CHAPTER 1

SUPPLY UNDER GST



The section numbers referred to in the Chapter pertain to the CGST Act, 2017, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2026.

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- comprehend the taxable event under GST
- analyse the taxable event – Supply – its meaning and scope.
- identify the transactions that will amount to supply even without any consideration.
- identify the transactions which will be neither the supply of goods nor the supply of services.
- classify the specified transactions either as supply of goods or as supply of services.
- explain the meaning of composite and mixed supplies and their taxability under GST.

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This chapter explains in detail the concept of taxable event under GST. However, it is advisable to first go through the basic concepts of GST as introduced in India. The same is given at the end of the chapter as **Annexure -1. The same is only for the understanding of the students and is not relevant from the examination point of view**.

1. TAXABLE EVENT UNDER GST - SUPPLY



A **taxable event** is any transaction or occurrence that results in a tax consequence. Before levying any tax, taxable event needs to be ascertained. It is the foundation stone of any taxation system; it determines the point at which tax would be levied.

Under the earlier indirect tax regime, the framework of taxable event in various statutes was prone to catena of interpretations resulting in litigation since decades. The controversies largely related to issues like whether a particular process amounted to manufacture or not, whether the sale was pre-determined sale, whether a particular transaction was a sale of goods or rendering of services etc.





The GST laws resolve these issues by laying down one comprehensive taxable event i.e. **"Supply"** - Supply of goods or services or both. Various taxable events namely manufacture, sale, rendering of service, purchase, entry into a territory of State etc. that existed prior to introduction of GST have been done away with in favour of just one event i.e. **Supply**.

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The GST Law, by levying tax on the 'supply' of goods and/or services, departs from the historically understood concepts of 'taxable event' under the State VAT Laws, Excise Laws and Service Tax Law i.e. sale, manufacture and provision of services respectively.

In the GST regime, the entire value of supply of goods and/or services is taxed in an integrated manner, unlike the earlier indirect taxes, which were charged independently either on the manufacture or sale of goods, or on the provision of services.

2. RELEVANT DEFINITIONS

- **Goods:** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Section 2(52)].

- **Services:** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

  Explanation: For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities [Section 2(102)].

- **Principal:** means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both [Section 2(88)].

- **Competent authority:** means such authority as may be notified by the Government [Section 2(29].

- **Family:** means, —

  (i) the spouse and children of the person, and

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(ii) the parents, grand-parents, brothers and sisters of the person **if they are wholly or mainly dependent on the said person** [Section 2(49)].

❖ **Government:** means the Central Government [Section 2(53)].

❖ **Local authority:** means —

(a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution.

(b) a "Municipality" as defined in clause (e) of article 243P of the Constitution.



(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal ***fund*** or local fund.

Explanation.—For the purposes of this sub-clause-

"local fund" means any fund under the control or management of an authority of a local self-government established for discharging civic functions in relation to a Panchayat area and vested by law with the powers to levy, collect and appropriate any tax, duty, toll, cess or fee, by whatever name called.

"municipal fund" means any fund under the control or management of an authority of a local self-government established for discharging civic functions in relation to a Metropolitan area or Municipal area and vested by law with the powers to levy, collect and appropriate any tax, duty, toll, cess or fee, by whatever name called.

In simple words, local fund is a fund controlled by a local governing body for civic functions in a Panchayat (rural) area, backed by the legal power to levy and collect tax, duty, toll, cess or fee. Municipal fund is also the same, but for civic functions in a Metropolitan or Municipal (urban) area.

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(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006.

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution.

(f) a Development Board constituted under article 371 and article 371J of the Constitution.

(g) a Regional Council constituted under article 371A of the Constitution [Section 2(69)].

❖ **Consideration:** in relation to the supply of goods or services or both includes:

- ❑ any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall **not include** any subsidy given by the Central Government or a State Government,
- ❑ the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the **supply** of goods or services or both, whether by the recipient or by any other person but shall **not include** any subsidy given by the Central Government or a State Government.

However, **a deposit** given in respect of the supply of goods or services or both shall **not be considered** as payment made for such supply unless the supplier applies such deposit as consideration for the said supply [Section 2(31)].

❖ **Business:** includes –

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(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to (a) above;

(c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;

(f) admission, for a consideration, of persons to any premises; and

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities

[Section 2(17)].

❖ **Actionable claim:** means a claim to any debt, **other than** a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent [Section 2(1) of CGST Act read with section 3 of the Transfer of Property Act, 1882].

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- **Manufacture:** means processing of raw material or inputs in any manner that results in **emergence of a new product** having a distinct name, character and use and the term "manufacturer" shall be construed accordingly [Section 2(72)].



- **Money:** means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value [Section 2(75)].



- **Taxable supply:** means a **supply** of goods or services or both which is leviable to tax under this Act [Section 2(108)].
- **Taxable territory:** means the territory to which the provisions of this Act apply [Section 2(109)].
- **Non-taxable territory:** means the territory which is outside the taxable territory [Section 2(79)].
- **India:** means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters. [Section 2(56)].

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❖ **Supplier**: in relation to any goods or services or both, shall mean the person supplying the said goods or services or both **and shall include** an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105)].

However, a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims [Section 2(105)].

❖ **Recipient**: of supply of goods and/or services means-

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration,

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply

and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93)].

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❖ **Person:** includes [Section 2(84)]-

- An individual
- A HUF
- A company
- A firm
- Trust
- A Limited Liability Partnership
- A local authority
- An association of persons or a body of individuals, whether incorporated or not, in India or outside India
- Any corporation established by/under any Central, State or Provincial Act or Government company as defined in section 2(45) of Companies Act, 2013
- Any body corporate incorporated by or under the laws of a country outside India
- Central Government/State Government
- A co-operative society registered under any law relating to cooperative societies
- Society as defined under the Societies Registration Act, 1860
- Every artificial juridical person, not falling above



✪ ***Definitions in which the expression "means" has been used are exhaustive definitions. Consequently, the scope of these definitions cannot be expanded.***

✪ ***Definitions in which the expression "includes" has been used are inclusive and are not exhaustive definitions. Resultantly, the scope of these definitions is wide.***

Our discussion in this Study Material will principally be confined to the provisions of CGST and IGST laws as the specific State GST laws[1] are outside the scope of syllabus.

[1] *It may be noted that GST laws of all the States and Union Territories are largely based on the CGST Act, 2017.*

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3. CONCEPT OF SUPPLY [SECTION 7 OF THE CGST ACT]

The concept of '**supply**' is the key stone of the GST architecture. The provisions relating to the meaning and scope of supply are contained in Chapter III of the CGST Act read with various Schedules given under the said Act.

Following sections and schedules shall be discussed in this chapter to understand the concept of supply:

Section 7	Meaning and scope of supply
Section 8	Taxability of composite and mixed supplies
Schedule I	Activities to be treated as supply even if made without consideration
Schedule II	Activities or transactions to be treated as supply of goods or as supply of services
Schedule III	Activities or transactions which shall be treated neither as supply of goods nor as supply of services.

Provisions of section 7 containing the meaning and scope of supply are as follows:

STATUTORY PROVISIONS

Section 7	***Meaning and Scope of Supply***	
Sub-section	***Clause***	***Particulars***
(1)	***Supply includes -***	
	(a)	*all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a* ***consideration*** *by* ***a person*** *in the* ***course or furtherance of business***

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	(aa)	*the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment/other valuable consideration.* *Explanation.––For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.*
	(b)	***importation of services,*** *for a consideration whether or not in the course or furtherance of business, and*
	(c)	*the* ***activities*** *specified in* ***Schedule I****, made or agreed to be made* ***without a consideration.***
(1A)	*where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in* ***Schedule II****.*	
(2)	*Notwithstanding anything contained in sub-section (1),*	
	(a)	*activities or transactions specified in* ***Schedule III****; or*
	(b)	*such 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 a supply of services.	
(3)	*Subject to the provisions of sub-sections (1), (1A) & (2), Government may, on the recommendations of the Council,*	

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	specify, by notification, the transactions that are to be treated as —	
	(a)	*a supply of goods and not as a supply of services; or*
	(b)	*a supply of services and not as a supply of goods.*

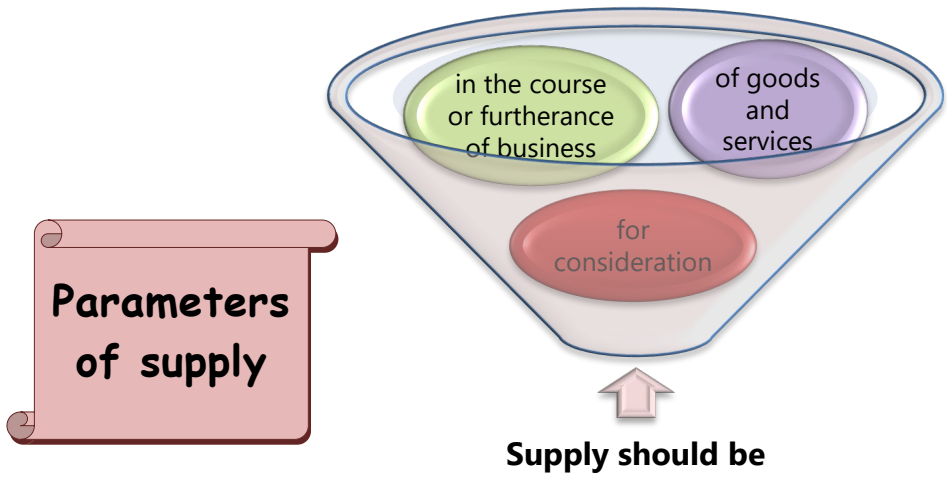
ANALYSIS

The definition of 'supply' as contained in section 7 is an inclusive definition and does not define the term exhaustively. It defines the scope of supply in an inclusive manner. Clause (a) of sub-section (1) illustrates the forms of supply, but the list is not exhaustive. This is further substantiated by the use of words ***'such as'*** in the definition.

Provisions of scope of supply under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act.

The meaning and scope of supply in terms of section 7 can be understood in terms of following **parameters**:

1. Supply should be of goods or services.
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.



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Aforesaid parameters describe the concept of supply. However, there are a few exceptions to 2nd and 3rd parameters *[the requirement of supply being made for a consideration and in the course or furtherance of business]* in the GST law.

Few exceptions have been carved out where a transaction is deemed to be a supply even without consideration *[contained in Schedule I – discussed later in this Chapter]*.

Without Consideration

Schedule -I -Deemed Supply

Import of Services for consideration

Supply even if not in the course or furtherance of business

Similarly, the condition of supply to be made in the course or furtherance of business has been relaxed in case of import of services *[Import of services for a consideration, whether or not in the course or furtherance of business, is treated as supply]*.

Further, there are also cases where a transaction is kept out of scope of supply despite the existence of the above parameters, i.e. there is a list of activities which are treated neither as a supply of goods nor as a supply of services *[contained in Schedule III – discussed later in this Chapter]*.

