludes*:-
 - a. Central tax, State tax, Union territory tax, Integrated tax and Cess;
 - b. The value of inward supplies on which tax is payable by a person on reverse charge basis;
- D. Vide explanation to the section 22 , the aggregate turnover *includes*:-
 - a. all supplies made by the taxable person on his own account ;
 - b. supplies made on behalf of all his principals; or
 - c. in case of a principal, the supply of goods by a registered job worker after Completion of job-work.

3.3.4. Persons not liable for Registration-Section 23

- A. Any person engaged exclusively in the business of supplying goods or services or both, which are not liable to tax or wholly exempt from tax under the CGST Act or under the IGST Act;
- B. an agriculturist, to the extent of supply of produce out of cultivation of land;
- C. Any class of persons specified by the Government on the recommendation of the Council, by notification. Under this section, the government has granted exemption from registration under this section, to :
 - (i) Individual advocates including senior advocates ,
 - (ii) Individual sponsorship service providers including players ,
 - (iii) Suppliers, whose all supplies are taxable under Reverse Charge (vide Notification No. 5/2017-Central Tax dated 19.06.2017).

3.3.5. Some relevant points

As per rule 18, every registered person shall display his certificate of registration in a prominent place at his principal place of business and at every additional place or places of business.

— Every registered person shall display his goods and services tax identification number (GSTIN) on the name board exhibited at the entry of his principal place of business and

3.3.6. at every additional place or places of business.

- (i) The liability for registration is on “every supplier”.
- (ii) The supplier should make a taxable supply of (i) goods or (ii) services or (iii) both over the threshold limit of 10 lakh/20 lakh rupees.
- (iii) Under section 22 read with section 23, a supplier of only tax-free supplies is not liable for registration.
- (iv) An agriculturist is specifically exempted from registration to the extent of supply of produce out of cultivation of land.

- (v) A supplier having tax-free supplies also has some taxable supply, then, all supplies, whether taxable or tax-free in the course of export or inter-State supply, will be considered in aggregate turnover.
- (vi) A supplier of only supplies taxable under reverse charge e.g. a transporter or lawyer is exempted from registration vide Notification No. 5/2017-Central Tax dated 19.06.2017.
- (vii) All supplies by a taxable person will be included in his aggregate turnover whether made
 - on his own account; or
 - as an agent on behalf of all his principals; or
 - in case of a principal, the supply of goods, after completion of job-work, by a registered job worker.
- (viii) The value of the supply considered in the account of the principal, shall not be included in the aggregate turnover of the registered job worker because only one person should be liable for accounting the turnover of supply.
- (ix) Registration shall be taken in the state or union territory from where the supplier makes the taxable supply of goods or services or both.

3.2.5. Illustrations:

1. Ashok supplies taxable goods from Imphal (Manipur) of Rs 21 lakh. A is liable for registration as the value of supplies provided by him exceeds Rs 20 lakh Manipur being a special category state.
2. Babu, who is a Kolkata based wholesaler in tea provides supplies in Panaji (Goa). B will be liable for registration in Panaji when the aggregate turnover or supply (sales) exceeds Rs 40 lakh.
3. Anil supplies (sells) taxable goods of Rs 35 lakh on his personal account and Rs 7 lakh on his principal B's Account, for whom he acts as the agent. Aggregate turnover of A is Rs 42 lakhs inclusive of supply made on his account and on B's account. A will be liable for registration, when the turnover exceeds Rs 20 lakh.
4. X jewellers Pune sends goods on job work to Y a registered artisan. Y completes the job work and sends goods to X valued at Rs 24 lakh. X's own turnover is of Rs 20 lakh. X will be liable for registration when his own turnover together with the goods received from Y exceeds the threshold limit of Rs 40 lakh. However, then the turnover of Rs 20 lakh will be excluded from the turnover of the job worker.
5. University of Mumbai provides only tax-free education services valued at Rs 50 lakh is not liable for registration because it does not provide any taxable supply.
6. The Bombay Hospital provides tax-free medical services of Rs 18 lakh and taxable services of Rs 4 lakh. It will be liable for registration as its aggregate turnover exceeds Rs 20 lakh.
7. Ashok makes export of taxable goods for Rs 100 lakh. Ashok will be liable for registration, although his tax liability will be Nil.
8. Mahesh is engaged exclusively in supplying tax-free goods. He will not be liable for registration although the turnover may be in excess of the threshold limit of Rs 40 lakh.

9. Babu supplies taxable goods worth Rs 50 lakh and taxable services of Rs 25 lakh. He will be liable for registration from the date on which the aggregate turnover of supply of goods/ services exceeds Rs 20 lakhs.
10. R has Turnover of supplies of goods and services Rs 16 lakh in Maharashtra and Rs 8 lakh in Gujarat. His turnover from supplies of goods and services is Rs 24 lakh which exceeds the threshold of Rs 20 lakh. Hence R is required to obtain Registration in both the States

Compulsory registration– Section 24

As per Section 24 of the CGST Act, 2017, following categories of persons are liable for compulsory registration irrespective of the amount of turnover:-

(i) Inter-State Suppliers

Persons making any inter-State taxable supply (e.g. from Chennai to Pune); However, vide Notification No. 10/2017-Integrated Tax dated 13.10.2017, the benefit of threshold limit of 10 /20 lakhs has been extended to persons making inter-State supplies of taxable services, having an aggregate turnover, to be computed on all India basis, not exceeding an amount of twenty lakh rupees (ten lakh rupees for special category States except J & K) and such persons will be exempted from obtaining registration

(ii) Casual taxable person

A casual taxable person means a person,

- who has a registered business in one state or union territory and
- wants to effect taxable supplies from some other state or union territory
- where he is not having any fixed place of business.

A casual taxable person will be liable for registration in the state from where he seeks to effect taxable supply.

Example

A Kanpur (UP) based supplier of shoes wants to effect supply from Mumbai, he will have to obtain registration as casual taxable person in Mumbai.

A casual taxable person has to apply for registration at least five days in advance of making such supply and make advance deposit of the estimated tax liability.

Such registration is granted for a specified period only not exceeding 90 days but the period may be extended on making application.

Exception

A casual taxable person making supplies of specified handicraft goods need not take compulsory registration, if his turnover does not exceed the threshold exemption of Rs. 20 Lakh/10 lakh.

(iii) Non-Resident Taxable Person

A Non-resident taxable person means

- a foreigner not having fixed place of business in India and
- who desires to make any taxable supply in any State in India.

A Non-resident taxable person has to apply for registration at least five days in advance of making such supply and make advance deposit of the estimated tax liability

Registration is granted to the non-resident taxable persons only for a specified period only, but the period may be extended on making application.

(iv) Payer of tax under reverse charge

Any persons required to pay tax under reverse charge mechanism (RCM) on the supplies received by him such as client of advocates, receiver of transport services from a goods transport agency etc.

(v) E-Commerce Operator

E-commerce operator notified as liable for payment of GST under section 9(5) of the CGST Act, 2017.

(vi) Tax Deductor

Persons required to deduct tax under section 51, whether or not separately registered under this Act.

(vii) Agent

Any Person making taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;

(viii) Input Service Distributor whether or not separately registered under this Act;

(ix) Supplier through E-Commerce Operator subject to TCS

Any person, who supplies goods or services or both, other than supplies specified under section 9(5) through any E-Commerce Operator, who is required to collect tax at source (TCS) under section 52.

(x) Supplier through E-Commerce Operator subject to TDS

Any person, who supplies goods or services or both through any E-Commerce Operator, who is required to collect tax at source.

However, suppliers of taxable services through e-commerce operators need not take compulsory registration and are entitled to avail the threshold exemption of Rs. 20 lakh/10 lakh (Notification No. 65/2017-Central tax dt. 15.11.2017)

(xi) **E-commerce Operator**, who provide platform to the suppliers to make supply through them.

(xii) Every person supplying Online Information and Database Access or Retrieval Services (OIDAR) from a place outside India to an unregistered person in India;

(xiii) Such other person or class of persons as may be notified by the Government on the recommendations of the Council.

11. Voluntary registration

Any person having turnover below the threshold limit Rs. 20 lakh/10 lakh may opt for voluntary registration. Entire turnover of such supplier will be subject to GST from the day of registration without the benefit of the threshold limit of Rs 20 lakh /10 lakh. Voluntary registration will not be cancelled until one year from the date of registration.

2.4 REGISTRATION PROCEDURES

4.1. Nature of Registration and salient features

Different procedures have been prescribed for registration of different classes of suppliers, namely non-resident taxable person, casual taxable person, deductor of tax, collector of tax, supplier of Online Information Database Access and Retrieval (OIDAR) services and other suppliers. These provisions have been dealt with separately at the appropriate places. Salient features for registration procedures applicable to all other suppliers are summarized below.

- (i) Registration not tax specific but common registration for all the taxes i.e. CGST, SGST/UTGST, IGST and Cesses.
- (ii) GST Registration PAN based and State/UT specific. A given PAN based legal entity would have one GSTIN per State/UT.
- (iii) A taxable person required to register in each State or Union territory from where he effects supply.
- (iv) An entity having branches in multiple States will have to take separate registration for the branches in different States/UTs.
- (v) An entity having branches within one State or Union territory, may obtain single registration declaring one place as the principal place of business and the other branches as additional places of business. This rule is subject to 3 exceptions, where separate registration is required even within a state, namely :-
 - i. a unit in SEZ ; or
 - ii. a SEZ developer; or

- iii. Each of business verticals separately of business entity within a State or Unit Territory.

“business vertical” as per Section 2(18) of CGTS Act, 2017 means “a distinguishable component of an enterprise that is engaged in supplying an individual product or service or a group of related products or services and that is subject to risks and returns that are different from those of other business verticals;

Explanation: Factors that should be considered in determining whether products or services are related include:

- (a) the nature of the products or services;
- (b) the nature of the production processes;
- (c) the type or class of customers for the products or services;
- (d) the methods used to distribute the products or provide the services; and
- (e) if applicable, the nature of the regulatory environment, for example, banking, insurance, or public utilities.”
- (vi) Upon registration-
 - (a) 15-digit ‘Goods and Service Tax Identification Number or “GSTIN” is allotted to the supplier. GSTIN comprising of
 - i. the first 2 digits for the State code followed by
 - ii. 10 digits PAN of the legal entity,
 - iii. 2 digits for the entity code and t
 - iv. the last digit for check number.
 - (b) Certificate of Registration incorporating the GSTIN is issued to the taxpayer,
 - (c) The GSTIN is made available to the applicant on the GSTN common portal.
 - (d) Centralised Unique Identification Number (UIN) is issued in respect of supplies to some notified agencies of United Nations organisation, multinational financial institutions and other organisations.

4.2. Standardisation of procedures for Registration

To ensure uniformity of the process all over the country and speeding up the decision making process, GST Registration Rules prescribe as many as 30 standard forms / formats to be used for every process in the registration chain such as application for registration, acknowledgment, query, rejection, registration certificate, show cause notice for cancellation, reply, cancellation, amendment, field visit report etc.

The rules also stipulate strict timelines for completion of different stages of registration process. The standardized process for Registration is given below.

4.3 Procedure for Registration for Regular Taxpayers

Registration under GST

Submission of application for registration

- (i) Every taxable person, who is not a non-resident, deductor of tax and collector of tax has to submit application for registration online through the common portal (GSTN) or the Facilitation Centre in form GST REG-01.
- (ii) Time limit for submission of application is within thirty days from the date when liability to register arises.
- (iii) Form for GST REG-01 is in two part – Part A and part B
 - Part-A contains the applicant entity's name, PAN, Mobile, email etc.
 - Part -B gives the application reference no. given in acknowledgment in GST-REG-02
- (iv) **Documents required for Registration**
 - (1) PAN of the applicant
 - (2) Identify and address proof of the promoters
 - (3) Proof of registration of business, e.g. partnership deed, registration certificate, certificate of incorporation etc.
 - (4) Address proof for place of business such as Rent receipt, electricity bill, Municipal certificate etc.
 - (5) Bank account proof
 - (6) Digital Signature
- (v) On submission of the application, PAN of the applicant is verified through GST portal through One Time Password (OTP) on Mobile no.
- (vi) After verification If the documents are found to be in order, an acknowledgment is issued electronically in Form GST-REG-02.

(vii) Verification process

1. The application is then forwarded to the proper officer of the respective State or the Central Government.
2. The Proper Officer examines the application and the accompanied documents and upon the verification finds the same in order, shall approve and grant the registration within three working days.
3. In case, where the proper officer finds the application to be deficient for any reason or requires any further clarification, he shall intimate to the applicant in form GST-REG-03.
4. The applicant shall submit the reply with clarification in form GST-REG-04 within seven working days starting from the fourth day of filing the original application/ the date of receipt of such information in form GST-REG-03. The clarification includes modification or correction of particulars declared in the application for registration.

(viii) Grant or refusal of registration

The proper officer shall grant the application for registration within seven working days thereafter and issue Registration Certificate in form GST-REG-06 or reject the application in form GST-REG-05.

(ix) If the proper officer does not respond within 3 working days of receipt of application or within 7 working days from receipt of clarification, then application under this Act shall be deemed to have been approved.

