

Concept of Supply Including Intra-State & Inter-State Supply

2.0 Introduction

Taxable Event under GST Regime shall be “supply” from the perspective of a registered person. The meaning and scope of term “supply” has been defined in Section 7 of the CGST Act. In addition, Schedule II to the CGST Act has considered certain supplies as service even though such supplies involves supply of goods and certain deeming sales in pre-GST regime are also being considered as supply of service. In order to bring clarity, it is provided in Schedule III to the CGST Act that specified activities or transactions shall be treated neither as a supply of goods nor a supply of services.

Further, all supplies shall be divided into two categories i.e. intra-State supplies and inter-State supplies. Intra-State supplies shall be subject to CGST and SGST and governed by CGST Act, 2017 and respective SGST Act whereas Inter-State supplies shall be subject to IGST and governed by the IGST Act, 2017 . In fact, tax liability in both the cases shall be same as CGST + SGST and shall be equal to IGST. However, wrong classification of transaction shall have serious implications on the liquidity of the registered taxable person as he has to pay tax once again to the legitimate Government and has to claim refund from the Government to whom tax has been paid wrongly. For this purpose readers may refer to Section 19 of the IGST Act and Section 77 of the CGST Act which shall be dealt in detail at appropriate places. The purpose of discussion at this point is just to highlight the significance of classification of supplies into intra-State and inter-State supplies.

2.1 Meaning and scope of supply - Section 7 of the CGST Act

Supply is defined to include all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. It also includes importation of services for a consideration whether or not in the course or furtherance of business.

2.1.1 Constitutional background of meaning and scope of ‘supply’

Article 366(12A) of the Constitution of India, Goods and Services Tax means a tax on supply of goods or services or both, except taxes on supply of alcoholic liquor for human consumption.

The concept of ‘supply’ is very important in GST Regime. GST is a multi-stage tax levied on supply of goods or services or both, in proportion to the value added by each taxable person in the chain of supply. In the GST regime, the entire value of supply of goods or services or both is to be taxed in an integrated manner, unlike the existing indirect taxes, which are charged independently either on the manufacture or sale of goods, or on the provision of services.

In the GST regime, three types of taxes shall be levied on supply of goods or services or both, depending upon the nature of such supply. These taxes shall be levied as follows:

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| 1. | In terms of section 9(1) of the CGST Act, Central Tax [CGST] shall be levied on all intra-State supplies of goods or services or both, |
| 2. | In terms of relevant section of the SGST Law, State Tax [SGST] shall be levied on all intra-State supplies of goods or services or both, or |
| 3. | In terms of charging section 7(1) of the UTGST Act, 2017, Union territory tax [UTGST] shall be levied on all supplies made within the Union territory (i.e. intra-Union territory supplies), and |

4. In terms of charging section 5(1) of the IGST Act, 2017, Integrated Tax [IGST] shall be levied on all inter-State supplies of goods or services or both.

CGST plus SGST or UTGST shall be levied on intra-State supplies, and IGST shall be levied on inter-State supplies of goods or services or both. Further, UTGST Act, 2017 shall apply to intra-State (i.e. within the union territories) taxable supplies made from these territories only.

2.1.2 What does the term ‘supply’ includes?

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| Section | ‘Supply’ includes all forms of supply of goods, or services or both and it is an inclusive definition. Illustrative list specifies forms of supply such as Sale, Transfer, Barter, Exchange, Licence, Rental, Lease or Disposal . |
| 7(1)(a) | However, besides the above illustrative forms of supply, there can be other forms of supply of goods or services or both. |

2.1.3 Future supply shall also be covered

All forms of supply of goods or services or both made or agreed to be made shall be covered. The use of the expression “agreed to be made” points out that supply of goods or services or both in future shall also be subject to tax. It has been done intentionally to tax the advance received prior to the actual supply of goods or services or both.

2.1.4 Supply must be made for a ‘consideration’

‘Consideration’ may be an act (doing something) or forbearance (not doing something) or a promise to do or not to do something. In addition, consideration may be past, present or future. It may take two forms namely monetary consideration and non-monetary consideration.

2.1.5 Supply must - be made by a person

The term “person” has been defined as under, vide Section 2(84) of the CGST Act, 2017.

(84) “person” includes-

- (a) an individual;
- (b) a Hindu Undivided Family;
- (c) a company;
- (d) a firm;
- (e) a Limited Liability Partnership;
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);
- (h) any body corporate incorporated by or under the laws of a country outside India;
- (i) a co-operative society registered under any law relating to co-operative societies;
- (j) a local authority;
- (k) Central Government or a State Government;
- (l) society as defined under the Societies Registration Act, 1860 (21 of 1860);
- (m) trust; and
- (n) every artificial juridical person, not falling within any of the above;

2.1.6 Supply need not be made by one person to another

It is to be noted very carefully that 'supply' need not be made by one person to another because self-supply shall also be taxable under GST. The taxing of self-supply is a new concept in GST.

In GST section 9(1) of CGST Act provides:

Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding 20%, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person

. Section 5(1) of IGST Act, 2017 is similar. Critical analysis of the charging section of both the Acts makes it clear that supply need not be made by one person to another in GST as was the case in erstwhile indirect taxes except excise where taxable event was manufacture.

2.1.7 Supply must be made in the course or furtherance of business

In order to fall within the ambit of Section 7(1) (a) supply must be made in the course or furtherance of business. It is easier to understand that one receives inward supply of goods or services or both for the furtherance of business like supply received to set up a new office by a supplier of goods or services or both but to visualize a situation that one makes outward supply of goods or service or both for furtherance of business is not such an easy job. Normally, when any person makes a supply of goods or services or both, it is in the course of business only. A trader supplying goods in the normal course of business is making such supplies in the course of business and not for furtherance of business as making supplies of goods is his normal business. It is a different issue that with every supply of goods he is making more money but that is from his existing business of doing purchase and sale of goods.

2.1.8 Supply includes importation of services, for a consideration, whether or not in the course or furtherance of business - Section 7(1)(b)

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| | Importation of service for a consideration |
| (a) | The term 'supply' shall include importation of service for a consideration. The meaning of the term 'consideration' has already been explained hereinabove under Section 7(1) (a). Thus, it can be inferred that if services are imported without consideration, then the same shall not fall within the scope of the term "supply". The scope of importation of service in this sub-section is very wide as such supply even if received in personal capacity and not in the course or furtherance of business shall also get covered in this sub-section. Therefore, test of business is not required to be satisfied in case of importation of services. |
| (b) | Importation of service in the course or furtherance of business is not essential |
| | It is wholly inconsequential whether or not the service has been imported in the course or furtherance of business. |

2.1.9 Supplies specified in Schedule I, made or agreed to be made without a consideration - Section 7(1)(c)

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| 7(1)(c) | Supply includes supplies specified in Schedule I, made or agreed to be made without a consideration. It implies that transactions as mentioned in Schedule I shall be deemed as supply even if they are made without consideration. Thus, presence of consideration, in respect of transactions specified in Schedule I, is not essential. |
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2.1.9.1 Permanent transfer or disposal of business assets where input tax credit has been availed on such assets - Paragraph 1 of Schedule I

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| <u>Scope of Para 1 of Schedule I to Section 7 of CGST Act</u> | | |
| Para 1 provides that the permanent transfer or disposal of business asset where input tax credit (hereinafter referred to as ITC) has been availed on such asset is treated as supply. The term “Business Assets” has not been defined under the GST Acts or Rules made thereunder. According to Rule of Literal Construction if literal meaning is clear and unambiguous and there is nothing to imply that the words have been used in a special sense different from their ordinary grammatical sense, interpretation is to be done according to aforesaid Rule. In the instant case, the term “Business Assets” is of very wide connotation. It includes every asset of the business including capital goods, finished goods, raw material, tools and equipment etc. | | |
| Para 1 of Schedule I of the CGST Act shall broadly cover following situations: | | |
| (a) | <p><u>Disposal of business assets to NGO without consideration</u></p> <p>It is a common feature in business to purchase certain business assets and avail input tax credit in respect of GST paid on such procurement. However, after using the aforesaid business assets for certain duration, the business assets may be transferred to an NGO, without any consideration. Such transfer shall be considered as supply in terms of Para 1 of Schedule I. Thus, GST shall be levied on the transfer of such assets on the value as determined under Section 15 of CGST Act, 2017 read with CGST Rules, 2017.</p> | |
| (b) | <p><u>Disposal of business assets to any person [including related person or a distinct person] without consideration</u></p> <p>This situation shall cover disposal of business assets where input tax credit has been availed on such assets to any person [including related person or a distinct person] without consideration. Transfer of business asset to related or distinct person shall also fall under Para 2 of Schedule I to the CGST Act. Moreover, it is a candid principle of law that specific entry shall be preferred to general entry. Therefore, under this Para, transfer of business asset (where input tax credit has been availed) to any person other than distinct or related person shall be covered. Consequently, the same shall be treated as “supply”.</p> | |
| In this case business assets specified in Para 1 shall include only those business assets which are being used in the course or furtherance of business. Thus, disposal of business assets to any person other than related person or a distinct person shall be considered as supply under this Para and GST shall be leviable on the same. | | |
| (c) | <p><u>Free goods along with other taxable supplies to incentivise receiver of such supplies</u></p> <p>In order to incentivise their distributors, wholesaler, customer or any business associate, many suppliers give free goods along with other supplies to aforesaid receiver of goods. The foregoing goods can be broadly classified as under:</p> | |
| | (a) | Goods which are manufactured by company itself or goods in which they are dealing on their own; or |
| | (b) | Goods purchased from other vendors. |
| On procurement of such goods or manufacturing of such goods, input tax credit in respect of the same is availed by | | |
| the concerned suppliers. Considering the wide definition of the term “business assets” (as discussed above), such goods shall fall within the purview of the “business assets”. Hence, free supply of goods to incentivise distributors etc. shall be considered as “supply”. Consequently, the same shall be liable to GST. | | |

2.1.9.2 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 - Paragraph 2 of Schedule I

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 shall be treated as supply even if made without consideration. However, according to proviso to Paragraph 2 of Schedule I, gifts not exceeding 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

