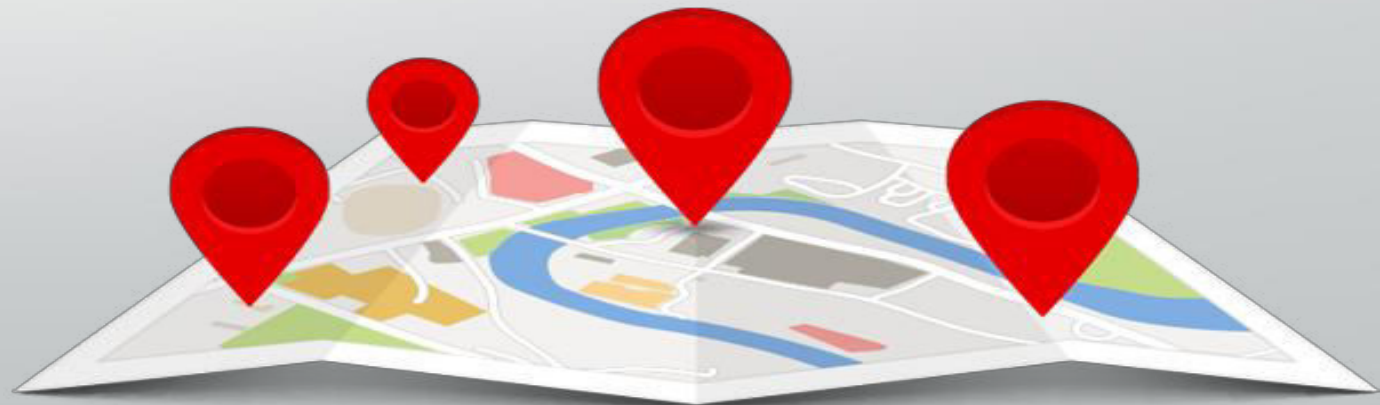


# **GST- Place of Supply**

**- CA. YASH PARMAR**

**S. B. GABHAWALLA & CO.**

**WIRC (29.09.17)**



# Place of Supply: Heart of GST

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- Objective:
  - Effectuate free flow of tax amongst Multiple States
  - In case credit is not eligible (B2C Transactions) , State component to go to the consuming State
- This classification is governed by IGST Act.
- Levy linked with the classification as intra-state or inter-state
- Based on the combination of
  - Location of Supplier – not defined for goods, defined for services.
  - Place of Supply – defined under IGST Act
- Inter-state Supply – Sec. 7 of IGST Act --- Different States
- Intra-state Supply – Sec. 8 of IGST Act. --- Same State

# Sec. 7 of IGST Act- Inter- State Supply

Situation	Supply	Tax
Location of Supplier and Place of Supply in different States	Inter State	IGST
Location of Supplier and Place of Supply in different Union territories	Inter State	IGST
Location of Supplier and Place of Supply is between a State and a Union Territory	Inter State	IGST
Import of Goods or Services (different countries)	Inter State	IGST (RCM)
Export of Goods or Services (different countries)	Inter State	Zero Rated
Supply of goods or services to SEZ	Inter State	Zero Rated
Supply of goods or services from SEZ	Inter State	IGST

# Sec. 8 of IGST Act- Intra- State Supply

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Situation	Supply	Tax
Location of Supplier and Place of Supply in same State	Intra State	CGST + SGST
Location of Supplier and Place of Supply in same UT	Intra State	CGST + UTGST

# Place of Supply Scenarios...



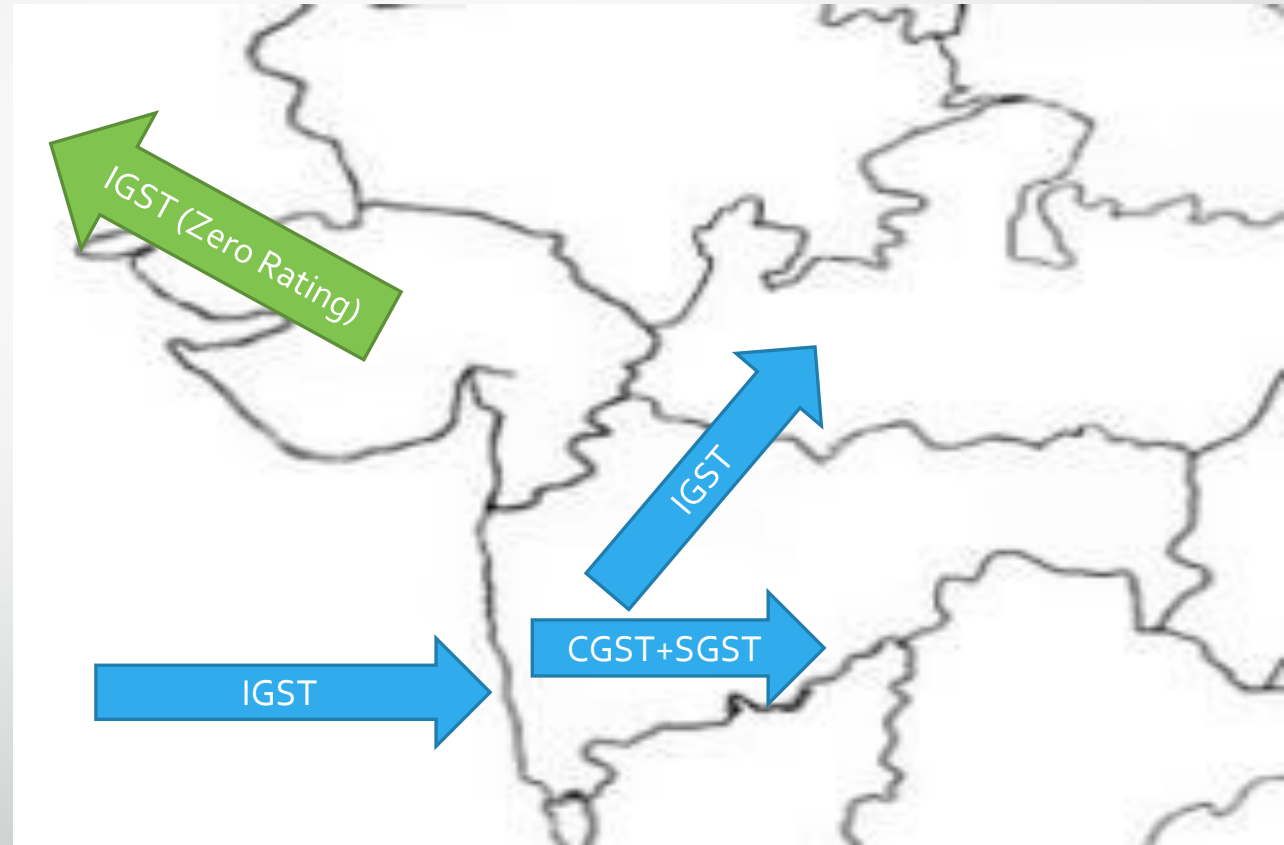
Intra-State Supplies Liabale for CGST & SGST

Inter-State Supplies Liabale for IGST

Branch Transfers Liabale for IGST

Imports Liabale for IGST

Exports entitled for Zero Rating



# INDIA...

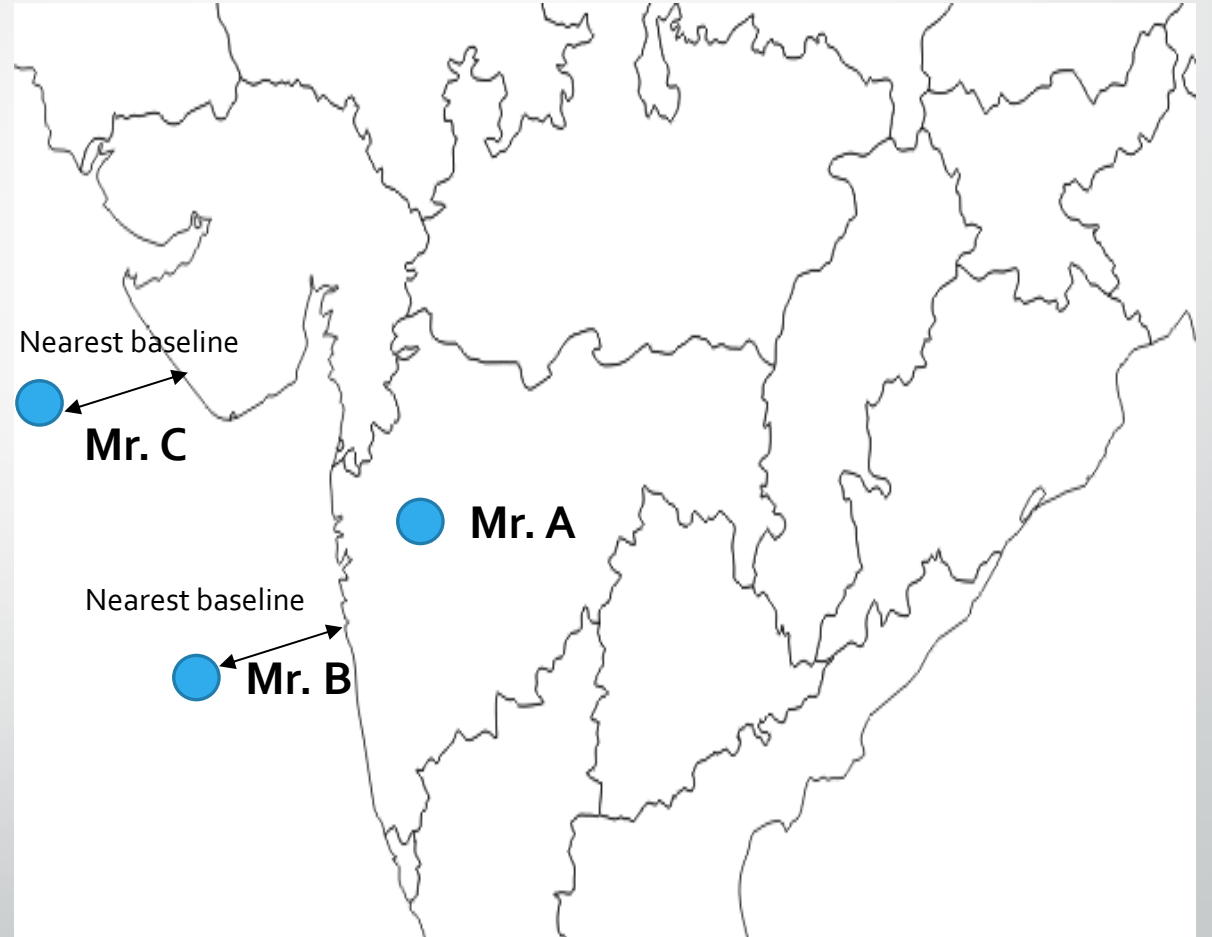
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- Section 2(56) of CGST Act, 2017 defines “India” as the territory of India as referred to in article 1 of the Constitution, its territorial waters, sea-bed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the **Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976)**, and the air space above its territory and territorial waters
- India includes area upto 200 nautical miles from base line inside sea. Area upto 12 nautical miles is deemed to be area of coastal state or Union Territory. Area between 12 nautical miles to 200 nautical miles is of Central Government for purpose of GST

