

GST ON NGO / TRUST / CO-OPERATIVE SOCIETY

GST Sectorial Series – Part II by WIRC of ICAI

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Agenda

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Charitable Institutions

- Introduction
- Scope of GST
- Exemption to charitable activities
- Exemption to healthcare services
- Exemption to educational institutions
- Other relevant notable exemptions
- Taxability of supplies made free of cost
- Impact on ITC of charitable institutions
- Registration requirement

Co-operative Societies

- Introduction
- Principle of mutuality in the context of GST
- Relevant exemption entry
- Registration requirement
- Controversy over interpretation of exemption entry
- Valuation issues

Charitable Institutions

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NGOs / Charitable Trusts / Societies / section 8 companies

Introduction - NGO

NGO A group that functions independently of any Government, formed to serve a social or political goal such as a humanitarian cause or the protection of environment.

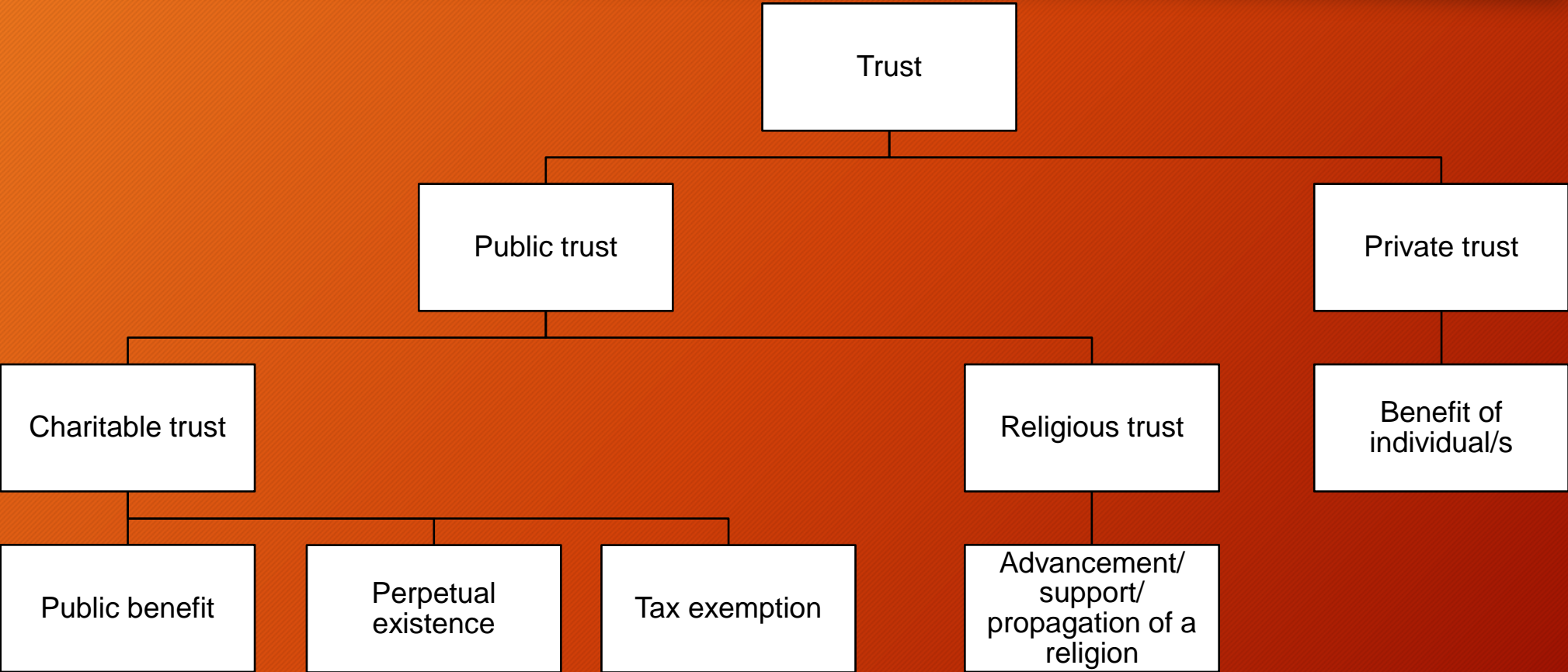
NGOs are often non-profit and rely on a variety of funding sources, from private donations and membership dues to government grants.