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| (a) | <u>Supply of goods or services or both between related persons or distinct persons</u> |
| (b) | <p><u>Supply of goods or services between distinct persons</u> In terms of Section 25, following persons shall be deemed as distinct persons: <u>Deemed Distinct Persons in Case of Multiple Registrations- Section 25(4)</u> A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.</p> <p><u>Deemed establishments of distinct persons in case of multiple registration in different states - Section 25(5)</u> Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act. The above provision provides that an establishment of a person who has either obtained or is required to obtain registration in a State and any of his other establishments in another State shall be treated as establishment of distinct persons for the purposes of the CGST Act, 2017. Supply of goods or services or both between related persons or between distinct persons in the course or furtherance of business shall be treated as supply even if there is no consideration. However, supplies without consideration between related persons or between distinct persons are taxable supplies and therefore, such supplies are eligible to GST. As a result, GST shall be levied on the supplies made even without consideration between distinct or between related persons on such value as determined in accordance with Sec 15 of CGST Act, 2017 read with CGST Rules, 2017. This situation shall also cover transfer of stock including distribution of free samples by the manufacturer to its own branches. In such a case, distribution of free samples to its own branches, being related persons, shall be subject to GST. Further, input tax credit in respect of such samples shall be allowed to the branches i.e. recipient of stock/free sample.</p> |

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| (c) | <p>It is being reported that gifts and perquisites supplied by companies to their employees will be taxed in GST. Gifts upto a value of Rs 50,000/- per year by an employer to his employee are outside the ambit of GST. However, gifts of value more than Rs 50,000/- are subject to GST, when made in the course or furtherance of business.</p> <p>The question arises as to what constitutes a gift. Gift has not been defined in the GST law. In common parlance, gift without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move to court of law for obtaining a gift.</p> <p>Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer <u>in the course of or in relation to his employment</u> are outside the scope of GST (neither supply of goods nor supply of services). It follows there from that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17 (5) (b) (ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C).</p> |
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2.1.9.3 Supply of goods by a principal to his agent or vice versa - Paragraph 3 of Schedule I

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| <p>Supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal shall be treated as Supply even if such supplies are made without consideration.</p> | |
| <p>1. Circular No. 57/31/2018-GST, dated 04.09.2018</p> | |
| <p>Scope of Principal-agent relationship in the context of Schedule I of the CGST Act-regarding.</p> | |
| <p>In terms of Schedule I of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”), the supply of goods by an agent on behalf of the principal without consideration has been deemed to be a supply. In this connection, various representations have been received regarding the scope and ambit of the principal-agent relationship under GST. In order to clarify some of the issues and to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168 (1) of the CGST Act hereby clarifies the issues in the succeeding paras.</p> | |
| <p>2. As per section 182 of the Indian Contract Act, 1872 , an “ agent” is a person employed to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented, is called the “principal”. As delineated in the definition, an agent can be appointed for performing any act on behalf of the principal which may or may not have the potential for representation on behalf of the principal. So, the crucial element here is the representative character of the agent which enables him to carry out activities on behalf of the principal.</p> | |
| <p>3. The following two key elements emerge from the above definition of agent:</p> | |
| a) | <p>The term ‘agent’ is defined in terms of the various activities being carried out by the person concerned in the principal-agent relationship; and</p> |
| b) | <p>The supply or receipt of goods or services has to be undertaken by the agent on behalf of the principal.</p> |
| <p>From this, it can be deduced that the crucial component for covering a person within the ambit of the term “agent” under the CGST Act is corresponding to the representative character identified in the definition of “agent” under the Indian Contract Act, 1872.</p> | |

4. Further, the two limbs of any supply under GST are “consideration” and “in the course or furtherance of business”. Where the consideration is not extant in a transaction, such a transaction does not fall within the ambit of supply. But, in certain scenarios, as elucidated in Schedule I of the CGST Act, the key element of consideration is not required to be present for treating certain activities as supply. One such activity which has been detailed in Para 3 of Schedule I (hereinafter referred to as “ the said entry ”) are reproduced hereunder:

Supply of goods-

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| (a) | By a principal to his agent where the agent undertakes to supply such goods on behalf of the principal;or |
| (b) | By an agent to his principal where the agent undertakes to receive such goods on behalf of the principal. |

5. All the activities between the principal and the agent and vice versa do not fall within the scope of the said entry. Firstly, the supply of services between the principal and the agent and vice versa is outside the ambit of the said entry, and would therefore require “consideration” to consider it as supply and thus, be liable to GST. Secondly, the element identified in the definition of “agent”, i.e., “ supply or receipt of goods on behalf of the principal ” has been retained in this entry.

6. It may be noted that the crucial factor is how to determine whether the agent is wearing the representative hat and is supplying or receiving goods on behalf of the principal. Since in the commercial world, there are various factors that might influence this relationship, it would be more prudent that an objective criteria is used to determine whether a particular principal-agent relationship falls within the ambit of the said entry or not. Thus, the key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

2. Circular No. 73/47/2018-GST, dated 05.11.2018- Scope of principal and agent relationship under Schedule I of CGST Act, 2017 in the context of del-credere agent-Regarding

Post issuance of circular No. 57/31/2018-GST dated 4th September, 2018 from F. No. CBEC/20/16/4/2018-GST, various representations have been received from the trade and industry, as well as from the field formations regarding the scope and ambit of principal agent relationship under GST in the context of del-credere agent (hereinafter referred to as “DCA”). In order to clarify these issues and to ensure uniformity of implementation across field formations, the Board, in exercise of its powers conferred under section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) hereby clarifies the issues in succeeding Para’s.

2. In commercial trade parlance, a DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the DCA guarantees the payment to the supplier. In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent. In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer. Concerns have been expressed regarding the valuation of supplies from Principal to recipient where the payment for such supply is being discharged by the recipient through the loan provided by DCA or by the DCA himself. Issues arising out of such loan arrangement have been

examined and the clarifications on the same are as below:

2.1.9.4 Importation of services by a person, from a related person or from any of his other

Establishments outside India, in the Course or Furtherance of Business - Paragraph 4 of Schedule I

A careful perusal of this entry reveals that importation of services by a person [taxable person for the period 01.07.2017 to 31.01.2019] from a related person or from any of his other establishments outside India in the course or furtherance of business shall fall within the ambit of the term ‘ Supply’ even if made without consideration. It can be safely inferred that scope of Paragraph 4 of Schedule I has been increased with effect from 01.02.2019 because import of services by a person [even if he is not a taxable person] from a related person or from any of his other establishments outside India in the course or furtherance of business shall fall within the ambit of the term ‘ Supply’ even if made without consideration. In terms of Section 2(107) “Taxable Person” means a person who is registered or liable to be registered under section 22 or section 24.

2.1.10 Activities to be treated as supply of goods or services - Section 7(1A) [notified with retrospective effect from 01.07.2017] read with Schedule II

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| 7(1A) | <p>Where certain activities or transactions constitute a supply in terms of Section 7(1) of the Act, they shall be treated either as supply of goods or supply of services as specified in Schedule II. For the purpose of determining whether a particular activity is supply or not, one has to test that activity on the parameter of section 7(1). After ascertaining the taxability of activity one has to refer to Schedule II to find out whether such activity is taxable as goods or as service. In other words, the role of Schedule II is limited to find out whether activities specified in Schedule II are to be treated as supply of goods or as supply of services. Schedule II cannot determine whether a particular activity is supply or not. Further mentioning of activity in Schedule II shall not make it a supply. For the purpose of classification as supply one has to apply the test as specified in section 7(1) as discussed in earlier paragraphs of this chapter.</p> |
| | <p>Schedule II reveals that in the GST Regime, the terms “goods” and “services” shall be understood in legal sense as defined in Schedule-II as compared to the traditional sense.</p> |
| | <p>However, in the GST Regime, Works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract shall be treated as supply of service only. Therefore, it shall be taxable at the rate which is applicable to this category of service and time of supply and place of supply and other provisions of CGST/SGST or IGST shall also be applicable as apply to the supply of service of the same category.</p> |

2.1.11 Which activities shall not be treated as a “supply”?

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| Section 7(2)(a) | <p>The activities listed in Schedule III to the Act shall neither be treated as a supply of goods nor a supply of services. Schedule III specifies activities or transactions that have been excluded from the ambit of GST. These activities shall not be subject to tax under GST.</p> |
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2.1.11.1 Services by an employee to the employer in the course of or in relation to his employment -Paragraph 1 to Schedule III

According to this entry, a supply of service by an employee to his employer either in the course of or in relation to his employment will not fall within the meaning of term ‘supply’.

It is also important to clarify here that in the above context the term ‘employee’ is very wide and it will, inter alia, include permanent, temporary as well as casual employees. Another classification of employees may be either Full-time or Part-time. From another angle, in the absence of relationship of employee and employer, the services supplied by one person to another person would be subject to GST. Thus, relationship of employer and employee between the supplier of service and the service recipient is essential for the purpose of claiming exclusion under this entry. This specific exclusion from the definition of supply will not provide any benefit to the Commercial world because dispensation by virtue of this entry has been provided to the employees who are individuals.

The activities performed by the employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT System Maintenance for the units located in the other States as well i.e. distinct persons as per Section 25(4) of the CGST Act, shall be treated as supply as per Entry 2 of the Schedule I of the CGST Act.

2.1.11.2 Services by any Court or Tribunal established under any law for the time being in force - Paragraph 2 to Schedule III

In this Entry, exclusion has been provided to services by any Court or Tribunal established under any law for the time being in force. This specific exclusion from the definition of supply will not provide any benefit to the commercial world because dispensation by virtue of this entry has been provided to the Court or Tribunal which are getting the fees and such courts and tribunal are part of Government machinery. Exclusion under this Para can be availed only if such Court or Tribunal which is supplying service is established under any law for the time being in force. Such law may be enacted by Central Government, State Government or any other competent organ of the Government.

2.1.11.3 Functions performed by the members of parliament, members of state legislature, members of panchayats, members of municipalities and members of other local authorities -Paragraph 3(a) to Schedule III

As per the above-mentioned entry, functions performed by any of the following shall not be subject to GST:

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| (i) | Members of Parliament; | (iv) | Members of Municipalities; or |
| (ii) | Members of the State Legislature; | (v) | Members of other local authorities. |
| (iii) | Members of Panchayats; | | |

However, this exclusion shall not cover such situations where the above specified persons perform functions which are not related to the holding of their office as member. To illustrate, if a Member of Parliament gets consideration for acting in a movie such consideration shall be subject to GST. All the specified persons are elected representative of public and hold their office by contesting the election/s. There is no employer employee relationship between such member and Government, Local Authority or any other Governmental authorities.