# Sec. 9 of IGST Act- Supply in Territorial Water

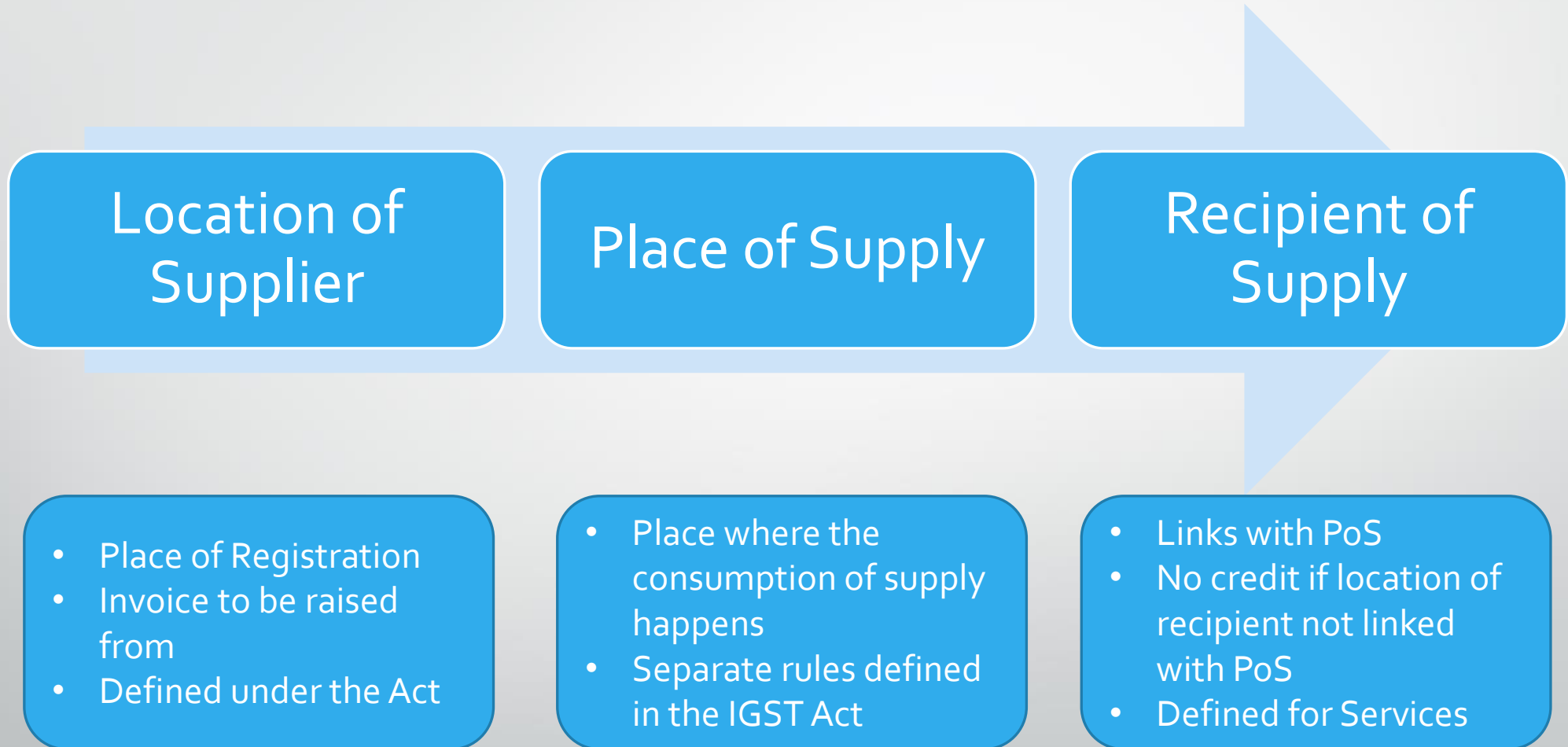
Mr. A supplying goods/services to Mr. B  
CGST + SGST of Maharashtra

Mr. A supplying goods/services to Mr. C  
IGST of Gujarat



# Complex Inter-dependencies

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# Supplier/ Location of Supplier...

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## Section 2(105) of the CGST Act, 2017

**“Supplier”** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied

## Section 2(71) of the CGST Act, 2017 & Section 2(15) of the IGST Act, 2017

### **“Location of the supplier of services” means-**

- (a) Where a supply is made from a place of business for which the registration has been obtained, the location of such place of business
- (b) Where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such establishment
- (c) Where supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and
- (d) In absence of such places, the location of the usual place of residence of the supplier

# Connected Definitions...

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## Section 2(85) of the CGST Act, 2017

**“Place of Business”** includes-

- (a) A place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- (b) A place where a taxable person maintains his books of account; or
- (c) A place where a taxable person is engaged in business through an agent, by whatever name called

## Section 2(50) of the CGST Act, 2017

**“Fixed Establishment”** means a place (other than the registered place of business) which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs

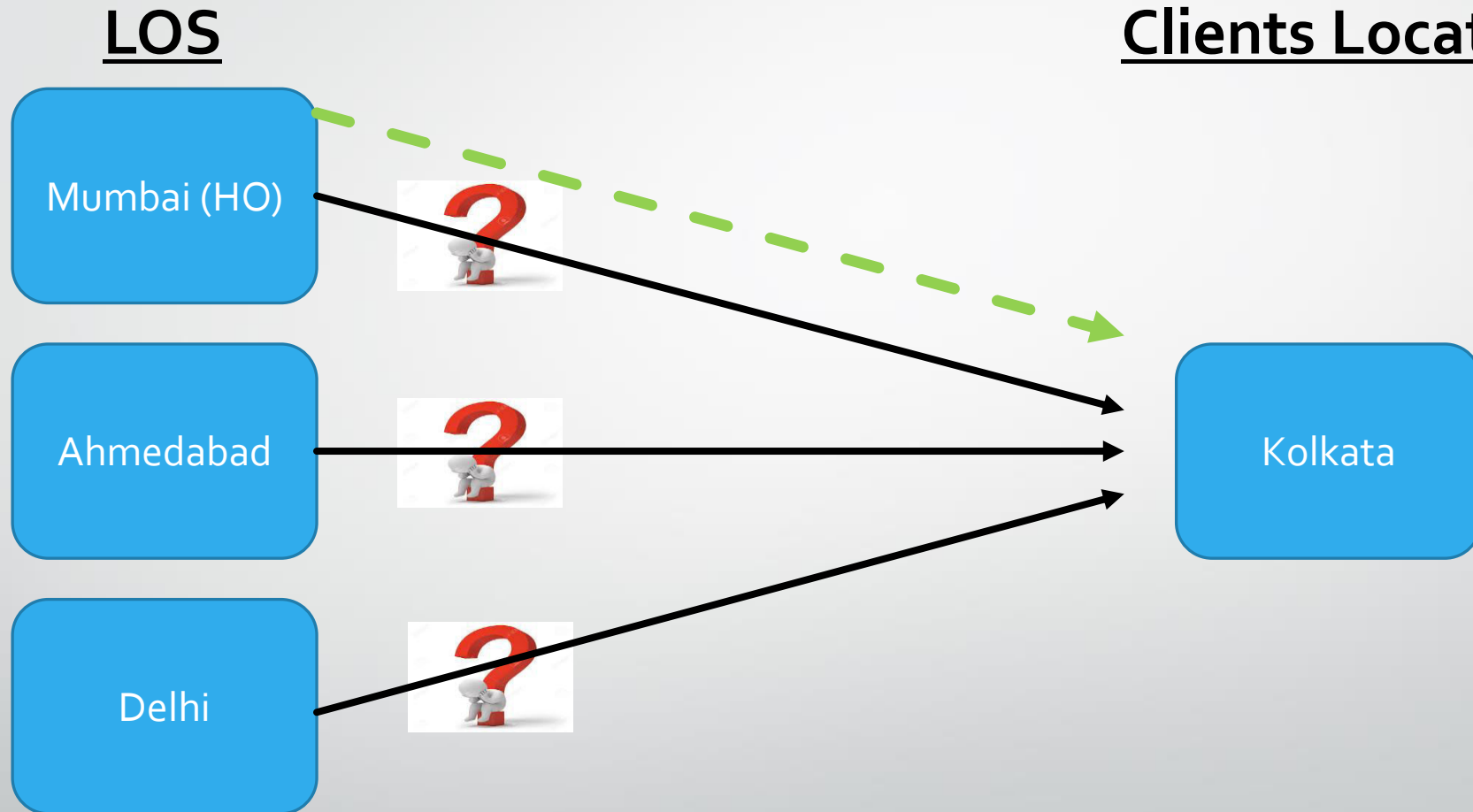
# Identifying the Location of Supplier...

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A CA firm has head office in Mumbai and branch offices in Ahmedabad and Delhi. The Mumbai office has entered into an audit engagement contract with a client located in Kolkata. A team of article assistants and CA's will be deputed from Ahmedabad branch office to the client location in Kolkata to conduct Audit. The audit report will be reviewed by senior partner located in Mumbai and ultimately signed off by an audit partner located in Delhi.

What is the Location of the Supplier?

# Identifying the Location of Supplier (Contd..)



# Recipient of Supply...

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## Section 2(93) of the CGST Act, 2017

**“Recipient”** of supply of goods or services or both means-

- (a) Where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration
- (b) Where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) Where no consideration is payable for the supply of a service, the person to whom the service is rendered,

And any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied

# Location of Recipient of Supply...

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- Location of recipient of Goods is not defined in the Act
- Section 2(70) of the CGST Act, 2017 and Section 2(14) of the IGST Act, 2017  
**“Location of recipient of services”** means-
  - (a) Where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
  - (b) Where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
  - (c) Where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
  - (d) in absence of such places, the location of the usual place of residence of the recipient

# Identifying the Location of Recipient...

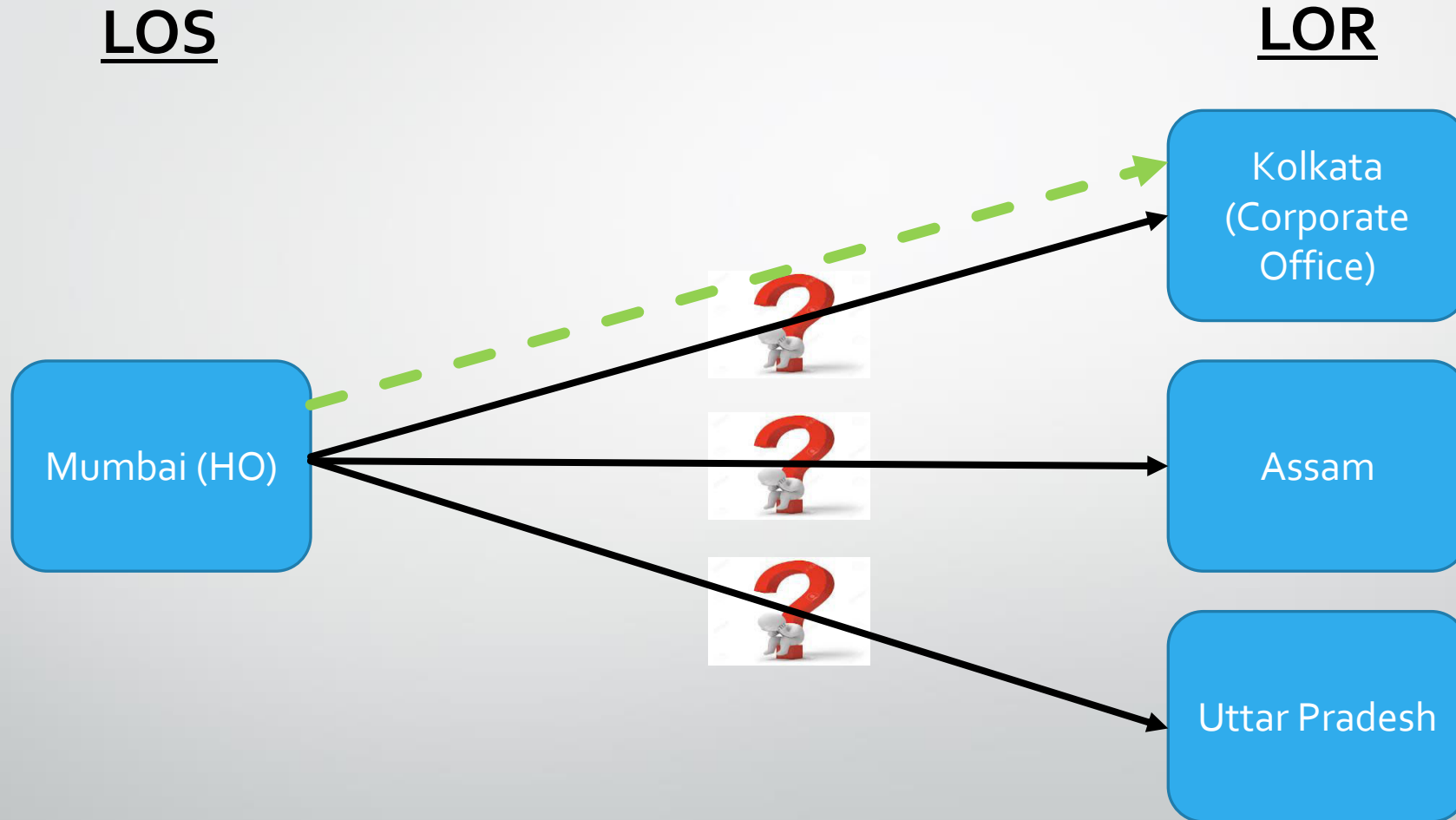
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Continuing the previous example with certain addition in facts:

