PART 1: LEVY AND COLLECTION

Section 9: levy and collection.

(1) 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.

(2) 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 date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(5) The Government may, on the 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:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative
in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

## PART 2: RELEVANT TERMS

### EXTENT & COMMENCEMENT OF GST LAW

<table>
<thead>
<tr>
<th>Act</th>
<th>Extent</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Central Goods and Services Tax Act, 2017</strong></td>
<td>Extends to the whole of India* [Section 1 of the CGST Act].</td>
</tr>
<tr>
<td></td>
<td>*It is pertinent to note that the CGST Act applies to the State of Jammu and Kashmir also.</td>
</tr>
<tr>
<td><strong>State GST law</strong></td>
<td>of the respective State/Union Territory with State Legislature [Delhi and Puducherry]** extends to whole of that State/Union Territory.</td>
</tr>
<tr>
<td><strong>Integrated Goods and Services Tax Act, 2017</strong></td>
<td>Extends to the whole of India* [Section 1 of the IGST Act].</td>
</tr>
<tr>
<td></td>
<td>It is pertinent to note that the CGST Act applies to the State of Jammu and Kashmir also.</td>
</tr>
<tr>
<td><strong>Union Territory Goods and Services Tax Act, 2017</strong></td>
<td>Extends to the Union territories** of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Chandigarh and other territory, i.e. the Union Territories without State Legislature [Section 1 of the UTGST Act]. **Union territory: means the territory of—(a) the Andaman and Nicobar Islands; (b) Lakshadweep; (c) Dadra and Nagar Haveli; (d) Daman and Diu; (e) Chandigarh; and (f) other territory.</td>
</tr>
<tr>
<td></td>
<td>Explanation—For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory [Section 2(114) of CGST Act].</td>
</tr>
</tbody>
</table>
What is Intra state supply under GST?

Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be treated as intra-State supply, namely:

(i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
(ii) goods imported into the territory of India till they cross the customs frontiers of India; or
(iii) supplies made to a tourist referred to in section 15.

(2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Explanation 1: For the purposes of this Act, where a person has,—

(i) an establishment in India and any other establishment outside India;
(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
(iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.

Explanation 2: A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

INTER STATE SUPPLY [SECTION 7 OF THE IGST ACT]

(1) 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) a State and a Union territory, shall be treated as a supply of goods in the course of interState trade or commerce.

(2) 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.

(3) 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) a State and a Union territory, shall be treated as a supply of services in the course of inter-State trade or commerce

(4) 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.

(5) 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.

**PART 3: REVERSE CHARGE MECHANISM**

Generally, the supplier of goods or services is liable to pay GST. However, in specified cases like imports and other notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply.

**There are two type of reverse charge scenarios provided in law.**

- First is dependent on the nature of supply and/or nature of supplier. This scenario is covered by section 9 (3) of the CGST/SGST (UTGST) Act and section 5 (3) of the IGST Act.
- Second scenario is covered by section 9 (4) of the CGST/SGST (UTGST) Act and section 5 (4) of the IGST Act where taxable supplies by any unregistered person to a registered person is covered.

**As per the provisions of section 9(3) of CGST/SGST (UTGST) Act, 2017/section 5(3) of IGST Act, 2017,**

the Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

**Similarly, section 9(4) of CGST/SGST (UTGST) Act, 2017/section 5(4) of IGST Act, 2017**

provides that the tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. Accordingly, whenever a registered person procures supplies from an unregistered supplier, he needs to pay GST on reverse charge basis. However, supplies where the aggregate value of such supplies of goods or services or both received by a registered person from any or all the unregistered suppliers is less than five thousand rupees in a day are exempted.
### List of goods notified under RCM

<table>
<thead>
<tr>
<th>SR.NO</th>
<th>DESCRIPTION OF SUPPLY OF GOODS</th>
<th>SUPPLIER OF GOODS</th>
<th>RECIPIENT OF GOODS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Cashew nuts, not shelled or peeled</td>
<td>Agriculturist</td>
<td>Any registered person</td>
</tr>
<tr>
<td>2</td>
<td>Bidi wrapper leaves (tendu)</td>
<td>Agriculturist</td>
<td>Any registered person</td>
</tr>
<tr>
<td>3</td>
<td>Tobacco leaves</td>
<td>Agriculturist</td>
<td>Any registered person</td>
</tr>
<tr>
<td>4</td>
<td>Supply of lottery</td>
<td>State Government, Union Territory or any local authority</td>
<td>Lottery distributor or selling agent</td>
</tr>
<tr>
<td>5</td>
<td>Silk yarn</td>
<td>Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn</td>
<td>Any registered person</td>
</tr>
<tr>
<td>6</td>
<td>Used Vehicle, seized and confiscated goods, old and used goods, waste and scrap</td>
<td>Central government, state government, union territory or a local authority</td>
<td>Any registered person</td>
</tr>
<tr>
<td>7</td>
<td>Priority sector lending Certificate</td>
<td>Any registered person</td>
<td>Any registered person</td>
</tr>
</tbody>
</table>

### List of services notified under RCM

**NOTIFICATION NO 10/2017 DATED 10/06/2017**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Category of Supply of Services</th>
<th>Supplier of service</th>
<th>Recipient of Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Supply of Services by a <strong>Goods Transport Agency (GTA)</strong> in respect of transportation of goods by road to— (a) any factory registered tender or governed by the Factories Act, 1948; or (b) any society registered under</td>
<td>Goods Transport Agency (GTA) <strong>who has not paid CGST @ 6%</strong></td>
<td>(a) Any factory registered under or governed by the Factories Act, 1948; or (b) any society registered under the Societies Registration Act,</td>
</tr>
<tr>
<td>The Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person.</td>
<td>1860 or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons; or (g) any casual taxable person. <strong>RCM not applicable if recipient registered only for TDS</strong> : However, nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to,— (a) a Department or Establishment of the Central Government or State Government or Union territory; or (b) local authority; or (c) Governmental agencies, which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax u/s 51 and not for making a taxable supply of goods or services.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. **Services provided by an individual advocate including a senior advocate or firm of advocates** by way of legal services, directly or indirectly. "*Legal service*" means any service An individual advocate Including a senior advocate or firm of advocating in legal matters. |

Any business entity located in the taxable territory. **Business entity being Litigant, applicant or petitioner located in Taxable territory - Deemed**
<table>
<thead>
<tr>
<th>Services supplied by an arbitral tribunal to a business entity</th>
<th>An arbitral tribunal</th>
<th>Any business entity located in the taxable territory</th>
</tr>
</thead>
<tbody>
<tr>
<td>Services provided by way of sponsorship to any body corporate or partnership firm</td>
<td>Any person</td>
<td>Any body corporate or partnership firm located in the taxable territory</td>
</tr>
<tr>
<td>Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, —</td>
<td>Central Government, State Government, Union territory or local authority</td>
<td>Any business entity located in the taxable territory</td>
</tr>
<tr>
<td>(1) renting of immovable property, and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2) services specified below—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(iii) transport of goods or passengers.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

"Renting of immovable property" means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an

Recipient: The business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing/licensing or other similar arrangements in respect of immovable property.</td>
<td></td>
</tr>
<tr>
<td>5A.</td>
<td>Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the CGST Act, 2017.</td>
<td>Central Government, State Government, Union territory or local authority</td>
</tr>
<tr>
<td>5B.</td>
<td>Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.</td>
<td>Any person</td>
</tr>
<tr>
<td>5C.</td>
<td>Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.</td>
<td>Any person</td>
</tr>
<tr>
<td>6.</td>
<td><strong>Services supplied by a director</strong> of a company or a body corporate to the said company or the body corporate.</td>
<td>A director of a company or a body corporate</td>
</tr>
<tr>
<td>7.</td>
<td><strong>Services supplied by an insurance agent</strong> to any person carrying on insurance business. <em>&quot;Insurance agent&quot;</em> means an insurance agent licensed u/s 42 of the Insurance Act, 1938 who receives agrees to receive payment by way of commission or other remuneration in consideration of his soliciting or procuring insurance business including.</td>
<td>An insurance agent</td>
</tr>
<tr>
<td>Business</td>
<td>Description</td>
<td>Place of Supply</td>
</tr>
<tr>
<td>----------</td>
<td>-------------</td>
<td>----------------</td>
</tr>
<tr>
<td>8.</td>
<td>Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.</td>
<td>A recovery agent</td>
</tr>
<tr>
<td>9.</td>
<td>Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered u/s 13(J)(a) of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like [Amended by Notification No. 22/2019-CT (Rate) w.e.f 1-10-2019]</td>
<td>Music composer, photographer, artist, or the like</td>
</tr>
</tbody>
</table>
| 9A. | **Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under Section 13(1) (a) of the Copyright Act, 1957 relating to original literary works to a publisher.** | Author | Publisher located in the taxable territory: However, nothing contained in this entry shall apply where, - i) the author has taken registration under the CGST Act, 2017, and filed a declaration, in the specified form before the commencement of financial year with the jurisdictional CGST or SGST commissioner, as the case may be, that he exercises the option to pay central tax on such services in accordance with Section 9(1) of the CGST Act, 2017 under forward charge, and to comply with all the provisions of CGST Act,
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>10.</strong></td>
<td>Supply of services by the members of Overseeing Committee to RBI</td>
<td>Members of Overseeing Committee constituted by the RBI</td>
</tr>
<tr>
<td><strong>11.</strong></td>
<td>Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs)</td>
<td>Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm.</td>
</tr>
<tr>
<td><strong>12.</strong></td>
<td>Services provided by business facilitator (BF) to a banking company</td>
<td>Business facilitator (BF)</td>
</tr>
<tr>
<td><strong>13.</strong></td>
<td>Services provided by an agent of business correspondent (BC) to business correspondent (BC)</td>
<td>An agent of business correspondent</td>
</tr>
<tr>
<td><strong>14.</strong></td>
<td>Security services (services provided by way of supply of security personnel) provided to a registered person.</td>
<td>Any person other than a body corporate</td>
</tr>
</tbody>
</table>
RCM not applicable if recipient registered only for TDS and in case composition suppliers: However, nothing contained in this entry shall apply to,

(i) (a) a Department or Establishment of the Central Government or State Government or UT; or
(b) local authority; or
(c) Governmental agencies, which has taken registration under the CGST Act, 2017 only for the purpose of deducting tax u/s 51 of the said Act and not for making a taxable supply of goods or services; or
(ii) a registered person paying tax under section 10 of the said Act.

15. **Services provided by way of renting of a motor vehicle provided to a body corporate**

Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with ITC only of input service in the same line of business

Anybody corporate located in the taxable territory

All the services which have been notified for reverse charge purposes under CGST Act vide Notification No. 13/2017-CT (R) dated 28-06-2017 w.e.f. 01-07-2017 have also been notified for reverse charge under IGST Act. Further, following two services are additionally included for IGST purposes.

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Category of supply of service</th>
<th>Supplier of service</th>
<th>Recipient of Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable</td>
<td>Any person located in a non-taxable territory</td>
<td>Any person located in the taxable territory other than non-taxable online recipient.</td>
</tr>
</tbody>
</table>
2. Services supplied by 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.

A person located in non-taxable territory

Importer, as defined in Section 2(26) of the Customs Act, 1962, located in the taxable territory. Importer, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer [Section 2(26) of the Customs Act, 1962].

NOTE 1: GTA services are taxable:
(i) @ 5% (2.5% CGST + 2.5% SGST/UTGST) provided GTA has not taken the Input tax credit (ITC) on goods and services used in supplying GTA service; or
(ii) @ 12% (6% CGST + 6% SGST/UTGST) provided GTA pays GST under forward charge. There is no restriction on availing ITC on goods and services used in supplying GTA service by GTA.

NOTE 2: Amendments in GST in real estate sector [Notification No. 07/2019-CT (R) dated 29-03-2019/ Notification No. 07/2019 IT (R) dated 29-03-2019]:

Earlier, the effective rate of GST on real estate sector was 8%/12% with ITC. With effect from 01-04-2019, the effective rates of (GST for the new projects have been brought down to a large extent.

However, the promoters/builders have been given a one-time option to continue to pay tax at the old rates on ongoing projects (buildings where construction and actual booking both have started before 01-04-2019) which have not been completed by 31-03-2019.

New effective rates of GST for the new projects by promoters are as follows:
(i) New rate of 1% without ITC on construction of affordable houses (area 60 sqm in non metros and value upto Rs. 45 lakh).
(ii) New rate of 5%, without ITC shall be applicable on construction of:
   (a) all houses other than affordable houses, and
   (b) commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

Conditions:
Above tax rates shall be available subject to following conditions:

(a) Input tax credit shall not be available.
(b) 80% of inputs and input services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be purchased from registered persons.

However, if value of inputs and input services purchased from registered supplier is less than 80%, **promoter has to pay GST on reverse charge basis, under section 9(4) of the CGST Act**, at the rate of 18% on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).

Further, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement on reverse charge basis, under section 9(4) of the CGST Act, at the applicable rate which is 28% (CGST 14% + SGST 14%) at present.

Moreover, GST on capital goods shall be paid by the promoter on reverse charge basis, under section 9(4) of the CGST Act at the applicable rates.

**NOTE 3: Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer exempt from GST:**

- Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer have been exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.
- Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property.
- The liability to pay tax on TDR, FSI, long term lease (premium) has been shifted from land owner to builder under the reverse charge mechanism (RCM).

**Other provisions under RCM**

**Person liable to pay tax on GTA service**

- Under GTA service, the person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the person who receives the service for the purpose of this notification.
- GTA services are taxable:
  - @ 5% (2.5% CGST+2.5% SGST/UTGST or 5% IGST) provided GTA has not taken the Input Tax Credit (ITC) on goods and services used in supplying GTA service or
(ii) @ 12% (6% CGST+6% SGST/UTGST or 12% IGST) provided GTA pays GST under forward charge. There is no restriction on availing ITC on goods and services used in supplying GTA service by GTA.

**Registration**
A person who is required to pay tax under reverse charge has to compulsorily register under GST and the threshold limit of Rs. 20 lakhs (Rs. 10 lakhs for special category states except J & K) is not applicable to him.

**ITC**
A supplier cannot take ITC of GST paid on goods or services used to make supplies on which the recipient is liable to pay tax.

**Time of Supply**

**In case of supply of goods**, time of supply is earliest of:
- (a) date of receipt of goods; or
- (b) date of payment as per books of account or date of debit in bank account, whichever is earlier; or
- (c) the date immediately following thirty days from the date of issue of invoice or similar other document.

**In case of supply of services**, time of supply is earliest of:
- (a) date of payment as per books of account or date of debit in bank account, whichever is earlier; or
- (b) the date immediately following sixty days from the date of issue of invoice or similar other document.
PART 4: PROVISIONS RELATING TO ELECTRONIC COMMERCE OPERATOR

DEFINITION

1. Electronic Commerce has been defined in Sec. 2(44) of the CGST Act, 2017 to mean the supply of goods or services or both, including digital products over digital or electronic network.
2. Electronic Commerce Operator has been defined in Sec. 2(45) of the CGST Act, 2017 to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

REGISTRATION

As per Section 24(x) of the CGST Act, 2017 the benefit of threshold exemption is not available to e-commerce operators and they are liable to be registered irrespective of the value of supply made by them.

PERSON LIABLE TO PAY TAX

1. In case of services notified under Sec. 9(5) of the CGST Act, 2017 then electronic commerce operator will be liable to pay tax.
2. In such cases tax shall be paid by the electronic commerce operator if such services are supplied through it and all the provisions of the Act shall apply to such electronic commerce operator as if he is the supplier liable to pay tax in relation to the supply of such services. A similar provision for inter-State supply is provided for in Sec. 5(5) of the IGST Act, 2017. (Refer to Notification No. 17/2017-Central Tax (Rate) and 14/2017-Integrated Tax (Rate) dated 28.06.2017).
3. No physical presence of e-commerce operator in the taxable territory - Representative liable to pay GST: Where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.
4. No representative in Taxable Territory: Where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.
5. It is important to note that this exception is carved out only in respect of supply of services through an e-commerce operator and will not be applicable/relevant to supply of any goods through an e-commerce operator.
Notification No. 17/2017 CT (R) dated 28.06.2017/ Notification No. 14/2017 IT (R) dated 28.06.2017

(a) services by way of transportation of passengers by a radiotaxi, motorcab, maxicab and motor cycle;

(b) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under section 22(1) of the CGST Act.

(c) services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section 22(1) of the CGST Act.

PROVISIONS OF TCS IN RESPECT OF ECO (SECTION 52)

(1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the “operator”), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Explanation.—For the purposes of this sub-section, the expression “net value of taxable supplies” shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

(2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.

(3) The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.

(4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end
(5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.

(6) If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

(7) The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.

(8) The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

(9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

(10) The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

(11) The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along
with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.

(12) Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—

(a) supplies of goods or services or both effected through such operator during any period; or

(b) stock of goods held by the suppliers making supplies through such operator in the godown or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

(13) Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.

(14) Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.

Explanation.—For the purposes of this section, the expression “concerned supplier” shall mean the supplier of goods or services or both making supplies through the operator.
# PART 5: CLASSIFICATION OF GOODS AND SERVICES UNDER GST.

<table>
<thead>
<tr>
<th>Need of classification</th>
<th>Description</th>
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<tbody>
<tr>
<td>In order to determine the rate applicable on a particular supply of goods or services, one needs to first determine the classification of such goods or services. Classification of goods and services assumes significance since there are different rates prescribed for supply of different goods and services. Therefore, classification is crucial for determining the rate of tax applicable on a particular product or service.</td>
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<tr>
<th>Classification of goods</th>
<th>Description</th>
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<tr>
<td>means identification of the tariff item, sub-heading, heading and chapter in which a particular product will be classified. Tariff item, sub-heading, heading and chapters referred in the Schedules of rate notification for goods under GST are the Tariff item, sub-heading, heading and chapters of the First Schedule to the Customs Tariff Act, 1975.</td>
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<thead>
<tr>
<th>Harmonised System of nomenclature</th>
<th>Description</th>
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<tr>
<td>Indian Customs Tariff is based on Harmonized System of Nomenclature (HSN). It is a multipurpose international product nomenclature developed by the World Customs Organization (WCO) for the purpose of classifying goods across the World in a systematic manner. It comprises of about 5,000 commodity groups; each identified by a 6 digit code [code can be extended], arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification. India has developed an 8-digit code of HSN.</td>
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<tr>
<th>Rules for interpretation of tariff</th>
<th>Description</th>
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<tr>
<td>Along the lines of HSN, the Indian Customs Tariff has a set of Rules of Interpretation of the First Schedule and General Explanatory notes. These rules and the general explanatory notes give clear direction as to how the nomenclature in the schedule is to be interpreted. These Rules for Interpretation including section and chapter notes and the General Explanatory Notes of the First Schedule apply to the interpretation of the rate notification for goods under GST also. Consequently, under GST, goods are classified on the basis of HSN in accordance with the Rules for the Interpretation of the Customs Tariff. Once classification for a product has been determined on this basis, applicable rate has to be determined as per the rate prescribed in the rate notification issued under GST.</td>
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9.19
A new Scheme of Classification of Services has been devised under GST. It is a modified version of the United Nations Central Product Classification. Under this scheme, the services of various descriptions have been classified under various sections, headings and groups. Chapter 99 has been assigned for services. This chapter has following sections:

- Section 5: Construction Services
- Section 6: Distributive Trade Services; Accommodation, Food and Beverage Service; Transport Services; Gas and Electricity Distribution Services
- Section 7: Financial and related services; real estate services; and rental and leasing services
- Section 8: Business and Production Services
- Section 9: Community, social and personal services and other miscellaneous services

Each section is divided into various headings which is further divided into Groups. Its further division is made in the form of 'Tariff item'/ Service Codes.

Rate of tax is determined in accordance with the Service Code in which the service is classified.
PART 6: CIRCULARS

Circular No. 48/22/2018 GST dated 14.06.2018

Services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ developer/SEZ unit – whether to be treated as an inter-State supply or an intra-State supply

- As discussed earlier, as per section 7(5)(b) of the IGST Act, the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply in the course of inter-State trade or commerce.
- However, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located.
- Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.
- It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.
- In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.
- It is therefore, clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

Q1- Decide which person is liable to pay GST in the following independent where the recipient is located in the taxable territory. Ignore the Aggregate Turnover and Exemption available.

(i) Mr. Raghu provided sponsorship services to WE-WIN Cricket Academy, an LLP.
(ii) 'Safe Trans', a Goods Transport Agency, transported goods of Kapil & Co., a partnership firm which is not registered under GST.

Ans: (i) As per Entry 4 of Notification No. 13/2017-CT (Rate), Services provided by way of sponsorship to anybody corporate or partnership firm shall be liable to be taxed under reverse charge mechanism and the recipient of service shall be liable to pay GST. For the purpose of this notification, A "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a partnership firm or a firm. Thus, WE-WIN Cricket Academy shall be liable to pay GST.

(ii) As per Entry 1 of Notification No. 13/2017-CT (Rate), Supply of Services by a goods transport agency (GTA) in respect of transportation of goods by road to any partnership firm whether registered or not under any law shall be liable to be taxed under reverse charge mechanism and the recipient of service shall be liable to pay GST. Thus, Kapil and Co, shall be liable to pay GST under reverse charge mechanism. However, if GST is paid @ 12% by GTA, then Goods transport agency is liable to pay tax under forward charge mechanism.
Q2 State with reason, person liable to pay GST in each of following independent cases. Assume recipient is located in taxable territory.

(1) Rental income received by Tamil Nadu State Government from renting an immovable property to Mannappa Pvt. Ltd. (Turnover of the company was Rs. 42 lakhs in the preceding F.Y.)

(2) Legal Fees received by Mr. Sushrut, a senior advocate, from M/s. Tatva Trading Company having turnover of Rs. 50 lakhs in preceding F.Y.

(3) XYZ & Co. provides security services to ABC Ltd. registered under GST.

Ans:

(1) As per Entry 5A of Notification No. 13/2017-CT (Rate), in case of Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the CGST Act, 2017, the recipient registered under the CGST Act, 2017 will be liable to pay GST. Hence, Mannappa Pvt. Ltd. will be liable to pay GST under reverse charge mechanism.

(2) Services provided by a senior advocate by way of legal services, directly or indirectly to any business entity located in the taxable territory, reverse charge mechanism is applicable and business entity is liable to pay GST. In this case M/s. Tatva Trading Company will be liable to pay GST.

(3) Security services (services provided by way of supply of security personnel) provided by any person other than a body corporate to a registered person is liable to be taxed under reverse charge basis. Hence, ABC Ltd. registered under GST shall be liable to pay tax on the same.

Circular No. 12/12/2017-GST dated 26-10-2017

Clarification regarding applicability of GST on the superior kerosene oil [SKO] retained for the manufacture of Linear Alkyl Benzene [LAB]:

Issue : Whether GST is applicable on the superior kerosene oil [SKO] retained for the manufacture of Linear Alkyl Benzene [LAB]?