Can be registered as a trust / society / section 8 company or any other kind of social service organisation under the applicable laws.

	Self	Alcoholics Anonymous	Labor unions
Beneficiary		Chess clubs	Trade associations
	Others	Salvation Army CARE	WWF Amnesty International
		Service	Advocacy
		Type of Activity	

Typology of NGOs
(Source: www.ngosindia.com)

Introduction - Trust



Charity

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charity noun

 Save Word

char·i·ty | \ 'cher-ə-tē, 'cha-rē-\
plural **charities**

Definition of *charity*

- 1 **a** : generosity and helpfulness especially toward the needy or suffering
also : aid given to those in need
// received *charity* from the neighbors
- b** : an institution engaged in relief of the poor
// raised funds for several *charities*
- c** : public provision for the relief of the needy
// too proud to accept *charity*
- 2 : benevolent goodwill toward or love of humanity
// The holidays are a time for *charity* and goodwill.
- 3 **a** : a gift for public benevolent purposes
- b** : an institution (such as a hospital) founded by such a gift
- 4 : lenient judgment of others
// The critic was liked for his *charity* and moderation.

generosity

relief of the poor

helpfulness

gift

benevolent

public purpose

“Charitable Purpose” under IT Act, 1961

7

- Includes
 - Relief of the poor
 - Education
 - Yoga
 - Medical relief
 - Preservation of environment (including watersheds, forests and wildlife)
 - Preservation of monuments or places or objects of artistic or historical interest
 - Advancement of any other object of general public utility

Context of today's discussion

8



Constitution may be
trust / society / sec.
8 company



Charitable or
philanthropic nature
of activities



Absence of
pecuniary benefit



Not a business
activity

Scope of GST relating to Charitable Institutions

GST is a tax on **supply** of goods or services or both

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**.

Consideration
Sec. 2(31)

Business
Sec. 2(17)

Person
Sec. 2(84)

Person includes -

10



Business includes -

11

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

Any activity or transaction in connection with or incidental or ancillary to any trade, commerce, etc.

Any activity or transaction in the nature of trade, commerce, etc., whether or not there is volume, frequency, continuity or regularity of such transaction

Nagri Eye Research Foundation v. UOI [2021] 54 GSTL 11 (Guj)

For the purpose of 'business' u/s 2(17), it is immaterial whether such a trade or commerce or such activity is for pecuniary benefit or not.

Landmark judgement under BST Act, 1959

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Commissioner of Sales Tax v. Sai Publication Fund [2002] 126 STC 288 (SC)

Where the main activity of the Trust does not fall within the meaning of “business”, any incidental or ancillary activity shall also not be considered as business.

- Trust was created with the primary object of spreading the message of Saibaba of Shirdi.
- In furtherance of and to accomplish the said object, trust published books, pamphlets & other literature containing Sai Baba's message and sold at nominal charge to meet cost.
- Sale proceeds of publication formed the property of the trust, which could be utilised only for advancement of the objects of the trust.
- Specific provision in the trust deed that in the event of failure of the trust to carry on its objects, the remaining fund in its hands would be handed over to Sansthanam of Shirdi.
- SC: The question of profit-motive or no profit-motive would be relevant only where a person carries on trade, commerce, manufacture or adventure in the nature of trade, commerce, etc. On the facts and in the circumstances of the case, irrespective of the profit-motive, it could not be said that the Trust either was "dealer" or was carrying on trade, commerce etc.

Notable AAR and AAAR

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Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra (Maharashtra AAR & AAAR)

- Whether the sale of spiritual products such as books, DVDs, etc. could be treated as supply attracting GST?
- Applicant contended that the money earned from sale of such goods was used for main object, i.e., for charitable and religious purposes. Therefore, since the main activity is not business, ancillary activity cannot be treated as business.
- Applicant placed reliance on the Supreme Court ruling in the case of **Sai Publication Fund and CIT v. Gujarat Maritime Board** [2007] 14 SCC 704 (SC) wherein it was held that if the primary or predominant object of the trust is charitable, any other object which might not be charitable, but which is incidental or ancillary to the dominant object will also be considered as charitable.
- AAR held that there was no specific exemption to registered charitable trusts for supply of such goods under GST. The sale of spiritual products which was incidental or ancillary to main charitable object of assessee could be said to be business. Therefore, the sale of spiritual products would be treated as supply attracting GST.
- Appellate AAR upheld the order of AAR.
- Applicant has moved the High Court of Judicature at Bombay by way of writ petition.