2.1.11.4 Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity - Paragraph 3(b) to Schedule III

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| According to this entry, duties performed by any person holding any post in pursuance of the provisions of the Constitution shall not be subject to GST. Benefit of this exclusion is available to any person subject to satisfaction following conditions cumulatively:- | |
| (i) | Duty is performed by any person who holds post in pursuance of the provisions of the Constitution like Diplomats, Governors of States etc.; |
| (ii) | Consideration to be received for performing the duties; and |
| (iii) | Performance of such duties shall be in official capacity and not in any other capacity. If consideration is received for performing any activity which is not performed because of holding of such post, exclusion under this Para shall not be available to such consideration. |

2.1.11.5 Duties performed by any person as a chairperson or a member or a director in a body established by the Central Government or a State Government or Local Authority and who is not deemed as an employee before the commencement of this clause - Paragraph 3(c), Schedule III

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| According to this entry, the duties performed by a person as a chairperson or a member or a director in a body established by the Union or State Government or local authority are not subject to tax under GST. Benefit of this exclusion is available to any person subject to satisfaction of following conditions cumulatively:- | |
| (i) | Duty is performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or State Governments or Local Authority; |
| (ii) | Duty is performed in official capacity as a chairperson or a member or a director; and |
| (iii) | There is no employer employee relationship between such chairperson, member or director and the body established by the Central Government, State Governments or Local Authority . |

2.1.11.6 Services of funeral, burial, crematorium or mortuary including transportation of the deceased - Paragraph 4 of Schedule III

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| Services of Funeral, burial, crematorium or mortuary including transportation of the deceased by any mode of transportation have been provided as exclusion from the purview of GST under this entry. |
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2.1.11.7 Sale of land and, subject to clause (b) of Paragraph 5 of Schedule II, Sale of Building - Paragraph 5 of Schedule III

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| The entry seeks to provide that sale of land or sale of building by itself is not subject to tax under GST. However, activities specified in entry 5(b) of Schedule II shall be subject to GST. In short, it provides that if any consideration for sale of building, complex, civil structure or a part thereof is received before issuance of completion certificate or first occupation therein, the entire consideration for such sale shall be liable to tax under GST as a supply of services. |
| Land and building are immovable properties and cannot be classified as goods. Since GST is a tax on supply of goods or services, sale of land or building are not liable to tax under GST. Even if this exclusion would have not been specifically provided in the Schedule III, GST would not be levied on transaction of sale of land or building. Thus, it is merely a clarificatory provision rather than a specific exclusion. |

If a strict interpretation is taken of the above definition land and building gets covered in the definition of service. The confusion gets further complicated as works contract relating to immovable property is also considered as service as per entry 6(a) of Schedule II as discussed above in this chapter. Lawmakers have provided this exclusion to clear the air of confusion.

2.1.11.8 Actionable Claims, other than lottery, betting and gambling - Paragraph 6 of Schedule III

This entry of Schedule III seeks to provide that actionable claims shall not be treated as a supply of goods and thus, shall not be liable to tax under GST.

2.1.11.9 Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India - Paragraph 7 of Schedule III [Applicable with effect from 01.02.2019]

This provision has been inserted so as to allow ITC on activities mentioned in Schedule III (other than sale of land and subject to clause (b) of paragraph 5 of Schedule II, sale of building) by removing it from the ambit of exempt supplies. Excluding of supplies covered under Schedule III from the scope of exempt supplies under Section 17(3) will result in lower reversal of credit particularly in case of merchant trade transactions.

2.1.11.10 Supply of warehoused goods to any person before clearance for home consumption - Paragraph 8(a) of Schedule III [Applicable with effect from 01.02.2019]

Supply of warehoused goods to any person before clearance for home consumption.

This provision has been inserted so as to allow ITC on activities mentioned in Schedule III (other than sale of land and subject to clause (b) of paragraph 5 of Schedule II, sale of building) by removing it from the ambit of exempt supplies. Excluding of supplies covered under Schedule III from the scope of exempt supplies under Section 17(3) will result in lower reversal of credit particularly in supply of warehoused goods before clearance for home consumption

3. Circular No. 91/10/2019-GST, dated 18.02.2019

Clarification regarding tax payment made for supply of warehoused goods while deposited in a customs bonded warehouse for the period July, 2017 to March, 2018-Reg.

Attention is invited to Circular No. 3/1/2018-IGST dated 25.05.2018 whereby applicability of integrated tax on goods transferred/sold while being deposited in a warehouse (hereinafter referred to as the “warehoused goods”) was clarified. In the said circular, it was enunciated that from 1st of April, 2018 the supply of warehoused goods before their clearance from the warehouse would not be subject to the levy of integrated tax.

2. It has been brought to notice of the Board that during the period from 1st of July, 2017 to 31st of March, 2018 (hereinafter referred to as the “said period”), the common portal did not have the facility to enable the taxpayer to report payment of integrated tax, in the details required to be submitted in FORM GSTR-1, for such supplies especially where the supplier and the recipient were located in the same State or Union territory. Hence taxpayers making such supplies have reported such supplies as intra-State supplies and discharged central tax and state tax instead of integrated tax accordingly. Now, representations have been received from trade to clarify the same.

3. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017, hereby issues the following instructions.

Supply of warehoused goods while deposited in custom bonded warehouses had the character of inter-State supply as per the provisions of Integrated Goods and Services tax Act, 2017. But, due to non-availability of the facility on the

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| 4. | common portal, suppliers have reported such supplies as intra-State supplies and discharged central tax and state tax on such supplies instead of integrated tax. In view of revenue neutral position of such tax payment and that facility to correctly report the nature of transaction in FORM GSTR-1 furnished on the common portal was not available during the period July, 2017 to March, 2018, it has been decided that, as a one-time exception, suppliers who have paid central tax and state tax on such supplies, during the said period, would be deemed to have complied with the provisions of law as far as payment of tax on such supplies is concerned as long as the amount of tax paid as central tax and state tax is equal to the due amount of integrated tax on such supplies. |
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2.1.11.11 Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption -- Para 8(b) of Schedule III inserted w.e.f. 01.02.2019

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| Any supply of goods shall fall within the purview of Paragraph 8(b) only when following conditions get satisfied cumulatively: | |
| (i) | Goods are supplied by the consignee to any other person by endorsement of documents of title to the goods; and |
| (ii) | The endorsement is done after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption. |

All inter-state transactions are subject to IGST. High sea sales are akin to inter-state transactions. Owing to this, it was presented to the Board as to whether the high sea sales of goods would be chargeable to IGST twice i.e. at the time of Customs clearance under Section 3(7) of Customs Tariff Act, 1975 and also separately under Section 5(1) of the IGST Act. The Board has, therefore, clarified vide Circular No. 33/2017-Customs, dated 01.08.2017, that in respect of imported goods, all duties, taxes, cesses etc. shall be collected at the time of importation i.e. when the import declarations are filed before the customs authorities for the customs clearance purposes. Paragraph 8(b) of Schedule III has confirmed the stand of the Department taken in Circular No. 33/2017-Customs, dated 01.08.2017.

Earlier HSS transactions were covered in the definition of “supply” under Section 7 of the CGST Act. However, aforesaid HSS transactions were not leviable to tax under the IGST Act which required the chargeability in accordance with provisions of Section 3 of the Customs Tariff Act, 1975. As a result, aforesaid HSS were considered as “Exempt Supply” in terms of section 17(3) of CGST Act, 2017, which used to result in reversal of proportionate ITC attributable to such HSS. With effect from 01.02.2019 HSS has been included as Para 8(b) to the Schedule III which contains activities or transactions which shall be treated neither as supply of goods nor a supply of services. The new provision has been inserted so as to allow ITC on activities mentioned in Schedule III (other than sale of land and subject to clause (b) of paragraph 5 of Schedule II, sale of building) by removing it from the ambit of exempt supplies. Excluding of supplies covered under Schedule III from the scope of exempt supplies under Section 17(3) will result in lower reversal of credit particularly in case of HSS.

2.1.12 Notified activities or transactions undertaken by government neither to be treated as supply of goods nor supply of services - Section 7(2)(b)

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| 7(2)(b) | The notified activities or transactions undertaken by the Central Government, State Government or any local authority in which they are engaged as public authorities shall neither be treated as a supply of goods nor a supply of services. Consequently, such activities or transactions shall not be subject to tax under GST. |
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In exercise of the powers conferred vide Section 7(2) (b), the Central Government has, notified the following activities or transactions:

| Notified activities or transactions | Period | Notification No. | Date of Notification |
|--|--|------------------|----------------------|
| Services by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called undertaken by the State Governments in which they are engaged as public authorities | With effect from 30.09.2019 | 25/2019-CT((R) | 30.09.2019 |
| Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution undertaken by the Central Government or State Government or Union territory or any local authority in which they are engaged as public authority | With effect from 27.07.2018 | 16/2018-CT(R) | 26.07.2018 |
| Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the | 01.07.2017 to | 14/2017-CT(R) | 28.06.2017 |
| Constitution undertaken by the Central Government or State Government or any local authority in which they are engaged as public authority | 26.07.2018 | | |
| Circular No. 121/40/2019-GST, dated 11.10.2019 [Relevant Extract] | | | |
| 2. | GST Council in its 26th meeting held on 10.03.2018 , recommended that GST was not leviable on license fee and application fee, by whatever name it is called, payable for alcoholic liquor for human consumption and that this would apply mutatis mutandis to the demand raised by Service Tax/Excise authorities on license fee for alcoholic liquor for human consumption in the pre-GST era, i.e. for the period from 01-04-2016 to 30-06-2017. | | |
| 4. | GST Council in its 37th meeting held on 20.09.2019 further recommended that the decision of the 26th GST Council meeting be implemented by notifying service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called, by State Government as neither a supply of goods nor a supply of service. Therefore, in exercise of powers conferred under sub-section 2 (b) of section 7 of CGST Act, 2017, Notification No. 25/2019-Central Tax (Rate) dated 30th September, 2019 has been issued. | | |
| 5. | GST Council further decided in the 37th meeting held on 20.09.2019 , to clarify that this special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable. | | |

2.1.13 Power of the Government to specify the transactions to be treated as supply of goods or supply of services -Section 7(3)

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| | On the recommendation of the GST Council, Government may specify, by Notification , the transactions that are to be treated as - | |
| (a) | A supply of goods and not as a supply of services; or | |

