



Confederation of Indian Industry



GST FEET ON THE STREET

This e-book is a compilation of GST related key legal provisions,
reports and articles



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Goods and Services Tax (GST) in India

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1. Step Plan for being GST ready

1.1 Five steps to be GST ready

It is said that when you want something to happen, the entire world conspires it to make it happen. And then when it actually happens, you are left wondering now what to do! Same is the feeling with Goods and Services Tax (GST) which was eluding India since so many years.

Now, as the Government is likely to introduce GST from 1 July 2017, so it can be said that it is just a matter of few days before GST may become a reality in India. So, in the following paras, the critical step plan for business to be GST ready is discussed.

1. Decode GST

It is an accepted fact that GST is not merely a tax change but a business change as it will impact all functions of an organisation such as finance, product pricing, supply chain, information technology, contracts, commercials etc. Thus, it is imperative that all these functional teams should be aware about the GST. But the underlying question is what should these team members read/ refer for GST?

In this regard, it is pertinent to note that most of the key aspects of the proposed GST regime are already in public domain through various such as CGST Act, SGST Act, IGST Act, UTGST Act, and Cess Act, 2017. Also, seven Rules¹ are finalised and available in public domain. Even the rates for goods and services are available in public domain. Thus, based on this legal knowledge of GST available in public domain the organisation may consider sensitising its employees.

¹ Composition Rules, Valuation Rules, ITC Rules Invoice, Debit & Credit Notes Rules, Payment Rules, Refund Rules and Registration Rules

The organisation can consider sensitising its entire business eco-system i.e. not only the employees but also vendors (such as Tier-1, Tier-2 vendors etc.) and key customers of the organisation. An early initiation of training will give the concerned employees, vendors and customers a sense of involvement in discussion much before GST legislation it is put in public domain.

2. Understand GST impact

GST may provide opportunities but at the same time it could bring threats. Given this, an organisation may consider carrying out an exercise to identify how its operations will get impacted because of GST. For GST Impact Analysis exercise, the respective department heads such as finance, supply chain, product pricing, human resource etc. should be involved to ensure that they provide their inputs and suggestions.

Going one step forward, organisations can also identify possible cost savings which key suppliers / vendors could be entitled to in the proposed GST regime. Based on the possible cost savings to suppliers / vendors, the organisations can have discussion with its vendors for passing of benefits by way of cost reduction in the coming years (i.e. after GST is introduced). Early discussion and engaging with vendors for GST will ensure maximum possible benefit to be passed on to the organisation in accordance with Anti-profiteering provisions (i.e. section 171 of CGST Act).

Organisations will also have to take into consideration the increase (most likely!) or decrease (least likely!) in tax compliances. For most of the organisations, in GST regime, compliances are expected to increase dramatically. Take example of a service tax assessee, who currently files 2 returns on an annual basis. Now, in GST regime, Service tax assessee could be required to file as many as 61 returns (5 returns per month plus 1 annual return)!!! Thus, in human resource department will have to be informed

about the GST regime so that they can anticipate the increase (and decrease in certain cases) in the manpower.

3. Gear up for transition of IT systems

Information Technology (IT) is a key area for business organisations as irrespective of the fact whether the organisation is ready or not, on the very first day GST is introduced, **the information technology system of an organisation has to be ready and running else it will bring the entire business to standstill.**

Take example of a retailer having multi-state presence. Currently, his IT system generates invoice/ bill with applicable respective VAT or CST. In GST regime, the IT System should generate invoice/ bill with applicable CGST and SGST or IGST. For a service provider, there could be more challenges as applicability of CGST and SGST or IGST will depend on the Place of Supply provisions (to determine whether the transaction is intra-State or Inter-State). Thus, **embedding the Place of Supply provisions in the IT system could pose a major challenge.**

Given this, to avoid the threat of disruption of business, it is advisable that early study should be carried out to understand how the systems migration for GST could be done.

4. Design Alternate Business Strategies

To gear up for GST regime, the organisation may identify alternate efficient business strategies to ensure smooth transition to GST. Even, supply chain strategies is expected to undergo a major change as entire India will become one market and there may not be any tax cost involved for intra-State vis-à-vis inter-State procurement of goods. An organisation will have to re-visit their pricing strategies as business competitors may well reduce prices of their product to pass on the GST benefits.

However, while forming alternate business strategies, it goes without saying that the organisation should take into consideration the commercial feasibility of alternate business strategies before these strategies are recommended.

5. Make Representation

Introduction of GST regime could affect negatively (than positively!) to few industries/ sectors. GST can have a tagline 'GST is a matter of solicitation. Please read all the law documents carefully!' Thus, efforts should be made by the organisation to identify the possible issues for which appropriate representation could be made before the Government through various trade chambers and forums.

While current economic situation is characterised by volatile economic conditions, introduction of GST remains a ray of hope, thus early initiation of aforesaid steps can surely help the organisations gain most of the proposed GST regime. Now, it seems GST is an idea whose time has come!

1.2. Three Steps plan for Anti-profiteering provisions

With each passing day, India seems to be marching towards the Goods and Services Tax (GST) slated for introduction from July 1, 2017. There are still several areas of doubt for taxpayers on the overall law and its implementation, and the 'Anti-Profiteering Provision' seems to be at the forefront of things.

What the section says?

For ease of reference, section 171 is reproduced below:

- 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.*
- (2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.*
- (3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.*

What is the Anti-Profiteering Provision?

The Central GST law, as passed by the Parliament, contains an anti-profiteering clause that mandates the manufacturer and others in the supply chain to pass on the benefits arising during the transition phase from current tax regime to GST regime, to the consumers.

Globally, Australia is said to be the first country to introduce an anti-profiteering provision during GST introduction in the year 2000, followed by Malaysia in the year 2015. Though there are no empirical studies to

prove its benefits, the Government appears to be inclined to experiment with these provisions in India as well.

The provision in the Central GST Act - Section 171, mandates that benefits arising due to either lower tax rates or more tax credits being available in the GST regime should be passed on to the consumer by way of commensurate reduction in prices. This section also empowers the Government to constitute an authority or entrust an existing authority to ensure compliance of anti-profiteering provisions. Therefore, it is of paramount importance for companies to set up processes to compute the likely benefits and have a plan to ensure smooth passage of the benefits to the consumer.

1. Computing Benefits due to Lower Tax Rates and Increased Credits

Currently, guidelines to compute the benefits have not been prescribed, yet taxpayers can compute the likely benefit at a broader level. The provision categorizes the likely benefits in two baskets:

a. More input tax credits becoming available

At present, Central Sales Tax (CST) is a cost in the supply chain, while in GST regime there will be no CST. This could be construed as a benefit arising due to transition to GST. Today service providers cannot claim credit of VAT paid on goods, and traders cannot claim credit of excise/ countervailing duty and service tax. Going forward, these credits are expected to accrue to a taxpayer. Taxpayer should identify these benefits arising on account of transition to GST at organizational level.

Tax benefits can also be computed at the product level based on a cost sheet.

b. Reduction in tax rates

Once benefits arising from credit are captured, the next step should be to compute benefits from rate reduction, if any. This benefit may be computed at the product level.

Say, for example, one unit of toothpaste of Rs. 10 attracts excise and VAT of Rs 3 today. If GST payable on toothpaste is Rs. 2, then Rs. 1 would be the likely benefit.

2. Looping in Vendors / Supply Chain

While the above steps provide clarity in understanding how much benefit is arising at the manufacturing level, the company will also have to ensure that their vendors pass on the benefits by way of price reduction. To do this, the company will be required to get cost data from vendors. Once details are shared by vendors, their veracity should be verified by the company or through an independent firm. In case vendors are not willing to share details, some sample cost sheets can be prepared based on industry knowledge. The expected amount of benefits thus arrived at could be shared with vendors for confirmation and used for negotiation.

To ensure that vendors comply with the company's requests, it is advisable to add an appropriate anti-profiteering clause in the vendor agreement stating that the vendor agrees to comply with anti-profiteering provisions and to share authentic and verified data to ensure that the benefit is appropriately passed on in accordance with the provisions. Going a step further, the clause can also state that in case appropriate benefit is not passed to the customer, then the vendor will be held accountable to pay any future disputed liability along with interest, fine, penalty, litigation cost etc.

3. Preparing for the Unknown

The anti-profiteering provisions in the GST Act are very brief, leaving enough room for misperceptions and perplexities. While the two steps mentioned above can help the company prepare for business conducted in the future, there are several questions on the business at hand that still remain unanswered. Questions such as how to change MRPs if products are already at the retail store, Is compliance mandatory even if the product is covered under drug pricing control order etc. still need clarifications.

For questions such as these, taxpayers need to be vigilant to announcements from the government on the topic and plan their processes accordingly.

Let's hope that the anti-profiteering provisions are not perceived as 'anti-industry' and the Government issues detailed guidelines to ensure that industry specific challenges are appropriately addressed.

2. Twelve things you must know about GST – Birds eye view

1. GST is payable on supply

In GST regime, all 'supply' such as sale, transfer, barter, lease, import of services etc. of goods and/ or services **made or agreed to be made for a consideration** will attract CGST (to be levied by Centre) and SGST (to be levied by State).

As GST will be applicable on 'supply' the erstwhile taxable events such as 'manufacture', 'sale', 'provision of services' etc. will lose their relevance.

Further, certain supplies (specified in Schedule I), even if made **without consideration**, such as permanent transfer of business assets on which credit is availed, transaction with related or distinct entities, transactions with agent etc. will attract GST.

In Schedule I of the CGST law, it is provided that **gifts** not exceeding INR 50,000/- in value in a financial year by an **employer to an employee** shall not be treated as supply of goods or services or both. This provision could open a Pandora's Box as free canteen facilities, travel arrangements for employees, irrespective of any threshold, may attract GST as they may not qualify as gifts.

2. GST Payment in case of Unregistered Suppliers

Typically, the GST liability is to be discharged by the supplier of goods/ service or both. However, in specific cases, the liability to pay tax is cast on the recipient of the supply instead of the supplier. This is known as Reverse Charge Mechanism (RCM).

There are two types of RCM proposed in GST law:

- a. Section 9 (3) of the CGST Act - RCM is said to be applicable in respect of specified services (12 services including transportation of goods by road

(GTA), advocate services, sponsorship, director etc specified by the GST Council)

- b. Section 9 (4) of the CGST Act – RCM is said to be applicable in cases of supply by an unregistered supplier to a registered person, GST shall be paid by the recipient under RCM.

RCM will increase the compliance burden for the recipient as invoice and payment voucher is required to be issued by the recipient [as per section 31 (3) (f) and (g) of CGST Act].

3. GST payable as per time of supply

The liability to pay CGST / SGST will arise at the time of supply as determined for goods and services. In this regard, separate provisions prescribe what will time of supply for goods and services. The provisions contemplate payment of GST on supply of goods or services at the earliest of date of issuance of invoice or prescribed last day by which invoice is required to be issued or date of receipt of payment.

Given that there could be **multiple parameters** in determining 'time' of supply, maintaining reconciliation between revenue as per financials and as per GST could be a major challenge to meet for businesses.

The CGST Act provides that the 'time of supply', to the extent it relates to an addition in the value of supply, by way of interest, late fee or penalty for delayed payment, of any consideration, shall be on the date on which the supplier receives such additional value.

4. Determining Place of Supply could be the key

An intra-State supply of goods will attract Central GST and State GST whereas an inter-State supply will attract IGST. Thus, it would be crucial to determine whether a transaction is an 'intra-State' or 'inter-State' as taxes will be applicable accordingly.

In this regard, the GST law provides separate provisions which will help an assessee determine the place of supply for goods and services. Typically for 'goods' the place of supply would be location where the goods are **delivered**. Whereas for 'services' the place of supply would be **location of recipient**.

However, the IGST Act prescribes multiple scenarios (at section 10, 11, 12, 13, 14 and 16) such as supply of services in relation to immovable property, services to and by SEZ etc. wherein this generic principle will not be applicable and specific provisions will determine the place of supply. Thus, businesses will have to scroll through all the place of supply provisions before determining the place of supply.

At section 77 of CGST Act and 19 of IGST Act it specifically provides that interest will not be payable on delayed payment of say CGST and SGST if taxpayer has wrongly paid IGST. However, a specific provision, for automatic inter-Governmental adjustment, in cases of wrong payment of GST would be welcome.

5. Valuation in GST

GST would be payable on the 'transaction value'. Transaction value is the **price actually paid or payable** for the said supply of goods and/or services between un-related parties.

The transaction value is also said to include all expenses in relation to sale such as packing, commission etc. Even **subsidies** linked to supply, excluding Government subsidies will be includable.

However, discounts/ incentives given **before or at the time** of supply will be permissible as deduction from transaction value. As regards discounts given after supply is made, the same will be permissible as deduction subject to fulfilment of prescribed conditions.

