

# CONTENTS

*Preface* .....V

## **Part I: The Central Goods and Services Tax Act, 2017**

---

<b>Chapter 1. Preliminary</b>	<b>I. 1</b>
<b>Chapter 2. Administration</b>	<b>I. 16</b>
<b>Chapter 3. Levy and Collection of Tax</b>	<b>I. 19</b>
<b>Chapter 4. Time and value of Supply</b>	<b>I. 63</b>
<b>Chapter 5. Input Tax Credit</b>	<b>I. 91</b>
<b>Chapter 6. Registration</b>	<b>I. 125</b>
<b>Chapter 7. Tax Invoice, Credit and Debit Notes</b>	<b>I. 139</b>
<b>Chapter 8. Accounts and Records</b>	<b>I. 147</b>
<b>Chapter 9. Returns</b>	<b>I. 151</b>
<b>Chapter 10. Payment of Tax</b>	<b>I. 168</b>
<b>Chapter 11. Refunds</b>	<b>I. 182</b>
<b>Chapter 12. Assessment</b>	<b>I. 191</b>
<b>Chapter 13. Audit</b>	<b>I. 197</b>
<b>Chapter 14. Inspection, Search, Seizure And Arrest</b>	<b>I. 201</b>
<b>Chapter 15. Demand And Recovery</b>	<b>I. 209</b>
<b>Chapter 16. Liability to Pay in Certain Cases</b>	<b>I. 224</b>
<b>Chapter 17. Advance Ruling</b>	<b>I. 233</b>
<b>Chapter 18. Appeals and Revision</b>	<b>I. 240</b>
<b>Chapter 18. Offences</b>	<b>I. 257</b>
<b>Chapter 20. Transitional Provisions</b>	<b>I. 264</b>
<b>Chapter 21. Miscellaneous</b>	<b>I. 285</b>

## **Part II: THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017**

---

<b>Chapter 1. Preliminary</b>	<b>II. 1</b>
<b>Chapter 2. Administration</b>	<b>II. 7</b>
<b>Chapter 3. Levy and Collection of Tax</b>	<b>II. 8</b>

# CONTENTS

<b>Chapter 4. Determination of Nature of Supply</b>	<b>II. 10</b>
<b>Chapter 5. Place of Supply of Goods or Services or Both</b>	<b>II. 13</b>
<b>Chapter 6. Refund of Integrated Tax To International Tourist</b>	<b>II. 49</b>
<b>Chapter 7. Zero Rated Supply</b>	<b>II. 50</b>
<b>Chapter 8. Apportionment of Tax And Settlement of Funds</b>	<b>II. 52</b>
<b>Chapter 9. Miscellaneous</b>	<b>II. 56</b>

## **Part III: Union Goods and Services Tax Act, 2017**

---

<b>Chapter 1. Preliminary</b>	<b>III. 3</b>
<b>Chapter 2. Administration</b>	<b>III. 5</b>
<b>Chapter 3. Levy and Collection of Tax</b>	<b>III. 7</b>
<b>Chapter 4. Payment of Tax</b>	<b>III. 9</b>
<b>Chapter 5. Inspection, Search, Seizure and Arrest</b>	<b>III. 10</b>
<b>Chapter 6. Demands and Recovery</b>	<b>III. 11</b>
<b>Chapter 7. Advance Ruling</b>	<b>III. 12</b>
<b>Chapter 8. Transitional Provisions</b>	<b>III. 14</b>
<b>Chapter 9. Miscellaneous</b>	<b>III. 21</b>

## **Part IV: The Goods and Services Tax (Compensation to States) Act, 2017**

---

# 3

## Levy and Collection of Tax

*When we treat man as he is, we make him worse than he is; when we treat him as if he already were what he potentially could be, we make him what he should be.*

– Johann Wolfgang von Goethe

### CHAPTER OUTLINES

- ❖ [Section 7] Scope of Supply
- ❖ [Section 8] Tax Liability on Composite and Mixed Supplies
- ❖ [Section 9] Levy and Collection
- ❖ [Section 10] Composition Levy
- ❖ [Section 11] Power To Grant Exemption From Tax

***Need for transitional provisions?***

***This is the charging section which empowers the government to collect tax on supplies. It also deals with different rates of taxes of supplies made.***

**[SECTION 7] SCOPE OF SUPPLY****Section 7(1)**

For the purposes of this Act, the expression “supply” includes:

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in [Schedule I](#), made or agreed to be made without a consideration; and
- (d) the activities to be treated as supply of goods or supply of services as referred to in [Schedule II](#).

***Analysis***

*As per Section 7, a supply which is made for consideration in course/furtherance of business is considered as a taxable supply.*

**Some inclusions in meaning of supply are:**

- |               |                 |                 |
|---------------|-----------------|-----------------|
| (a) Sale,     | (e) Licence,    | (i) Import      |
| (b) Transfer, | (f) Rental,     | (j) Schedule I  |
| (c) Barter,   | (g) Lease,      | (k) Schedule II |
| (d) Exchange, | (h) Disposal or |                 |

**Examples of above inclusions:**

- (a) Sale – Sale of goods
- (b) Transfer – Inter-state stock transfer
- (c) Barter – Exchange of goods/services for another goods/services
  - (i) A person having grains exchanges it for fruits
  - (ii) A photographer agrees to teach photography to a cricketer and the cricketer teaches batting to the photographer.
- (d) Exchange – Old phone is exchanged for a new one and some additional cash
- (e) Rental – House is given on rent
- (f) Lease – Office premises is given on lease
- (g) Disposal – Waste is disposed of
- (h) Import – A high-end car is imported in India from the USA

*Under the earlier law, if there was no consideration, there was no tax payable. However, under GST, the law makers have inserted Schedule I which specifies 4 supplies on which tax is payable even if there is no consideration.*