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| 7(3) | (b) | A supply of services and not as a supply of goods. |
| | | The above-mentioned power of the Government is subject to the provisions of Section 7(1) and Section 7(2) for the period 01.07.2017 to 31.01.2019. However, consequent upon omission of Section 7(1) (d) and insertion of Section 7(1A) with effect from 01.02.2019, power of the Government under Section 7(3) shall be subject to the provisions of Section 7(1), Section 7(1A) and Section 7(2) of the CGST Act. |
| | | The definition of supply consisted of four clauses. The clause (d) stated the activities to be treated as supply of goods or services as per Schedule II. However, this clause (d) being part of the definition of supply led to an understanding that an activity listed in Schedule II would be deemed to be a supply even if it does not constitute as a supply as per the first three clauses. |
| | | The intent of the Act was only for classification between goods or services once it was held to be a supply as per the first three clauses. To carry out this intention, a retrospective amendment has been made in the definition of supply with effect from 01.07.2017. |

DETERMINATION OF NATURE OF SUPPLY

2.2 Supply of Goods in the Course of Inter-State Trade or Commerce - Section 7(1), Section 7(2) and Section 7(5) of the IGST Act

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| 7(1) | Supply of goods in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in two different States/two different Union territories or a State and a Union territory. However, this sub-section is subject to the provisions of Section 10 of IGST Act which, among other things, deals with the subject of place of supply of goods other than supply of goods imported into, or exported from India. In order to determine the place of supply of goods other than supply of goods imported into or exported from India we have to refer to the provisions of Section 10 of the IGST Act which have been discussed in detail later in this chapter. |
| | Supply of goods in the course of inter-State trade or commerce means any supply where ‘ location of supplier’ and ‘ place of supply’ are in two different States/ two different Union territories or a State and a Union territory. In order to determine the place of supply one have to refer to section 10 of the IGST Act. Aforesaid Section 10 has been discussed in detail subsequently in this Chapter itself. |
| 7(2) | Supply of goods imported into the territory of India till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce. This is to further clarify that import of goods into the territory of India till they cross the customs frontiers of India, is inter-State supply of goods therefore attracting the levy of IGST i.e. tax payable on inter-state supply of goods. In simple words, importer has to pay IGST on the import of goods in addition to the applicable custom duty. |
| 7(5)(a) | Supply of goods shall be treated to be a supply of goods in the course of inter-State trade or commerce when the supplier is located in India [taxable territory] and the place of supply is outside India. |
| 7(5)(b) | Supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit shall be treated to be a supply of goods in the course of inter-State trade or commerce and shall be subject to IGST. Thus, supplier of goods to a SEZ developer or a SEZ unit shall charge IGST in the invoices raised by him even if both the supplier and SEZ developer/SEZ unit are located within the same State. Similarly, SEZ developer or a SEZ unit shall also charge IGST in the invoices raised by them to the recipient of supplies even if both SEZ developer/SEZ unit and the recipient are located within the same State. |
| 7(5)(c) | Any supply of goods in the taxable territory, not being an intra-State supply and not covered elsewhere in this section shall be treated to be a supply of goods in the course of inter-State trade or commerce and shall be subject to IGST. It is residual section and it provides that if the supply is within the taxable territory i.e. the whole of India and it does |

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| | not qualify as intra-State supply, it shall be treated as inter-State supply and shall be subject to IGST. | | | | | | | |
| 1. Circular No. 1/1/2017-IGST, dated 07.07.2017- Clarification on Inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance- regarding. | | | | | | | | |
| The issue relating to levy of IGST exemption on inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance, between distinct persons as specified in section 25(4) of the Central Goods and Services Tax Act, 2017, carrying goods or passengers or both; or for repairs and maintenance, [except in cases where such movement is for further supply of the same conveyance] has been examined. | | | | | | | | |
| 2. | In the above context, the legal provisions in GST laws are as under: | | | | | | | |
| | a) | As per section 24 (1) (i) of the Central Goods and Services Tax Act, 2017, persons making any inter-State taxable supply shall be required to be registered under this Act. | | | | | | |
| | b) | As per section 25(4) of the said Act a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act. | | | | | | |
| | c) | Schedule I to the said Act specifies situations where activities are to be treated as supply even if made without consideration which also includes 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 | | | | | | |
| | d) | Section 7(2) envisages that activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor as supply of services. | | | | | | |
| 3. | Against the above background, the issue of inter-state movement of goods like movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the said Act, not involving further supply of such conveyance, including- | | | | | | | |
| | i. | Trains | ii. | Buses | v. | Trailers | vi. | Vessels |
| | iii. | Trucks | iv. | Tankers | vii. | Containers | viii. | Aircrafts |
| | (a) | Carrying goods or passengers or both; or | | | | | | |
| | (b) | For repairs and maintenance, [except in cases where such movement is for further supply of the same conveyance] was discussed in GST Council's meeting held on 11th June, 2017 and the Council recommended that such inter-state movement shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to IGST. | | | | | | |
| 4. | In view of above, it is hereby clarified that "the inter-state movement of goods like movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the Central Goods and Services Tax Act, 2017, including the ones specified at (i) to (viii) of Para 3, may not be treated as supply and consequently IGST will not be payable on such supply. | | | | | | | |
| 5. | However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance . | | | | | | | |
| 2. Circular No. 93/12/2019-GST, dated 08.03.2019- Nature of Supply of Priority Sector Lending Certificates (PSLC)-regarding. | | | | | | | | |

2.3 Intra-State Supply of Goods-Section 8(1) of the IGST Act

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| | Supply of goods shall be treated as intra-State supply when the Location of the Supplier of goods and the Place of Supply of goods are in the same State or Union territory. However, in terms of proviso to Section 8(1) of the IGST Act, the following supply of goods shall not be treated as intra-State supply, namely: |
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| 8(1) | (i) | Supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit; |
| | (ii) | Goods imported into the territory of India till they cross the customs frontiers of India; or |
| | (iii) | Supplies made to a tourist referred to in Section 15. |
| However, supply of goods shall invariably be treated inter-State of supply of goods in accordance with provisions of Section 7(5) (b), Section 7(2) and Section 15 of the IGST Act respectively. The provisions of Place of supply of goods have been discussed immediately after this Paragraph vide Section 10 and Section 11 of the IGST Act. | | |

2.4 Determination of Place of Supply of Goods - Section 10 and Section 11 of the IGST Act, 2017

Place of supply of goods other than supply of goods imported into or exported from India - Section 10 of the IGST Act, 2017

2.4.1 Place of supply which involves movement of goods - Section 10(1)(a) of the IGST Act, 2017

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| Section 10(1) (a) provides as under: | |
| 1. | This sub section applies on such supplies of goods which involve movement of goods. Such movement of goods has been agreed to in an agreement between the supplier and the recipient. Such agreement may be in writing or verbal or may be ascertained by the conduct of parties; |
| 2. | Movement of goods shall be made either by the supplier or recipient or any other person acting on behalf of either the supplier or recipient of goods; and |
| 3. | Place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient. This principle is followed to align with the spirit of destination based consumption tax. However, the movement of goods terminates for delivery to the recipient finally and should not terminate intermittently for further transportation of goods. To illustrate, goods have to move from Delhi where the supplier of goods is located and has to move to Sikkim, where the recipient of goods is located. There is a shift in the transporter at Guwahati and the new transporter takes those goods to Sikkim. The place of supply shall be Sikkim where movement terminates for delivery of goods to ultimate customer in Sikkim. |

2.4.2 Place of supply if goods are delivered on the direction of a third person - Section 10(1)(b) of the IGST Act

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| | The place of supply of goods where goods are delivered by the supplier on the direction of third person shall be the principal place of such third person i.e. the place which is treated as principal place in the registration certificate of the third person. To say it differently, to determine the place of supply in terms of section 10(1)(b) the third person must be registered under the law as in this case the place of supply is his main place of business in the registration certificate. In fact, section 10(1) (b) of the IGST Act intends to cover two situations i.e. supply of goods on 'bill to ship to model' or 'supply of goods during the movement of goods', known popularly as E-1 sale during pre-GST regime under Central Sales Tax Act. |
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| 10(1)(b) | <p>However, applicability of section 10(1) (a) arises when a transaction involves movement of goods, thus in respect of ‘bill to ship to’ model, the provisions of Section 10(1) (a) may also apply as this transaction involves the movement of goods from one place to the other. Therefore, this situation may create confusion in the minds of the readers with respect to applicability of the relevant clauses i.e. (a) or (b) of sub-section (1) of section 10. Therefore, it is relevant to interpret/understand the difference between these two clauses and their applicability under the law.</p> |
| | <p>Both the clauses mentioned above contain the condition of movement of goods i.e. when a transaction involves movement of goods the provisions of both the above clauses comes into picture. Now the readers need to examine the case/transaction and the provision thoroughly to understand the applicability of respective provision. Here, the section 10(1)(a) of the Act has a broader applicability as it provides for only condition i.e. movement of goods and in this case the place of supply shall be the place where movement of goods terminates for delivery to the recipient, however the section 10(1)(b) of the Act provides for a specific condition i.e. delivery of goods on the direction of third person and it also provides that the place of supply shall be the principal place of business of such third person and it shall be deemed that the delivery has been made to the third person.</p> |
| 10(1)(c) | <p><u>Place of supply if the supply of goods does not involve movement of goods</u> It covers the situation where movement of goods is not involved. In simple words it covers normal supplies made by the supplier of goods over its counter or any other place of business . It is immaterial whether recipient of goods is local resident of the State where the supplier is located or has come from any other State of India or a visitor to this country from outside India. So long as the supply is complete over the counter of supplier of goods or any other place of business of supplier of goods, the place of supply shall be the location of such goods at the time of the delivery to the recipient.</p> |
| 10(1)(d) | <p><u>Place of supply if the goods are assembled or installed at site</u> The place of supply of such goods shall be the place of such installation or assembly. However, in case of composite supply which falls under the definition of works contract as defined in section 2(119) of CGST Act, provisions of section 12/13 of IGST Act shall be applicable as works contract is treated as ‘service’ in terms of schedule II of the CGST Act, 2017.</p> |
| 10(1)(e) | <p><u>Place of supply if goods are supplied on board a conveyance</u> In case of supply of goods provided on board a conveyance including vessel, aircraft, rail etc. the place of supply shall be the location at which such goods are taken on board.</p> |