The GST legislation contains an empowering provision for GST Valuation Rules through which GST Valuation Rules have been put in the public domain.

6. Input tax credit in GST

Current CENVAT Credit regime disallows CENVAT Credit on various services such as motor vehicle related services, **catering services, employee insurance, construction** of civil structure etc. Similarly, State VAT laws restrict input tax credit in respect of construction, motor vehicle etc. Current, this denial of credits leads to un-necessary cost burden on assessee.

It was expected that in GST regime, seamless credit will be allowed to business houses without any denial or any restrictions except say goods / services which are availed for personal use than official use (something similar to United Kingdom VAT law).

However, surprisingly, *inter-alia*, aforesaid credit would continue to be not available (in respect of both goods or services). Further, credit is proposed to be denied on goods and/or services used for **personal consumption**. **Also, input tax credit shall not be available on goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.** This continuation of denial will lead to substantial tax cascading (as rate of GST will be higher than the current rate of service tax!).

Credit will be available on rent-a-cab, life insurance and health insurance if the Government notifies these services as obligatory for an employer to provide to its employees under any law. Also, credit on food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery will be available. All this is available if used as inward supply for making an outward taxable supply of the same category or as an element of a taxable composite or mixed supply.

Also, another round of litigation as interpretation issues will crop up while determining eligibility or otherwise of GST paid on personal consumptions such as business lunch with clients.

To continue to claim the input tax credit the buyer has to ensure that he pays the supplier within 180 days from date of invoice². If payment to vendor is not made within 180 days, then proportionate input tax credit will have to be reversed and availed again on payment to vendor.

For a banking company or a financial institution including a NBFC, restriction of 50% on availment of credit shall not apply to tax paid on supplies made by one registered person to another registered person having the same PAN.

7. There would be 35 GST laws in India

In GST regime, there will be one CGST Act and 31 SGST Act for each of the States including two Union Territories, one UTGST Act (for 5 UTs) and one IGST Act governing inter-State supplies of goods and services. Also, there is a separate Compensation Act for cess.

8. Rate of GST is not yet specified in the GST law

India is proposing to adopt four tier structure in India with 5%, 12%, 18% and 28% (plus Cess). Recently, the Finance Minister shared that the likely rates for GST could be as under:

Particular	Rates	Reference
Nil rate	0%	Food grains

² As per Proviso to Rule 2 (1) of Input Tax Credit Rules the condition of 180 days is not applicable for supplies made without consideration as specified in Schedule I.

Particular	Rates	Reference
Concessional rate	5%	Mass consumption products used by common people
Standard rate 1	12%	Most products
Standard rate 2	18%	
Luxury goods	28% plus cess	Luxury items (such as luxury cars, aerated drinks and tobacco)

Similar to goods, 4 tier rate structure is also prescribed for services.

Composition rates

GST legislation prescribes a special rate for traders (1%), manufacturers (2%) and restaurants/ dhabas (5%) provided their turnover is less than INR 50 lacs. This composition scheme can be opted for by the taxpayer and the requirement of permission has been done away with.

9. Anti-profiteering provisions

Through section 171 of CGST Act, India plans to introduce an anti-profiteering measure to ensure that the benefits arising out of the GST regime is passed on to consumers.

The CGST Act only empowers the Government to constitute the Authority but does not prescribe any method to determine the benefit which the supplier is liable to be pass on. Thus, Anti-profiteering guidelines could be prescribed in the near future.

10. Key procedural provisions and Definition

As per GST Act, a registered person engaged in taxable activity is required to issue an invoice. Additionally, returns of outward supplies are required to be filed in GSTR-1 format (upto 10th of subsequent month)

and that of inward supplies in GSTR-2 format (upto 15th of subsequent month).

The CGST Act provides that the taxpayer shall not be allowed to furnish the details of outward supplies between the 11th and 15th of the month succeeding the tax period. Also, he shall either accept or reject the details communicated under inward supplies, on or before the 17th but not before the 15th of the month succeeding the tax period.

The GST Act also provides that an invoice may not be issued as tax invoice if the value of the goods or services or both supplied is less than INR 200 subject to prescribed conditions.

11. Time limit for adjudication

Time limit for adjudication of generic cases (i.e. other than fraud, suppression etc.) would be **three years** and in fraud, suppression etc. cases it would be **five** years. Its pertinent to note that the time limit prescribed for generic cases is much more than the current time limit prescribe in excise law (i.e. 12 months for issuance of Show Cause Notice) and service tax legislation (i.e. 30 months).

12. Old provisions re-introduced

Most of the current provisions such as reverse charge, tax deduction, pre-deposit, prosecution (!), arrest (!) etc. have been continued in the proposed GST law.

The new GST law seems to be a new wine in old bottle as most of the current in-efficiencies has been continued in the proposed GST law.

3. Legislative Analysis – Birds eye view

Chart highlighting legislative framework for GST

What	CGST	SGST	IGST	UTGST	Cess?
Tax on	Supply	Supply	Supply	Supply	Supply
Legislation	CGST Act	31 SGST Acts	IGST Act	UTGST Act	Cess Act
Extends	India (J&K)	State	India (J&K)	5 UTs	India
Administration	Central Authorities	State Authorities	Central Authorities	Administrator	Central Authorities

Chart highlighting Acts and the Sections therein

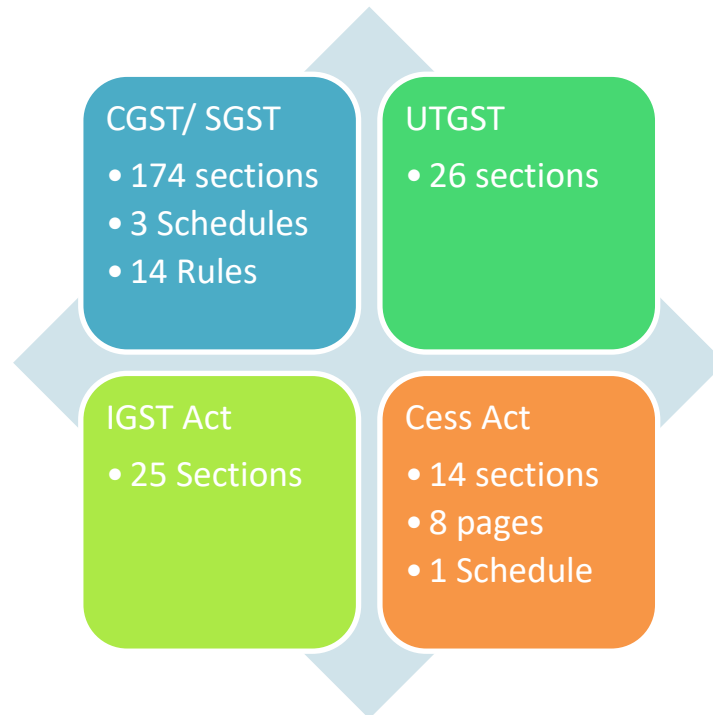


Chart highlighting various Rules (finalised and draft)

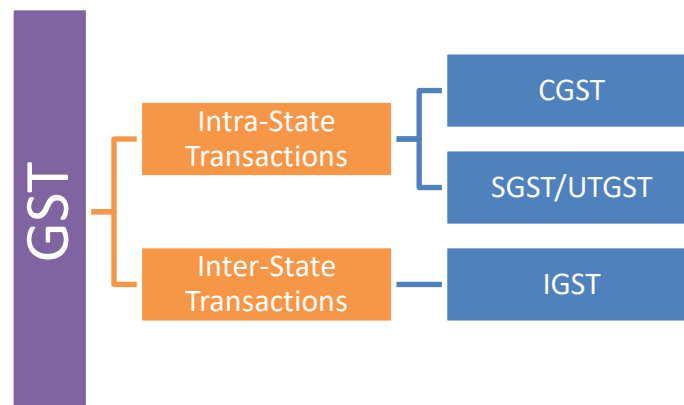


3.1 Seven keys things about charge in GST

I. What charging section says?

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

Thus, as per section 9 (1) of CGST Act, GST is leviable on intra-State supply³ of goods or services or both. The charge is on 'supply'. Similarly, through section 5 of the IGST Act, IGST is applicable on inter-State supplies of goods or services or both. This is captured in the chart as under:



³ It may be noted that the term intra-State supply is defined at section 8 (1) and (2) of IGST Act to mean supply of goods / services where the location of the supplier and the place of supply of goods / services are in the same State or same Union territory.

II. What is rate of GST?

The charging section provides that the Government, by notification, specify the GST rate. Further, the maximum rate in CGST will be twenty per cent. Rate of GST is one of the most important and contentious issues. Before we understand what could be the rate of proposed GST, lets understand the current rates of indirect taxes on goods and services.

The different rates of taxes on goods and services is tabulated below:

Particulars	Goods	Services
Excise duty	12.50%/ 6% / 2%	-
VAT	12.50% / 13.50% / 15% /6%	-
CST	2% (against Form C)	-
Local Body Tax	0.10% to 8%	-
Service Tax	-	15%

Rate of GST on Goods

The GST Council has shared likely rates of more than 1211 items on 18th May 2017. Sample rates for few of the items are provided below:

Goods	Rate
Milk, foodgrain, fresh chicken/ meat/ fish, bread, flour, besan, salt, bangles, sindoor, printed books, newspapers, firewood, agricultural implements etc	Nil
Oil, tea, coffee, sugar, mithai, pizza bread, branded paneer, sweetmeats, coa, LPG, Etc	5%
Frozen meat, ghee, butter, cheese, dry fruits, namkeens, milk beverages, ayurvedic medicines, fertilizers, mobiles, tractors, electric vehicles, bicycles, sports goods, art work, antiques etc	12%

Goods	Rate
Soap, hair oil, refined sugar, cornflakes, Jam, ice creams, mineral /aerated water (without sugar), cakes and pastries, copper bars/rods etc	18%
Chocolate, mineral /aerated water (with sugar), luxury cars, aerated water, pan masala, transformers, cement, ceramic tiles, paints, putty, perfumes, beauty preparations, shampoo, wrist watches etc	28%

[Link](#) for detailed rate schedule for goods.

Rate of GST on Services

The GST Council has shared likely rates of services on 19th May 2017. Like goods, for services also a four tier structures is proposed rather than single rate structures as was conceived earlier.

In a detailed Schedule of rates released for services, GST Council has classified **36 services** and proposed GST @ 5%, 12%, 18% or 28% on the same. The last 36th entry in the Schedule is 'all other services not specified elsewhere'. It appears that IT, telecom, financial services etc will attract GST @ 18%. Thus, effectively now the average rate of GST in India will be 18%.

Detailed rate schedule for services is provided below:

Sl. No.	DESCRIPTION OF SERVICES	GST RATE
1.	Transport of goods by rail	5% with ITC of input services

Sl. No.	DESCRIPTION OF SERVICES	GST RATE
2.	Transport of passengers by rail (other than sleeper class)	5% with ITC of input services
3.	Services of goods transport agency (GTA) in relation to transportation of goods [other than used household goods for personal use]	5% No ITC
4.	Services of goods transport agency in relation to transportation of used household goods for personal use.	5% No ITC
5.	Transport of goods in a vessel including services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	5% with ITC of input services
6.	Renting of motorcab (If fuel cost is borne by the service recipient, then 18% GST will apply)	5% No ITC
7.	Transport of passengers, by- (i) Air conditioned contract/ stage carriage other than motorcab; (ii) a radio taxi.	5% No ITC
8.	Transport of passengers by air in economy class	5% with ITC of input services

Sl. No.	DESCRIPTION OF SERVICES	GST RATE
9.	Transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme Airport.	5% with ITC of input
10.	Supply of tour operators' services	5% No ITC
11.	Leasing of aircrafts under Schedule II [5 (f)] by a scheduled airlines for scheduled operations	5% with ITC of input services
12.	Selling of space for advertisement in print media	5% With Full ITC
13.	Services by way of job work in relation to printing of newspapers;	5% With Full ITC
14.	Transport of goods in containers by rail by any person other than Indian Railways	12% With Full ITC
15.	Transport of passengers by air in other than economy class	12% With Full ITC
16.	Supply of Food/drinks in restaurant not having facility of air-conditioning or central heating at any time during the year and not having licence to serve liquor.	12% With Full ITC
17.	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having room tariff Rs.1000 and above but less than Rs.2500 per room per day	12% With Full ITC

Sl. No.	DESCRIPTION OF SERVICES	GST RATE
18.	Services provided by foreman of chit fund in relation to chit	12% with ITC of input services
19.	Construction of a complex, building, civil structure or a part thereof, intended for sale to a buyer, wholly or partly. [The value of land is included in the amount charged from the service recipient]	12% With Full ITC but no refund of overflow of ITC
20.	Temporary transfer or permitting the use or enjoyment of any Intellectual Property (IP) to attract the same rate as in respect of permanent transfer of IP;	12% with full ITC
21.	Supply of Food/drinks in restaurant having licence to serve liquor	18% With Full ITC
22.	Supply of Food/drinks in restaurant having facility of air-conditioning or central heating at any time during the year	18% With Full ITC
23.	Supply of Food/drinks in outdoor catering	18% With Full ITC
24.	Renting of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or	18% With Full ITC