Let us assume that the client has Corporate office in Kolkata who has entered into Audit engagement with the Chartered Accountant firm. The client also has office at Assam and a factory at Uttar Pradesh. These locations are also covered under the Audit.

Who is the Recipient of Supply in this Case?

# Identifying the Location of Recipient (Contd..)



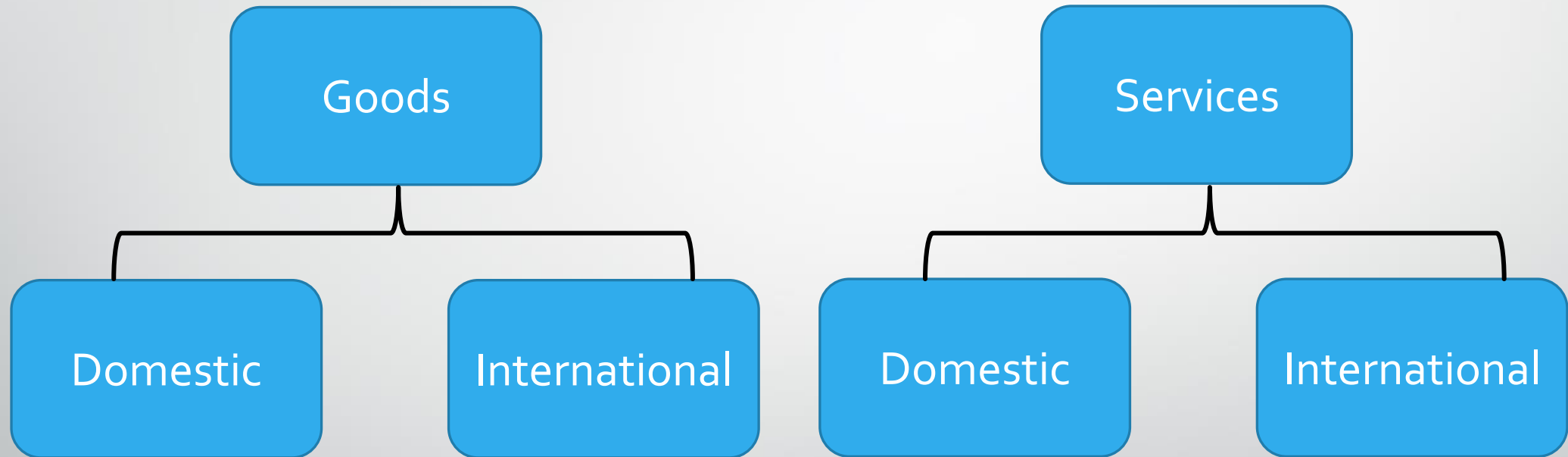




# **Understanding the Place of Supply Rules**

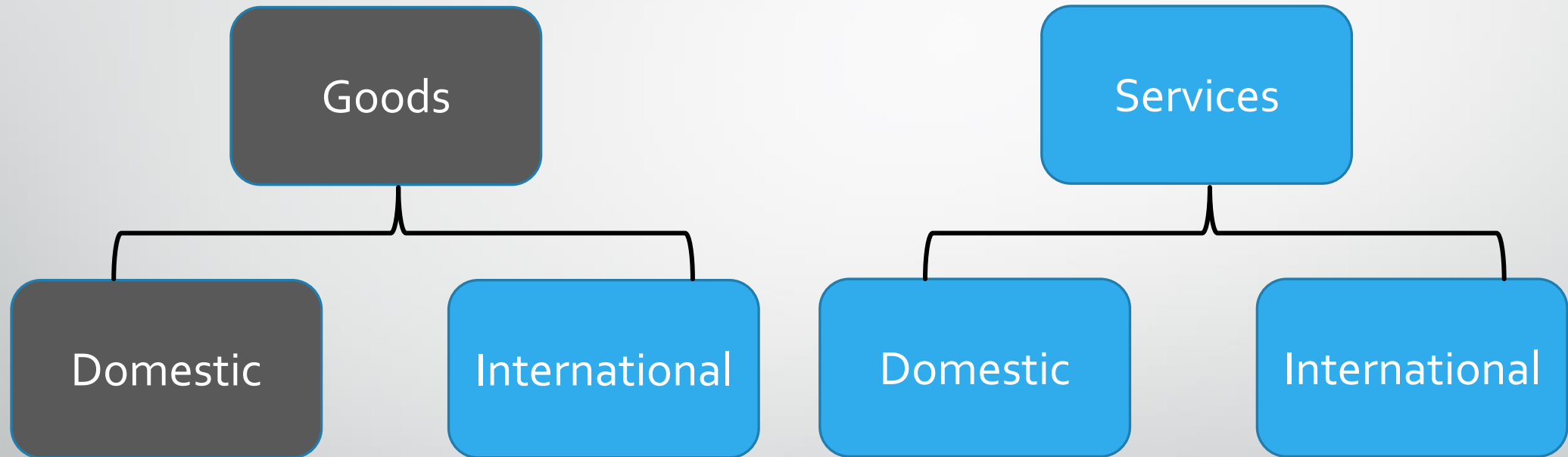
# Understanding the Place of Supply Rules...

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# Understanding the Place of Supply Rules...

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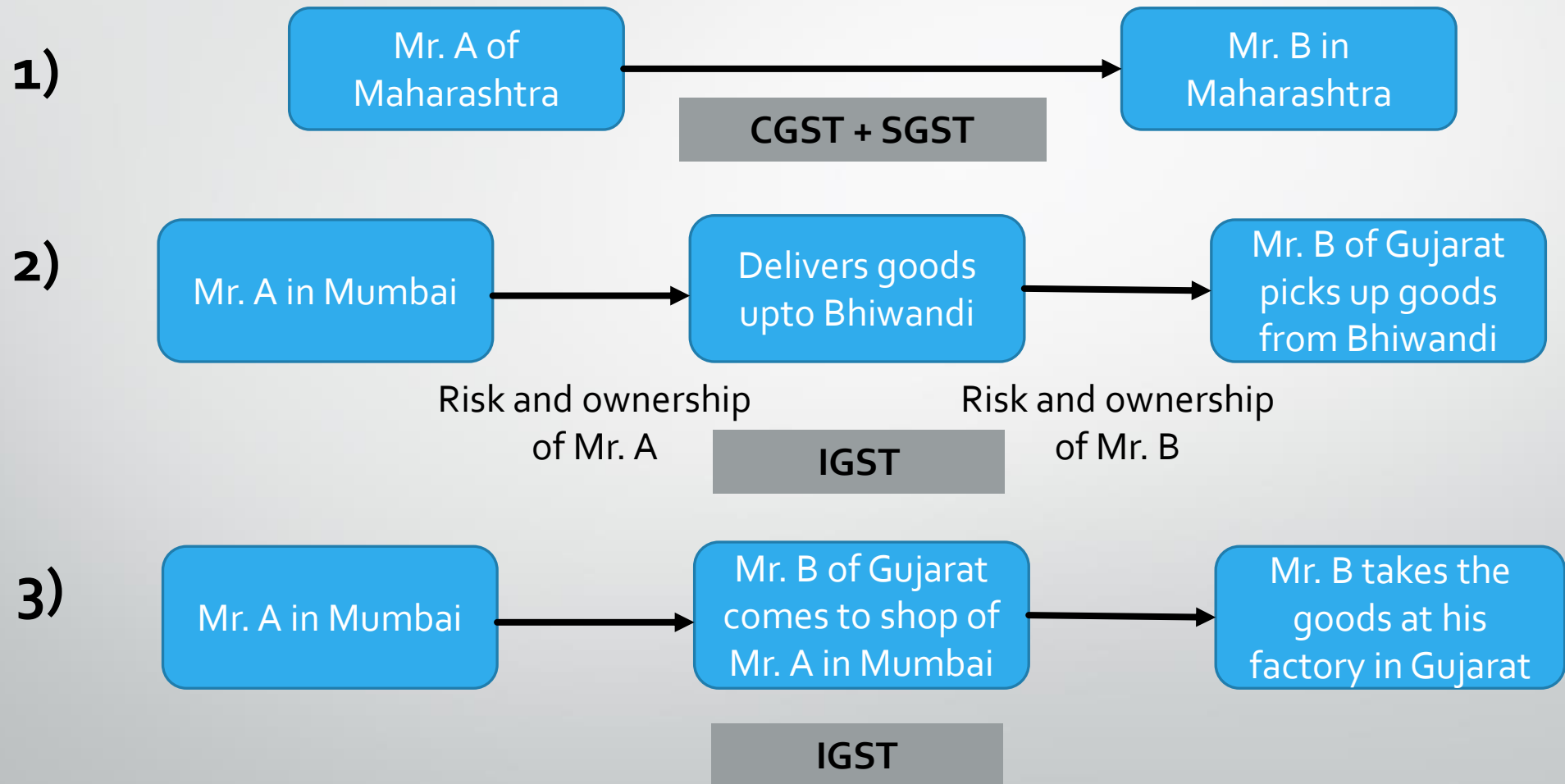


# Section 10(1)(a) of the IGST Act...

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Where the supply **involves movement of goods**, whether by the supplier or by the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which **the movement of goods terminates for delivery to the recipient**