2.4.3 Where place of supply cannot be determined under section 10(1) - Section 10(2) of the IGST Act

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| 10(2) | <p>In the residuary situations i.e. situations which are not specifically covered by Section 10(1), the place of supply of goods shall be determined in accordance with the Rules to be made by the Central Government. No such rules have been notified so far.</p> |
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2.5 Place of supply of goods imported into, or exported from India - Section 11 of the IGST Act

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| 11(a) | <p><u>Place of supply of goods imported into India</u> The place of supply of goods imported into India shall be the location of the importer. Again the term 'location of importer' has neither been defined in CGST Act or IGST Act.</p> <p>However, in the absence of place of business or other establishment/s location of importer of goods shall be the location of the usual place of residence of the importer. "Usual place of residence" has been defined in Section 2(113) of CGST Act and it means in case of an individual, the place where he ordinarily resides. In cases where importer of goods is not an individual, the place where such person is incorporated or is otherwise legally constituted.</p> |
| 11(b) | <p><u>Place of supply of goods exported from India</u> The place of supply of goods exported from India shall be the location outside India. However, no reference to the location of exporter or importer has been made in this sub-section. It is much easier to determine the place of supply in the case of export of goods. Furthermore, in terms of Section 7(5)(a) of IGST Act supply of goods or services or both, when the supplier is located in India and the place of supply is outside India, shall be treated as a supply of goods or services or both in the course of inter-State trade or commerce.</p> |

2.6 Determination of Inter-State supply of services - Section 7(3), Section 7(4) and Section 7(5) of the IGST Act

2.6.1 Supply of Services in the Course of Inter-State Trade or Commerce - Section 7(3), Section 7(4) and Section 7(5) of the IGST Act

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| 7(3) | <p>Supply of services in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in two different States/two different Union territories or a State and a Union territory. However, this sub-section is subject to the provisions of Section 12 of IGST Act which deals with the subject of place of supply of services where location of supplier and recipient is in India. In order to determine the place of supply of services where location of supplier and recipient is in India, we have to refer to the provisions of Section 12 of the IGST Act which have been discussed in detail later in this chapter.</p> | | |
| | <p>Supply of services in the course of inter-State trade or commerce means any supply where 'location of the supplier' and 'place of supply' are in two different States/ two different Union territories or a State and a Union territory.</p> | | |
| | <p>After analysing the definition of 'Location of supplier of services' given in Section 2(15) of the IGST Act, 2017, following inference is drawn-</p> | | |
| | S.No. | Situation | Location of the supplier of services |
| | (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 provision of the supply | |

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| | (d) | In the absence of such places | The location of the usual place of residence of the supplier |
| 7(4) | Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce. | | |
| 7(5)(a) | Supply of services shall be treated to be a supply of services in the course of inter-State trade or commerce when the supplier is located in India [taxable territory] and the place of supply is outside India. | | |
| 7(5)(b) | Supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit shall be treated to be a supply of services in the course of inter-State trade or commerce and shall be subject to IGST. Thus, supplier of services to a SEZ developer or a SEZ unit shall charge IGST in the invoices raised to them against supply of such services even if both the supplier and SEZ developer/SEZ unit are located within the same State. Similarly, supply of services by a SEZ developer or a SEZ unit to the recipient of services shall be treated to be a supply of services in the course of inter-State trade or commerce even if both are located in the same State. | | |
| 7(5)(c) | It is residual section and it provides that if the supply is within the taxable territory i.e. the whole of India and it does not qualify as intra-State supply, it shall be treated as inter-State supply and shall be subject to IGST. | | |

2.7 Intra-State Supply of Services - Section 8(2) of the IGST Act, 2017

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| 8(2) | Supply of services where the location of the supplier and the place of supply of services are in the same State or in the same Union territory shall be treated as intra-State supply. Section 12 of IGST Act deals with the place of supply of services where location of both supplier and recipient is in India. |
| Provision | Supply of services to or by a Special Economic Zone developer or a Special Economic Zone Unit shall not be included in the intra-State supply of services and therefore shall be treated as inter-State supply. Thus, supply of services by SEZ developer or SEZ unit shall always be inter-State supply of services. Similarly, inward receipt of services by SEZ developer or SEZ unit shall always be inter-State inward supply of services. |

2.7.1 Meaning of the term “An establishment in any territory” - Explanation 2 to Section 8 of the IGST Act

A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory. The term ‘person’ has been defined under section 2(84) of CGST Act and includes an individual; a Hindu Undivided Family; a company; a firm; a Limited Liability Partnership; an association of persons or a body of individuals; any corporation established by or under any Central Act, State Act or Provincial Act or a Government company; anybody corporate incorporated by or under the laws of a country outside India; a co-operative society; a local authority; Central Government or a State Government; society; trust; and every artificial juridical person, not falling within any of the above. Any individual or company or firm etc. carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory and therefore shall be treated as distinct person for the purposes of the Act.

However, Explanation 2 has also been inserted at the end of section 8 but it clearly provides that this explanation shall be applicable for the purposes of entire IGST Act, 2017.

2.8 Determination of Place of Supply of Services - Section 12 and Section 13 of the IGST Act, 2017

The basic principle of GST is that it should effectively tax the consumption of such supplies at the destination thereof or as the case may be at the point of consumption. So, place of supply provision determines the place i.e. taxable jurisdiction where the tax should reach. The place of supply determines whether a transaction is intra-state or interstate. In other words, the place of Supply of Goods or services is required to determine whether a supply is subject to SGST plus CGST in a given State or union territory or else would attract IGST if it is an inter-state supply.

2.8.1 Place of supply of services where location of both supplier & recipient is in India - Section 12 of IGST Act, 2017

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| Section 12(1) | The provisions of this section shall apply to determine the place of supply of services where location of both supplier and recipient is in India. Thus, this section shall not cover such situations where either of the two i.e. supplier of service or recipient of service is located outside India. To say it differently this section shall not be applicable in case of import of services and export of services. Provisions of section 13 of IGST act shall apply where either the supplier of services or recipient of services is outside India i.e. in the case of import and export of services. |
|---------------|---|

2.8.2 Default Provision - place of supply in case of services not falling in sub-section (3) to (14) of this section - Section 12(2)

| | |
|---|---|
| The place of supply of residuary services i.e. services not falling within the ambit of services specified in Section 12(3) to Section 12(14) shall be determined as under: | |
| Service Recipient of Residuary Services | Place of Supply of Residuary Services i.e. not falling in subsection (3) to (14) of this section |
| A Registered Person | The location of service recipient |
| A person other than a Registered Person | (i) The location of the recipient of services, where the address on the records exists; and |
| | (ii) The location of the supplier of services in other cases i.e. where the address on the records does not exist |

2.8.3 Place of supply of services in relation to an immovable property/ boat/ vessel located in India - Section 12(3)

| | |
|---|--|
| The place of supply of following services shall be the location at which the immovable property, boat or a vessel is located or intended to be located: | |
| (a) | <p><u>Services directly in relation to an immovable property</u> Services directly in relation to an immovable property including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work. The place of supply for all the services supplied by all the experts directly involved with such immovable property/boat/vessel shall be the location of such immovable property/boat/vessel where it is located or intended to be located. Further it is important to note that this clause also covers renting of such immovable</p> |

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| property/boat/vessel with or without passing the effective control or possession. In GST era both the transactions i.e. firstly where effective control and possession of such property is transferred while granting right to use and secondly where only license to use is granted without transferring the effective control or possession of such property is being considered as service in terms of Schedule II to the CGST Act. In other word's license to use or right to use immovable property/boat/vessel shall be service in GST and the place of supply shall be the location of such immovable property/boat/vessel. |
| What if a service is not directly related to immovable property? |
| Section 12 of the IGST Act, 2017 applies only to services which relate directly to specific sites of land or property. |
| In other words, the immovable property must be clearly identifiable to be the one from where, or in respect of which, a service is being provided. Thus, there needs to be a very close link or association between the service and the immovable property. Needless to say, this provision does not apply if a provision of service has only an indirect connection with the immovable property, or if the service is only an incidental component of a more comprehensive supply of services. |
| Place of supply of services when the immovable property/boat/vessel is located in more than one State/Union territory in India and there is no contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory-Rule 4 of the IGST Rules, 2017 -- Inserted w.e.f. 01.01.2019 vide N. No. 04/2018-IT, Dated 31.12.2018 |

2.8.4 Place of supply of specified performance based services - Section 12(4)

| Specified Services | | Place of Supply of Services |
|--------------------|---|--|
| 1. | Restaurant Services | Location where the services are actually performed |
| 2. | Catering Services | |
| 3. | Personal Grooming Services | |
| 4. | Fitness Services | |
| 5. | Beauty Treatment | |
| 6. | Health Services including Cosmetic and Plastic Surgery Services | |

This sub-section deals with the above specified services. What is the meaning and scope of these services, has not been prescribed in the provisions of law? How these services are being understood in common commercial parlance has to be understood for the purpose of this sub-section also as held by apex court in its judicial pronouncement.