*In present scenario, there are many issues which are classified as both goods and service. For e.g. – Sale of licence software, works contract, etc. Hence, the lawmakers have inserted Schedule II which makes it clear that a certain supply would be classified as goods/services.*

## Section 7(2)

Notwithstanding anything contained in sub-section (1):

- (a) activities or transactions specified in **Schedule III**; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

### Analysis

*This section has an over-riding effect on Section 7(1). In case of dispute, Section 7(2) will prevail over sec 7(1).*

*Activities specified in Schedule III are not supplies and hence are outside the scope of GST.*

*Hence, this section attempts to clarify supplies which are not supplies.*

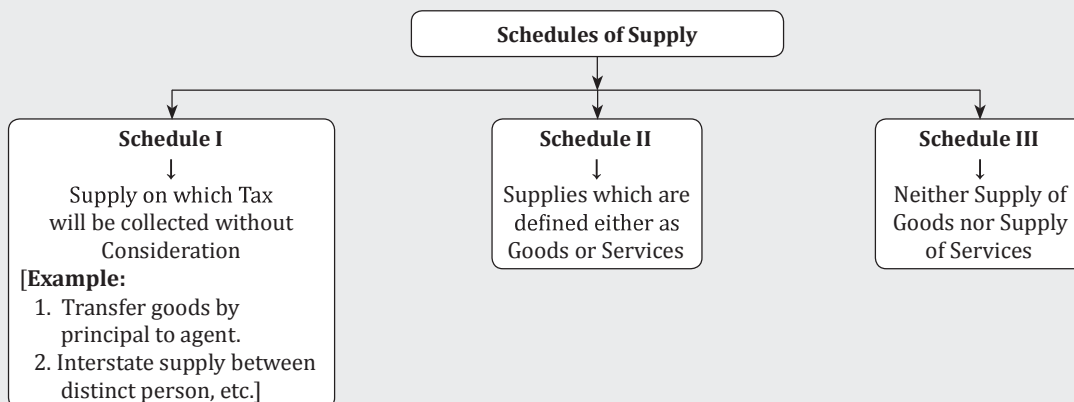
## Section 7(3)

Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods.

### Analysis

*The government has preserved a right for itself by this sub-section. This section empowers the government to classify and make amendments to Schedule II. It is by this section that the government can classify certain supply as supply of goods and certain supply as supply of services.*



**SCHEDULE I****Activities to be Treated As Supply Even If Made Without Consideration**

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

*Analysis*

*It is clear that permanent sale of business assets is taxable under GST. If it is a temporary transfer, it will be covered u/s 7(1) as rental. However, only such business assets on which input tax credit is availed is covered. Hence, a business asset on which input tax credit is not availed remains outside the scope of Schedule I.*

E  
X  
A  
M  
P  
L  
E

*Computer is purchased for business purpose and ITC on the same is availed. After some years, said computers are permanently transfer to educational institute without consideration under Corporate Social Responsibility policy (CSR). Then such permanent transfer is subject to GST event made without consideration.*

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

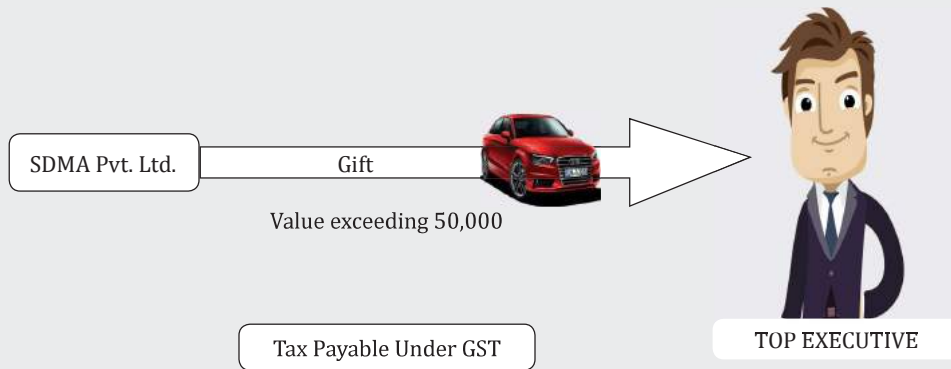
Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

*Analysis*

*Supplies between related parties would be taxable. Hence, there may arise a possibility that self-service may also be taxed under GST. However, an exception is made for employer-employee relationship wherein a monetary limit of ₹ 50,000 is kept as a taxable limit. The limit is per financial year.*

**For example**

- ABC Goa and ABC Mumbai are both different establishment of same parent having same PAN. However, if ABC Mumbai completes any assignment for ABC Goa, this would be taxable under GST as ABC Goa has received services from ABC Mumbai.*
- An employer offers high end car to its top executives for free, provision of such car will also be covered under GST as the value of gift exceeds ₹ 50,000. In this case, let us assume the employee has joined the company in January 2018. Hence, in the month of January 2018 such supply would be taxable. In the year 2019-2020, there is a fresh limit of ₹ 50,000 available with the employer.*

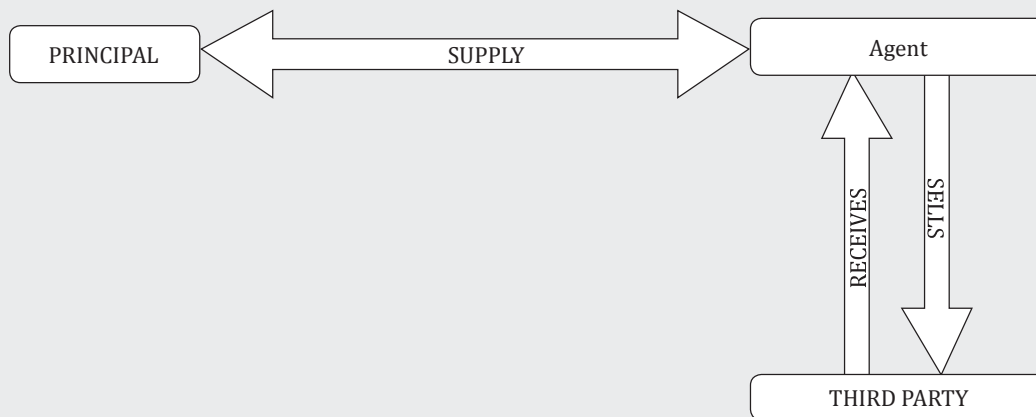


## 3. Supply of goods:

- (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
- (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