Neither Supply of goods nor Supply of services

Schedule - III

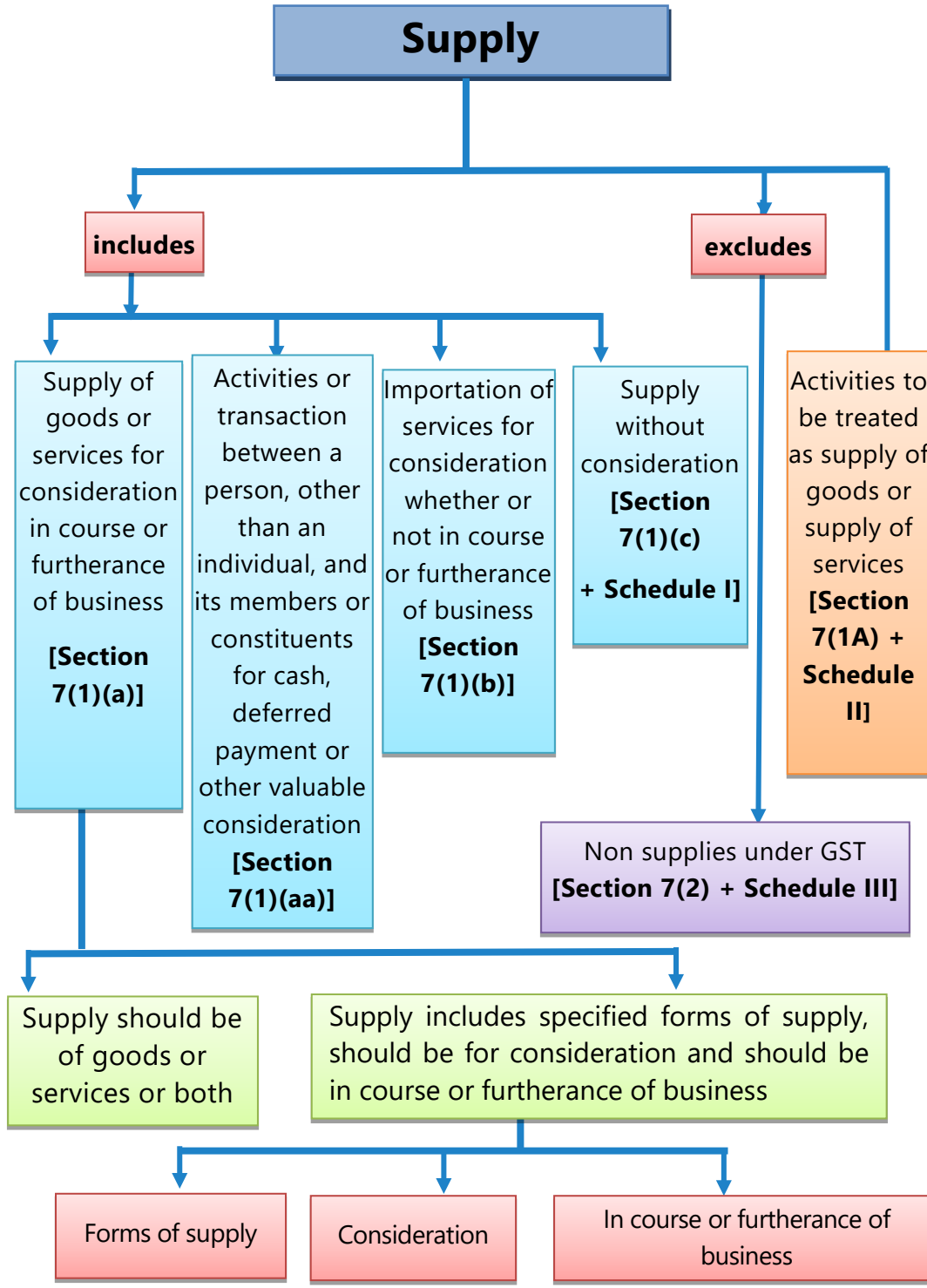
Classified either as Supply of goods or as Supply of services

Schedule - II

In other words, they are outside the scope of GST. Besides, GST law has classified certain activities/transactions either as supply of goods or as supply of services in Schedule II *[Discussed later in this Chapter]*.

Government is also empowered to notify transactions that are to be treated as a supply of goods and not as a supply of services, or as a supply of services and not as a supply of goods. In the subsequent paras, the above aspects of supply have been extensively discussed. The discussion has been broadly categorised into following:

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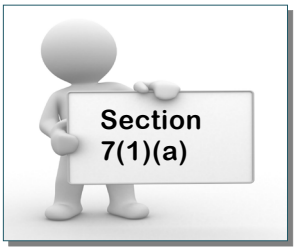


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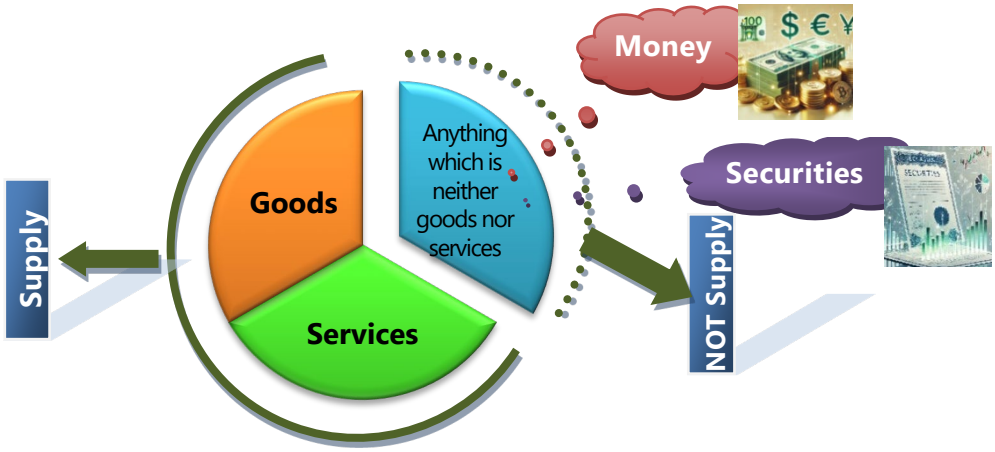
SUPPLY OF GOODS OR SERVICES FOR CONSIDERATION IN COURSE OR FURTHERANCE OF BUSINESS

SUPPLY SHOULD BE OF GOODS OR SERVICES OR BOTH

The definition of supply begins with the term **'Supply includes'**, thus making it clear that CGST Act intends to give an extensive meaning to the term 'supply'.



Supply **includes** all forms of supply of goods or services or both. Supply of **anything other than goods or services** like money, securities etc. does not attract GST.

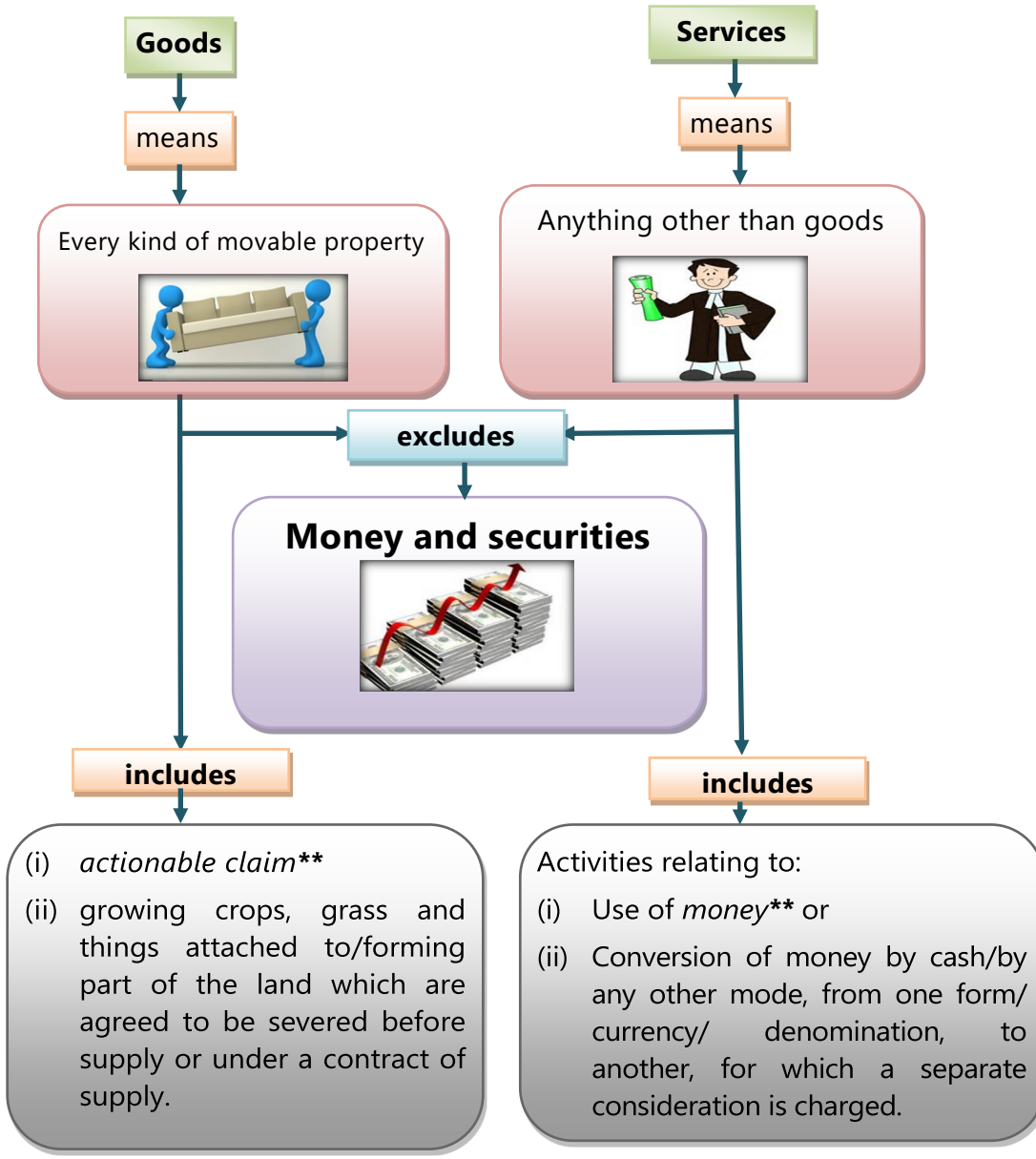


The terms goods and services as defined under the CGST Act have been analysed by way of a diagram on next page.

Anything supplied other than goods or services is outside the scope of supply.



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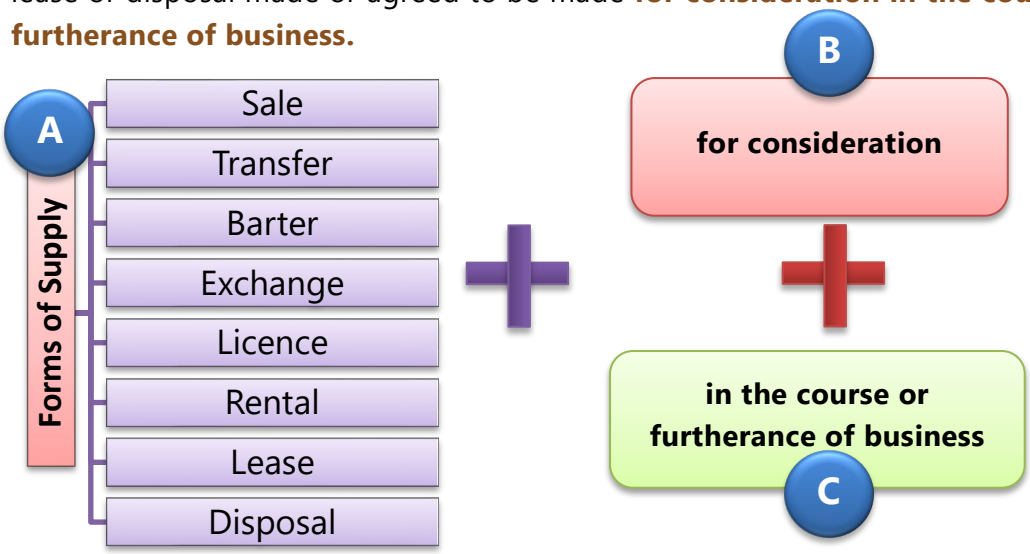


***Please refer the definitions of 'actionable claims' and 'money' as provided in heading 2. – Relevant Definitions.*

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SUPPLY INCLUDES SPECIFIED FORMS OF SUPPLY, SHOULD BE FOR CONSIDERATION AND SHOULD BE IN COURSE OR FURTHERANCE OF BUSINESS

The first part of section 7 [Clause (a) of sub-section (1)] includes **all forms of supply** of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made **for consideration in the course or furtherance of business.**



It is important to note that supply includes ALL forms of supply within its purview, though **eight illustrative forms of supply** have been enlisted in the definition. Further, supply as contemplated in this first part has two pre-requisites:

- ✓ the supply should be for a consideration; and
- ✓ the supply should be in the course or furtherance of business.

