

# WIRC of ICAI

- Event** : Refresher Course on GST
- Subject** : Issues in GST Valuation
- Date & Day** : Monday, 06<sup>th</sup> July 2020
- Presented by** : CA Naresh Sheth



# Pre-Requisites for Levy of Tax / Duty

Authority under  
Constitution to  
levy tax

Taxable territory

Taxable event

Assesse/  
Taxable person

**Measure or  
value of tax  
base**

Rate of tax

# Charging Provision (Relevant extract): Section 9 of CGST Act

Levy

There shall be levied a tax called **CGST**

On

All intra-state supplies of goods or services or both

Except

On the supply of alcoholic liquor for human consumption

Value

**On the value determined u/s 15 of CGST Act**

Rate

At such rates as may be notified by CG in this behalf but **not exceeding 20%** on recommendation of council

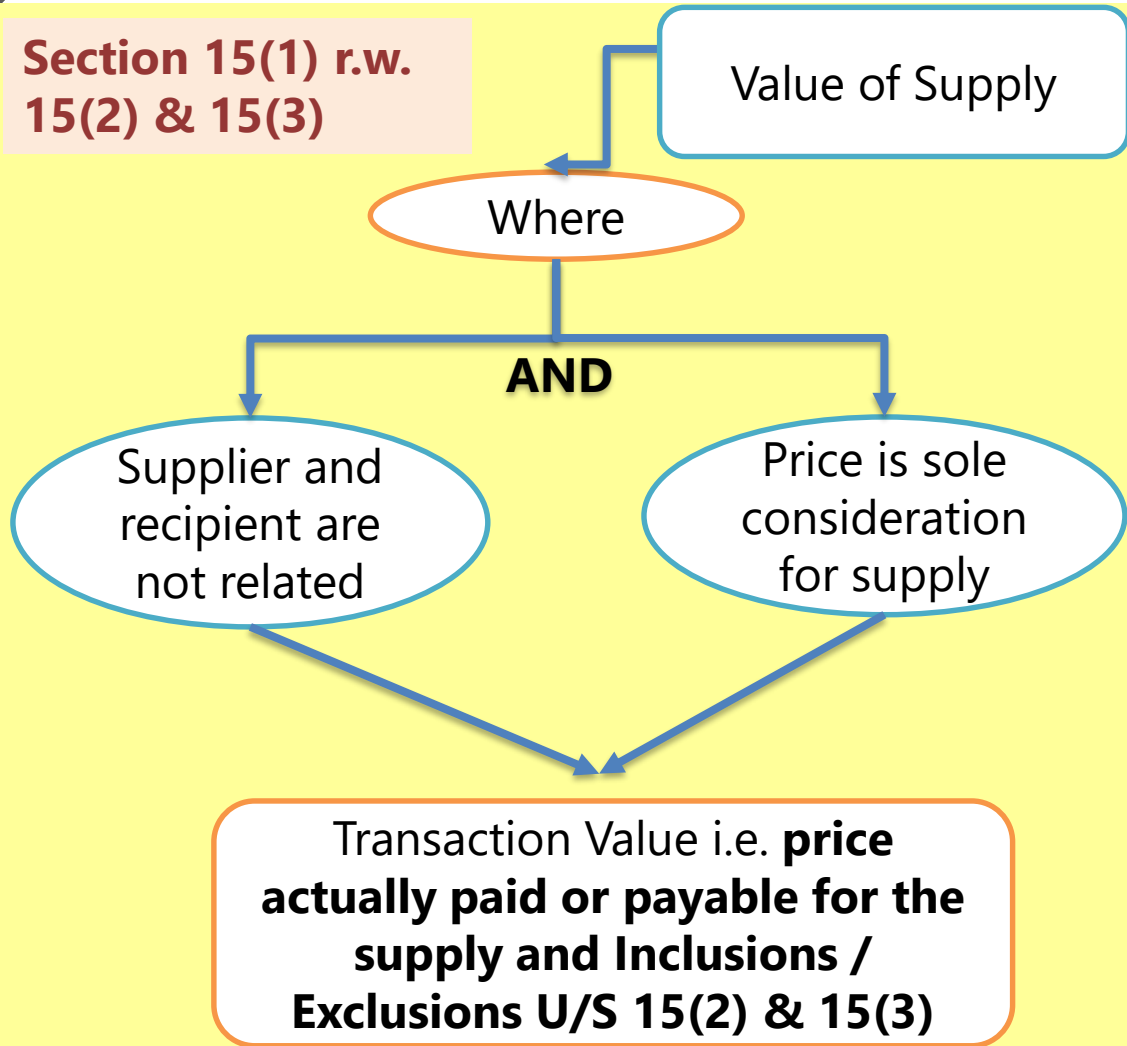
Similar charging provision is provided under:

- Section 5 of IGST Act
- Section 7 of UTGST Act
- Section 9 of respective SGST Act

# Valuation

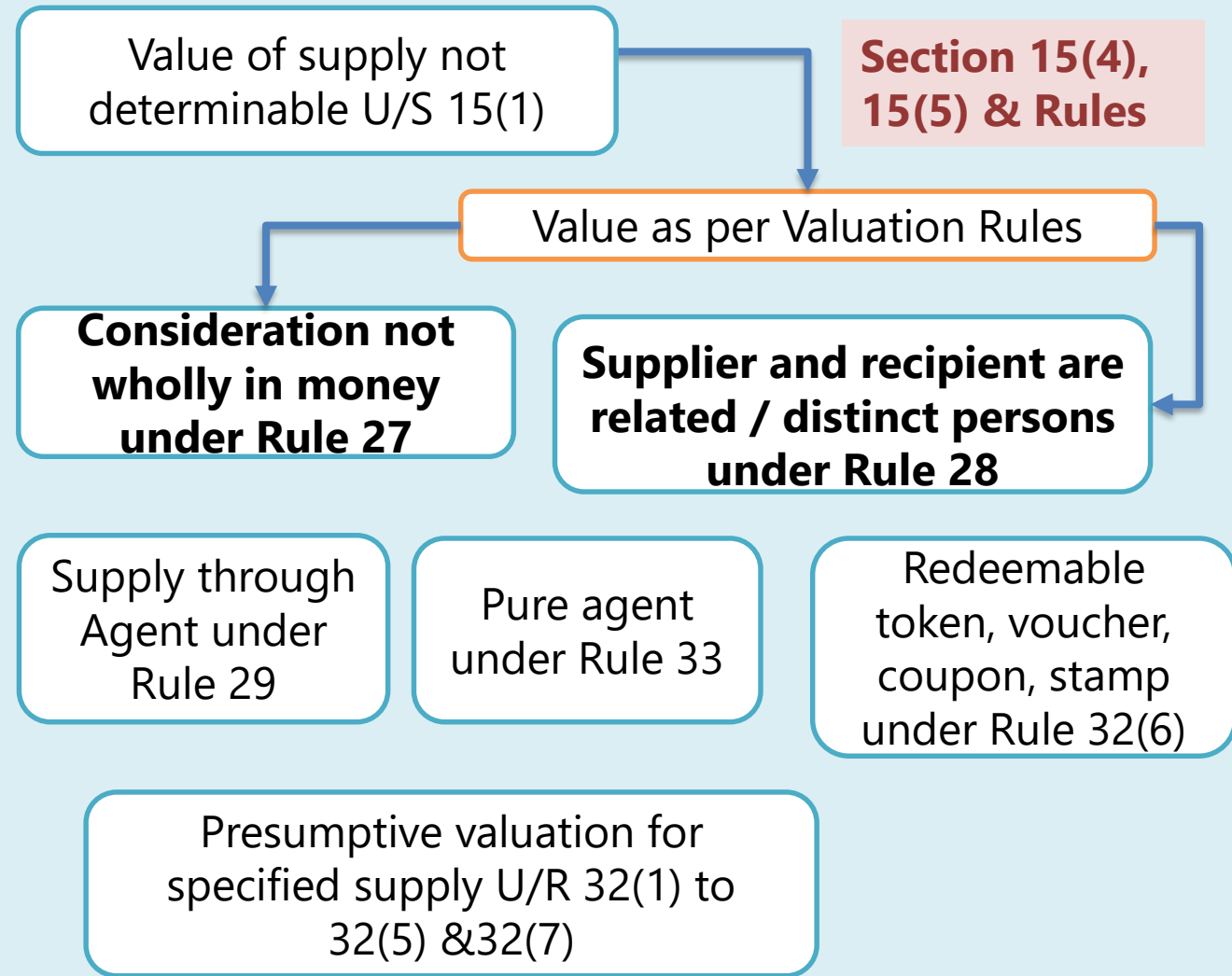
# Scheme of Valuation– Section 15 of CGST Act and CGST Rules [Rule 27 to Rule 35]