# Section 10(1)(a) of the IGST Act... (Examples)

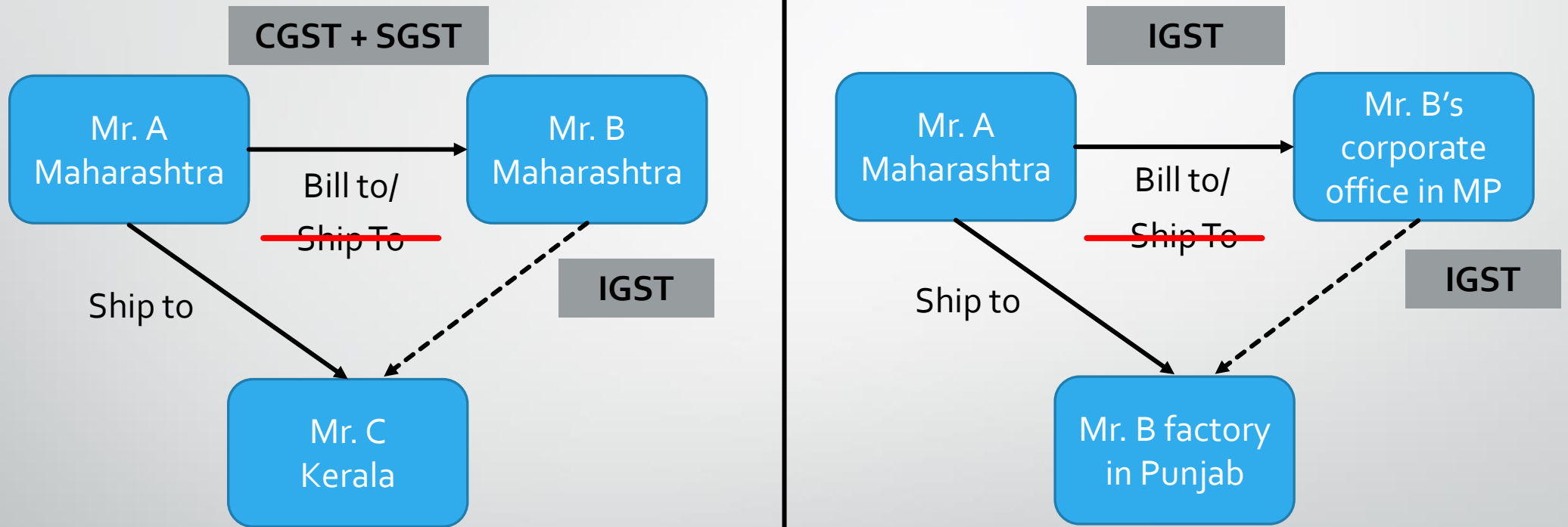


## Section 10(1)(b) of the IGST Act...

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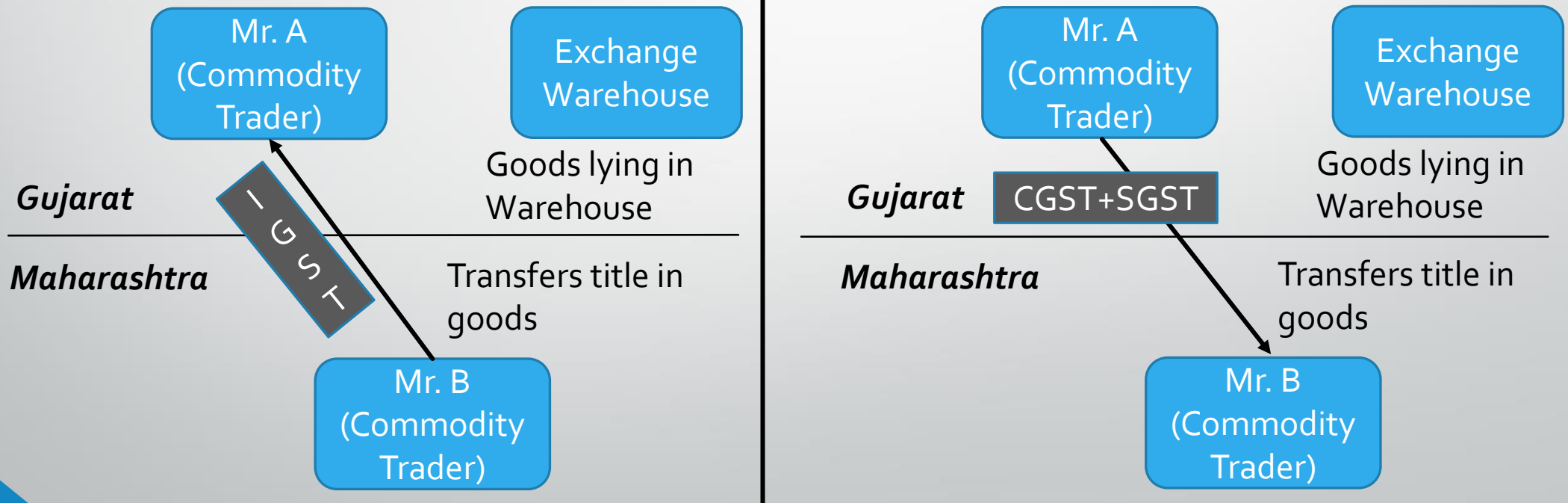
Where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person

# Section 10(1)(b) of the IGST Act... (Examples)



# Section 10(1)(c) of the IGST Act...

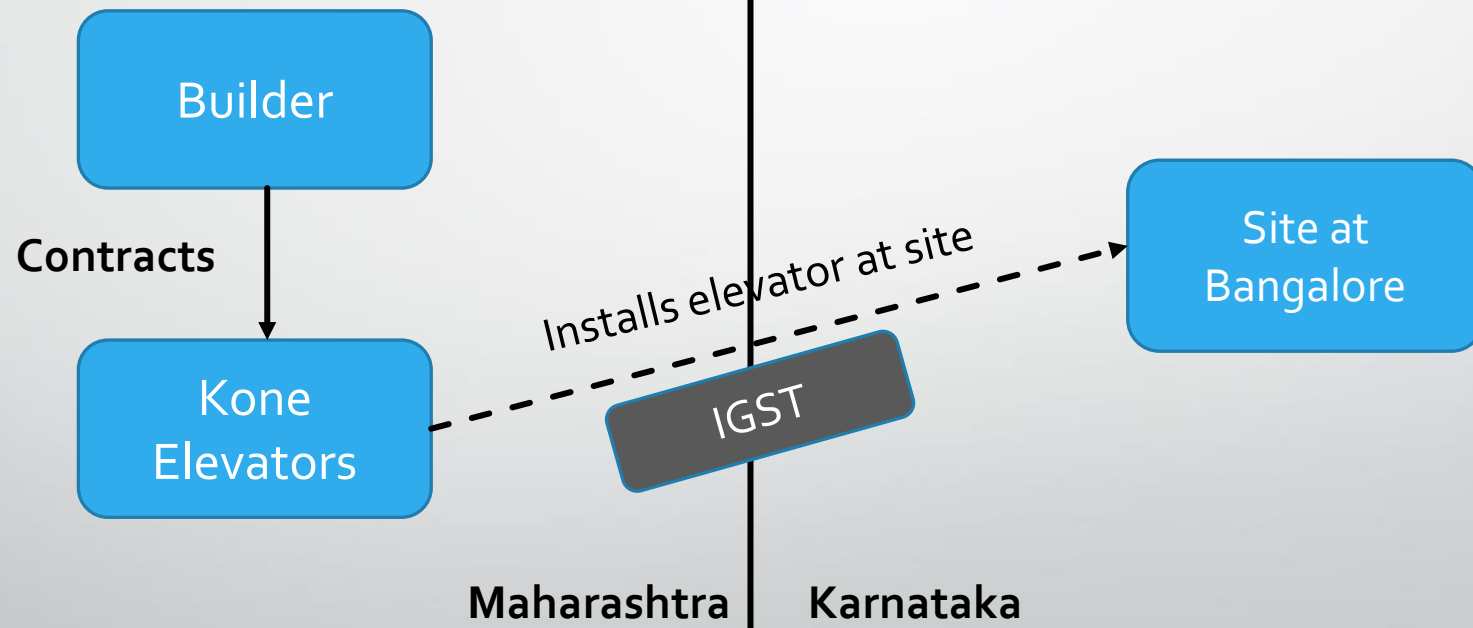
Where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient





# Section 10(1)(d) of the IGST Act...

Where the goods are assembled or installed at site, the place of supply shall be place of such installation or assembly



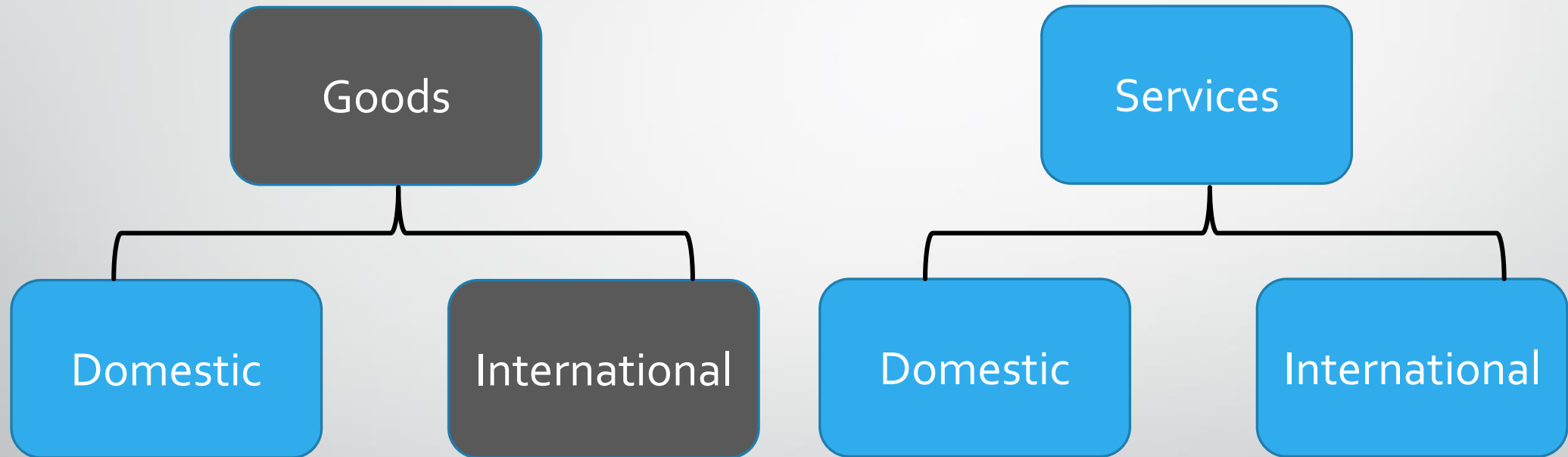
# Section 10(1)(e) of the IGST Act...

Where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board



# Understanding the Place of Supply Rules...

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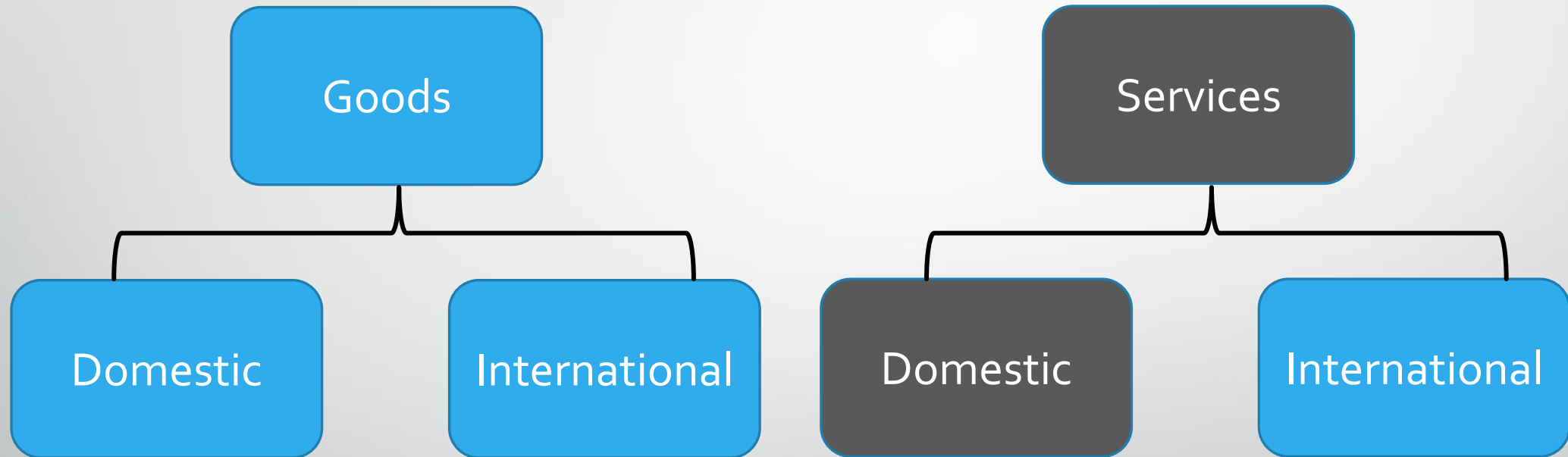
# Cross Border Movement...