Consideration

14

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 of goods or services or both, whether by the recipient or by any other person

Monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person

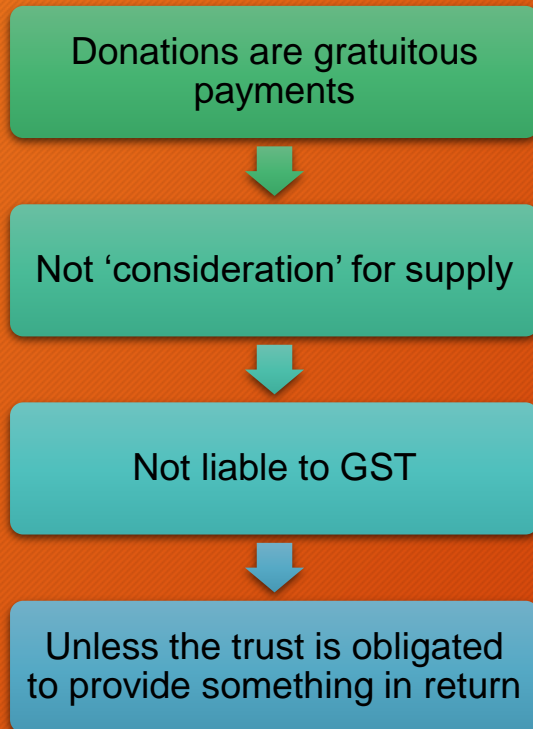
Does not include

Subsidy given by the Central Government or a State Government

Deposit, unless the supplier applies such deposit as consideration for the supply

Donations received by Charitable Institutions

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CBIC Circular No. 116/35/2019-GST dated 11-10-19:

Where the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of the recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration. Thus, where all the three conditions are satisfied namely, **(i) the gift or donation is made to a charitable organisation, (ii) the payment has the character of gift or donation and (iii) the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement**, then GST is not leviable.

Scope of GST relating to Charitable Institutions

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Person



Consideration



Business



GST



Unless specifically exempted

Criteria for exemption from GST

17

Services by an entity registered u/s 12AA or 12AB of the Income-tax Act, 1961

By way of activities which are specifically defined as “charitable activities” under Notification No. 12/2017-CTR dt. 28-06-2017

Charitable Activities

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Activities relating to public health by way of -

Activities relating to advancement of religion, spirituality or yoga

Activities relating to advancement of educational programmes or skill development relating to -

Activities relating to preservation of environment including watershed, forests and wildlife

Care or counselling of -

Public awareness of preventive health, family planning or prevention of HIV infection

Abandoned, orphaned or homeless children

Physically or mentally abused and traumatised persons

Prisoners

Persons over the age of 65 years residing in rural area*

Terminally ill persons or persons with severe physical or mental disability;

Persons afflicted with HIV or AIDS;

Persons addicted to a dependence-forming substance such as narcotics drugs or alcohol;

***Rural area** means the area comprised in a village as defined in land revenue records excluding the area under any municipal committee, municipal corporation, town area committee, cantonment board or notified area committee or any area that may be notified as an urban area by the Central Government or a State Government.

Notable Advance Ruling on “Charitable Activities”

19

Dream Runners Foundation (Tamil Nadu AAR) [22-01-2019]

- Applicant-trust is registered u/s 12AA of the Income-tax Act and engaged in conducting public charitable activities such as healthcare, rural development, women empowerment, education facility etc., either directly or through various public charitable institutions.
- Applicant conducts a marathon named Dream Runners Half Marathon. It collects donations from the participating runners and corporate donations. The amount so received is utilised for the expenses required to conduct of the event and the balance amount is paid as donations to NGOs supporting the cause or directly to the beneficiaries.
- **Held:** The activity of conduct of Marathon event does not fall under the definition for Charitable activities.
- Though the money collected from the participants may be donated or used for further charitable activities, organising marathon itself is a separate supply of service by the applicant for the various participants, individuals or runner groups etc.
- The money collected from the participants is a consideration towards the supply of service of organising and conducting the marathon for the participant's conduct of marathon event and the same is liable to GST.

