

# SUPPLY UNDER GST

## 1. INTRODUCTION

Taxable event is that event, happening of which attracts liability to tax. Taxable event is a very important event in any law as the levy and collection of tax is based on the happening of the taxable event. Although, the taxable event happens to be at a particular point of time, the levy and collection of such tax may be postponed for administrative convenience, to a later date.

Under the old indirect tax system there are different taxable event for different types of taxes such as for Excise duty it is manufacturing of goods, for service tax it is provision of service and for VAT/CST it is sale of goods etc. Various taxable events are summarized below:

TAX/DUTY	RELEVANT SECTION	TAXABLE EVENT
EXCISE DUTY	Section 3 of the Central Excise Act, 1944	Manufacture or production of goods in India
SERVICE TAX	Section 66B of the Finance Act, 1994	Service provided or agreed to be provided by one person to another in the taxable territory
CUSTOM DUTY	Section 12 of the Customs Act, 1962	Goods imported into, or exported from, India
CST	Section 6 of Central Sales Tax Act, 1956	Sale of goods in the course of Inter-State trade
VAT	State VAT laws	Sale of goods in the course of Intra-State trade

**“Goods and Services Tax”** means “any tax on supply of goods or services or both except tax on supply of alcoholic liquor for human consumption [Article 366 (12A) of the Constitutional (101st Amendment) Act, 2016]”.

Thus under the GST regime concept of tax on manufacturing (Excise Duty), tax on provision of service (Service Tax), tax on sale of goods (VAT/CST) etc. will be abolished. Only taxable event under GST will be supply of Goods and Services. Therefore supply will hold the greatest significance and shall be an important event in determining the taxability of all transaction whether commercial or otherwise under the GST regime.

### IMPORTANT DEFINITIONS:-

#### AGENT 2(5) of CGST ACT, 2017

- a. An agent is a person,
- b. Carries on business of supply of goods or services on behalf of another, or
- c. Carries on business of receipt of goods or services on behalf of another,
- d. An agent could be any of the following :
  - o factor
  - o broker

- o commission agent
  - o arhatia
  - o del credere agent
  - o auctioneer
  - o mercantile agent
  - o or any such other person by whatever name called.
- e. There must be two persons, i.e., an agent and principal (another person)

### BUSINESS 2(17) of CGST ACT, 2017

Business' as defined in **section 2(17) of the GST Act** includes :-

Law	Analysis/Example
a) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;	1. Definition has wider scope includes wager (betting transaction) also 2. Activities will cover in ambit of business even if there is no monetary benefit.
b) Any activity or transaction in connection with or incidental or ancillary to (a) above;	Eg. The activity of selling of old furniture by a trader of readymade garments shall get covered in this clause though he is not in the trade, adventure etc. of selling the furniture.
c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;	Eg. A trader of readymade garment makes a solitary transaction of providing consultancy 'how to set-up showroom for selling readymade garments' to one of his friend's son for a consideration shall get covered in definition of business.
d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;	Here the term Supply includes Inward and Outward both.  The Term "in Connection with" is expansive in nature and increase the scope of activities that will cover activities before commencement of business and activities after 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;	This clause does not talk about the provision of facility or benefits provided by club etc. to non member.
f) admission, for a consideration, of persons to any premises; and	Eg. Entry Ticket of amusement park or in diwali mela etc. of a consideration.
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;	Eg. If a CA in practice provides services as Independent Director, the service provided by him may be treated as 'business' and not 'employment'.
h) services provided by a race club by way of totalisator or a licence to book maker in such club;	Note: Book maker means: a person whose job is to take bets (especially on horse

	ances), calculate odds, and pay out winnings; the manager of a betting shop.
(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;	It provides that ANY activity or transaction by Government is included in the definition of business this will have far-reaching implications

## 2. Power To Levy GST

Article 246A of the Constitution, as brought by the Constitutional (101st Amendment) Act, 2016, confers concurrent power to both the parliament and state to powers to levy the GST on Intra-State supply. make laws with respect to GST.

However clause 2 of Article 246A read with Article 269A provides exclusive power to parliament to to make laws with respect to levy of Goods and Services Tax on Inter-State supply.

## 3. Meaning and Scope of Supply [Section 7 of CGST Act]:

Nature of Supply	Description
1. Supply Includes [Section 7(1)]	all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business, [Section 7(1)(a)] import of services, for a consideration whether or not in the course or furtherance of business, and [Section 7(1)(b)] activities specified in Schedule I, made or agreed to be made without a consideration. [Section 7(1)(c)] activities to be treated as supply of goods or supply of services as specified in Schedule II. [Section 7(1)(d)]

### Analysis

#### 1. Generic meaning of 'supply':

Expression "**supply**" includes 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 [Section 7(1)(b)]

Section 7 of the CGST Act defines the scope of supply in an inclusive manner. The above activities are specified as an example as they are preceded by words 'such as'.