(x) Physical verification in connection with registration

Since, the basic premise on which GST is based is evolution of a technology based tax regime reducing physical interface, physical verification is avoided to the extent possible.

However, where the proper officer is satisfied and deems necessity or desirable to carry out physical verification, he may do so only after granting the registration.

After the verification, the Proper Officer shall upload the verification report along with the supporting documents and photographs on the common portal within fifteen working days.

4.4. Registration procedure for Casual Taxable Person

A Casual Taxable Person is a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business.

Generally, Casual Taxable Persons, unlike the regular suppliers do not have a fixed place of business located in a State or Union Territory where they supply goods or services or both.

Persons running temporary businesses like event management, business fairs or exhibitions or other seasonal businesses fall under casual taxable persons under GST.

Following provisions are applicable on a Casual Taxable Person:-

- (i) Registration under GST is compulsory for casual taxable person irrespective of the annual aggregate turnover.
- (ii) A Casual Taxable Person shall make the application for GST registration inform GST REG-01 at least 5 days prior to the commencement of business.

(iii) Deposit for GST Registration

Nor only a Casual Taxable Person can not opt for composition scheme but is required to deposit in advance an amount equivalent to the expected tax liability during the validity period of registration. For this purpose, a temporary reference number is generated for payment of GST deposit.

- (iv) On paying the GST deposit, the Electronic Cash Ledger of the taxpayer is credited, and GST Registration Certificate is released, which will be valid initially for a period specified in the application or 90 days, whichever is earlier.

- (v) The period of extension may be extended for a further period of 90 days on making application in form GST-REG-11 before the expiry of the original validity period of registration and deposit an amount equivalent to additional tax liability during the extended period. Other procedures will be similar as those applicable *mutatis mutandis* to regular taxable persons

(vi) **Filing of returns:**

A registered a casual taxable person has to file the following monthly returns

- Form GSTR-1 on or before the 10th of the following month giving detail of the outward supplies of goods or service made by him
- Form GSTR-2 after the 10th but on or before the 15th of the following month giving detail of the inward supplies made by him
- Form GSTR-2 after the 15th but on or before the 20th of the following month showing the tax liability base on auto populated details of GSTR 1 & 2.
- There is no requirement for filing annual return by a casual taxable person .

(vii) **Refund of Tax**

After filing all the returns for the registration period, a Causal Taxable Person may claim refund in Form GSTR3 in respect of the excess tax paid by him.

4.5. Registration procedure for Non- Resident Taxable Person

A Non-Resident Taxable Person means any person or business or not-for-profit organisation, who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India.

Foreigners and foreign entities supplying goods or services to India would be non-resident taxable persons under the GST law.

The procedure for registration by a Non-Resident Taxable Person is as follows:

- (i) Registration under GST is compulsory for the Non-Resident Taxable Person irrespective of the annual aggregate turnover or any other criteria.
- (ii) A Non-Resident Taxable Person shall identify a person resident in India having a valid PAN in India to act as its authorised representative in India.
- (iii) Application for registration shall be submitted
 1. at least 5 days prior to the commencement of business in India ,
 2. shall be in form GST REG-09, and
 3. signed by his authorized signatory having a valid PAN in India

(iv) A Non-Resident Taxable Person is required to file the following documents for GST registration :

1. Documents showing proof of -
 - i. Principal place of business such as rentreceipt agreement, electricity bill or consent letter from the owner of the premises.
 - ii. Identity such as passport visa.etc.
 - iii. Bank account with IFC Code MICR etc.
2. Tax identification number or unique number,PAN on the basis of which the entity is identified by the foreign government, if available.
3. Authorisation for authorised representative in India along with the copy of the resolution of the board of directors granting such Authorisation , if any
4. Certificate of incorporation of the company ;
5. License issued by foreign country, if any;
6. Clearance certificate issued by Government of India, if any;

(v) GST Deposit for Non-Resident Taxable Person

Non-Resident Taxable persons are also required to make deposit of an amount equivalent to the expected tax liability during the validity of the registration for GST registration, where upon the Registration Certificate will be issued.

- (vi) An application reference number would be generated for payment of advance tax for obtaining GST registration.
- (vii) For final registration, an application is required to be submitted in form GST REG-26 electronically within a period of 3 months from the provisional registration.
- (viii) The proper officer, after verification shall issue registration in form GST REG-06.
- (ix) If the officer is not satisfied with the correctness or completeness of the information submitted or needs additional information, he shall issue a show cause notice to the applicant in Form GST REG-27.
- (x) If the reply to the show cause is satisfactory, the show cause notice may be cancelled by issuing an order in Form GST REG-20, and if it is not satisfactory, then the officer after giving opportunity of being heard to the applicant may pass an order for cancellation of the provisional registration granted to the applicant in Form GST REG-28.
- (xi) After expiry of the period of the Registration Certificate, an application may be filed for extension of registration Period in form GST-REG-11. Also deposit will be required to be made equivalent to the estimated tax liability for the extended period.
- (xii) Other provisions are similar to those applicable on the regular taxable persons in regard to the final registration.
- (xiii) The rules for filing of returns, refunds etc. are similar to those applicable to the casual taxable persons.

4.6. OIDAR Service Provider

Registration under GST

A taxable person, who supplies Online Information and Data base Access or Retrieval (OIDAR) Services to a non-taxable online recipient, is required to file the application for registration in Form GST REG-10 electronically and follow the procedure applicable to non-taxable persons.

4.7. Deductor or collector of GST

A person who is liable to deduct GST at source or collect GST e.g. e-commerce operator will have to follow the normal procedure as applicable except that application for registration shall be submitted electronically in Form GST REG-7

4.8. Special agency like united nation organization etc.

United Nations and other connected specified agencies are not liable to GST under the international protocols. However they are required to obtain Registration by making an application in Form GST-REG-13. Registration is required to claim refund of taxes paid on inward supply of goods or service or both.

4.9. Succession or transfer of business

On succession or transfer of a business as result of amalgamation, merger, demerger or change in constitution etc., the transferee of a business as going concern is liable for registration within 30 days from the date of transfer or succession and the transferee has to follow the applicable procedure as above.

2.5 AMENDMENT OF REGISTRATION

Procedure for amendment in particulars of registration varies according to the nature of amendment sought, which may be of the following three types:

(i) Changes in core field, which do not require cancellation of Registration under section 29 of CGST Act :

Under Rule 12, a taxable person may make an application for amendment in Form GST-REG-14 within 15 days of the following changes:

- (i) Legal name of the business, or
- (ii) State of place of business or
- (iii) Additional place of business, or
- (iv) Names of the functionaries – like partners, directors, etc.

The Proper Officer shall after making necessary inquiry, approve the amendment electronically in form GST -REG-15 within next 15 days from the date of application.

(ii) Change in Non- Core field

All the other corrections/amendments or change in the particulars of registration are called the change in non- core field. This change includes a change in the name of the authorised signatory by adding another name of signatory. A taxable person *suo motu* (on his own) may effect such changes on the common portal without seeking approval of the Proper Officer. Otherwise the change will not be effective.

(iii) Change in Mobile , email etc.

Change in e-mail, or mobile numbers may be effected in the common portal by the taxable person after an online verification through one time password (OTP) is issued.

Eligible persons

Change in the particulars can be effected by the following categories of persons, viz:

1. Applicant or Taxable person
2. Person holding UIN Card or other notified person for registration under TDS/TCS U. N. bodies category,
3. Non-Resident taxpayer
4. GST Practitioner , and
5. Online application and retrieval service provider.

(iv) Fields, which cannot be changed

The following changes which have the effect of changing the State specific PAN based incidence of GST are not allowed:

- a. Change in constitution of business ,
- b. Modification of place of business from one state to another.
- c. In these cases , a fresh registration will have to be obtained after cancelling the existing registration.

The amendments will come into effect from the date of application for amendment.

However, the Commissioner may allow the amendments with retrospective effect.

2.6 CANCELLATION OF REGISTRATION

6.1. Under section 29(1), Registration can be cancelled only in two circumstances:-

- (i) Voluntarily when a taxable person no more requires it , or
- (ii) *Suo motu* by the Proper Officer, when he considers the registration liable due to some specific defaults

6.2. Voluntary Cancellation:

6.2.1. Cancellation of Registration of migrated taxpayers :

An existing taxpayer, who has migrated from old tax regime to GST, may opt for cancellation of Registration online on GSTN portal, if he has not issued any tax invoice or in Form GST- REG- 16 if he has issued any tax invoice.

In either case, cancellation is allowed only if his:-

- (I.) Turnover is below the threshold limit , or
- (II.) Supply is in exempted category.

6.2.2. Cancellation of registration of other taxpayers

1. Time condition

- (i) Where a taxable person not being liable for obtaining registration, has taken voluntary registration , cancellation of registration is not allowed until expiry of one year from the effective date of registration.
- (ii) Other taxpayer may opt for cancellation anytime as the condition of one year does not apply on them.

2. Reasons for cancellation

The cancellation may be for the following reason:-

- a) the business of the taxpayer has been discontinued ;
- b) the business has been sold or transferred to some other entity and that other entity needs to register under GST;
- c) turnover is below the threshold limit; or
- d) the supply is in exempted category.

6.2.3. Procedure for cancellation

A taxable person desirous of cancellation of registration may apply on the common portal within 30 days of event warranting cancellation in Form GST-REG-16. Such person is required to

- a) declare in the application the stock held on the date with effect from which he seeks cancellation ,
- b) work out and declare
 - the quantum of dues of payments,
 - credit reversal, and
 - the particulars of payments made towards discharge of such liabilities.

On receipt of the application the Proper officer shall cancel the registration within 30 days from the date of application or receipt of explanations or clarifications in response to his notice issued by him in Form GST-REG-16 , if any. The notice has to be replied in in Form GST-

REG-18 within seven days. The order of cancellation will be in Form GST-REG-19. Revocation of notice will be in in Form GST-REG-20.

6.3. Suo-motu cancellation by the Officer

6.3.1. The Proper Officer may issue a show cause notice in Form GST-REG-16 to a registered person and call for information. After considering the information and hearing the taxpayer, the Proper Officer may cancel the registration by passing an order in Form GST-REG-19, if he is satisfied that the registered person has :

- (i) contravened the provision of the Act and the Rules;
- (ii) furnished returns for-
 - a) three consecutive tax periods in case of a composition taxpayer, or
 - b) Continuous period of six month in case of a regular taxpayer ;
- (iii) obtained voluntary registration but not commenced business within six months of registration;
- (iv) obtained registration by means of fraud, willful misstatement or suppression of facts;
- (v) discontinued business from the registered place of business;
- (vi) been issuing tax invoice without making the supply of goods or services; or
- (vii) Committed Such other defaults as may be specified.

6.3.2. Revocation of Cancellation

Where registration is cancelled suo motu, the taxable person, within a period of 30 days the service of cancellation order, may apply to the proper officer for revoking the cancellation order.

No such application shall be entertained unless the taxable person, before making such application, has made good the defaults by filing all pending returns, making payment of all dues etc. for which the registration was cancelled by the officer.

On receipt of the application, the Proper Officer, if satisfied, may either revoke the cancellation earlier ordered by him or reject the request for revocation of cancellation, after observing the principle of natural justice by way of issuing notice to the person and hearing him on the issue.

6.3.3. Cancellation not to affect pending tax liability :

Cancellation of registration will not affect the liability of taxes prior to cancellation. Further, the taxpayer will have to pay his due taxes by reversing the input credit in stock of raw materials, finished or semi-finished goods or make payment, whichever is higher. Similarly, input credit on capital goods also will have to be reversed or the payment will have to be made.

2.7 SELF-EXAMINATION QUESTIONS

Registration under GST

1. Explain the concept of casual taxable person .
2. What are the provisions for registration of a non- resident taxable person
3. List out the forms used for registration and cancellation
3. State whether the following are true or false:
 - a) A migrated taxpayer cannot cancel his registration
 - b) Registration may be refused if turnover does not exceed the taxable limit
 - c) A farmer is not liable to GST in respect of his agriculture
 - d) A plastic surgeon , who provides life-saving surgery for Rs 10lakh (exempt) and cosmetic surgery (taxable)for Rs 12 lakh not liable for registration .
 - e) A charitable trust is not liable for registration under GST.
 - f) An advocate is liable for registration under GST.
 - g) A Jammu taxpayer with taxable turnover of Rs 15 lakh not liable for registration .
 - h) Application for registrant in is to be made in GST-REG 1
 - i) A non- resident has to pay tax in advance
 - j) A GST number taken by fraud can be cancelled
 - k) A cancellation order cannot be revoked.

(False a, b, d, e, f and j , True c, g, h, i)



TIME, PLACE AND VALUE OF SUPPLY

Unit Structure

- 3.1 Introduction and Objective
- 3.2 Inter -State Vs. Intra-State Supply
- 3.3 Location of the Recipient of services
- 3.4 Location of the Supplier of services
- 3.5 Place of supply in respect of goods and services
- 3.6 Place of supply in respect of goods
- 3.7 place of supply in case of supply of services, when location of the supplier and recipient is in India
- 3.8 place of supply in case of supply of services, when location of the supplier and recipient is in India
- 3.9 Self- Examination Questions

3.1 INTRODUCTION AND OBJECTIVE

This lesson will explain the provisions relating to the determination of the time, place and value of supply of goods and their implications with reference to the location of the recipient of services and the location of the supplier of services.