*Analysis*

*Even principal agent relationship is not spared by the lawmakers. Hence, if an agent receives any supply on behalf of the principal, the agent will be liable to pay GST and vice versa.*



- 4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

*Analysis*

**U/S 7(1)(b), import of services for a consideration whether or not in the course or furtherance of business is taxable.**

**Example:** It means a friend from USA send gifts to another friend in India then GST will not be applicable because of following reason

1. no consideration is payable
2. Not used in the course of business
3. Friend is neither related party nor establishment

<i>Particulars</i>	<i>Section 7(1)(b)</i>	<i>Under Schedule I</i>
<i>Consideration</i>	<i>Always payable</i>	<i>No consideration</i>
<i>Persons Covered</i>	<i>Registered as well as unregistered</i>	<i>Taxable Person</i>
<i>Relationships Covered</i>	<i>All</i>	<i>Related Party</i>

## SCHEDULE II

### Activities to be Treated as Supply of Goods or Supply of Services

#### 1. Transfer

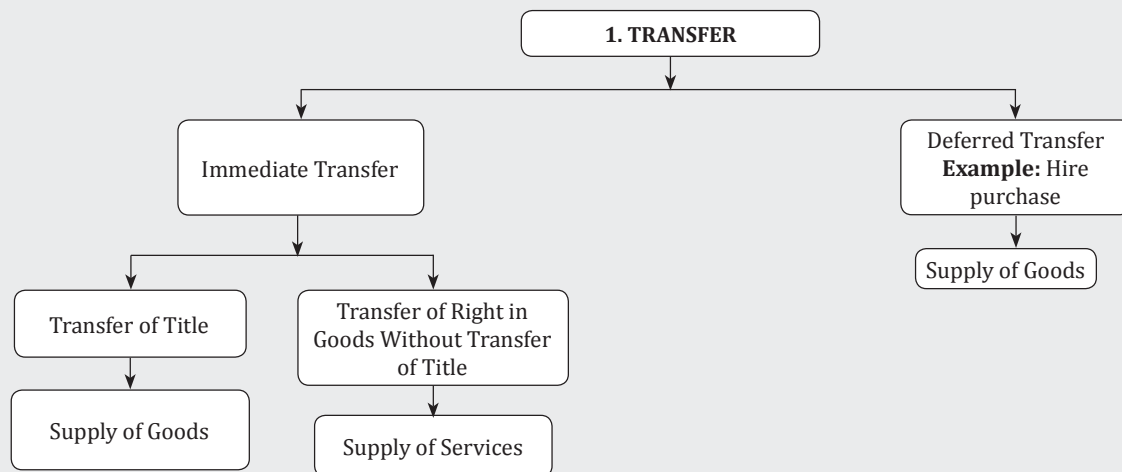
- any transfer of the title in goods is a supply of goods;
- any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
- any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

#### Analysis

*In short, the above point can be summarized as follows:*

- Transfer of title – Supply of goods
- Right to use the goods without transfer of title – Supply of services
- Transfer in title at a future date – Supply of goods

QUICK  
RECAP



**Examples of above:**

**Case 1:** When a flat is sold, title of the property is passed to the buyer.

**Case 2 :**

- When we buy licence of tally, we only get a right to use tally but do not become owner of codes of tally. Hence, title remains with tally.
- When we enter into an agreement to use car for a , we only get a right to use the property for a specified duration, we do not become owners of property.

**Case 3:** When we purchase a truck on hire-purchase basis, title of truck passes upon payment of last instalment at a future date.



**2. Land and Building**

- (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
- (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

*Analysis*

All supplies **except sale** in respect of land and building is supply of service.

**3. Treatment or process**

Any treatment or process which is applied to another person's goods is a supply of services.

*Analysis*

Best example for understanding this is that of a job-worker.

**4. Transfer of business assets**

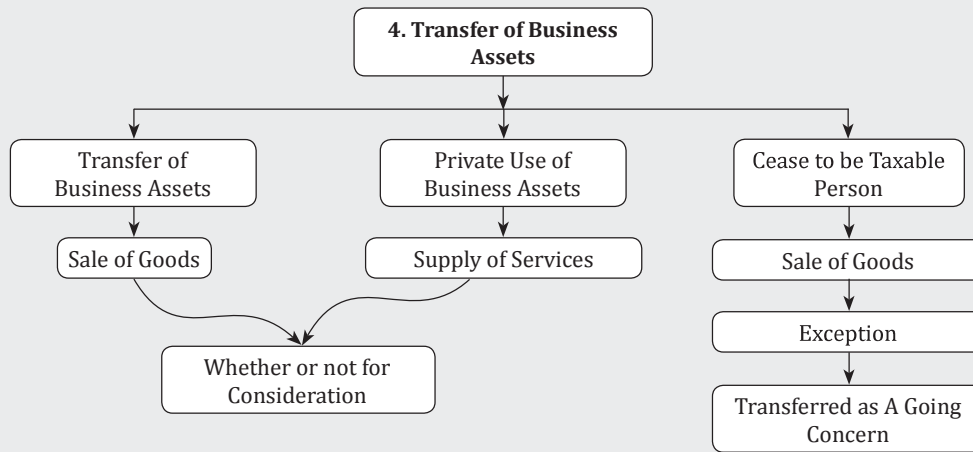
- (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;
- (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;
- (c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—
  - (i) the business is transferred as a going concern to another person; or
  - (ii) the business is carried on by a personal representative who is deemed to be a taxable person.