Meaning of various terms in relation to "Supply"

(i)	Sale	Transferring the property in goods from one to another, upon valuable consideration. Note: mortgage, hypothecation, charge or pledge is not supply and hence GST will not be levied. E.g. Mr. X sold laptop worth Rs. 1,00,000 and issued invoice infavour of Mr. Y. Now ownership in laptop transferred to Mr. Y. Such transaction
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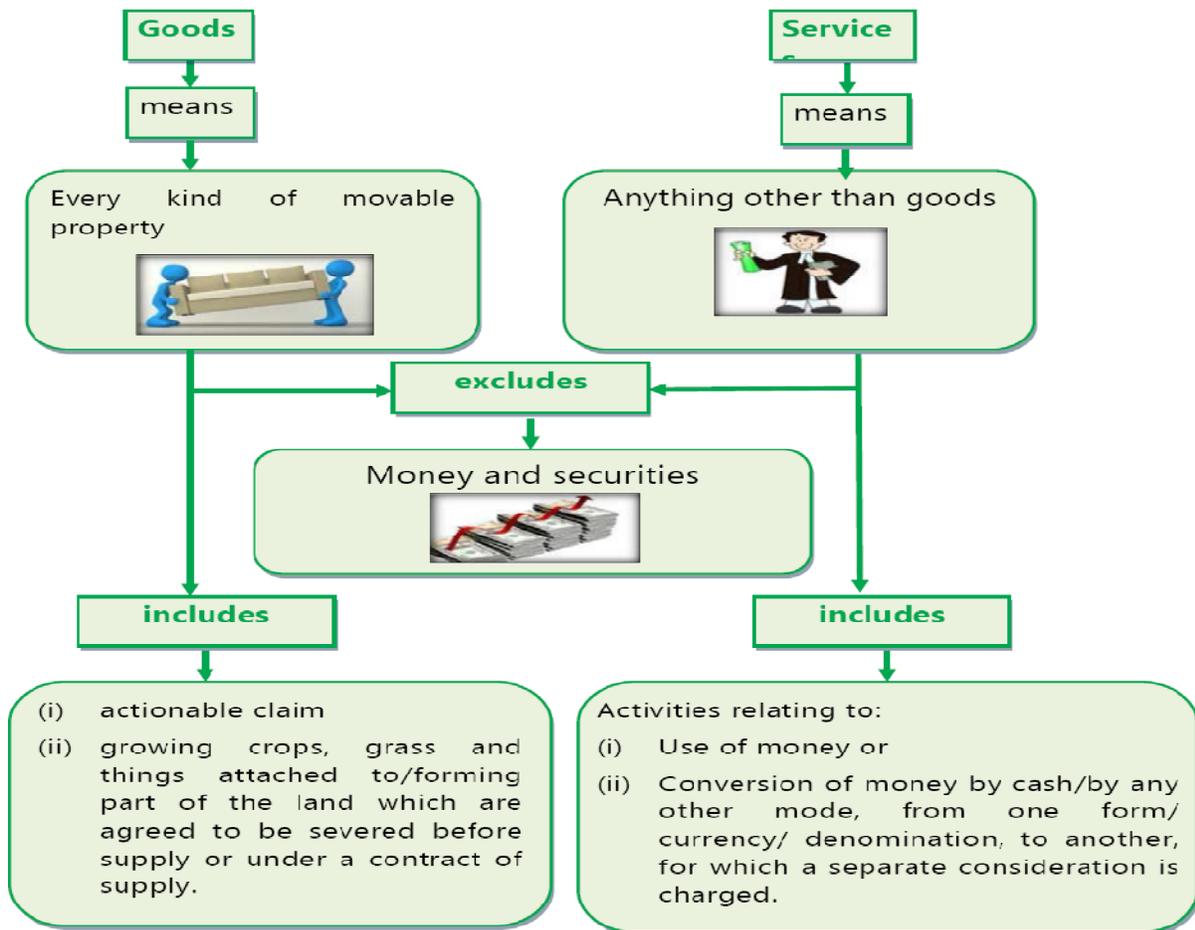
		shall be covered in sale. It is a supply of goods leviable to GST.
(ii)	Transfer	<p>the term transfer means, where the ownership may not be transferred but the right in the goods is transferred.</p> <p><i>Eg. Goods sent for a demonstration on returnable basis. It is supply?</i>  <i>Answer: No. It would not be considered supply, as there is no transfer of title involved.</i></p> <p><i>Eg. Mr. A is the owner of Xerox machine. He transferred the right to operate the Xerox machine to Mr. B for a consideration of ₹ 10,000 per month for four months. Hence, ownership of the machine is not transferred but the right in the machine is transferred. It is supply of service leviable to GST.</i></p>
(iii)	Barter	<p>To exchange one commodity for another without use of money.</p> <p><i>Eg. Mr. C a practicing Chartered Accountant provided services to M/s A Ltd., dealer of laptops, in return M/s A Ltd., given to Mr. C two laptops. Here, two-way supply takes place. Mr. C is making taxable supply of service and M/s A Ltd., is making taxable supply of goods. Hence, tax is payable by both.</i></p>
(iv)	Exchange	<p>when two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an exchange.</p> <p>Exchange offers on products such as televisions, mobile phones and refrigerators are leviable under GST.</p> <p><i>Eg. Mr. A is a dealer of new phones. He supplied for Rs. 20,000 to Mr. B along with exchange of an old phone and if the price of the new phone without exchange is Rs. 24,000, the open market value of the new phone is ₹ 24,000. Mr. A is liable to pay GST on ₹ 24,000. Mr. B also liable to pay GST on ₹ 4,000 if he is registered person.</i></p> <p><i>Eg. Mr X is a dealer of new cars. He sells new cars for ₹ 8,25,000 agrees to reduce Rs. 1,25,000 on surrendering of old car. Mr. Y who intends to buy new car worth Rs. 8,25,000 agreed to exchange his old car with new car.</i></p> <p><i>Under GST law, it will be treated as Mr. Y has made supply of old car to dealer Mr. X and Mr. X has made supply of new car to Mr. Y.</i></p> <p><i>If Mr. Y is registered person, he will be liable to pay GST on Rs. 1,25,000. Mr. X will be liable to pay GST on Rs. 8,25,000 whether Mr. Y is a registered person or not.</i></p>
(v)	Licence	<p>Permission granted by competent authority to exercise certain privileges without such authorization the activity would have constituted as an illegal act.</p> <p><i>Eg. Mr. X a developer of information technology software and holder of licence thereon. License to use software was given to different clients: Rs. 18 lakhs; hence, Mr. X is liable to pay GST whether he transfer such right permanently or temporarily as the case may be.</i></p>
(vi)	Rental	<p>Periodical payment for the use of another property.</p> <p><i>Eg. Mr. A owns a residential building in a prime commercial locality. Large vacant land in the backyard is given on rent of Rs. 1,80,000 per month to a parking contractor, Mr. B who has set up a parking facility on the said land. It is a taxable supply of service and hence, Mr. A is liable to pay GST.</i></p>
(vii)	Lease	<p>A lease is an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period of time. A lease may be financial lease or operating</p>