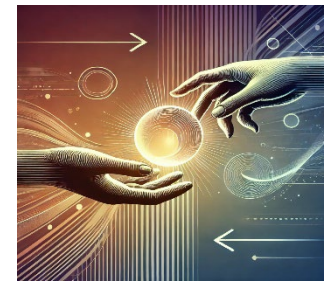
We shall first discuss the various forms of supply as illustrated in section 7(1)(a) in detail:

A. FORMS OF SUPPLY

Various forms of supply contemplated in section 7(1)(a) are sale, transfer, barter, exchange, licence, rental, lease or disposal. These forms of supply are only illustrative and not exhaustive. However, none of these terms have been defined under the Act. In order to understand their meaning, we have taken recourse to their dictionary meaning or otherwise and have explained them as follows:

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I. Sale and Transfer: The dictionary meaning of term 'sale' is the act of selling; specifically: the transfer of ownership of and title to property from one person to another for a price[2]. As per the Sale of Goods Act, 1930, a contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.



Further, the term 'transfer' has been defined in the Black's Law dictionary as to convey or remove from one place, person, etc., to another; pass or hand over from one to another; specifically, to make over the possession or control of.

(1) A shopkeeper sells a pen for ₹ 100 to the buyer. After the sale, the pen belongs to the buyer and shopkeeper does not have any right on the pen. This is a transaction of sale.

(2) A company transfers goods from its factory to the depot for sale purposes. This is 'transfer' of goods where the sale has not yet taken place.

II. Barter and Exchange: The dictionary meaning of term 'barter' is to exchange goods or services for other goods or services instead of using money[3]. Black's Law dictionary defines the term 'exchange' as an act of giving or taking one thing for another.



While barter deals with a transaction which only includes an exchange of goods/services, exchange may cover a situation where the goods are paid for partly in goods and partly in money. When there is a barter of goods or services, same activity constitutes supply as well as consideration.

(3) When a new car worth ₹ 5,00,000 is purchased in **exchange** of an old car alongwith the monetary consideration of ₹ 4,00,000 paid for the said purchase. – **Exchange transaction**

[2] *www.merriam-webster.com*
[3] *www.macmillandictionary.com*

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(4) A doctor got his hair cut from a barber and provides him medical consultancy in return. In this transaction, the doctor provided the medical consultancy services to the barber for which consideration was in the form of hair cutting services provided by the barber. Similarly, the barber provided hair cutting services to the doctor for which consideration was in the form of medical consultancy services provided by the doctor. – **Barter transaction.**

III. **Licence, lease, rental and disposal:** The dictionary meaning of the term 'licence' is a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful [4].



The dictionary meaning of 'rental' is an arrangement to rent something, or the amount of money that you pay to rent something [5] and that of 'lease' is to make a legal agreement by which money is paid in order to use land, a building, a vehicle, or a piece of equipment for an agreed period of time [6].

Black's law dictionary defines disposal as the sale, pledge, giving away, use, consumption or any other disposition of a thing.

Under GST, such licenses, leases and rentals of goods with or without transfer of right to use are covered under the supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule II of CGST Act *[Schedule-II has been discussed in detail in the subsequent paras]*.

As discussed earlier, one of the parameters to qualify as a supply of goods and/or services is that a supply is made for a consideration. This parameter has been explicated in the following paras:

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[4] *www.merriam-webster.com*
[5] *www.dictionary.cambridge.org*
[6] *www.dictionary.cambridge.org*

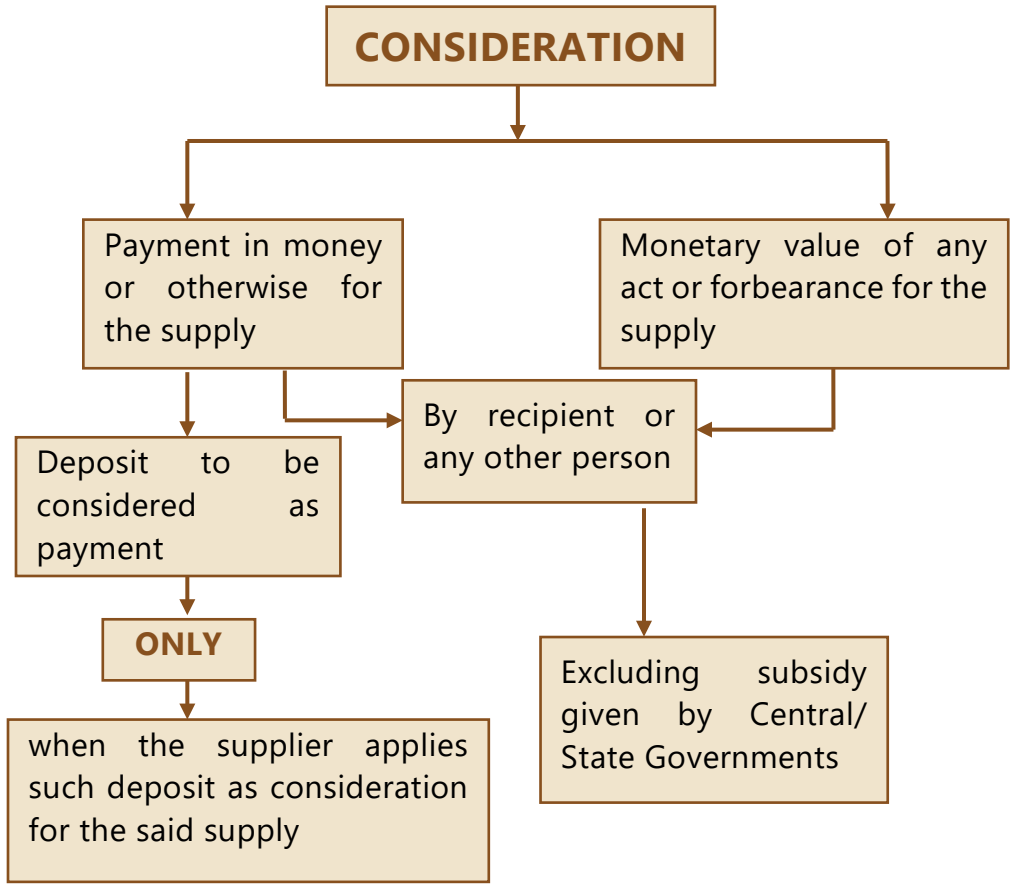
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B. CONSIDERATION

The dictionary meaning of word 'consideration' is payment. Consideration need not always be in the form of money. It can be in money or in kind. It covers anything which might be possibly done, given or made in exchange for something else. Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person. However, any subsidy given by the Central Government or a State Government is not considered as consideration.

A deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply. The term consideration is defined under section 2(31) *[Refer heading 'Relevant Definitions']*.

The said definition has been depicted in the form of a diagram as follows:



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Let us examine the existence of consideration in the following three scenarios:

1.	Donations received by charitable institutions from individual donors, without quid pro quo (something for something)
2.	Art works sent by artists to galleries for exhibition
3.	'No Claim Bonus' offered by an insurance company to the insured

1. Donations received by charitable institutions from individual donors, without *quid pro quo*[7]

An important feature of consideration is *quid pro quo* [something for something]. Donations received by the charitable organisations are treated as consideration only if there exists, *quid pro quo*, i.e., there is an obligation on part of recipient of the donation or gift to do anything (supply a service).

Generally, institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. receive financial help or any other support in the form of donation or gift from the individual donors. In order to express the gratitude towards such help/support, the recipient institutions place a name plate or similar such acknowledgement in their premises.

When the name of the donor is displayed in recipient institution's premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and **is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business**, then it can be said that there is **no supply** of service for the payment in the form of donation. In other words, there is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (i.e. supply a service). Therefore, there is no GST liability on such payment made.

Some examples of cases where there would be no taxable supply are as follows:-

[7] *any obligation to do anything in return of the donation*

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(5) Bhushan donated a blackboard to Yoganisht Sansthan - a charitable yoga institution. Yoganisht Sansthan printed underneath the blackboard so donated - "Good wishes from Mr. Bhushan".

(6) Smt. Durga Devi donated some money to a temple in the memory of her late father. The Temple Trust constructed a room in the temple complex from such donation and wrote "Donated by Smt. Durga Devi in the memory of her father" on the door floor of the room.

In above examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised.

Thus, GST is not leviable where the following three cumulative conditions are satisfied namely:



[Circular No. 116/35/2019 GST dated 11.10.2019]

2. Art works sent by artists to galleries for exhibition is not a supply as no consideration flows from the gallery to the artists

Artists give their work of art to galleries where it is exhibited for supply. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply.



It is **only when a buyer selects** a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply *[Circular No. 22/22/2017 GST dated 21.12.2017]*.

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3. No supply of service by the insured to the insurance company in lieu of 'No Claim Bonus' offered by said insurance company to him

The issue which arose for consideration was whether the deduction on account of 'No Claim Bonus' (NCB) allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s).

As per practice prevailing in the insurance sector, the insurance companies deduct 'No Claim Bonus' from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB.

It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and NCB cannot be considered as a consideration for any supply provided by the insured to the insurance company.

[Circular No. 186/18/2022 GST dated 27.12.2022]

4. Salvage/wreck value earmarked in claim assessment of damage caused to motor vehicle



In case of motor vehicle insurance provided by the insurance companies engaged in providing general insurance services, such companies insure the cost of repairs/damages of motor vehicles incurred by the policyholders.

In case a claim is made by an insurer for damage of the motor vehicle, while

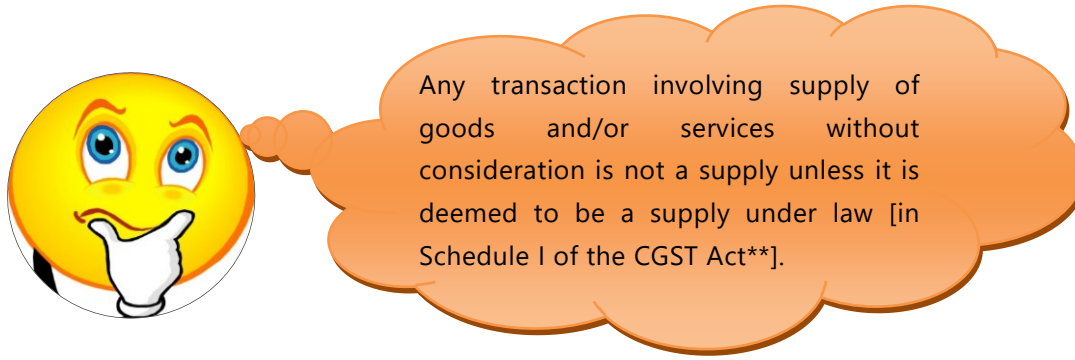
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settling said insurance claim, where the general insurance companies, as per the pre-decided terms of the insurance contract:

(i) deduct the value of salvage/wreckage of the motor vehicle as deductibles from the claim amount paid to the insured, the salvage remains the property of insured and insurance companies are not liable to discharge GST liability on the same.



(ii) do not deduct the value of salvage/wreckage of the motor vehicle and pay the full amount of insurance claim, the salvage becomes the property of the insurance company and the insurance company will be obligated to discharge GST on supply of salvage to the salvage buyer[8].



***Provisions of Schedule I have been discussed in detail later in this chapter.*

Another parameter to qualify as supply of goods and/or services is that a supply is made in course or furtherance of business. This parameter has been explained in the following paras:

C. COURSE OR FURTHERANCE OF BUSINESS

GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Resultantly, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of 'business'.