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- Section 2(5) of the IGST Act, 2017- “Export of Goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India
- Section 2(10) of the IGST Act, 2017- “Import of Goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India
- Section 11 of the IGST Act, 2017  
The place of supply of goods-
  - (a) imported into India shall be the location of the importer
  - (b) exported from India shall be the location outside India

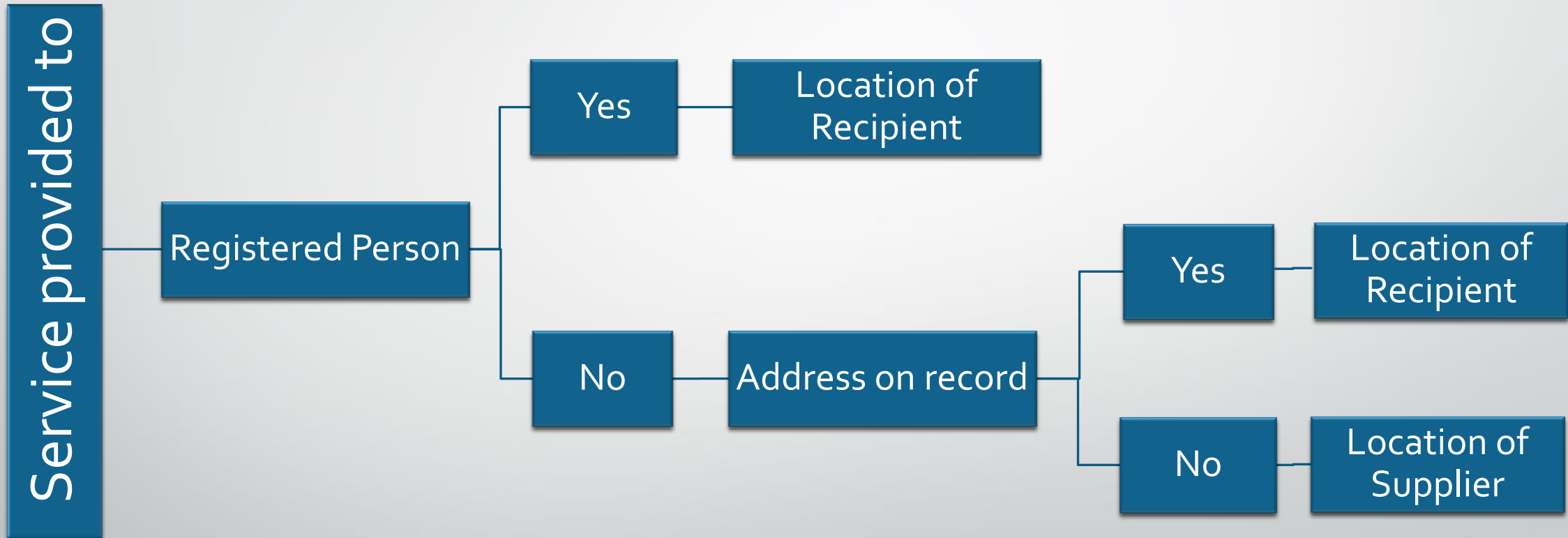
# Understanding the Place of Supply Rules...

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# Section 12(2)- General Rule

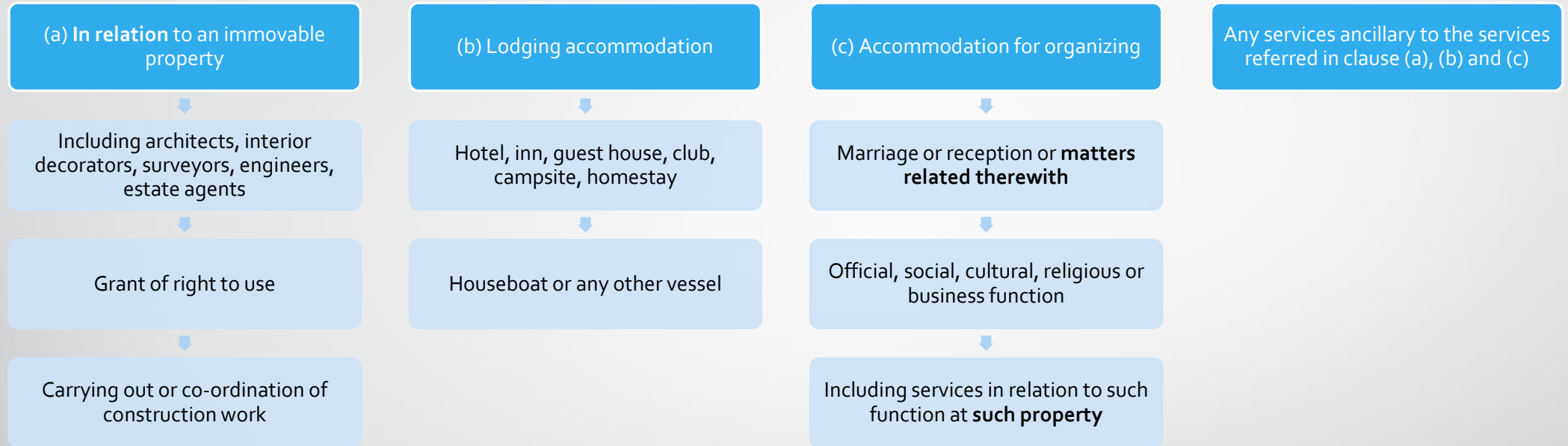
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# Exceptions to General Rule...

Source Rule	Hybrid Rule
Services in Relation to Immovable Property	Training and Performance appraisal
Hotels, Mandap Keeper services	Organization of events and ancillary services
Restaurant, catering, personal grooming, fitness, beauty treatment, health services, cosmetic and plastic surgery	Transportation of Goods including mail and courier
Services in relation to admission to event	Passenger Transportation services
Services supplied on board of a conveyance	Banking and Stock Broking

# Section 12(3)- Immovable Property



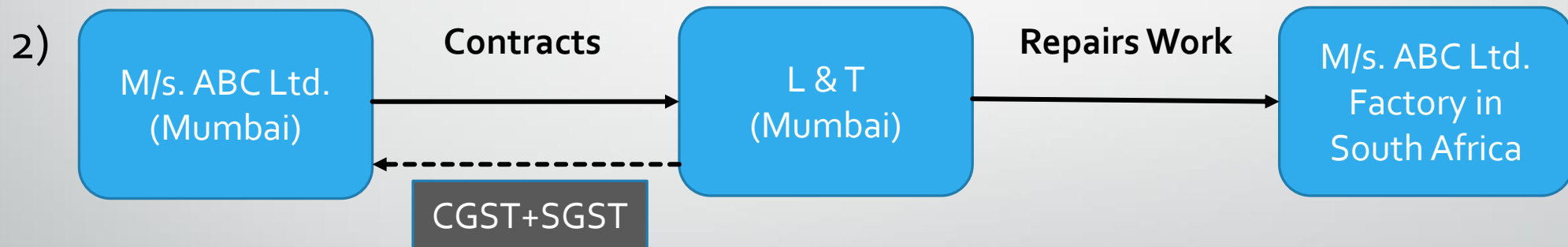
shall be the location at which the immovable property or boat or vessel is located or intended to be located

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be location of the recipient



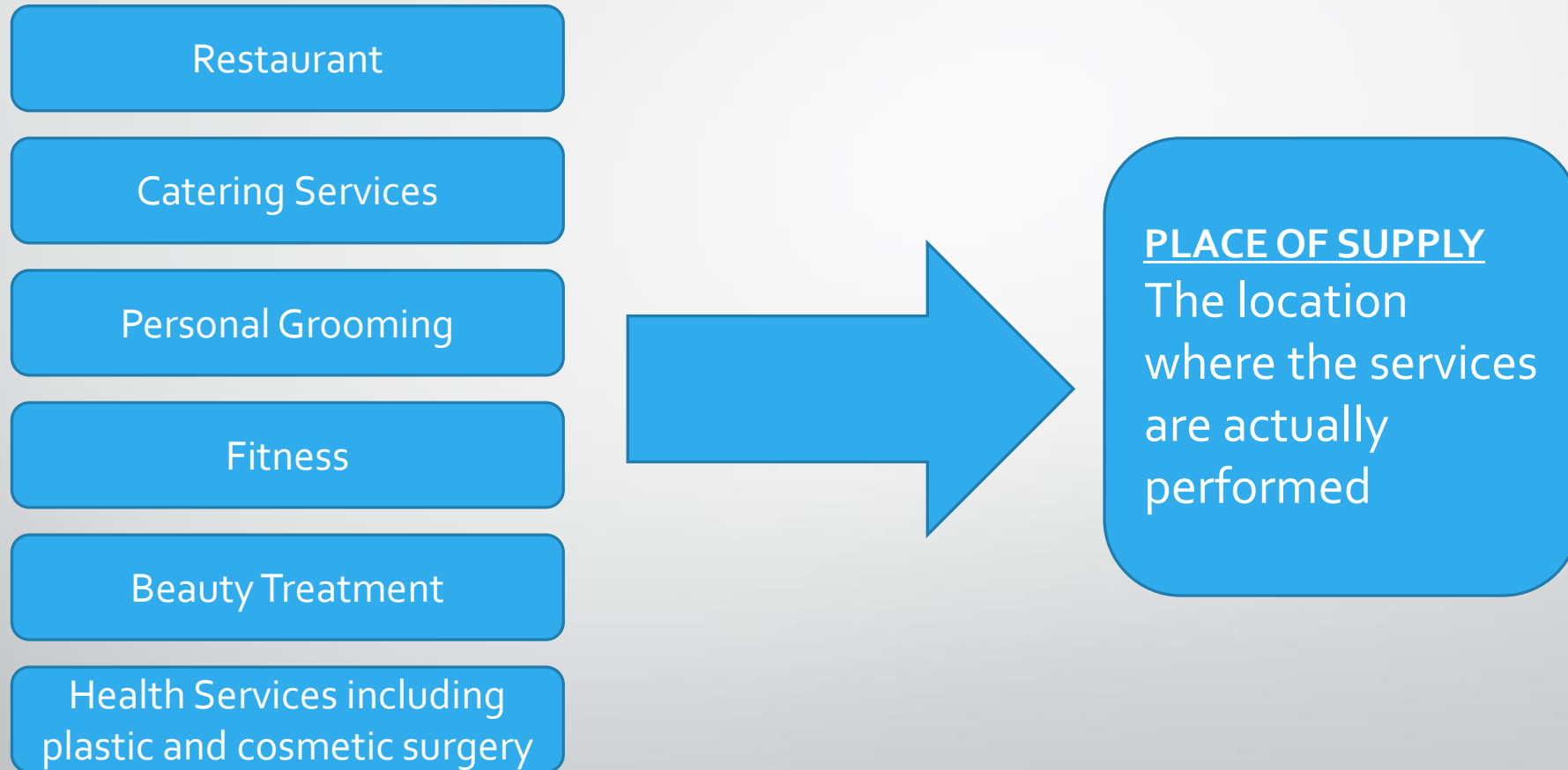
## Section 12(3)- Immovable Property (Examples)

- 1) Mr. A of Mumbai sold his property in Ahmedabad. Now he has approached his Chartered Accountants Mr. C, for the purpose of Capital Gains valuations. Chartered Accountant is also located in Mumbai. In this case, in his invoice Mr. C will charge CGST+SGST of Maharashtra or IGST of Gujarat?