		lease. E.g. M/s X Bank Ltd., given an asset under financial lease to M/s Y Ltd. Repayment of financial lease made by the customer to the bank ` 80 lakhs which includes a principal amount of Rs. 50 lakhs. Financial leases shall be taxed as supply of services. M/s X Bank Ltd., is liable to pay GST.
(viii)	Disposal	Disposal normally considered as selling of assets when the organization is about to close down and various assets are required to be disposed of. Such transactions will also be considered as supply of liable to tax under GST Law.

## 2. SCOPE OF SUPPLY:-

The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:

1. Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.



2. Supply should be made for a consideration

**Consideration** has been defined in Section 2(31) of GST Act. The main features of the said definition are as under:

- (i) It can be monetary or non-monetary.
- (ii) It can be given to/by third person excluding subsidy given by Central/ State Governments

- (iii) It should be lawful.
- (iv) Forbearance/abstinence can be consideration.
- (v) Compromise or composition is consideration.
- (vi) It should be certain.
- (vii) It excludes deposit (refundable or non-refundable) that is not treated by supplier as consideration for supply.

E.g. Akbar Travels Pvt. Ltd., a travel agent books ticket for a customer Mr. X. Travel agent raises invoice on customer Mr. X for transportation of passenger by air of ₹ 10,000 and his commission of ₹ 500. The entire amount of Rs. 10,500 is not his consideration. The amount of ₹ 500 retained by the air travel is to be considered as his consideration.

E.g. M/s X Ltd., being an authorized dealer of the TATA brand, rendered services to buyer of car, but payment is made to authorized dealer by the TATA Company. It is called as consideration is given by third person. Therefore, it is treated as supply of service and liable to tax in the hands of M/s X Ltd.

Eg. A Sports Club agrees to hire services of cricket player Mr. B for a consideration of ₹ 2 crores. In addition to this, the agreement provides that the player shall be provided with the car valued for ₹ 20 lakhs. The entire value of Rs. 2.20 crores will be considered as consideration and subject to tax.

Eg. M/s Lakshman Ltd. agreed to sell its business to M/s Ram Ltd., for a consideration of Rs. 50,00,000. M/s Lakshman Ltd. further agrees that it will not conduct same or similar business for a period of 10 years, for which M/s Ram Ltd., paid Rs. 20,00,000. Hence, M/s Lakshman Ltd., consideration is Rs. 70,00,000.

Eg. Mr. Rajesh during long drive with his wife Manju violated traffic rules and was imposed fine of ₹ 1,000. The amount received as fine or penalty for violation of statutory provisions will not be considered as consideration.

Eg. the following generally not considered as consideration:

- Grant of pocket money
- Gift or reward (which has not been given in terms of reciprocity) or
- Amount paid on alimony for divorce

Eg. Deposits: If refunded then, it is not a consideration. Therefore the same does not attract GST. If tax has already been paid the taxpayer would be entitled to refund. If not refunded then, it is relating to a service, attract GST.

Eg. Subsidy given by the Government to benefit the farmers cannot be considered an additional consideration:

The Government provides subsidy, for the benefit of farmers but it is given to the manufacturer of fertilizers will not be considered as consideration.

Eg. X Ltd. supplied spare parts freely to replace during warranty period. Is it supply and

chargeable to GST?

Answer: It is not supply.

GST is not chargeable if free replacement is provided by a business to customers without consideration under warranty.

Eg. Penalties levied on late or delayed payment of loans and advances are taxable supply?

Answer: Yes. These are taxable under GST.

3. Supply should be made in the course or furtherance of business

**In the course of business: Every person carries out certain activities regularly for running trade or commerce.**

Example: 1

Mr. CA Ram a practising Chartered Accountant carries out the activity of Accounting, Auditing, Filing returns, Certifying documents and so on so forth. These activities can be considered as performed in the course of business.

**Furtherance of business: Every business person use to think how to develop his business or carrying out new activities. Such activities called as furtherance of business.**

Example: 2

M/s X Ltd. manufacturing of motor cars. Company use to sell more number of cars in Southern India. In view of demand in Southern India, company intends to establish manufacturing unit in Chennai. M/s X Ltd. appointed Mr. Y as a consultant for searching, evaluating and shortlisting places for prospective targets. Finally company decided to establish unit at Ambattur Industrial Estate Chennai. Hence, Mr. Y carried out various activities is in furtherance of business of M/s X Ltd.

4. Supply should be made by a taxable person

5. Supply should be a taxable supply

6. Supply should be made within the taxable territory

(b) import of services, for a consideration whether or not in the course or furtherance of business [Section 7(1)(b)]

#### Analysis

(a) it is applicable only for services and not for goods

(b) It should be import of service (as referred under Section 2(11) of IGST Act, 2017), where

- i. The supplier of service is located outside India;
- ii. The recipient of service is located in India; and
- iii. The place of supply of service is in India.