[8] *Circular No. 215/9/2024 GST dated 26.06.2024*

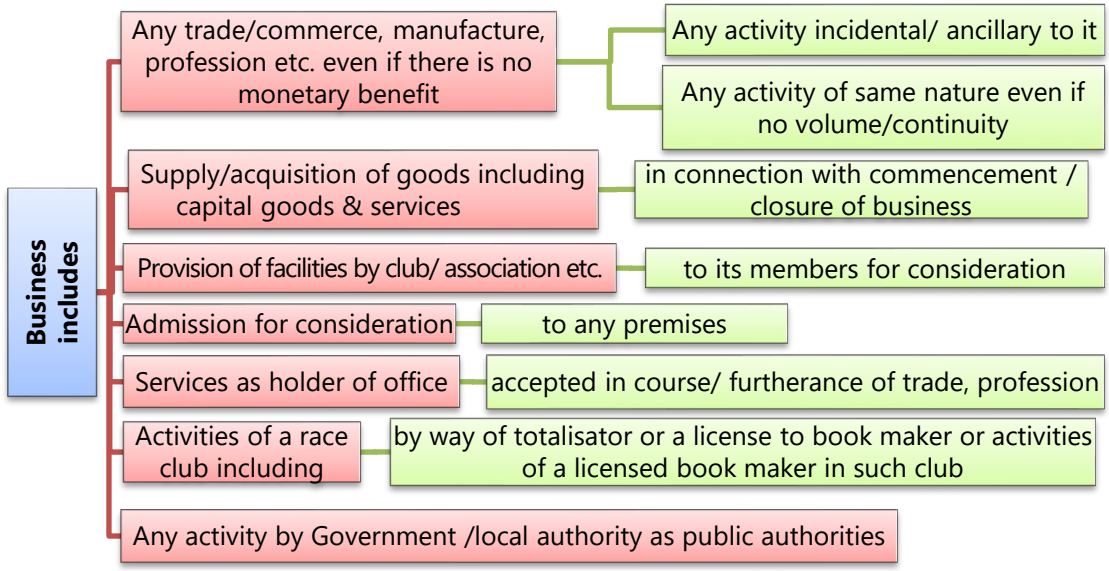
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Meaning of supply made in the course or furtherance of business: Any activity undertaken in course/ for furtherance of business would constitute a supply. In order to understand the term 'in the course or furtherance of business', we need to first understand the term 'business'. Business as defined under section 2(17), *inter alia,* includes any trade, commerce, manufacture, profession, vocation etc. whether or not undertaken for a monetary benefit.





The definition of business has been summarised in the diagram below:



Thus, business includes any activity/transaction which is incidental or ancillary to any trade, commerce, manufacture, profession, vocation, adventure, wager [bet] or any other similar activity. In addition, any activity undertaken by the Central Government or a State Government or any local authority in which they are engaged as public authority shall also be construed as business. For any trade, commerce, or any other similar activity to qualify as business, **frequency, volume, continuity or regularity of such transaction is not a pre-requisite**.

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Some of the examples of supply made/not made 'in the course or furtherance of business' are as follows:



(7) Rishabh buys a car for his personal use and after a year sells it to a car dealer. Sale of car by Rishabh to car dealer is not a supply under CGST Act because said supply is not made by Rishabh in the course or furtherance of business[9].

(8) Manikarnika sold her old gold bangles and earrings to 'Aabhushan Jewellers'. Sale of old gold jewellery by an individual to a jeweller will not constitute supply as the same cannot be said to be in the course or furtherance of business of the individual[10] [11].

Since 'business' includes vocation, therefore supply of goods or service **as a vocation** is also a supply under GST.

(9) Sundaram Acharya, a famous actor, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust – 'Kind Human'. The sale of paintings by the actor qualifies as supply as it is made in course or furtherance of business.

Facilities provided by the club/association to its members for consideration are provided in course or furtherance of business.



(10) A Resident Welfare Association provides the service of depositing the electricity bills of the residents in lieu of some nominal charges. Provision of service by a club or association or society to its members is included in the definition of 'business'.

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[9] Clarified vide GST FAQs issued by CBIC

[10] Clarified by CBIC vide press release dated 13.07.2017 and GST Flyer - 'The meaning and scope of supply'

[11] The view taken in Examples 7 & 8 above is based on the view taken in the Departmental FAQs/ press release. There is another school of thought according to which since the definition of business includes trade, commerce, or any other similar activity, ***whether or not there is frequency, volume, continuity or regularity*** *of such transaction, on literal interpretation, the transactions in the above examples can be considered to be made in the course or furtherance of business and thus, will constitute supply. The taxability of such transactions, however, will have to be examined under the provisions of section 9 [Discussed in detail in Chapter 2 – Charge of GST in this Module of the Study Material]. However, since this view may not always lead to logical conclusions, it is more prudent to take a purposive approach as followed in Departmental FAQs/press release given above.*

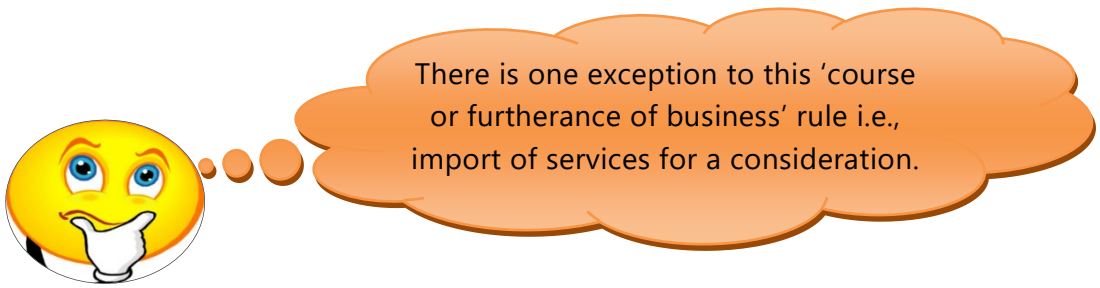
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Admission of persons to any premises for a consideration is also included in business.

(11) Services by way of admission to circus, cinema halls, amusement parks including theme parks, water parks, etc. are considered as supply as these are services by way of admission of persons to any premises for a consideration.

Business includes activities of a race club including by way of totalisator or a license to book maker[12] or activities of a licensed book maker in such club.

(12) Royal Turf Race Club is engaged in facilitating the wagering (betting) transactions on horses placed through totalisator[13]. For providing the service of facilitating wagering transactions, Royal Turf Race Club gets commission which is deducted and retained by the club from the total bet value. Said services amount to supply as the activities of a race club are included in business.



From the above discussion, it can be inferred that if an activity or transaction satisfies all the above parameters, as discussed in points A, B and C above, said activity or transaction qualifies as 'Supply under GST'.

[12] *Book maker is a person that accepts and pays off bets on sporting and other events at agreed-upon odds.*

[13] *Totalisator is a device showing the number and amount of bets staked on a race, to facilitate the division of the total among those backing the winner.*

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After understanding the basic concept of supply, let us now examine taxability of few transactions:

Taxability of Cost Petroleum

When an oil exploration & production contractor gets a license/lease to explore/mine the petroleum crude and/or natural gas from the Government, it enters into a **Production Sharing Contract (PSC)** with the Government. The relationship of the contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee. As per these PSCs, when a contractor discovers oil/gas, he is at first entitled to recover the contract cost *[expenses incurred in exploration, development, production and payment of royalty]* involved in the extraction of oil/gas from the total sale proceeds and thereafter, he is expected to share with the Government the profit from his venture [known as profit petroleum], as per the PSC.



The value of petroleum which the contractor is entitled to take in a year for recovery of the contract costs is called the **cost petroleum**. Further, the total value of petroleum produced and saved from the contract area in a particular period, as reduced by cost petroleum, is called the **profit petroleum**. The **Government's share of profit petroleum** which is the consideration paid by the contractor to the Central Government for the services of grant of license/lease to explore/mine petroleum crude and/natural gas **is exempt from GST**[14].



The **cost petroleum** is not a consideration received by the contractor for the services provided to Government and thus not taxable *per se*. The reason for the same is that the **contractors carry exploration and production of petroleum for themselves and not as a service to Government**. They had acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum *[Circular No. 32/06/2018 GST dated 12.02.2018]*.

[14] *Refer Chapter 4 – Exemptions from GST in this Module of the Study Material for detailed discussion.*

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Financial Transactions





Banks and financial institutions provide a bouquet of financial services relating to lending or borrowing of money or investments in money and other related services. For such services, invariably a variety of instruments are used in the financial markets.

In the following paras, we have examined whether transactions in such instruments qualify as supply? As seen earlier, the **definitions of 'goods' and 'services' specifically exclude both money and securities**.





The definition of **'money'** includes instruments like cheques, drafts, pay orders, promissory notes, letters of credit, etc. Therefore, activities that are only transactions in such instruments would be outside the definition of service.

Commercial Paper

Certificate of Deposit

Money would also include transactions in Commercial Paper ('CP') and Certificate of Deposit ('CD')[15] (as they are in the nature of promissory notes), issuance of drafts or letters of credit, etc. While these transactions are outside the ambit of supply, the related activity for which a separate consideration is charged, is chargeable to GST if other elements of taxability are present.

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[15] *Commercial Paper ('CP') and Certificate of Deposit ('CD') are understood as unsecured money market instruments which may be issued in the form of a promissory note or in a dematerialized form through any of the depositories approved by and registered with SEBI. CPs are normally issued by highly rated companies, primary dealers and financial institutions at a discount to the face value. CDs can be issued by Scheduled Commercial Banks (excluding RRBs and Local Area Banks) and All – India Financial Institutions (FIs) permitted by RBI.*

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The term **'securities'** shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (SCRA) [16] [Section 2(101)].



In this regard, there may arise a doubt as to whether a 'derivative' is included within the meaning of 'securities' above and whether derivatives are liable to GST? Before that, let us understand what a derivative means in simple terms. Derivatives are financial contracts/instruments that derive their value from something else, like an underlying asset. They are kind of bets or agreements based on the price/performance of the underlying asset, rather than owning that asset directly. 'Derivatives'[17] are included in the definition of 'securities' under SCRA. As **'derivatives' fall in the definition of securities, they are neither goods nor services and hence, are not liable to GST**.

Two most common types of derivatives are futures contracts and forward contracts. In simple terms, forward and futures contracts are similar to making a promise to buy or sell something, like a commodity (e.g., oil, wheat), financial asset (e.g., stocks, bonds), or even a market index (e.g., S&P 500) at a specific price on a future date. It's an agreement/contract between two parties to buy or sell that something at a specific price on a specific date in the future. On the specified date in future, the

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[16] *In terms of section 2(h) of SCRA, "securities" includes—*
(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
(ia) derivative;
(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;
(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
(id) units or any other such instrument issued to the investors under any mutual fund scheme;
(ii) Government securities;
(iia) such other instruments as may be declared by the Central Government to be securities; and
(iii) rights or interest in securities.

[17] *In terms of section 2(ac) of SCRA, "derivative" includes— (A) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security; (B) a contract which derives its value from the prices, or index of prices, of underlying securities. The definition of 'derivatives' in SCRA is an inclusive definition.*

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contract needs to be settled. These contracts can either be settled by way of actual physical delivery of the underlying asset or by way of net settlement of differential rate with no actual delivery. The primary difference between the futures and forward contract is that futures contracts are standardised derivative contracts, traded on organised exchanges and marked-to-market daily whereas forward contracts are customisable, over-the-counter derivative contracts, not traded on organised exchanges but negotiated between two parties, without any daily mark-to-market requirements.

GST implications on futures contracts: Since futures contracts are in the nature of derivatives, these qualify as 'securities' and thus, are **not subject to GST**. However, where the futures contracts have a **delivery option** and the settlement of contract takes place by way of actual delivery of underlying commodity/currency, then such **futures contracts would be treated as normal supply of goods and liable to GST**.



GST implications on forward contracts: Where the settlement takes place by way of **actual delivery of underlying commodity/currency**, then such forward contracts would be treated as **normal supply of goods and liable to GST**. Where the settlement takes place by way of net settlement of differential of the forward rate over the prevailing market rate on the settlement date, the same would be falling within the purview of 'securities' and thus, are not chargeable to GST.



GST implications on secured debt: Sale, purchase, acquisition or assignment of a secured debt does not constitute a transaction in money; it is in the nature of a derivative and hence a security.



GST implications on transactions in instruments: Transactions in instruments like interest rate swaps, and foreign exchange swaps would be excluded from the definition of 'supply' since such instruments are derivatives, being securities, based on contracts of difference.

