

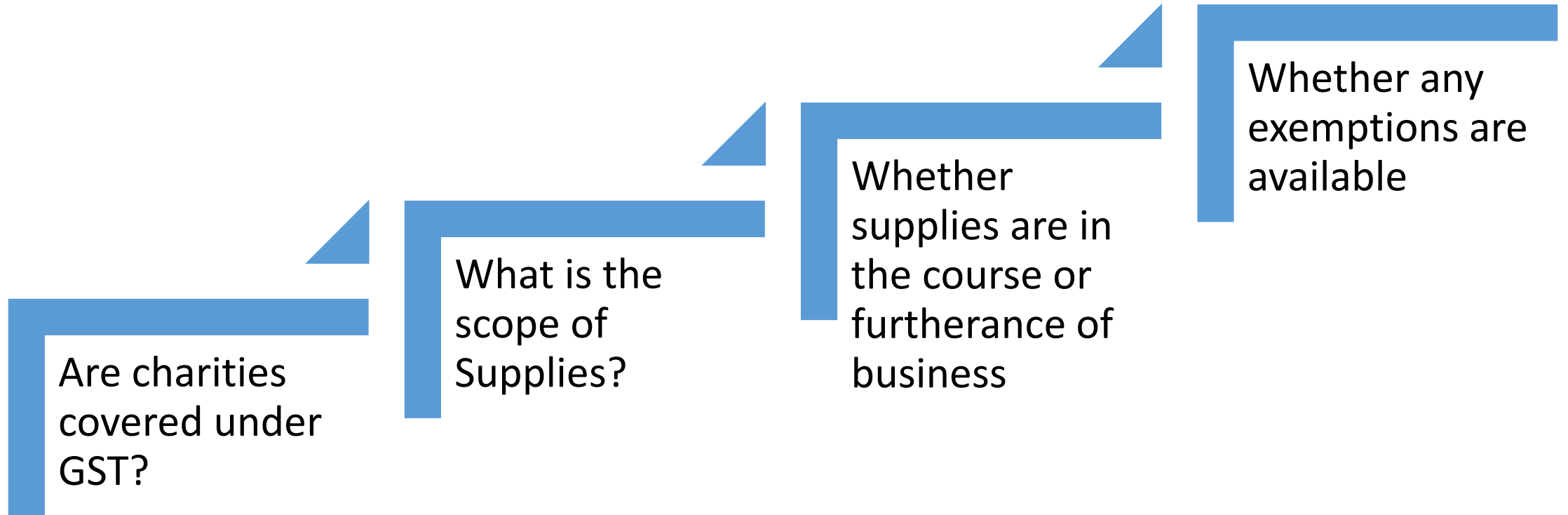


GST

GOODS AND SERVICES TAX

Issues for NGO's

Process Steps..



Is GST Law applicable to charitable trusts?

22. Persons liable for registration. — (1) Every **supplier** shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees
24. Compulsory registration in certain cases. — Notwithstanding anything contained in sub-section (1) of section 22, the following categories of **persons** shall be required to be registered under this Act,
- ...
- (iii) persons who are required to pay tax under reverse charge;

Relevant Definitions

Section 2(105) “**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(84) : Person includes

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

Supply : Scope : Section 7(1)

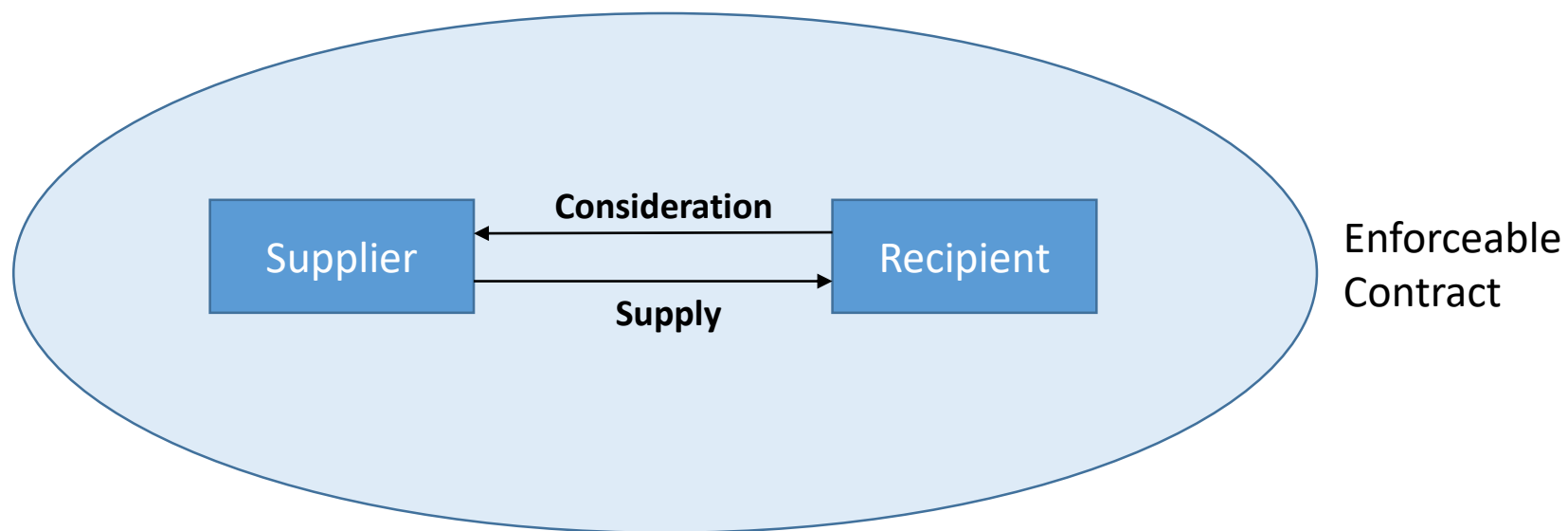
For the purposes of this Act, the expression “supply” includes -