2.8.5 Place of supply of services in relation to training and performance appraisal - Section 12(5)

| Recipient of Services in Relation to Training and Performance Appraisal | Place of Supply of Services |
|---|--|
| A Registered Person | The location of such person |
| A person other than a Registered Person | The location where the services are actually performed |

2.8.6 Place of supply of services relating to event - Section 12(6)

| Services Relating to Admission to Event/Amusement Park/Any Other Place and Services Ancillary thereto | Place of Supply of Services |
|---|---|
| Services by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and | Place where the event is actually held; or where the park or such other |

| | |
|--|-------------------|
| services ancillary thereto | place is located. |
| <p>This sub-section deals with the provision of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto and the place of supply shall be the place where the event is actually held or where the park or such other place is located. The place of supply of eligible services shall be the place where the event is held or where the park or such other place is located. Scopes of services which shall attract the provision of this sub-section are restricted to services by way of admission or ancillary to admission of such event. The nature of event as defined in this sub-section is very wide to include cultural, artistic, sporting, scientific, educational, entertainment event and admission to amusement park or any other place.</p> | |
| <p>Scope of ancillary service in relation to admission</p> | |
| <p>A service of security agency used for regulating the entry for admission in Music Show for an event is a service that is ancillary to admission to the event. A service of courier agency used for distribution of entry tickets for an event is a service that is not ancillary to admission to the event.</p> | |

2.8.7 Place of supply of other event related services - Section 12(7)

| Other event related services | Service recipient | Place of supply of services | |
|--|--|--|-------------------------------|
| Services provided by way of, - (a) Organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or (b) Services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events, | (i) A Registered person | The location of such person | |
| | (ii) A person other than a registered person | (a) If the event is held in India | Place where the event is held |
| | | (b) If the event is held outside India | The location of the recipient |
| Explanati onto Section 12(7) | Place of Supply of other event related services when the event is held in more than one State or Union territory Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed vide Rule 5 of the IGST Rules, 2017 which has been inserted with effect from 01.01.2019 vide N. No. 04/2018-IT, dated 31.12.2018. | | |
| Presence or Absence of Contract or Agreement | Place of Supply of Other Event Related Services when event is held in more than one State or Union territory | | |
| (A) If there is Contract or agreement | Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard | | |

| | |
|--|---|
| (B) If there is no Contract or Agreement | <p><u>With effect from 01.01.2019</u></p> <p>Place of supply of services shall be determined by application of the generally accepted accounting principles.</p> <p>Illustration: An event management company E has to organise some promotional events in States S1 and S2 for a recipient R. 3 events are to be organised in S1 and 2 in S2. They charge a consolidated amount of Rs.10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as Rs. 6,00,000/- in S1 and Rs. 4,00,000/- in S2</p> |
| | <p><u>For the period 01.07.2017 to 31.12.2018</u></p> <p>Place of supply of services shall be determined on such other basis as may be prescribed.</p> |

2.8.8 Place of supply of services by way of transportation of goods - Section 12(8)

| Services by Way of Transportation of Goods Including by Mail or Courier | |
|--|---|
| Service Recipient | Place of supply of services |
| (a) A Registered Person | <p><u>With effect from 01.02.2019</u></p> <p>The location of such person. However, where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.</p> |
| | <p><u>For the Period 01.07.2017 to 31.01.2019</u></p> <p>The location of such person.</p> |
| (b) A person other than a Registered Person | <p><u>With effect from 01.02.2019</u></p> <p>The location at which such goods are handed over for their transportation. However, where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods</p> |
| | <p><u>For the Period 01.07.2017 to 31.01.2019</u></p> <p>The location at which such goods are handed over for their transportation.</p> |
| <p>Section 12(8) deals with the services supplied by way of transportation of goods including mail or courier provided to a recipient located in India. Such transportation of goods can be made by any mode of transportation including Mail or Courier. Unlike pre-GST regime of service tax wherein transportation of goods was categorized into various categories such as transportation of goods by road, rail, air, ship etc. In GST no such categorisation has been done and transportation of goods by any mode of transportation shall be governed by this sub-section and the place of supply shall be as explained in the table above.</p> | |

2.8.9 Place of supply of passenger transportation service - Section 12(9)

| Service Recipient | Place of Supply of Service |
|---|---|
| (a) A Registered Person | The location of such person |
| (b) A person other than a Registered Person | <p>The place where the passenger embarks on the conveyance for a continuous journey. It is necessary to highlight here that for the purpose of Section 12(9), Return Journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.</p> <p>However, proviso to Section 12(9) provides that where the right to passage is given for future use and the point of embarkation is not known</p> |

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| | at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of Section 12(2) which has already been discussed earlier. |
|--|--|

2.8.10 Place of supply of services on board a conveyance - Section 12(10)

| |
|---|
| <p>The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.</p> |
| <p>Any service provided on board a conveyance (a vessel, an aircraft, a train or a motor vehicle) shall be covered in this sub-section. Some examples are on board service of movies/music/video/ software games on demand, beauty treatment etc., when provided against a specific charge, and not supplied as part of the fare. The place of supply of services provided on board a conveyance during the course of a passenger transport operation is the first scheduled point of departure of that conveyance for the journey.</p> |

2.8.11 Place of supply of telecommunication services - Section 12(11)

The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person has been given in the tabular form for the convenience of the readers:

| S.No. | Different Situations | Place of Supply of Services |
|--------------|---|--|
| (a) | In case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna | <p>Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services.</p> <p>Explanation to Section 12(11) where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed</p> |
| (b) | In case of mobile connection for telecommunication and internet services provided on post-paid basis | <p>Location of billing address of the recipient of services on therecord of the supplier of services.</p> <p>However, in terms of first proviso to Section 12(11), where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services.</p> |

| | | |
|-----|---|---|
| (c) | In cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means, - (i) Through a selling agent or a re-seller or a distributor of subscriber identity module (SIM) card or recharge voucher, or | The address of the selling agent or re-seller or distributor as per the records of the supplier at the time of supply. Second proviso to Section 12(11) if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services. |
| | (ii) By any person to the final subscriber | The location where such pre- payment is received or such vouchers are sold |
| (d) | In other cases, | The address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services |

One should not get misled with the term 'telecommunication services' as understood in common commercial parlance as this provision also deal with following services in addition to the telecommunication services: -

| | | | |
|----|------------------------|----|-------------------------------------|
| 1. | Date Transfer; | 3. | Cable services; and |
| 2. | Broadcasting Services; | 4. | Direct to Home Television services. |

In this provision attempt has been made to follow the destination based consumption principle as is clear from the clarifications issued by the department reproduced hereunder.

Explanation to Section 12(11) where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed. No basis had been prescribed until 31.12.2018. However, with effect from 01.01.2019 Rule 6 of the IGST Rules, 2017 has been inserted vide Notification No. 04/2018-IT, dated 31.12.2018.

Rule 6 in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, place of supply of Telecommunication Services, in the case of supply of services relating to a leased circuit where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of such services shall be determined in the manner given below:

| | | |
|-----|--|--|
| (a) | The number of points in a circuit shall be determined in the following manner: | |
| | (i) | In the case of a circuit between two points or places, the starting point or place of the circular and the endpoint or place of the circuit will invariably constitute two points; |
| | (ii) | Any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point. |
| (b) | The supply of service shall be treated as made in each of the respective States or Union territories, in proportion to the number of points lying in the State or Union territory. | |

2.8.12 Place of supply of banking and other financial services - Section 12(12)

| Services Covered | Service Recipient | Place of Supply |
|-------------------|-------------------|---|
| Banking and other | | Location of the recipient of services on the records of the supplier of services. |

| | | |
|---|------------|--|
| financial services including stock broking services | Any person | However, in terms of proviso to Section 12(12) if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services |
|---|------------|--|

Banking and other financial services including stock broking services

The place of supply of goods or services numbers of words/terms has been used but the scope of which cannot be determined in the absence of definition of these words/terms provided in the Act. It can be subject matter of dispute between the department and registered person in the times to come after the appointed date. It is a new law and these confusions can result into wrong classification of supplies i.e. inter-State or intra-State and vice versa which will have huge financial implications for the registered person for no fault of theirs. It is suggested that wherever these terms have the possibility of having implication on classification of supplies must be either defined or at least clarification be issued to avoid the unwanted litigations.

2.8.13 Place of Supply of Insurance Services - Section 12(13)

| Service Recipient of Insurance Services | Place of Supply of Services |
|---|--|
| (a) A Registered Person | The location of such person |
| (b) A person other than a Registered Person | The location of the recipient of services on the records of the supplier of services |

This sub-section deals with the place of supply of insurance services provided by one person to another person. Further “ insurance services ” have been specified in this sub section. In short, the place of supply of insurance services shall to a registered person, be the location of such person; and to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.

2.8.14 Place of supply of advertisement services to Government - Section 12(14)

| Place of Supply of Advertisement Services to Government | |
|---|---|
| Service Recipient | Place of Supply of Services |
| The Central Government, a State Government, a statutory Body, a Local Authority meant for the States or Union territories identified in the contract or agreement | In each of such States or Union territories |
| | However, the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard . However, in the absence of such contract or agreement, the value of Advertisement Service attributable to dissemination in each State or Union territory shall be determined in accordance with Rule 3 of the IGST Rules, 2017 which is applicable with effect from 01.07.2017. |

The determination of value for respective State or Union territory is made to satisfy the test of destination based consumption tax. Summary of such rule has been given below:

N. No 12/2017-IT, dated 15.11.2017 made applicable w.e.f. 01.07.2017

| IGST Rule | Mode of Advertisement | value of advertisement services attributable to dissemination in each State or Union territory in the absence of the contract between the supplier of service and recipient of services |
|------------------|---|--|
| Rule 3(a) | Newspapers and Publications | The amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in a State or Union territory |
| Rule 3(b) | Printed Material like Pamphlets, Leaflets, Diaries, Calendars, T-shirts etc. | The amount payable for the distribution of a specific number of such material in a particular State or Union territory |
| Rule 3(c)(i) | Hoardings other than those on Trains | The amount payable for the hoardings located in each State or Union territory |
| Rule 3(c)(ii) | Advertisements placed on Trains | The breakup, calculated on the basis of the ratio of the length of the railway track in each State for that train |
| Rule 3(d)(i) | Advertisements on the back of utility bills of Oil and Gas Companies etc. | The amount payable for the advertisements on bills pertaining to consumers having billing addresses in such States or Union territory |
| Rule 3(d)(ii) | Advertisement on Railway Tickets | The breakup, calculated on the basis of the ratio of number of Railway Stations in each State or Union territory |
| Rule 3(e) | Advertisements over Radio Stations | The amount payable to such radio station, which by virtue of its name is a part of a State or Union territory |
| Rule 3(f) | Advertisements over Television channels | Viewership of such channel in such State or Union territory |
| Rule 3(g) | Advertisements at Cinema Halls | The amount payable to a Cinema Hall or Screens in a Multiplex in a State or Union territory |
| Rule 3(h) | Applicable For the period 01.07.2017 to 31.12.2018 vide N.No.04/2018-IT (dated 1.12.2018)- Advertisements over Internet, the service shall be deemed to have been provided all over India (W.e.f. 01.01.2019) | Number of Internet Subscribers in a State or Union territory |
| Rule 3(i) | Advertisements through Short messaging Service [SMS] | Number of Telecommunication [Telecom] Subscribers |

Note: Department has given number of illustrations to explain various sub-rules of rule 3 of IGST Rules. Interested readers may refer to N.N.12/2017 dated 15.11.2017-IT in the section dealing with the notifications.