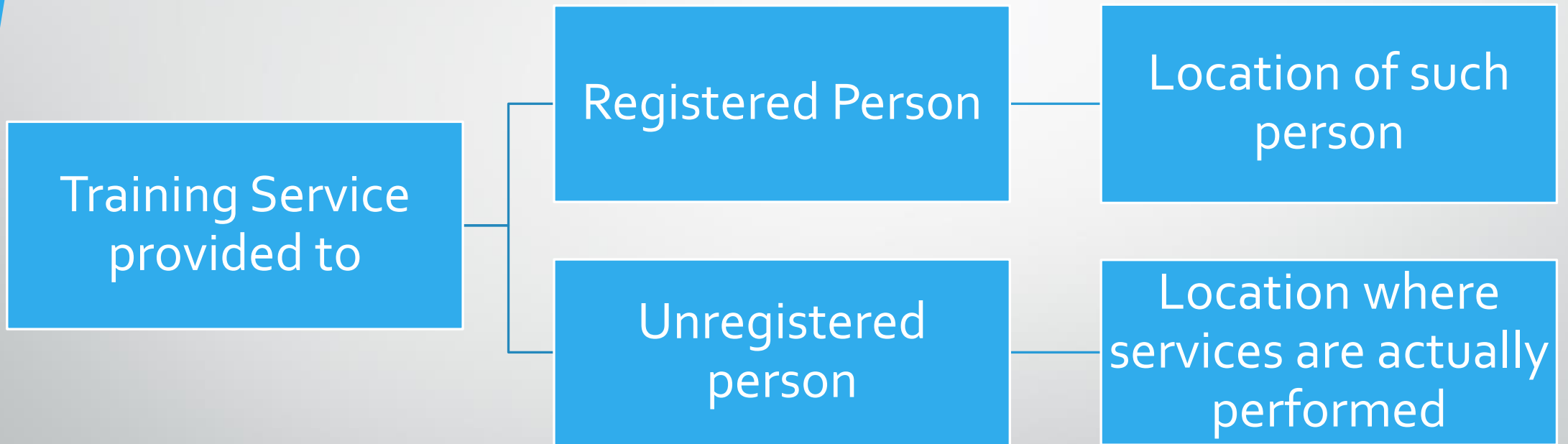
# Section 12(4)- Performance Based...

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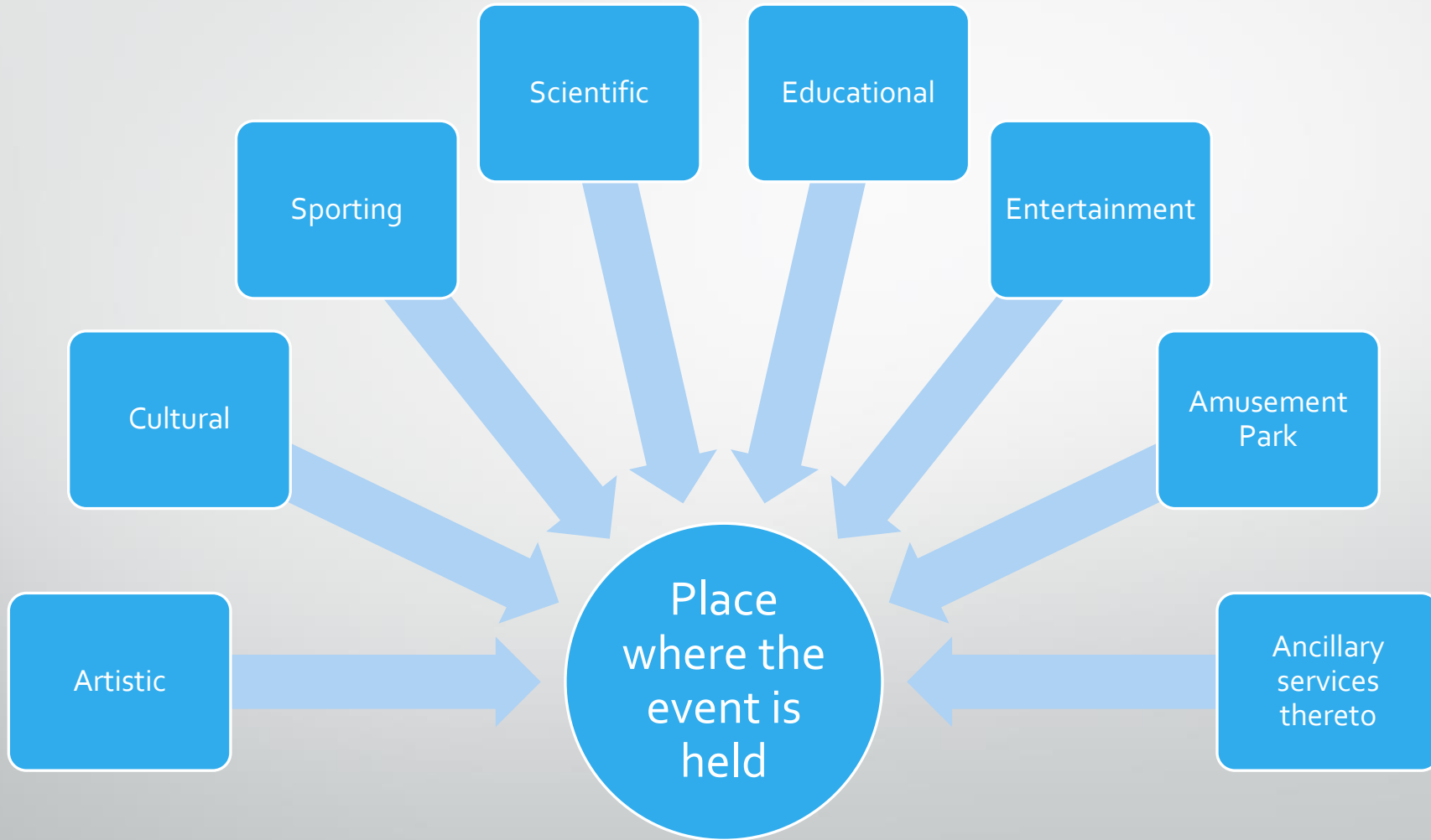
# Section 12(5)- Training & Performance Appraisal

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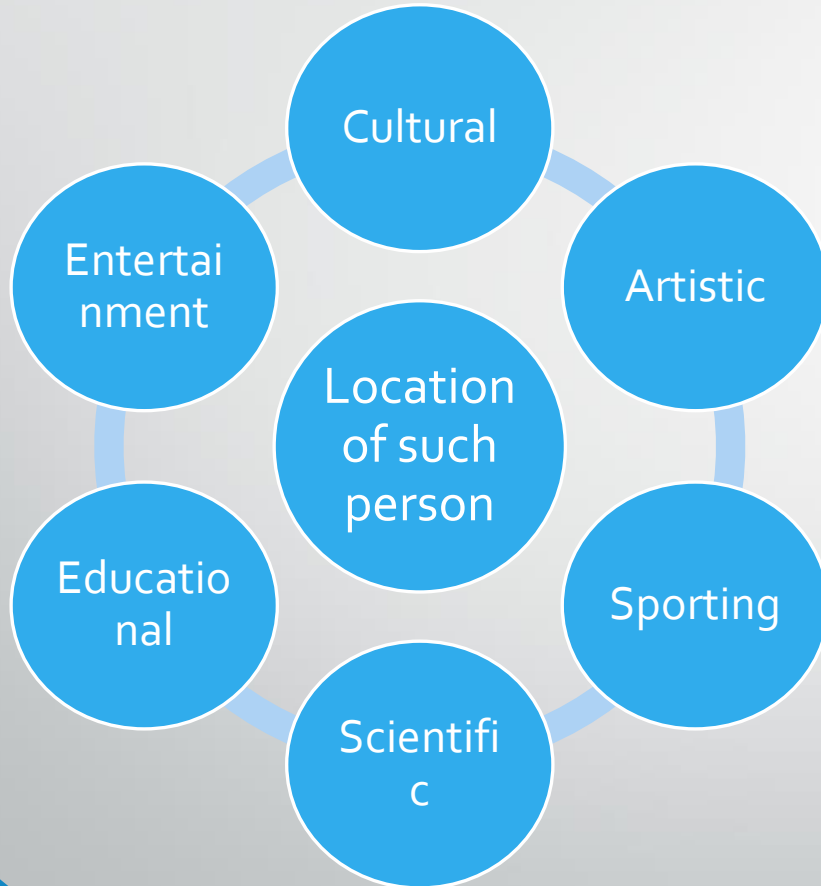
# Section 12(6)- Admission to an Event

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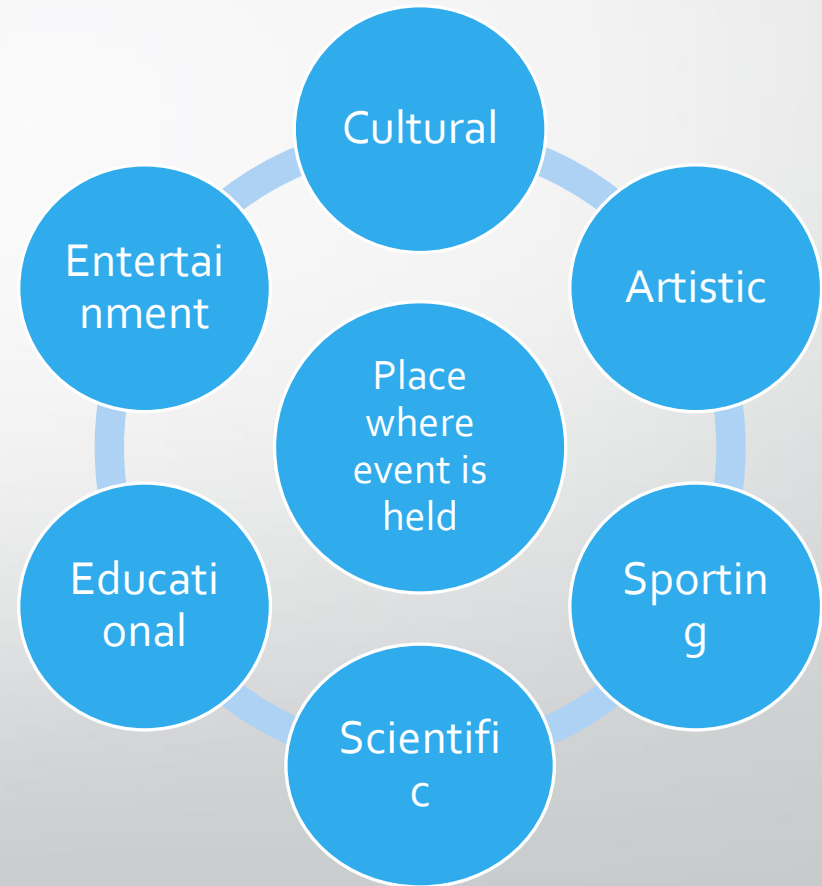