For every transaction, the time, place and value of supply of goods and/ or services are important factors which determine the incidence of the GST. Each transaction passes through the threefold test time, place and value of supply of goods and/ or services to ascertain:

- (a) The point in time in which supply of goods or services has taken place;
- (b) The place where supply of goods or services has taken place,
- (c) The value of goods or services supplied;
- (d) The nature of the transaction whether Inter-State Supply Or Intra-State Supply;
- (e) Whether the transaction attracts GST;
- (f) Type of the tax be levied, viz. IGST, CGST, SGST/UTGST on that transaction;
- (g) The amount of tax payable;

- (h) Who is to collect the tax on such transaction;
- (i) The due date for depositing tax with the government and for filing returns Etc.

Time, Place and Value of
Supply

3.2 TIME OF SUPPLY

Time of supply in relation to the supply of good and/or services means the point in time, when such supply takes place. Time of supply is the vital factor with reference to which the time when the tax liability arises, the type of tax payable i.e. IGST/ CGST, SGST/UTGST, the rate of tax and other incidental matters such as due date for payment of tax, filing of returns are determined.

There are separate criteria to identify the time of supply for goods and services.

A. Time of supply of goods.

Time of supply of goods will be the earliest of the following: -

1. Date of issue of invoice
2. Last date on which invoice should have been issued
3. Date of receipt of payment / Advance.

Illustrations:

- (1) From the following data determine the time of supply :

Date of sales of goods	1 January, 2022
Date of issuing invoice	15 January, 2022
Date of receipt of payment	25 January, 2022
The date of delivery of goods	20 January, 2022

Solution

The time of supply will be 15 January, 2022 being the earliest of the following:-

Date of issue of invoice	15 January, 2022
Last date on which invoice should have been issued	20 January, 2022
Date of receipt of payment	25 January, 2022

- (2) Assuming that 50% payment is received in advance on 01 January, 2022, the time of supply will be
- a. 01 January, 2022 for advance amount (50%) since the date of receipt of advance is before the date of issuing invoice, and

- b. 15 January, 2022 for the balance 50%.

B. Time of supply for services

Time of supply of goods will be the earliest of the following: -

- a. Date of issue of invoice (if issued within the prescribed time)
- b. Date of provision of services (if invoice is not issued within prescribed time).
- c. Date of receipt of payment /advance.

Illustrations:

- (1) From the following data determine the time of supply

Date of providing service 15 June 2022

Date of issuing invoice 30 June, 2022

Date of receipt of payment 20 July, 2022

The time of supply will be 30 June, 2022 being earliest of the following:

Date of issue of invoice 30 June 2022

Last day for issue of invoice 15 July 2022

(30 days from the date of provision
Of Service 15 June 2022))

Date of payment 20 July 2022

- (2) Assuming the invoice was issued on 19 July 2022 after the prescribed time of 30 days on 15 July 2022, then the time of supply of services will be 15 June 2022 being the date of providing service.

C. Time of supply of goods under Reverse Charge

Time of supply of goods for the recipient of the service will be 30 days from date of issue of invoice for goods.

D. Time of supply of services under Reverse Charge

Time of supply of goods for the recipient of the service will be 60 days from date of issue of invoice for goods.

- a. Date of payment:
- b. 60 days from date of issue of invoice for services

Illustrations

Time, Place and Value of Supply

- (1) A lawyer raised invoice on 1 June 2022 to a company to represent it before the ITAT on 15 May 2022. The company made the payment on 1 July 2022.

Lawyer's fees are covered under the Reverse Charge. Hence, the time of supply will be 1 July 2022 being earliest of the following: -

1. Date of payment 1 July 2022
2. 60 days from date of date of invoice: 31 July 2022

- (2) If the above was a case of supply of goods, then the time of supply of goods is 30 days from the date of invoice i.e. 1 July 2022.

Please note in RCM cases date of invoice is important not date of supply of goods or services.

3.4 INTER-STATE SUPPLY VS. INTRA-STATE SUPPLY

3.4.1 Broadly, transactions fall in two categories: -

A. International or cross border transactions, viz.:

- a. Imports of goods into India; or
- b. Export of goods outside India, and

B. Domestic transactions, viz:

- a. Inter-state supply
- b. intra-state supply

3.2. As per section 7 of the IGST Act, 2017 Inter-State Supply is when "location of supplier" and "place of supply" are in different States or Union Territories.

In contrast, as per section 8 of the IGST Act, 2017 Intra-State Supply is when "location of supplier" and "place of supply" are in the same State or same Union Territory.

Examples

1. A supplier in Panji, Goasells good in Margaon, Goa. It is intra-state supply, liable to CGST and Goa-SGST as location of the supplier and the place of supply are within the same state (Goa).
2. The supplier in Daman (UT) sells goods in Panji Goa. it is an inter-state supply attracting IGST as the location of the supplier and the place of supply fall in different States/UT.

Interestingly the CGST Act vide sections 2(70) and 2(71) defines "location of the recipient of services" and "location of the supplier of

services” respectively but it does not define “location of the recipient of goods” and “location of the supplier of goods” at any place.

3.5 LOCATION OF THE RECIPIENT OF SERVICES

As per section 2(70) of CGST Act “location of the recipient of services” means:—

- (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the recipient.

Thus, the location of the recipient primarily means: -

Supply Received at	Location of Recipient of Service
Place of business for which the registration has been obtained	Recipient’s Registered Office;
Place other than the place of business for which registration has been obtained, a fixed establishment	Recipient’s fixed establishment
at more than one establishment, whether the place of business or fixed establishment	The location of the establishment most directly concerned with the receipt of the supply
In absence of such places	The location of the usual place of residence of the recipient;

Illustration:

A is registered at Fort with head office at Dadar and branches at Thane and Borivali. His residence is in Juhu.

For any supply received in Thane office, the place of recipient will be at:

1. Registered office at Fort,
2. Dadar office if A does not have registration at Fort;

3. Most connected office at Thane in absence of Fort and Dadar offices.
4. Residence at Juhu, in absence of any of the above.

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3.6 “LOCATION OF THE SUPPLIER OF SERVICES

As per section 2(71) of the CGST Act, “location of the supplier of services” means: —

- (a) where a supply is made from a place of business for which the 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 (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 the establishment most directly concerned with the provisions of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the supplier;.

The yardstick for determining the location of the provider or supplier of service is more or less similar to those applicable on location of the receiver of the supply.

Supply made from	Location of Supplier of Service
Place of business for which the registration has been obtained	Recipient’s Registered Office;
Place other than the place of business for which registration has been obtained, a fixed establishment	Recipient’s fixed establishment
at more than one establishment, whether the place of business or fixed establishment	The location of the establishment most directly concerned with the provision of the supply
in absence of such places	The location of the usual place of residence of the supplier

Example:

XYZ Limited is a company having registered office at Vashi, corporate office at Mumbai and branches all over the country. Goods are supplied to Surat Branch of XYZ Limited. Place of supply will be Recipient's Registered Office at Vashi, fixed establishment at Mumbai and Surat in that order.

3.7 PLACE OF SUPPLY OF GOODS AND SERVICES

Sections 10, 12 and 13 of the IGST Act, 2017 lay down the principles for determination of place of supply broadly in three categories viz.: -

Section 10 Supply of goods

Section 12 Supply of services where location of both the supplier and the recipient is in India;

Section 13 Supply of services, where location of either the supplier or the recipient is outside India.

3.8 PLACE OF SUPPLY IN RESPECT OF GOODS

Section 10 of the IGST Act, 2017 lays down the following principles to determine place of service of goods

When there is movement of goods

When there is movement of goods, there may be two situations: -

A. Where supply involves movement of goods whether by the supplier or the recipient or by any other person, place of supply is the place where the movement terminates i.e. where the goods are delivered or the ownership in goods is transferred.

Examples

1. Paresh of Pali sells 100 cotton bales to Suresh of Satara. The place of supply is Satara in Maharashtra, where the movement of goods is terminated. Both Pali and Satara are in the state of Maharashtra, it is intra-State sales liable to CGST & SGST.
2. If Paresh sells goods to Bhupat of Bhopal in M.P., the place of supply will be in Bhopal M. P. M.P. and Maharashtra being different states, it will be inter-state sales attracting IGST.
3. Manoj of Mumbai places an order to Nokia's Chennai plant for purchase of mobile phones goods ex-factory. In this case the goods are delivered at Chennai; hence, Chennai will be the place of supply.

Both, the place of supply and location of the supplier being in same State Tamil Nadu, it will be intra-State sales chargeable to CGST and TN SGST.

Once place of supply has been determined at Chennai, subsequent transport of goods to his place of business in Mumbai or anywhere else is not relevant.

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Delivery to a third party as per instructions

When goods are delivered by a seller to the recipient (whether agent or not) on the direction of a buyer before or during the movement of goods, by way of transfer of document of title to the goods or otherwise, the place of supply will be the principal place of the buyer on the assumption that the buyer has received the goods.

Examples

1. Jatin of Jodhpur buys umbrellas from Mahesh of Mumbai to be delivered to his Mithun living in Mumbai.

This is a case of third party delivery. Hence, delivery of umbrellas by Mahesh to the third party i.e. Mithun in Mumbai will be treated as delivery to Jatin at his principal place in Jodhpur. Hence, Place of supply will be Jodhpur in Rajasthan.

Rajasthan and Maharashtra being different states, it will be inter-State sale chargeable to IGST.

2. Mayank of Mumbai places an order for two watches on Snapdeal (an E-Commerce Operator) Manufactured by Foss Ltd., Bengaluru (registered with Snapdeal) to be delivered to his sister Hema in Hubli.

This is again a case of third party delivery. Delivery of watch to Hema in Hubli will be assumed to be delivery to Raju at his principal place in Mumbai by the Supplier Foss Ltd. (Bengaluru Karnataka). Hence, Mumbai will be the place of supply. Karnataka and Maharashtra being different states, it will be inter-State sale chargeable to IGST.

When there is no movement of goods

A. Where supply does not involve movement of goods, the place of delivery of goods will be the place of supply.

Examples

1. Alok of Ahmedabad has his goods lying in Punit's godown in Pune. Punit offers to buy those goods and Alok agrees to sell these goods to Punit.

In this case, there is no physical movement of goods. Delivery of goods is effected when Punit appropriates the goods. Place of supply will be Pune. This being intra-state as the supplier and the place of supply both are in the same state, CGST and MH SGST will be charged.

2. In the above example, if Alok sells goods to Ramesh in Pune, who takes the delivery from Punit, the place of supply will be Pune. Pune and Ahmedabad being in different states, IGST will be charged.

3. Johor, a Mumbai based film producer purchases a studio in Kolkata with pre-installed audio-visual equipments. The place of supply is Kolkata being the location of equipments at the time of delivery along with the studio building, which is same as the location of the supplier. Hence, CGST and WB SGST will be charged as intra-State sale. There will be no GST on sale of building being a capital asset.

B. The goods assembled or installed at site

Where, goods are assembled or installed at the site of the buyer, site will be the place of supply.

Example

Infosys Ltd., Bengaluru installs a sophisticated internet-server for MTNL in Mumbai.

In this case, the place of supply will be Mumbai being the buyer's place or site of installation of server.

This will be inter-State supply from Bengaluru (Karnataka) to Mumbai (Maharashtra) subject to levy of IGST.

However, Infosys may apply for registration as Casual Taxable Person in Mumbai and pay CGST & MH SGST.

C. Goods Supplied on a Vessel/Conveyance

Where the goods are supplied on board a conveyance including any vessel, aircraft, train or a motor vehicle, place of supply is the location where such goods are taken (loaded) on board.

Examples

1. A buys food articles on board while travelling from Kolkata to Guwahati by air.

The food items are loaded into the plane at Kolkata. Hence, Kolkata will be the place of supply. If the Airline is registered in Kolkata, CGST & WB SGST will be charged. But if the Airline is registered in other state e.g. Mumbai (Maharashtra), IGST will be charged. In practice, most airlines are registered across the country and charge CGST/SGST.

2. Kamal, a consultant for JW Ltd, Indore buys food articles on board, while flying from Patna to Lucknow.

CGST & MP SGST will be charged as inter-State sales in Indore (M.P.) being the place of supply, where the food articles were loaded and the Airline is registered in MP. But if the Airline is registered in other state IGST will be charged.

3. Kutty is travelling from Jaipur (Rajasthan) to Kochi (Kerala) by Himgiri express starting from New Delhi (NCR). He buys lunch on board at Wadi in Andhra. The lunch was loaded by the IRCTC in Sholapur (Maharashtra).

The food items were loaded in Sholapur, hence place of supply is Sholapur (Maharashtra). Since IRCTC is registered throughout India, CGST & SGST will be charged.

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D. Where place of supply cannot be determined, the Parliament will make rules on the recommendation of GST Council.

E. Where, supply is by transfer of documents, place of supply will be the principal place of business of the person receiving the supply.

Example

Dilip of Dehradun (Uttarakhand) sells goods by endorsing airways bill for goods lying in Mumbai, from where the buyer takes the delivery of the goods. The place of supply is in Mumbai (Maharashtra) being the principal place of business of the person receiving the supply. It will be inter-state sales and IGST will be charged.