Sl. No.	DESCRIPTION OF SERVICES	GST RATE
	lodging purposes where room tariff of Rs 2500/ and above but less than Rs 5000/- per room per day	
25.	Bundled service by way of supply of food or any other article of human consumption or any drink, in a premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organizing a function) together with renting of such premises	18% With Full ITC
26.	Services by way of admission or access to circus, Indian classical dance including folk dance, theatrical performance, drama	18% With Full ITC
27.	Composite supply of Works contract as defined in clause 119 of section 2 of CGST Act	18% With Full ITC
28.	Services by way of admission to entertainment events or access to amusement facilities including exhibition of cinematograph films, theme parks, water parks, joy rides, merry-go rounds, go-carting, casinos, race-course, ballet, any sporting event such as IPL and the like;	28% With Full ITC
29.	Services provided by a race club by way of totalisator or a licensed bookmaker in such club;	28% With Full ITC
30.	Gambling;	28% With Full ITC

Sl. No.	DESCRIPTION OF SERVICES	GST RATE
31.	Supply of Food/drinks in <u>air-conditioned</u> restaurant in 5-star or above rated Hotel	28% With Full ITC
32.	Accommodation in hotels including 5 star and above rated hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, where room rent is Rs 5000/- and above per night per room	28% With Full ITC
33.	Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration (supply of service) to attract the same GST rate and compensation cess as applicable on supply of similar goods which involves any transfer of title in goods (supply of goods)	Same rate of GST and compensation cess as on supply of similar goods
34.	Any transfer of right in goods or of undivided share in goods without the transfer of title thereof (supply of services) to attract the same GST rate and compensation cess as applicable on supply of similar goods which involves any transfer of title in goods (supply of goods).	Same rate of GST and compensatio n cess as on supply of similar goods
35.	Supply consisting of transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed (supply of goods): value of	GST and compensation

Sl. No.	DESCRIPTION OF SERVICES	GST RATE
	leasing services shall be included in the value of goods supplied.	cess as on supply of similar goods
36.	All other services not specified elsewhere	18% With Full ITC

Approx. 83 services have been exempted like:

1. Services by RBI
2. Services by foreign diplomatic missions located in India
3. Services provided to the United Nations or a specified international organization
4. Services by way of access to a road or a bridge on payment of toll charges
5. Services by way of renting of residential dwelling for use as residence
6. Services by a veterinary clinic in relation to health care of animals or birds
7. Services by an organiser to any person in respect of a business exhibition held outside India
8. i) Health care services by a clinical establishment, an authorised medical practitioner or para-medics;
(ii) Services provided by way of transportation of a patient in an ambulance, other than those specified in (i) above
9. Services by way of slaughtering of animals
10. Services by way of transfer of a going concern, as a whole or an independent part thereof
11. Services by way of public conveniences such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets
12. Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo
13. Services provided by Government or a local authority by way of issuance of passport, visa, driving licence, birth certificate or death certificate

14. Services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract
15. Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation
16. Services by way of training or coaching in recreational activities relating to,-
 - (i) arts or culture. or
 - (ii) sports by charitable entities registered under section 12AA of Income tax Act, 1961
17. 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 less than one thousand rupees per day or equivalent
18. Services by way of loading, unloading, packing, storage or warehousing of rice
19. Services provided by the Goods and Services Tax Network (**GSTN**) to the Central Government or State Governments/Union Territories for implementation of Goods and Services Tax (GST)

It can be observed that most of the current exemptions as provided under Not. No. 25/2012-ST to various services are likely to continue in GST regime. Detailed list of exemption can be accessed at <http://www.cbec.gov.in/htdocs-cbec/gst/index>

III. What are the Compounding rates in GST regime?

GST legislation prescribes a special rate for traders (1%), manufacturers (2%) and restaurants/ dhabas (5%) provided their turnover is less than INR 50 lacs. This composition scheme can be opted for by the taxpayer and the requirement of permission has been dispensed.

IV. What is the rate of Compensation Cess?

Compensation Cess is proposed to be levied on 55 items including aerated water @12%, specified passenger cars – 1% or 3% or 15%, pan masala

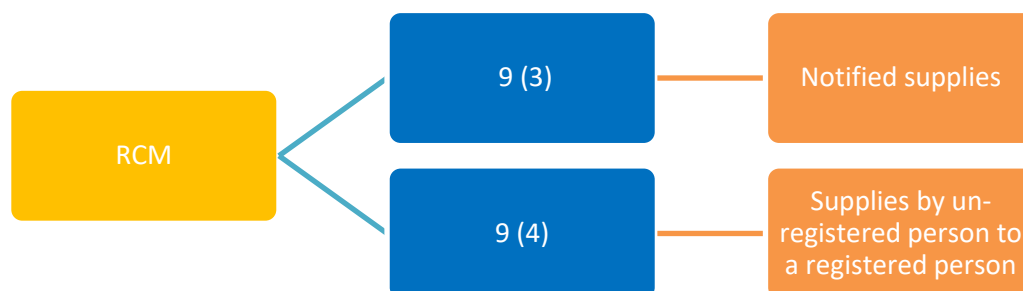
60%, tobacco – 61% to 204%, cigarettes – 5% to 290% plus upto INR 4,170/- per thousand sticks, coal - INR 400 per tonne.

V. Which petroleum products are outside GST?

As per section 9 (2) of CGST Act the central tax on the supply of **petroleum crude, high speed diesel, motor spirit** (commonly known as petrol), **natural gas and aviation turbine fuel** shall be levied with effect from such dates as may be notified by the Government on the recommendations of the Council.

VI. Whether Reverse Charge Mechanism (RCM) is applicable in GST?

Typically the liability to pay GST is on the supplier, however, in two scenarios the liability to pay GST is cast on the receiver through section 9 (3) and 9 (4) as discussed:



Procurement from URD liable to GST under RCM

Section 9 (4) is more pervasive as any supply of taxable goods by un-registered person to registered person will attract GST under RCM. It may be noted that even if say a Company procures stationery of Rs 100 from un-registered dealer then liability under RCM will trigger⁴.

It may be noted that as per section 9 (3), RCM is applicable on notified supplies of goods or services or both. The GST Council has provided for list of services under RCM as under:

⁴ Further, as per section 31 (3) (f) and (g) of the CGST Act, registered person should issue invoice and payment voucher in case of RCM.

Sl. No.	Service	Provider of service	Percentage of service tax ⁵ payable by service provider	Recipient of Service	% of tax payable by any person other than service provider
1.	Taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory other than non-assessee online recipient (OIDAR)	Any person who is located in a non-taxable territory	Nil	Any person located in the taxable territory other than non-assessee online recipient (Business Recipient)	100%
2.	Services provided or agreed to be provided by a goods transport agency (GTA) in respect of transportation of goods by road	Goods Transport Agency (GTA)	Nil	(a) any factory registered under or governed by the Factories Act, 1948; any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; (c) any co-operative society established	100%

⁵ The table has two errors, one error is with respect to sr. no. and another is that it refers to Service Tax than GST

Sl. No.	Service	Provider of service	Percentage of service tax ⁵ payable by service provider	Recipient of Service	% of tax payable by any person other than service provider
				<p>by or under any law;</p> <p>(d) any person registered under CGST/SGST/UTGST Act;</p> <p>(e) any body corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons.</p> <p>(g) Casual taxable person</p>	
3.	Services provided or agreed to be provided by an individual advocate or firm of advocates by way of legal services, directly or indirectly	An individual advocate or firm of advocates	Nil	Any business entity	100%
4.	Services provided or agreed to be provided by an arbitral tribunal	An arbitral tribunal	Nil	Any business entity	100%

Sl. No.	Service	Provider of service	Percentage of service tax ⁵ payable by service provider	Recipient of Service	% of tax payable by any person other than service provider
5.	Sponsorship services	Any person	Nil	Any body corporate or partnership firm.	100%
6.	<p>Services provided or agreed to be provided by Government or local authority excluding,-</p> <p>(1) Renting of immovable property, and</p> <p>(2) Services specified below-</p> <p>(i) services by Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government;</p> <p>(ii) services in relation to an aircraft or a vessel, inside or outside</p>	Government or local authority	Nil	Any business entity	100%

Sl. No.	Service	Provider of service	Percentage of service tax ⁵ payable by service provider	Recipient of Service	% of tax payable by any person other than service provider
	the precincts of a port or an airport (iii) transport of goods or passengers.				
7.	Services provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate;	A director of a company or a body corporate	Nil	A company or a body corporate.	100%
8.	Services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	An insurance agent	Nil	Any person carrying on insurance business.	100%
9.	Services provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company	A recovery agent	Nil	A banking company or a financial institution or a nonbanking financial company.	100%

Sl. No.	Service	Provider of service	Percentage of service tax ⁵ payable by service provider	Recipient of Service	% of tax payable by any person other than service provider
10.	Services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in non-taxable territory to a person located in non-taxable territory	Nil	Importer as defined under clause (26) of section 2 of the Customs Act, 1962.	100%
11.	Transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works	Author or music composer, photographer, artist, etc	NIL	Publisher, Music company, Producer	100%
12	Radio taxi or Passenger Transport Services provided through electronic commerce operator	Taxi driver or Rent a cab operator	Nil	Any person	100% by Electronic Commerce Operator

VII. What is the concept of aggregator?

As per section 9 (5) of the CGST Act, the Government may, on recommendations of the Council, **by notification, specify categories of**

services the tax on intra-State supplies of which shall be paid by the **electronic commerce operator** if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

The liability to pay GST on intra-State supplies of notified categories of services is cast on the electronic commerce operator. This provision is similar to with provision under Service Tax legislation.

3.2 Ten things you must know about Supply

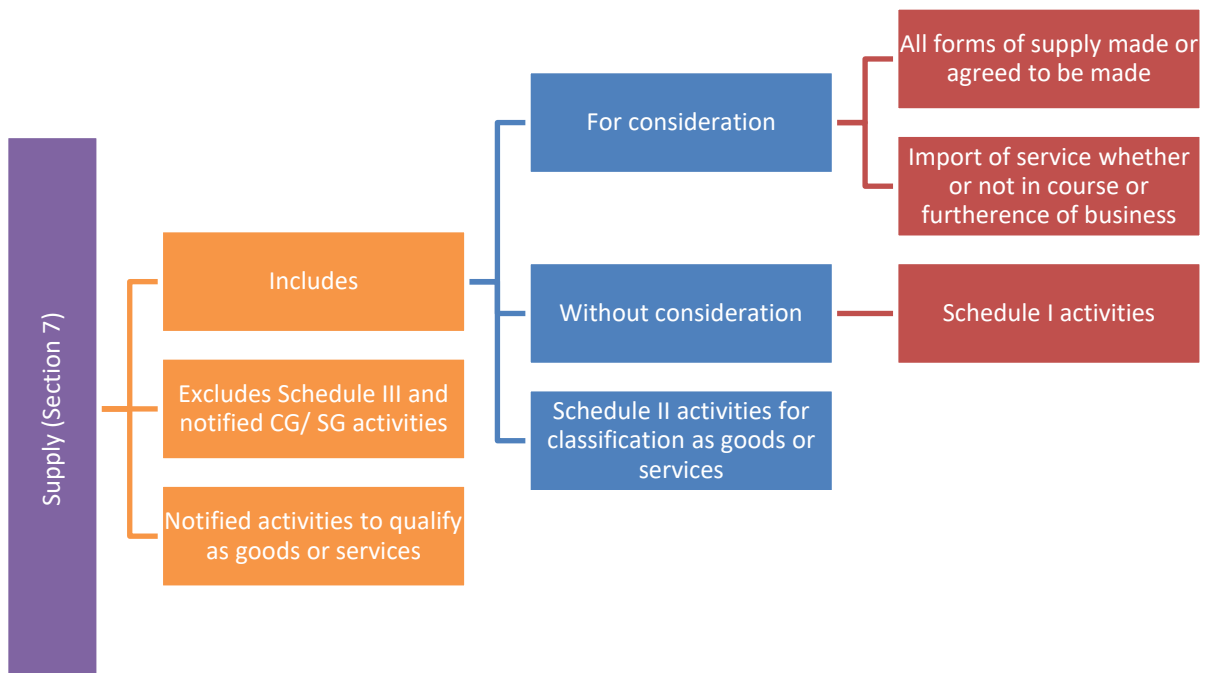
I. Supply is 'taxable event'

As per section 9 of the CGST Act, CGST and SGST is leviable on all intra-State '**supplies**' on the value of the goods and/or services. Whereas, as per section 5 of IGST Act, inter-State 'supply' attracts IGST. It can be observed that the taxable event under GST regime is 'supply'.