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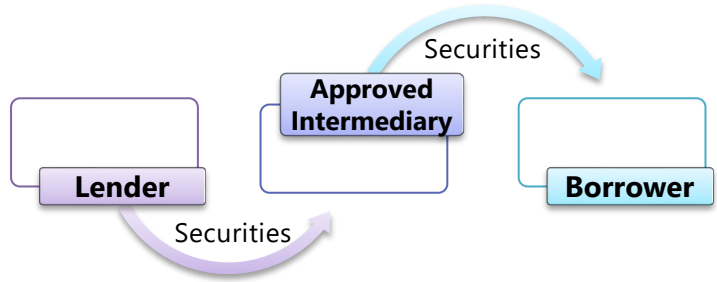
GST implications on services by way of extending deposits, loans or advances: Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount is exempt from the levy of GST. *The same has been discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material.*



It is important to note that GST would be levied on service charges normally charged for various transactions in money including charges for making drafts, issuance charges for letter of credit, etc or service charges or service fees or documentation fees or broking charges or such like fees or charges charged on the derivatives/futures contracts/forward contracts, since the same would be a consideration for provision of service.

Lending of securities - Securities Lending Scheme

Securities and Exchange Board of India (SEBI) has prescribed the Securities Lending Scheme, 1997 (hereafter referred to as SLS) for the purpose of facilitating lending and borrowing of securities. The security lending mechanism is depicted in the diagram below: -



In the above diagram:

(i) **Lender** is a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme.

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(ii) **Borrower** is a person who borrows the securities under the scheme through an approved intermediary.

(iii) **Approved intermediary** is a person duly registered by the SEBI under the SLS through whom the lender will deposit the securities for lending and the borrower will borrow the securities.

Under this scheme, **lender of securities** lends securities through an approved intermediary to a borrower, under an agreement, temporarily for a specified period. The lenders earn **lending fee** for lending their securities to the borrowers.

Securities are lent with a condition that the **borrower** will **return equivalent securities** of the same type or class at the end of the specified period along with the corporate benefits[18] accruing on the securities borrowed. The borrower of securities can **further sell or buy these securities**.

In order to lend securities under SLS, **lender enters into an agreement with the approved intermediary** and for the purpose of borrowing of securities, the **borrower enters into an agreement with the approved intermediary**. Thus, there is no direct agreement between the lender and borrower for the lending or borrowing of securities and there is anonymity between them.

The transaction takes place through an electronic screen-based order matching mechanism provided by the recognised stock exchange in India.

As seen earlier in this chapter, securities are neither covered in the definition of goods nor covered in the definition of services. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

The **SLS doesn't treat lending of securities as disposal of securities** and therefore is not excluded from the definition of services. The **lending fee** charged from the borrowers of securities **has the character of consideration and is taxable under GST.** Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for **commission or fee** are also **taxable separately** *[Circular No. 119/38/2019 GST dated 11.10.2019]*.

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[18] *Corporate benefits include dividends (gross), rights, bonus, redemption benefits, interest, or any other right or benefit accruing on the securities lent.*

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Securities of subsidiary company in holding company



Since securities (including shares)[19] are considered neither as goods nor as services [discussed in detail earlier], securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services.

Merely because there is an entry in the scheme of classification of services to that effect[20], **the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services** by a holding company to the said subsidiary company, unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7[21].

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[19] As per the definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956, securities include 'shares' as per definition of securities.

[20] There is a specific SAC (Service Accounting Code entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest".

[21] Circular No. 196/08/2023 GST dated 17.07.2023

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Cash Calls in Joint Venture (JV)

JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame. Whether a cash call is merely a transaction in money or in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case.

'Cash calls' are raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture (unincorporated) to meet the expenditure on the operations to be carried out as per the approved work programme and budget. Let us understand the taxability of cash calls with the help of following examples:



(13) There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member purchases machinery for ₹ 400 for the JV to be used in oil production.

In above case, cash calls will not be subject to GST since the operating member is not carrying out an activity for another for consideration. Here, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.



(14) There are 4 members in the JV including the operating member and each one contributes ₹ 100 as part of their share. A total amount of ₹ 400 is collected. The operating member thereafter uses its own machinery and performs exploration and production activities on behalf of the JV.

In above case, the operating member uses its own machinery and is therefore providing 'service' within the scope of 'supply' because here operating member is recovering the cost appropriated towards machinery & services from other JV members in their participating interest ratio[22].

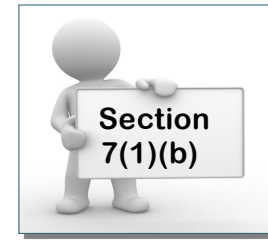
[22] *Circular No. 35/9/2018 GST dated 05.03.2018*

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In the subsequent paras, we have discussed the exceptions to the two parameters of supply, *namely*, (i) supply made for consideration, but not in course or furtherance of business and (ii) supply made without consideration.

IMPORTATION OF SERVICES FOR CONSIDERATION WHETHER OR NOT IN COURSE OR FURTHERANCE OF BUSINESS

The connotation of 'supply' gets expanded significantly through the second part of section 7 i.e. 7(1)(b) which brings within the ambit of 'supply', the importation of services for a consideration **whether or not in the course or furtherance of business**. This is the only exception to the condition of supply being made in course or furtherance of business.



(15) Ramaiyaa, a proprietor, has received the architect services for his personal residence from an architect located in New York at an agreed consideration of $ 5,000. The import of services by Ramaiyaa is supply under section 7(1)(b) though it is not in course or furtherance of business.

ACTIVITIES WITHOUT CONSIDERATION - DEEMED SUPPLY

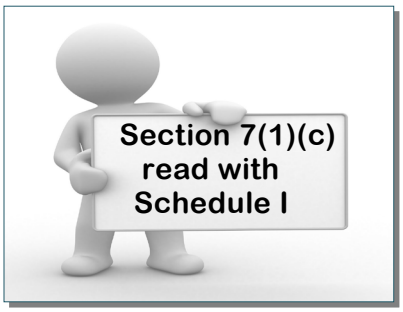
STATUTORY PROVISIONS

Schedule-I	***Activities to be treated as supply even if made without consideration***
Para No.	***Particulars***
(1)	*Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.*

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(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.* *Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.*
(3)	*Supply of goods —* *(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or* *(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.*
(4)	*Import 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.*

ANALYSIS



As seen earlier, section 7(1)(c) provides that supply includes the activities specified in Schedule I, made or agreed to be made without a consideration. Thus, there are activities or transactions which are treated as supply, **even if they are made without consideration**. These are specifically mentioned in Schedule I appended to the CGST Act. The same has been discussed in the subsequent paras:

As per Schedule I, in the following four cases, activities made without consideration will be treated as supply under section 7:

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I. Permanent Transfer/Disposal of Business Assets [Para 1 of Schedule I]: Any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration qualifies as supply. However, this provision shall apply only if input tax credit has been availed on such assets.



Therefore, in order to qualify as supply under this para, following conditions need to be satisfied cumulatively:

- There must be a disposal or transfer of business assets**.
- Transfer/disposal must be permanent, and
- ITC must have been availed on such business assets.



In view of the last condition stipulated above, permanent transfer/disposal of following business assets, without consideration, will not be covered within this para and thus will not be deemed as supply:

(i) Business assets on which ITC is blocked/not available under GST[23].

(ii) Business assets though eligible for ITC, ITC has not been availed by the registered person.

It's important to note that under GST legislation, there is no specific definition for the term "business asset." Nevertheless, business assets are generally recognized as property or equipment acquired primarily for business purposes. These assets can be grouped into various categories, including current and non-current, short-term and long-term, operating and capitalized, as well as tangible and intangible assets.



(16) Dhruv gives old laptops being used in his business to his friend free of cost. This will qualify as supply provided input tax credit has been availed by Dhruv on such laptops.

[23] *List of the goods and services in respect of which ITC is blocked has been elaborated in Chapter 7 – Input Tax Credit in Module 2 of this Study Material.*

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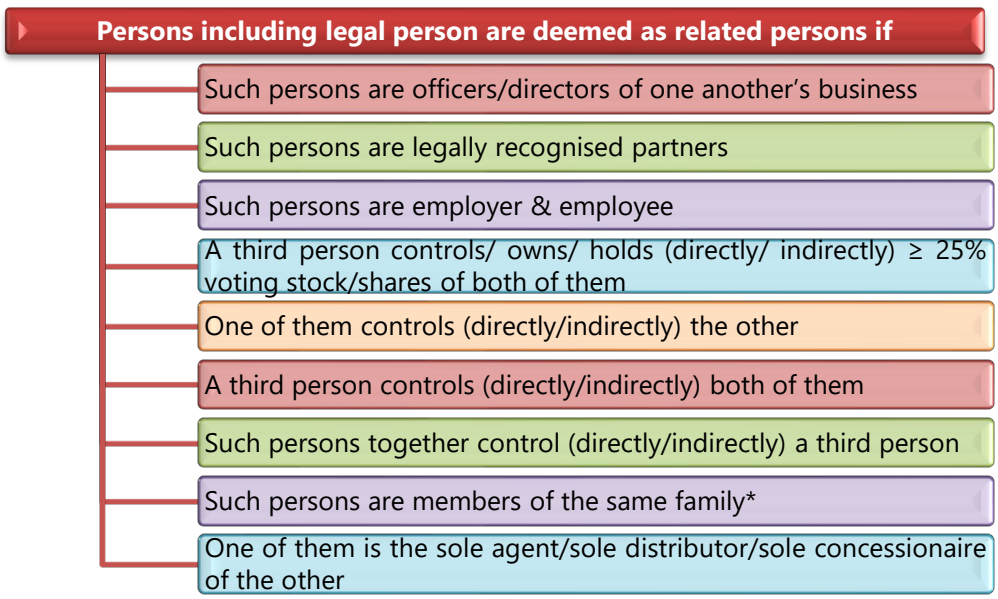
(17) A dealer of air-conditioners permanently transfers the motor vehicle free of cost. ITC on said motor vehicle is blocked. The transaction will not constitute a supply as the condition of availment of ITC on the business asset transferred is not fulfilled.

This para is wide enough to cover transfer of business assets from holding to subsidiary company for nil consideration.

II. Supply between related persons or distinct persons [Para 2 of Schedule I]: Supply of goods or services or both between 'related persons' or between 'distinct persons' as specified in section 25, will qualify as supply even if made without consideration **provided the same is made in the course or furtherance of business.**

Let us understand the terms **'related persons'** and **'distinct persons'**.

(i) Related persons: A person who is under influence of another person is called a related person like members of the same family or subsidiaries of a group company etc. Under GST law various categories of related persons have been specified. The term 'related person' has been defined in explanation to section 15. The said definition has been depicted by way of a diagram as follows:



*****See the definition of 'family' as provided in heading 2. – Relevant Definitions.*

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(18) Ms. Priya holds 30% shares of ABC Ltd. and 35% shares of XYZ Ltd. ABC Ltd. and XYZ Ltd. are related.

(19) Q Ltd. has a deciding role in corporate policy, operations management and quality control of R Ltd. It can be said that Q Ltd. controls R Ltd. Thus, Q Ltd. and R Ltd. are related.

(ii) Distinct Persons specified under section 25: Before we go through the statutory provisions of 'distinct persons', let us first have an **overview of the registration provisions** for better understanding of the concept of distinct persons. *Detailed and in-depth analysis of the registration provisions is contained in Chapter 8 – Registration in Module 2 of this Study Material.*

Under GST law, a supplier is required to obtain State-wise registration. He has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover exceeds a specified threshold limit. Thus, he is not required to obtain registration from a State/UT from where he makes a non-taxable/exempt supply.

Since registration under GST is PAN based, once a supplier is liable to register, he has to obtain registration in each of the States/UTs in which he operates [and makes a taxable supply] under the same PAN. Further, he is normally required to obtain single registration in a State/UT. However, where he has multiple places of business in a State/UT, he can get a single registration for said State/UT. He may also get separate registration for any place(s) of business in such State/UT.

