

# ISSUES IN CONCEPT OF SUPPLY

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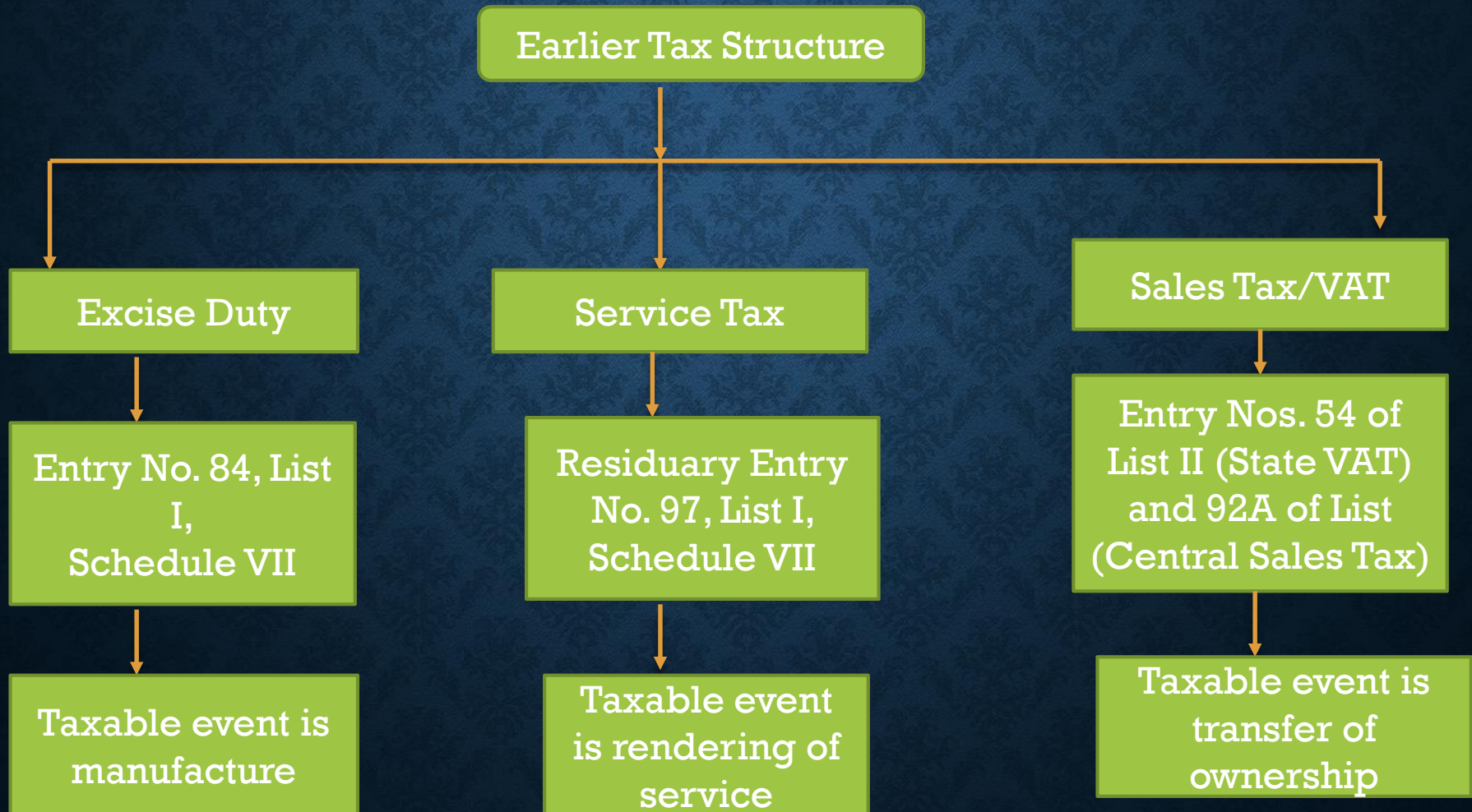
Refresher course on GST

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# EARLIER TAX STRUCTURE

Earlier tax was on manufacture, sales and service. Tax on manufacture and service was levied by Centre Government whereas tax on sale was levied by State. It has been explained below with pictorial presentation.





# GST REGIME

Article 246A has been incorporated in Constitution of India to provide powers to make laws with respect to goods and services tax. After implementation of GST incidence of tax is on supply.