F. In case of import of goods into India, place of supply is location of the importer and IGST will be charged.

Example

A toy dealer having his principal office in Puri (Odisha) imports Chinese toys in Mumbai port. Place of supply is Puri. IGST will be charged on the value of imports.

G. In case of export of goods outside India, place of supply is outside India. Exports are exempt from GST.

Example

A of Patna exports garments to San Francisco, U.S. from Kolkata airport.

Place of supply will be in San Francisco. Exports are exempt from GST.

3.9 PLACE OF SUPPLY IN RESPECT OF SERVICES WHEN LOCATION OF THE SUPPLIER AND RECIPIENT IS IN INDIA

Section 12 of the IGST Act lays down the following principles for determination of place of supply in case of supply of services, when location of the supplier and recipient is in India: -

1. General Rule

Where the services are provided to a registered person, place of supply of services is place of location of the registered recipient of services.

Example

A computer mechanic provides services to a Chartered Accountant registered in Thane. Place of service will be in Thane.

2. Where, the recipient is not registered, place of supply is the address on record of the recipient.

Example

In the above illustration, the Chartered Accountant is not registered and his address on record is at Pune. Place of service will be at the address on record (i.e. Pune)

3. In other cases, it is location of supplier of services.

4. Immovable Properties-Architects, surveyor etc.

Place of supply of services in case of services related to immovable property like architects, interior decorator, property agents, surveyors, engineers, hotels, inns, guest houses, lodges, club, banquet halls etc. shall be the location of the immovable property.

Example

An U.S. Architect makes designs and plans for Trump Tower in Mumbai. Place of service shall be Mumbai as the service is related to immovable property located in Mumbai.

5. Performance based service

In case of restaurant and catering, personal grooming services like beauty treatment, health, fitness etc. shall be the place of performance of these services.

Example

A bridal makeup artist of Mumbai goes to provide service in wedding in Delhi. Place of service will be Delhi, where the grooming service was provided.

6. Transport & Insurance etc.

Several services such as transportation of goods, transportation of passengers, Insurance etc., place of supply shall be the location of registered person.

7. Banking Services

In case of banking, place of supply is location of the recipient on record.

8. Telecommunication services

In case of telecommunication services involving fixed line, circuits, dish etc., place of supply is location of such fixed equipment.

Example

In respect of set top box fixed at the homes of viewers, place of service will be at the place where such box is installed.

9. Mobile / Internet Services

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In case of post-paid services, place of service is location of billing address of the recipient and In case of sale of pre-paid voucher, place of supply is place of sale of such vouchers. In other cases, it is address of the recipient in records.

Examples

1. Billing Address for mobile phone of Rajua resident of Thane is at his Chandigarh home address. Place of service shall be Chandigarh.
2. Yashvant, resident of Chandigarh purchases a JIO prepaid talk-time voucher in Raipur, place of service shall be Raipur.

3.10 PLACE OF SUPPLY OF SERVICES WHEN LOCATION OF EITHER THE SUPPLIER OR THE RECIPIENT IS OUTSIDE INDIA – SECTION 13

International transactions where both the recipient and the provider of service are outside India are not covered under GST in India. International transactions, where either of the service recipient or the service provider is outside India, place of service will be determined as per the principles laid down in section 13 of IGST, Act, viz:

3.11 General Rule

In international transactions, place of supply of services shall be the location of recipient of service.

Example

A Chartered Accountant provides service to his counterpart in London, U.K. As per section 13 of the IGST Act, place of supply shall be London, U.K. being the location of the recipient of service.

3.12 Non- availability of the location of service recipient

Where the location of service recipient is not available, the place of supply shall be location of the supplier of services.

Example

A Chartered Accountant provides consultancy services to a person outside India, whose location is not known, the place of service shall be India being the location of the supplier of services.

3.13 Services involving actual performance

Services involving actual performance, place of actual performance of services will be location of service.

Example

Sonu Nigam performs at IAFA awards ceremony in Macau, the place of service shall be Macau, China.

3.14 Processing of goods

When supply of service involves doing some activity on some goods, place of supply is location of goods.

Example

If packing of goods imported is to be done in London, the place of service shall be London for providing packing service.

3.15 Services related to immovable property

Services related to immovable property, place of supply of services is location of immovable property.

Example

An Engineer in India makes structural plans for a tower in Dubai. The place of service will be Dubai, not India

3.16 Event based Services

Place of supply with respect to event based services like exhibition, conference, fair etc. shall be place where such events are held.

Examples

1. A decorator organises a business fair in Rome, the place of service will be Rome.
2. A Hollywood based American event manager organises Oscar award ceremony in Mumbai. The place of service shall be Mumbai. The event manager will have to take registration as a Non-Resident Taxable Person at least five days advance of the event.

3.17 Services of Banking companies, transport hiring and intermediaries

In case of banking company, or intermediary services or hiring of means of transport etc. shall be location of the supplier of services.

Example

1. A German company gives buses on rent to an Indian troupe visiting Berlin and charts a plane for returning to Mumbai. Place of service will be the location of supplier in Germany.
2. Bank charges payable to a Swiss bank in Geneva, the place of service will be Geneva, Switzerland.

3.18 Transportation of goods

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Place of supply in case of transportation shall be place of destination of such goods.

Example

1. For a truck carrying goods to Nepal, the place of service shall be Nepal.
2. All ocean going ships or air crafts, place of service will be the destination port.

3.19 Transportation of passengers

In case of transportation of passengers, place where the passenger embarks on the conveyance.

Example

A travel agent carries passengers from Hardwar to Mansrovar in China, the place of service shall be Hardwar.

3.20 Online data information

Place of supply of services in case of online information and database access, place of recipient of services.

Example

Charges paid to google or Facebook for making available or data information in India, the place of service shall be India.

3.11 VALUE OF SUPPLY OF GOODS OR SERVICES- SECTION 15

The tax liability by way of CGST / SGST / UTGST or IGST is calculated ad valorem with reference to the value of the taxable supply of goods and/or services

As per section 15 (1), “value of taxable supply” will be the transaction value and “transaction value” means the price paid or payable for supply of goods and/ or services if: -

- (i) The supplier and the recipient are not related; and
- (ii) price is the sole consideration for the supply.

Transactional value is the value at which unrelated parties would transact in the normal course of business at normal price being the sole consideration. Hence in cases, where the parties are related (e.g., sister concerns) and a reasonable value may not be charged, or transaction may take place as a barter or exchange; the Act provides for determination of the transactional value’.

The phrase “price is the sole consideration for supply” implies that

- value of any additional consideration received, whether monetary or non-monetary, and
- payment made directly or indirectly by the recipient to the supplier will constitute the price actually paid or payable and shall be added to the consideration to arrive at the transaction value.

Illustration

Ashok sells a computer to Babu for Rs 50,000 payable in cash subject to the condition that Babu shall waive an old loan of Rs 50,000 due to him by Ashok. In this case the price of Rs.50,000 is not the sole consideration for sale. The loan of Rs 50,000 written off will also be the part of the consideration for supply of goods. The value of the transaction will be Rs one lakh not.

Under section 15(2) Transaction value will include:

- any taxes, duties, cesses, fees & charges levied under any statute, if charged separately by the supplier to the recipient. Municipal taxes, import duty are the examples of such taxes. However, taxes under this Act i.e. CGST/IGST/ SGST/ UTGST/ Cess etc will not be included in transaction value.
- any amount that the supplier is liable to pay in **relation to the supply, but which has been incurred by the recipient** of the supply and not included in the price actually paid or payable for the goods and/ or services. In other words, where the supplier is under an obligation for which receiver has made the payment, such payment in connection with the supply i.e. Transportation will form part of transaction value.

Illustration

A purchases a computer on onsite installation basis from B. A collects the computer from B and pays freight and installation charges. These expenses as per the original contract are to be incurred by B, will be included in the transaction value of the computer.

(c) Incidental expenses

Any incidental expenses, such as commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and /or services **at the time of, or before delivery of the goods or supply of the services;**

Illustrations:

- (1) A buys ice cream from Naturals and pays Rs 50 for special dry-packing for home delivery. Cost of such packing will be included in the value of ice cream even if it is separately paid by the recipient.

- (2) A suppliers supplies a diary of Rs 500 and asks the recipient to pay Rs 50 as the commission to the agent appointed by the supplier to procure the orders and remit the balance Rs 450. Transaction value will be Rs 500 inclusive of commission.

(d) Interest or Late Fees

Interest or Late fee or penalty for delayed payment of any consideration will be part of transaction value

Illustration

MTNL raises a telephone bill of Rs 500 payable within 15 days and Rs 600 if paid after 15 days. The interest or penalty of Rs100 will form part of the transaction value.

(e) Subsidies

Any subsidies directly linked to the price will form part of transaction value, unless such subsidies are provided by the Central or State Governments e.g. subsidy on gas cylinder, fertilisers or export subsides.

Illustration

A Temple Trust grants subsidy linked to the price of household products like honey etc. produced by the members of its clan, the such subsidy will be included in the price.

Exclusions from the Transaction Value- Section 15 (3)

Discount will be excluded from the transactional value in the following cases

- (a) **If discount is given before or at the time of the supply and** such discount has been duly recorded in the invoice issued in respect of such supply;
- (b) **If the discount is given after the supply has been affected, in terms of an agreement entered into at or before the time of such supply and**
 - (i) such discount is specifically linked to relevant invoice;
 - (ii) Input credit attributable to the discount has been reversed by the recipient.

Illustrations

- (1) Under a sales promotion scheme, Maruti offers 5% discount to the dealer who achieves a certain volume of turnover. Maruti Ltd. sells a car of Rs 10 lakh for Rs 9.50 lakh to the dealer indicating 5% discount in the invoice, the transaction value will be Rs. 9.50 lakh.
- (2) X purchases from Y goods for Rs 25,000 on 1 January 2022 on credit of one month. On 15 January 2022, Y gives a discount of Rs 3,000 and X

pays Rs 22000 to settle his account. Transaction value will be Rs 25,000 as discount is not known before or at the time of supply.

- (3) In the above illustration if the invoice mentions that discount of Rs 3,000 will be allowed if the payment is made before the due date, the transactional value will be Rs 22,000.

Value of supply not determinable- Sections 15(4)&15(5)

As per section 15(4), where the value of supply of goods or services cannot be determined under section 15(1), the same shall be determined in the prescribed manner.

Further as per section 15(5), the value of supplies by the Central or a State Government, on the recommendation of the GST council, shall be determined in prescribed manner. In this regard following rules have been framed.

1. Rule 1—Where, the consideration is not wholly in money, the value will be the open market value of such supply, and if there is no open market, the sum total of consideration in money and any such further consideration not in money if such amount is known at the time of supply. If the value of supply is not determinable, value of like kind and quality of goods or services or as per Rules 4 & 5.

Illustrations

- (1) A washing machine under an exchange offer is available for Rs. 10,000 and Rs 12,000 without exchange. Open market value of the new machine will be Rs. 12000.
- (2) A desktop is exchanged for a laptop costing Rs 25,000. Cost of the desktop is not known, then the value of desktop will be Rs 25,000.

2. Rule 2. Value of a supply between distinct or related person, will be the open market value of such supply, and if there is no open market, the sum total of consideration in money and any such further consideration not in money if such amount is known at the time of supply.

If the value of supply is not determinable, value of like kind and quality of goods or services or as per rules 4 & 5 or where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services”

3. Rule 3. Value of supply of goods made or received through an agent will be the-

- open market value of goods supplied, or
- at the option of the supplier, 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by said recipient.

If the value of supply is not determinable, value of like kind and quality of goods or services or as per Rules 4 & 5.

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Illustration

X supplies goods to his agent Y. Y sells like kind and quantity for Rs 10,000. Z, another supplier gives like kind and quantity to Z for Rs. 8,000. Value of the supply goods will be Rs 8,000 or at the option of X 90% of Rs 10,000 or Rs 9,000.

4. **Rule 4** - Where the value of a supply of goods/ services is not determinable by any of the preceding rules, the value of supply shall be 110% of the following

- (a) cost of production/ manufacture or
- (b) cost of acquisition of such **goods** or
- (c) cost of provision of such services.

5. **Rule 5**- Where the value of supply of goods or services or both cannot be determined under rules 1 to 4, the same shall be determined using reasonable means consistent with the principles & general provisions of section 15 and these rules. A supplier of services may opt for this rule, disregarding Rule 4”

6. **Rule 6: Value of other supplies:**

(a) Money changing

Value of service for purchase or sale of foreign currency or money changing in Indian rupee (INR) will be the buying rate or selling rate less RBI reference rate and if there is no RBI reference rate, 1% of the gross amount of Indian Rupees received or given by changing of money. RBI reference rate is available for USD, British pound, Euro and Yen only.

When neither of the currencies exchanged is Indian Rupee, the value of service will be equal to 1% of lesser of the two amounts, the person changing the money would have received by converting any of the two currencies at RBI reference rate.