(c) Services shall be provided with consideration

(d) Services may be in the course or furtherance of business or not in the course or furtherance of business.

Example:- Online information and data base access or retrieval services, where import of free services from Google and Facebook by Mr. Ram located in India, without any consideration. Is it subject to GST?

Answer:

These are not considered as supply and hence not attract GST.

Note: GST will be levied only when services are provided with consideration.

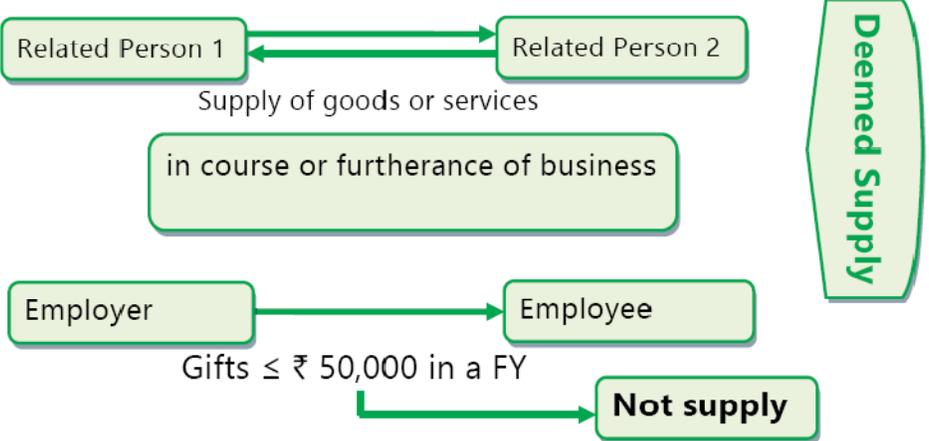
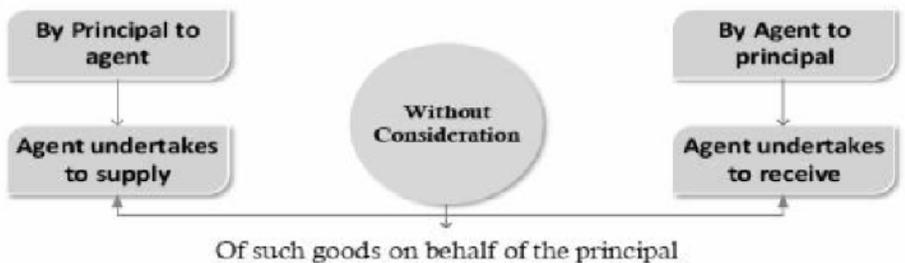
Example:- Suppose Mr.A pays fees for on-line coaching obtained from a teacher located in USA for coaching of Engineering course for his son. Even if receipt of this service is not for business or furtherance of business, A would be liable to pay GST under RCM, subject to threshold limit.

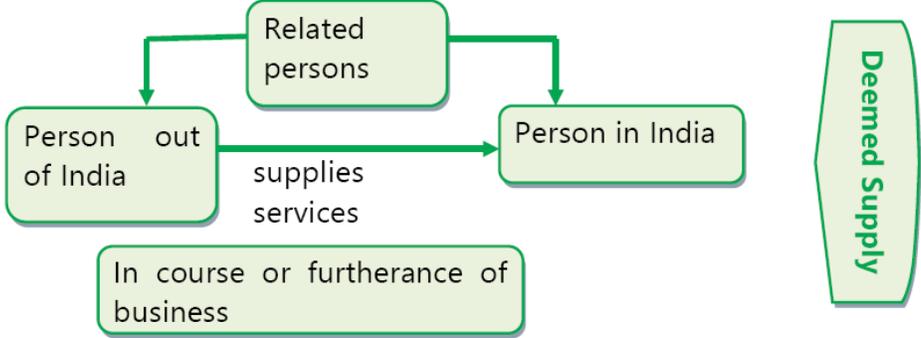
### Supply made without consideration

(c) activities specified in Schedule I, made or agreed to be made without a consideration. [Section 7(1)(c)]

This includes all supplies made by a taxable person to a taxable/ non-taxable person, even if the same is without consideration. These are specifically mentioned in Schedule I appended to the CGST Act. The same has been discussed below:

Sr.	Matter	Example to relating matter
1.	<b>Permanent transfer/disposal of business assets where input tax credit has been availed on such assets.</b>	<div style="text-align: center;"> <pre> graph TD     A[Business Assets] --&gt; B[Input Tax Credit availed]     B --&gt; C[Permanently transferred/disposed]     D[Deemed Supply]           </pre> </div> <ul style="list-style-type: none"> <li>✓ XYZ &amp; Co. donates old laptops to Charitable Schools when new laptops are purchased by business will qualify as supply provided input tax credit has been availed by XYZ &amp; Co. on such laptops.</li> <li>✓ A cloth retailer gives clothes from his business stock to his friend free of cost. In this case, transfer of business stock would amount to 'supply' if he had claimed input tax credit on his purchase of the business asset..</li> <li>✓ A dealer of air-conditioners permanently transfers an air conditioner from his stock in trade, for personal use at his residence. The transaction will constitute a supply as it is a permanent transfer/ disposal of business assets. The only condition is that input tax credit should have been availed on such assets.</li> </ul>