Now, let us understand the concept of distinct persons in simple terms:



The establishments of a person with separate registrations whether within the same State/UT or in different States/UTs are considered as **distinct persons**. Where a person having one registered establishment in a State/UT has another establishment in a different State/UT [not necessarily registered], these establishments are considered as **establishments of distinct persons.**

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Statutory provisions relating to 'distinct persons' are contained in sub-sections (4) and (5) of section 25. They have been explained with examples as follows:

A person who has obtained/is required to obtain more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as **distinct persons** [Section 25(4)].



(20) Mohan, a Chartered Accountant, has a registered head office in Delhi. He has also obtained registration in the State of West Bengal in respect of his newly opened branch office. Mohan's registrations under GST under same PAN in West Bengal and Delhi shall be treated as distinct persons.



Registered head office in Delhi **Registered branch office in West Bengal**

Further, 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** [Section 25(5)]. Further, Explanation 1 to section 8 of the IGST Act stipulates that **establishments of same entity shall be considered as establishments of distinct persons** where a person has:

(i) an establishment in India and any other establishment outside India;

(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or

(iii) an establishment in a State or Union territory and any other establishment within that State or Union territory.

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(21) Rishabh Enterprises, a registered supplier, owns a restaurant in Virar, Maharashtra. It has opened a liquor shop in Dehradun, Uttarakhand for trading of alcoholic liquor for human consumption.

Since supply of alcoholic liquor for human consumption in Uttarakhand is a non-taxable supply, Rishabh Enterprises is not required to obtain registration with respect to the same in Uttarakhand.

In this case, restaurant in Maharashtra and liquor shop [though unregistered] in Uttarakhand shall be treated as establishments of distinct persons. Supply by Maharashtra restaurant to Uttarakhand shop, in course or furtherance of business even without consideration will qualify as supply.



Registered restaurant in Maharashtra — **Unregistered liquor shop in Uttarakhand**

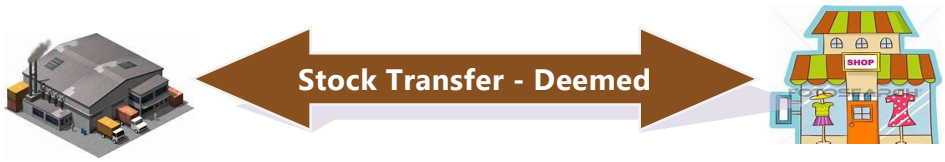
(iii) **Stock transfers or branch transfers qualify as supply**: It is a common practice in business to transfer goods transferred amongst different units of same entity, for instance, distribution of samples manufactured in a factory to different branches or transfer of goods from factory to depot/showroom for sale therefrom, from one warehouse to another warehouse, from one branch to another branch where the demand of the goods is higher. Since the transfer is within the same business, the transferor unit would not charge any amount to the transferee unit. Similarly, it is also possible that one branch supplies services to another branch of the same entity without consideration. These transactions are termed as self-supplies. Under GST, these transactions though undertaken without consideration, will also qualify as supply, provided the transfer of goods or services is between:

(i) different locations (with separate GST registrations) of same legal entity as these are transactions between distinct persons, or

(ii) establishments of distinct persons.

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(22) Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Raghubir Fabrics are registered in the States where they are located. Although no consideration is charged, supply of goods from factory to retail showroom constitutes supply.



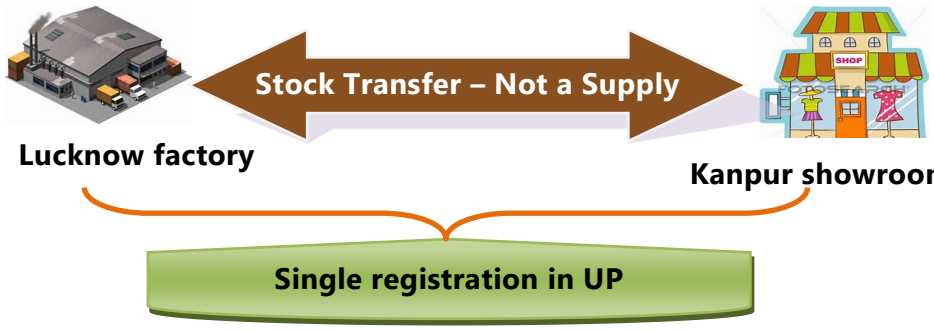
Registered Lucknow factory **Registered Delhi showroom**

However, transfer between two units of a legal entity under single registration (apparently within same State) will not be considered as supply. This can be understood with the help of the following example:

(23) Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Kanpur so that the same can be sold from there.

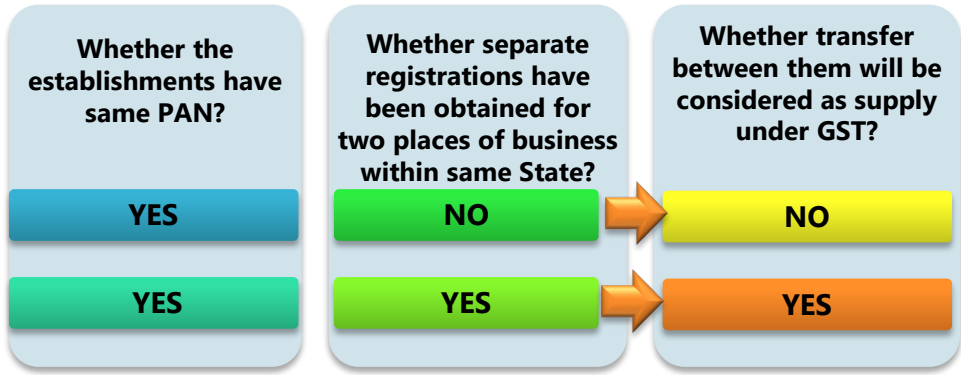
It has taken one registration in the State of Uttar Pradesh declaring Lucknow factory as its principal place of business and Kanpur showroom as its additional place of business.

Since no consideration is charged, supply of goods from factory to retail showroom in same State under single registration does not constitute supply.



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However, in the above example, if Raghubir Fabrics obtains separate registrations for Lucknow factory and Kanpur showroom, stock transfer between the Lucknow factory and Kanpur showroom will constitute supply. The concept arising from the above discussion is summarised in below diagram (assuming a case where there are two places of business in a State):





Moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer, in course or furtherance of business, do not constitute supply since they are not related persons or distinct persons and there is no consideration involved *[Circular No. 47/21/2018 GST dated 08.06.2018]*.

(iv) Supply of goods or services or both between an employer and employee: In terms of the definition of related person given above, employer and employee are related persons.

However, services provided by an employee to the employer in the course of or in relation to his employment are outside the scope of GST (treated as neither supply of goods nor as supply of services) as per Schedule III of the CGST Act *(discussed subsequently in this chapter)*].

Gifts by employer to employee

Further, proviso to Para 2 of Schedule I provides that gifts upto ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated

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as supply of goods or services or both. However, gifts of value more than ₹ 50,000 made without consideration are supply and are subject to GST, when made in the course or furtherance of business.



The term 'gift' has not been defined in the GST law. In common parlance, gift is made 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 a court of law for obtaining a gift.

Perquisites by employer to employee

Since services by an employee to the employer in the course of or in relation to his employment are outside the scope of GST, 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.



Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment.

It follows therefrom that **perquisites provided 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[24].**

[24] *Circular No. 172/04/2022 GST dated 06.07.2022*

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Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre[25]. Consequently, if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST.

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) [27]

III. Principal – Agent [Para 3 of Schedule I]: Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply.



Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is considered as supply.

Points which merit consideration, in this regard, are as follows:

- Only **supply of goods and not supply of services** is covered here.
- Supply of goods between principal and agent **without consideration** is also supply.

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[25] Complete list of the goods and services in respect of which ITC is blocked has been elaborated in Chapter 7 – Input Tax Credit in Module 2 of this Study Material.

[26] Circular No. 172/04/2022 GST dated 06.07.2022 read with Ministry of Finance's Press Release on 10.07.2017

[27] It is possible to take an alternative view in this regard. This scenario, i.e. the employer providing services (free of charge) to the employee in lieu of the services provided by the employee to the employer in the course of employment, is an exchange transaction. In an exchange transaction, both the parties independently assess their transaction status. Thus, while service provided by employee to the employer being covered under Schedule III is not a supply, service provided by employer to employee may constitute a supply in terms of section 7(1)(c) read with para 2 of Schedule I since employer and employee are related persons as per explanation to section 15. Provisions of section 15 have been discussed in detail in Chapter 6 – Value of Supply in this Module of the Study Material.

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Thus, the **supply of services** between the principal and the agent and vice versa would require "consideration" to be present so as to be considered as supply and thus, making it liable to GST.

Let us first go through the **meaning of terms 'principal' and 'agent'**. Section 2(5) defines **agent** as a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

As we can deduce from this definition of agent that (a) the term 'agent' is defined in terms of the various activities being carried out by the person concerned in the principal-agent relationship and (b) the supply/receipt of goods/services has to be undertaken by the agent on behalf of the principal.

Further, the term **principal** has been defined under section 2(88) as a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.



In order to determine whether a particular principal-agent relationship falls within the ambit of the Para 3 of Schedule I as discussed above or not, the **DECIDING FACTOR** is **whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not?** 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.

- 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 Para 3 above.



- However, 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 Para 3 above.

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- 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 Para 3 above ***[Circular No. 57/31/2018 GST dated 04.09.2018]***.

Goods procured on behalf of principal are invoiced in the agent's name.

Where the invoice is issued by the agent to customer in the name of:	Whether he will be an agent in terms of Para 3 of Schedule I?
Principal	No
Agent	Yes

The above clarification can be understood with the help of following scenario-based examples:

(24) Anmol appoints Bholu to procure certain goods from the market. Bholu identifies various suppliers who can provide the goods as desired by Anmol and asks the supplier (Golu) to send the goods and issue the invoice directly to Anmol.

In this scenario, Bholu is only acting as the procurement agent and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Bholu is not an agent of Anmol for supply of goods in terms of Para 3 of Schedule I.

(25) Manimani Bank, a banking company, appoints Mandaar (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders.

The highest bid is accepted and the goods are sold to the highest bidder by Manimani Bank. The invoice for the supply of the goods is issued by Manimani Bank to the successful bidder.

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In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mandaar is not an agent of Manimani Bank for the supply of goods in terms of Para 3 of Schedule I.



(26) Gautam, an artist, appoints Gambhir (auctioneer) to auction his painting. Gambhir arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder.

The invoice for the supply of the painting is issued by Gambhir on the behalf of Gautam but in his own name and the painting is delivered to the successful bidder.

In this scenario, Gambhir is not merely providing auctioneering services, but is also supplying the painting on behalf of Gautam to the bidder, and has the authority to transfer the title of the painting on behalf of Gautam. This scenario is covered under Para 3 of Schedule I.

(27) A C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F commission agent is an agent of the principal for the supply of goods in terms of Para 3 of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.

(28) Ravi sells agricultural produce by utilizing the services of Kavi who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Kavi identifies the buyers and sells the agricultural produce on behalf of Ravi for which he charges a commission from Ravi.

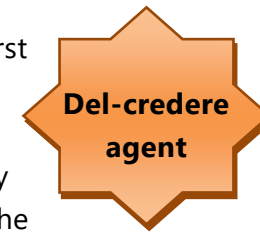
As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.

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In cases where the invoice is issued by Kavi to the buyer, then he is an agent covered under Para 3 of Schedule I[28]. However, in cases where the invoice is issued directly by Ravi to the buyer, the commission agent (Kavi) doesn't fall under the category of agent covered under Para 3

Clarification of issues pertaining to Del-credere agent (DCA)

A question was posed by the industry - whether supply between a principal and a Del-credere agent would also get covered under Schedule I. The Government clarified the doubt of the industry by way of following clarification:



Before going through the clarification, let us first understand what is meant by a DCA? 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.