In the current indirect tax regime, State impose 'Value Added Tax' on 'intra-State sales' and retain Central Sales Tax (CST) on inter-State sales. Further, Centre imposes excise duty on 'manufacture' and service tax on 'provision of service". In GST regime, GST will apply on 'supply'.

II. Supply is defined in inclusive manner

At section 7 of CGST Act, the term 'supply' has been defined in an inclusive manner (like definition of 'manufacture' in excise). For ease of reference the same is depicted as a chart:



III. Supply to include all forms of supply!

As per section 7 (1) (a) supply includes all forms of supply of goods or services or both such as:

- a. Sale
- b. Transfer
- c. Barter
- d. Exchange
- e. Licence
- f. Rental
- g. Lease
- h. Disposal

made or agreed to be made for a consideration by a person in the course or furtherance of business.

Thus, under section 7 (1) (a) an activity of sale, transfer etc. will qualify as supply if it is made or agreed to be made for a consideration by a person in the course or furtherance of business.

IV. What is meaning of the term 'consideration'?

The term 'consideration' is defined at section 2 (31) of CGST Act to include 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 but excludes any subsidy given by the Central Government or a State Government. Even monetary value of any act or forbearance, in includable in consideration.

Also, consideration can flow from recipient or from any other person.

As regards 'deposits' its provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment

made for such supply unless the supplier applies such deposit as consideration for the said supply. Given this kind of provision, GST regime may witness litigation on whether amount given by customer is 'deposit' or 'advance'.

V. What is in meaning of in the course or furtherance of business?

The term 'business' is defined at section 2 (17) to include any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit or an activity incidental or ancillary, whether or not with volume, frequency etc. Thus, even a single activity may qualify as 'business'.

The term 'business' is preceded by 'in the course or furtherance of', however, no meaning is ascribed in the Act for the same.

VI. Why import of services is appearing in definition of 'supply'?

Supply includes 'import of services' for a consideration whether or not in the course or furtherance of business.

In this regard, the term "import of services" is defined at section 2 (11) of IGST Act to mean the supply of any service, where:

- (i) the supplier of service is located outside India;*
- (ii) the recipient of service is located in India; and*
- (iii) the place of supply of service is in India*

Further, as per section 7 (4) of IGST Act, supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce. Thus, effectively, if a transaction qualifies as 'import of services', IGST will be payable on the same.

Surprisingly, 'import of services' which is a subject to IGST Act is covered in the definition of 'supply' in the CGST Act. One of the reason for this

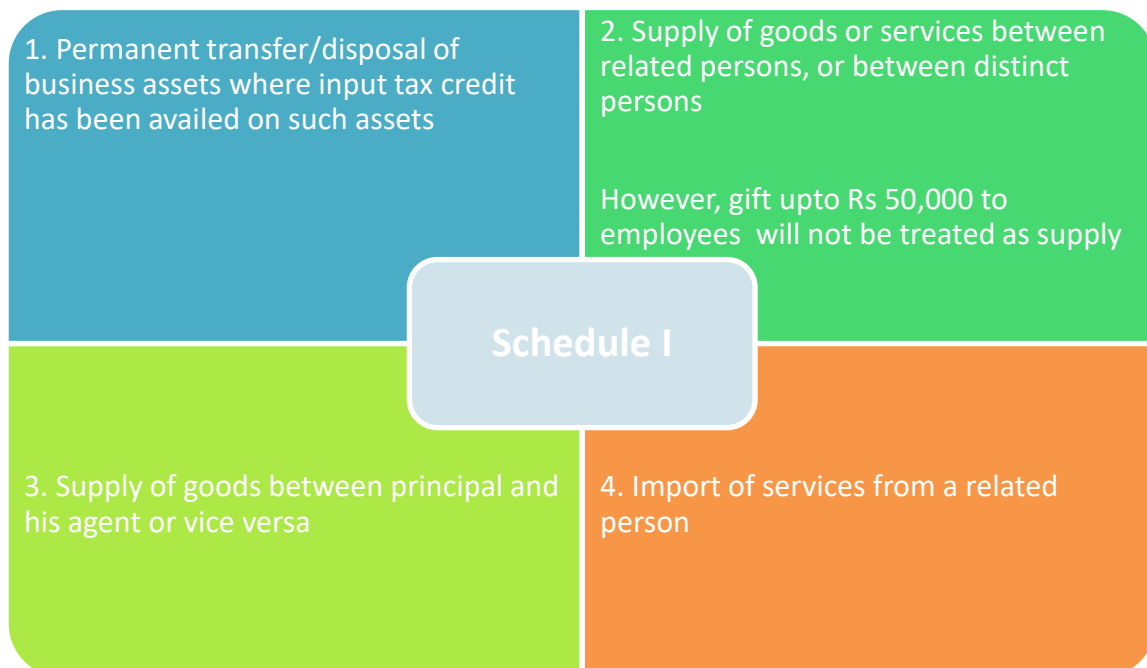
could be that definition of the term 'supply' IGST Act places reliance of CGST Act only⁶.

Further, only import of 'services' is covered and not import of 'goods' and the reason for this could be that as per section 5 of IGST Act, import of goods attract IGST levy in accordance with Customs Act, 1962 and Customs Tariff Act, 1975.

VII. Whether supplies without consideration are liable to GST?

As per **section 7 (1) (c)** of CGST Act, activities specified in the Schedule I made or agreed to be made without consideration will also qualify as 'supply'.

Schedule I comprises of following:



⁶ Section 2 (21) of IGST Act 'supply' shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act.

It may be noted that Schedule I specifically covers transactions, even if made without consideration, as 'supply'.

One of the most relevant entries aforesaid will be sr. no. 2 of Schedule I which covers supply of goods or services between related persons, or between distinct persons.

Who is 'distinct person'?

As per Section 25 (4) of CGST Act, a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

Thus, in case a Company has manufacturing facility say in Pune (Maharashtra) and Depot in Ahmedabad (Gujarat) then these two locations will be required to obtain registration in Maharashtra and Gujarat. These registrations in Maharashtra and Gujarat will be treated as distinct persons. Effectively, transaction, say a branch transfer or stock transfer, between these two will attract GST. The GST levied by supplier location will be available as a credit to recipient location. For valuation of such stock transfer refer Valuation Rules.

VIII. Why to differentiate between 'goods' and 'services'?

GST is payable on supply of goods or services or both. In this regard, taxpayers will have to classify whether a transaction is of 'goods' or 'services' as:

- a. Rate of GST for goods and services is different
- b. Time of Supply for goods (section 12) and services (section 13) is different
- c. Place of supply for goods and services is different

It may be noted that throughout the scheme of the Act the term 'both' is used to tax goods and services are supplied together as a bundle. However, there is no specific provision for time of supply, place of supply etc for '**both**'. Thus, in cases where goods and services are supplied together as a bundle then these transactions will have to be classified as either 'goods' or 'services'.

IX. How to differentiate between 'goods' and 'services'?

For understanding whether a transaction qualifies as goods or services, one has to refer to:

- a. Definition of goods and services as provided at section 2 (52) and 2 (102) respectively
- b. Schedule II of the CGST Act

What is 'goods'?

Section 2 (52) of CGST Act defines "goods" to mean *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.*

Thus, every kind of movable property other than money and securities including actionable claims⁷ will qualify as 'goods'.

What is 'service'?

Section 2 (102) of CGST Act defines "services" to mean *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*

⁷ As per Schedule III of CGST Act, all actionable claims, other than lottery, betting and gambling are neither goods nor services. Thus, effectively, only GST will apply on only three actionable claims i.e. lottery, betting and gambling.

form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

The term service is defined in the exclusion of 'goods' and thus anything which is not goods can qualify as 'services'. Given that the term 'service' is defined in a wide manner to cover 'anything other than goods', even 'interest' charged by banks on loan may get covered under the ambit of the term service⁸.

Which activities, as per schedule II, will qualify as goods or services?

Schedule II classifies eighteen transactions as either goods or services.

The prominent of such activities is sr. no. 3 and 6 (a) of Schedule II which are said to be 'services'. Sr. no. 3 covers treatment or process applied on another person's goods whereas sr. no. 6 (a) covers works contract in respect of immovable property [as defined in section 2 (119)].

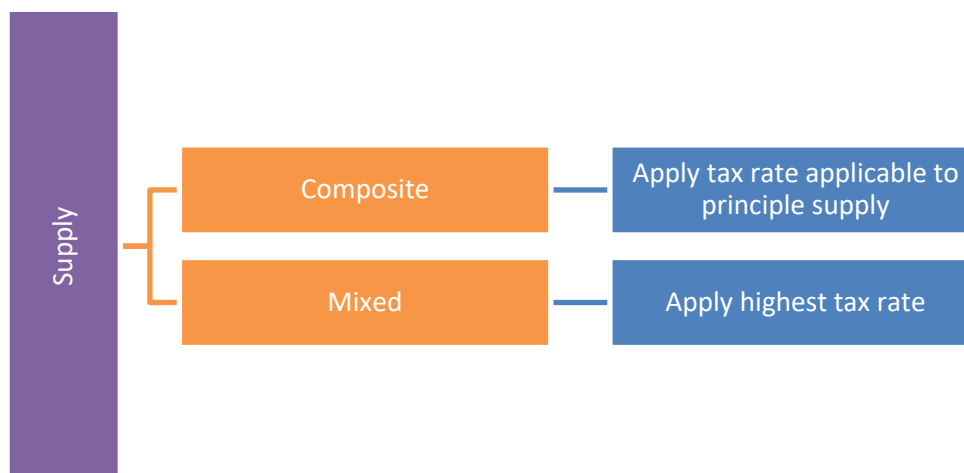
X. How to tax composite supplies or mixed supplies?

Section 8 of CGST Act the tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

- (a) A composite supply** comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- (b) A mixed supply** comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

⁸ Governments across the world do not levy GST on interest given the fact that there is always a debate on whether interest is the time value of money or a consideration for lending money. Thus, the GST may not be applicable on interest and in days to come this aspect could be clarified by the Government.

Aforesaid provisions can be explained through a chart as under:



Taxation of composite supply

“Composite supply” is defined at section 2 (30) to mean *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.*

Section 2 (30) also provides an illustration as under:

*‘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**.’*

Further, section 2 (90) of CGST Act defines “principal supply” to mean *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.* Thus, in cases where two or more taxable supplies of goods or services or both, are naturally bundled and supplied, then, it shall be treated as a supply of such principal supply. It may be noted that in case both supplies are predominant say (50% each) then how this provision will apply is not known.

Further, in case of conflict, say between Schedule II (which deems a activity as goods or services) and composite supply, it needs to be seen which provision will be applicable. For e.g. in case of coating on steel rod, if the paint comprises of 60% and services 40% then will the transaction qualify as supply of goods (as per composite supply provision) or supply of services (as per sr. no. 3 of Schedule II).

Taxation of mixed supplies

Mixed supplies is defined at section 2 (74) of the CGST Act to mean *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.*

Section 2 (74) also provides an illustration as under:

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.

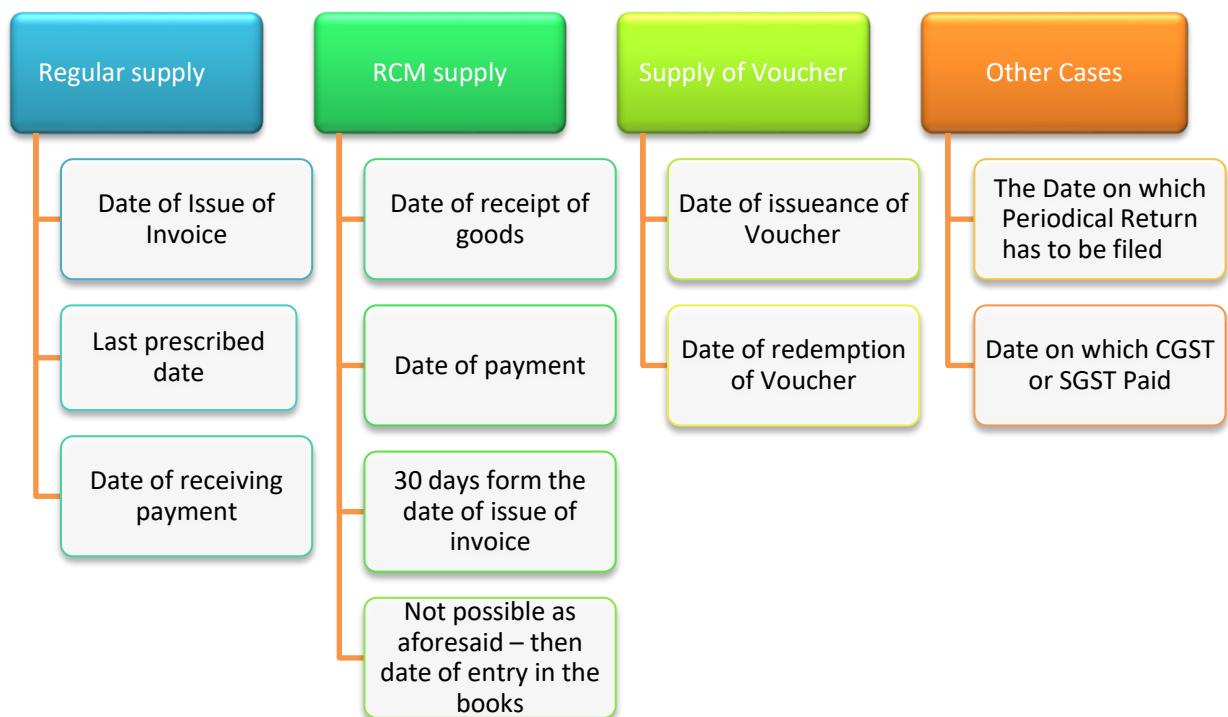
It may be noted that between composite and mixed supplies, the primacy appears to be given to composite supply and only if does not constitute a composite supply then the activity will qualify as 'mixed supply'.

