

Time of Supply – Critical Issues & Case Studies



Online GST Course

ICAI | ACCGST-8

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Change is the only Constant!

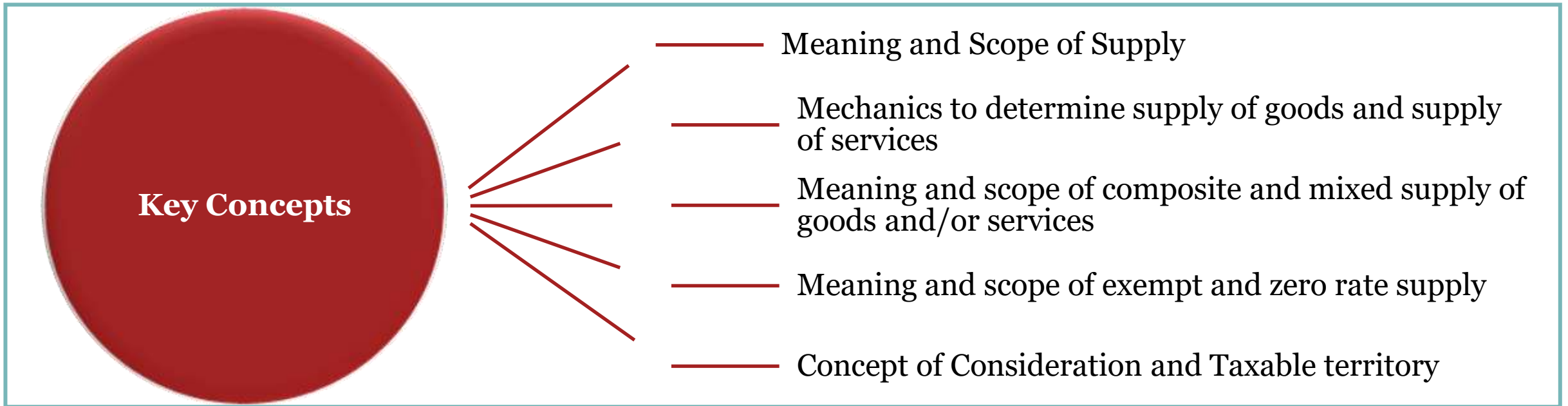
Supply

- Scope and key Issues**

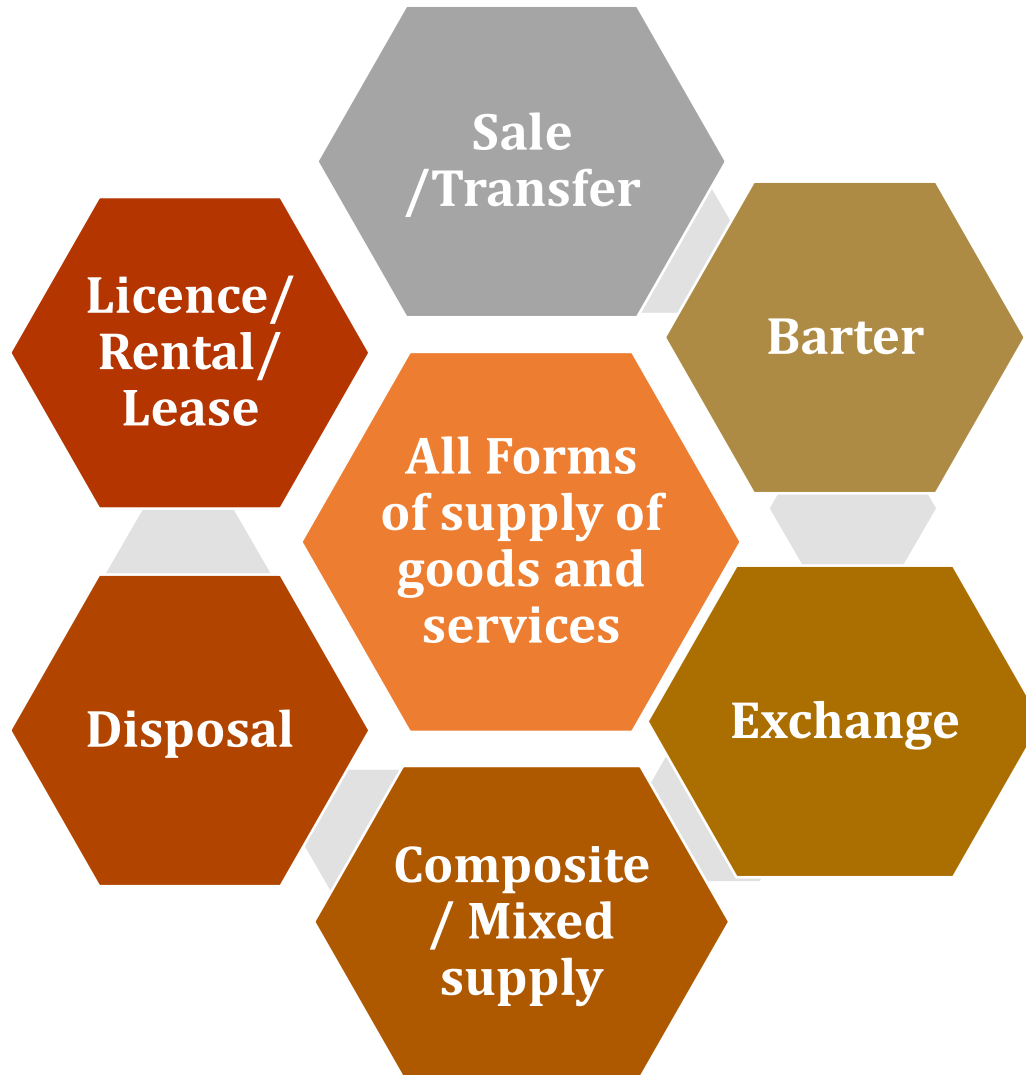
Legal framework:

- GST to apply on

- supply of all goods and services
- in the taxable territory other than
- exempt and zero rated supply
- but including composite and mixed supply of goods and/or services



Concept of Supply:



Key Issue

- Replacement of old parts for refurbished parts – whether qualify as barter transaction [Refer Kirlosar Copeland Ltd – Bombay HC (Fav.) & Sriram Refrigeration Tamilnadu HC (Against)]

Composite Supply, Mixed Supply, Exempt Supply and Continuous Supply

Tax liability on composite and mixed supplies– Section 8 of CGST Act

Section 8 – Tax Liability on Composite or Mixed Supply	
A supply consisting of 2 or more supplies	Treated as Supply of
Composite supply of 2 or more supplies and one of which is a principal supply	Principal Supply
Mixed supply of 2 or more supplies	That particular supply which attracts highest rate of tax

Tax liability on composite and mixed supplies– Section 8 of CGST Act

Composite Supply [Sec 2(30)]:

means a supply made by a taxable person to a recipient consisting of **two or more taxable supplies** of goods or services or both, or any combination thereof, which are ***naturally bundled and supplied in conjunction*** with each other in the ordinary course of business, one of which is a principal supply.

Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply

Principal Supply [Sec 2(90)]:

means the supply of goods or services which constitutes the ***predominant element of a composite supply*** and to which any other supply forming part of that composite supply is ancillary

A Hotel provides a 4-D / 3-N package with the facility of breakfast. This is natural bundling of services in the ordinary course of business and thus is a composite supply. The service of hotel accommodation gives the bundle the essential character and therefore the rate of tax applicable on providing hotel accommodation would be applicable on the entire supply.

Tax liability on composite and mixed supplies– Section 8 of CGST Act

Composite Supply:

If the ancillary supply were offered on a stand-alone basis, the same would not be accepted by the recipient. Even separate prices were assigned to each of the supplies involved, the one that is ancillary would not become predominant. The end use test could be important for determination of composite supply.