Clarification : In this context, LAB manufacturers have stated that they receive superior Kerosene oil (SKO) from, a refinery, say, Indian Oil Corporation (IOC). They extract n-Paraffin from SKO (15 to 17%) and return back the remaining of SKO (83 to 85%) to the refinery. The retained SKO is towards extraction of Normal Paraffin, which is used in the manufacturing of LAB.

In this context, the issue has arisen as to whether in this transaction GST would be levied on SKO sent by IOC for extracting n-paraffin or only on the n-paraffin quantity extracted by the LAB manufactures. Further, doubt have also been raised as to whether the return of remaining Kerosene by LAB manufactures would separately attract GST in such
transaction. In this transaction consideration is paid by LAB manufactures only on the quantity of retained SKO (n-paraffin).

The Board has clarified that in this transaction GST will be payable by the refinery on the value of net quantity of superior kerosene oil (SKO) retained for the manufacture of Linear Alkyl Benzene (LAB). Though, refinery would be liable to pay GST on such returned quantity of SKO, when the same is supplied by it to any other person.

<table>
<thead>
<tr>
<th>Circular No.</th>
<th>GST dated</th>
<th>Details</th>
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<tbody>
<tr>
<td>29/3/2018-GST</td>
<td>25-01-2018</td>
<td>GST is payable on net quantity of Polybutylene feedstock and LPG retained for the manufacture of Poly Iso Butylene and Propylene or Di-butyl para Cresol. Oil refineries liable to pay GST on such returned quantity when supplied to other customers.</td>
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<tr>
<td>(1)</td>
<td>Manufacturers of Propylene or Di-butyl para Cresol and Poly Iso Butylene have stated that the principal raw materials for manufacture of such goods are LPG and Poly butylene feed stock respectively, which are supplied by oil refineries to them on a continuous basis through dedicated pipelines while a portion of the raw material is retained by these manufacturers, the remaining quantity is returned to the oil refineries. In this regard an issue has arisen as to whether in this transaction GST would be leviable on the whole quantity of the principal raw materials supplied by the oil refinery or on the net quantity retained by the manufacturers of Propylene or Di-butyl para Cresol and Poly Iso Butylene.</td>
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<tr>
<td>(2)</td>
<td>GST will be payable by the refinery only on the net quantity of Polybutylene feedstock and Liquefied Petroleum Gas retained by the manufacturer for the manufacture of Poly Iso Butylene and Propylene or Di-butyl para Cresol. Though, the refinery would be liable to pay GST on such returned quantity of Polybutylene feedstock and Liquefied Petroleum Gas, when the same is supplied by it to any other person.</td>
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<tr>
<td>53/27/2018-GST</td>
<td>09-08-2018</td>
<td>GST will be payable by the refinery only on the net quantity of petroleum gases retained by the recipient manufacturer for the manufacture of petrochemical and chemical products. Though, the refinery would be liable to pay GST on such returned quantity of petroleum gases, when the same is supplied by it to any other person.</td>
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supplied by it to any other person. This clarification would be applicable mutatis mutandis on other cases involving supply of goods, where feed stock is retained by the recipient and remaining residual material is returned to the supplier. The net billing is done on the amount retained by the recipient.

Circular No. 13/13/2017-GST dated 27-10-2017

Classification of cut pieces of fabrics under GST (Unstitched Salwar Suits)

It has been represented that before becoming readymade articles or an apparel, the fabric is cut from bundles or thans and sold in that unstitched state. The consumers buy these sets or pieces and get it stitched to their shape and size. Fabrics are classifiable under chapters 50 to 55 of the First Schedule to the Customs Tariff Act, 1975 on the basis of their constituent materials.

Mere cutting and packing of fabrics into pieces of different lengths from bundles or thans, will not change the nature of these goods and such pieces of fabrics would continue to be classifiable under the respective heading as the fabric.

Q 1- Decide which person is liable to pay GST in the following independent where the recipient is located in the taxable territory. Ignore the Aggregate Turnover and Exemption available.

(i) Mr. Raghu provided sponsorship services to WE-WIN Cricket Academy, an LLP.
(ii) 'Safe Trans', a Goods Transport Agency, transported goods of Kapil & Co., a partnership firm which is not registered under GST.

Ans: (i) As per Entry 4 of Notification No. 13/2017-CT (Rate), Services provided by way of sponsorship to anybody corporate or partnership firm shall be liable to be taxed under reverse charge mechanism and the recipient of service shall be liable to pay GST. For the purpose of this notification, A "Limited Liability Partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008 shall also be considered as a partnership firm or a firm. Thus, WE-WIN Cricket Academy shall be liable to pay GST.

(ii) As per Entry 1 of Notification No. 13/2017-CT (Rate), Supply of Services by a goods transport agency (GTA) in respect of transportation of goods by road to any partnership firm whether registered or not under any law shall be liable to be taxed under reverse charge mechanism and the recipient of service shall be liable to pay GST. Thus, Kapil and Co, shall be liable to pay GST under reverse charge mechanism. However, if GST is paid @ 12% by GTA, then Goods transport agency is liable to pay tax under forward charge mechanism.
Q2. State with reason, person liable to pay GST in each of following independent cases. Assume recipient is located in taxable territory.

1) Rental income received by Tamil Nadu State Government from renting an immovable property to Mannappa Pvt. Ltd. (Turnover of the company was Rs. 42 lakhs in the preceding F.Y.)

2) Legal Fees received by Mr. Sushrut, a senior advocate, from M/s. Tatva Trading Company having turnover of Rs. 50 lakhs in preceding F.Y.

3) XYZ & Co. provides security services to ABC Ltd. registered under GST.

Ans:

1) As per Entry 5A of Notification No. 13/2017-CT (Rate), in case of Services supplied by the Central Government, State Government, Union territory or local authority by way of renting of immovable property to a person registered under the CGST Act, 2017, the recipient registered under the CGST Act, 2017 will be liable to pay GST. Hence, Mannappa Pvt. Ltd. will be liable to pay GST under reverse charge mechanism.

2) Services provided by a senior advocate by way of legal services, directly or indirectly to any business entity located in the taxable territory, reverse charge mechanism is applicable and business entity is liable to pay GST. In this case M/s. Tatva Trading Company will be liable to pay GST.

3) Security services (services provided by way of supply of security personnel) provided by any person other than a body corporate to a registered person is liable to be taxed under reverse charge basis. Hence, ABC Ltd. registered under GST shall be liable to pay tax on the same.
PART 1: EXPORT OF GOODS

CONCEPT AND DEFINITION

1) “Export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India, (Section 2(5) of IGST Act, 2017] India is defined as extending to limits of its maritime zone, which is 200 nautical miles from the coastal baseline. This is far beyond the normal definition of India, which only includes its territorial waters, which in turn extend 12 miles from the baseline. Given the extended meaning of India, export would require that the goods must travel beyond 200 miles from the baseline in order to qualify as having been exported.

It may be noted that unlike in case of export of services, in case of export of goods there is no condition of receiving the payment in convertible foreign exchange.

2) Supply of goods where supplier located in India and the place of supply outside India - Deemed to be Inter-State Supply [Section 7(5)(a)]:

Supply of goods, when the supplier is located in India and the place of supply is outside India, shall be deemed to be a supply of goods in the course of inter-State trade or commerce.

Following aspects need to be noted:

(a) The movement of goods is alone relevant and not the location of the exporter/importer.

(b) Unlike export of services which requires fulfilment of certain conditions for a supply to qualify as 'export of services' like the nature of currency in which payment is required to be made, location of the exporter etc., export of goods doesn't require fulfilment of any such conditions.

EXPORT PROMOTION MEASURE

Exports are zero rated:

Export of goods will be treated as 'zero-rated supplies'. Accordingly, while no tax would be payable on such supplies, the exporter will be eligible to claim the corresponding input tax credits. It is relevant to note that the input tax credits would be available to an exporter even if the supplies were exempt supplies so long as the eligibility of the input taxes is established. The exporter may utilise such credits for discharge of other output taxes or alternatively, the exporter may claim a refund of such taxes.
Refund of taxes:

The exporter will be eligible to claim refund under the following situations:

1. He may export the goods upon payment of IGST and claim refund of such tax paid; or
2. He may export the goods under a Letter of Undertaking, without payment of IGST and claim refund of unutilized input tax credit.

However, refund is not eligible in the following cases —

- If the goods exported out of India are subjected to export duty; or
- If the supplier of goods or services or both avails of drawback in respect of central tax.

"Drawback" in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods. [Section 2(42)]
**Refund of integrated tax paid on goods or services exported out of India – RULE 96.**

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<th>RULES</th>
<th>APPLICABILITY</th>
<th>PROVISION</th>
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| Rule 96(1) | Shipping bill - Deemed to be refund claim | The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:  
(a) the person in charge of the conveyance carrying the export goods duly files departure manifest or an export manifest or an export report covering the number and the date of shipping bills or bills of export; and  
(b) the applicant has furnished a valid return in **FORM GSTR-3 or FORM GSTR-3B**, as the case may be. |
| Rule 96(2) | Details of export invoices to be transmitted electronically to ICEGATE | The details of the relevant export invoices in respect of export of goods contained in **FORM GSTR-1** shall be transmitted electronically by the common portal to the system designated by the Customs i.e. ICEGATE and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.  
**Claiming of refund, if due date of filing return extended:**  
Where the date for furnishing the details of outward supplies in **FORM GSTR-1** for a tax period has been extended, the supplier shall furnish the information relating to exports as specified in **Table 6A of FORM GSTR-1** after the return in **FORM GSTR-3B** has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs.  
The information in Table 6A furnished shall be auto-drafted in **FORM GSTR-1** for the said tax period. |
| Rule 96(3) | Processing of refund claim and crediting in bank account of Applicant | Upon the receipt of the information regarding the furnishing of a valid return in **FORM GSTR-3** or **FORM GSTR-3B**, as the case may be; from the common portal, the system designated by the Customs i.e. **ICEGATE** or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities. |
| Rule 96(4) | Cases where refund can be withheld | The claim for refund shall be withheld where,—
A request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of Section 54(10)/(11); or
The proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962. |
| Rule 96(5) | Intimation of withholding of refund | Where refund is withheld in accordance with the provisions of Rule 96(4)(a), the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal. |
| Rule 96(6) | Order for withholding of Refund | Upon transmission of the intimation under Rule 96(5), the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in **Part B of FORM GST RFD-07**. |
| Rule 96(7) | Sanction of withheld refund and passing of Refund Order | Where the applicant becomes entitled to refund of the amount withheld under Rule 96(4)(a), the concerned jurisdictional officer of central tax, State tax or Union territory tax, as the case may be, shall proceed to refund the amount after passing an order in **FORM GST RFD-06**. |
| Rule 96(8) | Bhutan Exports - Refund to Bhutan Government | The Central Government may pay refund of the integrated tax to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax. |
| Rule 96(9) | Refund form in respect of Services | The application for refund of integrated tax paid on the services exported out of India shall be filed in FORM GST RFD-01 and shall be dealt with in accordance with the provisions of Rule 89. |
| Rule 96(10) | Ineligible Supplies | The persons claiming refund of integrated tax paid on exports of goods or services should not have—

Received supplies on which the benefit of Notification No. 48/2017-CT dated 18-10-2017 [i.e. deemed exports] or Notification No. 40/2017-CT (Rate), dated 23-10-2017/ Notification No. 41/2017-IT (Rate), dated 23-10-2017 has been availed [i.e. concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) for supply of goods made to merchant exporters for export]; or

availed the benefit under Notification No. 78/2017 or 79/2017-Customs, dated 13-10-2017 [i.e. Imports of goods by EOU’s/ Advance Authorisation/EPCG schemes]. |

**PROCEDURE OF EXPORT OF GOODS OR SERVICES UNDER BOND OR LETTER OF UNDERTAKING – RULE 96A.**

| Rule 96A(1) | Furnishing of bond or Letter of Undertaking for export of goods or services | Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under Section 50(1) within a period of—

15 days after the expiry of 3 months or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or |
15 days after the expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the Reserve Bank of India.

**Rule 96A(2)**
Details of export invoices to be transmitted electronically to Customs Portal

The details of the export invoices contained in **FORM GSTR-1** furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.

**Claiming of refund, if due date of filing return extended**: Where the date for furnishing the details of outward supplies in **FORM GSTR-1** for a tax period has been extended in exercise of the powers conferred under Section 37 of the Act, the supplier shall furnish the information relating to exports as specified in **Table 6A of FORM GSTR-1** after the return in **FORM GSTR-3B** has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs.

The information in Table 6A furnished shall be auto-drafted in **FORM GSTR-1** for the said tax period.

**Rule 96A(3)**
Recovery of bond amount in case of failure to export goods within specified time limit

Where the goods are not exported within the time specified in Rule 96A(1) and the registered person fails to pay the amount mentioned in the said sub-rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of Section 79.

**Rule 96A(4)**
Restoration on payment of dues by Registered person

The export as allowed under bond or Letter of Undertaking withdrawn in terms of Rule 96A(3) shall be restored immediately when the registered person pays the amount due.

**Rule 96A(5)**
Furnishing of Letter of undertaking instead of bond - Conditions and

The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.

All registered persons are eligible to furnish a LUT in place of a bond except those who have been
Safeguards prosecuted for cases involving an amount exceeding Rs. 250 lakh. [Notification No. 37/2017-CT dated 04-10-2017]

Rule 96A(6) Applicability to supplies of goods or services to SEZ The provisions of Rule 96A(1) shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.

Clarification on furnishing of bond/ LUT : Circular No. 08/08/2017-GST dated 04-10-2017 as amended vide Circular No. 40/14/2018-GST dated 06-04-2018 & Circular No. 88/07/2019-GST dated 01-02-2019 has clarified the following with regard to furnishing of bond/LUT for export without payment of tax:

(a) Validity of LUT The LUT shall be valid for the whole financial year in which it is tendered.
Withdrawal of facility, if tax remains unpaid - After payment of dues, facility gets restored : However, in case the goods are not exported within the time specified in Rule 6A(1) of the CGST Rules (as specified above) and the registered person fails to pay the amount mentioned in the said sub-rule, the facility of export under LUT will be deemed to have been withdrawn.
If the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable IGST or under bond with bank guarantee.

(b) Form for bond/ LUT The registered person (exporters) shall fill and submit FORMGST RFD-11 on the common portal. An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online.

(c) Documents for LUT No document needs to be physically submitted to the jurisdictional office for acceptance of LUT.

(d) Acceptance of LUT/bond An LUT shall be deemed to have been accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. If it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish an LUT in place of bond, then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected ah initio.

(e) Bank guarantee Since the facility of export under LUT has been extended to all registered persons, bond is required to be furnished by those persons who have been prosecuted for cases involving an amount exceeding Rs. 250 lakh. A bond, in all cases, shall be accompanied by a bank
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<td><strong>(f) Clarification regarding running bond</strong></td>
<td>The exporters shall furnish a running bond where the bond amount would cover the amount of self-assessed estimated tax liability on the export. The exporter shall ensure that the outstanding integrated tax liability on exports is within the bond amount. In case the bond amount is insufficient to cover the said liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability. The onus of maintaining the debit/credit entries of integrated tax in the running bond will lie with the exporter. The record of such entries shall be furnished to the Central tax officer as and when required.</td>
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<td><strong>(g) Sealing by officers</strong></td>
<td>Till mandatory self-sealing is operationalized, sealing of containers, wherever required to be carried out under the supervision of the officer, shall be done under the supervision of the central excise officer having jurisdiction over the place of business where the sealing is required to be done. A copy of the sealing report would be forwarded to the Deputy/Assistant Commissioner having jurisdiction over the principal place of business.</td>
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<td><strong>(h) Realization of export proceeds in Indian Rupee</strong></td>
<td>All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan”. Further, section 2(6) of the IGST Act, 2017 allows realization of export proceeds of services in INR, wherever allowed by the RBI. Accordingly, it is clarified that the acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in India currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines.</td>
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<td><strong>(i) Jurisdictional officer</strong></td>
<td>In exercise of the powers conferred by Section 5(3) of the CGST Act, it is hereby stated that the LUT/Bond shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the LUT/bond before either the Central Tax Authority or the State Tax Authority till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.</td>
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Circular No. 45/19/2018- GST dated 30-05-2018

Furnishing of bond or Letter of Undertaking (LUT) is not required in the case of zero rated supply of exempted or non-GST goods.

Refund of unutilised ITC can be claimed by the exporter of exempted or non-GST goods:

- As per Section 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. Whereas, as per Section 2(47) of the CGST Act, exempt supply includes non-taxable supply. Further, as per Section 16(3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or letter of undertaking (LUT) or makes such supply on payment of integrated tax.

- However, in case of zero rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon.

It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax; LUT/bond is not required. Such registered persons exporting non GST goods shall comply with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any.

- The exporter would be eligible for refund of unutilized input tax credit of central tax, state tax, union territory tax, integrated tax and compensation cess in case of refund of Non- GST paid goods.

IGST @ 0.1% - SUPPLY OF GOODS TO EXPORTER FOR EXPORT

Conditions which are required to be satisfied for levy of IGST at concessional rate of 0.1% on supplies of goods to the exporter for export.

Merchant Exports: The Central Government has exempted the inter-State supply of taxable goods by a registered supplier to a registered recipient for export from so much of the integrated tax leviable thereon under Section 5 of the IGST Act, 2017, as is in excess of the amount calculated at the rate of 0.1% subject to fulfilment of the following conditions, namely:

1) Tax invoice:
   The registered supplier shall supply the goods to the registered recipient on a tax invoice;

2) Export within 90 days:
   The registered recipient shall export the said goods within a period of 90 days from the date of issue of a tax invoice by the registered supplier;

3) GSTIN of supplier in export documents:
   The registered recipient shall indicate the GSTIN of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be;
(4) **Receipient must be registered with EPC:**
The registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognised by the Department of Commerce;

(5) **Copy of Purchase order to jurisdictional Officer of Supplier:**
The registered recipient shall place an order registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;

(6) **Movement of goods:**
The registered recipient shall move the said goods from place of registered supplier -
(a) directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or
(b) directly to a registered warehouse from where the said goods shall be move to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported,

(7) **Aggregation of supplies at registered warehouse and then export:**
If the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;

(8) **Endorsement of tax invoice and acknowledgement from warehouse-keeper:**
In case of situation referred to in condition (vii), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and

(9) **Proof of export to be given to the supplier and his Jurisdictional Officer:**
When goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of GSTIN and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.
**EXPORT AND IMPORT**

**SPECIAL PROVISION FOR TOURIST**

Tourist means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes. *[Explanation to Section 15 of IGST Act, 2017]*

**Refund of integrated tax paid on supply of goods to tourist leaving India [Section 15 of IGST Act, 2017]:**

The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

**DUTY FREE SHOPS/DUTY PAID SHOPS**

**Procedure of Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist.**

Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist *[Rule 95A] [Inserted by Notification No. 31/2019-CT dated 28-6-2019 w.e.f. 1-7-2019]*:

(1) *Retail outlet established beyond the immigration counters of international airport entitlement to claim refund:*

Retail outlet established in departure area of an international airport, beyond the immigration counters, supplying indigenous goods to an outgoing international tourist who is leaving India shall be eligible to claim refund of tax paid by it on inward supply of such goods.

Outgoing international tourist shall mean a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes. *[Explanation]*
(2) **Application for refund:**
Retail outlet claiming refund of the taxes paid on his inward supplies, shall furnish the application for refund claim in FORM GST RFD- 10B on a monthly or quarterly basis, as the case may be, through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

(3) **Information relating to sales and purchase invoice to be submitted:**
The self-certified compiled information of invoices issued for the supply made during the month or the quarter, as the case may be, along with concerned purchase invoice shall be submitted along with the refund application.

(4) **Conditions to be fulfilled:**
The refund of tax paid by the said retail outlet shall be available if-
- (a) the inward supplies of goods were received by the said retail outlet from a registered person against a tax invoice;
- (b) the said goods were supplied by the said retail outlet to an outgoing international tourist against foreign exchange without charging any tax;
- (c) name and GSTIN of the retail outlet is mentioned in the tax invoice for the inward supply;
- (d) such other restrictions or conditions, as may be specified, are satisfied.

(5) **Order of refund as per Rule 92:**
The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.

<table>
<thead>
<tr>
<th>Circular No. 106/25/2019-GST dated 29-06-2019</th>
<th>Procedure for refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange</th>
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<td>(1) The Government vide notification no. 11/2019-Central Tax (Rate) and Notification No. 10/2019-Integrated Tax (Rate) dated 29.06.2019 issued in exercise of powers under section 55 of the CGST the retail outlets established at departure area of the international airport beyond immigration coun shall be entitled to claim refund of all applicable Central tax and Integrated tax paid by them on inward supplies of indigenous goods received by them for the purposes of subsequent supply of goods to outgoing international tourists.</td>
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<td>(2) <strong>Duty Free Shops and Duty Paid Shops</strong> : It has been recognized that international airports, house retail shops of two types -</td>
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<td>(a) Duty Free Shops&quot; (hereinafter referred to as &quot;DFS&quot;) which are point of sale for goods sourced from a warehoused licensed under Section 58A of the Customs Act, 1962 and</td>
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<td>(b) Duty paid indigenous goods and Duty Paid Shops' (hereinafter referred to as</td>
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"DPS") retailing duty paid indigenous goods.

(3) **Procurement and supply of imported/ warehoused goods as per Customs Act:**
The procedure for procurement of imported / warehoused goods is governed by the provisions contained in Customs Act. The procedure and applicable rules as specified under the Customs Act are required to be followed for procurement and supply of such goods.

(4) **Procurement of indigenous goods - on payment of applicable taxes:** Under GST regime there is no special procedure for procurement of indigenous goods for sale by DFS or DPS. Therefore, all indigenous goods would have to be procured by DFS or DPS on payment of applicable tax when procured from the domestic market.

(5) **Retail outlets to supply goods without payment of tax and claim refund of tax on purchases:** The retail outlets will supply such indigenous goods without collating any taxes from the eligible passenger and may apply for refund as per procedure explained in succeeding paragraphs.

(6) **Conditions for claiming refund by the retail outlets:**

(i) **Registration under CGST Act:** The retail outlets applying for refund shall be registered under the provisions of section 22 of the CGST Act read with the rules made thereunder and shall have a valid GSTIN.

(ii) **Location of retail outlets:** Such retail outlets shall be established at departure area of the international airport beyond immigration counters and shall be entitled to claim a refund of all applicable Central tax. State tax. Integrated tax, Union territory tax and Compensation cess paid by them on all inward supplies of indigenous goods received for the purposes of subsequent supply of such goods to the eligible passengers.

(7) **Procedure for applying for refunds:**

(i) **Maintenance of Records:** The records with respect to duty paid indigenous goods being brought to the retail outlets and their supplies to eligible passengers shall be maintained in specified format in

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**DEEMED EXPORT**

The Central Government vide Notification No. 48/2017-CT dated 18-10-2017 has notified the following supplies as deemed exports under Section 147 of the CGST Act, 2017 —

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<th>Description of supply</th>
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<td>Supply of goods by a registered person against Advance Authorisation. However, goods so supplied, when exports have already been made after availing input tax credit on inputs used in manufacture of such exports, shall be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a chartered accountant is submitted to the jurisdictional commissioner of GST or any other officer authorised by him within 6 months of such supply, No such certificate shall be required if input tax credit has not been availed on inputs</td>
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used in manufacture of export goods.

Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation.

Supply of goods by a registered person to Export Oriented Unit.

Supply of gold by a bank or Public Sector Undertaking specified in the Notification No. 50/2017-Customs, dated 30-06-2017 (as amended) Advance Authorisation.

Taxability of deemed exports:
Deemed exports are not zero rated supplies by default, unlike the regular exports. Hence, all supplies notified as supply for deemed export are subject to levy of taxes, i.e. such supplies can be made on payment of tax and cannot be supplied under a Bond/LUT. However, the refund of tax paid on the supply regarded as deemed export is admissible to either the supplier or the recipient. Thus, the application for refund has to be filed by the supplier or the recipient (subject to certain conditions) of deemed export supplies, as the case may be.

Refund of taxes in case of deemed exports [Explanation 1 to Section 54 of CGST Act, 2017]:
“Refund” includes refund of tax on the supply of goods regarded as deemed exports.

Relevant date [Explanation 2(b) to Section 54 of CGST Act, 2017]: The relevant date for filing refund claim of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished.

Evidence for claiming refund of taxes in case of deemed exports [Notification No. 49/2017-CT dated 18-10-2017]:
The following evidences which are required to be produced by the supplier of deemed export supplies for claiming refund, namely:-

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<th>Evidences</th>
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<td>1.</td>
<td>Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.</td>
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<tr>
<td>2.</td>
<td>An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.</td>
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<td>3.</td>
<td>An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.</td>
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Refund to supplier of deemed export supplies:
In case such refund is sought by the supplier of deemed export supplies, the documentary evidences as specified in Notification No. 49/2017-CT dated 18-10-2017 are also required to be furnished which includes an undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and that no input tax credit on such supplies has been availed of by him. The undertaking should be submitted manually along with the refund claim.

Refund to recipient of deemed export supplies:
Similarly, in case the refund is filed by the recipient of Deemed export supplies, an undertaking by the supplier of deemed export supplies that he shall not claim he refund in respect of such supplies is also required to be furnished manually.

PART 2: EXPORT OF SERVICES

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 or in Indian rupees wherever permitted by the Reserve Bank of India; 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. [Section 2(6) of IGST Act, 2017]

Deemed distinct persons [Explanation 1 to Section 8]:
Where a person has,—
(i) an establishment in India and any other establishment outside India;
(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
(iii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory,
then such establishments shall be treated as establishments of distinct persons.

Branch or agency or representational office to be regarded as establishment [Explanation 2 to Section 8]:
• A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.
• Thus, where a branch office/agency or representational office is situated in a place other than the head office, it will be considered as an establishment of a distinct person.

**Service supplied by establishment of person in India to own establishment out of India exempt** [Entrv No. 10E of Notification No. 9/2017-IT (Rate) both dated 28-6-2017 as inserted w.e.f. 27-7-2018] :
Service supplied by establishment of person in India to own establishment out of India is exempt, if place of supply is out of India.

**Supply of services where supplier is located in India and the place of supply is outside India - Deemed to be inter-State supply [Section 7(5)(a)]**: 
Supply of services, when the supplier is located in India and the place of supply is outside India, shall be deemed to be a supply of services in the course of inter-State trade or commerce.

**Export of services to be zero rated**: 
- Under the CST regime. Export of service will be treated as 'zero-rated supplies'. Accordingly, while no tax would be payable on such supplies, the exporter will be eligible to claim the corresponding input tax credits.
- It is relevant to note that the input tax credits would be available to an exporter even if supplies were exempt supplies as long as the eligibility of the input taxes as input tax credits is established.

### Circular No. 78/52/2018-GST dated 31-12-2018:

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<th>Issue</th>
<th>Clarification</th>
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| In case of an exporter of services outsources a portion of the services contract to another person located outside India, what would be the tax treatment of the said portion of the contract at the hands of the exporter? There may be instances where the full consideration for the outsourced services is not received by the exporter in India. | Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, the following two supplies are taking place: -
(a) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contact value;
(b) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced portion of the contract. Thus, the total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all the conditions laid down in section 2(6) of the IGST Act, 2017 read with section 13(2) of the IGST Act are satisfied. |
Supplier liable to pay IGST on import of services under RCM and entitled for ITC: It is clarified that the supplier of services located in India would be liable to pay IGST on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India. Furthermore, the said supplier of services located in India would be eligible for taking ITC of the IGST so paid.

Consideration of service paid outside India to supplier of outsourced services - its deemed receipt in India for purpose of export of service: Thus, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that the recipient of services located outside India has directly paid to the supplier of services located outside India (for the outsourced part of services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, provided the:

(a) IGST has been paid by the supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India; and

(b) RBI by general instruction or by specific approval has allowed that part of the consideration for such exports can be retained outside India.

Illustration: ABC Ltd. India has received an order for supply of services amounting to $500,000/- to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person viz. ABC Ltd. India in accordance with the Explanation 1 in section 8 of the IGST Act) to supply a part of the services (say 40% of the total contract value).

ABC Ltd. India shall be the exporter of services for the entire value if the invoice for the entire amount is raised by ABC Ltd. India. The services provided by XYZ Ltd. Mexico to the US based client shall be import of services by ABC Ltd. India and it would be liable to pay IGST on the same under reverse charge and also be eligible to take ITC of the IGST so paid.

Further, if the provisions contained in section 2(6) of the IGST Act are not fulfilled with respect to the realization of convertible foreign exchange, say only 60% of the consideration is received in India and the remaining amount is directly paid by the US based client to XYZ Ltd. Mexico, even in such a scenario, 100% of the total contract value shall be taken as consideration for the export of services by ABC Ltd. India provided IGST on import of services has been paid on the part of services provided by XYZ Ltd Mexico directly to the US based client and RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India. In other words, in such cases, the export benefit will be available for the total
realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.

### Clarification on doubts related to supply of information Technology enabled Services (ITeS services) [Circular No. 107/26/2019-GST dated 18-07-2019]

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<th>Issue</th>
<th>Clarification</th>
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<td>1. Whether Supplier of information technology based services (ITeS services) to overseas entities comes within the ambit of “intermediary”?</td>
<td>The definition of intermediary as given under section 2(13) of the IGST Act, 2017 inter alia provides specific exclusion of a person who supplies goods or services or both or securities on his own account. Therefore, the supplier of services would not be treated as ‘intermediary’ even where the supplier of services qualifies to be ‘an agent/broker or any other person’ if he is involved in the supply of services on his own account. “Information technology enabled services” means the following business process outsourcing services provided mainly with the assistance or use of information technology, namely: — (i) back office operations; (ii) call centres or contact centre services; (iii) data processing and data mining; (iv) insurance claim processing; (v) legal databases; (vi) creation and maintenance of medical transcription excluding medical advice; (vii) translation services; (viii) payroll; (ix) remote maintenance; (x) revenue accounting; (xi) support centres; (xii) website services; (xiii) data search integration and analysis; (xiv) remote education excluding education content development; or (x) clinical database management services excluding clinical trials, but does not include any research and development services whether or not in the nature of contract. There may be various possible scenarios when a supplier of ITeS services located in India supplies services for and on behalf of a client located abroad. These scenarios have been examined and are being discussed in detail hereunder:</td>
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Scenario-I: The supplier of ITeS services supplies back and services. In such a scenario, the supplier will not fall under the ambit of intermediary under section 2(13) of the IGST Act where these services are provided on his own account by such supplier. Even where a supplier ITeS services to customers of his clients on clients’ behalf, but actually supplies these services on his own account, the supplier will not be categorized as intermediary. In other words, a supplier “A” supplying services as specified above, on his own account to his client “B” or to the customer “C” of his client would not be intermediary in terms of section 2(13) of the IGST Act.

Scenario –II: The supplier of back-end services located in India arranges or facilitates the supply of goods or services or both by the client located abroad to the customers of client. Such back-end services may include support services, during pre-delivery, delivery and post-delivery of supply (such as order placement and delivery and logistical support, obtaining relevant Government clearances, transportation of goods, post-sales support and other services, etc.). The supplier of such services will fall under the ambit of intermediary under section 2 (13) of the IGST Act as these services are merely for arranging or facilitating the supply of goods or services or both between two or more persons. In other words, a supplier “A” supplying back-end services as mentioned in this scenario to the customer “C” of his client “B” would be intermediary in terms of section 2(13) of the IGST Act.

Scenario - III: The supplier of ITeS services supplies back end services, as listed above, on his own account along with arranging or facilitating the supply of various support services during pre-delivery, delivery and post-delivery of supply for and on behalf of the client located abroad. In this case, the supplier is supplying two set of services, namely ITeS services and various support services to his client or to the customer of the client. Whether the supplier of such services would fall under the ambit of intermediary under section 2(13) of the IGST Act will depend on the facts and circumstances of each case. In other words, whether a supplier “A”
supplying services listed above as well as support services listed in Scenario -II above to his client "B" and/or to the customer "C" of his client is intermediary or not in terms of section 2(13) ot the IGST Act would have to be determined in facts and circumstances of each case and would be determined keeping in view which set of services is the principal / main supply.

2. Can the supplier of ITeS services claim the benefits of export of services?

The supplier of ITeS services, who is not an intermediary in terms of section 2(13) of the IGST Act, can avail benefits of export of services if he satisfies the criteria mentioned in section 2(6) of the IGST Act.

Case law

In Re: Global Reach Education Services (P.) Ltd. [2018] 92 taxmann.com 211 (AAR-West Bengal)

Where the applicant was facilitating recruitment/enrolment of students to foreign Universities and promotional services were only incidental and ancillary to above principal supply; and applicant was paid consideration in form of commission based on performance in recruiting students, as a percentage of tuition fee collected from students enrolled through applicant; the applicant, therefore, represented University in territory of India and acted as its recruitment agent. Accordingly applicant's service to foreign universities did not qualify as 'Export of Services' and were therefore, taxable under GST.

Thus, whatever services were provided by applicant were only as a representative of University and not as an independent service provider.

Question on which Ruling sought:

The Applicant, an Overseas Education Advisory service provider, promoting courses of foreign universities among prospective students seeks a ruling on whether the service provided to the Universities abroad is to be considered “export” u/s 2(6) of the IGST Act, 2017, and, therefore, a zero-rated supply?

Applicant's contention:

- The services are provided to the foreign universities and consideration received in convertible foreign exchange.
- The service recipient is located outside India and is not an establishment of a distinct person in accordance with Explanation 1 to Section 8 of the IGST Act.
- The applicant contends that it is an independent service provider. In other words, it is not providing any intermediary service. The place of supply should, therefore, be determined under section 13(2) and not under section 13(8)(b) of the IGST Act.

21.20
Act. The place of supply should, therefore, be the location of the recipient outside India. This being the case, its service to the foreign universities should be treated as export within the meaning of section 2(6) of the IGST Act.

- **The concerned officer objected to admission of the application on the ground that determination of the place of supply is beyond the jurisdiction of the Advance Ruling Authority.**

**Ruling given:**

- The objection of the concerned officer appears misplaced. Although place of supply is an context is in determining whether a provisioning of service qualifies as export, the issue, in the present not determination of place of supply, but whether the applicant is providing the recipient an intermediary service and making a taxable supply of service and liable to pay tax thereon. Advance ruling is admissible on this question under section 97(2)(a) & (e) of the GST Act.

- After detailed examination of the agreement between the applicant and foreign university, the authority observed that the main service provided by the applicant is facilitating recruitment of students and the consideration is paid as commission on the basis of course fee and recruitment through the applicant. Promotion of the courses is incidental to the above principal supply.

- In fact, the Applicant is not allowed to undertake any promotional or advertising activity without prior written approval from the University. Apart from the above consideration received from the University, the Applicant is not allowed to receive any fees or charges from the students or deduct anything from the charges or fees payable by the students to the University.

- The Applicant, therefore, represents the University in the territory of India and acts as its recruitment agent. It is, therefore, clear that whatever services the applicant provides is only as a representative of the University and not as an independent service provider.

- Being an intermediary service provider, the place of the Applicant’s supply shall be determined under section 13(8)(b) of the IGST Act and not under section 13(2) of the IGST Act. The place of supply under the above legal framework is the territory of India. As the place of supply is not outside India, the Applicant’s service to the foreign universities does not qualify as “Export of Services”, and is, therefore, taxable under the GST Act.

**Q1 - RST Inc.**, a corn chips manufacturing company based in USA, intends to launch its products in India. For this purpose, RST Inc. has approached ABC Consultants, Mumbai, (Maharashtra) to carry out a survey in India to enable it to make changes, if any, in its products to suit Indian taste.

The survey is to be solely based in the oral replies of the surveyees; they will not be provided any sample by RST Inc. to taste. ABC consultants will be paid in convertible foreign exchange for the assignment.
With reference to the provisions of GST law, determine the place of supply of the service. Also, explain whether the said supply will amount to export of service? (RTP May, 2018)

Ans: As per Section 13(2) of the IGST Act, 2017, in case where the location of the supplier of services or the location of the recipient of services is outside India, 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-sections (3) to (13) provide the mechanism to determine the place of supply in certain specific situations.

The given case does not fall under any of such specific situations and thus, the place of supply in this case will be determined under Section 13(2). Thus, the place of supply of services in this case is the location of recipient of services i.e., USA.

As per Section 2(6) of the IGST Act, 2017, 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;
(3) the place of supply of service is outside India;
(4) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
(5) 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.

Since all the above 5 conditions are fulfilled in the given case, the same will be considered as an export of service.
PART 3: ZERO RATED SUPPLY

Concept of zero-rating:
- By zero rating it is meant that the entire value chain of the supply is exempt from tax.
- This means that in case of zero rating, not only is the output exempt from payment of tax,
- there is no bar on taking/availing credit of taxes paid on the input side for making/providing the output supply.

What is zero rated supply
Exports and supplies to SEZ units/developers are zero rated. Supply to SEZ units/developers is zero-rated in the same manner as is applicable for the physical exports.

Manner of implementing zero rating:
A) The taxes paid on the supplies which are zero rated are refunded;
(c) The credit of inputs/ input services used in supplying the zero rated supply is allowed;
(d) Wherever the supplies (which are zero rated) are exempted, or the supplies are made without payment of tax, the taxes paid on the inputs or input services, i.e. the unutilised ITC is refunded. Thus, even if a zero rated supply is exempt, the credit of input tax may be availed.

MANNER OF REFUND
A registered person making zero rated supply can claim refund under either of the following options, namely:
(a) he may supply goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST and claim refund of unutilised ITC; or
(b) he may supply goods and/or services on payment of IGST and claim refund of such tax paid on goods and/or services supplied.

Circular No. 01/2017 dated 26-07-2017
has clarified that the provisions of section 16 relating to zero rated supply will apply to GST Compensation Cess also. Hence,
(i) exporters can claim refund of GST Compensation Cess paid on goods exported by him, or
(ii) GST Compensation Cess will not be charged on goods exported under bond or LUT and he will be eligible for refund of ITC of GST Compensation Cess relating to goods exported.
Difference between Zero-rated supplies and exempt supplies:
The difference between zero rated supplies and exempted supplies is tabulated as below

<table>
<thead>
<tr>
<th>Exempted Supplies</th>
<th>Zero rated supplies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Meaning</strong></td>
<td>Exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply.</td>
</tr>
<tr>
<td></td>
<td>Zero-rated supply means – (i) export of goods and/or services or (ii) supply of goods and/or services to SEZ unit/SEZ developer.</td>
</tr>
<tr>
<td><strong>Taxability</strong></td>
<td>No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed.</td>
</tr>
<tr>
<td></td>
<td>No tax on the outward supplies; Input supplies also to be tax free.</td>
</tr>
<tr>
<td><strong>ITC</strong></td>
<td>Credit of input tax needs to be reversed, if taken. No ITC on the exempted supplies.</td>
</tr>
<tr>
<td></td>
<td>Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply. ITC allowed on zero rated supplies.</td>
</tr>
<tr>
<td><strong>Valuation</strong></td>
<td>Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.</td>
</tr>
<tr>
<td></td>
<td>Value of zero rated supplies shall be added along with the taxable supplies for apportionment of ITC.</td>
</tr>
<tr>
<td><strong>Documents</strong></td>
<td>A registered person shall issue, instead of a tax invoice, a bill of supply.</td>
</tr>
<tr>
<td></td>
<td>Normal tax invoice shall be issi</td>
</tr>
</tbody>
</table>

PROVISION OF SECTION 16

Section 16(1)  Zero rated supply

"Zero rated supply" means any of the following supplies of goods or services or both, namely;-
(a) Export of goods or services or both; or
(b) Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Section 16(2)  Input tax credit eligible in respect of Zero Rated Supplies

Subject to the provisions of Section 17(5) of the CGST Act, credit of input tax may be availed for making zero-rated supplies, reenwhstanding that such supply may be an exempt supply.

Section 16(3)  Refund of Taxes

A registered person making zero rated supply shall be eligible to claim mnd under either of the

21.24
following options, namely:
(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or
(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of Section 54 of the CGST Act or the rules made thereunder.

Transactions with EOUs:
- Zero rating is not applicable to supplies to EOUs and there is no special for them under GST regime.
- Therefore, supplies to EOUs are taxable like any other taxable supplies.
- EOUs, to the extent of exports, are eligible for zero rating like any other exporter [Circular No 8/8/2017-GST dated 04-10-2017 as amended vide Circular No. 40/14/2018-GST dated 06-04-2018].

Circular No. 48/22/2018-GST
dated 14-06-2018

Whether the benefit of zero rated supply can be allowed to all Procurements by a SEZ developer or a SEZ unit as event management Services, hotel and accommodation services, consumables etc.
- A conjoint reading of Section 16(1) of IGST Act, 2017, read with Rule 89(1) of CGST Rules, 2017, reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized input tax credit or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone.
- Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.
Refund in case of Zero rated supply of goods or services.

Refund in case of Zero rated supplies [Rule 89(4)]:
In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of Section 16(3) of the IGST Act, 2017, refund of input tax credit shall be granted as per the following formula:

Refund amount = \[
\frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover, of zero - rated supply of services})}{\text{Adjusted Total Turnover}}
\]

Where,-

(A) “Refund amount” means the maximum refund that is admissible;
(B) “Net ITC” means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under Rule 89(4A) or (4B) or both;
(C) “Turnover of zero-rated supply of goods” means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under Rule 89(4A) or (4B) or both;
(D) “Turnover of zero-rated supply of services” means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) Adjusted Total Turnover" means the sum total of the value of -
(a) the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and
(b) the turnover of zero-rated supply of services determined in terms of (D) above and non-zero-rated supply of services,
excluding -
(i) the value of exempt supplies other than zero-rated supplies; and
(ii) the turnover of supplies in respect of which refund is claimed under rule 89(4A)/(4B) or both, if any, during the relevant period.
(F) "Relevant period" means the period for which the claim has been filed.

Circular No. 37/11/2018 GST dated 15-03-2018 has clarified that the relevant period has been defined in the context of the refund claim and is not linked to a tax period. The exporter, at his option, may file refund claim for one calendar in month/quarter or by
clubbing successive calendar months/quarters. The calendar month(s)/quarter(s) for which refund claim has been filed, however, cannot spread across different financial years.

**Refund of ITC on inputs and input services other than those for which benefit of Deemed Exports Claimed [Rule 89(4A)]:**

In case of supplies received on which the supplier has availed the benefit of Notification No. 48/2017 CT dated 18-10-2017 (i.e., where supplier has claimed refund of tax paid on deemed exports), refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

**[Note: In case of deemed exports, refund application can be made either by the recipient of deemed export supplies or by the supplier of deemed export supplies if the recipient does not claim ITC on such goods and gives an undertaking that the supplier may claim the refund.)**

**Refund of Input tax credit in Specified Situations (Rule 69(4B)):**

- In case of supplies received on which the supplier has availed the benefit of Notification No. 40/2017-CT (R) dated 23-10-2017/Notification No. 40/2017 CT (R) dated 23-10-2017 (concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST 0.1% IGST) for supply of goods made to merchant exporters for export) or
- Notification No. 78/2017-Cus dated 13-10-2017/Notification No 79/2017-Cus dated 13-10-2017 (imports of goods by EOUs/Advance Authorisation/EPCG schemes), or
- all of them, refund of input tax credit, availed in respect of inputs received under the said notifications for expert of inputs or input services to the extent used in making such export of goods, shall be granted.

**Amount refunded as ITC to be debited in Electronic Credit Ledger [Rule 89(3)]:**

Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

**Q2 - M/s. Kalaji Manufactures & Exporters Pvt. Ltd. furnishes following information and requests you to compute the maximum refund eligible in respect of Zero-rated supplies for the relevant period:**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Input tax credit availed on inputs</td>
<td>2,50,000</td>
</tr>
<tr>
<td>(ii) Input tax credit availed on input services</td>
<td>50,000</td>
</tr>
<tr>
<td>(iii) Input tax credit availed on capital goods</td>
<td>2,00,000</td>
</tr>
<tr>
<td>(iv) Taxable value of goods exported without payment of tax</td>
<td>15,00,000</td>
</tr>
<tr>
<td>(v) Taxable value of goods supplied within India</td>
<td>35,00,000</td>
</tr>
<tr>
<td>(vi) Payments received towards services supplied for exports (includes Rs. 50,000 of advance towards services to be supplied/exported after the</td>
<td>5,50,000</td>
</tr>
</tbody>
</table>
current relevant period)

| (vii) | Taxable value of services supplied within India | 5,00,000 |

**Solution: Computation of maximum refund admissible in respect of Zero-rated supplies (amount in Rs.):**

| (i)   | Net ITC i.e. input tax credit availed on inputs and input services during the relevant period [Rs. 2,50,000 + Rs. 50,000] | 3,00,000 |
| (ii)  | Turnover of zero-rated supply of goods i.e. value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking | 15,00,000 |
| (iii) | Turnover of zero-rated supply of services (advance received towards services to be supplied/exported after the current relevant period shall not be included, hence: Rs. 5,50,000 – Rs. 50,000) | 5,00,000 |
| (iv)  | Adjusted Total Turnover  
Turnover in State of goods and services [Rs. 35,00,000 + Rs. 5,00,000] | 40,00,000  
Value of Zero rated supplies of goods and services (as computed above) | 60,00,000  
20,00,000 |
| (v)   | Maximum refund = [(Item(ii) + Item(iii) ÷ Item(iv)) × Item(i)] | 1,00,000 |
PART 4: IMPORT OF GOODS

Import of goods and/or services - Deemed to be inter-State supply:
- “Import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India. [Section 2(10) of IGST Act, 2017]
- Section 7 of the IGST Act stipulates that import of goods/services into the territory of India shall be treated as supply of goods/services in the course of inter-State trade or commerce.
- Resultantly, import of goods or services will be treated as deemed inter-state supplies and would be subject to integrated tax.