**Section 15(1) r.w. 15(2) & 15(3)**



Value of supply not determinable U/S 15(1)

**Section 15(4), 15(5) & Rules**



# Presumptive Valuation in Respect of Specified Supplies

- Supplier **has option** to value following supplies in manner specified in rules:

<b>Nature of Supply</b>	<b>Value to be determined as per Rule</b>
Money changing service	32(2)(a) or (b)
Air travel agent service	32(3)
Life insurance service	32(4)
Buying and selling of second hand goods	32(5)
Supply of notified services between distinct persons (yet to be notified)	32(7)

# Transaction value u/s 15 of CGST Act

## Transaction value where :

- Supplier and Recipient are not related
- Price is sole consideration

**Means**

Price actually paid or payable for supply of goods and/or services

## Issue for consideration:

At what time relationship with Related Parties are to be seen for the purpose of Section 15?

## ADD:

Inclusions as specified U/S 15(2)

## LESS:

- Pre-supply discount
- Post supply discount [subject to conditions U/S 15(3)]

# Inclusions in Taxable Value – Sec 15(2) of CGST Act

## Transaction Value shall include:

- a) taxes, duties, cess, fees and charges levied under statute (other than GST) if charged separately by the supplier
- b) Amount which supplier is liable to pay in relation to supply but has been incurred by recipient and not included in the price of goods or services or both
- c) Incidental expenses:
  - Charged by supplier to recipient (such as commission, packing)
  - Any amount charged by supplier in respect of supply at the time of / before delivery of goods or supply of services
- d) Interest or late fee or penalty for delayed payment of any consideration for any supply
- e) Subsidies directly linked to the price **excluding** subsidies provided by the central and state governments



# Reduction of Discount from Transaction Value [Section 15(3) of CGST Act]

<b>Pre supply discount U/S 15(3)(a)</b>	<b>Post supply discount U/S 15(3)(b)</b>
<ul style="list-style-type: none"><li>• Given before or at the time of supply; and</li><li>• Duly recorded in invoice issued for such supply</li></ul>	<ul style="list-style-type: none"><li>• Established as per agreement; and</li><li>• Agreement is entered at or before time of supply; and</li><li>• <b>Specifically linked to relevant invoices;</b> and</li><li>• <b>Input tax credit</b> attributable to discount <b>should be reversed by the recipient</b> of supply</li></ul>

# Section 15- Issues for Consideration

- Assessable value of import is Rs 1crore. Basic custom duty thereon is Rs 10 Lacs. What will be the value for the purpose of levy of IGST on imports?
- The scrap seller is liable to collect Income Tax of 1% at Source from the buyer of the scrap. In case of sale of scrap of Rs 1 crore, the seller collects 1.01 core from the buyer which consist TCS of Rs1 lac. What will be the value of scrap in such case?
- A camera manufacturer has a procurement contract for camera parts with other manufacturing unit. The camera manufacturer gives moulds and dies (Free of Cost) to manufacturer of camera parts. Whether value of such moulds and dies is includible in the value of supply of camera parts?
- Program producer produces a TV serial for the channel. The lead artist in the serial is signed by the channel and such artist is directly paid by the channel. Whether the program producer is liable to include amount paid by the channel to the lead artist in the value of the serial supplied to the channel?