Eg: Supply of equipment and installation / commissioning of the same. In this case principal / predominant supply is supply of equipment and the ancillary supply is its installation. Here the customer has just the amount of understanding about the equipment to contract for its supply and measures its satisfactory performance based on commissioning tests.

Tax liability on composite and mixed supplies– Section 8 of CGST Act

Mixed Supply [Sec 2(74)]:

means **two or more individual supplies** of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration : A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately

- The way the supplies are naturally bundled must be examined. Merely by conjointly , supplying two or more goods or services does not constitute composite supply.

Eg: Supply of laptop and carry case - In this case the customer did not purchase the laptop to get the carry case. In fact, a carry case with the same brand as the laptop is normally not available for independent purchase. Here the predominant supply is laptop and ancillary supply is carry case. In case of carry bag is capable of being used to carry several brands of laptops this would be case of mixed supply (Sec 2(74)).

Test for ascertaining composite supply or and mixed supply:

Description	Composite Supply	Mixed Supply
Naturally bundled	Yes	No
Each supply available for supply individually	No	Yes/No
One is predominant supply for recipient	Yes	Yes/No
Other supply(ies) are ancillary or they are received because of predominant supply	Yes	No
Each supply priced separately	Yes/No	No
Supplied together	Yes	Yes
All supplies can be goods	Yes	Yes
All supplies can be services	Yes	Yes
A combination of one / more goods and one / more services	Yes	Yes

While, the above tests could be guiding principles in determining as to whether a supply is composite or mixed supply the end user test could be adopted as one of the criteria; Every supply will have to be independently analysed.

Continuous Supply of Goods – Sec 2(32)

“continuous supply of goods” means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;

□ *Examples* of continuous supply of goods are:

- Open purchase orders with an understanding of fortnightly billing;
- Supply of gases through pipeline with a weekly billing schedule;
- Supply of say, 5 litre water cans on an as and when required basis with a frequency of monthly billing under a contract.

Continuous Supply of Services – Sec 2(33)

“continuous supply of services” means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a ***period exceeding three months*** with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;

❑ Examples of continuous supply of services:

- Annual maintenance contracts;
- Licensing of software or brand names;
- Renting of immovable property; and
- Software as a service (SAAS) with monthly billing based on usage.

Recap on Supply:

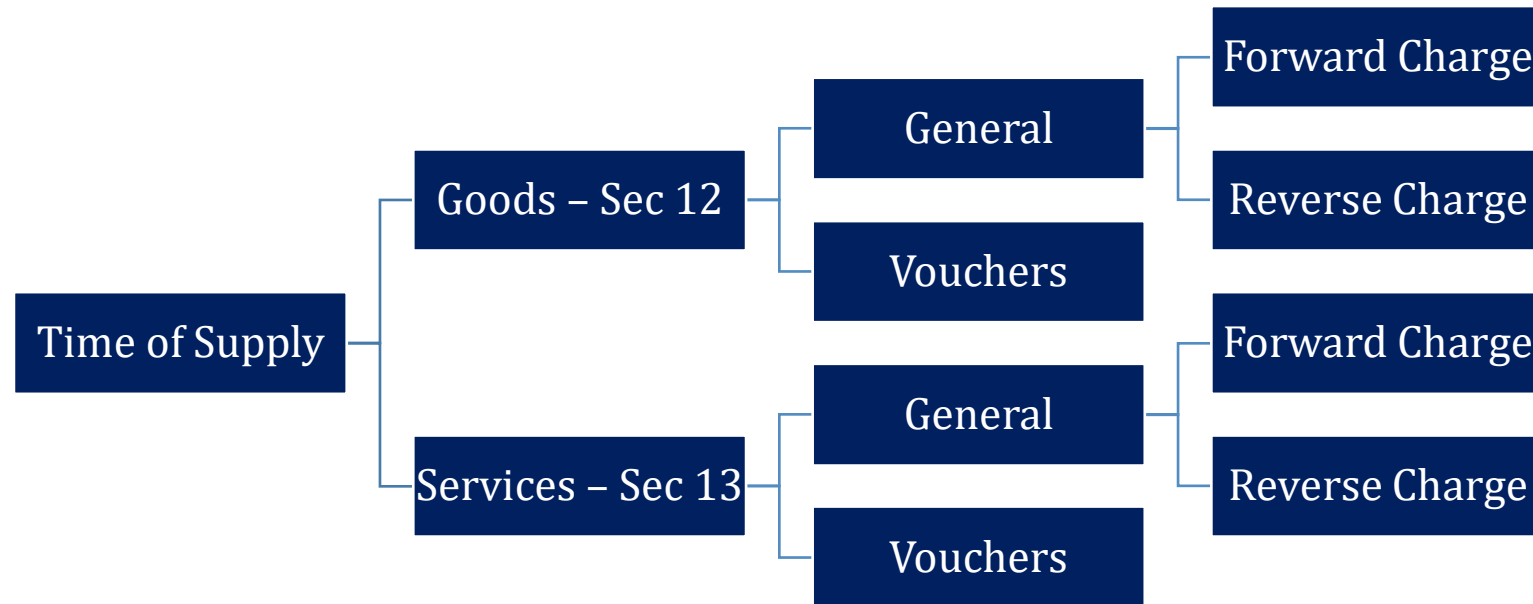
- Supply comprises:
 - Included supplies
 - Implied supplies (Sch. I)
 - Excluded supplies (Sch. III)
- Chargeability to tax:
 - Forward charge on supplier
 - Reverse charge on imports
 - Lateral charge (e-commerce)
- Supply characterization:
 - Composite supply or
 - Mixed supply