Place of supply of goods imported into India [Section 11 of IGST Act, 2017]:
The place of supply of goods, imported into India shall be the location of the importer.

IGST on import of goods [Proviso to Section 5 of IGST Act, 2017]:
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 Customs Tariff Act, 1975
- At the point when duties of customs are levied on the said goods u/s 12 of the Customs Act, 1962.

Value for purpose of levy of Integrated tax:
Further, the value of the goods for the purpose of levying integrated tax shall be,
- Assessable value
- plus Customs Duty levied under the Act, and
- any other duty chargeable on the said goods under any law for the time being in force as an addition to, and in the same manner as, a duty of customs.

The value of the imported article for the purpose of levying cess shall be,
- assessable value
- plus Basic Customs Duty levied under the Act, and
- any sum chargeable on the goods under any law for the time being, in force as an addition to, and in the same manner as, a duty of customs.
- The integrated tax paid shall not be added to the value for the purpose of calculating cess.

In cases where imported goods are liable to Anti-Dumping Duty or Safeguard Duty, value for calculation of IGST as well as GST Compensation Cess also includes Anti-Dumping Duty and Safeguard duty.
Integrated tax on warehoused goods:

- The supply of goods before their clearance from the warehouse would not be subject to the levy of IGST and the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse.

- Further, value of such in-bond sales is not included in the value of exempt supply for the purpose of reverse of ITC under rules 42 and 43 of CGST Rules [Explanation to section 17(3) of the CGST Act].

| Value for levying IGST in case of supply of warehoused goods | Transaction value (Sale value) OR Value determined at the time of filing into-bond bill of entry u/s 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess | WHICHEVER IS HIGHER |

- If goods are sold more than once while being deposited in the warehouse, the last transaction value is taken as the transaction value for the purpose of determining the value for levying IGST in the manner given above.

- If only a part of the goods are sold, the two values that are to be compared are –
  
  (i) transaction value of the goods sold and
  
  (ii) proportionate value (of the goods sold) determined at the time of filing into-bond bill of entry under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.

- The remaining goods (which are not sold) are assessed on the value determined under section 14 of the Customs Act plus basic customs duty and any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.

- One more issue connected with the above point is that whether such sale of warehoused goods can be considered as an “exempt supply” so as to trigger input tax credit reversal u/s 17(2) of CGST Act, 2017.

- It may also be noted that an amendment has also been made under Section 17(3) of CGST Act, 2017 to the effect that the transactions specified in Schedule-III (which includes the newly inserted entries) except sale of land and sale of building post completion shall not be included for the purpose of input tax credit reversal.

Input tax credit of integrated tax:

- Input tax credit of the integrated tax paid at the time of import shall be available to the importer

- GST Compensation Cess paid on import of goods is also available as ITC.
• The ITC of GST Compensation Cess, however, can only be used for payment of GST Compensation Cess.
• The Basic Customs Duty (BCD) and social welfare surcharge, shall however, not be available as input tax credit.

**Taxability of goods imported by SEZ:**
Goods imported by a unit or a developer in the Special Economic Zone (SEZ) for authorized operations are exempted from the whole of IGST leviable under section 3(7) of the Customs Tariff Act, 1975 vide Notification No. 64/2017 Customs dated 05-07-2017.

**Taxability of goods imported by EOU:**
Goods imported by Export Oriented Undertaking (EOU) attract liability to customs duty. Import of goods by 100% EOU’s are governed by Notification No. 52/2003-Cus (exempt from Customs duties, IGST & GST Compensation Cess) under the said notifications. However, exemption from IGST and GST Compensation Cess is available only till 31-03-2020.

**Import as baggage:**
Passenger baggage is exempted from IGST as well as GST Compensation Cess. The basic custom duty at the rate of 35% and the applicable social welfare surcharge is leviable on the value which is in excess of the duty free allowances provided under the Baggage Rules, 2016.

**Registration for importer of goods:**
• Reverse charge provisions do not cover importers of goods.
• Importers are also not listed among the categories of persons in section 24 of the CGST Act for whom registration is compulsory.
• However, all importers are required to quote GSTIN in the bill of entry for the purpose of payment of IGST on import of goods as also for availing ITC of such IGST.

**Registration in case of import of exempted goods:**
In terms of section 23 of the CGST Act, persons engaged exclusively in the supply of goods (import and export) that is either not liable to tax or is wholly exempt from tax under the CGST or IGST Acts are not required to obtain registration. In such cases, PAN (which is authorized as IEC by DGFT) of the importer and exporter would suffice. [Instruction No. 10/2017-Cus dated 06-07-2017]
PART 5: IMPORT OF SERVICES

Import of services means 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. [Section 2(11) of IGST Act, 2017]

Thus, only where the location of supplier is outside India but the location of recipient and the place of supply is in India, it shall qualify as import of services.

Import of service - Deemed to be Inter-State Supply (Section 7(4)):

• Supply of services imported into the territory of India shall by treated to be a supply of services in the course of Intio-State trade or commerce.

Person liable to pay tax in case of Importation of service:

• In case of importation of service, the recipient of imported service who is located in India (other than non-taxable online recipient of OIDAR service) is the person who has to pay IGST on the service under reverse charge [Section 5(3) of the IGST Act read with serial number (1) of Notification No. 10/2017 IGST (R) dated 28-06-2017].

• In case of services supplied by a person located outside India by way of transportation of goods by a vessel from a place outside India upto the custom station of clearance in India, IGST is to be paid by the importer located in India.

• In other words, in case of foreign shipping lines providing inbound transportation of goods (from a place outside India upto the customs station of clearance in India), IGST is to be paid by the importer [Section 5(3) of the IGST Act read with serial number (10) of Notification No. 10/2017 IGST (R) dated 28-06-2017].

• In case of importation of OIDAR services by a non-taxable online recipient, supplier of OIDAR services is liable to pay IGST.

• In case of importation of notified services through ECO, ECO is liable to pay IGST.

ITC of IGST paid on importation of services:

• Unlike IGST on importation of goods, IGST on importation of services is not specifically included in the definition of input tax vide a separate clause.

• Hence, IGST on importation of services is included within the ambit of IGST leviable on other inter-State supplies, i.e. under clause (c) of section 2(62) of the CGST Act.

• Therefore, IGST paid on importation of services is available as ITC at par with IGST paid on any other supply subject to conditions and restrictions prescribed under sections 16 and 17 of the CGST Act for availing such credit.

Registration for importer of services:

• Section 24(iii) of the CGST Act mandates compulsory registration for persons, without any benefit of the threshold limit for registration, who are required to pay tax under reverse charge.
• Accordingly, importer of services who are required to pay IGST under reverse charge
  have to obtain compulsory registration under GST law so as to be able to pay tax on
  imported services under reverse charge.
• Thus, recipient of imported services other than non-taxable online recipient must
  register compulsorily.

*************************************************************************
## CHAPTER 23 - PLACE OF SUPPLY

### PART 1: DEFINITIONS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Place of supply</strong></td>
<td>It means the place of supply as referred to in Chapter V of the Integrated Goods and Services Tax Act. [<em>Section 2(86)</em>]</td>
</tr>
</tbody>
</table>
| **Location of the supplier of services** | It means,—  
(a)  where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;  
(b)  where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the **location of such fixed establishment**;  
(c)  where a supply is made from more than one establishment, whether the place of business or fixed establishment, the **location of the establishment most directly concerned with the provisions of the supply**; and  
(d) in absence of such places, the location of the **usual place of residence of the supplier**. [*Section 2(71) of CGST Act, 2017 & Section 2(15) of IGST Act, 2017*]  
Broadly, it is the registered place of business or the fixed establishment of the supplier from where the supply is made. Sometimes, a service provider has to go to a client location for providing service. However, such place would not be considered as the location of the supplier. It has to be either a regular place of business or a fixed establishment, which is having sufficient degree of permanence and suitable structure in terms of human and technical resources.  
**Note:** It must be noted that the term 'location of supplier of goods' has not been defined in the Act. |
| **Location of the recipient of services** | It means, —  
(a)  where a supply is received at a place of business for which the registration has been obtained, the **location of such place of business**;  
(b)  where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the **location of such fixed establishment**;  
(c)  where a supply is received at more than one establishment, whether the place of business or fixed establishment, the **location of the establishment most directly concerned** |
with the receipt of the supply; and

(d) in absence of such places, the location of the **usual place of residence of the recipient.** [Section 2(70) of CGST Act, 2017 & Section 2(14) of IGST Act, 2017]

**Note:** It must be noted that the term 'location of recipient of goods' has not been defined in the Act.

<table>
<thead>
<tr>
<th>Place of business</th>
<th>Includes—</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or</td>
<td></td>
</tr>
<tr>
<td>(b) a place where a taxable person maintains his books of account; or</td>
<td></td>
</tr>
<tr>
<td>(c) a place where a taxable person is engaged in business through an agent, by whatever name called. [Section 2(85)]</td>
<td></td>
</tr>
</tbody>
</table>

**Note:** This is an inclusive definition and is applicable for both goods and services.

<table>
<thead>
<tr>
<th>Fixed establishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>It means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of <strong>human and technical resources</strong> to supply services, or to receive and use services for its own needs. [Section 2(50) of CGST Act, 2017 &amp; Section 2(7) of IGST Act, 2017]</td>
</tr>
</tbody>
</table>

Thus, following points are relevant—

(i) it is a place other than the registered place of business;

(ii) it has sufficient human and technical resources to supply and receive services, thus it is also a place of business;

(iii) temporary presence of staff by way of a short visit at a place cannot be called as fixed establishment;

(iv) the number of staff at a location is irrelevant and only the adequacy of the arrangement of human and technical resources to carry out the activities is to be considered;

(v) permanent nature of the arrangement and location need to be considered.

<table>
<thead>
<tr>
<th>Usual place of residence</th>
</tr>
</thead>
<tbody>
<tr>
<td>It means —</td>
</tr>
<tr>
<td>(a) in case of an individual, the <strong>place where he ordinarily resides;</strong></td>
</tr>
<tr>
<td>(b) in other cases, the <strong>place where the person is incorporated</strong> or otherwise legally constituted. [Section 2(113)]</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Address of delivery</th>
</tr>
</thead>
<tbody>
<tr>
<td>It means the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both. [Section 2(2)]</td>
</tr>
</tbody>
</table>
**PLACE OF SUPPLY**

| Address on record | It means the address of the recipient as available in the records of the supplier. [Section 2(3)] |

**Note: Determination of establishment Most Directly Concerned with the Supply:**

Normally in the case of multiple establishments of a person, it will be the establishment that actually supplies, or receives (*i.e. uses or consumes*), a service that would be treated as 'directly concerned' with the supply of service, notwithstanding the contractual position, or invoicing or payment.

Further, the same will depend on the facts and supporting documentation, specific to each case. The documentation will include the following:

- the contract(s) between the supplier of service and receiver;
- where there are no written contracts, any written account (documents, correspondence/e-mail etc.) between parties which sets out in detail their understanding of the oral contract;
- in particular, for suppliers, from which establishment the services are actually supplied;
- in particular, for receivers, at which establishment the services are actually consumed, effectively used or enjoyed;
- details of how the business fits into any larger corporate structure;
- the establishment whose staff is actually involved in the execution of the job;
- performance agreements (which may be indicative both of the substance and actual nature of work performed at a particular establishment).

**PART 2: INTER-STATE SUPPLIES**

According to Section 7 of the IGST Act, 2017, the broad principles for determining the supply of goods and services in the course of inter-state trade or commerce are:

**With reference to goods:**

Where location of the supplier and 'place of supply' are in different States/Union territories - Inter-State Supply [Section 7(1)]:

Supply of goods where—

- location of the supplier’ and
- 'place of supply’

are in—

(a) **two different States**;
(b) two different Union territories; or
(c) a **State and a Union territory**, shall be treated as a supply of goods in the course of **inter-State trade or commerce**.
Section 7(1) is subject to the provisions of Section 10:

Section 7(1) is subject to the provisions of Section 10, it implies that the place of supply of goods shall be determined as per Section 10 of the IGST Act and thereafter, Section 7(1) would be applied.

Import of goods - Deemed to be inter-State Supply [Section 7(2)]:

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.

"Customs frontiers of India" means the limits of a customs area as defined in Section 2 of the Customs Act, 1962,

"Customs area" means,—

- the area of a customs station or a warehouse; and
- includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities, [Section 2(11)]

Location of Supplier of Goods:

Unlike in the case of services, location of supplier of goods is a term that is not defined in the law. This is not an oversight of the draftsmen but a deliberate intention of the lawmakers to leave it to the facts of each case to determine the 'location of supplier of goods'.

The location of supplier of goods is more accurately determined by the physical point where the goods are located under the control of the person wherever incorporated or registered, ready to be supplied instead of relying on a superfluous fact of the registered place of business.

For example:

If a company incorporated in Delhi were to place purchase order on a manufacturer in Maharashtra to produce certain articles and sell it on ex-works basis with instructions to retain it until further instructions. This would be a case where the manufacturer in Maharashtra would like to charge IGST because the purchase order is from a customer in Delhi. In this supply, the location of supplier is Maharashtra and place of supply is also Maharashtra. Therefore, the manufacturer is required to charge CGST/SGST because this supply does not involve any movement and due to the instructions (or lapse of time) delivery is complete in Maharashtra itself.

Now, if instructions are subsequently issued to dispatch the goods to a warehouse in Madhya Pradesh, the supply by the manufacturer having been completed long before these dispatch instructions are received, there is a new supply emerging from Maharashtra to Madhya Pradesh but the supplier in this instance will be the Company in
Delhi and not by the manufacturer supplier in Maharashtra. In this new supply, the location of supplier can either be Delhi - registered place of business - or Maharashtra - the physical point where the goods are situated. The company in Delhi that collects delivery of the goods in Maharashtra and supplies them from Maharashtra to Madhya Pradesh must be liable to pay IGST on this supply.

If however, the delivery by the manufacturer is not completed ex-works but retained to be delivered to Madhya Pradesh at the instruction of the customer in Delhi then it would be a case of supply from Maharashtra to Delhi and from Delhi to Madhya Pradesh.

**With reference to services:**

Where 'location of the supplier' and 'place of supply' are in different States/ Union territories - Inter-State Supply [Section 7(3)]:

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) a State and a Union territory,

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

**Section 7(3) is subject to the provisions of Section 12:**

Section 7(3) is subject to the provisions of Section 12, it implies that the place of supply of services shall be determined as per Section 12 of the IGST Act and thereafter, Section 7(3) would be applied.

**Import of service - Deemed to be inter-State supply [Section 7(4)]:**

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.

**Supply of goods where supplier located in India and the place of supply outside India - Deemed to be inter-State supply [Section 7(5) (a)]:**

Supply of goods and/or services, when the supplier is located in India and the place of supply is *outside India*, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

**Supply of goods/ and or services - to/by SEZ developer/ unit - Deemed to be inter-State supply [Section 7(5) (b)]:**

Supply of goods and/or services to or by a SEZ developer or an SEZ unit, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.
Supply of goods/ and or services - Not being an intra-State supply - Deemed to be inter-State supply [Section 7(5)(c)]:

Supply of goods or services or both, 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.

Thus, from the above discussion the following supplies shall be inter-State supplies:

1. Supply of goods from one State or Union Territory to another State or Union Territory,
2. Supply of services from one State or Union Territory to another State or Union Territory.
3. Import of goods till they cross customs frontiers of India.
4. Import of services.
5. Export of goods or services.
6. Supply of goods/ services to/by SEZ.
7. Supplies to international tourists.
8. Any other supply in the taxable territory which is not intra-State supply.

Circular No. 48/22/2018 GST dated 14-06-2018

Services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ developer/ SEZ unit will be treated as an inter-State supply.

- Supply of goods/ and or services - Not being an intra-State supply - Deemed to be inter-State Supply:

As per section 7(5) (b) of the IGST Act, the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply in the course of inter-State trade or commerce.

- Services supplied in relation to immovable property - POS will be location of immovable property:

However, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.

- Specific provision to prevail over general provision: It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.

In the instant case, section 7(5) (b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies. It is therefore, clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.
PART 3: INTRA-STATE SUPPLIES

As per Section 8 of the IGST Act, 2017, the broad principles for determining the supplies of goods and/or services in the course of intra-State trade or commerce are:

**With reference to supply of goods:**

Where the location of the supplier and the place of supply are in the same State or Union territory - Intra-State Supply [Section 8(1)]:

Supply of goods where—
- the location of the supplier, and
- the place of supply of goods are in the same State or same Union territory

shall be treated as intra-State supply.

**Section 8(1) is subject to the provisions of Section 10:**

Section 8(1) is subject to the provisions of Section 10, it implies that the place of supply of goods shall be determined as per Section 10 of the IGST Act and thereafter, Section 8(1) would be applied.

**Intra-State supply - Exceptions:**

The following supply of goods shall not be treated as intra-State supply, namely:-

(i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
(ii) goods imported into the territory of India till they cross the customs frontiers of India; or
(iii) supplies made to a tourist referred to in Section 15.

"Special Economic Zone"
shall have the same meaning as assigned to it in Section 2(za) of the Special Economic Zones Act, 2005, [Section 2(19)]

"Special Economic Zone developer"
shall have the same meaning as assigned to it in Section 2(g) of the Special Economic Zones Act, 2005 and includes an Authority as defined in Section 2(d) and a Co-Developer as defined in Section 2(f) of the said Act [Section 2(20)]

**With reference to supply of services:**

Where ‘location of the supplier’ and ‘place of supply’ are in same State/ Union territory - Intra-State supply [Section 8(2)]:

Supply of services where—
PLACE OF SUPPLY

- the location of the supplier and
- the place of supply of services
are in the same State or same Union territory shall be treated as intra-State supply.

**Section 8(2) is subject to the provisions of Section 12:**
Section 8(2) is subject to the provisions of Section 12, it implies that the place of supply of services shall be determined as per Section 12 of the IGST Act and thereafter, Section 8(2) would be applied.

**Exception:**
The intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

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**Explain the provisions relating to supplies in territorial waters as per Section 9 of the IGST Act, 2017.**

**Supplies in territorial waters [Section 9 of IGST Act, 2017]:** Notwithstanding anything contained in this Act,

(a) where the location of the supplier is in the territorial waters, the location of such supplier; or

(b) where the place of supply is in the territorial waters, the place of supply,

shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.
PART 4: PLACE OF SUPPLY OF GOODS

Place of supply of goods other than supply of goods imported into, or exported from India [Section 10]:

<table>
<thead>
<tr>
<th>Section</th>
<th>Nature of Transaction</th>
<th>Place of Supply</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Place of supply of goods in domestic transactions i.e., within India</strong>: The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,-</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>10(1)(a)</strong></td>
<td>Where the supply involves MOVEMENT OF GOODS, whether by the supplier or by the recipient or by any other person,</td>
<td>Location of the goods at the time at which the movement of goods terminates for delivery to the recipient. Note: Thus, irrespective of the number of states the goods pass through during the course of its journey, the state in which the movement of goods terminates for delivery to the recipient is the place of supply of goods.</td>
</tr>
<tr>
<td><strong>10(1)(b)</strong></td>
<td>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,</td>
<td>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. These transactions are also known as Bill to Ship transactions.</td>
</tr>
<tr>
<td><strong>10(1)(c)</strong></td>
<td>Where the supply does not involve movement of goods, whether by the supplier or the recipient,</td>
<td>Location of such goods at the time of delivery to the recipient.</td>
</tr>
<tr>
<td><strong>10(1)(d)</strong></td>
<td>Where the goods are assembled or installed at site,</td>
<td>Place of such installation or assembly.</td>
</tr>
<tr>
<td><strong>10(1)(e)</strong></td>
<td>Where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle,</td>
<td>Location at which such goods are taken onboard.</td>
</tr>
<tr>
<td><strong>10(2)</strong></td>
<td>Where the place of supply of goods cannot be determined,</td>
<td>Shall be determined in such manner as may be prescribed.</td>
</tr>
</tbody>
</table>
SECTION 10(1)(a): SUPPLY INVOLVE MOVEMENT OF GOODS

Applicability
Place of supply in respect of domestic transactions where Supply involves Movement of Goods

Place of supply
In case of supply involving movement of goods, the place of supply is the location of the goods at the time when the movement of goods terminates for delivery to the recipient.

Note:
The 'location of the goods' is a question of fact to be ascertained by observing the journey that the goods supplied make from their origin from supplier to termination with the recipient. This movement, however, can be undertaken by the Supplier or recipient or even any other person after having disclosed the destination of the movement of goods.

It is important to understand that this provision does not apply in cases where there is no movement of goods. Also, the provision does not link itself to transfer of property in goods but to the movement of the goods.

Examples:
(i) Mr. A of Jaipur, Rajasthan sells 15 air-conditioners to Mr. B of Nasik, Maharashtra for delivery at Mr. B's place of business in Nasik. The place of supply is Nasik in Maharashtra.
(ii) Mr. X of Alwar, Rajasthan sells 15 motor pumps to Mr. Y of Surat, Gujarat for delivery at Mr. Y's place of business in Surat. The place of supply is Surat.

SECTION 10(1)(b): SUPPLY INVOLVES MOVEMENT ON DIRECTION OF 3RD PERSON

Applicability:
Section 10(1) (b) of the IGST Act, 2017 lays down the provisions to determine the place of supply in cases where there is a tripartite arrangement of supply, commonly known as bill to ship to transactions or where there is a sale of goods in transit by the original buyer/agents.

Place of supply
As per Section 10(1)(b) of the IGST Act, 2017, the place of supply shall be the principal place of business of third person and he shall be deemed to have received the goods if the following conditions are satisfied:

(i) the goods are delivered by the supplier to recipient or any other person;
(ii) the goods are thus delivered on the direction of a third person, who may or may not be an agent;
(iii) the goods are delivered before or during the movement of the goods, either by way of transfer of documents of title to the goods or otherwise.

Even though Section 2(93) of CGST Act defines recipient, *inter alia*, as the 'payer of the consideration'; under this provision, recipient is the one who actually collects the goods and the third person is the one who enjoys privity with the supplier to be able to direct him to deliver the goods.

**Note:**

Where three parties are involved *i.e.* to say a supplier, a buyer who is not the recipient of goods (referred as third person) and the recipient who actually receives the goods on the directions of the buyer, a fiction is introduced by Section 10(1) (b) of IGST Act, 2017, whereby the third person on whose direction the goods are delivered will be considered the recipient of the goods and the place of supply is deemed to be the principal place of business of the said third person (being the first buyer).

It is important to identify the two supplies involved in this transaction - by supplier to third person and by third person to recipient. This provision deals only with the first limb of supply *i.e.*, supply by supplier to third person.

**Example:** Mr. X (a supplier registered in Rajasthan having principal place of business at Jaipur) asks Mr. Y of Surat, Gujarat to deliver 15 music system to his buyer Mr. Z at Bhopal, Madhya Pradesh. In this case, two supplies are involved, one between Mr. X and Mr. Z and other between Mr. Y and Mr. X.