# Section 12(7)- Organising an Event

## Registered Person



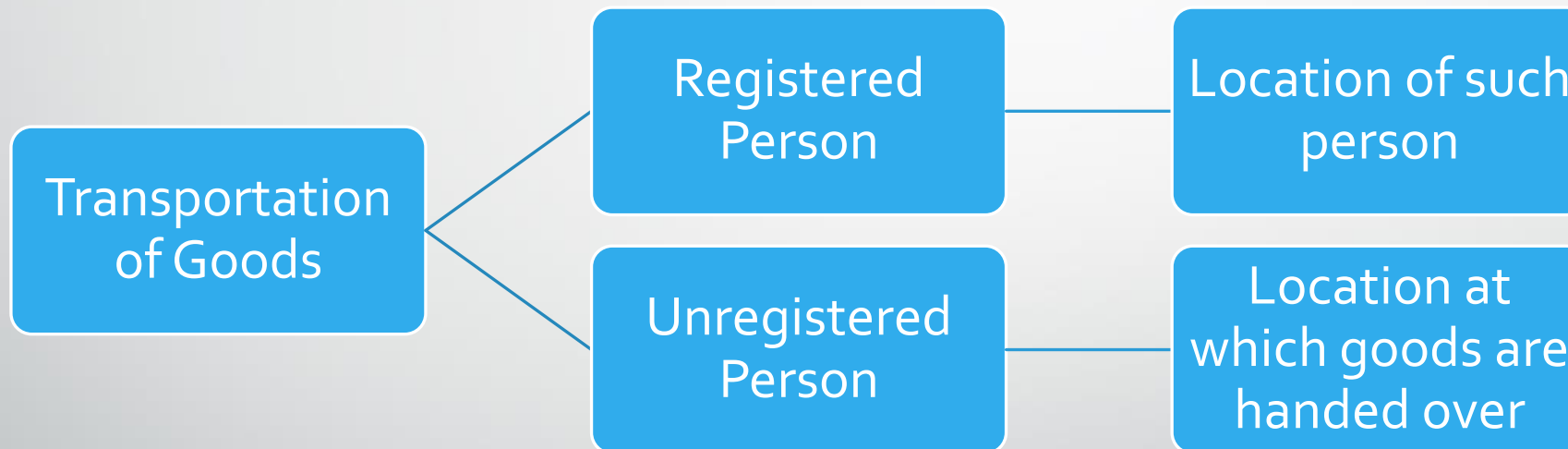
## Unregistered Person



# Section 12(8)- Transportation of Goods..

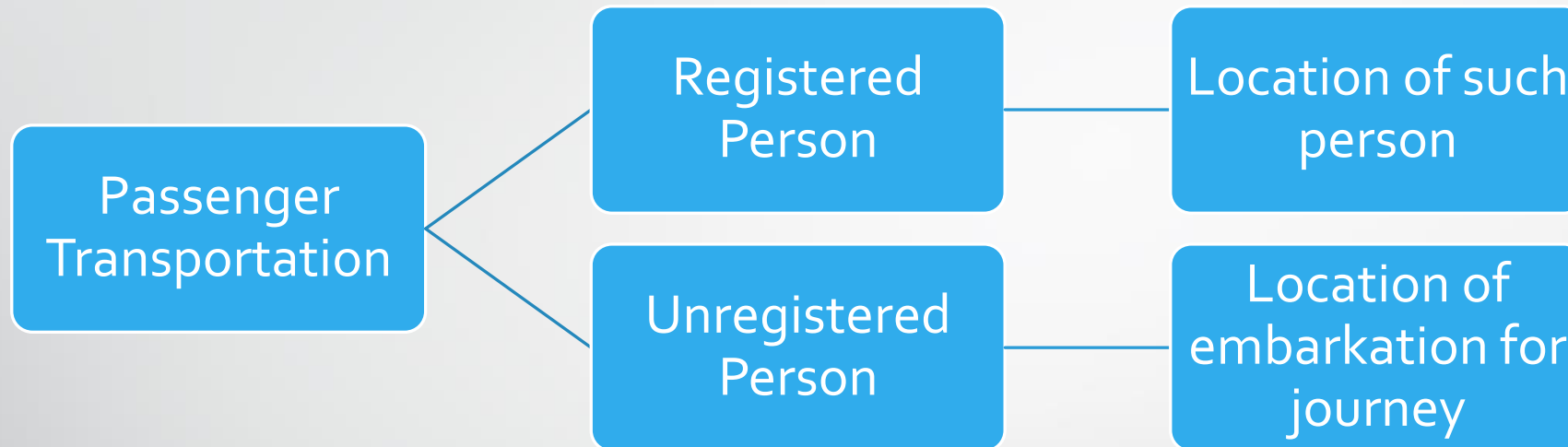
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The place of supply of services by way of transportation of goods, including by mail or courier to-



# Section 12(g)- Passenger Transportation

The place of supply of passenger transportation service to-



Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2)

Explanation- For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time

# Section 12(10)- On Board Services

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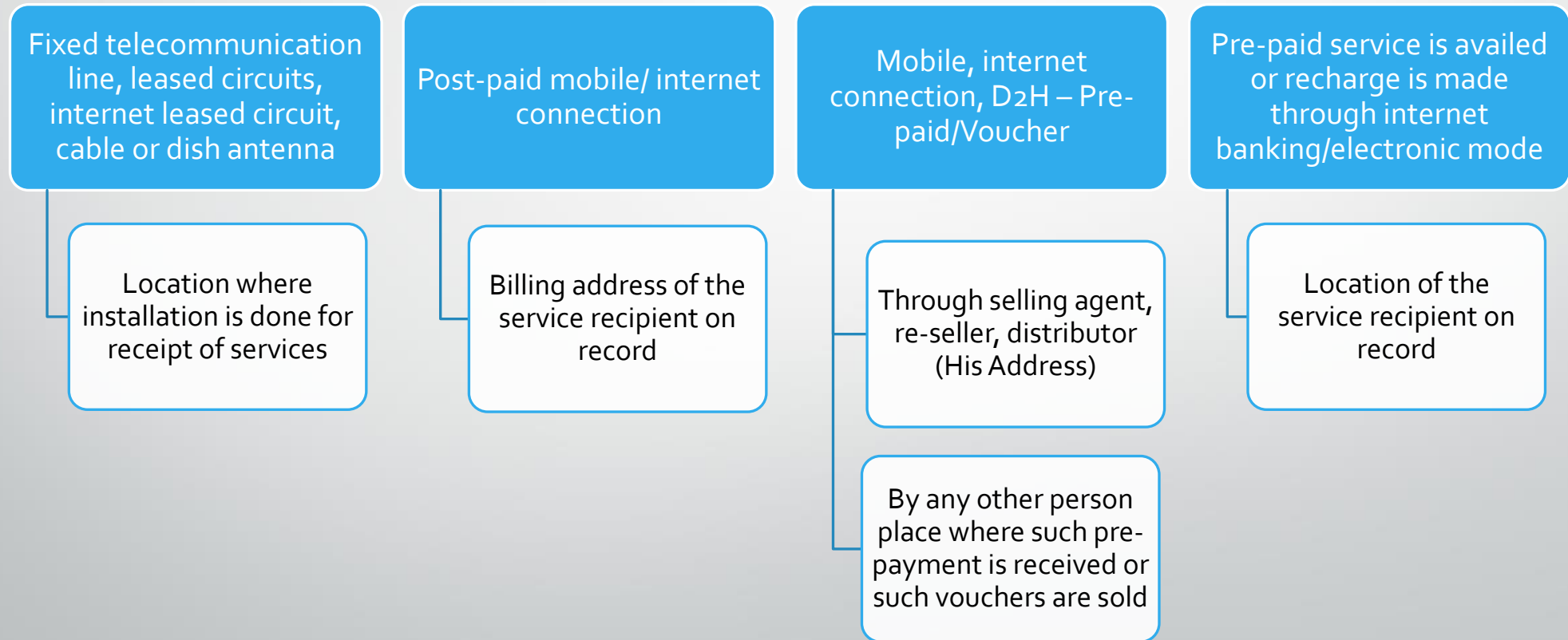
The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey





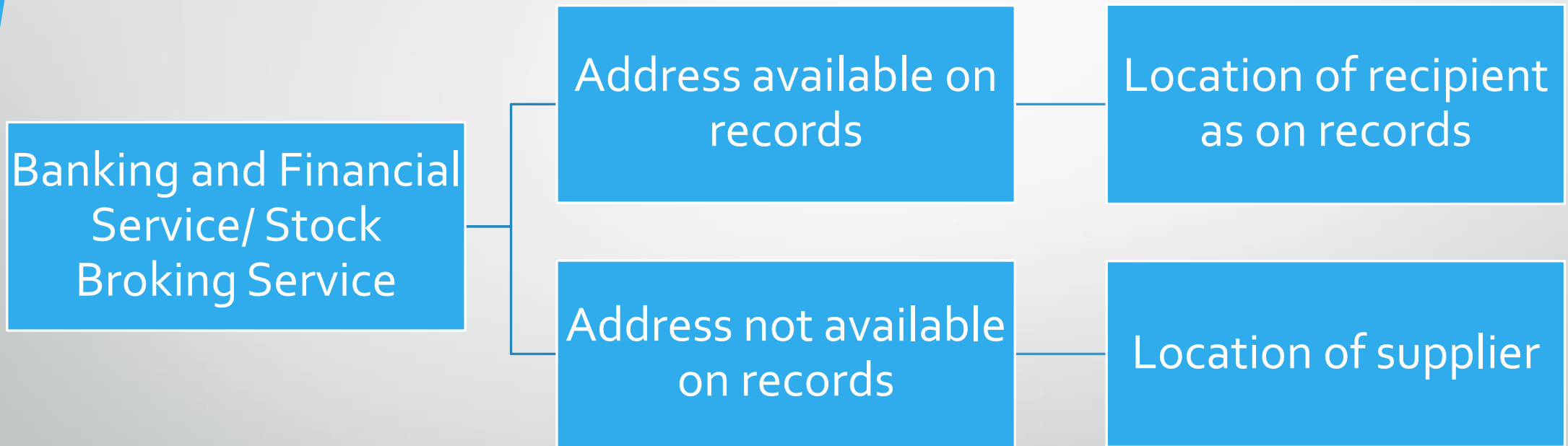
# Section 12(11)- Telecommunication Service

- Scope- data transfer, broadcasting, cable and direct to home television services



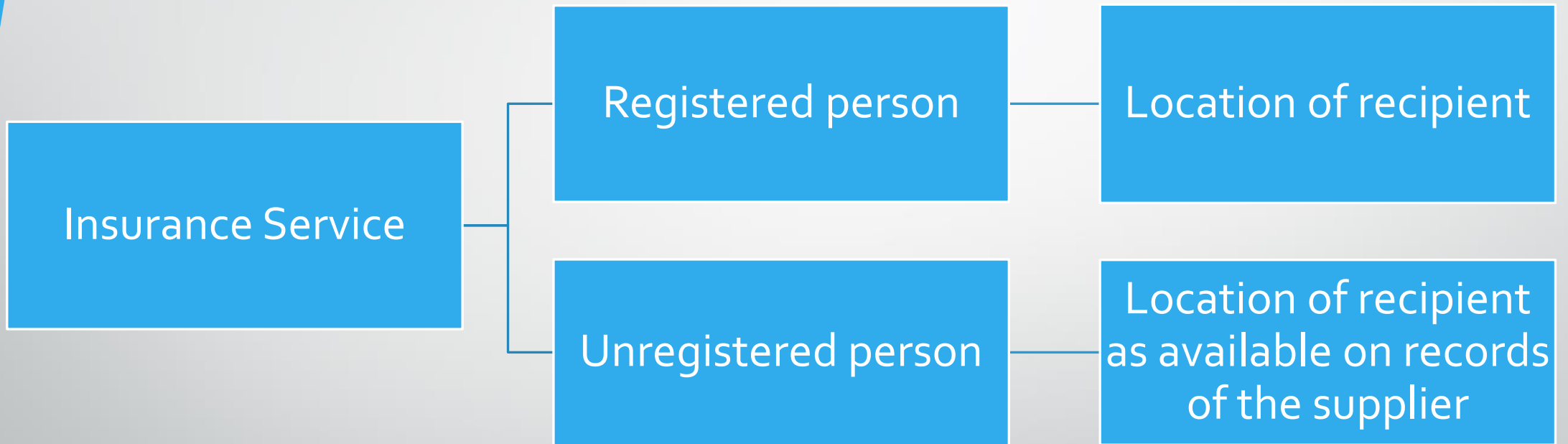
# Section 12(12)- Banking Financial Service