Notable Advance Ruling on “Charitable Activities”

20

Ecosan Services Foundation (Maharashtra AAR) [19-12-2018]

- Applicant is a NPO registered u/s 12AA and providing services of sanitation capacity building through training, piloting and demonstration, awareness raising, R&D and open dissemination of knowledge in sustainable sanitation and water management.
- Donations / grants are received from various companies and persons
- **Q.** Whether the aforesaid services provided to NGOs registered u/s 12AA amounts to provision of service and whether donations received are liable to GST?
- **Held:** Services relating to sanitation provided to various entities including non-profit organisations by the applicant entity registered u/s 12AA are exempt as they are **relating to preservation of environment.**

Notable Advance Ruling on “Charitable Activities”

21

All India Disaster Mitigation Institute (Gujarat AAR) [11-09-2019]

- Applicant is a charitable trust established for community-based research, policy analysis, planning and technical assistance for the purpose of enhancing prevention, mitigation and management of disasters and reorientation of relief and reconstruction to local initiatives. It is registered under section 12AA and section 80G of the Income-tax Act.
- **Held:** The activities of the applicant relating to disaster prevention, disaster mitigation and disaster management are activities relating to preservation of environment. Thus, the activities of the applicant are considered as charitable activities. Hence activities of the applicant, being registered under section 12AA of the Income-tax Act, are exempt from tax by virtue of Entry No. 1 of Notification No. 12/2017-CTR.

Activities relating to advancement of religion, spirituality or yoga

22

CBIC Circular No. 66/40/2018-GST dated 26-09-2018

Exempt

Fee or consideration charged in any form from the participants for participating in a religious, Yoga or meditation programme or camp meant for advancement of religion, spirituality or yoga.

Residential programmes or camps where the fee charged includes the cost of boarding and lodging **so long as the primary or predominant activity, objective and purpose is advancement** of religion, spirituality or yoga.

Taxable

If charitable trusts merely or primarily provide accommodation or serve food and drinks against consideration in any form including donation

Activities such as holding fitness camps or classes such as those in aerobics, dance, music, etc.

Renting of religious precincts

23

Entry	SAC	Description of Service
13	Heading 9963 or Heading 9972 or Heading 9995 or Any other heading of section 9	<p>Services by a person by way of –</p> <p>a) conduct of any religious ceremony</p> <p>b) renting of precincts³ of a religious place¹ meant for general public², owned or managed by an entity registered as a charitable or religious trust under section 12AA or 12AB of the Income-tax Act, 1961 or a trust or an institution registered under sub-clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act:</p> <p>Provided that nothing contained in entry (b) shall apply to –</p> <ul style="list-style-type: none">• Renting of rooms where charges are Rs. 1,000 or more per day• Renting of premises, community halls, kalyanmandapam or open area and the like, where charges are Rs. 10,000 or more per day• Renting of shops or other spaces for business or commerce where charges are Rs. 10,000 or more per month

¹ **Religious Place** means a place which is primarily meant for conduct of prayers or worship pertaining to a religion, meditation, or spirituality.

² **General public** means the body of people at large sufficiently defined by some common quality of public or impersonal nature.

³ **Precincts** is an area within the walls or perceived boundaries of a particular building or place, an enclosed or clearly defined area of ground around a cathedral, church, temple, etc. (*Dictionary meaning*)

Health care services

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Entry	SAC	Description of Service
74	Heading 9993	a) Services by way of health care services* by a clinical establishment**, an authorised medical practitioner or paramedics; b) Services by way of transportation of a patient in an ambulance other than those specified in (a) above

***Health care services** means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

****Clinical establishment** means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.

Health care services provided by charitable hospitals at concessional rate exempt from GST under Entry 74 of NFN 12/2017-CT(R)

Notable Rulings relating to Health Care Services

25

KIMS Health Care Management Ltd. (Kerala AAR) [20-10-2018]