# Section 15- Issues for Consideration

- A stockbroker charges his client for value of shares, brokerage and also interest, late fees or penalty for delay in the payment, if any. Whether interest, late fee or penalty is to be added in the value of supply of services?
- A Mall owner, in addition to rent and common area maintenance charges, recovers electricity charges (based on actual consumption as per sub-meter), water charges, property tax and cooking gas (based on actual consumption as per sub-meter) from the tenants. In case of electricity failure, the mall owner supplies electricity (generated through in-house generator) to the tenants. Whether above referred recoveries is to be included in the value of supply?
- Kishan Mitra (NGO) is having a contract with manufacturer of pesticides whereby the manufacturer supplies pesticides (Market value Rs 1000 per liter) at concessional rate of Rs 700 per liter to the farmers in a particular area. The balance Rs 300 per liter is paid by NGO to the manufacturer. What will be the taxable value of such pesticides? Will your answer differ if Rs 300 per liter is paid by State Government instead of NGO?

# Section 15- Issues for Consideration

- The retail outlet, as agreed with the manufacturer, will give Stock clearance discounts to customers post lockdown period. Manufacturer will bear 80% of such discounts. What will be the impact on value of taxable supply for Retail outlets and the Manufacturers?
- The landowner of a commercial property has waived the rent for the period April to July, 2020. What will be the value of services liable to tax for the above periods? Will your answer change if instead of full waiver, 50% of rent is waived?
- Whether the supplier executing solar power project on turnkey basis can break up the value of contract into supply of solar panel and installation-cum-other services. The issue for deliberation here is whether in case of a composite supply, the supplier is entitled to assign separate values for different constituents of the composite supply?



# Valuation Rules

# Relevant Definitions

- Tax is payable on the consideration.
- **“Consideration”** 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,
  - whether by the recipient or by any other person,
  - the monetary value of any act or forbearance
- Consideration does not include-
  - Subsidy given by the Central Government or a State Government
  - Deposit unless it is applied as consideration for the supply

# Relevant Definitions

- **Open Market Value** of supply of goods or services or both means [Explanation to Chapter IV of CGST Rules]:
  - full value in money;
  - excluding integrated tax, central tax, state tax, union territory tax and cess payable by a person in a transaction;
  - **where supplier and recipient of supply are not related; and**
  - **price is sole consideration;**
  - to obtain such supply at same time when supply being valued is made
  
- **Probable Issues:**
  - Whether open market value of goods/ service supplied by supplier to other customers to be taken or value at which 'such goods/ service' are supplied by other suppliers to be taken?
  - What about adjustment towards brand name, trade name, design, reputation, etc.
  - What about adjustment as to quantity, timing, credit terms, market conditions, geographical location, etc.
  - How to determine open market value of services?

# Relevant Definitions

- **Supply of goods or services or both of like kind and quality means** [Explanation (b) to Chapter IV of CGST Rules]:
  - Any other supply of goods or services or both made under similar circumstances that, in respect of:
    - Characteristics,
    - Quality,
    - Quantity,
    - functional components,
    - materials; and
    - reputation
  - of goods or services or both first mentioned, is same as, or closely or substantially resembles, that supply of goods or services or both.
  - How to determine value of like kind and quality for services?



# Supply of Like Kind and Quality – Jurisprudence Under Customs Law

- If more than one value of identical goods is available, then lowest of such value should be taken [*Resina Combination vs CC 1999 (114) E.L.T 860 (Tribunal)*]
- Two goods produced in two different countries cannot be said to be similar. Goods produced in Japan and those produced in France are not similar goods [*Nitisoya Diamond Tools vs. CC 1994 (74 E.L.T 49 (Tribunal)*]
- Comparison of goods must be of identical goods at same commercial level [*Sandip Agarwal vs CC 1992 (62 E.L.T 528 (Cal)*]
- The word similar is more expansive than the word same. Plywood or veneer panels are similar to laminated wood [*CCE vs. Wood Craft Products Ltd. 1995 (77) ELT 23 (SC)*]