Illustration

A changes US \$ 100 for Rs 69.72 against the RBI reference rate of Rs 69.45. Value of service- $\text{Rs } 0.27 \times \$100 = \text{Rs. } 27$. If RBI reference rate is not there, the value of service will be $1\% \text{ of Rs } 69.72 = \$100 = \text{Rs } 69.72$.

(b) booking of air tickets

Value of services on booking of air tickets will be 5% of basic fare for domestic bookings, and 10 % of basic fare for International booking. Basic Fare Means the part of air fare on which commission is normally paid to the air travel agent by the airline

(c) Life insurance agents

Value of service will be the gross amount charged to the policyholder reduced by the amount allocated for investment on behalf of the policyholder, if such amount is intimated to the policy holder at the time of supply of service and 10% of the premium, in case of single premium annuity policies. For policies towards risk coverage only, the value will be tank at Nil.

(d) Buying and selling of second hand goods

Value of supply shall be the difference between the selling price and purchase price, and if the value of supply is negative it shall be ignored. However this subject to the condition that used goods are sold as such or after such minor processing which does not change the nature of the goods, and no input tax credit has been availed on purchase of such goods

(e) Token/ Voucher/ Coupon/ Stamp

Value of Token/ Voucher/ Coupon/ Stamp etc. will be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

7. Rule 7 - The expenditure or costs incurred by the supplier as a pure agent of the recipient of supply of services shall be excluded from the value of supply on fulfilment of certain conditions. Example demurrage charges paid by customs house agent for their client's or property taxes paid by a housing society on behalf of the flat owners will be decocted if the same are paid as pure agent.

Meaning of Certain terms:**(a) open market value**

A supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, state tax, union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

(b) Supply of goods or services or both of like kind & quality

Any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.

(c) Related person

- Officers or directors of one another's businesses
- legally recognised partners in business
- Employer and employee

- Any person who directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them
- One of them directly or indirectly controls the other
- Both of them are directly or indirectly controlled by a third person;
- Together they directly or indirectly control a third person
- Members of the same family

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Supply

3.12 SELF- EXAMINATION QUESTIONS

1. What is the meaning of “location of the recipient of service:
2. Explain the term’ location of provider of service ‘
3. How the place of service is determined for supply of goods?
4. Explain the rules for determining place of supply of services.
5. What determination of place of service is important.
6. What are the types of taxes, How the will be affected by the place of service.
7. How the value of service will be determined?



INPUT TAX CREDIT

Unit Structure

- 4.1 Introduction and Objectives
- 4.2 Input Tax Credit (ITC)
- 4.3 Eligibility to claim input credit
- 4.4 Restrictions on Availment of Input Tax Credit
- 4.5 Document requirement
- 4.6 Reversal of Input credit
- 4.7 Utilisation of input credit
- 4.8 Matching of ITC
- 4.9 Conditions for availing ITC
- 4.10 Reversal of credit
- 4.11 Other provisions
- 4.12 Self-Examination Questions

4.1 INTRODUCTION AND OBJECTIVES

The GST was introduced to establish a pan-Indian supply chain from the manufacturer of the goods to the end consumer and to devise seamless flow of input tax credit (ITC) across the chain.

Indeed, the GST laws and rules made thereunder make elaborate provisions to attain this objective.

This lesson seeks to explain these provisions in particular regard to

- Who can or cannot claim the ITC,
- The supplies of goods and/or service in respect of which the ITC is allowable or not allowable,
- Conditions and procedures for claiming ITC cross utilization of credits of different taxes against one another and other relevant matters.

4.2 INPUT TAX CREDIT (ITC)

Input Tax Credit (ITC)

As per section 2(63) **Input Tax Credit (ITC)** means ‘the credit of **input tax**’

Input Tax

Input Tax is defined in section 2(62). **Input Tax** in relation a registered person means:-

“the central tax, state tax, integrated tax or union territory tax charged on any supply of goods or services or both made to him and includes” —

- 4.3 the integrated goods and services tax charged on import of goods;
- 4.4 the tax payable under sections 9(3) and 9(4) of CGST Act
- 4.5 the tax payable under sections 5(3) and 5(4) of the IGST Act
- 4.6 the tax payable under sections 9(3) and 9(4) of the SGST Acts
- 4.7 the tax payable under sections 7(3) and 7(4) of UTGST Act

but does not include the tax paid under the composition levy.

Input

As per section 2(59) **Input** means “any good other than capital goods used or intended to be used by supplier in the course or furtherance of business”.

Input services

As per section 2(60) **Input services** means any service used or intended to be used in the course of furtherance of business.

Capital goods

As per section 22 (19) **Capital goods** means “goods, the value of which is capitalised in the books of accounts of the person claiming the ITC and which are used or intended to be used in the course of business”

From the above definitions read collectively, ITC under GST shall be available in respect of taxes paid by way of CGST/IGST/UGST and IGST including taxes paid under the Reverse Tax Mechanism (RCM) by the recipient of goods and / or services.

1. On Supply of Inputs or Input Services or both
2. On Capital goods
3. On Import of Goods or Services
4. Under RCM Advertisement
5. Input Service Distributor (ISD)
6. Deemed supply In the course and furtherance of business:

Input Service Distributor (ISD) means an office of the supplier of goods or services or both which receives tax invoices towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax (CGST), State tax (SGST)/ Union territory tax (UTGST) or integrated tax

4.3 ELIGIBILITY TO CLAIM INPUT TAX CREDIT

3.1. Section 16, states that **every registered person** shall be entitled take credit of input tax charged on any supply of goods or services or both, which are used or intended to be used in the course or furtherance of his business only if he satisfies all the conditions as prescribed in section 16(1) and 16(2).

3.2. Who can avail ITC?

As per Section 16 every registered person is eligible to avail ITC except the following persons:

1. Composition dealer

A person registered under composition scheme in GST is not eligible to claim ITC although the goods or services received by him are used in furtherance of his business

2. Supplier engaged in supply of exempted or Nil rated goods

3. Unregistered person.

Registered person as per section 2(94) of CGST Act means a person who is registered under section 25 but does not include a person having a Unique Identity Number as a registered person

3.3. Basic conditions for claiming ITC

1. The goods and /or services have been received by the person or his agent whether physically or by transfer of documents.
2. The person should be in possession of proper documentary evidence to avail ITC viz. a tax invoice, debit note or other prescribed document issued by a registered supplier under Rule 36 mentioning following particulars:
 - a. Taxable value
 - b. Tax Rate
 - c. Description of goods or services
 - d. GSTIN of supplier and Recipient and
 - e. Place of supply in case of inter-State supply
3. The tax charged on such supply should have been paid to the government by the supplier either in cash or through utilisation of ITC admissible in respect of the said supply.
4. The person has furnished the return under section 39 within specified time in respect of such supply.
5. The ITC is credited to the Electronic Credit Ledger of such person provided in Common portal.
6. When goods are received in instalments or lots, ITC can be claimed only when the last lot / instalment is received.
7. The ITC is admissible only in respect of taxable goods and/or service used in furtherance of business.

4.4 RESTRICTIONS ON AVAILMENT OF INPUT TAX CREDIT

4.1. General Restrictions

1. ITC shall **not be allowed** in respect of :

- (a) Supplies related to Non Business Purpose
- (b) Exempted Supplies
- (c) Supplies on which tax has been paid under Composition scheme under section 10
- (d) Goods and/or Services used for personal consumption.
- (e) tax component of any capital goods on which depreciation has been claimed
- (f) Supplies for which ITC is specifically not available
- (g) Membership of a club, health and fitness centre.
- (h) Travel benefits extended to employees on vacation such as leave or home travel concession.
- (i) Goods and/or services received by a taxable person for construction including, re-construction, renovation, additions or alterations or repairs of an immovable property (other than plant or machinery) even if used in furtherance of business.
- (j) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

However, ITC will be admissible for making zero-rated supplies although such supply may be an exempt supply.

Zero rated supplies mean:-

- (a) export of goods or services or both or
- (b) supplies of goods or services or both made to a SEZ developer or a SEZ Unit

2. ITC will be allowed **only** in respect of :

- a. Goods imported by a Non-Resident Taxable Person, not on domestic goods or services.
- b. The supply of Motor vehicles and other conveyances with 13 or more persons capacity (including the driver) ONLY when they are used for making taxable supplies, namely: -
 - (i) Further supply of such vehicles or conveyances; or
 - (ii) Transportation of passengers; or
 - (iii) Imparting training on driving; flying, navigating such vehicles or conveyance;
- c. The following supplies **only** where same category of goods or services is used for making outward supply or an element of Mixed or Composite Supply namely:

- i. Food and beverages services.
- ii. Outdoor catering services.
- iii. Beauty treatment services.
- iv. Health services.
- v. Cosmetic and plastic surgery.

d. The following supplies ONLY IF notified by the Government as obligatory to provide such service by employer to employee or where same category of goods or services is used for making outward supply or an element of mixed or composite supply namely: -

- i. Rent-a-cab services,
- ii. Life insurance services,
- iii. Health insurance services.

e. Works contract services when supplied for construction including re-construction, renovation, additions or alterations or repairs of an immovable property (other than plant and machinery) ONLY IF it is an input service for further supply of works contract service.

“Plant and machinery “means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes:-

- (a) land, building or any other civil structure;
- (b) telecommunication towers; and
- (c) Pipelines laid outside the factory premises.

3. Apportionment of credit and blocked credits:

Availment of the ITC is subject to following additional restrictions:

(1) No credit shall be availed in respect of any tax paid :

- a. in pursuance of any order where any demand on account of non-levy, short levy due to suppression of facts, any fraud, wilful misstatement recovered by the department under section 74.
- b. in connection with any detention or seizure of goods, release of goods, confiscation of goods in transit under section 130.

(2) The amount of credit shall be restricted to so much of the input tax as is attributable to

- a. the purposes of his business, where the goods and/or services are used by the registered person partly for business and partly for other purposes.
- b. the taxable supplies including Zero-Rated Supplies, where the goods and/or services are used by the registered person partly for taxable supplies including Zero-Rated Supplies and partly for Exempt Supplies under the CGST /IGST Acts.

4.5 DOCUMENTS REQUIRED FOR CLAIMING INPUT TAX CREDIT

Under Rule 36 of the CGST Rules, a Registered Person including the Input Service Distributor (ISD) may avail ITC on the basis proper documentary evidence. The Rule gives a list the following documents:

1. Tax invoice issued by the supplier of goods or services or both;
2. Debit note issued by a supplier;
3. Bill of entry under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports.
4. Tax invoice issued under reverse charge payment of tax;
5. Tax Invoice or credit note issued by an Input Service Distributor.

The rule further provides that such documents issued by the supplier must mention the following particulars:

- a. Taxable value
- b. Tax Rate
- c. Description of goods or services
- d. GSTIN of supplier and Recipient and
- e. Place of supply in case of inter-State supply

4.6 REVERSAL OF INPUT TAX CREDIT

Rule 37 of the CGST Rules provides for reversal of ITC availed by a registered person in the following cases:

- (1) Credit on stocks on the relevant date, when a registered person :
 - a. opts to go out from normal scheme to composition scheme,
 - b. surrenders his Registration due to closure of business.
- (2) When capital goods on which credit has been taken, have been removed by the registered person after they have been put in use, putting into use.
- (3) When consideration for supplies is not paid within 180 days of issuance of invoice.
- (4) When there is a mismatch of returns of supplier and recipient.
- (5) When credit has been availed twice against single document.
- (6) When credit has been availed on common inputs, reversal of credit to the extent of credit relating to exempted supplies or supplies for non-business purpose.

4.7 UTILISATION OF INPUT TAX CREDIT (ITC)

OF CREDIT ON UTILIZATION FROM FIRST OPTION SECOND OPTION THIRD OPTION 1 IGST IGST CGST SGST/UGST 2 CGST CGST IGST – 3 SGST/UGST SGST/UGST IGST – Thus, Inter- sectoral credit is not allowed for CGST and SGST/UGST Refund: Section 54 deals with Refund. An eligible person or supplier can claim refund provided that ITC is excess of his outward liability. Conditions to claim refund: 1.

Refund should be claimed before the expiry of 2 years from the relevant date 2. No refund shall be allowed on capital goods 3. Return under section 39 should be filed 4. No refund shall be available in case of a. zero rated supplies made without payment of taxes b. where the credit consists of rate of tax on inputs is higher than that of output supplies 5. Minimum amount to be refunded is Rs. 1,000/-

Input tax credit can be utilised in the following manner: -

- A. The ITC availed by the registered person is credited to his electronic Credit ledger. The balance in the electronic ledger can be utilised to pay off his output liability.
- B. The supplier in The State of Origin may utilise ITC for transfer of funds towards payment of CGST, UTGST/SGST or IGST.
- C. The buyer in the destination State/UT may utilise IGST credit for payment of CGST and SGST by the transfer of funds from IGST account.
- D. The amount of ITC on account of IGST is allowed to be utilised towards the payment (a) IGST, (b) CGST and (c) SGST/UTGST in that order.
- E. The amount of ITC on account of CGST is allowed to be utilised towards the payment of (a) CGST and (b) IGST in that order.
- F. The amount of ITC on account of SGST/UTGST is allowed to be utilised towards the payment a) SGST/UTGST and (b) IGST in that order.
- G. Input tax credit of CGST and SGST cannot be cross utilised i.e. CGST cannot be used to pay off SGST and vice versa
- H. Set off of ITC not available to a person under composition scheme.