- Supply of medicines, consumables and implants used in course of providing healthcare services to in-patients (patients admitted in hospital) for diagnosis or treatment by applicant-hospital being naturally bundled and provided in conjunction with each other would be considered as 'composite supply' eligible for exemption under category 'healthcare services'

Terna Public Charitable Trust (Maharashtra AAR) [21-05-2019]

- The supply of medicines, surgical items, implants, consumables and other allied items provided by the hospital through the hospital-owned pharmacy, as well as food, room on rent to the in-patients is part of composite supply of health care treatment and hence not taxable under GST Laws.
- Pharmacy run by the hospital dispensing medicine to out-patients or bystanders or others can be treated as individual supply of medicine and GST is liable to be paid on such sale effected by the pharmacy.

Ambara (Karnataka AAR) [08-10-2020]

- Supply of food and beverages by the hospital to patients is naturally bundled with the health care service and is eligible for exemption.

Divyajivan Healthcare LLP (Gujarat AAR) [18-10-2021]

- Where applicant proposes to establish a hospital to provide healthcare services and has devised a plan for providing healthcare services to subscriber members for next 20 years in lieu of lump sum payment, healthcare services supplied by applicant under said plan merits exemption vide Entry No. 74.

Notable Rulings relating to Health Care Services

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Baroda Medicare Pvt. Ltd. (Gujarat AAAR) [23-02-2022]

- Occupational health check-ups or preventive care is exempted from GST.
- Entry at S. No. 74 is wide enough to cover general medical services consisting of prevention, diagnosis and care and they can be provided in general practitioner's practice and also delivered by outpatient clinics at home, in firms, schools, etc. or by phone, internet or other means. No difference when such healthcare services are provided by a clinical establishment to a patient inside the clinical establishment or outside the said establishment.

Oswal Industries Ltd. (Gujarat AAAR) [17-02-2022]

- Applicant providing wellness facilities at its institution such as naturopathy, ayurveda, yoga and meditation, physiotherapy and special therapy is not eligible for the benefit of exemption Entry No. 74 since the therapy is strictly on residence basis and the consideration is solely dependent on the type of room opted leading to the conclusion that accommodation was the primary activity in the entire package.

Corbett Nature Reserve (Uttarakhand AAAR) [10-03-2022]

- Services of naturopathy are ancillary to principal supply of accommodation service in composite supply as such accommodation service is advertised and marketed as main service and such supply is liable to GST applicable to accommodation service.

OPTM Healthcare Pvt. Ltd. (West Bengal AAR) [20-03-2020]

- Where applicant's plant-based preparation are not in accordance with formulae described in any authoritative book of Ayurveda specified in First Schedule of the Drugs and Cosmetics Act, 1940, applicant is not a clinical establishment offering treatment in recognised ayurvedic system of medicine, and, therefore, its services are not exempt as healthcare services provided by a clinical establishment

Services by rehab professionals at rehab centres established by Charitable Trusts

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Entry	SAC	Description of Service
74A	Heading 9993	Services provided by rehabilitation professionals* recognised under the Rehabilitation Council of India Act, 1992 by way of rehabilitation, therapy or counselling and such other activity as covered by the said Act at medical establishments, educational institutions, rehabilitation centers established by Central Government, State Government or Union territory or an entity registered under section 12AA or 12AB of the Income-tax Act, 1961.

*Sec. 3 of RCI Act, 1992: Rehabilitation professional means –

1. Audiologist and speech therapist, clinical psychologists;
2. Hearing aid and ear mould technicians;
3. Rehabilitation engineers and technicians;
4. Special teachers for educating and training the handicapped;
5. Vocational counsellors, employment officers & placement officers dealing with handicapped;
6. Multi-purpose rehabilitation therapists, technicians; or
7. Such other category of professionals as the Central Govt may, in consultation with the Council, notify

Educational Institutions

Entry	SAC	Description of Service
<p>66</p> <p><i>Applies only to educational institution providing pre-school education and education up to higher secondary</i></p> <p><i>Does not apply to pre-school & higher secondary</i></p>	<p>Heading 9992</p>	<ul style="list-style-type: none"> • Services provided by an educational institution* to its students, faculty and staff. • Services provided by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee. • Services provided to an educational institution, by way of – <ul style="list-style-type: none"> i. transportation of students, faculty and staff ii. catering, including any mid-day meals scheme sponsored by the Central Govt, State Govt or UT iii. security or cleaning or housekeeping services performed in such educational institution iv. services relating to admission to, or conduct of examination by, such institution. v. supply of online educational journals or periodicals