*Analysis*

**Point (a):** In Schedule I, permanent transfer of business asset was treated as taxable, it is taxable as goods is defined here.

**Point (b):** This deals with the case where business assets are made available for personal use, it shall be taxable as supply of service irrespective of the consideration.

**Point (c):** This deals with a case where a person ceases to be a taxable person. In such case it shall be deemed that such person has supplied the business assets unless the above 2 conditions are fulfilled.



### 5. Supply of services

The following shall be treated as supply of service, namely:

- (a) renting of immovable property;
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

**Explanation:** For the purposes of this clause:

- (1) the expression “competent authority” means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non - requirement of such certificate from such authority, from any of the following, namely:—
- (2) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
- (3) a chartered engineer registered with the Institution of Engineers (India); or
- (4) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (5) the expression “construction” includes additions, alterations, replacements or remodelling of any existing civil structure;
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and
- (f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

### Analysis

To summarise, the following supplies are taxable as services

1. Renting of immovable property
2. Construction of complex
3. Temporary transfer of IPR
4. Development/design, etc of software
5. Transfer of right to use any goods
6. Agreeing to/refraining from an act

## 6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:

- (a) works contract as defined in clause (119) of section 2; and
- (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

### Analysis

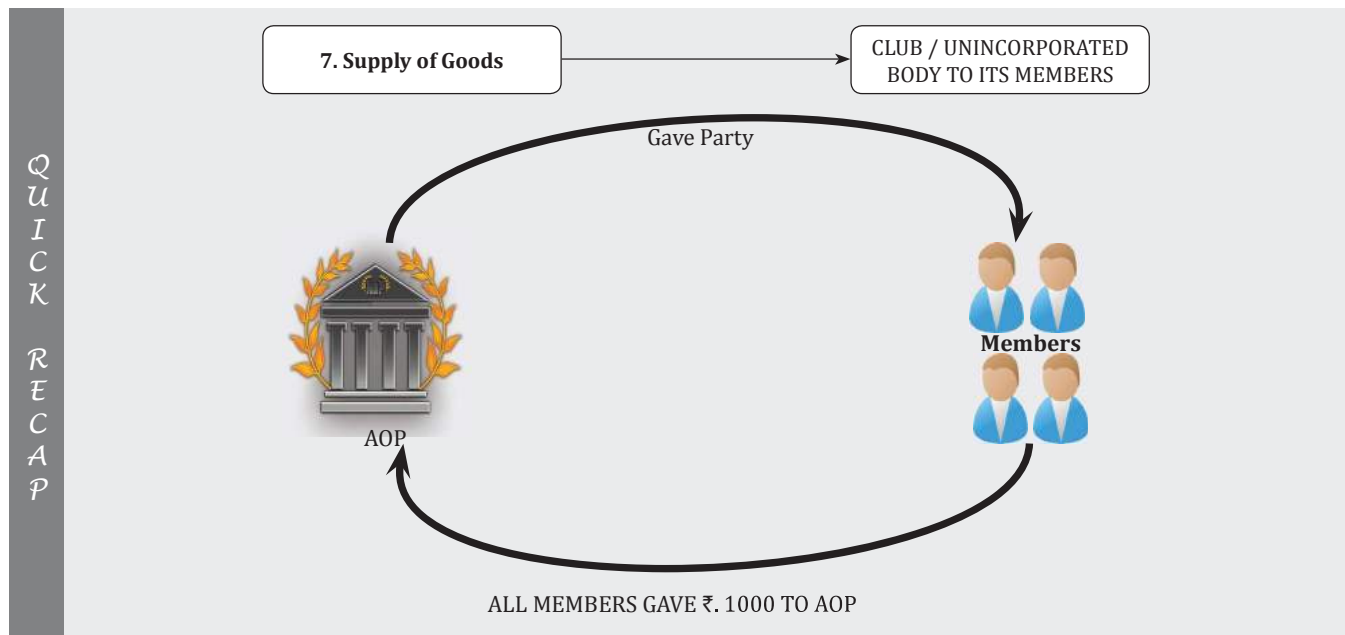
Following supplies are treated as a supply of services

1. Works contract
2. Example of – Catering service other than alcoholic liquor for human consumption

## 7. Supply of Goods

The following shall be treated as supply of goods, namely:

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.



## SCHEDULE III

### Activities or Transactions Which Shall be Treated Neither as A Supply of Goods nor a Supply of Services

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.

(a) Explanation: For the purposes of paragraph 2, the term “court” includes District Court, High Court and Supreme Court.

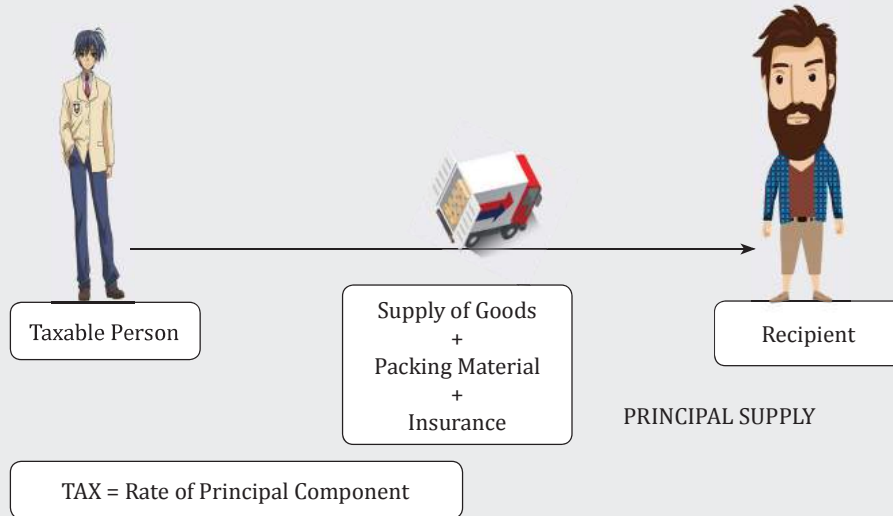
- (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
  - (b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
  - (c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
  5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
  6. Actionable claims, other than lottery, betting and gambling.