The manner of availment and utilisation of Input Tax credit of CGST, SGST, IGST and UTGST is given in the following Table.

SET OFF OF INPUT CREDIT			
Input Credit	UTILISATION OF INPUT CREDIT		
	First utilisation	Second Utilisation	Balance
CGST	CGST	IGST	No
SGST/UTGST	SGST/UTGST	IGST	No
IGST	IGST	CGST	SGST/UTGST
Input tax credit of CGST and SGST cannot be cross- utilised i.e. Credit of CGST cannot be used for payment of SGST / UTGST and Credit of SGST / UTGST cannot be utilized for payment of CGST.			

Illustration -1

Ashok of Aundh, Pune sells goods of Rs 10,000 to Ganesh of Goa. The CGST /SGST rate is 6% each and IGST rate is 12%. Ganesh sells these goods in Goa for Rs 12,000.

(a) This is the case of interstate supply of goods involving movement of goods between two different states Maharashtra and Goa liable to IGST @ 12%. Ashok may transfer Rs 1200 to IGST account by paying cash or by utilising ITC due to him, if any. This credit will be available to Ganesh on account of IGST of Rs 1200.

(b) (i) For Ganesh, this is an intra-state supply within the state of Goa. He is liable to pay Rs 720 each towards CGST and GOA-SGST @ 6% on Rs 12,000.

(ii) From the credit of IGST of Rs 1200 available, Ganesh can transfer

- Firstly, Rs 720 towards the CGST and
- The Balance Rs 480 towards the Goa-SGST.

(iii) Ganesh will transfer the balance of Rs 240 towards the Goa-SGST in cash.

Illustration -2

Following is the summary of GST payable and input credit available to Ashok:

Tax	Output tax	Input Tax Credit
	Liability	(ITC)
	Rupees	
IGST	40,000	20,000
CGST	12,000	15000
SGST	12,000	15000

The tax payable will be calculated as follows:

Tax	Output tax Liability	Input Tax Credit			Cash Payment Balance
		IGST	CGST	SGST	
	Rupees				
IGST	40,000	20,000	3,000	3,000	14,000
CGST	12,000	0	12,000	0	0
SGST	12,000	0	0	12,000	0
Total	64,000	20,000	15,000	15,000	14,000

Illustration -3

Following is the summary of GST payable and input credit available to Ashok :

Tax	Output tax Liability	Input Tax Credit (ITC)
	Rupees	
IGST	25,000	50,000
CGST	30,000	10,000
SGST	30,000	10,000

The tax payable will be calculated as follows:

Tax	Output tax Liability	Input Tax Credit			Cash Payment Balance
		IGST	CGST	SGST	
	Rupees				
IGST	25,000	25,000	NIL	NIL	0
CGST	30,000	20,000*	10,000	NA	0
SGST	30,000	5,000	NA	10,000	15,000
Total	85,000	50,000	10,000	10,000	

*30,000-10,000 CGST

4.8 MATCHING OF ITC

The final ITC would be allowed only when details of supplies made by supplier match with the recipient's return of availing credit. The matching has to be done in respect of GSTIN of Supplier and GSTIN of recipient in respect of each supply and recipient, Invoice number, Debit Note number, Credit Note number, Taxable Value and Tax amount involved.

An intimation of acceptance of credit would be sent to recipient in FORM GST MIS-I if the details match or the return filed by supplier is accepted by the recipient.

In case of mismatch of details, the discrepancy would be communicated to the concerned that is both the supplier and recipient, if the fault is that of supplier or only to the recipient, if fault is that of recipient.

Mismatch of ITC

The discrepancies could be –

- I availing credit in excess of the tax declared by the supplier, or
- II the outward supply is not declared by the supplier, or
- III there is a second time claim of ITC by the recipient.

Where the discrepancy is due to -

- differences of figures of amount of supplier and recipient, or
- non-declaration of outward supply by supplier,

the supplier would be asked to rectify the discrepancy in the return of month in which discrepancy is informed to him.

If the supplier fails to rectify the discrepancy, excess credit will be added to the output tax liability of recipient next month and the recipient will be liable to pay an interest @18% on the amount added to the output tax liability from the date of availing the ITC till the discrepancy is reflected in returns.

Re-Claim of ITC on subsequent matching

The recipient may re-claim the credit, if after reversal of credit by recipient, the supplier rectifies the discrepancies. Interest paid, if any will also be refundable by crediting the amount to the recipient's Electronic Cash Ledger.

4.9 CONDITIONS FOR AVAILING ITC

A. Transitional Provisions of Input Tax Credit

The Registrants under Central Excise, Service Tax and VAT, who have migrated to GST were entitled to claim the credits available under the old law in Electronic Credit Register, if such credits are covered under the GST law and the Registered person has not opted to pay tax under

composition scheme and who have filed declaration in FORM GST TRAN-1 within 90 days from appointed date, specifying amount of credit claimed and admissible as per earlier credit Rules. This was subject to the following two conditions:

1. The amount of Cenvat credit on inputs, capital goods and input services were carried forward in the last return filed under the old laws.
2. Such credit is unavailed credit in respect of capital goods, i.e. the balance amount of credit that remains after subtracting the credit already availed.

B. Conditions for availing ITC by new registrant

New Registrants from 01-07-2017 onwards are eligible to claim Input tax credit only, if:-

- (i) Goods on which input tax credit is claimed are not unconditionally exempt from the whole of the duty of excise or not nil rated.
- (ii) The document for procurement of such goods is available with the Registered Person.
- (iii) Where these documents are not available, input tax credit shall be allowed after the GST has been paid on such supplies at:-
 - 60% (30% in case of IGST) for goods with CGST rate of 9% and more
 - 40% (20% in case of IGST) in case of other goods.
- (iv) The registered person who avails this scheme and furnishes the details of stock, must submit a statement in FORM GST TRAN-2 at the end of each of the six tax periods during which the scheme is in operation indicating the details of supplies of such goods effected during the tax period.
- (v) The amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal.
- (vi) The stock of goods on which the credit is availed should be identified by the registered person.

C. Transfer of credit on sale / merger/ amalgamation/ lease/ transfer etc.

A registered person may transfer his unavailed (unutilised) credit in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason subject to the following :-

- (1) The registered person furnishes the details in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized Input Tax Credit lying in his Electronic Credit Ledger to the transferee.

- (2) In case of demerger, the Input Tax Credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.
- (3) The transferor shall also submit a copy of a certificate issued by a practicing Chartered Accountant or Cost Accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.
- (4) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the unutilised credit specified in FORM GST ITC-02 shall be credited to his Electronic Credit Ledger.
- (5) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

4.10 REVERSAL OF CREDIT UNDER SPECIAL CIRCUMSTANCES

Rule 44(1) of CGST Rules provides for reversal of credit for CGST/SGST/UGST and IGST relating to inputs held in stock of raw material semi-finished goods, finished goods or capital goods.

The credit so reversed shall be determined separately for each tax in the following manner:-

1. For inputs held in stock, the credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs.
2. For capital goods held in stock, the credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.
3. Where the tax invoices related to the inputs held in stock are not available, the registered person shall estimate the amount based on the prevailing market price of the goods on the effective date of the occurrence of any of the events.
4. The credit so determined shall form part of the output tax liability of the registered person and the details thereof shall be furnished in
 - FORM GST ITC-03, in case the credit relates to any event and
 - FORM GSTR-10, where the credit relates to the cancellation of registration.
5. The details furnished shall be duly certified by a practicing Chartered Accountant or Cost Accountant.
6. The amount of credit for the purposes relating to capital goods shall be determined in the same manner as specified and the amount shall

be determined separately for input tax credit of CGST/SGST/UTGST/IGST.

7. Where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in FORM GSTR-1.

4.13 ITC ON CAPITAL GOODS AND IMPORTS

11.1. ITC on Capital Goods in GST

- (a) ITC would be available in full without restriction where capital goods have been used for effecting taxable supplies and business activity.
- (b) No credit will be admissible capital goods used exclusively for effecting exempt supplies or non-business or personal activity.
- (c) Credit to extent of depreciation under Income Tax Act is not admissible.
- (d) Capital goods after taking credit can be sent to job-worker without reversing credit. The capital goods so sent to job-worker are to be returned within three years and otherwise the principal shall be liable to pay the tax along with applicable interest.

11.2. Input Tax Credit for importers

- (a) Integrated Tax (IGST) paid on imports is entitled for Input Tax Credit in terms of the bill of entry or any similar document prescribed under the Customs Act. However, the credit of Basic Customs Duty (BCD) would not be available.
- (b) In case of goods imported by a unit or a developer of SEZ, for authorised operations are exempted from the whole of the IGST.
- (c) Export Oriented Units (EOU), Electronic Hardware Technology Park, (EHTP), Software Technology Parks (STP) who are eligible for BCD exemption, shall to pay IGST on imports but the credit of the IGST so paid shall be eligible for ITC. This credit can be utilized towards payment of CGST on Domestic Tariff Unit (DTA) clearance or refund can be claimed on accumulation of the IGST.

4.13 OTHER PROVISIONS

12.1. Offences and penalties

- a. Demand/ Penalty on registered person for violation of ITC provisions

Under section 73/74 the proper officer is authorised to issue demand notices to recover the credit wrongfully availed and also impose a penalty upto 100% of such credit from a Registered Person for violation of the ITC provisions.

b. Issuing false invoice

A person, who issues invoice without supplying goods and thereby enables the recipient to take credit without possession of goods, shall be liable to a penalty equal to amount of ITC involved or Rs.1000/- whichever is higher.

c. Prosecution

Prosecution can be initiated for the default, which is punishable for fine and imprisonment of one year upto five years depending upon amount of ITC involved.

12.2. Refunds

As per section 54 an eligible person or supplier can claim refund provided that ITC is excess of his outward liability.

Conditions to claim refund:

1. Refund should be claimed before the expiry of 2 years from the relevant date.
2. No refund shall be allowed on capital goods
3. Return under section 39 should be filed
4. No refund shall be available
 - a. in case of zero rated supplies made without payment of taxes
 - b. where the credit consists of rate of tax on inputs is higher than that of output supplies
5. Minimum amount to be refunded is Rs. 1,000

12.3 Miscellaneous Provisions

(1) The value of exempt supply shall be calculated in terms of formula prescribed in rules and shall include supplies on which the recipient is liable to pay tax on Reverse Charge basis, transactions in securities, sale of land and sale of building.

(2) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of formula so prescribed or avail of, every month, an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse.

(3) Amount of ITC already claimed with interest will be added to the output tax liability unless the payment for supplies received has been made within a maximum period of 180 days.

(4) ITC is not admissible to that extent of depreciation on capital goods claimed.

(5) A Registered person shall not be allowed to take ITC, if the same has not been credited within 1 year from the date of issue of tax invoice relating to such supply of goods or services or both.

(6) ITC would also not be permissible if invoice or debit note is received after due date of filing return for September of next financial year or filing annual return whichever is later.

4.14 SELF-EXAMINATION QUESTIONS

1. What is Input tax?
2. Explain the concept of Input credit.
3. Who are eligible for claiming ITC?
4. Enumerate the supplies not eligible for ITC
5. When can the ITC be reversed ?
6. Explain the utilisation of ITC.
7. What are the conditions for claiming ITC?
8. Can a person claim ITC who has not filed returns ?



LEVY AND COLLECTION OF GST

Unit Structure

- 5.1 Introduction and Objective
- 5.2 Scope of Supply
- 5.3 Composite and Mixed Supplies
- 5.4 Import of Supply
- 5.5 Supply without Consideration – Schedule-I
- 5.6 Activities treated as Supply of goods / services -Schedule – II
- 5.7 Activities neither Supply of Goods nor Services- Schedule-III
- 5.8 Non- taxable & Non- GST Supplies
- 5.9 Composition Levy
- 5.10 Levy and Collection of Tax
- 5.11 Exemption from Tax
- 5.13 Self-Examination Questions

5.1 INTRODUCTION AND OBJECTIVES

The GST is a tax on taxable supply of goods or services or both. Hence, levy and collection of the GST largely depends upon the nature of supply whether it is Taxable Supply, Exempt Supply, Nil-Rated Supply or Zero-Rated Supply.

The lesson explains all these concepts along with the concept of composition scheme for Small Taxable Persons.

5.2 SCOPE OF SUPPLY

1.1. Meaning and Scope of Supply

As per Article 366 (12A) of the Constitution of India “Goods and Services Tax” means “any tax on supply of goods or services or both except tax on supply of alcoholic liquor for human consumption”.

The definition uses the term “supply”, which is wider than “sale”. This has the effect of including stock transfer or branch transfer within the ambit of GST.

The taxable event is the supply of goods and/or services, occurrence of which gives rise to levy and collection of GST.

As per Section 7 of CGST Act, the term ‘Supply’ includes:

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

Exceptions:

As per section 7(2), following shall be treated neither as a supply of goods nor a supply of services.

- (a) activities or transactions specified in Schedule III;
- (b) notified activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities on the recommendations of the Council.

Further, section 7(3) states that the Government may, on the recommendations of the GST Council, specify by notification, the transactions that are to be treated as

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.