*educational institution means an institution providing services by way of -

- pre-school education & education up to higher secondary school or equivalent;
- education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- education as a part of an approved vocational education course

Other notable exemptions

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Entry	SAC	Description of Service
9D	Chapter 99	Services by an old age home run by Central Govt, State Govt or by an entity registered under section 12AA or 12AB of the Income-tax Act, 1961 to its residents (aged 60 years or more) against consideration up to Rs. 25,000 per month per member , provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance .
50	Heading 9984	Services of public libraries by way of lending of books, publications or any other knowledge-enhancing content or material.
60	Heading 9991	Services by a specified organisation in respect of a religious pilgrimage facilitated by the Government of India, under bilateral arrangement.

Other notable exemptions

30

Entry	SAC	Description of Service
76	Heading 9994	Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets.
77	Heading 9995	Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution – (a) as a trade union; (b) for the provision of carrying out any activity which is exempt from the levy of GST; (c) ...

Other notable exemptions

31

Entry	SAC	Description of Service
77A	Heading 9995	Services provided by an unincorporated body or a non-profit entity registered under any law for the time being in force, engaged in,- i) activities relating to the welfare of industrial or agricultural labour or farmers; or ii) promotion of trade, commerce, industry, agriculture, art, science, literature, culture, sports, education, social welfare, charitable activities and protection of environment, to its own members against consideration in the form of membership fee up to an amount of Rs. 1,000 per member per year.
80* (w.e.f. 18-07-22)	Heading 9996	Services by way of training or coaching in – (a) recreational activities relating to arts or culture, by an individual , or (b) sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act.

Additional exemption under IGST

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Notification No. 9/2017-Integrated Tax (Rate), dated 28-06-2017

Entry	SAC	Description of Service
10	Chapter 99	<p>Services received from a provider of service located in a non-taxable territory by an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities.</p> <p>Exemption does not apply to OIDAR services or ocean freight services.</p>

Hostel Accommodation services provided by Charitable Institutions

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CBIC Circular No. 32/06/2018-GST dated 12-02-2018

- Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of Notification No. 12/2017-CT(Rate).
- However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below Rs. 1,000 per day or equivalent are exempt. Thus, accommodation service in hostels provided by any person including a trust having declared tariff below Rs. 1,000 per day is exempt.

Taghar Vasudeva Ambrish v. AAAR [2022] 91 GST 750 (Kar.) [07-02-22]

- Residential premises rented as hostel to students and working professionals is covered under residential dwelling being used as residence and eligible for exemption under S. No. 13 of Notification No. 9/2017-IT(R)

Taxability of supplies made free of cost

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Normally, supplies of goods or services or both made without consideration shall not be liable to tax.

However, where such supplies fall under Schedule I of the Act, they will be liable to GST irrespective of the fact that they are made without consideration.

- Permanent transfer or disposal of business assets where input tax credit was availed on such assets.
- Supply of goods or services or both made to a related person or to a distinct person as specified in section 25.

Impact on ITC

35



ITC calculation including proportionate reversal of common ITC to be done in accordance with rule 42 & 43 of CGST Rules

Registration requirements

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Exclusive supply of goods

- Rs. 40 lakh (Rs. 20 lakh in case of Special Category States)

Supply of goods and/or services

- Rs. 20 lakh (Rs. 10 lakh in case of Special Category States)

Aggregate turnover Includes taxable & exempt supplies including supplies not leviable to GST

Persons engaged exclusively in the business of supplying goods and/or services that are wholly exempt from tax are not liable to registration (sec. 23)

Provisions of sec. 24 relating to compulsory registration apply.

Co-operative Societies

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With emphasis on Co-operative Housing Societies

Introduction

Co-operative society

International Co-operative Alliance (ICA) defines a co-operative as “an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise.”

Works on the principle of self-help and mutual help with the primary goal of providing support to its members.

Governed by State Co-operative Societies Act (E.g. The Maharashtra Co-operative Societies Act, 1960 or by the Multi-State Co-operative Societies Act, 2002.