**Levy and Collection:** The relevant extract of section 9 of CGST Act, 2017 dealing with the provisions of Levy and Collection is reproduced below:

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

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.



# SCOPE OF SUPPLY AS DEFINED U/S 7 OF CGST ACT, 2017

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;
  - (b) import 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 <sup>5</sup>[sub-sections (1), (1A) and (2), the Government may, on the recommendations 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.



## SCHEDULE III

### ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
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*  
*(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.*
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.



5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

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

*Explanation.*-For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.”;

(ii) The Explanation shall be numbered as Explanation 1 and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely:-

‘Explanation 2.—For the purposes of paragraph 8, the expression “warehoused goods” shall have the same meaning as assigned to it in the [Customs Act, 1962](#).]



## Broad Criteria of the definition of supply is as follows:

- a) It should be in course or furtherance of business. Business is defined very widely in section 2(17) which is as follows:

2 (17) “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) services provided by a race club by way of totalisator or a licence to 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;*

- b) It should be for consideration except for transaction listed in Schedule I which are as follows:

### **SCHEDULE I**

#### **ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION**



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

*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.*

c) Transaction specified in Schedule II is for classifying goods/ services.

d) Transaction specified in Schedule III neither goods nor services.



## IN ADDITION TO ABOVE, OTHER CRITERIA ARE AS FOLLOWS

- a) Contractual obligation (Intention to create legal relationship)
- b) Positive act to supply
- c) Mere receipt of amount cannot be considered as supply
- d) Illegal supply is also supply.
- e) An activity would qualify as a 'supply' only if a voluntary act is undertaken by the supplier



## Illustration for illegal supply is also supply-

The activity may be carried out legally or illegally *i.e.* without compliance with statutory provisions. Assuming the thief has stolen car and sells the car to person X. It is illegal to steal a car and thereafter sell it to another person. However, sale of car by thief to the person X will constitute supply liable to be taxed.

However, if a particular activity is totally prohibited, such activity cannot constitute supply. The European Court in the case of *Vereniging Happy Family Reustenburgerstrat v. Inspecteur der Omzetbelasting* [1989] 4 BVC 216 has held that there was no liability of VAT on illegal distribution of prohibited drugs because their supply was subject to total prohibition in the member States.



## SOME OF THE ITEM THAT NEEDS DISCUSSION

- a) Receipt of dividend;
- b) Commission received by executive director/ non- executive director;
- c) Receipt of interest on fixed deposit/ inter-corporate deposit;
- d) Remuneration from partnership;
- e) Receipt of amount on maturity of life insurance policy;
- f) Transfer of profit share in partnership firm;
- g) Whether providing sanitizer, health insurance and pick up drop service to employees free of cost is a supply;
- h) Whether recovery of certain amount for non-fulfilment of contract of supplying agreed units within prescribed time is a supply;
- i) Barter



# COMPOSITE AND MIXED SUPPLY

➤ Section 2(30) of the CGST Act defines composite supply:

“**composite supply**” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

*Illustration.—Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;*



- Section 2(74) of the CGST Act defines mixed supply as below:

“mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply

*Illustration. — A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;*

- Section 2(90) of the CGST Act defines the meaning of principal supply as follows:

“principal supply” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;



- Section 8 of CGST Act, 2017 provides for the determination of tax liability on composite and mixed supplies as below:
  - a)* a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
  - (b)* a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.



# FACTORS WHERE A TRANSACTION IS CONSIDERED AS A COMPOSITE SUPPLY

- The components are sold as a package at a single price.
- The components are advertised as package.
- The different components are not available separately.
- The customer perceives what they receive as a single supply, not independent components.
- The different components are aspects of the quality or grade of the overall supply.
- The different components are integral to one main supply. If one or more of the components is removed, the nature of the main supply would be affected.
- Some components are clearly incidental or ancillary to an identifiable main supply.



## FACTORS WHERE A TRANSACTION IS CONSIDERED AS A MIXED SUPPLY

- The individual components are not integral to each other.
- A single price is charged for separate principal supplies.
- The components are available separately.
- The components are not interdependent or connected.



# M/S. ROYAL CARE SPECIALITY HOSPITALS LTD. 2019 (10) TMI 1187 - AAR, TAMILNADU- COMPOSITE SUPPLY

## Issue:

- Whether the medicines, consumables, surgical and implants used in the course of providing health care services to patients admitted to the Hospital for diagnosis or treatment would be considered as “Composite Supply” of health care services under GST and consequently exemption under notification no. 12/2017 read with section 8(a) of CGST Act, 2017?