<p>2. <b>Supply of goods or services between related persons or Between distinct persons</b> [as defined in Sec. 25 of GST Act], when made in the course or furtherance of business. Provided that gift not exceeding Rs. 50,000 in value in a financial year by employer to employee shall not be treated as supply of goods or services or both .</p>	 <p>Supply of goods or services in course or furtherance of business</p> <p>Employer → Employee</p> <p>Gifts ≤ ₹ 50,000 in a FY</p> <p><b>Not supply</b></p> <p><b>Deemed Supply</b></p> <ul style="list-style-type: none"> <li>✓ Holding company provides corporate guarantee to subsidiary company for enabling them to raise loan from banks. Generally no amount is charged for providing this guarantee but such transaction will be considered as supply.</li> <li>✓ Stock transfer made to a unit outside the state or to a different business vertical of the same assessee will be reckoned as supply.</li> <li>✓ Employer and employee is covered in the definition of related person. Thus, any supply of goods or services by employer to employee even free of cost would have been covered under the scope of supply .But when the GST bill was passed in the Lok sabha on 29.03.2017 , this clause was inserted to provide exemption of gift up Rs 50000 by the employer to employee in a FY .</li> </ul> <p>Eg. M/s Guideline Academy Pvt. Ltd., gives Diwali Gifts to each employee worth ` 75,000/- . Since, an employee and employer are considered to be related persons, such gift treated as supply and would be leviable to GST on the entire value.</p>
<p>3. Supply of goods—  <b>a)</b> by a principal [as defined in Sec. 2(88)] to his agent [as defined in Sec. 2(5)] where the agent undertakes to supply such goods on behalf of the principal, or  <b>b)</b> by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.</p>	 <p>By Principal to agent</p> <p>By Agent to principal</p> <p>Agent undertakes to supply</p> <p>Agent undertakes to receive</p> <p>Without Consideration</p> <p>Of such goods on behalf of the principal</p> <ul style="list-style-type: none"> <li>✓ ABC Manufacturers Ltd. engages Raghav &amp; Sons as an agent to sell goods on its behalf. For the purpose, ABC Manufacturers Ltd. has supplied the goods to Raghav &amp; Sons located in Haryana. Supply of goods by ABC Manufacturers Ltd. to Raghav &amp; Sons will qualify as supply even though Raghav &amp; Sons has not paid any consideration yet.</li> </ul>

<p>4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.</p>	 <ul style="list-style-type: none"> <li>✓ ABC Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such services free of cost to its branch office. Since ABC Associates and the branch office are related persons, services received by ABC Associates will qualify as supply even though the head office has not charged anything from it.</li> <li>✓ Sumedha, a proprietor registered in Delhi, has sought architect services from his brother located in US, with respect to his newly constructed house in Delhi. Although services have been received by Sumedha without consideration from a related person, yet it will not qualify as supply since the same has not been received in course or furtherance of business.</li> </ul>
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### Schedule-II

#### Whether activity is supply of goods or service

(d) activities to be treated as supply of goods or supply of services as specified in Schedule II. [Section 7(1)(d)]

Section 7(1)(d) of the Act refers to Schedule II for determining whether a particular transaction is a supply of goods or supply of service. This helps in mitigating the ambiguities which existed in earlier laws.

Sr.	Matters	Example
<b>Matters to be treated as supply of goods</b>		
1.	Transfer of the title in goods	Sale of goods by one taxable person to another. Furniture House sold furniture to Mr. Ganesh. This will be treated as supply of goods, because on sale, the title of the furniture is transferred to Mr. Ganesh
2.	Transfer of title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment of full consideration	Furniture House supplied furniture to Mr. Ramesh in an agreement to receive payments in 6 instalments. This amounts supply of goods, because the title of the furniture will pass on to Mr. Ramesh on completing the payment of 6 instalments.  Typically, all hire purchase will qualify under this section.

3.	Goods forming part of business assets are transferred/disposed off by/under directions of person carrying on business so as no longer to form part of those assets, whether or not for consideration	Permanently transferred or disposed of business assets shall be treated as supply of goods. <ul style="list-style-type: none"> <li>• Sale of office computer.</li> <li>• Free samples</li> </ul>
4.	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. Exceptions: Business transferred as a going concern. Business carried on by a personal representative who is deemed to be a taxable person.	Person closing down his taxable business Dissolution of partnership firm
5.	Supply of goods by an unincorporated association /body of persons (BOP) to its member	Goods sold by a body of persons to its member for cash or on deferred payment. Supply of food, gaming tools, books etc. by any club to its members.
<b>Matters to be treated as supply of service</b>		
1.	Transfer of right to use goods without transfer of title in goods	Machinery given on rent for specified period along with operator. Rent a Cab. Furniture House supplied furniture to Mr. Rakesh, on rental basis, for a period of 3 months.  This amounts supply of service because furniture is transferred for Mr. Rakesh's usage, and the title of the furniture is still with Furniture House.
2.	Lease, tenancy, easement, licence to occupy land	Mr. Suresh lets out land on lease to Furniture House. The letting out of land on lease is considered as supply of services.
3.	Lease or letting out of the building including a commercial, industrial or residential complex for business or commerce	Mr. Suresh lets out a building to Furniture House. Furniture House used the building for display and sale of furniture. This is a supply of services
4.	Job work on others goods	Specified activities whether amount to manufacture or not. Furniture House also undertakes repair works and polishing of the furniture of their customers.