5.3 COMPOSITE AND MIXED SUPPLY

1.2. Composite Supply

As per Section 2(30) of CGST Act, “Composite Supply” means a supply made by a taxable person to a recipient consisting of two or more taxable 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.

Further as per section 8(a) of CGST Act, Composite Supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such Principal Supply. The tax rate applicable on the Principal Supply will be applicable on the other supplies also.

From the above, it emerges that

- (a) Ordinary course of business is to make Principal Supply.
- (b) The Principal Supply consists of two or more taxable supplies of goods or services or both, or any combination thereof.

- (c) All the supplies are naturally bundled and made in conjunction with each other.

Illustrations

- (1) 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 a principal supply;
- (2) An air ticket includes cost of meals and free airport transfer. These services are bundled together. The Principal Supply will be transportation of passengers.
- (3) School Bus Services provided as part of included in school fee has been held to be a composite supply. The Principal Supply will be imparting education.

1.3. Mixed Supply

As per section 2(74) “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. Mixed Supplies are not naturally bundled and made in conjunction with each other.

Section 8(a) of CGST Act states that a Mixed Supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax. However, if the supplies are made separately and not dependent on any other, it shall not be a Mixed Supply.

Mixed Supply and Composite Supply both refer to supply of more than one goods and/or services. When the different products are naturally bundled to the Principal Supply e.g. Gillette Razor with inbuilt blade a book with a plastic cover, it will be a case of Composite Supply but when the supplies are unrelated and not dependent such as different sweets, dry fruits or Diwali Pooja articles it will be mixed supply.

Composite Supply will be taxable at the rate applicable to Principal Supply but Mixed Supply will be taxable at the highest rate applicable to any of the goods/services in the bundle.

Illustrations

- (1) A gift box contains different products having different rates, will be liable to highest rate of tax applicable to any of the items contained therein.
- (2) A package contains canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices. When supplied for a single price, this will be a Mixed Supply. Assuming the different product carry tax rate from zero to 28%, the package will be taxable at the highest rate 28%.
- (3) A hotel provides a package inclusive of meals and sightseeing. Sightseeing is not natural bundling with accommodation. Hence, the package will be a Mixed Supply not Composite Supply.

- (4) A combo- pack is available for Rs 1000 comprising of a key chain, wallet and a belt. This is a Mixed Supply as the articles are not naturally bundled.

5.4 IMPORT OF SUPPLY

Supply includes import. Import irrespective of the nature or use of good/services imported whether for personal consumption or commercial use will be liable to GST under Reverse Charge Mechanism (RCM). A service will be deemed to be Import of Service if following conditions are fulfilled:-

- a) Supplier of service is located outside India,
- b) Recipient of service is located in India and
- c) Place of supply of service is in India.

Example

Rahul pays fees for online coaching for MBA from a coaching institution in New York. Coaching is imparted online in India. The Coaching fee will be liable to GST although it is personal, not for business or in furtherance of business.

5.5 SUPPLY WITHOUT CONSIDERATION- SCHEDULE-I

Supply includes the following activities specified in Schedule I made or agreed to be made without a consideration :

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

Examples: Transfer of plant to another unit located in another state.

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business except gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee

Examples

- i. The transaction of providing corporate guarantee by a holding company to its subsidiary or *vice versa* in respect of loan raised from banks will be considered as supply although there may be no consideration for providing the guarantee.
- ii. Stock transfer made to a unit outside the state or to a different business vertical of the same assessee will be regarded as supply.
- iii. Any supply of goods or services by employer to employee free of cost will be a supply. Subject to exemption of gift up to Rs 50,000 by the employer to employee in a financial year.

3. Supply of goodsby: -

- i. A principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
- ii. An agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

4. Import 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.

5.5ACTIVITIES TREATED AS SUPPLY OF GOODS / SERVICES -SCHEDULE-II

Schedule III lists out the following activities, which are treated as Supply of Goods / Services :-

Transfer of goods

- 1) Transfer of the title in goods;
- 2) Transfer of right in goods or of undivided share in goods without the transfer of title thereof, e.g. hiring out machinery, rent a cab etc.
- 3) Transfer of title in goods under an agreement, whereby property in goods shall pass at a future date upon payment of full consideration as agreed, e.g. hire purchase agreement.

Lease and tenancy

- 4) Lease, tenancy, easement, licence to occupy land;
- 5) Lease or letting out wholly or partly, of a building, a commercial, industrial or residential complex for business or commerce.

Business assets

- 6) Treatment or process applied to another person's goods e.g. job work, processing charges, jewellery making dyeing of textile fabrics etc.
- 7) Transfer of business assets transferred or disposed of whether or not for a consideration, e.g. disposal of old furniture, office machines.
- 8) Transfer of business assets to put to any private use or are used or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, e.g. using business vehicles for personal use by the proprietor / partners or employee, or giving company auditorium to employee for personal functions etc.
- 9) Any goods forming part of the assets of any business immediately before the taxable person ceases to be a taxable person, unless—
 - (i) the business is transferred as a going concern to another person; or
 - (ii) the business is carried on by a personal representative who is deemed to be a taxable person, e.g. dissolution of firm,

10) Renting of immovable property e.g. renting an office or factory;

11) Construction including additions, alterations, replacements or remodelling of any existing civil structure, of commercial or residential complex including a complex or building intended for sale to a buyer, except where the entire consideration has been received **after issuance of completion certificate** by the competent authority, or an Architect, Chartered Engineer or a Licensed Surveyor, if there is no competent authority where required, or before its first occupation, whichever is earlier.

12) Temporary transfer or permitting the use or enjoyment of any intellectual property right e.g. franchise.

13) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software e.g. Programming or development of IT software;

14) Agreeing to the obligation to refrain from an act, tolerate an act or a situation, or to do an act e.g. damages for inefficient services, penalty imposed for late completion of agreed contract, etc.

15) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

16) Composite Supplies by way of or as part of a works contract or any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink other than alcoholic liquor for human consumption, where such supply or service is for cash, deferred payment or other valuable consideration, e.g. catering service Restaurant service.

17) Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration, e.g. Supply of food, gaming tools, books etc. by any club to its members.

5.6 ACTIVITIES NEITHER SUPPLY OF GOODS NOR SERVICES- SCHEDULE-III

Following activities are considered neither supply of goods nor of services as per Schedule III :

1. Services by an *employee to the employer* in the course of or in relation to his employment.
2. Services by any court or tribunal including a District Court, High Court or Supreme Court established under any law for the time being in force.

3. The functions performed by the *Members of Parliament (MPs)*, *Members of State Legislature (MLAs)*, *Members of Panchayats*, *Municipalities* and other local authorities;
- b. The duties performed by any person who *holds any post* in pursuance of the provisions of the *Constitution* in that capacity; or
- c. The duties performed by any person as a *Chairperson*, a *Member or a Director* in a body established by the Central Government, a State Government or local authority and who is not deemed as an employee;
4. Sale of land /Building (subject to building under construction as per schedule II.
5. Actionable claims, other than lottery, betting and gambling.
6. Services of *funeral, burial, crematorium or mortuary including transportation of the deceased*.

Exemption granted to these services which were excluded from the definition of “service” or were in Negative List under the Service Tax regime, is continues under the new GST regime. .

Other points

Mutuality and **absence of Profit motive** are not relevant considerations to hold whether any services are or are not taxable.

Accordingly, Clubs or Societies catering to their members on a no profit no loss basis will still be liable to GST subject to other exemptions available, if any.

5.7 NON TAXABLE SUPPLY AND EXEMPT SUPPLY

Non-Taxable Supply

As per section 2(78) of the Act “Non-Taxable Supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act.

Exempt Supply

As per section 2(47) of the Act “Exempt Supply” means a supply of goods or services or both which attracts Nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act and includes Non-Taxable Supply.

Zero Rated Supply

Under section 16 of IGST Act Zero Rated Supply means **taxable supply by way of export of goods or supply of services to SEZ / SEZ Developer on which rate of tax is zero.**

Credit of Input Tax Credit (ITC) will be available to a person making Zero Rated Supply, who will be eligible to claim refund of unutilised ITC or IGST paid on such exports, if not under Letter of Undertaking- LUT or Bond.

Non-Taxable, Exempt, Nil Rated Supply and Non- GST Supply

On a plain reading of sections 2(47) and 2(78) which define Exempt Supply and Non-Taxable Supply respectively together with section 7, which defines “supply”, it follows that there must be an activity, which can be called as “supply” with reference to Schedule III, which gives the list neither of activities which are treated neither as Supply of Goods nor of Services.

Since such activities or transactions listed in schedule-III are not “Supply”, they cannot be said to be either Non -Taxable Supply or Exempt Supply. They along with the activities or transactions undertaken by Government and Local Authority as Public Authorities are sometimes referred to as Non-GST Supplies although no such term is defined in law.

Non-Taxable Supply

- a. If no tax is be leviable on any supply either under CGST, UTGST/ SGST or IGST, it will be “Non-Taxable Supply”.
- b. Supply of alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit, natural gases and aviation turbine fuel are “Supply” on which no tax is levied, will be ‘Non-Taxable Supply’.

Nil-Rated, Zero Rated or Exempt Supply

If the supply is wholly exempt or attracts Nil rate of tax, it will be called Nil-Rated, Zero Rated or Exempt Supply. This term is again referred to in connection with refunds as “Zero Rated Supplies made without payment of tax”.

Nil- Rated supply of goods has not been defined anywhere in CGST Act. Since, In case of NIL rated supply, the **tariff rate is NIL**, there will be no GST without the exemption notification.

Support services to agriculture, forestry, fishing and animal husbandry, is the lone service notified as Nil Rated Supply of Service.

In case of Exempt Supply, the tariff is higher than 0% but there is no tax payable due to exemption notification.

As per IGST Act, Exports and service to SEZ developers are considered as Zero-Rated Supplies

The Central Government has issued two notifications No. 02/2017 and 12/2017 to exempt a number of services under section 11. As a result of the notifications the supply otherwise taxable will attract No Tax or Zero -Tax Rate.

Some of the Services which are exempt from Tax are given below.

- (a) Services by a charitable trusts registered u/s 12AA of the Income Tax Act.
- (b) Services by way of transfer of a going concern.
- (c) Services provided to Government with certain conditions.
- (d) Service by way of renting of residential dwelling for residential purposes.
- (e) Intra- state supply of goods and/or services received by a Registered Person from an Unregistered Person where the value of such goods are not above Rs 7,500 per day as per section 9(4) currently kept in abeyance),
- (f) Service imported by a SEZ Unit or SEZ developer.

5.8 EXEMPTION FROM TAX

Section 11(1) empowers the Government to grant general exemption

- on the recommendations of the GST Council
- by notification issued in public interest from the date specified therein.

The exemption can be granted only to goods and/or services of any specified description not to any specific person from payment of the whole or any part of the tax leviable thereon unconditionally or subject to such conditions as may be specified.

Section 11(1) empowers the Government to grant by special order in each case under circumstances of an exceptional nature to be stated in such order, exemption from payment of tax to any goods and/or services on which tax is leviable.

Section 11(3) empowers the Government the power to insert within one year, an explanation to the notification.

Further, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

The Government has issued several notifications granting total or partial exemption in some cases as given below:-

- A. Absolute exemption granted to following classes of supplies: -
 - a. Transmission or distribution of electricity.
 - b. Renting of residential dwelling for use as residence.
 - c. Services by Reserve Bank of India.
 - d. Services by a veterinary clinic in relation to health care of animals or birds
 - e. Electricity, Salt, fresh fruits, potato, tomato, onion, plastic bangles, passenger baggage etc. (149 items of goods)

B. Conditional exemption granted to following classes of supplies: -

- a. Exemption from payment of tax under reverse charge basis granted to intra- state supply received by
 - a deductor under section 51 from Unregistered Person, who is otherwise not required to registered under GST,
 - a Registered Person from Unregistered Person dealing in buying and selling of second hand goods and who pays the central tax on the value of outward supply,
- b. aRegistered Person from Unregistered Person,the aggregate value of such supplies received by a registered person from all or any of the suppliers does not exceed Rs. 7500 in a day. (Currently the tax is kept in abeyance)
- c. Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation less than Rs. 1000/- per day
- d. Concession rate of 2.5% to specified goods required in connection with various kinds of petroleum operations undertaken
- e. Supplies by CSD to unit run canteens and supplies by CSD / unit run canteens to authorised customers
- f. Supply of 81 services under CGST Act which were exempted under old service tax law.
- g. Intra -state supply of heavy water and nuclear fuels by the Department of Atomic Energy to the Nuclear Power Corporation of India Ltd.
- h. services provided by fair price shops to Government and those provided by and to FIFA for FIFA U-17
- i. right to admission to the events at under FIFA U-17 World Cup 2017

5.8 COMPOSITION LEVY - SECTION 10

Meaning of Composition Scheme:

Section 10 of the CGST provides for an optional simplified composition scheme for the benefit of small dealers and small manufacturersand by reducing their burden of compliances. Such as reducing number returns to be filed, maintenance of books and records as compared to general dealeretc.