While the former supply *i.e.* between Mr. X and Mr. Z is covered under Section 10(1)(a), the latter one *i.e.*, between Mr. Y and Mr. X is covered under Section 10(1)(b).

Accordingly, in this case, the place of supply of goods is not the location of delivery of such goods (Bhopal) but the principal place of business of third person *i.e.*, principal place of business of Mr. X located at Jaipur.

### SECTION 10(1)(c): SUPPLY DOES NOT INVOLVE MOVEMENT OF GOODS

**Applicability**

Supply not involving movement of goods [Section 10(1)(c)] :

**Place of supply**

If the supply does not involve movement of goods, the place of supply is the location of goods at the time of delivery to the recipient.
Examples:

(i) Mr. X (Jaipur) has leased his machine (Cost Rs. 15,00,000) to Mr. Y (Dewas, Madhya Pradesh) for production of goods on a monthly rent of Rs. 30,000. After 18 months Mr. Y requested Mr. X to sell the machine to him for Rs. 9,00,000, which is agreed to by Mr. X. In this case, there will be no movement of goods and the sanip will be sold on ‘as is where is basis’. Thus, the location of the machine at the time of such sale will be the place of supply i.e., Dewas.

(ii) KK Ltd. (Delhi) opens a new branch office at Noida, UP. It purchases a building for office from PDL Builders (Noida) along with pre-installed office furniture and fixtures. Though there will be no GST liability on purchase of building, office furniture and fixtures will be liable to GST. Since there is no movement of office furniture and fixtures, the place of supply of such goods is their location at the time of delivery to the recipient (KK Ltd.) i.e., Noida.

SECTION 10(1)(d): SUPPLY INVOLVES ASSEMBLING OR INSTALLATION

Applicability
Supply involving installation or assembly of goods [Section 10(1) (d)]:

Place of supply
If the supply involves goods which are to be installed or assembled at site, the place of supply is the place of such installation or assembly.

SECTION 10(1)(e): SUPPLY ON BOARD OF A CONVEYANCE

Applicability:
Goods supplied on Board a Conveyance

Place if supply
Place of supply of goods supplied on board a conveyance like aircraft, train, vessel, motor vehicle is the location where such goods have been taken on board.

Note:
Place of supply of goods supplied on board a conveyance is determined under this provision even if the supply has been made by any of the passenger on board the conveyance and not by the carrier of the conveyance.

Examples:

(i) Mr. X (Mumbai) boards the Mumbai-Jaipur train at Mumbai, During the journey, he sells the goods at Kota which were taken on board by him at Mumbai. The place of supply of goods is the location at which the goods are taken on board i.e., Mumbai and not Kota where they have been sold.
(ii) Ms. S, an unregistered person, (New Delhi) is travelling from New Delhi to Kanpur, Uttar Pradesh in a train. The train starts at New Delhi and stops at three stations before reaching Kanpur. The goods were loaded into the train at Aligarh (Uttar Pradesh) - 2nd Station. Ms. S buys goods on board the train. The place of supply is the location at which the goods are taken on board i.e, Aligarh. The location at which Ms. S boards the train is irrelevant.

**PART 5: IMPORT AND EXPORT OF GOODS**

**"Import of goods"**

With its grammatical variations and cognate expressions, means bringing goods into India from a place outside India. [*Section 2(10) of IGST Act, 2017*]

All imports are deemed as inter-State supplies and accordingly IGST is levied in addition to the applicable custom duties.

**"Export of goods"**

With its grammatical variations and cognate expressions, means taking goods out of India to a place outside India. [*Section 2(5) of IGST Act, 2017*]

**Under the GST Law, export of goods has been treated as:**

- Inter-State supply
- "zero rated supply" i.e., the goods or services exported shall be relieved of GST levied upon them either at the input stage or at the final product stage.

**Place of supply of goods imported into, or exported from India.**

*Place of supply of goods imported into, or exported from India [Section 11 of IGST Act, 2017]:*

<table>
<thead>
<tr>
<th>Section</th>
<th>Nature of Transaction</th>
<th>Place of Supply</th>
</tr>
</thead>
<tbody>
<tr>
<td>11(a)</td>
<td>Goods imported into India</td>
<td>Location of the importer.</td>
</tr>
<tr>
<td>11(b)</td>
<td>Goods exported from India</td>
<td>Location outside India.</td>
</tr>
</tbody>
</table>
### PART 6: SEC 12: PLACE OF SUPPLY OF SERVICES

Place of supply of services where location of supplier and recipient is in India [Section 12 of the IGST Act, 2017]:

<table>
<thead>
<tr>
<th>Section</th>
<th>Nature of Transaction</th>
<th>Place of Supply</th>
</tr>
</thead>
<tbody>
<tr>
<td>12(1)</td>
<td>Determination of the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.</td>
<td></td>
</tr>
<tr>
<td>12(2)</td>
<td><strong>General provisions</strong>: The place of supply of services,</td>
<td>Location of such person; the location of the recipient the location of the supplier of services</td>
</tr>
<tr>
<td></td>
<td>(a) made to a registered person</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) made to any person other than a registered person-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(i) where the address on record exists;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(ii) in other cases.</td>
<td></td>
</tr>
<tr>
<td>12(3)</td>
<td>Services provided in relation to immovable property —</td>
<td>Location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located.</td>
</tr>
<tr>
<td></td>
<td><strong>Services</strong>,-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) by way of lodging accommodation by a <strong>hotel, inn, guest house, home stay, club or campsite</strong>, by whatever name called, and including a house boat or any other vessel; or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>⇒ by way of accommodation in any immovable property for organising any marriage or</td>
<td></td>
</tr>
</tbody>
</table>
reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or

⇒ any services ancillary to the services referred to in clauses (a), (b) and (c),

If the location of the immovable property or boat or vessel is located or intended to be located outside India,

**Explanation**: Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed*

<table>
<thead>
<tr>
<th>12(4)</th>
<th>Restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery</th>
<th>Location where the services are actually performed.</th>
</tr>
</thead>
</table>
| 12(5) | Services in relation to training and performance appraisal to,-  
(a) a registered person,  
(b) a person other than a registered person, | Location of such person; Location where the services are actually performed. |
| 12(6) | Services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, | Place where the event is actually held or where the park or such other place is located. |
| 12(7) | Services provided by way of,-  
(a) organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or  
(b) services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of |
**PLACEMENT OF SUPPLY**

<table>
<thead>
<tr>
<th>Sponsorship to such events,</th>
<th>Location of such person;</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) to a registered person,</td>
<td>Place where event is actually held</td>
</tr>
<tr>
<td>(ii) to a person other than a</td>
<td>Location of the recipient.</td>
</tr>
<tr>
<td>registered person,</td>
<td></td>
</tr>
<tr>
<td>➢ If event is held in India</td>
<td></td>
</tr>
<tr>
<td>➢ If event is held outside</td>
<td></td>
</tr>
<tr>
<td>India</td>
<td></td>
</tr>
</tbody>
</table>

**Explanation:** Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

### 12(8)

Services by way of **transportation of goods**, including by mail or courier to,—

<table>
<thead>
<tr>
<th>Services</th>
<th>Location of such person;</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) a registered person,</td>
<td>Location at which such goods are handed over for their transportation.</td>
</tr>
<tr>
<td>(b) a person other than a registered person,</td>
<td>Place of destination of such goods.</td>
</tr>
</tbody>
</table>

However, where the transportation of goods is to a place outside India, **Passenger transportation** service to, —

<table>
<thead>
<tr>
<th>Services</th>
<th>Location of such person;</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) a registered person,</td>
<td>Location where the passenger embarks on the conveyance for a continuous journey.</td>
</tr>
<tr>
<td>(b) a person other than a registered person,</td>
<td>Location of such person;</td>
</tr>
<tr>
<td>Where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage,</td>
<td>the location of the recipient</td>
</tr>
<tr>
<td>(a) made to a registered person</td>
<td>the location of the supplier of services</td>
</tr>
<tr>
<td>(b) made to any person other than a registered person-</td>
<td></td>
</tr>
<tr>
<td>(i) where the address on record exists;</td>
<td></td>
</tr>
<tr>
<td>(ii) in other cases.</td>
<td></td>
</tr>
</tbody>
</table>

**Return Journey to be treated as a separate journey [Explanation]:** The return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time. **"Continuous journey"** means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Place of Supply</th>
</tr>
</thead>
<tbody>
<tr>
<td>2(3) of IGST Act, 2017</td>
<td><em>Explanation - &quot;Stopover&quot;</em> means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time.</td>
<td><strong>Location of the first scheduled point of departure of that conveyance for the journey.</strong></td>
</tr>
<tr>
<td>12(10)</td>
<td>Services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle,</td>
<td><strong>Location of the first scheduled point of departure of that conveyance for the journey.</strong></td>
</tr>
<tr>
<td>12(11)</td>
<td>Telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall,</td>
<td><strong>Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;</strong></td>
</tr>
<tr>
<td></td>
<td>(a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna,</td>
<td><strong>Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Explanation:</strong> Where the leased, circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.</td>
<td><strong>Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;</strong></td>
</tr>
<tr>
<td></td>
<td>(b) in case of mobile connection for telecommunication and internet services provided on post-paid basis,</td>
<td><strong>Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;</strong></td>
</tr>
<tr>
<td></td>
<td>(c) in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means,—</td>
<td><strong>Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;</strong></td>
</tr>
<tr>
<td></td>
<td>(i) through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher,</td>
<td><strong>Address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or</strong></td>
</tr>
<tr>
<td></td>
<td>(ii) by any person to the final subscriber,</td>
<td><strong>Location where such prepayment is received or such vouchers are sold;</strong></td>
</tr>
<tr>
<td></td>
<td>If such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment,</td>
<td><strong>Location of the recipient of services on the record of the supplier of services.</strong></td>
</tr>
<tr>
<td></td>
<td>(d) in other cases,</td>
<td><strong>Location of the recipient of services on the record of the supplier of services.</strong></td>
</tr>
</tbody>
</table>
(i) If address of the recipient as per the records of the supplier of services is available
(ii) where such address is not available,

<table>
<thead>
<tr>
<th>Address of the recipient as per the records of the supplier of services and Place of supply shall be location of the supplier of services.</th>
</tr>
</thead>
</table>

Where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be the location of the supplier of services. **[Applicable for 12(11) (a) to (d) above]**

"Telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means; **[Section 2(110) of CGST Act, 2017]**

<table>
<thead>
<tr>
<th>12(12) Banking and other financial services, including stock broking services to any person</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location of the recipient of services on the records of the supplier of services: Location of the supplier of services.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>12(13) Insurance services,</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) to a registered person, Location of such person;</td>
</tr>
<tr>
<td>(b) to a person other than a registered person, Location of the recipient of services on the records of the supplier of services.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>12(14) Advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>➞ Place of supply shall be taken as being in each of such States or Union territories ➞ Value of such supplies specific to each State or Union territory shall be in proportion to: ➢ amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, ➢ in the absence of such contract or agreement, on such other basis as may be prescribed.</td>
</tr>
</tbody>
</table>
SECTION 12(2): General Rule/ Default Rule/ Residuary Rule:
The rule is applicable only if the supply of service does not fall in any of the specific cases provided under Section 12.

Services supplied to registered person (B2B supply of services):
The rule provides that the place of supply of services made to a registered person is the location of the person receiving the services.

i. Since the supplier has the GSTIN of the person receiving the service, the location of such GSTIN is the place of supply.

ii. Thus, the default presumption for place of supply in respect of registered recipients (B2B supply of services) is the location of such person. Since the recipient is registered, address of recipient is always there and the same can be taken as proxy for place of supply.

Services supplied to unregistered person (B2C supply of services):
If the service is supplied to an unregistered person, the place of supply is:

(i) the location of such unregistered person, if the address of the unregistered person is available in the records of the supplier

(ii) the location of the supplier of services in other cases.

(iii) The default presumption for place of supply in respect of unregistered recipients (B2C supply of services) is also the location of recipient. However, in many cases, the address of recipient is not available; in such cases, location of the supplier of services is taken as proxy for place of supply.

Examples:
(i) Mr. Y (a Chartered Accountant registered in Jaipur) supplies service to his client Mr. R of Noida, Uttar Pradesh (registered in Uttar Pradesh). In this case, since the supply is made to a registered person, the place of supply is the location of the registered recipient i.e., Noida.

(ii) Mr. Y, an astrologer in Bhilwara, Rajasthan, (registered in Rajasthan) provides astrology services to his client Mr. C who is a resident of Uttar Pradesh but is not registered under GST. Here, if the address of Mr. C is available on the records of Mr. Y, location of Mr. C i.e., Uttar Pradesh will be the place of supply, else the location of Mr. Y, which is Bhilwara, will be the place of supply.
SECTION 12(3) Of IGST Act, 2017: SERVICES IN RELATION TO AN IMMOVABLE PROPERTY

Applicability
Place of supply of services provided directly in relation to immovable property or boat or vessel:

Place of Supply
In respect of the following services the place of supply shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:

Note:
(1) Services directly in relation to an immovable property, including—
   (i) services provided by —
      (a) architects,
      (b) interior decorators,
      (c) surveyors,
      (d) engineers, and
      (e) other related experts or estate agents.
   (ii) any service provided by way of grant of rights to use immovable property; or for carrying out or co-ordination of construction work; or
(2) Services by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or
(3) Services by way of accommodation in any immovable property for organising —
   ➢ any marriage or reception or matters related thereto,
   ➢ official, social, cultural, religious or business function including services provided in relation to such function at such property; or
(4) any services ancillary to the services mentioned above.

If Immovable property is located or intended to be located outside India - POS shall be the location of recipient:
If the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.
Immovable property located at more than one State or Union Territory

[Explanation]:
Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to—

- the value for services separately collected or determined in terms of the contract or agreement entered into in this regard, or
- in the absence of such contract or agreement, on such other basis as may be prescribed.

For this purpose Rule 4 of IGST Rules, 2017 has been inserted vide Notification No. 4/2018-IT w.e.f. 01-01-2019

which provides that the place of supply of services shall be determined in the following manner namely:-

<table>
<thead>
<tr>
<th>Nature of Transaction</th>
<th>Place of Supply</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Services provided by way of lodging accommodation by a hotel, irurcv guest house,</td>
<td>The supply of services shall be treated as made in each of the respective States or</td>
</tr>
<tr>
<td>club or campsite, by whatever name called and services ancillary to such services:--</td>
<td>Union territories, in proportion to the area of the immovable property lying in each</td>
</tr>
<tr>
<td>Where such property is a single property located in two or more contiguous States or</td>
<td>State or Union territory.</td>
</tr>
<tr>
<td>Union territories or both.</td>
<td></td>
</tr>
<tr>
<td>Cases except where such property is a single property located in two or more</td>
<td>The supply of services shall be treated as made in each of the respective States or</td>
</tr>
<tr>
<td>contiguous States or Union territories or both.</td>
<td>Union territories, in proportion to the number of nights stayed in such property.</td>
</tr>
<tr>
<td>(ii) All other services in relation to immovable property including services by way</td>
<td>The supply of services shall be treated as made in each of the respective States or</td>
</tr>
<tr>
<td>of accommodation in any immovable property for organising any marriage or reception</td>
<td>Union territories, in proportion to the area of the immovable property lying in each</td>
</tr>
<tr>
<td>etc.</td>
<td>State or Union territory,</td>
</tr>
<tr>
<td>Services provided by way of lodging accommodation by a house boat or any other vessel</td>
<td>The supply shall be treated as made in each of the respective States or Union</td>
</tr>
<tr>
<td>and services ancillary to such services.</td>
<td>territories, in proportion to the time spent by the boat or vessel in each such State or</td>
</tr>
<tr>
<td></td>
<td>Union territory, determined on the basis of a declaration made to the effect by the</td>
</tr>
<tr>
<td></td>
<td>service provider.</td>
</tr>
</tbody>
</table>

Illustrations:

1. A hotel chain X charges a consolidated sum of Rs. 30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night. The place of supply in this case is both in the Union territory of Delhi and in the State of Uttar Pradesh and the service shall be deemed to
have been provided in the Union territory of Delhi and in the State of Uttar Pradesh in the ratio 2:1 respectively. The value of services provided will thus be apportioned as Rs. 20,000/- in the Union territory of Delhi and Rs. 10,000/- in the State of Uttar Pradesh.

2. There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work has been entrusted to T. The ratio of land in the two states works out to 12:8 or 3:2 (simplified). The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively. The value of the service shall be accordingly apportioned between the States.

3. A company C provides the service of 24 hours accommodation in a houseboat, which is situated both in Kerala and Karnataka inasmuch as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the states of Kerala and Karnataka, respectively. The value of the service shall be accordingly apportioned between the States.

How will the place of supply of construction services of a road to be constructed from Delhi to Mumbai covering multiple states be determined.

As per explanation to Section 12(3) of IGST Act, 2017, where the immovable property is located in more than one State, the supply of service shall be treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

Therefore, the place of supply of construction services of the road from Delhi to Mumbai shall be in each of the states where the service is supplied.

Section 12(4) of IGST Act, 2017: PERFORMANCE BASED SERVICES

Applicability:
Place of supply of performance based services
- restaurant and catering services,
- personal grooming,
- fitness,
- beauty treatment,
- health service including cosmetic and plastic surgery,
**PLACE OF SUPPLY**

**Place of supply**
shall be the location where the services are actually performed.

**Section 12(5) of IGST Act, 2017: TRAINING AND PERFORMANCE APPRAISAL SERVICES**

**Applicability:**
The place of supply of services in relation to training and performance appraisal

**Place of supply:**
(a) a registered person (i.e. B2B supplies), shall be the location of such person;
(b) a person other than a registered person (i.e. B2C supplies), shall be the location where the services are actually performed.

**Section 12(6) of IGST Act, 2017: ADMISSION TO EVENTS OR AMUSEMENT PARKS OR OTHER PLACES**

**Applicability**
Place of supply of services provided for admission of events.
The place of supply of services provided by way of—

⇒ admission to following types of events —
   (a) cultural,
   (b) artistic,
   (c) sporting,
   (d) scientific,
   (e) educational,
   (f) entertainment

⇒ admission to amusement park or any other place,

⇒ services ancillary to the above mentioned services,

shall be the place where the event is actually held or where the park or such other place is located.

**Services ancillary to the services of admission to the main event:**
These are the services which assist the recipient of the service to enjoy the main service conveniently. A service which does not constitute for a customer an aim in itself but a means of better enjoying the principal supply, is considered as a supply ancillary to the principal supply.
Section 12(7) of IGST Act, 2017 - SERVICES PROVIDED BY WAY OF ORGANIZING AN EVENT AND SERVICES INCIDENTAL THERETO:

The place of supply of services provided by way of,—

(a) **organisation** of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or

(b) **services ancillary to organisation** of any of the events or services referred to in clause (a), or assigning of sponsorship to such events,—

<table>
<thead>
<tr>
<th>(i) to a registered person,</th>
<th>Location of such person;</th>
</tr>
</thead>
<tbody>
<tr>
<td>(ii) to a person other than a registered person, —</td>
<td>Location at which such goods are handed over for their transportation.</td>
</tr>
<tr>
<td>➢ if event is held in India</td>
<td></td>
</tr>
<tr>
<td>➢ if event is held outside India</td>
<td></td>
</tr>
</tbody>
</table>

**Event held in more than one State or Union Territory [Explanation]:**

Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to

- the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or,
- in the absence of such contract or agreement, on such other basis as may be prescribed *i.e. by application of the generally accepted accounting principles. - Rule 5 of IGST Rules, 2017.*

**Example:**

An event management company E has to organise some promotional events in States S1 and S2 for a recipient R. 3 events are to be organised in S1 and 2 in S2. They charge a consolidated amount of Rs. 10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as Rs. 6,00,000/- in S1 and Rs. 400,000/- in S2.

Section 12(8) of IGST Act, 2017 - SERVICES BY WAY OF TRANSPORTATION OF GOODS.

**Place of supply of services by way of transportation of goods including mails:** The place of supply of—

<table>
<thead>
<tr>
<th>Services by way of transportation of goods, including by mail or courier to,-</th>
<th>Place of Supply</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) a registered person,</td>
<td>Location of such person;</td>
</tr>
<tr>
<td>(b) a person other than a registered person,</td>
<td>Location at which such goods are handed over for their transportation.</td>
</tr>
</tbody>
</table>

However, where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.
Examples:

(i) M/s. ABC Pvt. Ltd. is a registered company in Jaipur. It sends its courier to Mumbai through M/s. First Fly Courier Service. The recipient being registered person, the place of supply is the location of recipient i.e., Jaipur.

(ii) Mr. Y, an unregistered person, of Jaipur sends a courier from New Delhi to his friend in Time, Maharashtra while he was on trip to New Delhi. The recipient being unregistered person, the place of supply is the location where goods are handed over for their transportation i.e., New Delhi.

Section 12(9) of IGST Act, 2017 - SUPPLY OF PASSENGER TRANSPORTATION SERVICE.

Place of supply of passenger transportation service: The place of supply of passenger transportation service shall be determined as under—

<table>
<thead>
<tr>
<th>Passenger transportation service to, -</th>
<th>Location of such person.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) a registered person,</td>
<td>Place where the passenger embarks on the conveyance for a continuous journey.</td>
</tr>
<tr>
<td>(b) a person other than a registered person,</td>
<td>Location of such person.</td>
</tr>
</tbody>
</table>

Where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage,-

<table>
<thead>
<tr>
<th>(a) made to a registered person,</th>
<th>Location of such person.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) made to any person other than a registered person—</td>
<td>The location of the recipient.</td>
</tr>
<tr>
<td>(i) where the address on record exists;</td>
<td>The location of the supplier of services.</td>
</tr>
<tr>
<td>(ii) in other cases.</td>
<td></td>
</tr>
</tbody>
</table>

Return Journey to be treated as a Separate Journey [Explanation]:

The return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.

"Continuous journey"

means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued. [Section 2(3) of IGST Act, 2017]

"Stopover"

means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time. [Explanation]

Examples:
(i) Mr. A (registered person in Jaipur) travels from New Delhi to Bangalore in Airjet flight. Mr. A has bought the tickets for the journey from Airjet's office registered in New Delhi. The place of supply is the location of recipient i.e., Jaipur.

(ii) Mr. A (an unregistered person) purchased from an aircraft operator, registered in Bengaluru, a single air ticket on Bengaluru - Pune - Ahmedabad - Pune - Bengaluru route with halt at Ahmedabad on either side. This will be treated as continuous journey. However, as per Explanation to Section 12(9), both the journeys - onward and return shall be considered separately and taxed as follows:

Onward journey from Bengaluru - Pune - Ahmedabad - here, since Mr. A is unregistered person, therefore, the place of supply shall be the place of embarkation of Mr. A for continuous journey. In this case, since Mr. A embarks at Bengaluru airport, therefore, the place of supply shall be Bengaluru. Since the airline is located in Bengaluru, it shall charge CGST/SGST.