Circular No. 73/47/2018 GST dated 05.11.2018 has clarified the following issues in this regard:

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[28] *It is important to note that services provided by the commission agent for sale or purchase of agricultural produce are exempt supply under GST. Said exemption has been discussed in detail in Chapter 4 Exemptions from GST in this Module of the Study Material.*

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Sl. No.	Issue	Clarification
1.	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I?	As already clarified vide *Circular No. 57/31/2018 GST* (discussed above), whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I depends on the following possible scenarios: ❑ In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent. ❑ In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.
2.	Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I?	In such a scenario, following activities are taking place: 1. Supply of goods from supplier (principal) to recipient; 2. Supply of agency services from DCA to the supplier or the recipient or both; 3. Supply of extension of loan services by the DCA to the recipient. It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I, the temporary short-term transaction based loan being

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		provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply[29]. Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier.
3.	Where DCA is an agent under Para 3 of Schedule I and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?	In such a scenario following activities are taking place: 1. Supply of goods by the supplier (principal) to the DCA; 2. Further supply of goods by the DCA to the recipient; 3. Supply of agency services by the DCA to the supplier or the recipient or both; 4. Extension of credit by the DCA to the recipient. It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient would not be

[29] *Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) are exempt supply vide Entry 27 of Notification No. 12/2017 CT(R) dated 28.06.2017 [Discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material].*

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		considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient. It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per section 15(2)(d)[30].

IV. Importation of services [Para 4 of Schedule I]: Import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business shall be treated as "supply".



(29) Jhumroo Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such consultancy services free of cost to its branch office.

Since Jhumroo Associates and the head office are related persons, services received by Jhumroo Associates will qualify as supply even though the head office has not charged anything from it.

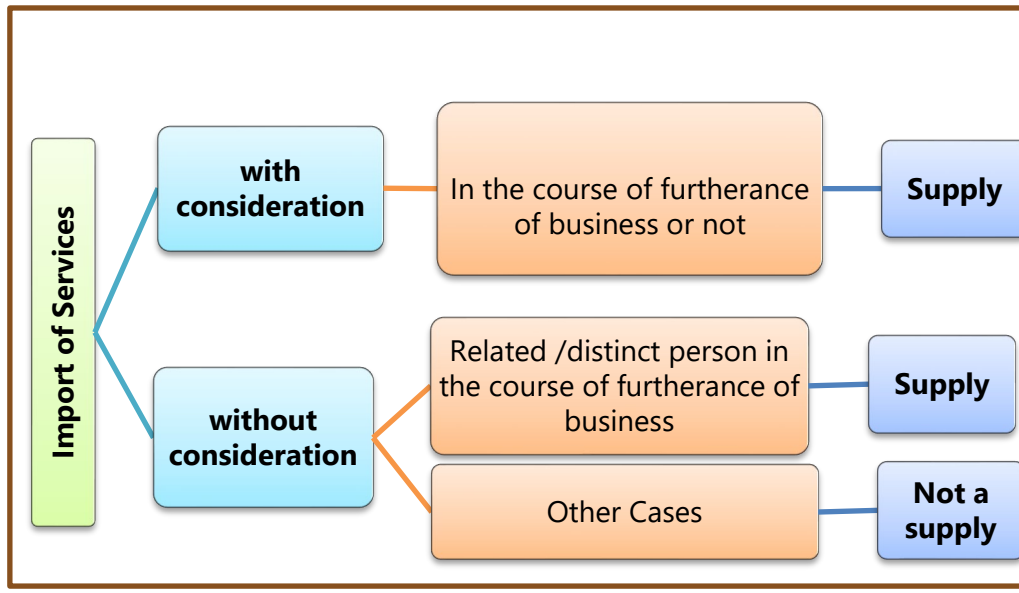
(30) Chakmak, a proprietor registered in Delhi, has sought architect services from his son located in US, with respect to his newly constructed house in Delhi.

Although services have been received by Chakmak without consideration from his son - a related person, yet it will not qualify as supply since the same has not been received in course or furtherance of business.

However, if in the above case, Chakmak receives architect services without consideration from his son with respect to his office in Delhi, the same shall be treated as supply because the same have been received in the course of business.

[30] *Section 15 has been discussed in detail in Chapter 6 – Value of Supply in this Module of the Study Material.*

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In the preceding paras, we have discussed the provisions of Schedule-I which enumerates the cases where an activity is treated as supply even though it is undertaken free of cost. In this backdrop, let us now examine whether the items given free of cost in case of some of the sales promotion schemes qualify as supply or not.

Clarification on Sales promotion schemes



A number of sales promotion schemes are commonly employed by the businesses to increase sales volume or to encourage the use or trial of a product or service so that new customers get attracted towards their products. For instance, certain sections of trade and industry, such as, pharmaceutical companies often provide drug samples to their stockists, dealers, medical practitioners, etc., or sometimes, companies announce offers like 'Buy One, Get One free' - i.e. buy one soap and get one soap free or get one tooth brush free along with the purchase of tooth paste.





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As we have already seen that as per section 7(1)(a), the goods or services which are supplied free of cost (without any consideration) shall not be treated as "supply" except in case of activities mentioned in Schedule I of the CGST Act. In view of the same, few sales promotion schemes have been examined as under:



Free samples and gifts: Samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST[31], except where the activity falls within the ambit of Schedule I.



Buy one get one free offer: It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly – *Concept of composite and mixed supply has been discussed subsequently in this chapter*.

[Circular 92/11/2019 GST dated 07.03.2019]

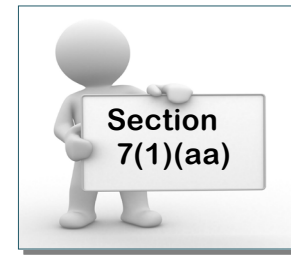
There has always been an ambiguity as to whether activities/ transactions involving supply of goods/ services, by any person, other than an individual, to its members or vice-versa fall within the purview of supply or not. Clause (aa) to section 7(1) brings in the certainty that said activities/ transactions are covered within the scope of supply under GST and ensures the levy of GST on such activities/transactions. This has been discussed as under:

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[31] *ITC on inputs, input services and capital goods to the extent they are used in relation to the gifts/free samples shall be available to the supplier only where the activity of distribution of gifts/free samples falls within the scope of supply supply. The same has been discussed in detail in Chapter 7 – Input Tax Credit in Module 2 of this Study Material.*

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ACTIVITIES/TRANSACTIONS BETWEEN A PERSON, OTHER THAN AN INDIVIDUAL, AND ITS MEMBERS/ CONSTITUENTS FOR CONSIDERATION



The activities or transactions (involving supply of goods or services) between a person, other than an individual, (i.e. association, club, etc.) and its members or constituents, for cash, deferred payment or other valuable consideration are covered within the ambit of 'supply' as per section 7(1)(aa).

Further, explanation to clause (aa) to section 7(1) clarifies that for the purpose of this clause, such person (association, club, etc.) and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions between them shall be deemed to take place from one such person to another. The **explanation starts with a non-obstante clause and shall therefore, shall have an overriding effect** over anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority.

The aforesaid explanation prevents the application of doctrine of mutuality by such person(s)[32].

(31) Resident Welfare Association (RWA) of Sanskriti Society supplies air-conditioners to its members at a concessional price.

(32) A Resident Welfare Association collects maintenance charges from its members for services provided.

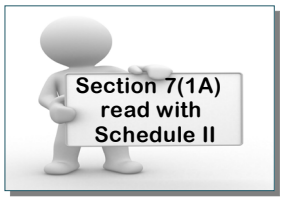
Here, in both the aforesaid examples, it shall be deemed that the Resident Welfare Association (RWA) and its members are two separate persons and it shall be deemed that the supply has taken place from Resident Welfare Association (RWA) to its members.

[32] *Section 7(1)(aa), in effect, overrules the judgment of the Hon'ble Supreme Court in State of West Bengal v. Calcutta Club Limited wherein it was held that the transactions between a Club and its members cannot be taxed owing to the doctrine of mutuality, i.e., a person cannot make a profit from himself.*

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ACTIVITIES/TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

Section 7(1A) classifies certain activities/ transactions constituting supply, either as supply of goods or supply of services. Schedule II of the CGST Act contains the list of activities or transactions which have been classified either as supply of goods or supply of service.



This helps in mitigating the ambiguities which existed in earlier laws.

(33) Under earlier tax regime, the restaurants used to charge both service tax and VAT on the value of food served. This is so because both sale of goods and provision of service were involved and therefore taxable event under both the Statutes i.e. respective VAT law and service tax law got triggered.

Under GST, the supply by a restaurant is treated as composite supply *[concept of composite supply is discussed subsequently in this chapter]* since supply of food and service is naturally bundled in ordinary course of business. Further, para 6(b) of Schedule II *[refer table below]* specifically provides that such composite supply shall be treated as supply of service. Hence, the entire value of invoice shall be treated as value of service and leviable to GST accordingly.

The matters listed out in Schedule II are primarily those which had been entangled in litigation in the earlier regime owing to their complex nature and susceptibility to double taxation. These are as follows:-

Para No.	Activity/ Transaction	Type	Nature of Supply
1.	Transfer	Any transfer of title in goods. **(34)** Shivaji sells ready-made garments to its customers.	Supply of Goods

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		Any transfer of right in goods/ undivided share in goods without transfer of title thereof.  **(35)** Genius Equipments Ltd. gives a machinery on rent to Suhaasi Manufacturers.	Supply of Services
		 Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed. **(36)** Dhruva Capitals supplied goods on hire purchase basis to customers. **(37)** Optima Manufacturers supplies toys to retailers on 'sale or return basis'.	Supply of Goods
2.	Land and Building	Any lease, tenancy, easement, licence to occupy land[33].  **(38)** Lease agreement for land.	Supply of Services
		Any lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or partly.  **(39)** A shop let out in a busy market area.	Supply of Services

[33] *Also refer Circular No.44/18/2018 CGST dated 02.05.2018 discussed subsequently.*

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3.	Treatment or Process	Any treatment or process which is applied to another person's goods  **(40)** Damani Dying House dyes the clothes given by Shubham Textiles Ltd. on job work basis.	Supply of Services
4.	Transfer of Business Assets	Goods forming part of business assets are transferred or disposed of by/under directions of person carrying on the business so as no longer to form part of those assets.	Supply of Goods
		Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/ under directions of person carrying on the business.  **(41)** A person manufacturing and selling wooden furniture takes one chair manufactured by him for use at his house.	Supply of Services
		Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, **in the course or furtherance of his business,** immediately before he ceases to be a taxable person.	Supply of Goods

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		 **(42) Arun, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him.** **Exceptions:** ❑ Business is transferred as a going concern to another person[34]. ❑ Business is carried on by a personal representative who is deemed to be a taxable person.	
5.	**(a) Renting of immovable property**  **(43)** Renting of a commercial complex. **(44)** Renting of precincts of a religious place. **(45)** Renting of property to an educational institution. **(46)** Permitting use of immoveable property for placing vending/dispensing machines. **(b) Construction of complex, building, civil structure, etc.** Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where	Supply of Services

[34] *Services by way of transfer of a going concern, as a whole or an independent part thereof are exempt supply under GST [Discussed in detail in Chapter 4 – Exemptions from GST in this Module of the Study Material].*

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	required, by the competent authority or after its first occupation, whichever is earlier[35].  **(47)** Rathi Builders has constructed individual residential units for agreed consideration of ₹ 1.2 crore per unit. ₹ 90 lakh per unit were received before issuance of completion certificate by the competent authority and its first occupation, and balance after completion. The term **construction** includes additions, alterations, replacements, or remodeling of any existing civil structure. The expression **competent authority** means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:— (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or (ii) a chartered engineer registered with the Institution of Engineers (India); or (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.	Supply of Services
	(c) Temporary transfer or permitting use or enjoyment of any intellectual property right  **(48)** Temporary transfer of patent.	