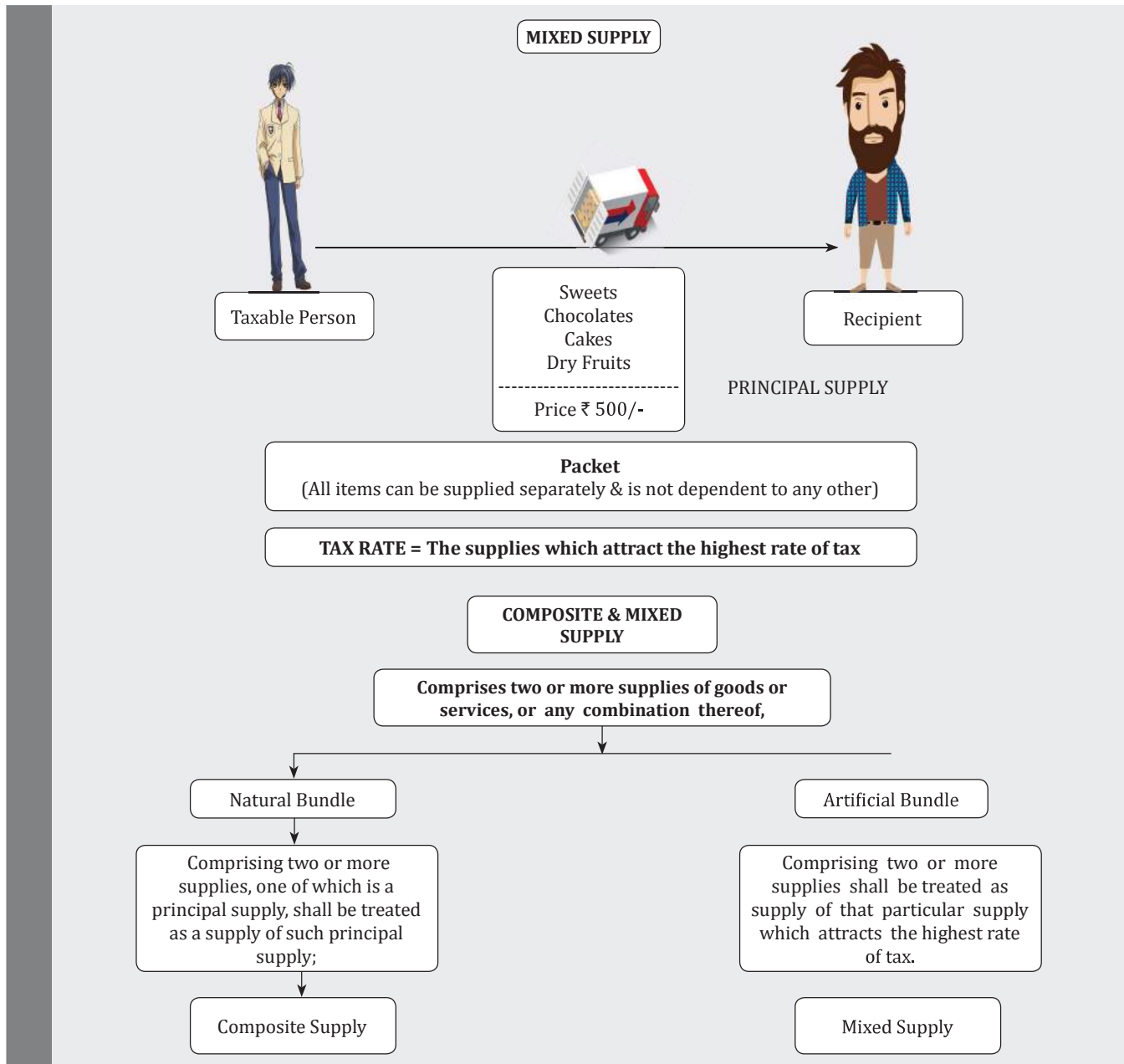
## [SECTION 8] TAX LIABILITY ON COMPOSITE AND MIXED SUPPLIES

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:

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

**Supply made by a Taxable Person to a Recipient Consisting of 2 or more taxable Supplies of Goods or Services or both which are naturally bundle & supplied in conjunction with principle supply.**