Return journey from Ahmedabad - Pune - Bengaluru - in case of return journey, Mr. A shall embark at Ahmedabad airport and therefore, the place of supply shall be Ahmedabad. Here, since the airline is located in Bengaluru, therefore, it shall charge IGST on the return fare.

Section 12(10) of IGST Act, 2017: SERVICES PROVIDED ON BOARD A CONVEYANCE.

Place of supply of services on board a conveyance

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

Note:

- It must be noted that the proxy for place of supply of goods on board a conveyance is the location at which the goods are taken on board.
- Services being intangible, the same proxy cannot be used for determining the place of supply for services supplied on board a conveyance.
- Therefore, for services, the proxy is the location of the first scheduled point of departure of that conveyance for the journey.
- However, for determining the place of supply of both goods and services supplied on board a conveyance, no distinction is made between registered and unregistered recipients.

Section 12(11): TELECOMMUNICATION SERVICES

Definition - "Telecommunication service"

means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of
signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means. [Section 2(110) of CGST Act, 2017]

POS - Services provided using a fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna:
In case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;

POS - Leased circuit is installed in more than one State or Union territory and consolidated amount charged for supply - Place of supply is to be determined in terms of contract [Explanation]:
Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to -

- the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or,
- in the absence of such contract or agreement, on such other basis as may be prescribed.

For this purpose Rule 6 of IGST Rules, 2017 has been inserted vide Notification No. 4/2018-IT w.e.f. 01-01-2019 which provides that the place of supply of services shall be determined in the following manner namely:-

(a) The number of points in a circuit shall be determined in the following manner:
- in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;
- any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point;

(b) the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of points lying in the State or Union territory.

Illustration:

1. A company T installs a leased circuit between the Delhi and Mumbai offices of a company C. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence, one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.
2. A company T installs a leased circuit between the Chennai, Bengahmi and Mysuru offices of a company C. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence, one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.

3. A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.

**POS - Post-paid mobile connection and post-paid internet services:**
In case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services.

**POS - Pre-paid mobile connection and pre-paid internet and DTH Services:**
In cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means, —

| (i) through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, | Address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or |
| (ii) by any person to the final subscriber, | Location where such prepayment is received or such vouchers are sold; |
| If such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, | Location of the recipient of services on the record of the supplier of services. |

**POS - Other cases:**
In other cases, be the address of the recipient as per the records of the supplier of services.

**Address of the recipient is not available - POS will be Location of Supplier:**
Where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services.
Section 12(12): BANKING AND OTHER FINANCIAL SERVICES, INCLUDING STOCK BROKING SERVICES.

Applicability:
Place of supply of banking and other financial services, including Stock Broking Services

Place of supply
location of the recipient of services on the records of the supplier of services.
However, if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

Section 12(13): INSURANCE SERVICES.

Applicability:
Place of supply of Insurance Services:

Place of supply
(a) to a registered person, be the location of such person;
(b) to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.

Section 12(14): PLACE OF SUPPLY OF ADVERTISEMENT SERVICES TO THE GOVERNMENT

Applicability:
Explain the place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories.

Place of supply
Place of supply of advertisement services to the Government: As per Section 12(14) of IGST Act, 2017, the place of supply shall be determined as under—

<table>
<thead>
<tr>
<th>Nature of Transaction</th>
<th>Place of Supply</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertisement services to the Central Government, a State Government, a statutory</td>
<td>Place of supply shall be taken as being in each of such States or Union territories</td>
</tr>
<tr>
<td></td>
<td>Value of such supplies specific to each State or</td>
</tr>
</tbody>
</table>
body or a local authority meant for the States or Union territories identified in the contract or agreement.

Union territory shall be in proportion to:
- amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard, or
- in the absence of such contract or agreement, on such other basis as may be prescribed.

**Apportionment of IGST with respect to advertisement services u/s 12(14) of the IGST Act, 2017:**

The proportion of value attributable to different States or Union territories, in the case of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority, under Section 12(14) of the IGST Act, 2017, in the absence of any contract between the supplier of service and recipient of services, shall be determined in the following manner namely:-

**Newspapers and publications - On basis of Amount Payable for Publication:**

In the case of newspapers and publications, the amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in a State or Union territory, as the case may be, is the value of advertisement service attributable to the dissemination in such State or Union territory.

**Advertisements through printed material like pamphlets, leaflets, diaries, calendars, T-shirts, etc. - On basis of amount payable for the distribution of a Specific Number of such Material:**

In the case of printed material like pamphlets, leaflets, diaries, calendars, T-shirts etc, the amount payable for the distribution of a specific number of such material in a particular State or Union territory is the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

**Hoardings - on basis of amount payable for such Hoardings:**

In the case of hoardings other than those on trains, the amount payable for the hoardings located in each State or Union territory, as the case may be, is the value of advertisement service attributable to the dissemination in each such State or Union territory, as the case may be.

**Advertisements on train - Length of the railway track in each State/Union Territory, for that train:**

In the case of advertisements placed on trains, the breakup, calculated on the basis of the ratio of the length of the railway track in each State for that train, of the amount payable for such advertisements is the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.
Advertisements on the back of utility bills of oil and gas companies, etc.- On basis of billing address of Consumers:
In the case of advertisements on the back of utility bills of oil and gas companies etc, the amount payable for the advertisements on bills pertaining to consumers having billing addresses in such States or Union territory as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory.

Railway tickets - On basis of no. of Railway Stations:
In the case of advertisements on railway tickets, the breakup, calculated on the basis of the ratio of the number of Railway Stations in each State or Union territory, when applied to the amount payable for such advertisements, shall constitute the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Radio - Stations - Amount payable to such radio station, which by virtue of its name is part of each State/ Union territory:
In the case of advertisements over radio stations the amount payable to such radio station, which by virtue of its name is part of a State or Union territory, as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory, as the case may be.

Television channels - On basis of Viewership in each State/ union Territory:
In the case of advertisement on television channels, the amount attributable to the value of advertisement service disseminated in a State shall be calculated on the basis of the viewership of such channel in such State, which in turn, shall be calculated in the following manner, namely:-

(i) Viewership on basis of Broadcast Audience Research Council : The channel viewership figures for that channel for a State or Union territory shall be taken from the figures published in this regard by the Broadcast Audience Research Council;

(ii) Figures of last week of given quarter shall be used : The figures published for the last week of a given quarter shall be used for calculating viewership for the succeeding quarter and at the beginning, the figures for the quarter 1st July, 2019 to 30th September, 2019 shall be used for the succeeding quarter 1st October, 2019 to 31st December, 2019;

(iii) Population to be basis if viewership relates to more than one State : Where such channel viewership figures relate to a region comprising of more than one State or Union territory, the viewership figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest Census, to such viewership figures;

(iv) the ratio of the viewership figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent
the portion of the value attributable to the dissemination in that State or Union territory,

**Cinema-hall – Amount payable to a cinema hall or screens in a multiplex in each State / Union territory:**

In the case of advertisements at cinema halls the amount payable to a cinema hall or screens in a multiplex, in a State or Union territory, as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory, as the case may be.

**Internet – On basis of Internet subscribers:**

In the case of advertisements over internet the service shall be deemed to have been provided all over India and the amount attributable to the value of advertisement service disseminated in a State or Union territory shall be calculated on the basis of the internet subscribers in such State or Union territory, which in turn, shall be calculated in the following manner, namely:-

(i) the internet subscriber figures for a State shall be taken from the figures published in this regard by the Telecom Regulatory Authority of India;

(ii) the figures published for the last quarter of a given financial year shall be used for calculating the number of internet subscribers for the succeeding financial year and at the beginning, the figures for the last quarter of financial year 2018-19 shall be used for the succeeding financial year 2019-20;

(iii) where such internet subscriber figures relate to a region comprising of more than one State or Union territory, the subscriber figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest census, to such subscriber figures;

(iv) the ratio of the subscriber figures for each State or Union territory as so calculated, when applied to the amount payable for this service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

**SMS - On basis of subscribers:**

In the case of advertisements through short messaging service the amount attributable to the value of advertisement service disseminated in a State or Union territory shall be calculated on the basis of the telecommunication herein after referred to as telecom) subscribers in such State or Union territory, which in turn, shall be calculated in the following manner, namely:-

(a) the number of telecom subscribers in a telecom circle shall be ascertained from the figures published by the Telecom Regulatory Authority of India on its website www.trai.gov.in;
(b) the figures published for a given quarter, shall be used for calculating subscribers for the succeeding quarter and at the beginning, the figures for the quarter 1st July, to 30th September, shall be used for the succeeding quarter 1st October, to 31st December;

(c) where such figures relate to a telecom circle comprising of more than one State, or Union territory, the subscriber figures for that State or Union territory shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest census, to such subscriber figures.

(d) the ratio of the subscriber figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.
## PART 7: SEC 13: PLACE OF SUPPLY OF SERVICES

Explain the provisions for determination of the place of supply of services where location of supplier or location of recipient is outside India.

Place of supply of services where location of supplier or location of recipient is outside India [Section 13 of IGST Act, 2017]:

<table>
<thead>
<tr>
<th>Section</th>
<th>Nature of Transaction</th>
<th>Place of Supply</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>13(1)</strong></td>
<td><strong>Applicability:</strong> 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.</td>
<td></td>
</tr>
<tr>
<td><strong>13(2)</strong></td>
<td><strong>General Provisions:</strong></td>
<td>Location of the recipient of services.</td>
</tr>
<tr>
<td></td>
<td>Services not covered in Section 13(3) to 13(13)</td>
<td>Location of the supplier of services.</td>
</tr>
<tr>
<td></td>
<td>If in above case where the location of the recipient of services is not available in the ordinary course of business.</td>
<td></td>
</tr>
<tr>
<td><strong>13(3)</strong></td>
<td><strong>Performance Based Services:</strong></td>
<td>Location where the services are actually performed.</td>
</tr>
<tr>
<td></td>
<td>(a) Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services. When such services are provided from a remote location by way of electronic means, Services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.</td>
<td>Location where goods are situated at the time of supply of services. Provisions of Section 13(3)(a) will not be applicable and place of supply shall be determined as per Section 13(2).</td>
</tr>
<tr>
<td></td>
<td>(b) Services supplied to an individual, represented either as the recipient of</td>
<td>Location where the services are actually performed.</td>
</tr>
</tbody>
</table>
PLACE OF SUPPLY

<table>
<thead>
<tr>
<th>Section</th>
<th>Nature of Services</th>
<th>Place of Supply</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>13(4)</td>
<td><strong>Services relating to Immovable property:</strong></td>
<td>Place where the immovable property is located or intended to be located.</td>
<td>Services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators.</td>
</tr>
<tr>
<td>13(5)</td>
<td><strong>Services relating to events:</strong></td>
<td>Place where the event is actually held.</td>
<td>Services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation.</td>
</tr>
</tbody>
</table>
| 13(6)   | **Services provided at more than one location:** | Location in the taxable territory. | Where any services referred to in,-

⇒ [Section 13(3) *i.e. Performance Based Services*]; or
⇒ [Section 13(4) *i.e. Services relating to Immovable property*]; or
⇒ [Section 13(5) *i.e. Services relating to events*],
is supplied at more than one location, including a location in the taxable territory. |
| 13(7)   | | | Where any services referred to in,-

⇒ [Section 13(3) *i.e. Performance Based Services*]; or
⇒ [Section 13(4) *i.e. Services relating to Immovable property*]; or
⇒ [Section 13(5) *i.e. Services relating to events*],
are supplied in more than one State or Union territory.

⇒ Place of supply of such services shall be taken as being in each of the respective States or Union territories; and
⇒ Value of such supplies specific to each State or Union territory shall be in proportion to-

- Value for services separately collected or
determined in terms of the contract or agreement entered into in this regard, or
- In the absence of such contract or agreement, on such other basis as may be
  prescribed.

### 13(8) Specified Services:

<table>
<thead>
<tr>
<th>Location of the supplier of services.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders.</td>
</tr>
<tr>
<td>Explanation:</td>
</tr>
<tr>
<td>⇒ “Account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;</td>
</tr>
<tr>
<td>⇒ “Banking company” shall have the same meaning as assigned to it under Section 45A(a) of the Reserve Bank of India Act, 1934;</td>
</tr>
<tr>
<td>⇒ “Financial institution” means, -</td>
</tr>
<tr>
<td>(i) a financial institution which is a company;</td>
</tr>
<tr>
<td>(ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or</td>
</tr>
<tr>
<td>(iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Location of the supplier of services.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) Intermediary services</td>
</tr>
<tr>
<td>“Intermediary” means a broker, an agent or</td>
</tr>
</tbody>
</table>

23.36
any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, **but does not include** a person who supplies such goods or services or both or securities on his own account; [*Section 2(13) of IGST Act, 2017*]

<table>
<thead>
<tr>
<th>Location of the supplier of services.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(c) Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of <strong>one month</strong>.</td>
</tr>
</tbody>
</table>

**13(9)** Services of **transportation of goods**, other than by way of mail or courier, Place of destination of such goods.

**13(10)** **Passenger transportation services** Place where the passenger embarks on the conveyance for a continuous journey.

**13(11)** Services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, First scheduled point of departure of that conveyance for the journey.

**13(12)** The place of supply of **online information and database access or retrieval services**. Location of the recipient of services.

"**Online information and database access or retrieval services**" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,-

(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

(v) online supplies of digital content
(movies, television shows, music and the like); (vi) digital data storage; and (vii) online gaming. [Section 2(17) of IGST Act, 2017]

Explanation: Person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely:-

(a) the location of address presented by the recipient of services through internet is in the taxable territory;
(b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;
(c) the billing address of the recipient of services is in the taxable territory;
(d) the internet protocol address of the device used by the recipient of services is in the taxable territory;
(e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
(f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;
(g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

13(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

Section 13(2) of IGST Act 2017: GENERAL PROVISION OR RESIDUARY PROVISION

Applicability:
When section 13(3) to section 13(12) is not applicable

**Place of Supply**
The place of supply of services shall be the location of the recipient of services.
However, where the location of the recipient of services is not available in the ordinary courses of business, the place of supply shall be the location of the supplier of services.

**Section 13(3): PERFORMANCE BASED SERVICES**

**Performance based services in respect of goods provided by recipient for supply of service:**
Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services, the place of supply shall be the location where the service is actually performed.

- **Note 1: Services provided from a remote location by way of electronic means:**
  When such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services.

- **Note 2: General Rule applicable when goods that are temporarily imported into India for repairs, etc.:**
The above provision shall not apply in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.

**Physical presence of recipient required for supply of service:**
Services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services, the place of supply shall be the location where the service is actually performed.

**Examples:**
(i) ABC Ltd. (Registered in Jaipur, Rajasthan) imports a machine from Japan for being installed in its factory at Jaipur. To install such machine. ABC Ltd. takes the service of an engineer who comes to India from Japan for this specific installation. The place of supply of installation service, which requires the physical presence of machinery, is the location where the service is actually performed i.e., Jaipur.

(ii) A software company located in Canada takes services of a software company located in Hyderabad to service its software in Canada. The Indian software
company provides its services through electronic means from its office in Hyderabad. The place of supply is the location where goods are situated at the time of supply of service i.e., Canada.

(iii) ABC Ltd., Jaipur has exported a machine to a company in Japan. There were technical snags in the Machine and is therefore, imported by ABC Ltd. for free repairs as per the terms of the sale contract. The machine is exported after repairs. The place of supply of repair service is the location of the recipient i.e., Japan.

(iv) Mr. X a hair stylist registered in Jaipur, travels to Dubai to provide his services to Ms. Y, a resident of Dubai The place of supply is the location where the services are actually performed i.e., Dubai.

Section 13(4): SERVICES DIRECTLY IN RELATION TO IMMOVABLE PROPERTY

Applicability:
As per Section 13(4) of IGST Act, 2017, the place of supply of services supplied directly in relation to an immovable property, including –

- services supplied in this regard by experts and estate agents,
- supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called,
- grant of rights to use immovable property,
- services for carrying out or co-ordination of construction work, including that of architects or interior decorators,

Place of supply
shall be the place where the immovable property is located or intended to be located.

Following is the list of services which can be treated as directly in relation to or indirectly in relation to immovable property:

<table>
<thead>
<tr>
<th>Services supplied directly in relation to immovable property covered by this Section:</th>
<th>Services supplied indirectly in relation to immovable property covered by this Section:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Services supplied in the course of construction, reconstruction, alteration, demolition, repair or maintenance (including painting and decorating) of any building or civil engineering work.</td>
<td>Services of a Tax Return Preparer in simply calculating a tax return from figures supplied by a business in respect of rental income from commercial property.</td>
</tr>
<tr>
<td>Packages of property management services which may include rent collection, arranging repairs and the maintenance of financial accounts.</td>
<td>Advice or information relating to land prices or property markets because they do not relate to specific sites.</td>
</tr>
<tr>
<td>Services of real estate agents, auctioneers,</td>
<td>Land or Real Estate Feasibility studies,</td>
</tr>
</tbody>
</table>
### Section 13(5) of IGST Act, 2017: ADMISSION TO AND ORGANISATION OF EVENT

How is the place of supply determined in case of services of admission to and organisation of event where location of supplier or location of recipient is outside India.

**Applicability:**

Place of supply of services supplied by way of admission to or Organisation of Event and Incidental Services

- **admission to, or organisation of—**
  - (a) a cultural, artistic, sporting, scientific, educational or entertainment event, or
  - (b) a celebration, conference, fair, exhibition or similar events,

- **services ancillary to such admission or organisation,**

**Place of Supply**

shall be the place where the event is actually held.

**For example:**

A circus team from Russia organizes a circus in Jaipur. The place of supply is the location where the event is actually held i.e., Jaipur.

### Section 13(6) of the IGST Act, 2017: SERVICE IS SUPPLIED AT MORE THAN ONE LOCATION, INCLUDING THE LOCATION OF TAXABLE TERRITORY

**Applicability:**

<table>
<thead>
<tr>
<th>Services connected with oil/ gas/ mineral exploration or exploitation relating to specific sites of land or the seabed.</th>
<th>Repair and maintenance of machinery which is not permanently installed. This is a service related to goods.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The surveying (such as seismic, geological or geomagnetic) of land or seabed.</td>
<td>Services of an agent who arranges finance for the purchase of a property.</td>
</tr>
<tr>
<td>Legal services such as dealing with applications for planning permission.</td>
<td></td>
</tr>
<tr>
<td>The supply of hotel accommodation or warehouse space.</td>
<td></td>
</tr>
<tr>
<td>Renting of immovable property.</td>
<td></td>
</tr>
</tbody>
</table>
Where any service referred to in Section 13(3) or Section 13(4) or Section 13(5) is supplied at more than one location including a location in the taxable territory, its

**Place of supply:**
Place of supply shall be the location in the taxable territory.

**Section 13(7) of the IGST Act, 2017: SERVICES SUPPLIED IN MORE THAN ONE STATE**

**Applicability:**
Where the services referred to in Section 13(3) or Section 13(4) or Section 13(5) are supplied in more than one State or Union territory,

**Place of supply**
Place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

**For example:**
An event management company registered in Jaipur organises road show for educational institution of London. The road show is organised in 3 countries including India (organised at Jaipur). Since the service is supplied at more than one location including a location in the taxable territory, the place of supply is the location in the taxable territory i.e., Jaipur. Mention the services specified in Section 13(8) of the IGST Act, 2017 in res

**Section 13(8) of IGST Act, 2017: SPECIFIED SERVICES**

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

**Place of supply of specified services**
The place of supply of the following services shall be the location of the supplier of services
Details

<table>
<thead>
<tr>
<th>Banking services</th>
<th>&quot;Account&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account. [Explanation (a) to Section 13(8) of IGST Act, 2017]</td>
</tr>
<tr>
<td></td>
<td>Services supplied to holders of demand deposits, term deposits, NRE (non-resident external) accounts and NRO (non-resident ordinary) accounts will be covered under this Section.</td>
</tr>
<tr>
<td></td>
<td>Banking services supplied to persons other than account holders will be covered under the default Section i.e. Section 13(2) of the IGST Act, 2017.</td>
</tr>
</tbody>
</table>

**Services supplied to account holders in Ordinary Course of Business:**

The services that are supplied by a banking company or financial institution or non-banking financial company to an "account holder", in the ordinary course of business, are as under, —

(i) services linked to or requiring opening and operation of bank accounts such as lending, deposits, safe deposit locker, etc.;

(ii) transfer of money including telegraphic transfer, mail transfer, electronic transfer, etc.

**Place of supply of services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders [Section 13(8) of IGST Act, 2017]:**

The place of supply of services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders shall be the location of the supplier of services.

<table>
<thead>
<tr>
<th>Intermediary services</th>
<th>&quot;Intermediary&quot; means —</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>a broker, an agent or any other person, by whatever name called,</td>
</tr>
<tr>
<td></td>
<td>who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons,</td>
</tr>
<tr>
<td></td>
<td>but does not include a person who supplies such goods or services or both or securities on his own account. [Section 2(13) of IGST Act, 2017]</td>
</tr>
</tbody>
</table>

**Place of supply of intermediary services [Section 13(8) of IGST Act, 2017]:**

The place of supply of services supplied by an intermediary shall be the location of the supplier of services.
**PLACE OF SUPPLY**

**Act, 2017**: The place of supply of the intermediary services shall be the location of the supplier of services, where location of supplier or location of recipient is outside India.

**Exemption in respect of intermediary services** [Entry 12AA of Notification No. 9/2017-IT (Rate)] [Inserted by Notification No. 20/2019-IT (Rate) w.e.f. 1-10-2019]: Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory are exempt.

**Documentation requirement**: Following documents shall be maintained for a minimum duration of 5 years:

(i) Copy of Bill of Lading

(ii) Copy of executed contract between Supplier/Seller and Receiver/Buyer of goods

(iii) Copy of commission debit note raised by an intermediary service provider in taxable territory from service recipient located in nontaxable territory

(iv) Copy of certificate of origin issued by service recipient located in nontaxable territory

(v) Declaration letter from an intermediary service provider in taxable territory on company letter head confirming that commission debit note raised relates to contract when both supplier and receiver of goods are outside the taxable territory.

**Transport Related Services**

"Means of transport" means any conveyance designed to transport goods or persons from one place to another.

**Hiring of means of transport upto one month - Place of supply shall be the Location of Service Supplier** [Section 13(8) of IGST Act, 2017]: The place of supply of services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month shall be the location of the supplier of services.

Thus, if means of transport are supplied on hire for a period of more than one month the place of supply shall be determined as per default Section *i.e.* Section 13(2) of the IGST Act, 2017.

Similarly if aircrafts and vessels are supplied on hire irrespective of the period of hire, the place of supply shall be determined as per default Section *i.e.* Section 13(2) of the IGST Act, 2017.

**For example:**
Mr. X, an unregistered person based in Jaipur, leaves for Dubai on holiday. He hires a car from Dubai for 10 days. The place of supply is the location of the supplier of services i.e., Dubai.