		The repair and polishing activity will be treated as supply of service.
5.	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, whether or not for consideration	Temporary transfer of business goods or capital goods for personal use whether or not for consideration Use of company vehicle for arranging picnic for employee. Company guest house given to an employee for his personal function.
6.	Renting of Immovable Property	Renting of factory
7.	Construction of a complex, building, civil structure or a part thereof	Construction of commercial or residential complex except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation, whichever is earlier.
8.	Temporary transfer or permitting the use or enjoyment of any intellectual property right	Copyright, Patents, Trademarks, Design, Franchise etc.
9.	Development, design, programming, customisation, adaptation, up gradation, enhancement, implementation of information technology software	Programming or development of IT Software will now be a service only. (i.e. ERP). Max Technologies Ltd developed a payroll software for Furniture House. The development of software is a supply of services.
10.	Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act	- Activity of agreeing to the obligation to refrain from an act, or - Activity of agreeing to the obligation to tolerate an act or a situation, or - Activity of agreeing to the obligation to do an act
11.	Works contract as defined in section 2(119), including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract of immovable property	Entire works contract will be treated as supply of service. Construction services.  Murali Construction Ltd constructed a commercial complex involving material and labour. This is a supply of services
12.	Supply of goods, being food or any other article for human consumption or any drink (except alcoholic drink.)	Restaurant Services Catering services

Activities or transactions which shall be treated neither as supply of goods nor services

Activities neither to be treated as supply of goods nor a supply of	Activities as specified in Schedule III [Section 7(2)(a)] Such activities or transactions undertaken by the Central Government, a State Government or any local authority, as may be
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services [Section 7(2)]	notified by the Government on the recommendation of the council. [Section 7(2)(b)].
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1. Services by an employee to the employer in the course of or in relation to his employment. However, Services provided outside ambit of employment for a consideration would be a service.

Example:- If an employee provides his services on contract basis to an associate company of the employer, then this would be treated as provision of supply.

2. Services by any Court or Tribunal established under any law for the time being in force.

Explanation : for the purpose of paragraph 2 , the term "court " includes District Court ,High Court, Supreme Court

3.

a. The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

b. The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

Example:- Diplomats, Governors of the States, C&AG of India, Attorney General of India (AGI) etc.

c. The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

Example:- Finance Commission is a body established by the president of India (under Article 280 of Constitution of India). Chairman/ Member/ Directors (who are not employee) of these bodies shall be out of GST.

Example:- Telecom Regulatory Authority of India (TRAI) is also a body established by CG. Chairman/ Member/ Directors (who are not employee) of these bodies shall be out of GST.

4. Sale of land and Sale of Building (except sale of under-construction premises where the part or full consideration is received before issuance of completion certificate or before its first occupation, whichever is earlier.

5. Actionable claims, other than lottery, betting and gambling.

6. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

Activities/transactions notified by the Government:

<b>Power of Central Government or State Government to notify transactions</b> [Section 7(3)]	Subject to sub-section (1) and sub-section (2), the Central or a State Government may, upon recommendation of the Council, specify, by notification, the transactions that are to be treated as— (a) a supply of goods and not as a supply of services; or (b) a supply of services and not as a supply of goods; or (c) neither a supply of goods nor a supply of services.
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COMPOSITE AND MIXED SUPPLIES [SECTION 8]

Tax liability on Composite	(a) <b>Composite Supply</b> means supply made by taxable person to
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<p>Supply and Mixed Supply [Section 8])</p>	<p>recipient</p> <ul style="list-style-type: none"> <li>- Consist of two or more supplies of goods or services</li> <li>- Naturally bundled i.e., goods or services are usually provided together in the normal course of business.</li> <li>- One of which is principal supply</li> </ul> <p>Tax liability shall be rate of principal supply</p> <p>(b) <b>Mixed supply</b> means supply made by taxable person to recipient</p> <ul style="list-style-type: none"> <li>- combination of goods and services for a single price</li> <li>- Supplies are not bundled due to natural necessities</li> <li>- can be supplied individually in the ordinary course of business.</li> </ul> <p>Tax liability shall be the rate applicable to the supply that attracts highest rate of tax</p> <p><b>Example on Composite Supply and Mixed Supply</b></p> <p>Composite Supply</p> <p>Example-1: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply.</p> <p>The entire supply will be treated as supply of principal and the rate of tax of principal will apply for other items.</p> <p>Example-2:</p> <p>In case of purchase of ticket in Rajdhani Train where the cost of ticket includes the services for Transportation of passengers, cost of foods and supply of bed rolls. All these services are bundled together and here the principal supply will be transportation of passengers.</p> <p>Example-3:</p> <p>A Five-star hotel provides four days and three-night package, with breakfast. This is a composite supply as the package of accommodation facilities and breakfast is a natural combination in the ordinary course of business for a hotel. In this case, the hotel accommodation is the principal supply, and breakfast is ancillary to the hotel accommodation.</p> <p>The hotel accommodation attracts 18% tax and the restaurant service attracts 28% tax. As per the example, hotel accommodation is the principal supply, and the entire supply will be taxed at 18%.</p> <p>Mixed Supply</p> <p>Example-4:</p> <p>Let us suppose a supply of package consisting of canned foods, sweets, chocolates, cakes, dry fruits, and fruit juice when supplied for a single price.</p> <p>Here it is further assumed that canned food is taxable @ 12%, sweets at zero rate, chocolates @ 18%, cakes 18%, dry fruits 18%, and fruit juice @ 28%.</p> <p>Here the Highest rate will be charged @ 28 % on entire value of supply.</p> <p>If these items are supplied separately then it will not be a mixed supply.</p>
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**Example-5:**

Let us take another example :

A combo pack for Rs 10,000 is supplied which consist of a shirt, watch, wallet, book .

Tax rate for a shirt, watch, wallet and book are 12%, 18%, 5% and Nil respectively. Here the combo pack will be considered as Mixed supply and will be taxable at highest rate which is 18% .