## [SECTION 9] LEVY AND COLLECTION

### Section 9(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.

## Section 9(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.

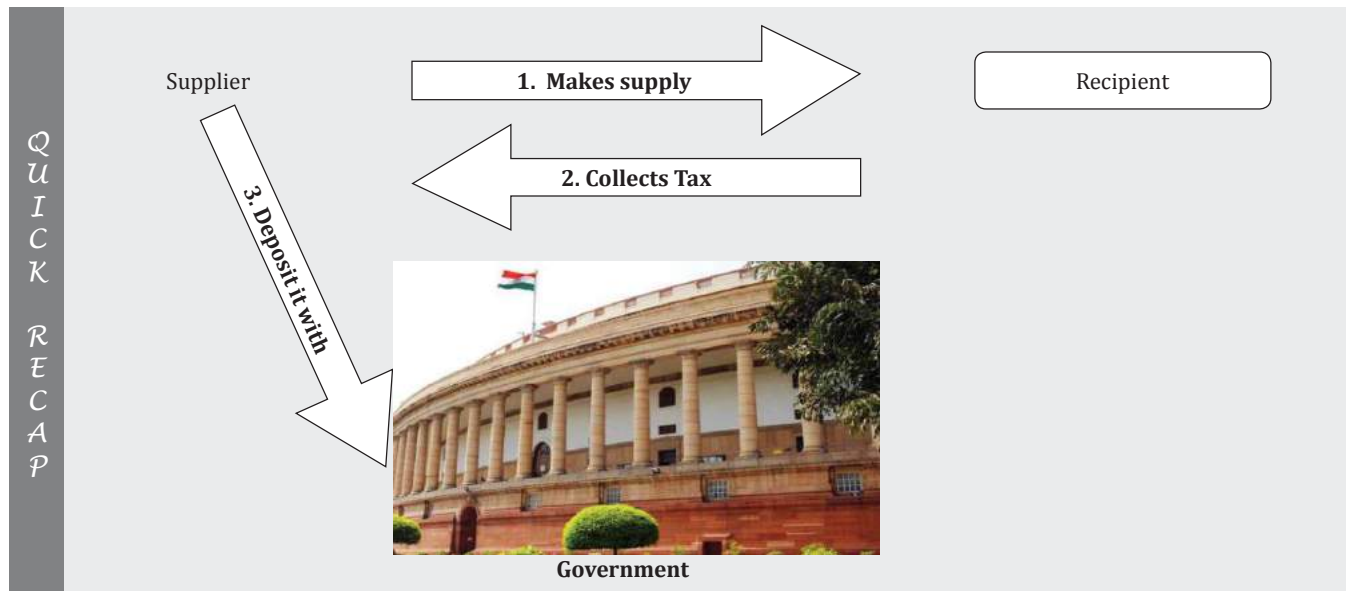
### Analysis

*Section 9(1) covers Intra-state supplies*

*In case of intra-state supplies other than mentioned in Section 9(2) and alcoholic liquor for human consumption. The maximum rate of tax is 20%. However, in addition to tax, cess may be charged. Thereby increasing the total percentage of tax to over 40%. The valuation would be as per Section 15 of the CGST Act.*

*As per Section 9(2), items which are specifically left outside purview as of now are:*

1. Petroleum crude
2. High speed diesel
3. Motor spirit (commonly known as petrol)
4. Natural Gas
5. Aviation turbine fuel



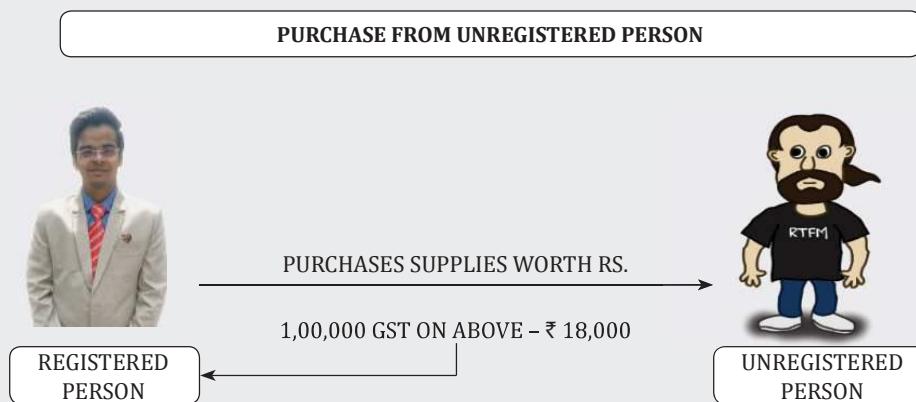
## Section 9(3)

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.



### Section 9(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.



### Analysis

- (a) When a registered person buys from an unregistered person, the registered person will have to pay tax on reverse charge basis. Hence, it will be very difficult to manipulate purchases.
- (b) This also increases the responsibility of the recipient as now he will not only be paying taxes on reverse charge basis but also be invoicing on reverse charge basis. Hence, the recipient will be forced to do all compliances as if he is the supplier.

When a registered person buys from an unregistered person, the registered person will have to pay tax on reverse charge basis. Hence, it will be very difficult to manipulate purchases.

**Important notification no 8/2017 dated 28th June 2017. to note**

In exercise of the powers conferred by sub-section (1) of section 11 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on being satisfied that it is necessary in the public interest so to do, on the recommendations of the Council, hereby exempts intra-State supplies of goods or services or both received by a registered person from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017):

Provided that the said exemption shall not be applicable where the aggregate value of such supplies of goods or service or both received by a registered person from any or all the suppliers, who is or are not registered, exceeds five thousand rupees in a day.

This notification shall come into force with effect from the 1st day of July, 2017.

Analysis of the notification read with Section 9(4) -

A joint reading of the notification and section makes it clear that "Intra-state" purchases from an "Unregistered Person" upto ₹ 5,000/- will not be liable to CGST.

However, if the aggregate purchases from all unregistered persons exceeds ₹ 5,000/- in total, GST will be payable on the entire value.

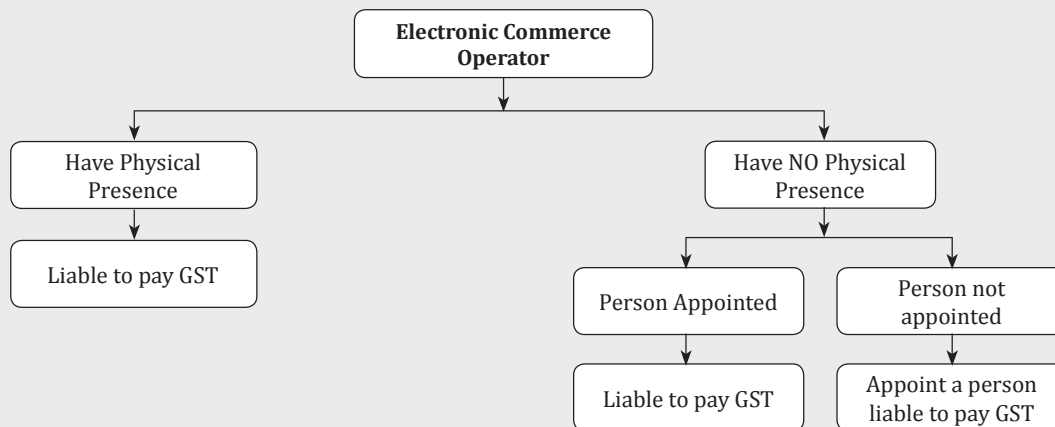
Aggregate Purchase from ALL Unregistered Persons	Exempted vide Notification No. 8/2017	Taxable
₹ 5,000/-	₹ 5,000/-	Not taxable
₹ 6,000/-	₹ 5,000/-	Taxable Value = ₹ 6,000/-