Section 13(9) of IGST Act, 2017: TRANSPORT OF GOODS OTHER THAN MAIL OR COURIER

Applicability:
Place of supply of services of transportation of goods, other than by way of mail or courier, where the location of supplier or the location of recipient is outside India

Place of Supply:
place of destination of such goods where location of supplier or location of recipient is outside India.

Import Freight is Taxable:
In case of Import of goods since the destination of goods is in India, the place of supply of import freight is in India, hence the same is liable to tax.

GST on ocean freight importation of goods under Reverse Charge:
in case of import of goods by vessel from out of India to first custom port in India, the importer in India is liable to pay GST under reverse charge basis.

Import Air Freight Exempt:
Services by way of transportation of goods by an aircraft from a place outside India up to the customs station of clearance in India are exempt vide Entry 19 of Notification No. 12/2017-CT (Rate).

For example:
An aircraft operator, Pune, Maharashtra transports a shipment of rose flowers from Pune to Toronto, for an event management company based in Toronto. The place of supply is the location of destination of goods transported i.e., Toronto.

Satellite launch services provided to international customers - Place of supply is to be determined as per destination of goods - Export Incentives available. [Circular No. 2/2017-IGST dated 27-09-2017]

<table>
<thead>
<tr>
<th>Issue</th>
<th>Clarification</th>
</tr>
</thead>
<tbody>
<tr>
<td>How is the taxability of satellite launch services provided to both international and domestic customers by ANTRIX Corporation Limited, which is Customers located outside India: Place of supply of satellite launch services supplied by ANTRIX Corporation Limited to international customers would be outside India in terms of Section 13(9) of IGST Act, 2017 and such supply which meets the</td>
<td></td>
</tr>
</tbody>
</table>
a wholly owned Government of India Company under the administrative control of Department of Space (DOS), determined?

- requirements of Section 2(6) of IGST Act, thus constitutes export of service and shall be zero rated in accordance with Section 16 of the IGST Act.

Customers located in India: Where satellite launch service is provided by ANTRIX Corporation Limited to a person located in India, the place of supply of satellite launch service would be governed by Section 12(8) of the IGST Act and would be taxable under CGST Act, UTGST Act or IGST Act, as the case may be.

---

**Section 13(10) of the IGST Act, 2017: TRANSPORT OF PASSENGER SERVICES**

**Applicability:**
The place of supply in respect of passenger transportation services

**Place of supply:**
the place where the passenger embarks on the conveyance for a continuous journey.

"Continuous journey"
means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.  
*{Section 2(3) of IGST Act, 2017}*

"Stopover"
means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time.  
*{Explanation}*

All stopovers do not cause a break in continuous journey. Only such stopovers will be relevant for which one or more separate tickets are issued.

**Analysis:**
For a journey to be regarded as continuous journey it is not necessary that a single ticket or invoice must be issued. However, the supplier of service or agent must be one person.

**Example:**
In case of travel on Delhi - London - New York - London - Delhi on a single ticket, if a halt is made at London either on the onward journey or on a return journey or on both, it shall be covered in the definition of continuous journey. However, if a separate ticket is issued, say New York - Boston - New York, the same will be outside the scope of a continuous Journey.
If journey is non-continuous - Each journey is Separate:
In case the journey is not a continuous journey, each journey shall be regarded as separate journey and the same shall be liable to be taxed accordingly.

Example:
Mr, A, a foreign tourist, has booked a ticket for New Delhi - Sri Lanka flight from an airline registered in New Delhi for a continuous journey without any stopover. The place of supply is the place where the passenger embarks on the conveyance for a continuous journey i.e., New Delhi.

Section 13(11) of the IGST Act, 2017: SUPPLY OF SERVICES PROVIDED ON BOARD A CONVEYANCE

Applicability:
Supply of services provided on board a conveyance during the course of a passenger transport operation where location of supplier or location of recipient is outside India.

Place of supply
The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

Section 13(12) of the IGST Act, 2017: OIDAR SERVICES

Applicability:
Place of supply determined in case of OIDAR services where location of supplier or location of recipient is outside India.

Place of supply of OIDAR Services
The place of supply of OIDAR services shall be the location of the recipient of services.

Recipient deemed to be located in India if any 2 non-contradictory conditions out of such 7 conditions fulfilled [Explanation]:
Person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely:-
(i) the location of address presented by the recipient of services through internet is in the taxable territory;
(ii) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;
(iii) the billing address of the recipient of services is in the taxable territory;
(iv) the internet protocol address of the device used by the recipient of services is in the taxable territory;
(v) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
(vi) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;
(vii) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

Powers of Government to prevent double taxation or non-taxation of the supply of a service.

As per Section 13(13) of IGST Act, 2017, in order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

The power granted under the rule is to enable the Government to issue notifications to,-

Correct injustice on account of double taxation:
Sometimes, the rules that are applicable in a foreign territory may be inconsistent with the rules under the Indian GST laws, thereby leading to double taxation.

Curb the tax avoidance practices:
Due to the cross border nature of many services, it is also possible in certain situations to set up businesses in a non-taxable territory while the effective enjoyment, or in other words consumption, may be in taxable territory.

Curb ingenious practices:
This rule is also meant as an anti-avoidance measure where the intent of the law is sought to be defeated through ingenious practices unknown to the ordinary ways of conducting business.

Clarification regarding determination of place of supply in respect of services provided by Ports and Services rendered on goods temporarily imported in India

[Circular No. 103/22/2019-GST dated 28-06-2019]:
The clarification relating to determination of place of supply is as under —

<table>
<thead>
<tr>
<th>Nature of services</th>
<th>Place of supply</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Services provided by Ports - Cargo handling :</td>
<td>Place of supply is to be determined as per Section 12(2)/ Section 13(2) of the IGST Act, 2017 : It is hereby</td>
</tr>
<tr>
<td>Various services are being provided by</td>
<td></td>
</tr>
</tbody>
</table>

23.48
the port authorities to its clients in relation to cargo handling. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel etc. Doubts have been raised about determination of place of supply for such services i.e. whether the same would be determined in terms of the provisions contained in Section 12(2) or Section 13(2) of the IGST Act, as the case may be or the same shall be determined in terms of the provisions contained in Section 12(3) of the IGST Act.

clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property. Accordingly, the place of supply of such services will be determined as per the provisions contained in Section 12(2) or Section 13(2) of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.

(2) **Services rendered on goods temporarily imported in India** : Doubts have been raised about the place of supply in case of supply of various services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India?

**Place of supply to be determined as per Section 13(2) of the IGST Act, 2017** : Place of supply in case of performance based services is to be determined as per the provisions contained in Section 13(3)(a) of the IGST Act and generally the place of services is where the services are actually performed. But an exception has been carved out in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.

In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the place of supply would be determined as per the provisions contained in Section 13(2) of the IGST Act.
**PART 8: ONLINE INFORMATION DATABASE ACCESS AND RETRIEVAL (OIDAR) SERVICES**

**Online Information Database Access and Retrieval (OIDAR) Services:**

Online information and database access or retrieval services [Section 2(17) of IGST Act, 2017]:

"OIDAR "services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as, -

(i) advertising on the internet;
(ii) providing cloud services;
(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
(v) online supplies of digital content (movies, television shows, music and the like);
(vi) digital data storage; and
(vii) online gaming.

The above definition makes it apparent that in order to determine whether a particular service is an OIDAR service, the following tests need to be applied:

- Services whose delivery is mediated by information technology over the internet/electronic network **AND**
- Services are automated and impossible to ensure in the absence of information technology.

The inclusive Part of the definition are only indicative and not exhaustive.
List out examples of what could be OIDAR services and what could not be OIDAR services.

<table>
<thead>
<tr>
<th>Service</th>
<th>Whether Provision of service mediated by information technology over the internet or an electronic network</th>
<th>Whether it is Automated and impossible to ensure in the absence of information technology</th>
<th>OIDAR service</th>
</tr>
</thead>
<tbody>
<tr>
<td>PDF document manually emailed by provider</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>PDF document automatically emailed by provider’s system</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>PDF document automatically downloaded from site</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Stock photographs available for automatic download</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Online course consisting of pre-recorded videos and downloadable PDFs</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Online course consisting of pre-recorded videos and downloadable PDFs plus support from a live tutor</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Individually commissioned content sent in digital form eg, photographs, reports, medical results</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

Indicative List of OIDAR services:

1. **Website supply, web-hosting, distance maintenance of programmes and equipment**
   - Website hosting and web-page hosting;
   - automated, online and distance maintenance of programmes;
   - remote systems administration;
   - online data warehousing where specific data is stored and retrieved electronically;
   - online supply of on-demand disc space.

2. **Supply of software and updating thereof**
   - Accessing or downloading software (including procurement/ accountancy programmes and anti-virus software) plus updates;
   - software to block banner adverts showing,
<table>
<thead>
<tr>
<th>PLACE OF SUPPLY</th>
<th>AJ EDUCATION NEXT</th>
</tr>
</thead>
</table>
| 3. Supply of images, text and information and making available of databases | ⇒ Accessing or downloading desktop themes;  
⇒ accessing or downloading photographic or pictorial images or screensavers;  
⇒ the digitised content of books and other electronic publications;  
⇒ subscription to online newspapers and Journals;  
⇒ weblogs and website statistics;  
⇒ online news, traffic information and weather reports;  
⇒ online information generated automatically by software from specific data input by the customer, such as legal and financial data, *(in particular such data as continually updated stock market data, in real time)*;  
⇒ the provision of advertising space including banner ads on a website/webpage;  
⇒ use of search engines and Internet directories. |
| 4. Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events | ⇒ Accessing or downloading of files on to computers and mobile phones;  
⇒ accessing or downloading of jingles, excerpts, ringtones, or other sounds;  
⇒ accessing or downloading of films;  
⇒ downloading of games on to computers and mobile phones;  
⇒ accessing automated online games which are dependent on the Internet, or other similar electronic networks, where players are geographically remote from one another. |
| Supply of distance teaching | ⇒ Automated distance teaching dependent on the Internet or similar electronic network to function and the supply of which requires limited or no human intervention, including virtual classrooms, except where the Internet or similar electronic network is used as a tool simply for communication between the teacher and student;  
⇒ workbooks completed by pupils online and marked |
SECTION 14: Special provision for payment of tax by a supplier of online information and database access or retrieval services

Applicability:
This Section is applicable in case of—

 supply of OIDAR services
 by any person located in a non-taxable territory, and
 received by a non-taxable online recipient.

"Non-taxable online recipient"
means any Government, local authority, governmental authority, an individual or any other person not registered and receiving OIDAR services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory. [Section 2(16)]

"Governmental authority"
means an authority or a board or any other body,-
(i) set up by an Act of Parliament or a State Legislature; or
(ii) established by any Government,
with 90% or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution. [Explanation]

OIDAR Services - Supplier of services liable to pay IGST [Section 14(1)]:
If this Section applies the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services.

Intermediary deemed to be supplier of service subject to Certain Exceptions [Proviso to Section 14(1)]:
If this Section applies —
 an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be,
 the recipient of such services from the supplier of services in non-taxable territory, and
 supplying such services to the non-taxable online recipient.

Thus, if an intermediary located outside India arranges or facilitates supply of such service to a non-taxable online recipient in India, the intermediary would be deemed to be the supplier of the said service, except when the intermediary satisfies the following conditions namely:-

23.53
(a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;

(b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge. This means that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;

(c) the intermediary involved in the supply does not authorise delivery; and

(d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

**Simplified Registration Scheme in respect of OIDAR Services [Section 14(3)]:**
The supplier of OIDAR services referred above shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government. [Principal Commissioner of Central Tax, Bengaluru West has been notified vide Notification No. 2/2017-IT dated 19-06-2017 w.e.f 22-06-2017]

**Representative of supplier in taxable territory liable to pay tax:**
Any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier.

**Appointment of any person in taxable territory to pay tax:**
If such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

**Additional provisions for payment of tax for persons supplying OIDAR services from outside India to Non-taxable Online Recipient [Rule 87(2) and 87(3)]:**
A person supplying OIDAR services from a place outside India to a non-taxable online recipient referred to in Section 14 of the IGST Act, 2017,-

(a) may pay tax through the Board’s payment system namely, Electronic Accounting System in Excise and Service Tax from the date to be notified by the Board; [Omitted by CGST (Amendment) Rules, 2019, w.e.f. 28-6-2019]

(b) may also make the deposit through international money transfer through Society for Worldwide Inter-bank Financial Telecommunication payment network, from the date to be notified by the Board.
Procedure for grant of registration to a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient.

<table>
<thead>
<tr>
<th>Rule 14(1)</th>
<th>E-application by supplier of OIDAR services</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Any person supplying OIDAR services from a place outside India to a non-taxable online recipient shall electronically submit an application for registration, duly signed or verified through EVC, in FORM GST REG-10, at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rule 14(2)</th>
<th>Grant of RC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The applicant referred to in Rule 14(1) shall be granted registration, in FORM GST REG-06, subject to such conditions and restrictions and by such officer as may be notified by the Central Government on the recommendations of the Council.</td>
</tr>
</tbody>
</table>

Form and manner of submission of return by persons providing online information and database access or retrieval services.

Form and manner of submission of return by persons providing online information and database access or retrieval services [Rule 64]: Every registered person providing online information and data base access or retrieval services from a place outside India to a person in India other than a registered person shall file return in FORM GSTR-5A on or before the 20th day of the month succeeding the calendar month or part thereof.

**PART 9: PROBLEM**

Q3 – Kailash Traders, a dealer in furniture, located in Maharashtra, receives an order from Ghanshyam Traders, also located in Maharashtra. The order is for the supply of 250 Chairs, with an instruction to ship the Chairs to Prime Hardwares, located in Tamil Nadu. Prime Hardwares is a customer of Ghanshyam Traders. What will be the place of supply of goods?

**Solution:** Where three parties are involved i.e. to say a supplier, a buyer who is not the recipient of goods (referred as third person) and the recipient who actually receives the goods on the directions of the buyer, a fiction is introduced by Section 10(1)(b) of IGST Act, 2017, whereby the third person on whose direction the goods are delivered will be considered the recipient of the goods and the place of supply is deemed to be the principal place of business of the said third person (being the first buyer).

**There are two parts to this transaction:**

1. First part of the transaction - between Kailash Traders and Ghanshyam Traders: Kailash Traders is the supplier of Chairs, and Ghanshyam Traders is the buyer.
Accordingly, Kailash Traders bills the transaction to Ghanshyam Traders, and as per the instruction, ships the goods to Prime Hardwares in Tamil Nadu.

Over here, on the instruction from Ghanshyam Traders, Kailash Traders ships the chairs to Prime Hardwares located in Tamil Nadu. Here, Ghanshyam Traders is deemed as the third person. Therefore, the place of supply will be the principal place of business of the third person, i.e., Maharashtra. Accordingly, Kailash Traders charges CGST and SGST on billing to Ghanshyam Traders.

(2) **The second part of the transaction - between Ghanshyam Traders and Prime Hardwares**: Ghanshyam Traders is the supplier, and Prime Hardwares is the buyer. Ghanshyam Traders bills the transaction to Prime Hardwares, and endorses the lorry receipt (goods shipped in a lorry by Kailash Traders) in favour of Prime Hardwares. This lorry receipt (LR) will enable Prime Hardwares to take the delivery of the goods. The second part of the transaction between Ghanshyam Traders and Prime Hardwares will also be interstate, and IGST will be charged.

Q4 - Chamunda Traders in Maharashtra receives an order from Queens Associates in London to deliver 100 cell phones at Maheshwari Dealers in Maharashtra. Determine place of supply.

**Ans:** Where three parties are involved i.e. to say a supplier, a buyer who is not the recipient of goods (referred as third person) and the recipient who actually receives the goods on the directions of the buyer, a fiction is introduced by Section 10(1) (b) of IGST Act, 2017, whereby the third person on whose direction the goods are delivered will be considered the recipient of the goods and the place of supply is deemed to be the principal place of business of the said third person (being the first buyer).

**There are two parts to this transaction:**

(1) **Between Chamunda Traders and Queens Associates**: As per provisions of Section 10(1) (b), the place of supply will be location of third person i.e. Queen Associates. Thus, the place of supply will be in London.

Now, it is to be determined whether the transaction between Chamunda Traders and Queens Associates will be considered as Export. As per Section 16, export of goods is a "Zero Rated Supply" and tax need not be levied on the same.

As per Section 2(5), "export of goods" means taking goods out of India to a place outside India. In our case, as goods are not moving out of India hence it cannot be termed as exports.

Section 7(5) (a) states that supply of goods or services or both when the supplier is located in India and the place of supply is outside India shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce.

Above Section applies to the present case, supplier (Chamunda Traders) is located in India and place of supply (London) is outside India. Hence, the transaction between Chamunda Traders and Queens Associates will be considered as an inter-state supply, and IGST shall be levied on it.
Between Queens Associates and Maheshwari Dealers: The transaction between Queens Associates and Maheshwari Dealers cannot be considered as the import of goods as according to Section 2(11) "import of goods" means bringing goods into India from a place outside India.

This transaction will be covered under Section 7(5) (c) which states that supply of goods or services or both in the taxable territory, not being an intra-State supply and not covered elsewhere in Section 7 shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce. Hence, it will be inter-state supply liable for IGST.

Q5 - From the following information determine the place of supply of goods as per Section 10(1)(b) of IGST Act, 2017, where the goods are delivered by the supplier to a recipient on the direction of a third person during the course of movement of goods. Also determine the nature of supply - whether inter state or intra-State supply?

<table>
<thead>
<tr>
<th>Supplier and his location</th>
<th>Location of the buyer (third person)</th>
<th>Recipient and his location</th>
<th>Place of delivery of the goods</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Ltd. Jaipur</td>
<td>B Ltd. Jaipur</td>
<td>M Ltd. Mumbai</td>
<td>Mumbai</td>
</tr>
<tr>
<td>A Ltd. Jaipur</td>
<td>M Ltd. Mumbai</td>
<td>B Ltd. Jaipur</td>
<td>Jaipur</td>
</tr>
<tr>
<td>A Ltd. Jaipur</td>
<td>S Ltd. Surat</td>
<td>M Ltd. Mumbai</td>
<td>Mumbai</td>
</tr>
<tr>
<td>A Ltd. Jaipur</td>
<td>M Ltd. Mumbai</td>
<td>P Ltd. Mumbai</td>
<td>Mumbai</td>
</tr>
</tbody>
</table>

Solution: As per Section 10(1)(b), the place of supply of goods shall be determined as under—

<table>
<thead>
<tr>
<th>Supplier and his location</th>
<th>Location of the buyer (third person)</th>
<th>Recipient and his location</th>
<th>Place of delivery of the goods</th>
<th>Place of Supply (As per Section 10(1)(b) shall be the principal place of business of third person i.e. buyer)</th>
<th>CGST/IGST</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Ltd. Jaipur</td>
<td>S Ltd. Surat</td>
<td>M Ltd. Mumbai</td>
<td>Mumbai</td>
<td>Inter-State – IGST</td>
<td></td>
</tr>
<tr>
<td>A Ltd. Jaipur</td>
<td>M Ltd. Mumbai</td>
<td>P Ltd. Mumbai</td>
<td>Mumbai</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The place of supply in respect of Second transaction i.e. between the third person and ultimate recipient shall be determined as under:

<table>
<thead>
<tr>
<th>Location of the third person</th>
<th>Recipient and his location</th>
<th>Place of delivery of the goods</th>
<th>Place of Supply</th>
<th>CGST/IGST</th>
</tr>
</thead>
<tbody>
<tr>
<td>B Ltd. Jaipur</td>
<td>M Ltd. Mumbai</td>
<td>Mumbai</td>
<td>Mumbai</td>
<td>Inter-State - IGST</td>
</tr>
<tr>
<td>M Ltd. Mumbai</td>
<td>B Ltd. Jaipur</td>
<td>Jaipur</td>
<td>Jaipur</td>
<td>Inter-State - IGST</td>
</tr>
</tbody>
</table>
Q6 - Mr. A located in Chennai places order on Mr. B of Chennai for installation of a machinery at his factory in Delhi. Mr. B procures the various parts of the machinery from different states and arranges for installation of the same in A’s factory at Delhi. Determine the place of supply of machine.

**Ans:** As per Section 10(1)(d) of IGST Act, 2017, where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly. In this case the place of supply shall be the place where the goods are installed, *i.e.* Delhi even though A and B are both located in Chennai.

Q7 - Determine place of supply of goods in the following cases and also state the nature of supply and the type of tax leviable:

<table>
<thead>
<tr>
<th>Supplier and his location</th>
<th>Recipient and his location</th>
<th>Place of assembly/installation of goods</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Ltd. Jaipur</td>
<td>B Ltd. Jaipur</td>
<td>Kolkatta</td>
</tr>
<tr>
<td>A Ltd. Jaipur</td>
<td>M Ltd. Mumbai</td>
<td>Surat</td>
</tr>
<tr>
<td>A Ltd. Jaipur</td>
<td>S Ltd. Surat</td>
<td>Allahabad</td>
</tr>
<tr>
<td>A Ltd. Jaipur</td>
<td>M Ltd. Mumbai</td>
<td>Jaipur</td>
</tr>
</tbody>
</table>

**Solution:** The place of supply shall be determined as under—

<table>
<thead>
<tr>
<th>Supplier and his location</th>
<th>Recipient and his location</th>
<th>Place of assembly/installation of goods</th>
<th>Place of Supply</th>
<th>Nature of supply and tax leviable</th>
</tr>
</thead>
<tbody>
<tr>
<td>A Ltd. Jaipur</td>
<td>B Ltd. Jaipur</td>
<td>Kolkatta</td>
<td>Kolkatta</td>
<td>Inter-State - IGST</td>
</tr>
<tr>
<td>A Ltd. Jaipur</td>
<td>M Ltd. Mumbai</td>
<td>Surat</td>
<td>Surat</td>
<td>Inter-State - IGST</td>
</tr>
<tr>
<td>A Ltd. Jaipur</td>
<td>S Ltd. Surat</td>
<td>Allahabad</td>
<td>Allahabad</td>
<td>Inter-State - IGST</td>
</tr>
<tr>
<td>A Ltd. Jaipur</td>
<td>M Ltd. Mumbai</td>
<td>Jaipur</td>
<td>Jaipur</td>
<td>Intra-State - CGST</td>
</tr>
</tbody>
</table>

Q8 - X Ltd. of Delhi entered into contract with the airlines authority for the supply of food packets to the passengers flying on Delhi - Bengaluru route. Aircraft commenced the Journey from Delhi. The goods were loaded on board the aircraft in Jaipur. Determine the place of supply of goods.

**Ans:** As per Section 10(1)(e), where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board. In present case the place of supply shall be the place of loading of goods on board the aircraft *i.e.* Jaipur, irrespective of the place of commencement or destination of aircraft.

Q9 - XYZ Ltd. of Jaipur imported certain goods from PQR Inc of US. The goods were imported through vessel and delivery of goods was taken at Mumbai Port. Determine the place of supply of goods.
**Ans:** As per Section 11(a) of the IGST Act, 2017, the place of supply of goods imported into India shall be the location of the importer. Thus, in this case the place of supply shall be the location of XYZ Ltd. i.e. Jaipur.