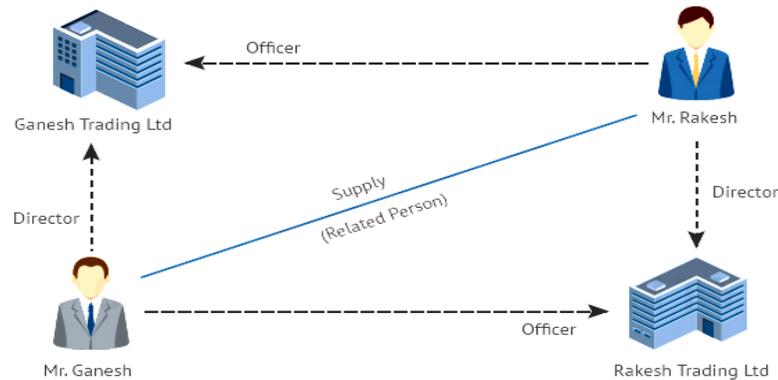


## Appendix

### Related person

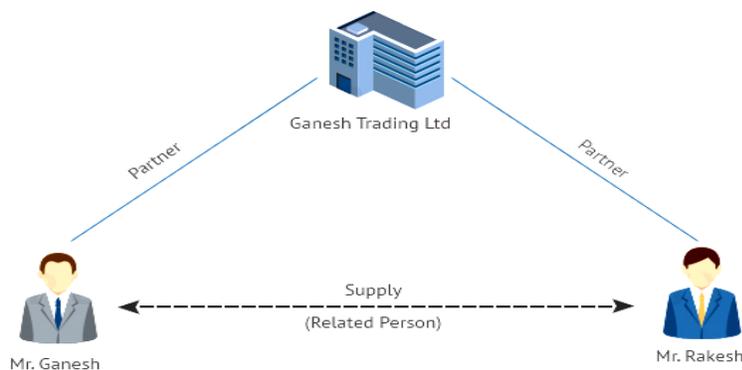
The definition of “Related Person” is similar to the current Customs Valuation Rules. The supply is considered as between related persons only if the supply of goods or services is made between:

**1. Officers or directors of one another’s businesses:** In a supply, the supplier and the recipient are actually officers or directors of the other business.



As illustrated above, Mr. Ganesh is a Director in Ganesh Trading Ltd, and an officer in Rakesh Trading Ltd. Mr. Rakesh, is a Director in Rakesh Trading Ltd. Also, Rakesh is an officer in Ganesh Trading Ltd. Therefore, any supply between them, will be treated as supply between related persons.

**2. Legally recognized partners in business:** The supplier and the recipient are partners in the same business or associated business.



As illustrated above, Mr. Ganesh and Mr. Rakesh are partners in Ganesh Trading Ltd. Any supply between Mr. Ganesh and Mr. Rakesh will be treated as supply between related persons.

**3. Employer and employee:** Any supply of goods and services between employer and



employee.

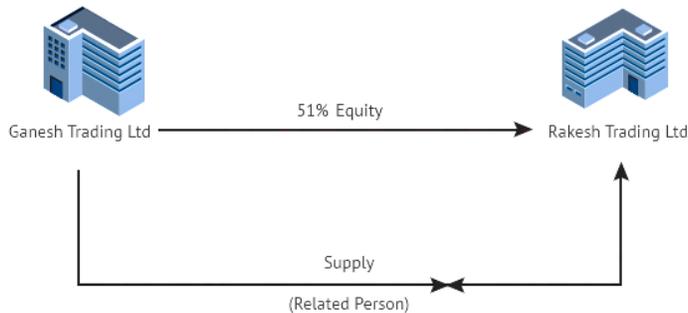
Mr. Rakesh is an employee of Ganesh Trading Ltd. Any supply from Ganesh Trading Ltd to Mr. Rakesh is considered as supply between related persons.

**4. The supplier or recipient directly or indirectly owns, controls or holds twenty-five per cent or more of the outstanding voting stock or shares.**

For example, the recipient hold 25% of equity in the supplier's business.

**5. One of them directly or indirectly controls the other:** If in any supply, the supplier or the recipient directly or indirectly controls the other, then it is considered as supply between related persons.

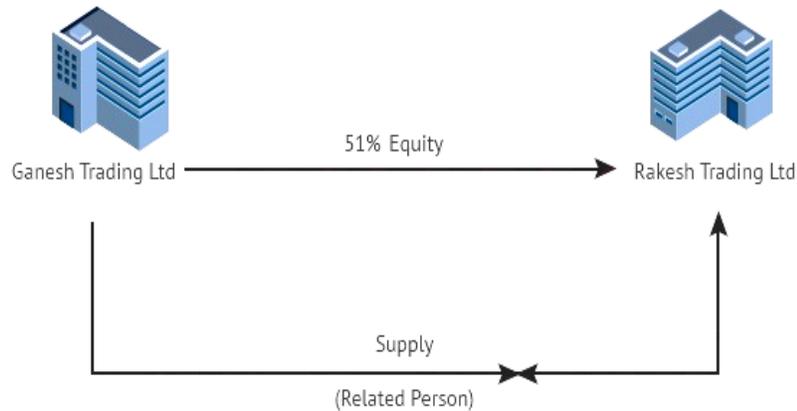
#### Direct Control



As illustrated above, Ganesh Trading Ltd holds equity in Rakesh Trading Ltd. The supply between Ganesh Trading and Rakesh Trading are related since Ganesh Trading Ltd directly controls Rakesh Trading Ltd.'s business.