(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**

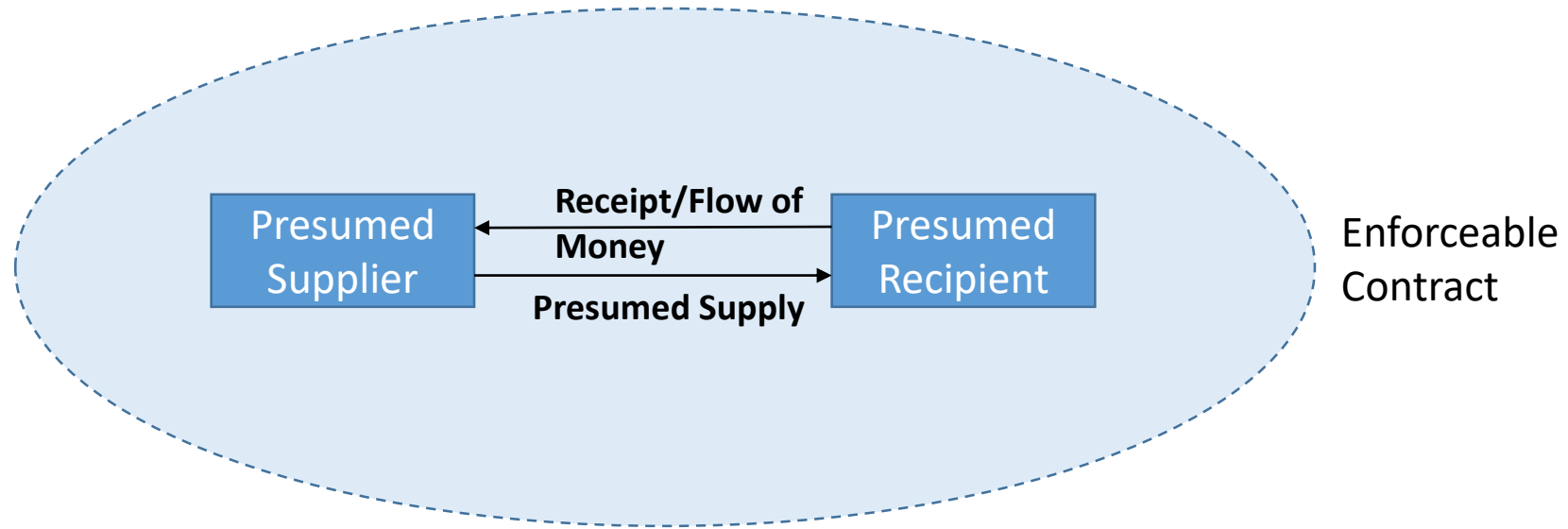
Supply : Essential Ingredients

- All forms of Supply
 - Supply vs. Activity vs. Benefit
- Made or Agreed to be made
- For a Consideration
 - Can be monetary or non monetary
 - Extent of Nexus
 - Cause & Effect Relationship & Enforceability to be examined
- By a person
- In the course or furtherance of business

The Classic Proposition for Taxability



The Convenient Proposition for Taxability



Tax cannot be demanded on presumptions

Some Quick Statements

What GST is?

- Tax on Supplies
 - of Goods or Services or both

What it is not?

- Tax on Income
 - Or Receipts

Supply Consideration

- Donations collected by a trust – corpus / voluntary donations
- What if such donations have a nexus with a supply?
 - Eg. Letting out of a hall against a donation
- What if something is supplied as acknowledgement of a donation/contribution?
 - Eg: Mementoes / Letters of Appreciation / Recommendation / Naming of Hospitals / Educational Institutions

Supply... Consideration

- Donations as part of CSR Activity
 - Trust acting as a Contractor to the company
 - Trust acting as an Implementation Partner - Apitco Ltd. v. Commissioner of Service Tax, Hyderabad 2011 (23) S.T.R. J94 (SC)
- Donations with end use conditions / monitoring
- Specific Research Grants with right to retain IP/Results of Research

Supply business

- Tata Motors is in the business of automobile manufacture
 - Supply of motor cars is in the furtherance of its' automobile business
- Tata Motors is NOT in the business of scrap generation
 - Sale of scrap generated is NOT in the course of its' scrap generation business
 - Sale of scrap generated is in the course of its' automobile business
- ITC is in the **independent businesses** of food, hospitality, cigarettes, etc.