## Judgement:

- Inpatient services means services provided by hospitals to inpatients under the direction of medical doctors aimed at curing, restoring and/or maintaining the health of a patient and the service comprises of medical, pharmaceutical and paramedical services, rehabilitation services, nursing services and laboratory and technical services.



- Supply of medicines, consumables, surgical items, items such as needles, reagents etc used in laboratory, room rent used in the course of providing health care services to in-patients for diagnosis or treatments which are naturally bundled and are provided in conjunction with each other.
- Further, a complete gamut of activities required for well-being of a patient and provided by a hospital under the direction of medical doctors is a composite supply as defined in Section 2 (30) of the CGST Act, 2017 and accordingly tax liability has to be determined in accordance with Section 8 of the CGST Act, 2017.
- In this case the provision of health care services being the principal supply (predominant service) and the other supplies being dependent on the provision of health care services can only be considered as services ancillary to the provision of health care services.
- In case of an inpatient, the hospital provides a bundle of supplies which is classifiable under health care services eligible for exemption under Sl. No. 74 of Notification No.12/2017-CT(R) dated 28<sup>th</sup> June. 2017.



# M/S. H.P. SALES INDIA PVT. LTD. 2020 (6) TMI 706 – AAAR (MAH) – MIXED SUPPLY

**Facts:** The applicant was engaged in supplying of the ElectroInk along with the other consumables comprising of blanket, photo imaging plate, binary ink developer, HP imaging oil, blanket web and other machinery products to its customers

**Issue:** Whether the supply is composite supply or mixed supply

**Judgement:**

- The bundled supplies by the applicant to its customers has no principal supply, which is one of the primary conditions for any supply to be treated as the composite supply as envisaged under section 2(30) of the CGST Act, 2017.
- The Appellant themselves have admitted that there is not any specific element under this bundle of supplies, which is more significant than others, ruling out the possibility of presence of any principal supply. The above submissions and the evidence produced by the applicant themselves in the form of the Chartered Engineer's certificate also lead us to conclude further that there are no components in this bundle of supplies, which are ancillary in nature, as all the components are indispensable in nature, and not additional or subordinate in nature.



- None of the components are subordinate to any one element of the supplies. That is, none are providing additional support to any specific consumable items. All these consumables are being consumed together to achieve the desired output. In absence of any one of these consumables, the entire printing function will be stalled, which clearly shows the importance of each of the components of the bundled supplies. At the same time, it also shows that none of supplies are ancillary in nature.
- The supply of the Electrolnk along with other consumables by the Appellant is not a composite supply. Instead the said supply can be construed as mixed supply, as it satisfies all the conditions stipulated for the 'mixed supply' under the provision of section 2 (74) of the CGST Act



# DISPLAY OF NAME OR PLACING OF NAME PLATES OF DONOR

- The recipient institution displays name or places name plates of individual donors who have provided financial help or any other support in the form of donation or gift to various institutions which can be religious, charitable, carrying out education, medical etc. to express gratitude. The name in different style is used but no reference is made to business activity of the donor.
- Therefore, donor does not get any commercial gain. No advertisement is made for the business of donors. Hence it is clarified vide circular No. 116/35/2019-GST dated 11-10- 2019 that display of name or placing of name plate of the donor in the premises of charitable organization is not a taxable supply.



# SUPPLY BY COURT RECEIVER

Section 92 provides for the levy and recovery of GST from a Court of Wards, Administrator General, Official Trustee, receiver or manager-

*“92. Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.”*



On a reading of Section 92 of the CGST Act it is clear that GST may be determined and levied from the court receiver if:

*a. The receiver is in control of the business of a taxable person*

*b. A taxable event of supply has taken place with respect to such business on account of which the estate of the taxable person would be liable to tax, interest or penalty under the CGST Act.*

Section 92 of the CGST Act clearly contemplates that GST may be levied on and collected from the Court Receiver with respect to a business under its control provided that the taxable event of 'supply' for such levy of GST has taken place.