# Valuation Rules- Manner of Application

- **One has to ignore transaction value and apply Valuation Rules when transaction is:**
  - For consideration not wholly in cash (i.e. barter, exchange, etc.)
  - Between related persons (including employees but excluding agent)
  - Between distinct persons (branch and establishments in other states or abroad)
  - Between principal and agent
- The sub-rules of Rule 27, Rule 28 and Rule 29 are to be applied **sequentially**
- If value cannot be determined under any of above Rules, Rule 30 and Rule 31 are to be applied
- Rule 30 and Rule 31 (residuary rule) is to be applied sequentially for valuing goods
- Supplier of service has an option to disregard Rule 30 and straight opt for Rule 31

# Rule 27 – Consideration Not Wholly in Money

Value of supply of goods or services where the consideration is **not wholly in money** shall be:

**a. Open market value of Supply**

**b. Open market value not available** - Money consideration + money equivalent of non-monetary consideration

**c. Not determinable in clause (a) and (b)** - Value of supply of goods or services or both of **like kind and quality**

**d. Not determinable in clause (a), (b) and (c) –**

Money consideration + money equivalent of non-monetary consideration **as determined by Rule 30 or Rule 31 in that order (service supplier has option to directly opt for Rule 31)**

# Rule 28 – Supply Between Distinct or Related Persons Other Than Agent

**Value** of supply of goods or services between **distinct persons or related persons** other than agent shall be:

**a) Open market value of Supply**



**Proviso:**

Where the **recipient is eligible for full input tax credit**, value declared in the **invoice** shall be deemed to be the open market value of goods or services.

**b) Open market value not available**



Value of supply of goods or services of **like kind and quality**

**c) Not determinable in clause (a) and (b)**



Value as determined by application of **Rule 30 or Rule 31 in that order (service supplier has option to directly opt for Rule 31)**

Where goods are intended for further supply as such by recipient, **at the option of the supplier**, value of supply shall be 90% of the price charged for supply of goods of like kind and quality by recipient to his customer not being a related person

# Rule 29 – Supply Made or Received Through Agent

## ➤ **Value of supply of goods between the principal and agent shall be:**

- Open market value of Supply; or
- At the option of the supplier, 90% of the price charged for supply of goods of like kind and quality by recipient to his customer not being a related person where goods are intended for further supply by the said recipient;
- Where value of supply is not determinable as above, it shall be determined by **application of Rule 30 or Rule 31 in that order (service supplier has option to directly opt for Rule 31)**

# Rule 30 - Cost Based Valuation

Where value of supply cannot be determined under Rules 27 to 29:



Value shall be **110% of:**

- Cost of production; or
- Cost of manufacture; or
- Cost of acquisition of such goods; or
- Cost of provision of services

Supplier of services has option to disregard Rule 30 and opt for Rule 31

# Rule 31 – Residuary Method

Where value of supply cannot be determined under Rules 27 to 30:



Value to be determined using **reasonable means** consistent with principles and general provisions of section 15 and these Rules

## Can a tax payer directly resort to Residuary Method of Valuation?

### Judicial precedence under the Customs law:

- Residual method should be adopted only if valuation is not possible by any other method [Sanjay Chandiram v. CC 1995 (77) E.L.T 241(S.C.)]
- Before resorting to valuation under residuary Rule, applicability of other Rules will have to be exhausted [Polyvinyl Industrial Corporation vs CC 1994 (74) ELT 426]

# Rule 33 – Value of Services in Case of Pure Agent

## **Pure Agent is a person who satisfy all of FOUR Criteria:**

- who enters into a contractual agreement with the recipient of supply to act as Pure Agent;
- who neither intends to hold nor holds any title to the goods or services or both so procured or supplied;
- does not use such procurement for his own interest; **and**
- receives only the actual amount incurred for such procurement

## **Expenditure incurred by a supplier as a pure agent shall be excluded from the value of supply subject to following conditions:**

- the supplier acts as a pure agent, when he pays to third party on recipient's authorisation;
- Such payment is separately indicated in invoice issued by Pure Agent;
- Supplies procured by the pure agent are in addition to the services he supplies on his own account