[35] *Also refer Circular No. 234/28/2024 CGST dated 11.10.2024 discussed subsequently.*

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	(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software  **(49) Suvidha Solutions develops an accounting software for a business firm.**	Supply of Services
	(e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.  **(50)** Cable operator - Sakharam has entered into an agreement with Cable operator - Aatmaram that Sakharam will not provide cable connections in the specified areas where Aatmaram is providing the connections. Non-compete agreements constitute supply of service. *Please refer the detailed discussion on this para of Schedule-II given at the end of the Table.*	
	(f) Transfer of right to use any goods for any purpose (whether or not for specified period) for cash, deferred payment or other valuable consideration.  **(51)** Machinery given on hire.	
6.	Following composite supplies :- ❑ Works contract ***Works contract:*** *means a contract for building, construction, fabrication, completion, erection,*	

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	installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of <u>any immovable property</u> wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract [Section 2(119)]. ❑ Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.	Supply of Services

CBIC has clarified the taxability of tenancy rights, Joint Venture (JV) and Priority Sector Lending Certificates (PSLCs) as under:

1. Taxability of 'tenancy rights' under GST

CBIC has clarified the taxability of 'tenancy rights' under GST as under:



Pagadi system, i.e. transfer of tenancy rights against tenancy premium, is prevalent in some States. In Pagadi system, the tenant acquires tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property, but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceeds with owner of land, as laid down in their tenancy agreement. **Alternatively,** the landlord pays to tenant the prevailing tenancy premium to get the property vacated.

It has been clarified that the activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST.

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It is a form of lease or renting of property and such activity is specifically declared to be a service in Para 2 of Schedule II as discussed in table above i.e. any lease, tenancy, easement, licence to occupy land is a supply of services. Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST. Merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST.

The transfer of tenancy rights cannot be treated as sale of land/ building in para 5 of Schedule III. Thus, it is not a negative list activity *[this concept is discussed under next heading]* and consequently, a consideration for the said activity shall attract levy of GST.



To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable *per-se*. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.

However, renting of residential dwelling for use as a residence to an unregistered person or to a registered sole proprietor taking the residential dwelling on rent on his own account in his personal capacity for use as his residence is exempt *[Entry 12 of Notification No. 12/2017 CT (R) dated 28.06.2017 – Discussed in Chapter 4 – Exemptions from GST in this Module of the Study Material]*. Hence, grant of tenancy rights in a residential dwelling for use as residential dwelling against tenancy premium or periodic rent or both (to above mentioned persons) is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST[36].

[36] *Circular No. 44/18/2018 CT dated 02.05.2018*

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2. Priority Sector Lending Certificates (PSLCs)[37]

PSLCs are in the nature of goods[38]. PSLC are not securities. PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which earlier attracted VAT.

In GST, there is no exemption available to trading in PSLCs. Thus, PSLCs are taxable as goods. GST payable on the certificates would be available as ITC to the bank buying the certificates *[Circular No. 34/08/2018 GST dated 01.03.2018]*.

Further, nature of supply of PSLC between banks is supply of goods in the course of inter-State trade or commerce. Accordingly, IGST shall be payable on the supply of PSLC traded over e-Kuber portal of RBI *[Circular No. 93/12/2019 GST dated 08.03.2019]*.

3. Applicability of GST on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law

CBIC has clarified issues with respect to GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law.

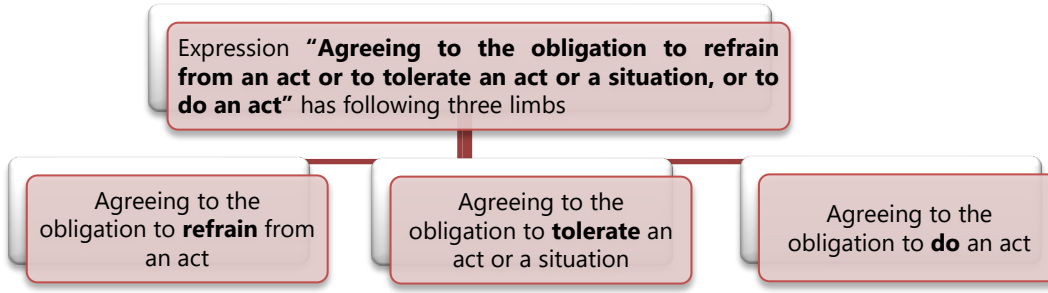
Clarification: "Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5(e) of Schedule II if the same constitutes a "supply" within the meaning of the CGST Act.

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*[37] Lending by a commercial bank for specified sectors which have been identified as **"priority sector"** by RBI is called as Priority Sector Lending. Priority Sector Lending Certificates (PSLCs) are a mechanism to enable banks to achieve the priority sector lending target and sub-targets by purchase of these instruments in the event of shortfall. This also incentivizes surplus banks as it allows them to sell their excess achievement over targets thereby enhancing lending to the categories under priority sector. Under the PSLC mechanism, the seller sells fulfilment of priority sector obligation and the buyer buys the obligation with no transfer of risk or loan assets.*

[38] RBI's FAQ on PSLCs

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a. Agreeing to the obligation to REFRAIN from an act



(52) Non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.

(53) A builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight.

(54) An industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

b. Agreeing to the obligation to tolerate an act or a situation

This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

c. Agreeing to the obligation to do an act

This would include the case where an industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

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Above three activities must comply with the following conditions:

(1) There must be an expressed or implied agreement or a contract must exist

Above three activities must be under an **"agreement" or a "contract"** (whether express or implied) to fall within the ambit of para 5(e) of Schedule II. In other words, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain or (b) tolerate or (c) do.

Such contractual arrangement must be an **independent arrangement** in its own right. Such arrangement/agreement can take the form of an **independent stand- alone contract or may form part of another contract.**

Thus, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

Such a contract cannot be imagined or presumed to exist just because there is a flow of money from one party to another. There must be an expressed or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him.

(2) Consideration must flow in return to this contract/agreement

Some **"consideration"** must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing.

Taxability of some of the transactions has been discussed in detail as under:

(A) Liquidated Damages



It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Black's Law Dictionary defines 'Liquidated

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Damages' as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.

The taxability or otherwise of liquidated damages is clarified as under:

It is argued that performance is the essence of a contract. **Liquidated damages** cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance.

Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not restitute the aggrieved person.

A contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party.

Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are merely a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

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Examples of such cases are:



(55) Penalty stipulated in a contract for delayed construction of houses,

(56) Forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer.

(57) Forfeiture of earnest money by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources.

The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' irrespective of by what name it is called, otherwise it is not a "supply".

If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'.

On the contrary, consider the following examples:



(58) A contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty.

(59) A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up.

(60) A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer.

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(61) A contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty.

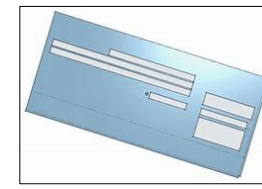
(62) Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period.

In the above examples, amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of prepayment of loan and of making arrangements for the intended supply by the tour operator respectively.

Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable.

Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Naturally, such payments will not be taxable if the principal supply is exempt.

(B) Cheque dishonor fine/ penalty



The supplier wants payment to be received on time and does not want cheque to be dishonoured. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty.

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The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, **cheque dishonor fine or penalty is not a consideration for any service and not taxable.**

(C) Penalty imposed for violation of laws



Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also **not consideration for any supply received and are not taxable.**

Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit.

Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration.

In short, **fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to tax.**

(D) Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment

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contract to discourage non-serious candidates from taking up employment.

The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation.

Further, the employee does not get anything in return from the employer against payment of such amounts.

Therefore, such amounts recovered by the employer are **not taxable as consideration** for the service of agreeing to tolerate an act or a situation.

(E) Late payment surcharge or fee



The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc.

Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty.

Even if this service is described as a service of tolerating the act of late payment, it is an **ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply.**

Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply.

However, the same cannot be said of cheque dishonor fine or penalty as discussed earlier.

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(F) Fixed charges for power



The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge.

The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.

Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.

(G) Cancellation charges

It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee.

Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till the exit of the passenger from the destination terminal.

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All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.



The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business. Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply.

example

(63) Cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

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Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

However, as discussed earlier, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money.

Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable[39].

4. Clarifications regarding applicability of GST on penal charges being levied by the Regulated Entities (REs)

Regulated Entities (hereinafter referred as REs) such as banks and non-banking financial companies (NBFCs) have been instructed, vide RBI instructions dated 18.08.2023, to discontinue the use of penal interest for non-compliance with loan terms.

As per the instructions, instead of penal interest, REs are to levy penal charges for non-compliance with loan terms.

The intent of levying penal charges is essentially to inculcate a sense of credit discipline. These instructions are effective from 01.01.2024, and do not apply to credit cards, external commercial borrowings, trade credits and structured obligations which are covered under product specific directions.

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[39] *Circular No. 178/10/2022 GST dated 03.08.2022*

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Issue: The issue which arose for consideration was whether penal charges so levied are in the nature of payment/consideration for tolerating an act or situation.

Clarification: As clarified vide *Circular No. 178/10/2022* GST dated 03.08.2022 discussed above that certain payments such as liquidated damages for breach of contract are not a consideration for tolerating an act or situation. They are rather amounts recovered to deter such acts; such amounts are for preventing breach of contract or non-performance and are thus mere 'events' in a contract. The essence of a contract is its 'performance' and not its 'breach', meaning thereby that parties enter into a contract for execution and not for its breach.

Penal charges levied by REs, in compliance with RBI directions dated 18.08.2023, are essentially in the nature of charges for breach of terms of contract and hence, it has been clarified that no GST is payable on the penal charges levied by Regulated Entities, in compliance with RBI directions dated 18.08.2023, for non-compliance with material terms and conditions of loan contract by the borrower[40].

5. Applicability of GST in respect of warranty replacement of goods or its parts and/ repair services during warranty period

As a commercial practice, the original equipment manufacturers/ suppliers offer warranty for the goods / services supplied by them to the customers. During the warranty period, goods /services are replaced to the customers (either by manufacturer itself or by the distributor on behalf of the manufacturer) and generally, no separate consideration is charged and received at the time of replacement from the customer.

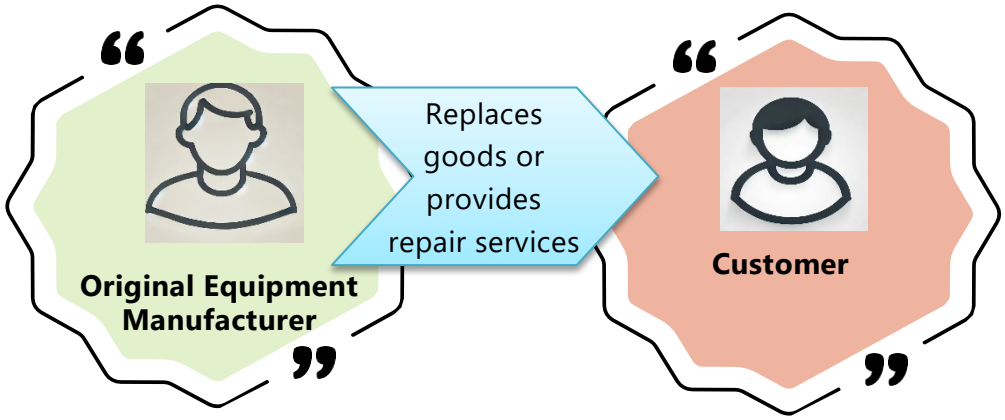
Following issues have been clarified in respect of warranty replacement of goods or its parts and/ repair services provided during the warranty period:

[40] *Circular No. 245/02/2025 GST dated 28.01.2025*

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SCENARIO 1

ORIGINAL EQUIPMENT MANUFACTURER OFFERING REPLACEMENT OF GOODS OR ITS PARTS/ REPAIR SERVICES UNDER WARRANTY TO THE CUSTOMER





Issue: Where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of goods or its parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, whether GST would be payable on such replacement of goods or its parts or supply of repair services, **without any consideration from the customer**, as part of warranty?

Clarification: The **value of original supply** of goods (provided along with warranty) by the manufacturer to the customer **includes the likely cost of replacement of goods or its parts and / or repair services to be incurred during the warranty**

Value of original supply includes likely cost of replacement of goods/its parts/ repair services to be incurred during the warranty period.

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