- Cases to consider:
 - *Purpose* of supply – business or not
 - Same *forms of supply* apply to services
 - Supply by casual taxable person
 - ISD or inter-branch service transfer
 - Intra-State stock transfer
 - Free samples and warranty are supplies *for consideration*
 - Material supplied for job-work
 - Sch II not exhaustive but specific
 - No supply, no tax but ***no credit too***

Time of Supply

Time of Supply:

- ❑ The **liability to pay tax** on goods or services shall arise at the **time of supply**. [Section 12(1)]
- ❑ Chapter – IV (CGST)
 - ❑ Section 12: Time of supply of **goods**
 - ❑ Section 13: Time of supply of **services**
 - ❑ Section 14: **Change in rate of tax** in respect of supply of goods or services.



Section 12: Time of Supply of Goods

Note: Date of receipt/making of payment refers to the date on which the payment is entered into books of account or date on which payment is credited/debited to bank account, whichever is earlier

Time of supply of goods

Section 12 (2)

General Provision for goods taxable on **forward charge basis** (other than voucher)

Earliest of:

- Date of issue of invoice
- Date of removal of goods for supply (Where movement is involved)
- Date of delivery of goods or when goods made available to the recipient (where supply does not involve movement of goods)
- Date of receipt of payment

Section 12 (4)