# Rule 34 – Rate of Exchange of Currency for Goods

- Rate of exchange for determination of **value of taxable goods** shall be:
  - Applicable rate of exchange as notified by the Board u/s 14 of Customs Act, 1962 for date of time of supply of such goods in terms of section 12 of the CGST Act,2017
- The Indian company has imported goods worth \$1,00,000.The relevant details of transaction is as under:
  - Remitted \$50,000 as advance on 02<sup>nd</sup> January,2020. The remittance rate was Rs 70 per \$. The custom notified rate for January was Rs 65 per \$.
  - Goods were cleared from Customs on 25<sup>th</sup> February,2020.The RBI rate for dollar was Rs 72 per \$ and custom notified rate for February was Rs 70 per \$.
  - The importer remitted balance \$50,000 on 28<sup>th</sup> March,2020. The remittance rate was Rs 75 per \$ and custom notified rate for March was Rs 70 per \$.

What will be the taxable value of such imports?

# Rule 34 – Rate of Exchange of Currency for Services

- Rate of exchange for determination of value of taxable services shall be:
  - Applicable rate of exchange determined as per generally accepted accounting principles for date of time of supply of such services in terms of section 13 of the CGST Act,2017
- A builder and developer has availed services of foreign architect for it's project in India for agreed fees of \$ 1,00,000.
  - Remitted \$50,000 as advance on 02nd January,2020. The remittance rate was Rs 70 per \$. The custom notified rate for January was Rs 65 per \$.
  - Final Invoice of \$ 1,00,000 was raised by architect on 25<sup>th</sup> February,2020 and booked in the accounts at the rate of Rs 72 per \$. The custom notified rate for February was Rs 70 per \$.
  - The importer remitted balance \$50,000 on 28th March,2020. The remittance rate was Rs 75 per \$ and custom notified rate for March was Rs 70 per \$.

What will be the taxable value of such import of service?

# Rule 35- Value of Supply Inclusive of Tax

- Where the value of supply is inclusive of tax, the tax amount shall be determined in the following manner:

$$\text{Tax amount} = \frac{\text{Value inclusive of taxes} \times \text{Tax Rate in \%}}{100 + \text{sum of taxes in \%}}$$

# Valuation Rules- Issues for Consideration

- The housing society entered into a development agreement on 1<sup>st</sup> June, 2019 wherein the developer agreed to provide 20 flats to existing society members out of the 40 flats to be constructed in the redevelopment project. What will be the value of services provided by the developer to the society or its members?
- Mr. X owns a commercial property of 20 thousand sq.ft. The market rent for similar property is Rs. 50 per sq.ft. The property is let out to Y Ltd on following terms:
  - Monthly Rent of Rs. 2,00,000/-(Rs 10 per sq.ft.); and
  - Interest free refundable deposit of Rs. 7.5 croresWhat will be the value of renting services?
- The film star (on behalf of film production house) appears in T.V show for promotion of new film. This is a mutual promotion i.e. TV channel is promoting film and film star is promoting the TV show. What will be the value of such services by each of them. Whether value in hands of both the parties can differ?

# Valuation Rules- Issues for Consideration

- A company is having head office in Mumbai and branches in different states. HO is advised by its GST consultant to cross charge its branches for various support services provided to branches. Whether the cost of manpower is to be included in such cross charging? What should be the value of such cross charging? Whether your answer will change in case where branches are dealing in:
  - Exclusively taxable supply
  - Exclusively exempt supply.
  - Exempt supply and taxable supply.
  
- An infrastructure company is having registration in 6 states. The capital equipments are transferred from one state to another state for long duration. Whether the transaction amounts to deem supply under Schedule I to CGST Act? If answer is yes, how to value such transactions ?

# Presumptive Scheme of Valuation

# Rule 32(2)(a) – Money Changing Service

- **The valuation of service of buying and selling foreign currency to be done as under:**
  - Take buying / selling rate
  - Take RBI reference rate
  - Work out the difference between both above rates
  - Multiply by total units of currency bought or sold
- When RBI reference rate is not available, value shall be 1% of the value of money exchanged in Indian Rupee
- When none of the currencies is converted into Indian Rupee, value shall be 1% of the lower of the amount receivable if both the currencies are converted to Indian Rupee at RBI reference rate is to be considered for arriving at the value