**Section 9(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.

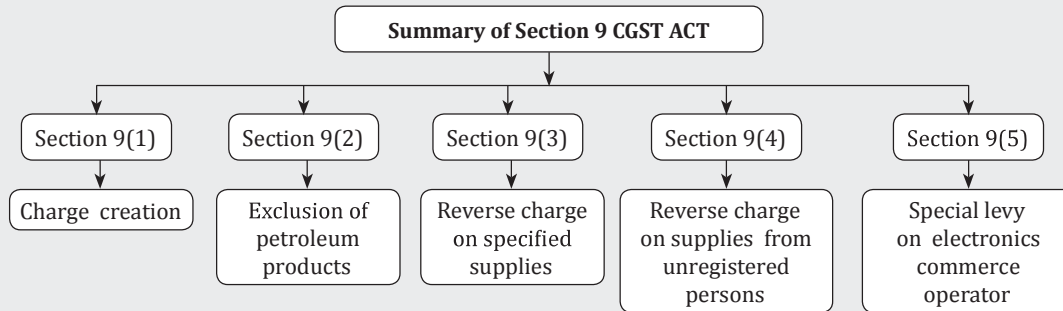




### Analysis

This sub-section deals with provisions for **ELECTRONIC COMMERCE OPERATOR** and also guides the operator as to who will be responsible for paying tax in case supplies are made through the operator.

QUICK  
RECAP



## [SECTION 10] COMPOSITION LEVY

### Section 10(1)

Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding,—

- (a) one per cent of the turnover in State or turnover in Union territory in case of a manufacturer,
- (b) two and a half per cent of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and
- (c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers, subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council.

### Analysis

*This section overwrites the entire GST but not section 9(3) and 9(4). At present, the government has provided an option to taxpayers whose turnover is less than ₹ 50 Lakhs to pay at a rate which is less than normal rate of tax. However, the limit of ₹ 50 Lakh can be increased upto ₹ 1 crore.*

#### Rates in tabular form

Eligible person	Rates	Tax Payable at
Manufacturer	1%	2% (1%+1%)
Other suppliers	0.5%	1% (0.5%+0.5%)
Restaurant business	2.5%	5% (2.5%+2.5%)

## Section 10(2)

The registered person shall be eligible to opt under sub-section (1), if:

- (a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;
- (b) he is not engaged in making any supply of goods which are not leviable to tax under this Act;
- (c) he is not engaged in making any inter-State outward supplies of goods;
- (d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and
- (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

### *Analysis*

#### ***Persons not eligible for composition scheme:***

- (a) *A service provider.*
- (b) *Person making exempt supplies.*
- (c) *Person making inter-state supply of goods.*
- (d) *An electronic commerce operator responsible for collecting tax at source and*
- (e) *Manufacturer of notified goods. (Also refer Joint Reading for notified goods)*

## Section 10(3)

The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).

## Section 10(4)

A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

### *Analysis*

*A person paying tax under composition scheme is not allowed to collect tax from his customers.*

## Section 10(5)

If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.

**Notification No. 8/2017 dated 27<sup>th</sup> June, 2017**

In exercise of the powers conferred under the proviso to sub-section (1) of section 10 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby prescribes that an eligible registered person, whose aggregate turnover in the preceding financial year did not exceed seventy five lakh rupees, may opt to pay, in lieu of the central tax payable by him, an amount calculated at the rate of,—

- (a) one per cent. of the turnover in State in case of a manufacturer,
- (b) two and a half per cent. of the turnover in State in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II of the said Act, and
- (c) half per cent. of the turnover in State in case of other suppliers:

Provided that the aggregate turnover in the preceding financial year shall be fifty lakh rupees in the case of an eligible registered person, registered under section 25 of the said Act, in any following States, namely:

- (i) Arunachal Pradesh,
- (ii) Assam,
- (iii) Manipur,
- (iv) Meghalaya,
- (v) Mizoram,
- (vi) Nagaland,
- (vii) Sikkim,
- (viii) Tripura,
- (ix) Himachal Pradesh:

Provided further that the registered person shall not be eligible to opt for composition levy under sub-section (1) of section 10 of the said Act if such person is a manufacturer of the goods, the description of which is specified in column (3) of the Table below and falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Table:

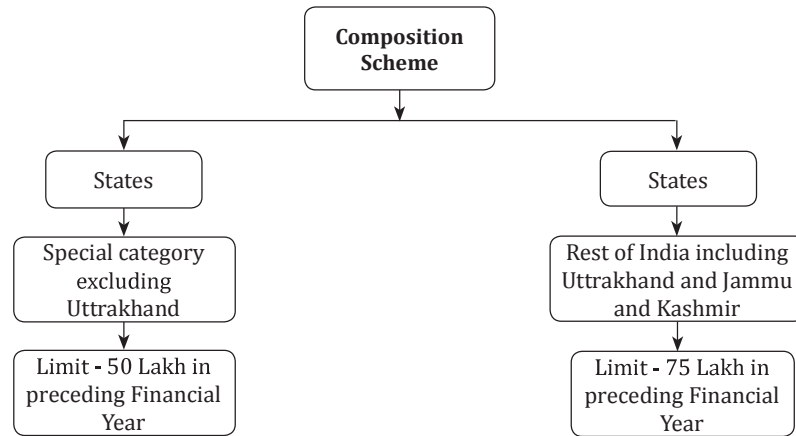
S. No.	Tariff item, subheading, heading or Chapter	Description
(1)	(2)	(3)
1.	2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2.	2106 90 20	Pan masala
3.	24	All goods, i.e. Tobacco and manufactured tobacco substitutes