Eligibility

The scheme is available only to taxable persons being

- manufacturers of goods,
- dealers, and

- restaurants (not serving alcohol) having aggregate turnover of Rs 1 Crore during the preceding financial year.

Turnover Limit is Rs. 75 lakhs for Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Rs 1 crore for the rest of India including the states of Uttarakhand UT of Jammu& Kashmir and Ladakh

Ineligibility

Composition option cannot be exercised in the following specific cases:

1. Supply of services (including goods treated as *supply of services* by Schedule II) except the services covered under Schedule II, Paragraph 6(b) such as restaurants.
2. Supply of goods viz.
 - Non-taxable goods
 - Inter-State outward supplies
 - Through e-commerce operators required to collect tax at source/s 52.
 - Notified goods manufactured by the supplier
3. Manufacture of:
 - Ice cream and other edible ice, whether or not containing cocoa
 - Pan masala
 - All goods, i.e. Tobacco and manufactured tobacco substitutes

Aggregate turnover

Aggregate Turnover means the aggregate value of

- All taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis),
- Exempt supplies(including non-taxable supplies),
- Exports of goods or services or both and
- Inter-state supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess. [Section 2 (6)]

The definition of Aggregate Turnover is very wide and includes every supply whether covered under GST or not, namely, Taxable Supplies, Exempt Supplies, Non-Taxable Supplies, Export Supplies and Inter-State Supplies. Further, the Aggregate Turnover is for all business registered under single PAN across India.

Rate of tax

Under the scheme, the registered person whose aggregate turnover in the preceding financial year does not exceed Rupees 75,00,000/ I Cr, as the case may be; may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate prescribed in the Rules 7 of the GST Rules as mentioned below:

Type of Business	CGST	SGST/ UTGST	Total
Manufactures and traders of goods	0.5%	0.5%	1%
Restaurants (not serving alcohol)	2.5%	2.5%	5%
Other service providers	NA	NA	NA

Notes

- (a) Other service providers not allowed to opt for composition scheme.
- (b) Different rate may be for manufacturers of notified goods.
- (c) For restaurants, the composite supply shall be treated as supply of service where the supply, by way of or as a part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where supply or service is for cash, deferred payment or other valuable consideration.
- (d) The composition rate cannot be applied in case of inter-state supplies as the composition scheme is not available when the inter-state supply is made by the supplier.
- (e) If aggregate turnover on all India basis of preceding financial year exceeds Rs 1 Crore/ 75 lakh during this financial year, the supplier is required to pay tax as normal dealer from the following day.

Impact of becoming a normal dealer from composition dealer

If during the current year turnover exceeds Rs. 75 Lakh then this case the composition supplier is required to file a FORM GST CMP-04 within 7 days.

Details of stock and capital goods, as on the day when composition dealer is becoming as normal dealer, are required to file in FORM GST ITC-01 within 30 days to take the credit of input on the same.

Terms and Conditions to opt for composition

1. A supplier will have to opt composition scheme for all businesses registered under one PAN.
2. After, opting for composition is prohibited from -
 - a) making interstate outward supply (sale of goods in other states).
 - b) making supply of tax-free or exempted goods,
 - c) making supply through e commerce operator.
 - d) getting registration as Casual Taxable Person, or Non-resident Taxable Person for making supply in places where he is not registered.
 - e) Manufacturing goods notified under section 10(2)(e).
3. The supplier is required to:-

- a) mention “Composition Taxable person not eligible to collect tax on supplies” on the Invoice,
- b) mention “Composition Taxable Person” on every notice, signboard displayed at all place of business.
- c) pay tax on reverse charge basis as provided in Section 9(3) i.e. Inward Supplies from notified persons and section 9(4) i.e. Inward Supplies from Unregistered Person.
- d) show that stock as on appointed day have not been purchased in the course of
 - Inter State Trade or commerce
 - Imported from a place outside India
 - received from his branch situated outside the state
 - received from his agent or principal outside the state
- e) pay tax on stock on appointed day, under reverse charge under sections 9(3)/9(4). Otherwise he will lose his right to opt composition scheme.
4. A composition supplier should file quarterly return in GSTR-4 before the 18th of the following month after end of the quarter and also annual return in GSTR -9A.
5. Transitory provisions for a dealer migrating to GST on the appointed day 01 July 2017 included filing duly signed application for Composition Scheme in FORM GST CMP-01 by 31 July 2017 and furnishing the details of stock, including the inward supply of goods received from unregistered Persons, held by him on the day preceding the date from which he opts for composition, electronically in FORM GST CMP-03 within 60 days of the date from which composition scheme is opted. The option exercised under section 10 was to remain valid so long the conditions mentioned in section 10 and Composition Rules were satisfied.

Procedure for composition

6. Any Registered Person i.e. normal dealer desirous of opting for Composition Scheme shall
 - a) Electronically file intimation in FORM GST CMP-02 prior to the commencement of financial year,
 - b) Submit FORM GST ITC-3 within 60 days from the commencement of the relevant financial year.
 - c) shall pay an amount, by way of debit in the Electronic Credit Ledger or Electronic Cash Ledger, equivalent to the credit of input tax in respect of
 - i. inputs held in stock
 - ii. inputs contained in semi-finished goods
 - iii. inputs contained finished goods held in stock and
 - iv. capital goods, as reduced by such percentage points as prescribed in ITC rules on the day immediately preceding the date of exercising such option.
7. Any intimation for opting composition scheme for any place of business shall be deemed for all other place of business.

8. After opting for composition scheme, the supplier cannot collect tax from the recipients of supply, but he shall issue bill of supply for supplies made thereafter.
9. No credit will be available to a registered taxable person on the invoice of a composition taxable person. Hence, composition scheme is not viable on B to B basis.
10. IGST dealer are not eligible to take the benefit of composition scheme.
11. A normal dealer, who opts for composition, all credit in his ledger will lapse and included in the cost of goods under section 18(4).
12. A composition taxable person will not be entitled to claim for Input Tax credit. product. Such credit will become his cost of goods.
13. A taxable person may opt out from the composition scheme by filing an application in FORM GST CMP-04, electronically before the date of such withdrawal.

Examples:

1. Akash owns a restaurant and a grocery shop having turnover of Rs 15 lakh and Rs 90 lakh respectively.

Akash is eligible for composition restaurant services are eligible and the turnover does not exceed Rs 100 lakh during the financial year.

2. Amit had during the financial year 2021-22 had the following turnover:

Exempted goods	Rs 60 lakh
Non- taxable goods	Rs 25 lakh
Taxable goods	Rs 20 lakh

Aggregate Turnover of all type of supplies registered under single PAN exceeds Rs. 100 lakh. Further Amit also supplies non-taxable goods. Amit is not eligible for composition Scheme.

3. Anuj is an architect running a consulting and a ceramics shop registered in the same PAN having receipt of Rs 25 lakh and turnover of Rs 85 lakh respectively during the financial year 2021-22.

Consultancy services are not eligible for composition scheme. Hence Anuj is not eligible for composition scheme both in respect of his consultancy and his shop.

4. Anuj wants to opt for composition only in respect of his shop. He cannot do so as all the business including the consultancy under one PAN have to be taken together.
5. Anuj, instead of consultancy owns a shop in building material having turnover of Rs 25 lakh during the financial year 2021-22.

Although the businesses are eligible, turnover during the previous year exceeds Rs 100 lakh, hence not eligible for composition scheme.

6. Anuj has only one shop of Ceramics and no consultancy business. He is eligible to opt for composition scheme as turnover is below Rs 100 lakh.
7. M purchases goods in Mumbai (Maharashtra) sells in Panaji, Goa. His turnover during the financial year 2021-22 is Rs 69 lakh. M is not eligible for composition as her turnover is of interstate outward supply.
8. Assuming, M purchases goods from Panaji and sells in Mumbai, she may go for composition as there is restriction on outward interstate supply not on inward interstate supply.
9. Sushil sells his goods through Amazon, an E-Commerce Operator. Turnover of preceding financial year is Rs. 65 lakh.

Sushil is not eligible for composition scheme as he sells goods through an E-Commerce Operator.

10. Rogers of Imphal obtains registration as a Casual Taxable Person in Kohima, Nagaland and records a turnover of Rs 42 lakh.

Roger being a Casual Taxable person has been specifically excluded from the composition scheme.

11. Turnover of Tony, who has opted for composition, exceeds Rs 100 lakh on 15-04-2022. Tony will lose his option for composition from 16-04-2022. He has to file FORM GST CMP-04 within 7 days i.e. before 23-04-2022, FORM GST ITC-01 within 30 days i.e. before 15-05-2022 giving details of stock and capital goods, as on 22-04-2022 to claim ITC.

5.9 LEVY AND COLLECTION OF TAX

5.10 Section 9 of the CGST Act, 2017, which is the charging section, provides that for all intra state supplies of taxable goods or services or both, there shall be levied a tax called **Central Goods and Services Tax (CGST)** on the value as determined under section 15 of the Act at such rates, not exceeding 20%, as may be notified by the Government on the recommendation of the Council. The section excludes from its ambit the supply of alcoholic liquor for human consumption.

Example:

Jugal of Panaji in Goa supplies goods to D'sa in Vasco (Goa). The tax will be levied in Goa because goods will be consumed in Goa. Jugal will Charge CGST + Goa-SGST from D'sa

5.11 From the above it follows that for levy and collection of CGST following conditions must be satisfied: -

1. GST is levied on taxable intrastate supply of goods or services or both.

“Goods’ means every kind of movable property other than money and securities but includes actionable claim, 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;

‘Services’ means anything other than goods, money and securities but 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.

2. The supply must be capable of being valued under section 15.
3. The tax shall be levied /collected on the basis of the value so determined.
4. The rate of tax shall be at the prescribed rates not exceeding 20%.

GST rates has been announced on various goods/ services in 4 slabs at 5%, 12%, 18% and 28% apart from the Nil rate and 0.25% on diamonds and 3% for bullion. The maximum rate of GST is 28% (i.e. 14% CGST+14% SGST). It can be increased maximum up to 40% (i.e. 20% CGST + 20% SGST) before cess on demerit items.

5. If the supply is not capable of being categorised under any of the prescribed rates category then tax cannot be levied on the same.
6. The CGST shall be levied and collected by the Central Government in the manner as prescribed GST - Payment of Taxes Rules, 2017.
7. The tax shall be payable by the Taxable Person. “Taxable Person” means a person who is registered or liable to be registered under section 22 or section 24 of the Act”.
8. Taxable Person may not necessarily be the person who supplies the goods. For instance, the recipient of the service under the Reverse Tax Mechanism (RCM), E- Commerce Operator and Registered Taxable Person In respect of supplies received from an Unregistered Person are liable to pay tax, not the supplier.
9. Tax cannot be collected from a person, who does not fall within the ambit of the definition of Taxable Person.
10. The section excludes from its ambit the supply of alcoholic liquor for human consumption.
11. CGST on crude oil, high speed diesel, aviation turbine, motor spirit (petrol), shall be levied with effect from the date to be notified by the Government on the recommendations of Council. - Section 9(2).

Council means the Goods and Service Tax Council established under Article 279-A of the Constitution”- Section 2(36)

12. GST may be levied in three case under reverse tax mechanism (RCM), where the tax shall be paid on reverse charge basis by the recipient of such goods or services or both. All the provisions of this Act shall apply to the recipient as if he is the person liable for paying the tax. no reverse charge shall be applicable in case of exempt supply or non-taxable supply
 - a. The supplyof notified goods or services or both,under section 9(3). While as many as 12 services have been notified, good have not been notified under this section.
 - b. The supply of goods or services or both by Unregistered Person to a registered person under section 9(4). Presently, the provision has been postponed.
 - c. Intra-state supply of specific services supplied through the Electronic Commerce Operator under section 9(5)/ or its representative (to be mandatorily appointed) if such operator has no physical presence in the taxable territory.

5.12 In the following cases tax will be payable by the recipient of the goods and/or service or the electronic commerce operator.

1. Goods Transport Agency(GTA)for service provided to Casual Taxable Person, body corporate, partnership firm, any society, factory, any person registered under CGST, SGST, UTGST Act.
2. Recovery agent for a banking company, NBFC or any financial institution
3. A director of a company or a body corporate.
4. An individual advocate or firm of advocates, an arbitral tribunal providing representational services to any business entity.
5. Taxi driver or Rent a cab operator working through e-commerce operator ;
6. An insurance agent of an insurer.
7. Sponsorship received by a body corporate or partnership firm.
8. Importer receiving supply from non-taxable territory;
9. Copyright sold by an author or music composer, photographer, artist, to a publisher, music company, producer,
10. Any person who is located in a non-taxable territory to any person located in the taxable territory other than non-assessee online recipient (Business Recipient) Service recipient.

Values of taxable supply under section 15, Reverse Charge Mechanism (RCM) have been taken up separately in their appropriate place.

5.10 SELF-EXAMINATION QUESTIONS

1. What is meant by supply?
2. What is difference between naturally bundles and not so bundled supply and its impact on tax rare
3. Container sold with a vacuum flask is missed supply or composite supply, state with reason
4. What is composition scheme?

What are the advantages and disadvantages?

5. A German publisher takes Registration as a non-resident taxable person and he wants to opt for composition scheme. State with reason if he can do so?
6. What is exemption from tax?