The requirement of a 'supply' is essential. It is the taxable event under the CGST Act. If there is no supply, there can be no liability for payment of tax (or any interest or penalty thereon). Therefore, if these requirements are met with, Section 92 of the CGST Act provides that GST may be determined and recovered from the receiver in the like manner and to the same extent as it would be determined and be recoverable from a taxable person as if the receiver were conducting the business himself.



There may be instances where payments received by the Court Receiver may attract GST. For instance:

*(i) Where the Court Receiver is appointed to run the business of a partnership firm in dissolution, the business of the firm under the control of receivership may generate taxable revenues,*

*(ii) Where the Court authorises the Court Receiver to let out the suit property on leave and license, the license fees paid may attract GST.*

*(iii) Where the Court Receiver collects rents or profits from occupants of properties under receivership, the same will be liable to payment of GST.*

*(iv) Consideration received for assignment, license or permitted use of intellectual property.*

This is not an exhaustive list but the principles applicable for answering the question of law raised in this Court Receiver's Report may be relevant to address issues that may otherwise arise. In such cases, GST may be collected from the Court Receiver as a representative assessee under Section 92 and as such the Court Receiver may be required to obtain registration under the relevant GST laws.



## **BAI MAMUBAI TRUST 2019 (9) TMI 929 - BOMBAY HIGH COURT**

**Issues A :** Whether GST is liable to be paid on services or assistance rendered by the Court Receiver appointed by Court?

**Judgement:** It was held that services of the Court Receiver falls under Item 2 of Schedule III to the CGST Act as it is for a service provided by an officer of the Court. Thus, activities or transactions of the Court Receiver shall be treated neither as a supply of goods nor a supply of services and the same. Accordingly, the fees or charges paid to the Court Receiver are not liable to GST.



**Issue B:** Whether GST is liable to be paid on royalty or payments under a different head paid by a defendant (or in a given case by the plaintiff or third party) to the Court Receiver in respect of properties over which a Court Receiver has been appointed.

**Judgement:**

- It was held that the Learned Amicus Curiae is correct in submitting that the legislature has, in Section 92 of the CGST Act, provided that a receiver would be a convenient point for the revenue to determine and collect GST.
- If Section 92 of the CGST Act is applicable in a given case, GST may be determined and recovered from the Court Receiver by reason of the Court Receiver being akin to a 'representative assessee'. However, whether or not GST is applicable depends on the nature of the cause of action pleaded by the Plaintiff or the order of the Court directing payment and which sets out the terms of receivership. This is because the cause of action and finding thereon will determine the character of the payments made. All or some of these would have to be considered to determine if a 'taxable event' within the four corners of the CGST Act have taken place to attract liability for GST.



- The requirement of a 'supply' is essential. It is the taxable event under the CGST Act. If there is no supply, there can be no liability for payment of tax (or any interest or penalty thereon).
- This is clear from Article 246A of the Constitution of India which deals with the legislative competence of the Union and the States to make laws with respect to goods and services tax imposed by the Union or such State and Article 366(12A) of the Constitution of India which defines 'goods and services tax' as 'any tax on Supply of Goods or Services or both except taxes on the supply of the alcoholic liquor for human consumption'.
- This is also evident from the charging provision i.e. Section 9 of the CGST Act - If these requirements are met with, Section 92 of the CGST Act provides that GST may be determined and recovered from the receiver in the like manner and to the same extent as it would be determined and be recoverable from a taxable person as if the receiver were conducting the business himself.



- Royalty is paid towards damages or compensation or securing any future determination of compensation or damages for a prima facie violation of the Plaintiff's legal right in the Suit Premises. The prima facie finding is that the Defendant has no semblance of right to be in occupation of the Suit Premises. The permission granted to the Defendant to remain in possession subject to payment of royalty is an order to balance the equities of the case. The basis of this payment is the alleged illegal occupation or trespass by the Defendant.
- However, where no reciprocal relationship exists, and the plaintiff alleges violation of a legal right and seeks damages or compensation from a Court to make good the said violation (in closest possible monetary terms) it cannot be said that a 'supply' has taken place. Such payment lacks the necessary quality of reciprocity to make it a 'supply'. Hence no GST is payable.
- GST is liable to be paid on royalty or payments, subject to the payment towards royalty or the payment to the Court Receiver (described by whatever name) is towards or in relation to a 'supply' within the meaning of the CGST Act. However, in the present case no GST is payable since there is no supply involved.



*THANK YOU*

**BALANCED VIEW**

**PRESENTED BY**

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