

GST LEVY & SCOPE OF SUPPLY

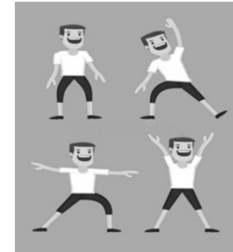
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Scope and Purpose of session

- Broad overview of provisions. [warm up!]
- No exhaustive coverage of provisions.
- No intricate analysis of issues



Levy and collection of GST (s. 9 of the CGST Act, 2017)

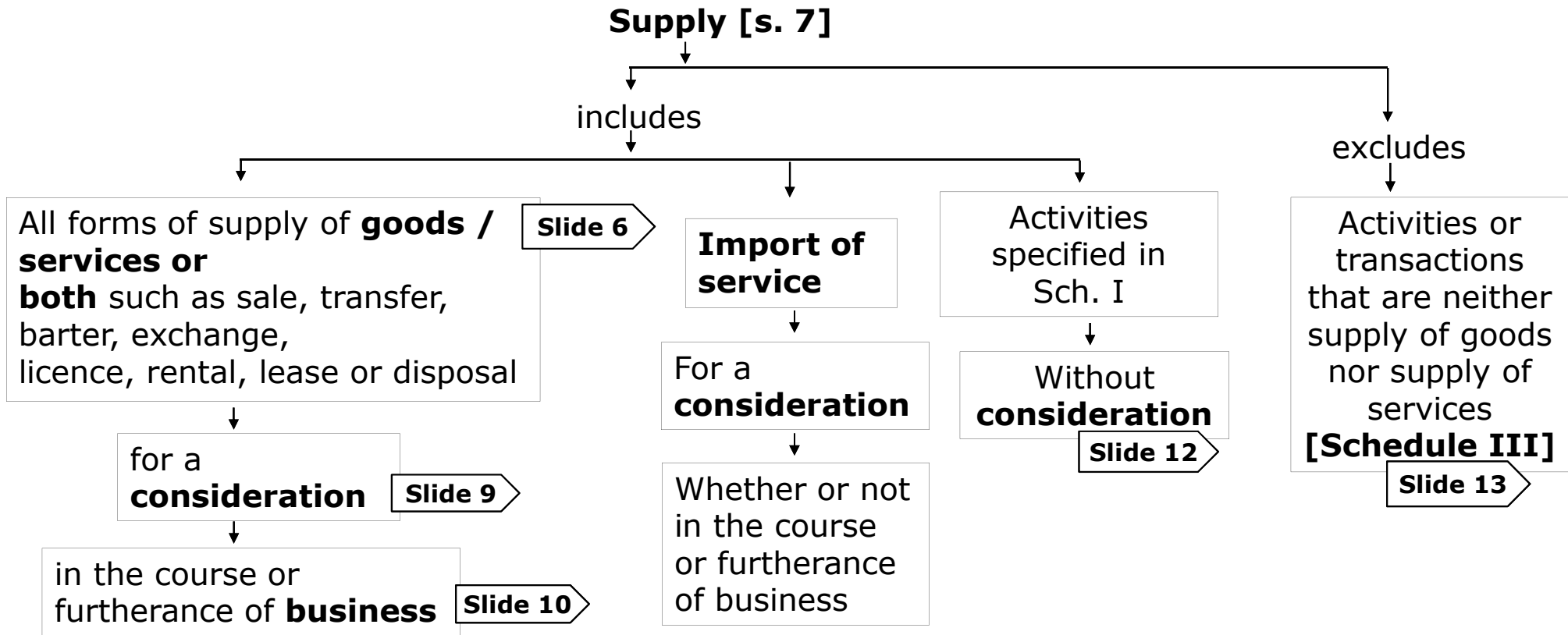
- CGST levied on –
 - Intra-State 'supply'.
 - Supply must be of 'goods' or 'services' [except alcoholic liquor for human consumption].
 - Tax is to be computed on the value determined u/s. 15.
 - Rate of tax not exceeding 20% as may be notified by Government.
 - Tax shall be paid by the 'taxable person'.

[s. 9(1)]

Levy and collection of GST (s. 9 of the CGST Act, 2017) [Contd.]

- In certain notified supplies of goods or services, tax is payable by the recipient of supplies on reverse charge basis [s. 9(3)].
- In certain notified cases where supplies are made through E-commerce operators ["ECO"], the ECO is liable to pay tax, as if he is a supplier [s. 9(5)].

Taxable event – ‘Supply’ – Its scope



Section 7(1A) Activities/transactions if constitute a supply u/s. 7(1) they will be treated as supply of goods or services as provided to in Sch. II

Goods / Services

- In the CGST Act and IGST Act, 'supply' envisaged is that of 'goods' or 'service'.

Goods

"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 [s. 2(52)].

Goods / Services [Contd.]

Services

- As defined in Article 366(26A) of the Constitution Amendment Act -
“Services” means anything other than goods;
- As defined in CGST Act [s.2(102)]
“Services” means **anything** other than goods, money and **securities** but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged
Explanation – For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities.