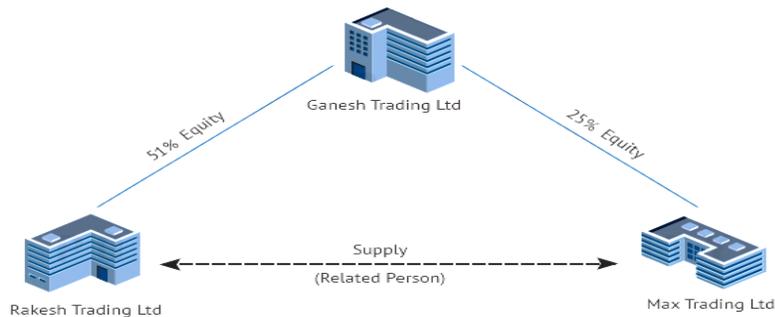
#### Indirect Control

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As illustrated above, Ganesh Trading Ltd holds equity in Rakesh Trading Ltd . Rakesh Trading Ltd. holds equity in Max Trading Ltd. Any supply between Ganesh Trading Ltd and Max Trading Ltd. are related. This is because Ganesh Trading Ltd. indirectly controls Max Trading's Ltd business by way of 'Rakesh Trading's' business interest in Max Trading Ltd.

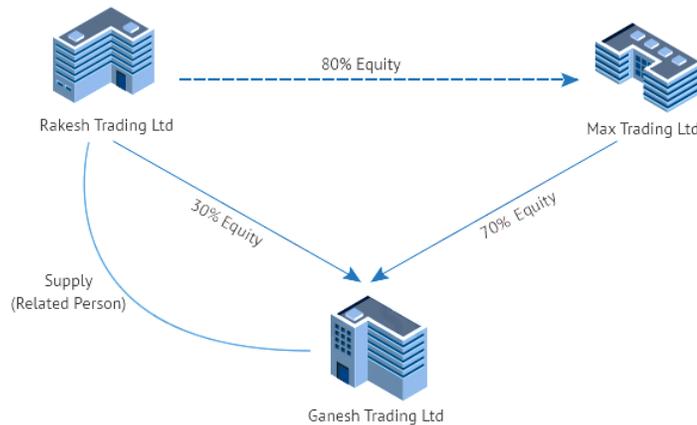
**6. Both of them are directly or indirectly controlled by a third person:** If in any supply, the supplier and the recipient are directly or indirectly controlled by a third person.



In the illustration above, Ganesh Trading Ltd holds equity in Rakesh Trading Ltd and Max Trading. The supply between Rakesh Trading Ltd and Max Trading Ltd are related since both of them are directly controlled by Ganesh Trading Ltd.

**7. Together they directly or indirectly control a third person:** If in any supply, the supplier and the recipient, together, directly or indirectly control a third person.

CA. VI



As illustrated above, Rakesh Trading Ltd holds 80% equity in Max Trading Ltd and 30% in Ganesh Trading Ltd.

Max Trading Ltd' hold 70 %equity in Ganesh Trading Ltd . Now, together, Rakesh Trading Ltd has control over Ganesh Trading Ltd and the supply between them will be considered as supply between related persons.

**8. They are members of the same family:** A supply made between the members of the same family is considered as supply between related persons.

Distinct Person

A Distinct Person can be defined as a taxable person who has obtained or is required to obtain more than one registration in the same state or a different state. Or an establishment of a person who has obtained or is required to obtain a registration, and also has the establishment in another state.

Each of his/her registration and establishment will be treated as a Distinct Person, and any supply between them will be taxable.

Therefore, any stock transfer or branch transfers are taxable in the following two cases:

**1. Intra state stock transfer:** Only when an entity has more than one registration in one state.

#### For Example

Super Cars Ltd is a car manufacturing unit located in Karnataka. They also own a service unit in Karnataka. Super Cars Ltd have obtained separate registrations for both the manufacturing and service units.

The manufacturing unit and the service unit of Super Cars Ltd will be treated as distinct persons, and any supply between them will be taxable, even without consideration.

**2. Inter State Stock transfer:** Transfer between two entities located in different states is taxable.

#### For Example

Super Cars Ltd is a car manufacturing unit located in Karnataka. They also own a service unit in Delhi.

The manufacturing unit and the service unit of Super Cars Ltd located in Delhi will be treated as distinct persons, and any supply between them will be taxable, even without consideration.

**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) of CGST Act].

**Actionable claim:** shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882.

As per section 3 of the Transfer of Property Act, 1882, 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].

#### ILLUSTRATION ON ACTIONABLE CLAIM

- ♣ Lottery ticket (before draw)
- ♣ Insurance policy
- ♣ Claims for arrears of rent
- ♣ Claims for future rent
- ♣ Unsecured Loan
- ♣ Option to purchase securities or movable/immovable property
- ♣ Claims for unpaid dower (in case of Muslim women getting divorce)
- ♣ Right to sue or infringement of brand or copyright even when
- ♣ brand or copy right is not registered .

**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) of CGST Act].

**Money:** means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveler 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) of CGST Act].

**Taxable supply:** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108) of CGST Act].

**Taxable territory:** means the territory to which the provisions of this Act apply [Section 2(109) of CGST Act].

**Person:-** includes—

- (a) an individual
- (b) a Hindu undivided family
- (c) a company
- (d) a firm
- (e) a Limited Liability Partnership
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in section 2(45) of the Companies Act, 2013
- (h) any body corporate incorporated by or under the laws of a country outside India
- (i) a co-operative society registered under any law relating to co-operative societies

- (j) a local authority
- (k) Central Government or State Government
- (l) society as defined under the Societies Registration Act, 1860 (21 of 1860)
- (m) trust and
- (n) every artificial juridical person, not falling within any of above.

The definition is 'inclusive' and can cover any other 'person' also. [Section 2(84) of CGST Act]

**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) of CGST Act]

**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) of CGST Act].

**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. [Sec. 2(52) of CGST Act].

**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. [Section 2(102) of CGST Act].