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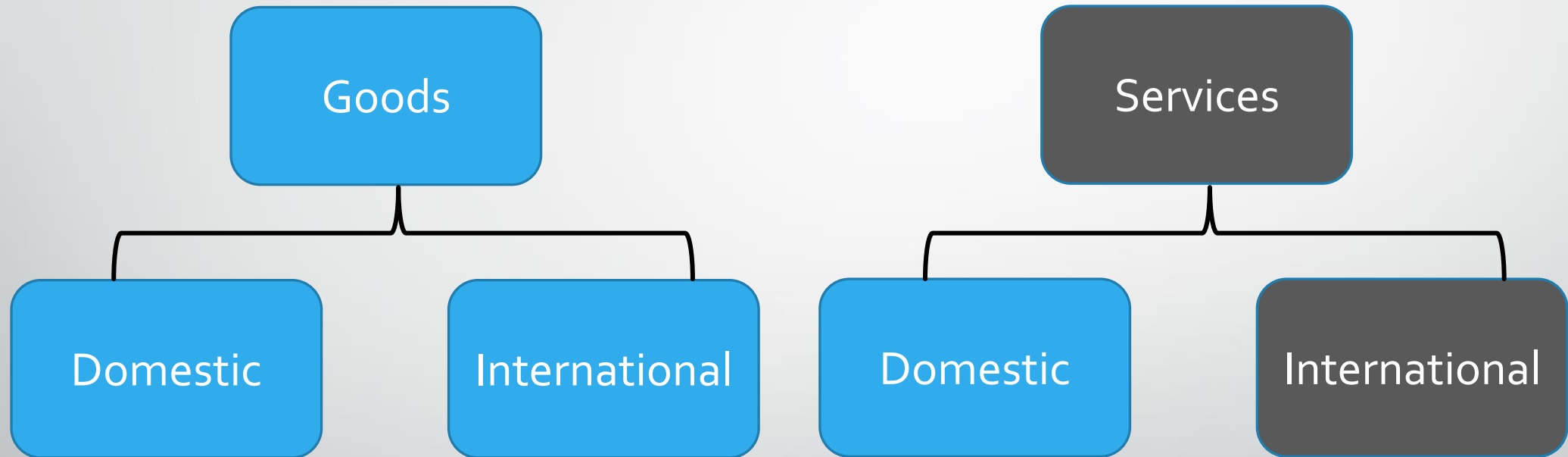
# Section 12(13)- Insurance Service

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# Understanding the Place of Supply Rules...

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# Export of Service- Sec. 2(6) of IGST Act



The supplier of service and recipient of service are not merely establishments of a distinct person

# Import of Service- Sec. 2(11) of IGST Act

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Recipient In India

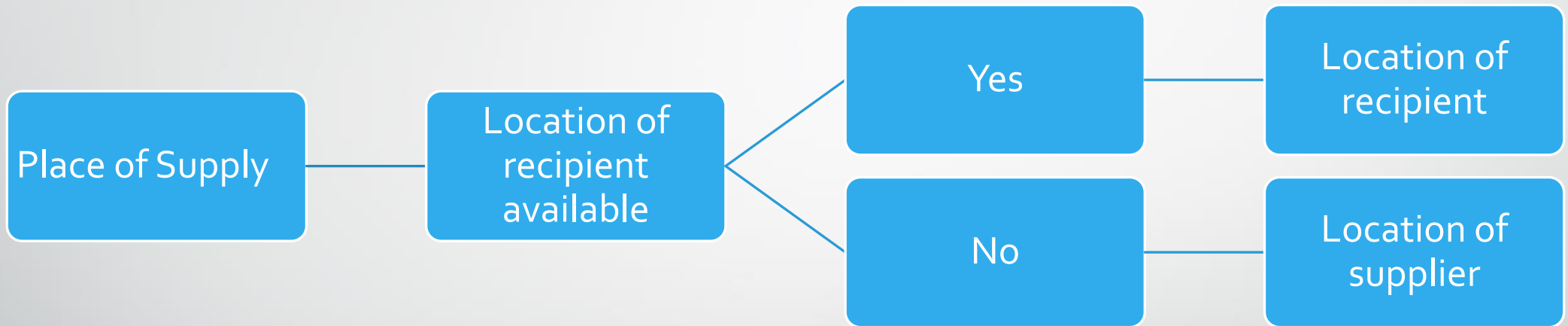


Supplier outside India

Even if the supplier of service and recipient of service are merely establishments of a distinct person

# Section 13(2)- General Rule

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**Similar to provisions of Place of Provision of Service Rules, 2012**

# Source Rules...

Section	Nature of Activity	Place of Supply
13(3)	Performance based where physical presence of goods on which service is to be supplied. Proviso- It shall not include goods which are temporarily imported into India for repairs and are exported after repairs	Location where the services are actually performed
13(4)	Services in relation to immovable property	Location of immovable property
13(5)	Admission to Events	Place where Event is held
13(9)	Transportation of Goods by mail or courier	Place of destination of goods
13(10)	Passenger Transportation	Place where he embarks
13(11)	Supply of services Onboard	First scheduled point of departure



# Sec. 13(8) of the IGST Act, 2017

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The place of supply of the following services shall be the location of the supplier of service, namely-

- (a) Services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders
- (b) Intermediary Services
- (c) Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

“Account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account



# Case Studies

# Case Study 1:

---

## Question

A depository company is having its main servers in Maharashtra from where the business is generally carried on. Billing is also centralized from Maharashtra. They have a Disaster Recovery Centre (DRC) located in Bangalore which is used at the time of emergency. Also as per SEBI norms, the DRC has to be used once in a quarter for normal operations to ensure that it is in working condition and can actually service at the time of disaster. Will the depository company require to take registration as service supplier from Bangalore? Will the billing required to be done from the Bangalore office during the times of DRC usage?

Can be possibly argued that the supply is made from DRC location i.e. Bangalore. Invoicing and Tax might be required to be paid in Karnataka

## Case Study 2:

---

A banking company is having its branch in Delhi and head office in Mumbai. All the front-end work pertaining to LC transactions are happening from Delhi office, however, back office work such as review of documents, postage/ courier, accounting, invoicing, etc happens from Mumbai office. In this case, which office is providing service to its customers? Mumbai office or Delhi office? Will Delhi office require a separate registration?

Delhi branch has contractual agreement with clients and therefore, PoS is Delhi

## Case Study 3:

---

A company which is registered in Delhi has approached an advertising agency in Mumbai for advertisement of its event on the streets of Mumbai. The event is going to be held in Bangalore. What will be the place of supply?

General Rule- PoS Delhi

Advertisement services cannot be read as 'ancillary' to organisation of the event. Hence, section 12(7) will not apply

## Case Study 4:

---

A business entity in Mumbai has entered into an agreement with HRD Ministry of India to conduct training of its IFS employee who is located in Bhutan. The training is done in Bhutan. HRD ministry is going to remit training fees in INR. What will be the place of supply of service in this case?

HRD and IFS employees, both not registered.

PoS – Outside India.

This transaction shall not be considered as 'exports'. IGST is payable.

# Case Study 5:

---

A stock broking entity has branches across various states and HO in Mumbai. A customer walks-in at his branch in Indore and got his demat account opened. All the account opening formalities like signing of forms, etc was done at Indore office. However, verification and other formalities were carried out in HO (Mumbai).

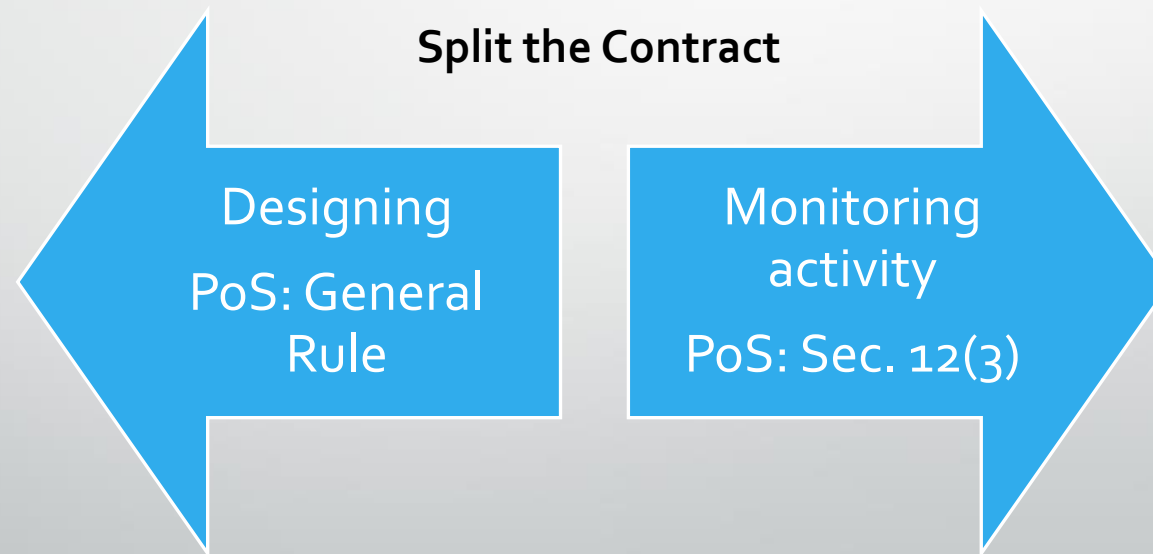
Now, client has started trading in securities. Analyze place of Supply in the following scenarios: (P.S. All contract notes are generated from HO)

- 1) Client calls at the branch at Indore and books his order PoS- Indore
- 2) Client calls at the call centre and places his order. Call Centre is located in Mumbai PoS- Indore with BT
- 3) Client does the trade himself through internet/mobile application facility PoS- Indore

# Case Study 6:

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An Engineering company has been appointed by a MNC for designing a plan for constructing Anganwadi (CSR Project) across various villages in the country. The MNC has been contracted for designing the plan which will be common and also is been asked to monitor the work which will be done by the third party contractor. Discuss PoS implications.





# Case Study 7:

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An association who is registered under GST in the state of Rajasthan is conducting an event for its members at Delhi. It has appointed an event management company based in Mumbai for organizing the event. The association will pay a fixed lumpsum fee for the entire event and also the association will charge its customer admission fees for the event. Discuss taxability.

## Organizing of Event Supply:

Location of Supplier: Mumbai  
Place of Supply: Rajasthan  
Tax: IGST (Rajasthan)

\* Loss of certain credit to the event organizing company

## Admission to the Event:

Location of Supplier: Rajasthan  
Place of Supply: Delhi

Tax: IGST (Delhi)



# Thank You

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Email: [yash@sbgco.in](mailto:yash@sbgco.in)

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