2.9 Place of supply of services when either the location of the supplier of services or the location of the recipient of services is outside India - Section 13 of the IGST Act

| | | |
|-------|---|--|
| 13(1) | <p><u>Scope</u> Determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India. This section contains 13 sub-sections, subsection (2) is default sub-section and shall apply where sub-section (3) to (13) are not applicable. Each of the sub-sections i.e. (3) to (13) deals with the place of supply of specific services and the same is discussed hereunder:</p> | |
| 13(2) | <p><u>Default Provision - Place of supply in case of services not falling under section 13(3) to 13(13)</u> The place of supply of residuary services i.e. services not falling within the ambit of services specified in Section 13(3) to Section 13(13) shall be determined as under:</p> | |
| | <p>The place of supply of services except the services specified in sub - sections (3) to (13)</p> | |
| | | <p>Service Recipient of Residuary Services</p> |
| | | <p>Place of Supply</p> |
| | | <p>(a) Where the location of the recipient of services is available in the ordinary course of business</p> |
| | <p>(b) Where the location of the recipient of services is not available in the ordinary course of business</p> | <p>Location of the supplier of services</p> |
| | <p>This is the default sub-section and shall apply in all such situations which do not get covered under the provisions of Section 13(3) to 13(13). The place of supply of services shall be the location of the recipient of services and where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.</p> | |

2.9.1 Place of Supply of Performance Based Services - Section 13(3)

| | |
|---------------|---|
| 13(3)(a) | <p>Place of supply of any service provided in respect of goods that are required to be made physically available by recipient of the service to the provider of service shall be location where the services are actually performed. Services that are related to goods, and which require such goods to be made available to the service provider so that the service can be rendered, are covered here. Examples of such services are repair, reconditioning, or any other work on goods, storage and warehousing, courier service, cargo handling service (loading, unloading, packing or unpacking of cargo), technical testing/inspection/certification/ analysis of goods, dry cleaning etc. It will not cover services where the supply of goods by the receiver is not material to the rendering of the service e.g. where a consultancy report commissioned by a person is given on a pen drive belonging to the customer. Similarly, provision of a market research service to a manufacturing firm for a consumer product (say, a new detergent) will not fall in this category, even if the market research firm is given say, 1000 nos. of 1-kilogram packets of the product by the manufacturer, to carry for door-to-door surveys.</p> |
| First Proviso | <p><u>When such services are provided on goods from a remote location by way of electronic means</u> In the field of Information Technology, it is not uncommon to provide services in relation to tangible goods located distantly from a remote location. Thus, the actual place of performance of the service could be quite different from the actual location of the tangible goods. This proviso requires that the place of provision shall be the actual location of the goods and not the place of performance, which in normal situations is one and the same.</p> |
| | <p><u>Services supplied in respect of goods which are temporarily imported into India for Repairs or for any other Treatment or Process</u></p> |

| | | |
|----------------|---|--|
| Second Proviso | <p>Services supplied in respect of goods which are temporarily imported into India for repairs or (with effect from 01.02.2019) any other treatment or process and are exported after such repairs or treatment or process, without being put to any use in India, other than that which is required for such repairs or treatment or process shall not be covered under Section 13(3) (a). Place of supply of aforesaid services in respect of such repairs or, any other treatment or process shall be location of recipient of such services in accordance with General Section 13(2). As a result, the place of Supply of aforesaid services shall be outside India. Basic purpose of such exclusion is not to charge any tax on such repairs or, any other treatment or process.</p> | |
| 13(3)(b) | <p><u>Services supplied to an individual which require the physical presence of the recipient for the supply of services</u></p> <p>Certain services like cosmetic or plastic surgery, beauty treatment services, personal security service, health and fitness services, photography service (to individuals), internet café service, classroom teaching, are examples of services that require the presence of the individual receiver for their provision. As would be evident from these examples, the nature of services covered here are such as are rendered in person and in the receiver's physical presence. Though these services are generally rendered at the service provider's premises (at a cosmetic or plastic surgery clinic, or beauty parlour, or health and fitness centre, or internet cafe), they could also be provided at the customer's premises, or occasionally while the receiver is on the move (say, a personal security service; or a beauty treatment on board an aircraft).</p> <p>This implies that while a service in this category is capable of being rendered only in the presence of an individual, it will not matter if, in terms of the contractual arrangement between the provider and the receiver (formal or informal, written or oral), the service is actually rendered by the provider to a person other than the receiver, who is acting on behalf of the receiver.</p> | |
| | Scope of Services Covered | Place of Supply |
| | <p>Services in respect of goods to be made physically available to the supplier of services</p> <p>(i) Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services.</p> | <p>Location where the services are actually performed</p> |
| | <p>(ii) When such services are provided on goods from a remote location by way of electronic means - First Proviso to Section 13(3)(a)</p> | <p>Location where goods are situated at the time of supply of services</p> |
| (a) | <p>(iii) <u>Applicable with effect from 01.02.2019</u></p> <p>Services supplied in respect of goods which are temporarily imported into India for Repairs or for any other Treatment or Process -Substituted Second Proviso to Section 13(3)(a)</p> <p>In case of services supplied in respect of goods which are temporarily imported into India for repairs or any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, than that which is required for such repairs or treatment or process, provisions of Section 13(3) (a) shall not apply. Consequently, the aforesaid services shall fall within the purview of General Section 13(2).</p> <p><u>For the period 01.07.2017 to 31.01.2019</u></p> <p>Services supplied in respect of goods which are temporarily imported into India for repairs - Second Proviso to Section 13(3)(a)</p> <p>In case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after such repairs without being put to any other use in India , than that which is required for such repairs , provisions of Section 13(3)(a) shall not apply. Consequently, the aforesaid services shall fall within the purview of General Section 13(2).</p> | |

| | | |
|-----|--|--|
| (b) | Services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services | Location where the services are actually performed |
|-----|--|--|

2.9.2 Place of supply of services supplied directly in relation to an immovable property - Section 13(4)

| Scope of Services Covered | | Place of Supply |
|---|--|---|
| Services supplied directly in relation to an immovable property, including any of the following services: | | Where the immovable property is located or is intended to be located. |
| (a) | Services supplied in this regard by experts and estate agents, | |
| (b) | Supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, | |
| (c) | Grant of rights to use immovable property, | |
| (d) | Services for carrying out or co-ordination of construction work, including that of architects or interior decorators | |

This sub-section deals with the place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

In order to attract the provision of this sub-section, eligible services should be directly in relation to immovable property. The place of provision of such services shall be the place where the immovable property is located or is intended to be located. It is an inclusive definition and provides that following services shall be squarely covered under the ambit of this sub-section to determine the place of supply of such services. It is an inclusive definition, services similar to which have been specifically included shall also attract the provision of this sub-section though not specifically included in the sub-section. Specific services included in Section 13(4) are:

| | |
|-----|---|
| (a) | Services provided by experts and estate agents; |
| (b) | Provision of hotel accommodation by a hotel, inn, guest house, club or campsite, by whatever, name called; |
| (c) | Grant of rights to use immovable property; or |
| (d) | Services for carrying out or co-ordination of construction work, including architects or interior decorators etc. |

2.9.3 Place of supply of event related services - Section 13(5)

| Services Covered | Place of Supply |
|---|--|
| Services supplied by way of admission to , or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organization | Place where the event is actually held |

| | |
|--|--|
| <p>This sub-section deals with the provision of services provided by way of admission to or organization of specific events [or similar services ancillary to such admission or organization] as enumerated in this sub-section. The place of supply of eligible services shall be the place where the event is held. Scope of services which shall attract the provision of this sub-section are restricted to services by way of admission or organization of specific events or ancillary to such admission or organization of such event. The nature of event as defined in this Section is very wide to include a celebration, conference, fair, exhibition, or any other similar event such event may be a cultural, artistic, sporting, scientific, educational, entertainment or similar such event. Services in relation to such eligible event but not related to admission or organization of such event shall not be governed by this sub-section and shall be governed by default sub-section i.e. Section 13(2).</p> | |
| <p>What is the place of supply of services relating to events?</p> | |
| <p>Place of supply of services provided by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational, entertainment event, or a celebration, conference, fair exhibition or any other similar event and of services ancillary to such admission, shall be the place where the event is held.</p> | |
| <p>What are the services that will be covered in this category?</p> | |
| <p>Services in relation to admission as well as organization of events such as conventions, conferences, exhibitions, fairs, seminars, workshops, weddings, sports and cultural events are covered under Section 13(5).</p> | |
| <p>What is a service ancillary to organization or admission to an event?</p> | |
| <p>Provision of sound engineering for an artistic event is a prerequisite for staging of that event and should be regarded as a service ancillary to its organization. A service of hiring a specific equipment to enjoy the event at the venue (against a charge that is not included in the price of entry ticket) is an example of a service that is ancillary to admission.</p> | |
| <p>What are event-related services that would be treated as not ancillary to admission to an event?</p> | |
| <p>A service of courier agency used for distribution of entry tickets for an event is a service that is not ancillary to admission to the event.</p> | |

2.9.4 Place of supply of services if any services referred in section 13(3) or 13(4) or 13(5) is supplied at more than one location - Section 13(6)

| Services Covered | Place of Supply |
|--|-----------------------------------|
| Any services referred in Section 13(3) or Section 13(4) or Section 13(5) is supplied at more than one location including a location in the taxable territory | Location in the taxable territory |

This sub-section deals with the place of supply where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

Where performance based services 13(3) or services directly related to immovable property 13(4) or services by way of admission to or organization of specific event 13(5) are supplied, as discussed above, at more than one location and it includes a location in the taxable territory, provision of this sub-section shall get attracted and place of supply shall be the location in the taxable territory. Thus, the place of supply shall be the location in the taxable territory. Further, services supplied in the non-taxable territory, shall have no significance for the purpose of determining the place of supply. If no service is supplied within taxable territory this rule shall not have any applicability.

Section 13(6) covers situations where the actual performance of a service is at more than one location, and occasionally one(or more) such locations may be outside the taxable territory. This sub-section is, however, not intended to capture insignificant portion of a service rendered in any part of the taxable territory like mere issue of invoice, processing of purchase order or recovery, which are not by way of service actually supplied on goods.

2.9.5 Place of supply of services if services referred in section 13(3) or section 13(4) or section 13(5) are supplied in more than one state or union territory - Section 13(7)

Where performance based services 13(3) or services directly related to immovable property 13(4) or services by way of admission to or organization of specific event 13(5) are supplied, as discussed above, at more than one State or Union territory, provision of this sub-section shall get attracted. The place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard.