**Q10—** Determine place of supply in independent cases as under:

1. A company in Pune contracts with a Pune based architect to design a structure for their new office to be located in Bangalore.
2. Mr. A of Jaipur entered into a lease agreement with Mr. B of Jaipur whereby he leased out his farm in Nagpur to Mr. B.
3. Mr. A an employee of ABC Ltd. Kolkata, goes on an official tour to Hyderabad and stays in a hotel there, booked in the name of his company.
4. Mr. X of Mumbai arranged for destination wedding of his son at Pushkar (Rajasthan) he "booked a resort at Pushkar for the accommodation of his guests and also for performing the marriage ceremony. Apart from providing the resort for the marriage purpose, decoration was also provided.
5. The contractor M/s. ABC of Pune sub-contracted the work of construction of the building at Delhi to M/s. XYZ of Mumbai, to complete the work as per the drawing and design of the Architect.
6. ABC Ltd. of Mumbai, hires a professional firm of Delhi to design its office in Canada.

**Solution:** The place of supply of services shall be determined as under—

<table>
<thead>
<tr>
<th>Case</th>
<th>Place of supply</th>
<th>Reasons</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. A company in Pune contracts with a Pune based architect to design a structure for their new office in Bangalore.</td>
<td>Bangalore</td>
<td>Though the supplier of service and me recipient are both located in Pune, place of supply would be the place where the immovable property is located i.e. Bangalore.</td>
</tr>
<tr>
<td>2. Mr. A of Jaipur entered into a lease agreement with Mr. B of Jaipur whereby he leased out his farm in Nagpur to Mr. B.</td>
<td>Nagpur</td>
<td>Though the supplier and the recipient are both in Jaipur, Rajasthan but any service provided by way of grant of rights to use immovable property is covered under Section 12(3) of the IGST Act, 2017, therefore, the place of supply shall be the location of the immovable property, here being Nagpur.</td>
</tr>
<tr>
<td>3. Mr. A an employee of ABC Ltd. Kolkata, goes on an official tour to Hyderabad and stays in a hotel there, booked in the name of his company.</td>
<td>Hyderabad</td>
<td>This being the accommodation service, is covered under Section 12(3) of the IGST Act, 2017, accordingly, the place of supply shall be the location of the immovable property (here Hotel). The location of the supplier and the receiver is irrelevant. The place of supply of service for</td>
</tr>
<tr>
<td>4. Mr. X of Mumbai arranged</td>
<td>Pushkar</td>
<td></td>
</tr>
</tbody>
</table>

23.59
for destination wedding of his son at Pushkar (Rajasthan). He booked a resort at Pushkar for the accommodation of his guests and also performing the marriage ceremony. Apart from providing the resort for the marriage purpose, decoration was also provided.

| 5. | The contractor M/s. ABC of Pune sub-contracted the work of construction of the building at Delhi to M/s. XYZ of Mumbai, to complete the work as per the drawing and design of the Architect. | Delhi | Here, the main contractor, M/s. ABC merely co-ordinates with the subcontractor M/s. XYZ to ensure completion of construction work. Hence, both these services of construction activity undertaken by M/s. XYZ and the co-ordination of construction work undertaken by M/s. ABC are covered under Section 12(3)(a) of the IGST Act, 2017, hence, the place of supply shall be the place where the immovable property is located. |
| 6. | ABC Ltd. of Mumbai, hires a professional firm of interior decorators of Delhi to design its office in Canada. | Mumbai | Since the immovable property is intended to be located outside India, therefore, as per proviso to Section 12(3) of the IGST Act, 2017, the place of supply shall be the location of the recipient of service, here - Mumbai, being the location of ABC Ltd. |

**Q11** - *Mb. X of Jaipur went on trip to Mumbai. She availed beauty treatment services in Beauty Parlour of Mumbai. Determine place of supply of beauty treatment services provided to Ms. X.*

**Ans:** As per Section 12(4) of IGST Act, 2017, the place of supply of beauty treatment services shall be the location where the services are actually performed. Thus, place of supply in this case shall be Mumbai.

**Q12** - *XYZ Ltd, of Delhi has entered into a contract with ASL Training Ltd. of Mumbai for training and performance appraisal of its employees. Training was provided at Dehradun Training Centre of ASL Training Ltd. Determine the Place of supply of services in case XYZ*
Ltd. is registered in Delhi. What would your answer be in case XYZ Ltd. is unregistered recipient.

**Ans:** As per Section 12(5) of IGST Act, 2017, the place of supply of services in relation to training and performance appraisal to, —

(a) a registered person, shall be the location of such person;
(b) a person other than a registered person, shall be the location where the services are actually performed.

Thus, when XYZ Ltd. is registered the place of supply of services shall be Delhi. When XYZ Ltd. is unregistered the place of supply will be Dehradun.

**Q13** - Auditions of music show were held at Jaipur, where the judges of the music and dance firm registered in Mumbai were sent to appraise the performance of the young aspirants. Determine the place of supply of performance appraisal services.

**Ans:** As per Section 12(5) of IGST Act, 2017, the place of supply of services in relation to training and performance appraisal to, a person other than a registered person, shall be the location where the services are actually performed. Here, the place of supply of service shall be the location of the performance of activity (Jaipur) as the participants are unregistered.

**Q14** - Mr. X, of Mumbai purchased online tickets for the Wonder la water park in Bengaluru. Determine the place of supply.

**Ans:** According to Section 12(6) of the IGST Act, 2017, the place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located. Therefore, in this case, the Place of supply shall be Bengaluru.

**Q15** - Mr. A of Pune, booked online for the Tiger Safari at the Ranthambor National Park and hired a jeep to be taken around for the safari. Determine the place of supply for the services.

**Ans:** Here, there are two kinds of supply of services- first admission to the park and second hiring of the jeep. As per the provisions of Section 12(6) of the IGST Act, the place of supply of services by way of admission to a amusement park or any other place shall be the location of the park, here Ranthambor (Rajasthan). The service of hiring of the jeep is ancillary to the service of admission to the park as the same is provided to make the visit more convenient. Hence, the provisions of Section 12(6) shall apply thereon and the place of supply shall be the place of location of the park being Ranthambor (Rajasthan).

**Q16** - Jas Fashions Ltd. an Indian fashion designing company registered in Delhi hosts a fashion show at Toronto, Canada. The firm receives the services of ABC Ltd. of Mumbai for organizing the event. Determine the place of supply of services provided by ABC Ltd.
**Ans:** As per Section 12(7) of IGST Act, 2017, the place of supply of services provided by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events to a registered person, shall be the location of such person. Thus, in this case, though the service is received outside India, since service recipient is registered person, the place of supply shall be the location of the recipient, here Delhi.

**Q17 - Mr. A of Raipur (unregistered person) hires the services of M/s XYZ an event management company registered in Jaipur, for organising the marriage ceremony of his daughter at marriage garden in Jaipur. Determine place of supply of services provided by XYZ Ltd. What would your answer be in case marriage takes place in Dubai.**

**Ans:** As per Section 12(7) of IGST Act, 2017, the place of supply of services provided by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient. Since Mr. A is not a registered person, the place of supply shall be the place where the event is held, here as the marriage ceremony is held in Jaipur, therefore, place of supply shall be Jaipur. The location of the supplier and the location of the recipient is irrelevant. If the marriage ceremony is organised in Dubai, then the place of supply would have been the location of the recipient. Since Mr. A resides in Raipur, therefore, the place of supply shall be Raipur.

**Q18 - The All India Scientists Association (AISA) registered in Bengaluru, contracted with event managers M/s. BB Ltd. of Neu Delhi for organising the National seminar of scientists at Curgaon and the highly esteemed real estate company XYZ Ltd. of Rajas than offered sponsorship for the seminar. Mr. A, a scientist from Chennai paid for the fees to attend the seminar at the Bengaluru office of the AISA. Determine the place of supply of the various services supplied herein.**

**Solution:** The place of supply shall be determined as follows:

<table>
<thead>
<tr>
<th>Service supplied</th>
<th>Supplier</th>
<th>Recipient</th>
<th>Place of supply</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organisation of the event</td>
<td>BB Ltd. of Delhi</td>
<td>AISA of Bengaluru</td>
<td>Bengaluru</td>
<td>As per Section 12(7), where the services by way of organisation of an event is supplied to a registered person, the place of supply shall be the location of such person.</td>
</tr>
<tr>
<td>Assigning of sponsorship</td>
<td>AISA Bengaluru</td>
<td>XYZ Ltd. Rajasthan</td>
<td>Rajasthan</td>
<td>As per Section 12(7), where the services ancillary to organisation of any of the events or assigning of sponsorship to such events is</td>
</tr>
</tbody>
</table>
Q19 - ABC Goods transportation agency located in Delhi provides services to PQR Ltd. registered in Gurgaon, A consignment of new motorcycles from the factory of PQR Ltd, in Gurgaon (Haryana) is transported to the depot of PQR Ltd, in Bhopal, Madhya Pradesh. Determine place of supply of transportation of goods service.

*Ans:* As per Section 12(8) of IGST Act, 2017, the place of supply of services by way of transportation of goods, including by mail or courier to a registered person, shall be the location of such person. In this case since PQR Ltd. is located in Haryana, the place of supply shall be Haryana.

Q20- Mr. X of Jaipur an unregistered person has availed services of Delhi Transport Company of Delhi for transport of goods from his house in Bhilwara (Rajasthan) to Delhi. Determine place of supply of goods transport services.

*Ans:* As per Section 12(8) of IGST Act, 2017, the place of supply of services by way of transportation of goods, including by mail or courier to a person other than a registered person, shall be the location at which such goods are handed over for their transportation. In this case since the goods are handed over to transporter in Bhilwara, the place of supply shall be Bhilwara.

Q21 - Mr. A, partner of M/s. ABC Chartered Accountants, a firm registered in Delhi, went to Mumbai for audit purposes. He purchased from Jaipur Airlines (registered in Rajasthan) air ticket from Jaipur to Mumbai disclosing the name of the organisation and its GST Registration number. Determine the place of supply of service. What would your answer be in case Mr. A does not disclose the particulars of organisation.

*Ans:* As per Section 12(9) of IGST Act, 2017, the place of supply of passenger transportation service to,—

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey.

Here, since the organisation is registered in Delhi, therefore as per Section 12(9) (a), the place of supply shall be the place where the recipient is located *i.e.* Delhi in this case. The airlines shall charge IGST as the location of supplier is in Jaipur.
In case Mr. A does not disclose the particulars of the organisation, the place of supply of service will be Jaipur \textit{i.e.} the place where Mr. A embarks the aircraft for his journey. Here, the airlines shall charge CGST/SGST.

**Q22 -** Mr. X residing in Delhi travelling with Indian Airlines is provided with the movie-on-demand service as on-board entertainment during the Kolkata - Delhi leg of a Itongkok - Kolkata - Delhi flight. Determine the place of supply of service provided to Mr. X.

**Ans:** As per Section 12(10) of IGST Act, 2017, the place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey. The place of supply of this service will be Bangkok \textit{(i.e. the first scheduled point of departure of the conveyance for the journey)} which is outside the taxable territory, hence not liable to tax.

**Q23 -** Determine place of supply in the following independent cases:

1. Mr. X, registered in Bengaluru has availed land-line services from BSNL. The telephone is installed in residential premises in Jaipur and the billing address is of office of Mr. X in Bengaluru.
2. Mr. X has availed post paid mobile services from BSNL registered in Bengaluru. Mr. X is registered under GST law in Bengaluru but the billing address is of residential premises of Mr. X in Jaipur.
3. Mr. X has purchased pre-paid mobile vouchers of BSNL registered in Bengaluru through internet banking. Mr. X is registered under GST law in Bengaluru but in BSNL’s records the address of Mr. X is that of his residence in Jaipur.
4. Mr. C (Pune) purchases a pre-paid card from a selling agent in Mumbai.
5. Mr. F (Puducherry) gets a pre-paid voucher recharged from a grocery shop in Chennai.

**Ans:**

1. As per Section 12(11) of the IGST Act, 2017, the place of supply of telecommunication services by way of fixed telecommunication line shall be the location where the telecommunication line is installed for receipt of services. In this case though the billing address is in Bengaluru but the place of supply of services shall be Jaipur where the telephone is installed.
2. As per Section 12(11) of the IGST Act, 2017, the place of supply of services by way of mobile connection for telecommunication provided on post-paid basis shall be the location of billing address of the recipient of services on record of the supplier of services. In this case since the billing address of the recipient is of Jaipur, the place of supply shall be Jaipur.
3. As per Section 12(11) of the IGST Act, 2017, the place of supply of services by way of mobile connection for telecommunication provided on pre-paid basis shall be
the location of billing address of the recipient of services on the record of the supplier of services if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment. In this case since address of Mr. X as per BSNL's record is that of Jaipur, the place of supply shall be Jaipur.

(4) As per Section 12(11) of the IGST Act, 2017, in case where mobile connection for telecommunication is provided on pre-payment basis through a voucher or any other means by any person to the final subscriber, the place of supply shall be the location where such prepayment is received or such vouchers are sold i.e. in this case Chennai.

Q24 - Mr. X registered poison of Jaipur buys shares from a broker in Delhi on NSE (in Mumbai). What will be the place of supply of stock broking services?

*Ans:* The place of supply shall be the location of the recipient of services on records of the supplier of services. So, here, Jaipur shall be the place of supply.

Q25 - A person from Mumbai goes to Kullu-Manali and avails of some services from ICICI Bank in Manali. What will be the place of supply?

*Ans:* If the service is not linked to the account of the person, place of supply shall be Manali i.e. the location of the supplier of services. However, if the service is linked to the account of the person, the place of supply shall be Mumbai, the location of recipient on the records of the supplier.

Q26 - A person from Gurgaon travels by Air India flight from Mumbai to Delhi and gets his travel insurance done in Mumbai. What will be the place of supply?

*Ans:* Since Mr. A is an unregistered person, the location of the recipient of services on the records of the supplier of insurance services shall be the place of supply. So Gurgaon shall be the place of supply. *(Proviso clause to Section 12(13) of the IGST Act)*

Q27 - Government of India launched a project "Make in India" and appointed ABC Advertising agency of Haryana for advertisement of the project all over the country. ABC agency advertises the project in all states of India. Determine the place of supply of advertisement services.

*Ans:* As per Section 12(14) of IGST Act, 2017, the place of supply shall be each state where the advertisement services are provided and the value to each state shall be in proportion to the amount attributable to service provided by way of dissemination in
the respective states and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into. In this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

Q28 – Delhi Government gives an advertisement contract to an advertising agency registered in Delhi to promote its ‘Every Child Can Read’ campaign in Delhi.

**Ans:** As per Section 12(14) of IGST Act, 2017, the place of supply shall be the state where the advertisement services are provided. Thus, in this case the place of supply is Delhi.

Q29 – Mr. C, an architect (New Delhi), provides interior decorator services to Mr. Z of New York in relation to his immovable property located in Pune.

**Ans:** According to Section 13(4) of the IGST Act, 2017, the place of supply of services supplied directly in relation to an immovable property shall be the place where the immovable property is located. In this case the place of supply is Pune.

Q30 - What would be the place of supply of service in the following independent cases?

(1) Tradeget of Jaipur are appointed as commission agents by a foreign company for sale of its goods to Indian customer. In lieu of their services, Tradeget receives a fixed percentage of commission from the concerned foreign company.

(2) Kamal Repair Centre of Mumbai has temporarily imported certain goods from its customer located in China for repairs. The said goods have been re-exported to China after carrying out the necessary repairs without being put to any use in Mumbai.

(3) SCI, a shipping company located in Mumbai, has hired vessels from a foreign shipping line of Japan for a period of 25 days.

**Ans:** The place of supply of services will be as under:

(1) As per Section 13(8)(b) of IGST Act, 2017, place of supply of intermediary services is the location of supplier of service. Commission agent of goods are covered under Section 13(8)(b) of IGST Act, 2017. Thus, the place of supply of services provided or agreed to be provided by Tradeget (as commission agent of goods) to foreign company will be the location of supplier of service i.e., Jaipur.

(2) Section 13(3) (a) of IGST Act, 2017, provides that the place of supply of services provided in respect of goods that are required to be made physically available by the recipient of service to the supplier of service in order to supply the service, is the location where the services are actually performed.

However, Section 13(3)(a) does not apply in the case of a service supplied in respect of goods that are temporarily imported into India for repairs and are exported after the repairs without being put to any use in India, other than that which is required for such repair. Consequently, such a case will be covered
under Section 13(2) (default provision) and the place of supply of service will be the location of recipient of service.

In the given case, goods have been temporarily imported by Kamal Repair Centre and have been re-exported after the repairs without being put to any use in Mumbai. Therefore, place of supply of repair services carried out by Kamal Repair Centre will be determined by Section 13(2). Consequently, the place of supply of service will be the location of recipient of service i.e. China.

(3) As per Section 13(8)(c) of IGST Act, 2017, the place of supply of service consisting of hiring of all means of transport including Yachts but excluding—

(i) aircrafts, and

(ii) vessels,

upto a period of one month, is the location of the supplier of service.

Therefore, services of hiring of aircraft and vessel (except yachts) irrespective of the period of hire, will be covered under Section 13(2) of IGST Act, 2017 (default provision) and the place of supply of service will be the location of the recipient of service.

In the given case since SCI, a shipping company location in Mumbai (recipient of service) has taken vessel on hire from foreign shipping line of Japan, the place of supply of aforesaid hiring services will be Mumbai (location of service recipient).

Q32 – ABC Pvt. Ltd., New Delhi, provides support services to foreign customers in relation to procuring goods from India. The company identifies the prospective vendor, reviews product quality and pricing and then shares the vendor details with the foreign customer.

The foreign customer then directly plates purchase order on the Indian vendor for purchase of the specified goods. ABC Pvt. Ltd. charges its foreign customer cost plus 10% mark up for services provided by it.

For the month of December, 2019, the company has charged US $ 1,00,000 (exclusive of GST) to its foreign customer. With reference to the provisions of GST law, examine whether the company is liable to pay IGST or CGST and SGST.

**Note**: GST @ 18% is applicable on supply of the support services provided by ABC Pvt. Ltd. Rate of exchange is Rs. 65 per US $. *(RTP May, 2018)*

**Ans:**

**Service Supplier is an intermediary** : Section 2(13) of the IGST Act, 2017 defines "intermediary" to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

In this case, since ABC Pvt. Ltd. is arranging or facilitating supply of goods between the foreign customer and the Indian vendor, the said services can be classified as intermediary services.
**Place of Supply is location of intermediary**: If the location of the supplier of services or the location of the recipient of service is outside India, the place of supply is determined in terms of Section 13 of the IGST Act, 2017. Since, in the given case, the recipient of supply is located outside India, the provisions of supply of intermediary services will be determined in terms of Section 13 of the IGST Act, 2017.

**Supply is intra-State supply**: As per Section 13(8)(b), the place of supply in case of intermediary services is the location of the supplier i.e., the location of ABC Pvt. Ltd. which is New Delhi. Further, as per Section 8(2) of the IGST Act, 2017, supply of services where the location of the supplier and the place of supply of services are in the same State is treated as intra-State supply.

Therefore, since in the given case, both the location of ABC Pvt. Ltd. and the place of supply of the service provided by it are in New Delhi, the supply of service will be an intra-State supply leviable to CGST & SGST.

**Computation of GST payable**: Assuming that the given rate of exchange is prevailing on the date of time of supply of services, the CGST and SGST liability will be worked out as under:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value of taxable Supply</td>
<td>$1,00,000</td>
</tr>
<tr>
<td>Exchange rate</td>
<td>Rs. 65</td>
</tr>
<tr>
<td><strong>Value of taxable Supply in India Rupees</strong></td>
<td>Rs. 65,00,000</td>
</tr>
<tr>
<td>CGST @ 9%</td>
<td>Rs. 5,85,000</td>
</tr>
<tr>
<td>SGST @ 9%</td>
<td>Rs. 5,85,000</td>
</tr>
<tr>
<td><strong>Total GST Payable</strong></td>
<td>Rs. 11,70,000</td>
</tr>
</tbody>
</table>

**Q33** - XYZ Pvt. Ltd., New Delhi, provides support services to PQR Inc of US in relation to procuring goods from China. The company identifies the prospective vendor, reviews product quality and pricing and then shares the vendor details with the PQR Inc. PQR Inc. then directly places purchase order on the Chinese vendor for purchase of the specified goods. XYZ Pvt. Ltd. charges PQR Inc. cost plus 10% mark up for services provided by it.

For the month of December, 2019, the company has charged US $ 1,00,000 (exclusive of GST) to PQR Inc. The company is of the opinion the said services are exempt from GST. With reference to the provisions of GST law, examine whether the company is liable to pay IGST or CGST and SGST.

**Note**: GST @ 18% is applicable on supply of the support services provided by XYZ Pvt Ltd. Rate of exchange is Rs. 75 per US $.

**Solution**: The relevant provisions are discussed as under:

- **Service Supplier is an intermediary**: Section 2(13) of the IGST Act, 2017 defines "intermediary" to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both,
or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

In this case, since XYZ Pvt. Ltd. is arranging or facilitating supply of goods between the PQR Inc. and the Chinese vendor, the said services can be classified as intermediary services.

- **Place of Supply is location of intermediary**: If the location of the supplier of services or the location of the recipient of service is outside India, the place of supply is determined in terms of Section 13 of the IGST Act, 2017. Since, in the given case, the recipient of supply is located outside India, the provisions of supply of intermediary services will be determined in terms of Section 13 of the IGST Act, 2017.

- **Supply is intra-State supply**: As per Section 13(8)(b), the place of supply in case of intermediary services is the location of the supplier i.e., the location of XYZ Pvt. Ltd. which is New Delhi. Further, as per Section 8(2) of the IGST Act, 2017, supply of services where the location of the supplier and the place of supply of services are in the same State is treated as intra-State supply.

Therefore, since in the given case, both the location of XYZ Pvt. Ltd. and the place of supply of the service provided by it are in New Delhi, the supply of service will be an intra-State supply leviable to CGST & SGST.

- **Exemption in respect of said services**: Entry 12AA of Notification No. 9/2017-IT (Rate) provides that services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory are exempt subject to the following documentation which shall be maintained for a minimum duration of 5 years:
  
  *(a) Copy of Bill of Lading*
  *(b) Copy of executed contract between Supplier/Seller and Receiver/Buyer of goods*
  *(c) Copy of commission debit note raised by an intermediary service provider in taxable territory from service recipient located in nontaxable territory*
  *(d) Copy of certificate of origin issued by service recipient located in nontaxable territory*
  *(e) Declaration letter from an intermediary service provider in taxable territory on company letter head confirming that commission debit note raised relates to contract when both supplier and receiver of goods are outside the taxable territory.*

Therefore, if the above documentation requirement are fulfilled by XYZ Pvt. Ltd, the intermediary services provided by it to PQR Inc. of US shall be exempt from tax.

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