# Rule 32(2)(b) – Money Changing Service

- At the option of provider of money changing services, the value in relation to supply of foreign currency, including money changing shall be deemed to be:

Range	Value of supply*
Less than or equal to Rs. 1,00,000	1% of gross amount of currency exchanged - Subject to Minimum amount of Rs. 250
Rs. 1,00,001 to Rs. 10,00,000	Rs. 1,000 + 0.5% of gross amount of currency exchanged
More than Rs. 10,00,000	Rs. 5,500 + 0.1% of gross amount of currency exchanged - Subject to maximum amount of Rs. 60,000

Option U/R 32(2)(b) once exercised for a financial year **cannot be withdrawn for remaining part** of that financial year

\* GST rate has to be applied on the value arrived as per this Rule



# Rule 32(3) – Air Travel Agent Service

## ➤ Value of supply of air travel agent services in relation to booking of tickets for air travel:

Nature	Value of supply*
Domestic booking	5% of basic fare
International booking	10% of basic fare

\* GST rate has to be applied on the value arrived as per this Rule

**Basic fare** means that part of the air fare on which commission is normally paid to air travel agent by the airline [explanation to Rule 32(3)]

## ➤ Whether air travel agent [paying tax u/r 32(3)] is liable to tax on following charges charged to its clients?

Passport charges	Visa charges	Service charges	Cancellation charges
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## ➤ Whether incentive received from Galileo or such other CRS companies is liable to tax in addition to tax paid in accordance with Rule 32(3)?

# Rule 32(4) – Life Insurance Service

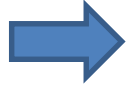
## ➤ Value of life insurance service shall be:

Nature	Value of supply*
a) Life insurance policy (where amount allocated for investment or saving on behalf of policy holder is intimated to policy holder)	Gross premium charged less amount allocated for investment
b) Single premium annuity policy [other than (a) above]	10% of single premium
c) In all other cases	First year – 25% of premium Subsequent years – 12.5% of premium
d) Entire premium is towards risk cover in life insurance	Rule 32(4) does not apply

\* GST rate has to be applied on the value arrived as per this Rule

# Rule 32(5) – Supply of Second Hand Goods

Taxable supply made by person dealing in second hand goods\*



- Value of supply = Selling price – Purchase price
- If value determined above is negative then it shall be ignored

\*Second hand goods means:

- used goods as such; or
- used goods after such minor processing which does not change nature of goods; **AND**
- where **NO** input tax credit has been availed on purchase of such goods

- Where goods are repossessed from an unregistered defaulting borrower for purpose of recovery of loan or debt, purchase value of such goods shall be deemed to be purchase price of such goods by defaulting borrower reduced by 5% for every quarter or part thereof
- Quarter or part thereof will be calculated between date of purchase and date of disposal by person making such repossession

# Rule 32(5)- Issues for Consideration


- The Company deals in old goods such as paintings, vintage cars, sculptures, classic miniature paintings, fine writing instruments, vintage timepieces, aristocratic jewellery and antique items.

Can the company claim that above mentioned goods are second hand goods and tax be discharged on margin under Rule 32(5) and not on the transaction value?

- Whether following cost is deductible while ascertaining value of second hand goods for payment of tax under rule 32(5)?
  - Transportation cost
  - Transit Insurance
  - Brokerage paid on procurement and sale of such goods,
  - GST paid on procurement of such goods,
  - Cost of improvement for bringing second hand goods in saleable condition

# Rule 32(6) – Supply Against Redeemable Token, Vouchers etc.

Token, voucher, or a coupon or stamp (other than postage stamp) redeemable against supply of goods or services or both



Value shall be:  
Money value of goods or services or both redeemable against such token, voucher, coupon or stamp

# Rule 32(7) – Supply of Services Between Notified Distinct Persons

- Value of **supply of service** between distinct persons [u/s 25 r.w. entry 2 of Schedule I] shall be deemed to be **NIL** when:
  - Said distinct persons are those which are notified by central government on recommendation of GST Council; and
  - Input tax credit is available
- No such class of service providers is notified till date

# Words of Caution

- Views expressed are the personal views of faculty based on his interpretation of law
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**THANK YOU**