3.3 Six thing to know about Time of supply

The liability to pay GST will arise at the time of supply (ToS) as determined for goods and services. In this regard, separate provisions i.e. section 12 and section 13 prescribe time of supply for goods and services as discussed below:

I. What is ToS for goods?

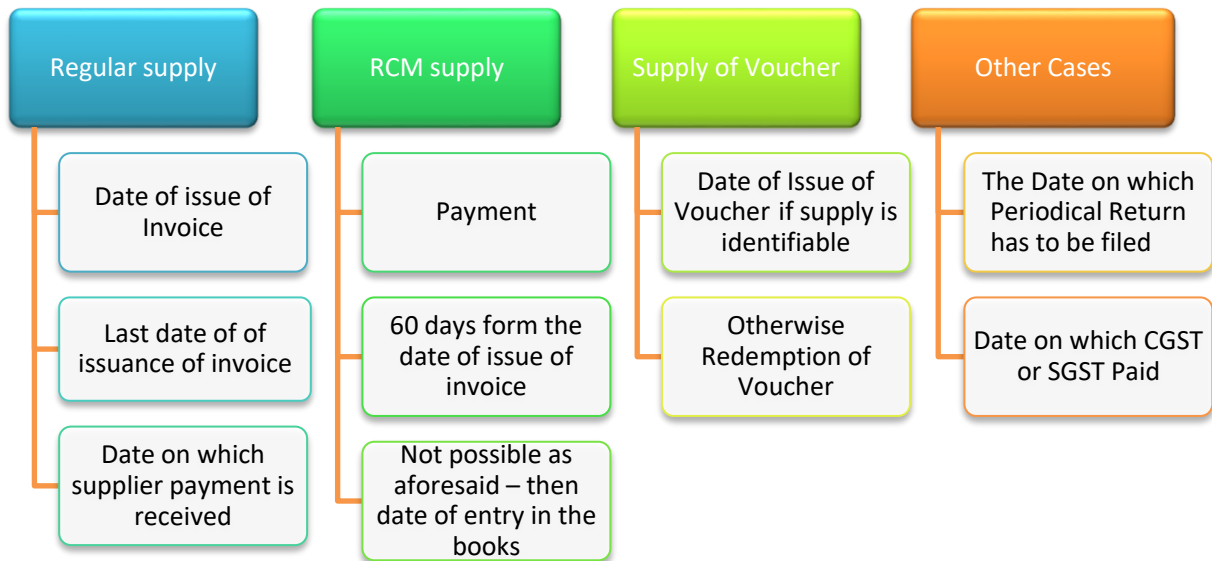
As per Section 12 of CGST Act, time of supply shall be earliest of:



In GST regime, tax collection will be earliest of the specified events as given above and this will be altogether a new concept for the current VAT and excise taxpayers as even on advance received GST will be payable.

II. What is ToS for services

As per Section 13 of CGST Act, time of supply shall be earliest of:



III. What is ToS for Reverse Charge Mechanism (RCM) for goods?

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:—

- Date of the receipt of goods; or
- Date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- Date immediately following **thirty days** from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier

Also, it is provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

IV. What is ToS for Reverse Charge Mechanism for services?

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:

- (a) Date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (b) the date immediately following **sixty days** from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

It is also provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:

Further in case of supply by **associated enterprises**, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

Re-conciliation required!

It can be observed that there are many parameters in determining 'time' of supply. Thus, determining the 'time' of supply and further maintaining re-conciliation between revenue as per financials and as per GST rules could be a major challenge to meet.

V. What is ToS for vouchers?

In case of supply of vouchers by a supplier, the time of supply shall be:

- (a) Date of issue of voucher, if the supply is identifiable at that point or
- (b) Date of redemption of voucher, in all other cases

VI. What is ToS for interest, late fees and penalty?

The CGST Act provides that the 'time of supply', to the extent it relates to an addition in the value of supply, by way of interest, late fee or penalty for delayed payment, of any consideration, shall be on the date on which the supplier receives such additional value.

3.4 Seven things to know about valuation

As per section 15 of CGST Act, GST would be payable on the 'transaction value'. Transaction value is the price actually paid or payable for the said supply of goods and/or services between un-related parties and where price is the sole consideration.

Section 15 (2) specifically provides for inclusion and exclusion from value as discussed below.

I. Whether value include other taxes, duties etc?

Yes, transaction value will include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than, if charged separately by the supplier,:

- a. CGST Act
- b. State Goods and Services Tax Act
- c. Union Territory Goods and Services Tax Act
- d. Goods and Services Tax (Compensation to States) Act

Thus, all taxes than GST and cess will be includible in the value subject to GST. For example, in case a person takes a cab from Pune to Mumbai and the cab owner charges him Rs 4,000 for travel and Rs 300 for toll tax then GST will be payable on Rs 4,300. However, as GST will be payable on all the taxes other than GST, it may hamper the very basic objective of removing cascading effect of taxes.

II. Whether value will include amount supplier is liable to pay but incurred by recipient?

Transaction value will include any amount that the supplier is liable to pay in relation to such supply **but which has been incurred** by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both.

This provision could create challenges as amount that the supplier is liable to pay **but which has been incurred by the recipient** is required to be included. In this regard, interpretation challenges could arise as to whether say:

- a. Hotel expenses incurred by client directly for auditor should be included in the invoice of auditor
- b. Free of cost supply of material for job work

III. Whether value will include incidental expenses?

Transaction value will include incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services.

Given the aforesaid provision, packing, freight expenses etc will be includible in the value of supplies.

IV. Whether value will include interest or late fee or penalty?

Transaction value will even include interest or late fee or penalty for delayed payment of any consideration for any supply.

V. Whether value will include subsidies?

Transaction value will even include subsidies **directly linked to the price** excluding subsidies provided by the Central Government and State Governments. It is also provided through Explanation that the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

VI. Value to exclude discounts

As regards discounts/ incentives, it will not form part of 'transaction value' subject to fulfilment of conditions as under:

- a. Discount given before or at the time of the supply provided such discount has been **duly recorded** in the invoice issued in respect of such supply;
- b. Discount given after supply is effected provided that:
 - (i) such discount is **established in terms of an agreement** entered into at or before the time of such supply and **specifically linked** to relevant invoices; and
 - (ii) input tax credit has been **reversed** by the recipient of the supply as is attributable to the discount on the basis of document issued by the supplier

VII. Valuation Rules

As per section 15 (4) of CGST Act empowers the Government to make Rules. Further, section 20 of IGST Act and section 21 of UTGST Act states that rules made under CGST Act shall mutatis mutandis, apply for IGST/ UTGST. Valuation Rules comprises of 8 Rules.

The valuation provisions are summarised below:

Particulars	Rule	Applicable to	Open Market Value	Like kind and quality (LKQ)	90% of price charged to 3 rd party LKQ	110% Value	Rule
							4/5
Supply to distinct person ⁹	2 ¹⁰	Goods or service	Yes	Yes	Yes ¹¹	-	Yes

⁹ This Rule will typically cover inter-State Stock / branch transfers

¹⁰ Value determined cannot be challenged by Authorities if recipient is eligible for full input tax credit

¹¹ This valuation (90%) is an option available to supplier and where the goods are intended for further supply to third party customers by recipient

Particulars	Rule	Applicable to	Open Market Value	Like kind and quality (LKQ)	90% of price charged to 3 rd party LKQ	110% Value	Rule 4/5
		s or both					
Agent	3	Goods	Yes	-	Yes ¹²	-	Yes
Exchange	1	Goods or services	Yes ¹³	Yes	-	-	Yes
Cost basis	4	Goods or services or both	-	-	-	Yes	-
Residual	5 ¹⁴	Goods or services or both	Yes	Yes	Yes	Yes	Yes

We have discussed the aforesaid Valuation Rules in detail below:

Rule 1 - Value of supply of goods or services where the consideration is not wholly in money

This Rule helps in determination of value of goods or services where the consideration is not wholly in money. In such case the value would be either:

¹² This valuation (90%) is an option available to supplier and where the goods are intended for further supply to third party customers by agent

¹³ If OMV is not available then total value of money and money equivalent

¹⁴ Service provider has option to choose Rule 5 disregarding Rule 4

- a. Open market value¹⁵
- b. If OMV is not available then total value of money and money equivalent
- c. If value is not determinable as per aforesaid clauses then value of goods or services or both of like kind and quality
- d. In case the value cannot be determined under clause (a), (b) or (c) then the value would be sum total of consideration in money and such value of further consideration that is not in money determined as per rule 4 (i.e. cost + 10%) and 5 (Residual value method) in sequential manner.

There could be the possibility to arise many issues like how to determine value if multiple open market values are available and thus determining open market value would pose practical challenges. Similarly, determining value of services of like kind and quality could be practically difficult.

Illustrations provided in Rule 1 of Valuation Rules are reproduced below:

- (1) Where a new phone is supplied for Rs.20000 along with the exchange of an old phone and if the price of the new phone without exchange is Rs.24000, the open market value of the new phone is Rs 24000.*
- (2) Where a laptop is supplied for Rs.40000 along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is Rs.4000 but the open market value of the laptop is not known, the value of the supply of laptop is Rs.44000.*

It may be noted that no illustration for valuing services provided on say barter basis is provided in the aforesaid Rule.

¹⁵ As per Explanation given (at the end of the Rules), 'open market value' means the full value in money, excluding GST and the cess, where supplier and the recipient are not related and price is sole consideration at the same time when the supply being valued is made.

Rule 2 - Value of supply of goods or services or both between distinct or related persons, other than through an agent

Rule 2 of Valuation Rules helps in determination of value between distinct or related persons, other than agent. Typically, this rule will apply for:

- a. Supply of goods/ services between two distinct persons- say stock / branch transfers between factory in Maharashtra and Branch in Gujarat
- b. Supply of goods/ services between related persons

The Rule splits the transaction in two broad baskets as under:

- a. Where recipient is eligible for full input tax credit** - Value declared in invoice shall be deemed to be the open market value of goods or services. This is a big relief as the valuation will not be questioned by the Authorities where the credit is fully available. Certainly, this provision will ease out valuation pains of many sectors such as banks, telecom, insurance etc.
- b. Where recipient is not eligible for full input tax credit** – Value in such cases will:
 - (a) be **open market value**¹⁶ of such supply;
 - (b) if open market value is not available, be the value of supply of **goods or services of like kind and quality**¹⁷;

¹⁶ As per Explanation at end of Valuation Rules "**Open market value**" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

¹⁷ As per Explanation at end of Valuation Rules "**supply of goods or services or both of like kind and quality**" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods

(c) if value is not determinable under clause (a) or (b), be the value as determined by application of rule 4 or rule 5, in that order.

Proviso to Rule 2 also provide an option to supplier, where the goods are intended for further supply to third party customers by agent, to value goods at 90% of value of price charged to goods (and not for services!) of like kind and quality.

As mentioned earlier, determining 'open market value' or value of 'like kind and quality supplies' would pose practical challenges. Also, valuing services could be more challenging.

Rule 3 - Value of supply of goods made or received through an agent

This Rule helps in determination of value of supply of goods made or received through agent. Typically, in such case the value would be

- a. Open market value
- b. 90% of the price charged by agent to his third party customer

Determining open market value would pose practical challenges. Further, though the Rule provides for alternate valuation mechanism i.e. 90% of value could be difficult as the value (at which agent will sell to end customer) will not be available at the time of supply of goods by principle to agent.

Illustration provided in Rule 3 of Valuation Rules are reproduced below:

Where a principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a

or services or both.

price of Rs.5000 per quintal on the day of supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of Rs.4550 per quintal. The value of the supply made by the principal shall be Rs.4550 per quintal or where he exercises the option the value shall be 90% of the Rs.5000 i.e. is Rs.4500 per quintal.