## Analysis

A combined reading of Section 10 & the notification can be summarised as follows:

### List of Special Category States:

1. Arunachal Pradesh,
2. Assam,
3. Manipur,
4. Mechalaya,
5. Mizoram,
6. Nagaland,
7. Sikkim,
8. Tripura, and
9. Himachal Pradesh



Persons not eligible for composition scheme:

- (a) A service provider.
- (b) Person making exempt supplies.
- (c) Person making inter-state supply of goods.
- (d) An electronic commerce operator responsible for collecting tax at source and
- (e) Manufacturer of notified goods.
  1. Ice cream and other edible ice, whether or not containing cocoa
  2. Pan masala
  3. All goods, i.e. Tobacco and manufactured tobacco substitutes

## [SECTION 11] POWER TO GRANT EXEMPTION FROM TAX

### Section 11(1)

Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

### Section 11(2)

Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

### Section 11(3)

The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation

in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

**Explanation:** For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

### Analysis

*A clarification can be issued within 1 year from the issue of notification. Hence, it means such clarifications are always retrospective in nature.*

## PRACTICAL PROBLEM AND SOLUTION

**Problem 1:** An electronics dealer sells a desktop for ₹ 50,000 to earn a profit. Does it qualify as a supply.

**Solution:** Yes, it qualifies as a supply.

**Legal Justification:** As per Section 7(1)(a) of CGST Act, 2017, supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

Hence, the above case will be treated as supply.

**Problem 2:** Mr. A (an unregistered person) plans to pursue his higher education in Australia. He receives career consultancy services from an Australian based consultant for ₹ 5,00,000. Does it qualify as a supply?

**Solution:** Yes, it qualifies as a supply

**Legal Justification:** As per Section 7(1)(b) of CGST Act, 2017, supply includes import of services for a consideration whether or not in the course of furtherance of business.

Hence, the above case will be treated as supply.

**Problem 3:** ABC & Co. a manufacturer of goods donated old Laptops to Charitable Schools on account of relocation of office. The company has taken input tax credit on the computers so donated. Does it qualify as a supply?

**Solution:** Yes, it qualifies as a supply

**Legal Justification:** A joint reading of Section 7(1)(c) and Schedule I of CGST Act, 2017, permanent transfer or disposal of business assets where input tax credit has been availed shall be treated as supply even made without consideration.

Hence donation of old laptops to charitable schools shall qualify as supply since input tax credit has been availed by ABC & Co.

**Legal Justification:** A joint reading of Section 7(1)(c) and Schedule I of CGST Act, 2017, permanent transfer or disposal of business assets where input tax credit has been availed shall be treated as supply even made without consideration.

Hence donation of old laptops to charitable schools shall qualify as supply since input tax credit has been availed by ABC & Co.

**Problem 4:** Sun Ltd. provides management consultancy services without charge to Moon Ltd in which Sun Ltd. has controlling rights. The said consultancy has been provided for benefit of entire group. Does it qualify as a supply?

**Solution:** Yes, it qualifies as a supply

**Legal Justification:** Section 7(1)(c) read with Schedule I of CGST Act, 2017 says that supply of goods or services between related persons is treated as supply even if it is without consideration.

As per Explanation to Section 15 of CGST Act, 2017, persons shall be deemed to be “related persons” if “one of them directly or indirectly controls the other”. Since, Sun Ltd. has controlling rights of Moon Ltd., it means it directly controls Moon Ltd. They will be treated as related persons and the said transaction will qualify as supply.

**Problem 5:** PQR Ltd. gives gifts to employee worth ₹ 6,00,000. Does it qualify as a supply? Would your answer change if gifts of ₹ 40,000 have been given to employee.

**Solution:** Yes, it qualifies as a supply

**Legal Justification:**

As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, supply of goods or services between related person is treated as supply even if it is without consideration.

As per Explanation to Section 15 of CGST Act, 2017, persons shall be deemed to be “related persons” if such persons are employer and employee. Thus, gifts to employee worth ₹ 6,00,000 will qualify as supply and thus GST leviable.

If gift of ₹ 40,000 is given instead of ₹ 6,00,000, the same will not qualify as supply since it has been specifically provided that gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

**Problem 6:** Duster Ltd. owns a motor vehicles which is used to transport its workers to customers premises. During one weekend, one car was used by its managing director for his relatives for a family outing, Is it a supply?

**Solution:** Yes, it qualifies as a supply

**Legal Justification:** As per Section 7(1)(c) read with Schedule I of CGST Act, 2017, Supply of goods or services by employer to employee when made in the course or furtherance of business shall be treated as Supply even if made without consideration.

Thus, the said transaction will qualify as supply.

**Problem 7:** JKL Ltd. engages True Ltd. as an agent to sell laptops on its behalf. For the purpose, JKL Ltd. has supplied 200 laptops to the showroom of True Ltd. located in Rajasthan. Does it qualify as supply.

**Solution:** Yes, it qualifies as a supply

**Legal Justification:**

Section 7(1)(c) read with Schedule I of CGST Act, 2017 says that supply of goods by a principal to his agent where the agent undertakes to supply/receive such goods on behalf of the principal shall be treated as supply even if made without consideration.

In view of the same supply of laptops by JKL Ltd. to True Ltd. will qualify as supply.

**Problem 8:** Class Associates received management consultancy services from its head office located in Malaysia. The head office has rendered such services free of cost to its branch office. Does it qualify as supply.

**Solution:** Yes, it qualifies as a supply

**Legal Justification:** A combined reading of Section 7(1)(c) and Schedule I of CGST Act, 2017 says that import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business will be treated as supply even if made without consideration. Thus, management consultancy services received by Class Associates will qualify as supply even though the head office has not charged anything from it and will be liable to GST.