NOTE: Issue of securities neither goods nor services.

Whether all that is not 'goods' is a 'service'

- Service means anything other than goods as per GST law ?
- It should have the character of service – [see *Hariprasad Shivshankar Shukla vs. A. D. Divelkar* AIR 1957 SC 121 wherein the SC held that ordinary accepted version of the expression defined should be considered and not verbatim definition – relied on in *Zee Telefilms Ltd. vs. CCE* (2006) 4 STR 349 (Tri.- Mumbai)]
"find what is the ordinary accepted version of the expression defined, thereafter find whether the said ordinary accepted version fits in with every requirement of definition clause. Then, the definition is not to be taken to as destroying the essential meaning of the term defined. A definition merely employing apt and readily intelligible words."





Consideration [s. 2(31)]

- Consideration = Any payment made in money / otherwise

+

Monetary value of any act / forbearance (voluntary / otherwise)

In response to / for inducement of supply whether by recipient or *by any other person*

- Subsidy given by C. Govt. / S. Govt. not to be included in consideration.
- Refundable deposits excluded unless applied by supplier as consideration for supply.
- Gifts not a supply - Gift is without consideration and is voluntary in nature and is made occasionally.
It cannot be demanded as a matter of right. [Press release dated 10.7.2017]
- Donation – Not a consideration – Voluntary – without ‘*quid pro quo*’.
- Liquidated damages 
- Deduction on account of deficiency in services 

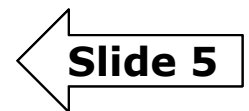
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Business [s. 2(17)]

- "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) 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.

Illustrations of certain transactions not of 'business'

- Illustrations :
 - Sale of old gold jewellery by a person who is not in the business of selling jewellery would not be considered as a 'supply' [Press release dated 13.7.2017];
 - Sale of old and unused car by an individual not in the course or furtherance of its business does not constitute a 'supply' [Q.10 CBIC FAQ on Meaning & Scope of Supply].
- Is profit motive relevant especially in the context of Charities?
- Is pecuniary benefit equal to profit motive?



Activities to be treated a supply event if made without consideration – Schedule I

SCHEDULE I [see s. 7]

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.

Slide 5

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Activities / transactions not considered as supply – Schedule III

SCHEDULE III [see s. 7]

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.

Activities / transactions not considered as supply – Schedule III [Contd.]

SCHEDULE III [see s. 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES [Contd.]

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.
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.

Activities / transactions not considered as supply – Schedule III [Contd.]

SCHEDULE III [see s. 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES [Contd.]

Explanation 1.—For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

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 (52 of 1962).

Composite supply

- **Composite supply [s. 2(30)]**

"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.

- **Principal supply [s. 2(90)]**

"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.

- **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;

Composite supply - Factors to determine natural bundle

Depends upon the normal or frequent practices followed in the area of business to which supply relate. Some indicators are:

- Perception and expectation of the consumer or recipient
- Practice of majority of suppliers in a particular line of business. E.g. bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- The nature of the various services in a bundle. One service maybe the main supply and others are in the nature of ***incidental or ancillary services which help in better enjoyment of a main supply***. E.g. Hotel stay combined with laundering of 3-4 items of clothing free of cost per day. Laundering is incidental to hotel accommodation and the resultant package is naturally bundled in the ordinary course of business.
- Other Illustrative indicators such as – single price for an unlimited use; advertised as a package; not available separately; supplies are integral to an overall supply, etc.

[Education Guide – para 9.2.4]

Mixed supply

■ **Mixed supply [s. 2(74)]**

"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

Tax treatment of composite and mixed supply [s. 8]

- Composite supply – would be considered as a supply of the principal supply - Tax rate / liability of the principal supply would apply to all the supplies.
- Mixed supply – would be considered as a supply of the item in the basket that has the highest tax rate. The single price would be subject to the highest tax rate.


Supplies not being composite or mixed supplies

A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities:

- Accommodation for the delegates,
- Breakfast for the delegates,
- Tea and coffee during conference,
- Access to fitness room for the delegates,
- Availability of conference room, and
- Business centre for delegates.

A bouquet of services are supplied. None of the supplies in the bouquet is a principal supply. Hence not a composite supply. None of them are **individual** supplies which are **independent of each other**. Hence not a mixed supply. **However, if the service is described as convention service it is able to capture the entire essence of the package.**

Taxable person

- A 'taxable person' means a person who is registered or liable to be registered u/s. 22 or u/s. 24 [s. 2(107)].
- S. 22 provides that a person having a PAN India taxable turnover exceeding Rs. 20 lakhs [Rs. 10 lakhs in special category States] in a financial year shall be liable to register.
- S. 24 provides for certain persons to compulsorily register irrespective of threshold limit [one of which is person liable to pay under reverse charge].
- S. 23 provides that a person providing supplies not liable to tax or wholly exempt from tax are not liable to register. [Conflict between s. 23 & s. 24 ]

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