Rule 4 - Value of supply of goods or services or both based on cost

This Rule appears to be borrowed from Rule 8 of Central Excise (Determination of Value) Rules, 2000. This Rule applies if value cannot be determinable as per any of the preceding Rules. As per this Rule the value will be:

- a. 110% of cost of production or manufacture
- b. 110% of cost of acquisition
- c. 110% of cost of provision of services

Application of this Rule has two hurdles:

1. This Rule is a residual Rule and will apply only if any of the preceding rules is not applicable. It would have been preferable if this Rule was available to the taxpayers as an option.
2. Application of this Rule will entail determination of cost. Herein, complications may increase if the Authorities request taxpayer to substantiate the value (say in terms of Cost Accounting Standard 4)

Rule 5 - Residual method for determination of value of supply

This is a residual Rule wherein the value needs to be determined using reasonable means.

This Rules provides an option to supplier of services to opt for this Rule than Rule 4 (as determination of cost of provision of services could be challenging).

Rule 6 (1) and (2)- Value in case of exchange of currency

This sub-rule prescribes methodology to determine value in case of sale or purchase of foreign currency. Value in such case can be determined as-

Option I

1. If RBI reference rate for a currency is available

Value = Difference in buying or Selling with RBI reference rate at that time multiplied by total units of currency

2. If RBI reference rate for a currency is not available then 1% of gross amount of INR provided / received

Option II

Value will be deemed as:

1. 1% of gross amount exchanged for amount upto INR 1 Lakh subject to minimum INR 250/-
2. INR 1,000/- + 0.50% of gross amount exchanged for amount more than 1 Lakh upto 10 Lakhs
3. INR 5,500/- + 0.10% of gross amount exchanged for amount exceeding 10 Lakhs subject to max Rs 60,000/-

Rule 6 (3) - Value in case of travel agents

This sub-rule prescribes methodology to determine value in case of sale of tickets by travel agent. The value in such cases will be:

- a. Domestic booking - 5% of basic fare
- b. International booking – 10% of basic fare

Rule 6 (4) - Value in case of insurance

This sub-rule prescribes methodology to determine value in case of life insurance. The value in such cases will be:

- a. If amount is intimated to the policy holder – Gross amount minus investment allocated
- b. Single premium annuity policies other than (a) – 10% of premium
- c. All other cases – 25% in first year and 12.50% in subsequent years

It is also provided in the Rule that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

Rule 6 (5) - Value in case of second hand goods

This is a special sub-rule for person buying and selling second hand goods (say used cars, tv, mobiles etc). This sub-rule will certainly be welcomed by all second hand car dealers, mobile dealers, persons dealing in re-furbished goods etc.

Herein, the sub-rule prescribes that the value will be difference between selling and purchase price (and where the value of such supply is negative it shall be ignored) provided there is no change in nature of goods and credit on purchased second hand goods is not availed by dealer. In case the value determined is negative, i.e. goods are sold at loss then GST will not be payable.

Special provisions for re-possessed assets from defaulting borrower

It is provided in this sub-rule that the purchase value of goods repossessed from a defaulting borrower, **who is not registered**, for the purpose of recovery of a loan or debt shall be deemed to be the purchase

price of such goods by the defaulting borrower reduced by **5% for every quarter or part thereof**, between the date of purchase and the date of disposal by the person making such repossession.

Rule 6 (6) - Value in case of vouchers

This is a special sub-rule for value of vouchers/ token etc. The value in such case will be equivalent monetary value of supply redeemed against.

Rule 6 (7) - Value of notified services

This is a special sub-rule empowering Government to notify value of certain taxable services as referred to in Entry 2 of Schedule I between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be Nil.

Rule 7 - Pure agent supplies

This Rule deals with Pure Agent reimbursements. Reimbursable expenses, in case qualify as 'pure agent' reimbursements then GST will not be payable on these reimbursements. However, to qualify as pure agent reimbursements, following conditions needs to be satisfied:

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorization by such recipient;*
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and*
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.*

Explanation . - For the purposes of this rule, "pure agent" means a person who -

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;*
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;*
- (c) does not use for his own interest such goods or services so procured; and*
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account*

These aforesaid conditions are similar to Rule 5 (2) of Service Tax (Determination of Value) Rules, 2006.

Illustration provided in Rule 7 of Valuation Rules are reproduced below:
Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to Registrar of the Companies. The fees charged by the Registrar of the companies registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

The aforesaid illustration provided in the Rule does not take away into consideration real life challenges like various charges, fees, transportation amounts paid to Custom House Agent etc!

Rule 8 - Rate of exchange of currency, other than rupees, for determination of value

This Rule deals with conversion of foreign currency invoices in INR. In such cases, one has to take the reference rate of Reserve Bank of India of that currency on the date of Point of Taxation as per section 12 and section 13.

Rule 9 - Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax

Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner,

Tax amount =	Value inclusive of taxes X tax rate in % of IGST or as the case may be CGST, SGST or UTGST
	100+ Sum of tax rates, as applicable, in %

Example: Say Rs 1,00,000 is inclusive of IGST of 18%. Lets calculate IGST payable

Tax amount =	$1,00,000 \times 18$
	100+ 18
IGST Amount	15,254/-

3. 5 Fifteen things to know about Input Tax credit

Section 16 and 17 of CGST Act deals with Input Tax Credit provisions. Further, recently Rules for Input Tax Credit are also put in the public domain.

I. What is Inputs, Input services and capital goods?

Input tax credit can be claimed on inputs, input services and capital goods as defined below:

Term	Definition
Input - Section 2 (59)	means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business
Input service - Section 2 (60)	means any service used or intended to be used by a supplier in the course or furtherance of business
Capital goods" - Section 2 (19)	means goods, the value of which is capitalised in the books of accounts of the person claiming the credit and which are used or intended to be used In the course or furtherance of business

It is pertinent to note that the aforesaid definitions are very wide and can cover under its ambit any input, input service or capital goods provided it is used or intended to be used by the supplier in the course or furtherance of business.

II. What is the sequence of utilization?

The available input tax credit should be utilised in the following manner:

Credit of	Utilisation
IGST	First against IGST then against CGST and later against SGST
CGST	First against CGST then against IGST
SGST	First against SGST then against IGST

III. Can un-registered person avail ITC?

As per section 16 (1) 'registered' taxable person, subject to fulfilment of prescribed conditions, can avail the credit of input tax.

IV. Whether the ITC is now online?

ITC will now be available provided the credit is appearing in the Electronic Credit Ledger online! Thus, unlike current service tax and excise law, the credit will be effectively dependent on the vendors as unless vendors file the appropriate returns, GST credit will not be available to the recipient.

V. What are the conditions prescribed for availment of ITC?

Section 16 (2) of the Act, prescribes following four conditions for availment of credit:

- (a) he is in **possession of** a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
- (b) he has **received** the goods or services or both¹⁸.
- (c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash

¹⁸ Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise

or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

The aforesaid, *inter-alia*, two conditions appears to be un-justified as typically, credit should be available basis invoice and recipient should not be burdened with the responsibility of knowing whether the tax has actually been credited to the Government or not. Putting such a kind of onerous condition on buyer leads to un-necessary burden and may pave way of litigation.

Section 16 (2) (b) of the CGST Act prescribes that for availment of input tax credit, *inter-alia*, services should be received. The condition of receipt of goods can be proved through GRN (Goods Received Note) however, it services are intangible in nature and thus its not clear why a condition of 'receipt' of service is provided for.

VI. When ITC be available in case goods are received in instalment?

It is provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment. To claim credit, taxpayer will have to track now whether the goods are received in one lot or multiple!

VII. What is vendor is not paid within 180 days?

To continue to claim the input tax credit the buyer has to ensure that he pays the supplier within 180 days from date of invoice. If payment to vendor is not made within 180 days, then proportionate input tax credit will have to be reversed in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of issue of invoice (refer ITC Rule 2).

180 days condition not to apply on Schedule I supplies

It may be noted that condition of 180 days payment is not applicable to value of supplies made without consideration as specified in Schedule I.

Interest payable from date of availment till reversal

Interest will be payable for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability is paid.

Credit can be availed again on payment to vendor!

The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or these rules, that had been reversed earlier. Herein, interest paid, if any, will be a cost!

VIII. Whether double benefit under GST and Income Tax is available?

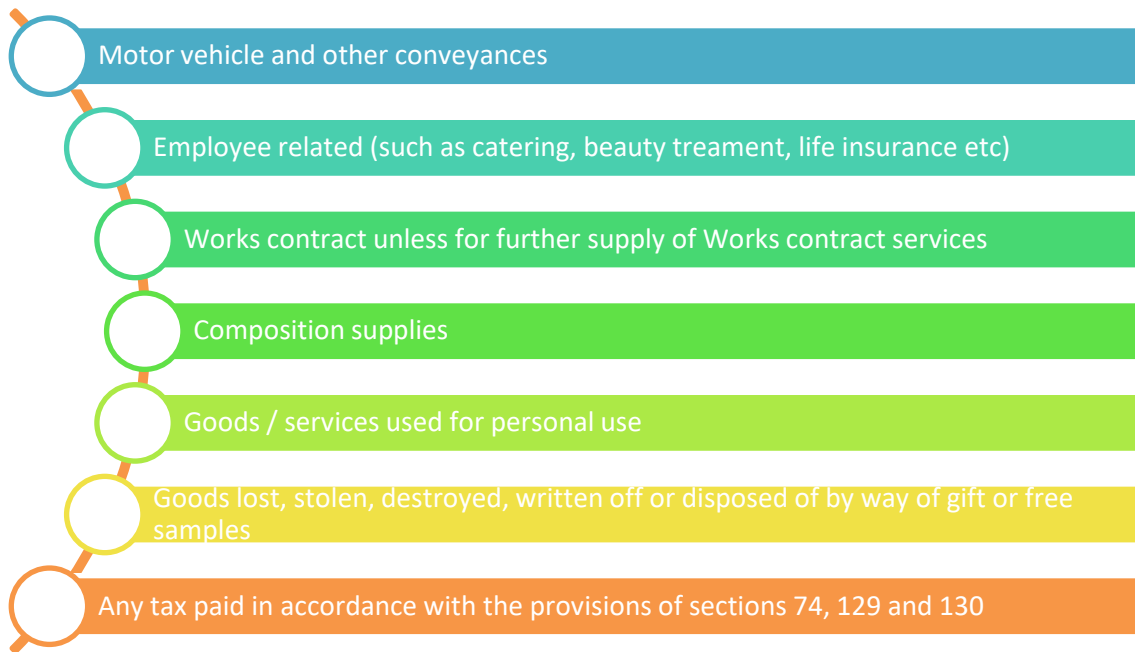
No. In case where registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

IX. What is the time limit for claiming credit?

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of **September** following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of relevant **annual return, whichever is earlier.**

X. On what goods or services ITC is not available?

Section 17 (5) provides that input tax credit will not be available on following:



It was expected that in GST regime, seamless credit will be allowed to business houses without any denial or any restrictions except say goods / services which are availed for personal use than official use (something similar to United Kingdom VAT law).

However, surprisingly, *inter-alia*, aforesaid credit would continue to be not available (in respect of both goods or services). Further, credit is proposed to be denied on goods and/or services used for **personal consumption**. Also, input tax credit shall not be available on **goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples**. This continuation of denial will lead to substantial tax cascading (as rate of GST will be higher than the current rate of service tax!).

Credit will be available on rent-a-cab, life insurance and health insurance if the Government notifies these services as obligatory for an employer to provide to its employees under any law. Also, credit on food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery will be available. All this is available if used as inward supply for

making an outward taxable supply of the same category or as an element of a taxable composite or mixed supply.

Also, another round of litigation as interpretation issues will crop up while determining eligibility or otherwise of GST paid on personal consumptions such as business lunch with clients.

XI. Can ITC be availed on telecommunication towers and pipelines?

Explanation to Section 17 provides that, the expression “**plant and machinery**” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes:

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises

Thus, through aforesaid Explanation, input tax credit is specifically denied on telecommunication towers, pipelines etc.

XII. What is rule of proportion for taxable and exempt activity?

If goods and/or services used:

- a. Partly used for the purposes of business and partly for other purposes
or
- b. Partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempted supplies

then credit to the extent of use for taxable or business supplies will be available. Rule 7 of Input Tax Credit Rules, prescribes for apportionment of credit on inputs and input services (for Capital goods – refer Rule 8). The apportionment is required to be done on the basis of previous years

turnover. The Rule also provides for segregation of credit, at invoice level itself.

Finally, on actual basis for the financial year, reversal should be done, before the due date for filing the return for the month of September following the end of the financial year to which such credit relates. However, interest will be payable if finally it is determined that the credit availed was more. Herein, short availment will not entitle taxpayer to claim credit from Government!