Determination of Value of Performance-Based Services in the Absence of a Contract or Agreement Between the Supplier and Recipient

(A) For the period 01.07.2017 to 31.12.2018 -No basis had been prescribed

The value of such supplies specific to each State or Union territory shall be determined on such other basis as may be prescribed. No basis had been prescribed for the period 01.07.2017 to 31.12.2018.

(B) With effect from 01.01.2019-Insertion of Rule 7 of the IGST Rules

| S. No. | Different Situations | Manner of determining value of supply of services |
|--------|--|--|
| (i) | Services supplied on the Same Goods | By equally dividing the value of the service in each of the States and Union territories where the service is performed Situation 1: A company C which is located in Kolkata is providing the services of testing of a dredging machine and the testing service on the machine is carried out in Orissa and Andhra Pradesh. The place of supply is in Orissa and Andhra Pradesh and the value of the service in Orissa and Andhra Pradesh will be ascertained by dividing the value of the service equally between these two States. |
| (ii) | Services supplied on the Different Goods | By taking the ratio of the Invoice Value of goods in each of the States and Union territories on which service is performed Situation 2: A company C which is located in Delhi is providing the service of servicing of two cars belonging to Mr. X. One car is of manufacturer J and is located in Delhi and is serviced by its Delhi workshop. The other car is of manufacturer A and is located in Gurugram and is serviced by its Gurugram workshop. The value of service attributable to the Union Territory of Delhi and the State of Haryana respectively shall be calculated by applying the ratio of the invoice value of car J and the invoice value of car A, to the total value of the service. |
| (iii) | Services supplied to Individuals | By applying the Generally Accepted Accounting Principles Situation 3: A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles. |

Determination of value of immovable property related services in the absence of a contract or agreement between the supplier and recipient

(A) For the period 01.07.2017 to 31.12.2018 -No basis had been prescribed

The value of such supplies specific to each State or Union territory shall be determined on such other basis as may be prescribed. No basis had been prescribed for the period 01.07.2017 to 31.12.2018.

(B) With effect from 01.01.2019-Insertion of Rule 8 of the IGST Rules, 2017

Rule 8 of the IGST Rules, 2017 has been inserted vide Notification No. 04/2018-IT, dated 31.12.2018.

Aforesaid Rule 8 provides that in the absence of any agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each State or Union territory, the value of supply of services in each of the States and Union territories shall be determined by applying the provisions of Rule 4 of the IGST Rules, 2017. Aforesaid Rule 4 deals with determination of place of supply where such immovable property or boat or vessel is located in more than one State or Union territory.

Determination of value of event related services in the absence of a contract or agreement between the supplier and recipient

(A) For the period 01.07.2017 to 31.12.2018 -No basis had been prescribed

The value of such supplies specific to each State or Union territory shall be determined on such other basis as may be prescribed. No basis had been prescribed for the period 01.07.2017 to 31.12.2018.

(B) With effect from 01.01.2019-Insertion of Rule 9 of the IGST Rules, 2017

Rule 9 provides that in the absence of any agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each State or Union territory, the value of supply of services in each of the States and Union territories shall be determined by applying the provisions of Rule 5 of the IGST Rules, 2017. Aforesaid Rule 5 deals with determination of place of supply where event related services are supplied to a person other than a registered person and the event is held in more than one State or Union territory.

2.9.6 Place of supply of specified services - Section 13(8)

| | Specified Services | Place of Supply |
|--|--|--------------------------------------|
| (a) | Services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders | Location of the supplier of services |
| (b) | Intermediary Services | |
| (c) | Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month | |
| Services Supplied by a banking company, or a financial institution, or a non-banking financial company to its account holders - Section 13(8)(a) | | |

Services provided by a banking company etc. to its account holder are covered under this sub-section whereas services provided by banking company etc. to persons other than account holder shall not get covered by this sub-section i.e. Section 13(8). Such services shall be governed by the provisions of section 13(2) as discussed above. Readers need to be very careful as Section 13(2) and Section 13(8) are exactly opposite to each other. Services provided by the banking company etc. firstly, shall be classified into two categories i.e. provided to account holders and persons other than account holder.

Definition of account holder as provided has been provided in the table provided hereinabove and not discussed here for the sake of brevity. Therefore, services provided by banking company etc. to its account holder shall alone be covered by this sub-section whereas services provided to persons other than account holder/s shall be governed by the provisions of section 13(2) as discussed supra.

What is the meaning of term “account holder”? Which accounts are not covered by Section 13(8)(a)?

“Account” has been defined in the Rules to mean an account which bears an interest to the depositor. Services provided to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under Section 13(8)(a). Banking services supplied to persons other than account holders will be covered under the default Section 13(2).

What are the services that are provided by a banking company to an account holder (holder of an account bearing interest to the depositor)?

Following are examples of services that are provided by a banking company or financial institution to an “account holder”, in the ordinary course of business: -

| | |
|-----|---|
| (i) | Services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker etc.; |
|-----|---|

| | |
|------|---|
| (ii) | Transfer of money including telegraphic transfer, mail transfer, electronic transfer etc. |
|------|---|

What are the services that are not provided by a banking company or financial institution to an account holder, in the ordinary course of business, and will consequently be covered under another sub-section of Section 13?

In the case of any service which does not qualify as a service provided to an account holder, the place of provision will be determined under the default section i.e. 13(2). Thus, it will be the location of the service receiver where it is known (ascertainable in the ordinary course of business), and the location of the service provider otherwise.

Intermediary Services - Section 13(8)(b)

As per section 2(13) of IGST Act, 2017“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

This sub-section covers the services which satisfy the following conditions cumulatively: -

| | |
|-----|---|
| (a) | Services shall be supplied by a broker, an agent or any other person, by whatever name called; |
| (b) | Such broker, agent etc. arranges or facilitates the supply of goods or services or both or securities between two or more person. Resultantly, there shall be at least three parties namely supplier of goods or services or both or securities, receiver of goods or services or both or securities, and the broker/agent etc. and |
| (c) | Such broker, agent etc. does not supply such goods or services or both or securities on his own account. |

Commission Agent vs Intermediary

In these provisions ‘Intermediary’ means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a supply of a service or goods or both or securities between two or more persons, but does not include a person who supply such goods or services or both or securities on his own account. This definition clearly implies that the scope of intermediary is much wider than commission agent as understood in common commercial parlance. Commission agent, in common commercial parlance, means a person who causes sale or purchase of goods whereas intermediary means a person who arranges or facilitate supply of goods or services or both or securities. Arranging or facilitating supply of goods or services or both or securities is much wider than causing sale or purchase of goods or services or both or securities. Services likely to be covered in the phrase “arranging or facilitating supply of goods or services or both or securities” will certainly be much wider and comprehensive as compare to “causing sale or purchase of goods or services or both or securities”.

Generally, an “intermediary” is a person who arranges or facilitates a supply of goods or services or both or securities between two persons, without material alteration or further processing. Thus, an intermediary is involved with two supplies at any one time:

| | |
|------|--|
| (i) | The supply between the principal and the third party; and |
| (ii) | The supply of his own service (agency service) to his principal, for which a fee or commission is usually charged. |

For the purpose of this section exclusion has been provided to a person who arranges or facilitates supply of goods or services or both or securities on his own account., services supplied by the following persons will qualify as ‘intermediary services’: -

| | | | |
|------|-----------------------------------|-------|---|
| (i) | Travel Agent (any mode of travel) | (iii) | Commission agent of goods or services or both or securities |
| (ii) | Tour Operator | (iv) | Recovery Agent |

Even in other cases, wherever a supplier of any goods or service or both or securities acts as an agent for another person, as identified by the guiding principles outlined above, this provision will apply.

Normally, it is expected that the intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of the 'main supplier'.

| |
|---|
| Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month - Section 13(8)(c) |
|---|

The place of supply of services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month shall be the location of service provider. The term "means of transport" has not been defined in GST Laws but in common parlance it means any conveyance designed to transport goods or persons from one place to another. Therefore, those shipping companies, engaged in the business of hiring aircraft/vessel/s, which are situated in India, were liable to pay tax under GST in order to provide level playing field to such companies aircrafts and vessels (excluding yachts) will be excluded from the provisions of this sub-section and will be governed by section 13(2) of IGST Act. Consequently, the place of provision in respect of hiring of (i) aircrafts and (ii) vessels excluding yachts shall be the location of the service recipient instead of location of service provider. Thus, a person giving an aircraft/vessel on hire to another person located in non-taxable territory shall not be liable to pay tax under GST.

2.9.7 Place of supply of services of transportation of goods - Section 13(9)

| | | |
|--|--|--|
| 13(9) | The place of supply of services of transportation of goods by any mode of transport (air, vessel, rail or by road), other than by way of mail or courier. The place of supply shall be the place of destination of such goods. | |
| Scope of Services Covered | Place of Supply | |
| Services of transportation of goods, other than by way of mail or courier. | Place of destination of such goods | |

2.9.8 Place of supply of services of passenger transportation - 13(10)

| | |
|--------------------------------------|--|
| Scope of Services Covered | Place of Supply |
| Services of Passenger Transportation | Place where the passenger embarks on the conveyance for a continuous journey |

This sub-section deals with the place of supply in respect of passenger transportation services. Place of supply shall be the place where the passenger embarks on the conveyance for a continuous journey.

2.9.9 Place of supply of services provided on board a conveyance - Section 13(11)

| | |
|--|---|
| Scope of Services Covered | Place of Supply |
| Services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board. | First scheduled point of departure of that conveyance for the journey |

This sub-section deal with the place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board. Place of supply shall be the first scheduled point of departure of that conveyance for the journey.

2.9.10 Place of Supply of OIDAR Services - Section 13(12)

| | |
|---|---------------------------------------|
| Services Covered | Place of Supply |
| Online information and database access or retrieval services ['OIDAR Services'] | Location of the recipient of services |

| | |
|--|---|
| | . |
| This sub-section deals with the place of supply of online information and database access or retrieval services. Place of supply shall be the location of the recipient of services. | |

2.9.11 Power to Notify Services/Circumstances in Which the Place of Supply shall be Place of Effective Use and Enjoyment of a Service - Section 13(13)

In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

2.10 Supplies in Territorial Waters - Section 9 of the IGST Act

This is a non-obstante clause which means that provisions of this section shall prevail if there is any conflict between this section and other provisions of act. A careful perusal of Section 9 of the IGST Act, 2017 reveals as under:

In each of the following independent situations, the location of the supplier or as the case may be, the place of supply shall be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located:

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Vivek Purohit