May be for profit or not for profit

Types: Producer’s society, Agricultural Marketing society, Consumers society, Co-operative bank, Housing society.



Principle of Mutuality

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Clause (aa) inserted in sec. 7(1) w.r.e.f. 01-07-2017 by the Finance Act, 2021

- “Supply” includes the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration.
- *Explanation.*— For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be **deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.**

Relevant Exemption Entry

40

S.No.	SAC	Description of Service
77	Heading 9995	<p>Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –</p> <p>(a) ...</p> <p>(b) for the provision of carrying out any activity which is exempt from the levy of GST;</p> <p>(c) up to an amount of Rs. 7,500 per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex</p>

Registration requirement of RWA

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Annual turnover of RWA	Monthly maintenance charge	Whether exempt?
More than Rs. 20 lakh	More than Rs. 7500/-	No
	Rs. 7500/- or less	Yes
Rs. 20 lakh or less	More than Rs. 7500/-	Yes
	Rs. 7500/- or less	Yes

CBIC clarification on issues related to GST on monthly contribution charged by RWA from its members

42

Circular No. 109/28/2019-GST, dated 22-07-2019

- The exemption from GST on maintenance charges charged by a RWA from residents is available only if such charges do not exceed Rs. 7500/- per month per member. **In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable.** For example, if the maintenance charges are Rs. 9000/- per month per member, GST @18% shall be payable on the entire amount of Rs. 9000/- and not on [Rs. 9000 - Rs. 7500] = Rs. 1500/- .

Controversy over interpretation of exemption entry

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Facts & Contentions

- Writ Petition filed challenging order of AAR levying tax on the entirety of the contribution to RWA and Circular No. 109/28/2019 dated 22-7-2019.
- CBIC Flyer issued in 2017 categorically stated that GST would be applicable only on the amount in excess of Rs. 7500/-
- In 2019, one AAR ruling stated that if the contribution exceeded Rs. 7,500/-, then the very entitlement of that RWA to exemption would stand defeated and the entirety of the amount collected would have to be brought to tax.
- Circular No. 109/28/2019 was passed thereafter toeing the line of the AAR.

Observations of the Court

- The plain words employed in Entry No. 77 of Notification No. 12/2017 Central Tax (Rate), dated 28-6-2017 being, 'upto' an amount of Rs. 7,500/- can only be interpreted to state that any contribution in excess of the same would be liable to tax. [Para 23]
- The term 'upto' hardly needs to be defined and connotes an upper limit. It is interchangeable with the term 'till' and means that any amount till the ceiling of Rs. 7,500/- would exempt for the purposes of GST. [Para 24]
- The conclusion of the AAR as well as Circular No. 109/28/2019 to the effect that any contribution above Rs. 7,500 would disentitle the RWA to exemption, is contrary to the express language of the entry No. 77 and both stand quashed. Only contributions to RWA in excess of Rs. 7,500/- would be taxable under GST Act. [Para 26]

Greenwood Owners Association v. UOI [2021] 55 GSTL 529 (Madras)

Appeal by UOI against the order of the single bench admitted by Madras HC

Valuation issues in calculating maintenance charges

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Property tax / Water tax

- Services provided by the Central Government, State Government, Union territory or local authority to a person other than business entity, is exempted from GST. So, Property Tax, Water Tax, if collected by the RWA/Co-operative Society on behalf of the MCGM from individual flat owners, then GST is not leviable. (CBIC Flyer)

Electricity / water charges for common areas

- GST is not leviable on electricity charges which are collected under other statutes from individual flat owners. (CBIC Flyer)
- Charges collected as pure agent
- Entry No. 77(b) exemption available

Sinking Fund

- Sinking fund, repairs & maintenance fund, car parking charges, Non- occupancy charges or simple interest for late payment, attract GST, as these charges are collected by the RWA/Co-operative Society for supply of services meant for its members.(CBIC Flyer)
- Revenue: Sinking fund is an advance received for provision of services in the future and is liable to GST on the date of collection.
- Taxpayer: Sinking fund is a deposit for a future contingent supply and shall be liable to GST only when it is adjusted against the consideration for service in the future.



“

It's not how much we give
but how much love we put
into giving

”

- Mother Teresa

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