XIII. What is the rule of proportion for credit on Capital Goods?

Rule 8 prescribes for apportionment of credit on capital goods in various scenarios such as:

- a. Partly used for the purposes of business and partly for other purposes, or
- b. Partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempted supplies

Credit cannot be claimed on capital goods used exclusively for effecting exempt supplies whereas credit can be claimed on capital goods used exclusively for effecting taxable including zero rated supplies.

Useful life of capital goods is assumed 5 years and 5% is proposed per quarter.

XIV. What are ITC provisions for banking?

For a banking company or a financial institution including a NBFC, restriction of 50% on availment of credit shall not apply to tax paid on supplies made by one registered person to another registered person having the same PAN.

XV. On which documents credit can be availed?

As per Rule 1 of ITC Rules, the input tax credit can be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely:-

- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
- (b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to payment of tax;
- (c) a debit note issued by a supplier in accordance with the provisions of section 34;
- (d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for assessment of integrated tax on imports;
- (e) an ISD invoice or ISD credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule invoice 7

Input tax credit will be availed by a registered person only if **all applicable particulars** as prescribed in Invoice Rules are contained in the said document, **and** the relevant information, as contained in the said document, is **furnished in FORM GSTR-2** by such person.

Further, no input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any **order where any demand has been confirmed** on account of any **fraud, willful misstatement or suppression of facts**.

3.6 Five key aspects about registration

I. What is generic threshold in GST?

As per section 22 of the CGST Act, every supplier shall be liable to be registered under CGST Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds **twenty lakh Rupees**.

II. Whether there is lower threshold for NE States?

It is also provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year **exceeds ten lakh rupees**.

III. How GST registration no. will look like?

Registration number in GST will be PAN based and hence, having PAN would be a pre-requisite for obtaining registration. Further, as registration under GST will be State-wise, thus the assessee will have to obtain separate registration for each State in which it has physical presence.

Further, the GST law provides for an option to obtain separate registration for each of the 'business vertical' in the same State.

IV. Registration Rules

Recently Registration Rules are put in the public domain. These rules prescribe the methodology, procedure forms etc for application, cancellation, and revocation of the registration under GST.

As per these rules the persons given below are liable to take registration under GST regime:

- A new taxable person who is not registered under any of the current indirect tax law but requires compulsory registration under GST

- Person who intends to exercise option available for different business vertical within same state.
- Persons who is required to deduct tax at source or to collect tax at source as per section 51 and section 52
- A non-resident taxable person
- A person supplying online information and data base access or retrieval services from a place outside India to a non-taxable online recipient

V. What is registration requirement for Special Economic Zone?

It is provided in the Rules that a Special Economic Zone unit or Special Economic Zone developer will make a separate application for registration as a business vertical distinct from its other units located outside the Special Economic Zone.

3.7 Seven things about returns

I. Which are the return is GST regime?

GST law prescribes filing of following returns:

Return	Nature	Due date
GSTR 1	Outward supplies	10 th of next month
GSTR 2	Inward supplies (prepare on the basis of GSTR 2A)	15 th of next month
GSTR 3	Monthly return	20 th of next month
GSTR 4	Quarterly return for compounding dealers	18 th of next quarter
GSTR 5	Return for non- resident	20 th of next month
GSTR 6	Input Service Distributor	13 th of next month
GSTR 7	Tax Deduction at Source	10 th of next month
GSTR 8	Statement by E- commerce operator	10 th of next month
GSTR 9	Annual return	31 st December of next year
GSTR 10	Final return	Within three months of date of cancellation or date of order of cancellation, whichever is later
GSTR 11	Return by UN agencies	28 th of the month

II. What is return of outward supplies?

Every registered taxable person will be required to furnish, electronically, in GSTR-1 format, the details of outward supplies of goods and/or services effected, during a tax period on or before the 10th day of the month succeeding month.

Thus, all the GST assessee throughout India will upload the details of outward supplies by 10th of subsequent month.

III. What is return of inward supplies?

Every registered taxable person will be required to verify/modify, electronically (in GSTR-2 format), the details of inward supplies of goods and/or services, during a tax period on or before the 15th day of the month succeeding month. The details of inward supplies will be auto-populated based on GSTR-1 filed by the vendors.

Effectively, all the GST assessee will have to reconcile the procurement details with vendors on monthly. This concept of credit availment appears to be heavily borrowed from Maharashtra VAT provisions (forms J1 and J2).

IV. What is monthly return?

Every registered taxable person will be required, to file a monthly return, electronically, of inward and outward supplies of goods and/or services, input tax credit availed, tax payable, tax paid and other particulars as may be prescribed within 20 days after the end of such month.

V. Which return Composition dealer has to file?

Composition dealer (registered in accordance with section 10 of GST Act) will be required to file a quarterly return before 18th from the end of quarter in GSTR-4 format.

VI. Which return Input Service Distributor has to file?

An Input Service Distributor will be required to file a monthly return with 13 days from end of the month.

VII. Whether GST regime means substantial increase in compliances due to multiple GST returns?

Yes. Take example of a service tax assessee, who currently files 2 returns on an annual basis. Now, in GST regime, Service tax assessee could be required to file as many as 61 returns (5 returns per month plus 1 annual return)!

Organisations will also have to take into consideration the increase (most likely!) or decrease (least likely!) in tax compliances. For most of the organisations, in GST regime, compliances are expected to increase dramatically.

Thus, in human resource department will have to be informed about the GST regime so that they can anticipate the increase (and decrease in certain cases) in the manpower.

3.8 Five things about Tax Deduction at Source

I. When is TDS applicable?

Section 51 of the CGST Act deals with Tax Deduction at Source (TDS). The rate specified for CGST is 1% and similar rate for SGST will be applicable. So, effective rate will be 2%. The liability to deduct TDS will trigger in cases where total value of supply exceeds Rs 2.50 lakhs.

II. When TDS is not applicable?

It is provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

III. On what value TDS to be deducted?

For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

IV. What are TDS Compliances?

The amount deducted is required to be deposited within 10 days of after the end of the month. Deductor is liable to pay penalty of Rs 100/- per day if the certificate of the tax deduction is not issued within 5 days from the date of payment (subject to maximum penalty of 5,000).

V. Who can claim credit of TDS?

Deductee can claim the credit of TDS.

3.9 Five things about Invoices

A tax invoice has to be issued by the supplier of goods or services based on section 31 of the CGST Law.

I. When to issue invoice for goods?

As per section 31 (1) of the CGST Act, a registered person supplying taxable goods shall, before or at the time of:

- (a) Removal of goods for supply to the recipient, where the supply involves movement of goods; or
- (b) Delivery of goods or making available thereof to the recipient, in any other case

II. When to issue invoice for services?

As per section 31 (2) of the CGST Act, a registered person supplying taxable services will, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed.

In this regard, the Invoice Rules provides that invoice should be issued within **30 days** from the date of supply of service. For insurer or a banking company or a financial institution, including a non-banking financial company, this period is **45 days**.

III. When to issue receipt voucher for advances?

A registered person is required to, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment.

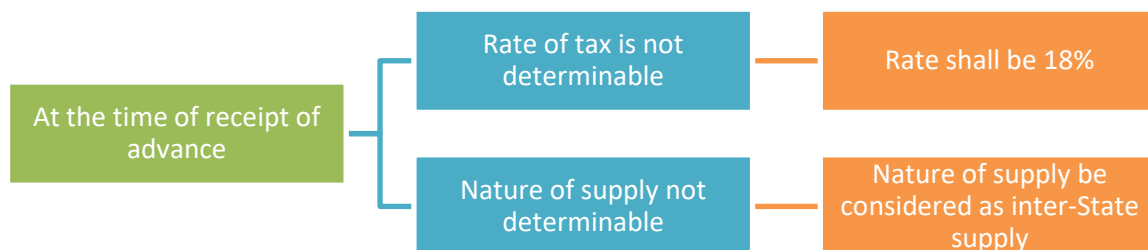
On receipt of advance payment with respect to any supply of goods or

services or both the registered person issues a receipt voucher, but subsequently **no supply is made** and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who had made the payment, a refund voucher against such payment.

It is also provided in the Rule 5 of ITC Rules, that where at the time of receipt of advance,

- (i) the **rate of tax** is not determinable, the tax shall be paid at the rate of **eighteen** per cent.;
- (ii) the **nature of supply** is not determinable, the same shall be treated as **inter-State** supply

Aforesaid is explained by way of a chart as under:



IV. Whether invoice to be issued for Reverse Charge Mechanism (RCM)?

As per section 31 (3) (f) and (g) of the CGST Act, registered person should issue invoice and payment voucher in case of RCM.

V. What are the contents of invoice?

Invoice Rules prescribe more than 17 particulars / contents to be prescribed in invoice as under:

- (a) name, address and GSTIN of the supplier;
- (b) a consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

- (c) date of its issue;
- (d) name, address and GSTIN or UIN, if registered, of the recipient;
- (e) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more;
- (f) HSN code of goods or Accounting Code of services;
- (g) description of goods or services;
- (h) quantity in case of goods and unit or Unique Quantity Code thereof;
- (i) total value of supply of goods or services or both;
- (j) taxable value of supply of goods or services or both taking into account discount or abatement, if any;
- (k) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (l) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (m) place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;
- (n) address of delivery where the same is different from the place of supply;
- (o) whether the tax is payable on reverse charge basis; and
- (p) Signature or digital signature of the supplier or his authorized representative:

Tax invoice numbering

Tax invoice numbering can be in multiple series and special characters are also allowed.

HSN

As far as present invoice structure is concern the **HSN code** of the goods is required to be mentioned only in the case where invoice is issued by

the manufacturer as i.e. for Excise Invoice. However, even trader, agent etc. is require to specify the HSN code of the goods.

However, government may by way of notification specify the certain class of registered person that may not require to mentioned HSN code or accounting code for service for such period as may be specified in the notification.

3.10 Compliance Rating

Section 149 of CGST Act provides for GST Compliance Rating as under:

149. (1) *Every registered person may be **assigned** a goods and services tax compliance rating score by the Government based on his record of compliance with the provisions of this Act.*
- (2) *The goods and services tax compliance rating score may be determined on the basis of such **parameters** as may be prescribed.*
- (3) *The goods and services tax compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the **public domain** in such manner as may be prescribed.*

It is pertinent to note that in GST regime, every taxable person shall be assigned a GST compliance rating score based on his record of compliance with the provisions of this Act.

GST compliances rating will be of paramount importance as non-compliance will impact the rating which will be placed in the public domain and thus could affect reputation of a business.

3.11 Key transitional compliances

Transitional provisions are covered under section 139 to 142 of CGST Act. Further, Draft Transitional Rules are available in the public domain.

How to avail transitional credit?

As per section 140 of the GST Act a registered taxable person, other than the person who opt composition scheme under GST regime, is allowed to carry forward the credit lying in stock on the appointed day satisfying the prescribed conditions. In this regard, the person who intend to carry forward the credit of return shall:

- Submit an application electronically in FORM GST TRAN-1
- Application should specify the value of pending forms such as form C, F, H, I for interstate sale, Sale in the course of Export, Branch transfer etc.

Further, the person intends to take the credit of un-availed credit of the capital goods not carried forward in the return shall:

- Separately specify the amount of tax or duty availed or utilized by way of input tax credit under each of the existing laws till the appointed day
- Amount of duty or tax yet to be availed or utilized

Also, a person who was not registered under the existing law or not engaged in the manufacture of exempted goods or provision of exempted services shall also allowed to take input tax credit on goods held in stock on appointed date in the following manner subject to fulfillment of specified conditions:

- Shall allowed to take credit of Central Tax on the basis of documents evidencing payment of central excise duty.

- Further where such documents are not available credit shall be restricted up to the 40% of the of central tax applicable on supply of goods and shall be credited after payment of central tax.
- The aforesaid scheme is available for six tax period from the date of appointment.
- In the similar manner, such person can avail the credit of State tax paid.

Declaration of stock held by a principal

Every person to whom the provisions of section 141 is applicable shall, within sixty days of the appointed day, submit an application electronically in FORM GST TRAN-1, specifying therein, the stock or, as the case may be, capital goods held by him on the appointed day details of stock or, as the case may be, capital goods held by him as a principal at the place/places of business of his agents/branch, separately agent-wise/branch-wise.

3.12 Ten things about Integrated GST

At present inter-State supply of goods attract Central Sales Tax. Now, it provides that an inter-State supply of goods and/ or services will attract IGST (i.e. CGST plus SGST). Thus, it would be crucial to determine whether a transaction is an 'intra-State' or 'Inter-State' as taxes will be applicable accordingly.

In this regard, the GST law provides separate provisions, as part of Integrated GST Act (IGST), which will help an assessee determine the place of supply for goods and services. At the outset it may be relevant to note that as Place of Supply provisions of part of IGST Act (than CGST/ SGST Act) thus there is likely to be uniformity in application of Place of Supply provisions throughout India.