Supply business

- XYZ charitable trust is engaged in social cause of rehabilitation of distressed elderly persons in old age homes
 - Supply of accommodation is in the furtherance of its' _____ business?
 - Supply of accommodation is in the course of its' _____ business?

- How to interpret the term 'business' ?

Business: Pre GST Background

Citation	Decision in brief
State Of Andhra Pradesh vs Abdul Bakhi And Bros [1964] 15 STC 644 (SC)	Profit Motive is a must to treat some activity as business
Raipur Manufacturing Co. Ltd. [1967] 19 STC 1 (SC)	Sale of Scrap by a textile dealer – not part of business though there is intention to make profits
State of Tamil Nadu and Another Versus Board of Trustees of the Port of Madras 1999 4 SCC 630 (SC)	If the main activity does not constitute business, an incidental activity will not constitute business
Commissioner of Sales Tax vs. Sai Publication Fund AIR 2002 SC 1582 (SC)	Sale of publications and prasadam by a temple does not constitute business even if there is a profit motive

Business

“business” includes —

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;**
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);**
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;**
- (d) supply or acquisition of goods including capital goods 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;
- (f) admission, for a consideration, of persons to any premises;
- (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; and]
- (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

Is there a conflict?

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

- How to interpret “**for** pecuniary benefit” – Is it the end result or the intention?
 - You use a corkscrew for opening bottles
 - Cigarettes are bad for you
 - I bought it for \$10

Business : How to determine?

Scenario	Example	Whether covered?
Primary Objective is not business. Certain incidental activities carried out which may partake the character of business. However, such activities dependent on the primary objective	A religious trust selling prasadam, religious books, etc.	No.
Primary activity carried out with commercial objectives in mind and the profit applied towards charitable causes	Hospital run by a trust	Yes.
Primary Objective is not business. Independent activities carried out which may partake the character of business.	Mandap Keeper and Catering Services rendered by a trust.	Yes.

Specific Exemption Entries

Notification 12/2017-CT(Rate)

- 1. Services by an entity registered under Section 12AA of Income-tax Act, 1961 by way of charitable activities
- 13. Renting of precincts of a religious place by a charitable or religious trust
- 80. Training or Coaching in sports by charitable entities
- Charitable Activities defined in Clause 2(r)

CBIC Flyer

- Highlights specific exemption entries and definition of charitable activities
- Exemption is specific
- Does not consider the impact of 'business'
- Considers various scenarios in the light of several exemption entries

CBIC Flyer : Scenarios

Scenario	CBIC Clarification	Remarks
Renting of Immoveable Property	Exempt if in the precincts of religious place if charges are less than Rs. 1000 per day	Supply of renting is in the furtherance of ___ business
Advertisement Hoarding received by a Ganesh Mandal	Taxable	Supply of advertisement is in the furtherance of ___ business
Educational Institutions	Entry 66 exempts recognised education	What happens to other than recognised courses?
Running Public Libraries	Entry 50 exempts such services	
Running Hospitals	Entry 74 exempts healthcare services	

RCM – Whether trusts liable?

- GTA Services (other than 12% forward charge cases) – if already registered
- Legal Services / Services by Arbitral Tribunal – if received by business entity
- Services rendered by Government (including Renting*) – if received by business entity
- Import of Services (Entry 10 provides limited exemption for charitable activities)

Tax Implications on donors/sponsors

- Sponsorship liable for RCM
- For donations in kind, whether ITC is available?

End Note

- GST is an indirect tax
 - Does not impact Supplier if able to collect
 - Breaks credit chain if intermediary entity steps out (exempted / not covered)
- Trustee-ship position is an onerous one
- Once registered, multiple compliance requirements kick in

Issues for Co-operative Societies

Applicability

- Does the Society supply goods or services or both?
- Is there a consideration for the supply?
- Is the supply in the course or furtherance of business?
- Can a person supply to one-self?
- Is mutuality principle applicable? – Calcutta Club (Supreme Court)

- **Specific Exemption for RWAs**
 - Rs. 7500 per month per member – for residential societies only
- **Threshold Limit**
 - Rs. 20 lakhs per annum
 - Includes exempted supplies
 - Only if not registered

CHS/RWA : Clarifications from Govt.

Nature of Receipt	Clarifications from Govt.
Property Tax	Not Taxable
Water Charges	Not Taxable if in the nature of tax
Electricity Charges	Not Taxable if collected under Statute
N.A. Tax	Not Taxable
Maintenance and Society Charges	Taxable
Parking Charges	Taxable
Non Occupancy Charges	Taxable
Sinking/Repair Fund	Taxable ???
Share Transfer Fees	Taxable ???