I. When is IGST leviable?

Section 5 IGST Act provides that '*... there shall be levied a tax called the integrated goods and services tax on all **inter-State supplies** of goods or services or both except on the supply of alcoholic liquor for human consumption, **on the value** determined under section 15 of the Central Goods and Services Tax Act and at such rates, **not exceeding forty per cent.**, as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person*'.

It is also provided that the integrated tax on **goods imported** into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962

II. Inter-State supply of goods

As per section 7 (1) of IGST Act, subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in:

- (a) Two different States;
- (b) Two different Union territories; or
- (c) State and a Union territory,

shall be treated as a supply of goods in the course of inter-State trade or commerce.

As per section 7 (2) of the IGST Act, Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

III. Inter-State supply of services

As per section 7 (3) of IGST Act, subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in:

- (a) Two different States;
- (b) Two different Union territories; or
- (c) State and a Union territory,

shall be treated as a supply of services in the course of inter-State trade or commerce

As per section 7 (4) of IGST Act, supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce

IV. Certain supplies to qualify as inter-State supplies

As per section 7 (5) of IGST Act, supply of goods or services or both;

- (a) when the supplier is located in India and the place of supply is outside India;
- (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
- (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce

V. Export of service

As per section 2 (5) of IGST Act, 'export of services' means the supply of any service when:

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

Thus, to qualify any service as export of service, taxpayer will be required to satisfy five conditions as given above. These conditions are similar to Rule 6A of the Service Tax Rules, 1994.

VI. Import of services

As per section 2 (11) of IGST Act 'import of services' means the supply of any service, where:

- (i) Supplier of service is located outside India;
- (ii) Recipient of service is located in India; and
- (iii) Place of supply of service is in India

VII. Place of supply of goods

Place of supply of goods will be determined as under if the goods:

Involves movement	• Location of the goods at the time at which movement of goods terminates for delivery to the recipient
Does not involve movement	• Location of goods at the time of the delivery to the recipient
Assembly/ Installation	• Place of Assembly/ Installation
On board	• Place of on-boarding
Not covered by (2), (3), (4),(5) and (6)	• Law made by Parliament as per Council recommendation

VIII. Place of supply for bill to ship to model

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 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.**

IX. Place of supply of services

The provisions of section 12 of IGST Act, apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.

As per section 12 of IGST Act, the place of supply of services, except the services specified in sub-sections (3) to (14):

- (a) Made to a registered person shall be the location of such person;
- (b) Made to any person other than a registered person shall be:

- (i) Location of the recipient where the address on record exists; and
- (ii) Location of the supplier of services in other cases

Section 12 (3) to (14) provide specific provisions and the business will have to scroll through all the place of supply provisions before determining the place of supply where location of the supplier of the service and location of the recipient of service is in India.

X. PoS if supplier of services or the location of the recipient of services is outside India

Section 13 of IGST Act the provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India. As per section 13 (2) of IGST Act, the place of supply of services except the services specified in sub-sections (3) to (13) shall be **the location of the recipient of services.**

Sub-section (3) to (13) provide specific criteria for determining place of supply of services.

Further, it is important to note that supply of services will be zero rated only if qualify as export of services as defined under section 2(5) of the IGST Act by satisfying all 5 conditions. Out of the 5 conditions one of the condition is that the Place of Supply shall be outside India. Hence, section 13 of IGST becomes critical because even if the recipient is outside India, if the place of supply is not outside India it will not be zero rated.

Hence, the business will have to scroll through all the place of supply provisions before determining the place of supply where location of the supplier of the service and location of the recipient of service is outside India.

4. Impact of GST

4.1 Four Critical Implications of GST on the Banking Sector

The banking sector is one of the largest services sectors in India. The implementation of the Goods & Services Tax (GST) for will likely prove to be a challenge for the sector on two counts – One, due to the higher GST rates compared to the current service tax rate (Read here how GST Rates Could Impact Your Business Strategies) and second, due to the vast geographical reach of most banks.

With the GST coming close on the heels of demonetization, the banking sector needs to ensure that they are ready for this new tax regime. In this article, we will cover 4 critical implications of GST on the banking sector to help banks plan their GST implementation strategy.

1. Substantial increase in compliance:

GST will increase compliance requirements for banks on two fronts:

State-wise Registration:

GST is a parallel tax regime where the State and Center, both tax the payer in one go. Hence, you may need to obtain State-wise registration in every State where you have a branch. In case bank has multiple branches one State (say 30 branches) then for all the branches together only one registration will be required.

However, most banks have multi-State presence. Thus, the state-wise registration will lead to substantial increase in compliance levels, particularly, given the fact that at present most of the banks have obtained a 'centralized' registration under service tax. So, at present, a bank may be filing only two returns on an annual basis as a service tax assessee, in the GST regime, bank might be required to file as many as 61

returns per year for every state you are present in (five returns per month plus one annual return).

2. Determining Place of Supply could be critical

The Model GST law casts the onus of determining whether a transaction is an 'intra-State' or 'inter-State' on the assessee. So, you need to decide whether the payment is against Central GST (CGST) *plus* State GST (SGST) or Integrated GST (IGST), based on the type of transaction.

Services being intangible in nature, proxy rules/ provisions are prescribed in the GST framework to help the assessee determine the place of consumption. Though, typically, the place of consumption for banking services (as per revised IGST Act) is the location of the recipient of services on the records of the supplier. But there is ample scope for wrong determination for a pan-India bank as there could be dispute on who is the service recipient.

GST is a 'place of supply' based tax regime. Hence, for every transaction in GST regime, bank will need to determine the place of consumption where GST will be paid. With bank branches conducting several transactions, both within and outside States, determining the place of consumption will not be very easy.

Moreover, inter-State supplies of goods or services or both between two branches of the same bank, located in two States, will also attract IGST. The GST charged will be available as credit to the receiving branch; however, tracking such transactions could prove to be a cumbersome task.

Further, in cases where there is a dispute over the place of supply of services, the taxpayer may get entangled in legal dispute. Currently, the GST legislation provides that if an assessee wrongly pays, say CGST and

SGST (on a belief that the transaction is intra-state) instead of IGST, then they will have to pay correct taxes (i.e. IGST) again and claim refund of wrongfully paid taxes.

Ideally, instead of putting the onus on the taxpayer to determine whether the transaction is intra-state or inter-state, the GST law should provide for a simpler redressal mechanism.

3. Interest taxability

In the current tax regime, the service tax legislation does not tax 'interest'. But with GST, the term 'service' is defined in a wide manner to cover 'anything other than goods' which may cover interest as well.

Governments across the world do not levy GST on interest given the fact that there is always a debate on whether interest is the time value of money or a consideration for lending money. Thus, the GST Law in India too should clarify if interest is outside the ambit of GST. Further, if 'interest' is not expected to attract GST, it will have implications on input tax credits claimed by banks.

4. Paying GST at applicable rate

With GST, services are expected to attract 18% GST. This rate is higher by 3% from the current service tax rate of 15%. This may make banking services such as issue of cheque books and demand drafts a bit costlier, particularly for retail customers.

Another point to note is that these days banks also deal in commodities such as gold / silver wherein a concessional GST rate is expected to be applicable. Thus, banks need to be careful in paying GST with the appropriate applicable rate on different products.

Way forward

Banking has always been a huge pillar of the Indian economy and taxpayers are literally 'banking' on them for GST payments / financial needs. Given this, the GST Council must provide clarity on GST for the banking sector and clarify several open ended issues that are plaguing them currently.

4.2 Do Telecom Companies have the Bandwidth for GST?

In the last few decades, the telecom sector has emerged as one of the largest services sectors in India. With the internet of things becoming more common, data charges reducing considerably, mushrooming of ecommerce providers and easy accessibility to technology, this is one sector that has achieved huge penetration in the retail space.

However, telecom is different from other service industries due to the fact that there is still a relatively small pool of service providers that caters to the majority of the market, and the market seems to be in further consolidation mode.

On the customer side, there is a fair amount of churn and telecom companies are constantly focused on customer retention by offering free promotional offers and value added services. Given this backdrop, how will the introduction of the Goods and Services Tax impact this sector and are companies ready for this change?

In this article, we will cover 4 areas of concern that telecom companies will face in transitioning to GST and what they can do to mitigate them.

1. Centralized Registration versus State wise Registrations, leading to Increased Compliance:

Most telecom companies in the country have a multi-state presence. To complicate matters further, telecom companies operate their service in geo-mapped circles which are not always mapped 1:1 with States. Practically, this means that you could have one service circle mapped to multiple states such as Maharashtra and Goa and/or two cities in the same state belonging to different circles such as the Mumbai circle.

In the GST regime, telecom companies will be required to have individual registrations in every State they are present in. State-wise registrations

will certainly lead to a substantial increase in compliance levels, given that most companies currently have a centralized registration under service tax.

Effectively, a company which may be filing only 2 returns on an annual basis as a service tax assessee, will now be required to file as many as 61 returns per year for every state they are present in (five returns per month plus one annual return).

2. Fixed 'Place of Service' vs Movable 'Place of Supply'

With the onus of determining the place of supply falling on the assessee in the GST regime, telecom companies will have to put in place stringent mechanisms to determine if a transaction is 'intra-state' or 'inter-state'. As a service provider, correct determination of place of supply will help you decide whether tax payment is against Central GST (CGST) *plus* State GST (SGST) or Integrated GST (IGST), for intra and inter-state transactions respectively.

Additionally, telecom companies face an added complication due to the mobile (no pun intended) nature of their customers. Typically, the place of supply or consumption for telecom services is the location of the recipient of services on the records of the supplier. But the telecom customer keeps moving from one state to another for jobs, studies etc. without changing their service provider or even intimating them of the location change. Hence, telecom companies will have to either update their customer database. This will further complicate core operations of telecom companies.

And even if companies tighten their processes for place of supply determination, there is plenty that can go wrong owing to the separate provisions in the GST Law for various telecom services:

- a. For fixed telecom/leased lines: The place of supply will be where the cable/antenna is located
- b. For post-paid services: The place of supply will be the billing address which is on record
- c. For pre-payment services: The place of supply will be either the location of the agent or the address where pre- payment is received or voucher is sold

Based on these complications, we foresee several legal disputes that telecom companies could get into over the place of supply of services. Currently, the GST legislation provides that if an assessee wrongly pays, say CGST and SGST instead of IGST (on a belief that the transaction is intra-state), then they will have to pay the correct taxes (i.e. IGST) again and then claim refund for the wrongfully paid taxes.

Ideally, instead of putting the onus on the taxpayer to determine whether the transaction is intra-state or inter-state, the GST law should provide for a simpler redressal mechanism.

3. ITC woes

In the current indirect tax regime, Central Value Added Tax (CENVAT) credit on telecommunication towers was being denied (based on certain judicial precedents) to telecom companies. Now, in the CGST Act there is a specific provision introduced to deny the input tax credit on telecom towers. This denial of credit on telecom towers/ infrastructure will certainly lead to cascading tax for this sector.

To add to their woes, certain petroleum products such as diesel, a key cost in keeping telecom towers functioning, are outside the purview of GST. This means that no input tax credit of taxes paid on diesel will be available to telecom companies, thus increasing their tax burden.

4. Higher GST Rates vs Lower Service Tax Rates:

In the GST regime, services are expected to attract 18% GST. This rate is 3% higher when compared to the current service tax rate of 15%. (Read here how GST Rates Could Impact Your Business Strategies). This may make telecom services such as broadband connections and calling services a bit costlier, particularly for retail customers. Even though, there are few players in the market, there is stiff competition for market share due to the ever-reducing prices of data and voice technologies. Due to these crunched margins, any increase in pricing might directly impact the customer's pocket.

5. Goods or Services?

Another highlight is that these days telecom companies collaborate with mobile manufacturers to provide bundled services to customers such as a one year free subscription with the device. While the customer is not charged separately, the telecom operator enters into an agreement with the device manufacturer on a profit-sharing basis. Since GST is applicable on 'goods and services transferred from one place to other with a consideration', telecom companies stand to face two challenges:

- a. Determining whether bundled deals are to be taxed as goods or services.
- b. Quantifying consideration for such bundled deals, as they are without consideration for the end-user.

Telecom players will need to identify consideration in discussions with the device manufacturers. Similarly determining the taxability for value added services (VAS) and determining their place of supply could be challenging.

Way forward

Telecom services have seen huge penetration in the country in recent times. So any margin pressure faced by these firms due to GST has the potential to impact their pricing and in turn millions of customers. It is

therefore crucial that the GST Council provide more clarity to this sector and address any open issues.

About the Book and Author

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- IRIS has been in the compliance space for over 2 decades, having worked with regulators and filing entities alike. On one hand, IRIS solutions power the likes of the Reserve Bank of India and ACRA, Singapore on the regulatory side, and on the other, we support over 700 Indian corporates to meet their MCA filing requirements.
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