Vouchers

If the supply is identifiable on date of issue of voucher

Date of issue of voucher

If the supply is NOT identifiable on date of issue of voucher

Date of redemption of voucher

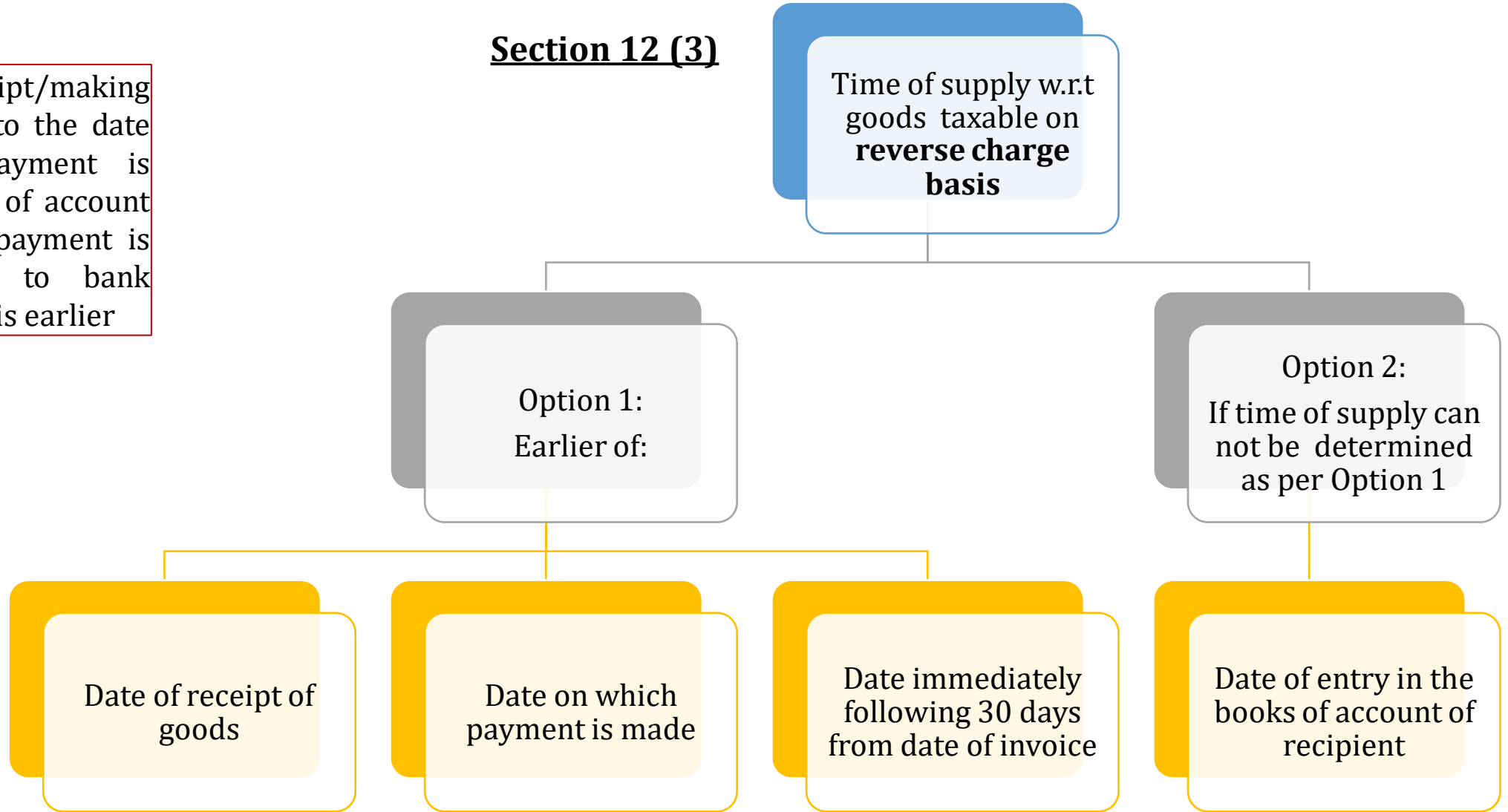
Voucher

“voucher” means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument

- a voucher is an asset for the recipient, and without a recipient, a ‘voucher’ would lose its meaning;
- it is an instrument that can be used in place of money (or other consideration) which can be used on effecting yet another inward supply. E.g. **coupons, tokens, promo-codes**, etc.

Section 12: Time of Supply of Goods

Note: Date of receipt/making of payment refers to the date on which the payment is entered into books of account or date on which payment is credited/ debited to bank account, whichever is earlier



Section 12: Time of Supply of Goods

Continuous supply of goods: Tax invoice rules

- Where successive statements of accounts or successive payment are involved → Invoice shall be issued before or at the time each such statement is issued or as the case may be each such payment is received

Residuary provision: **Section 12 (5)**

Where it's not possible to determine time of supply by (2)/ (3)/ (4) time of supply shall be:

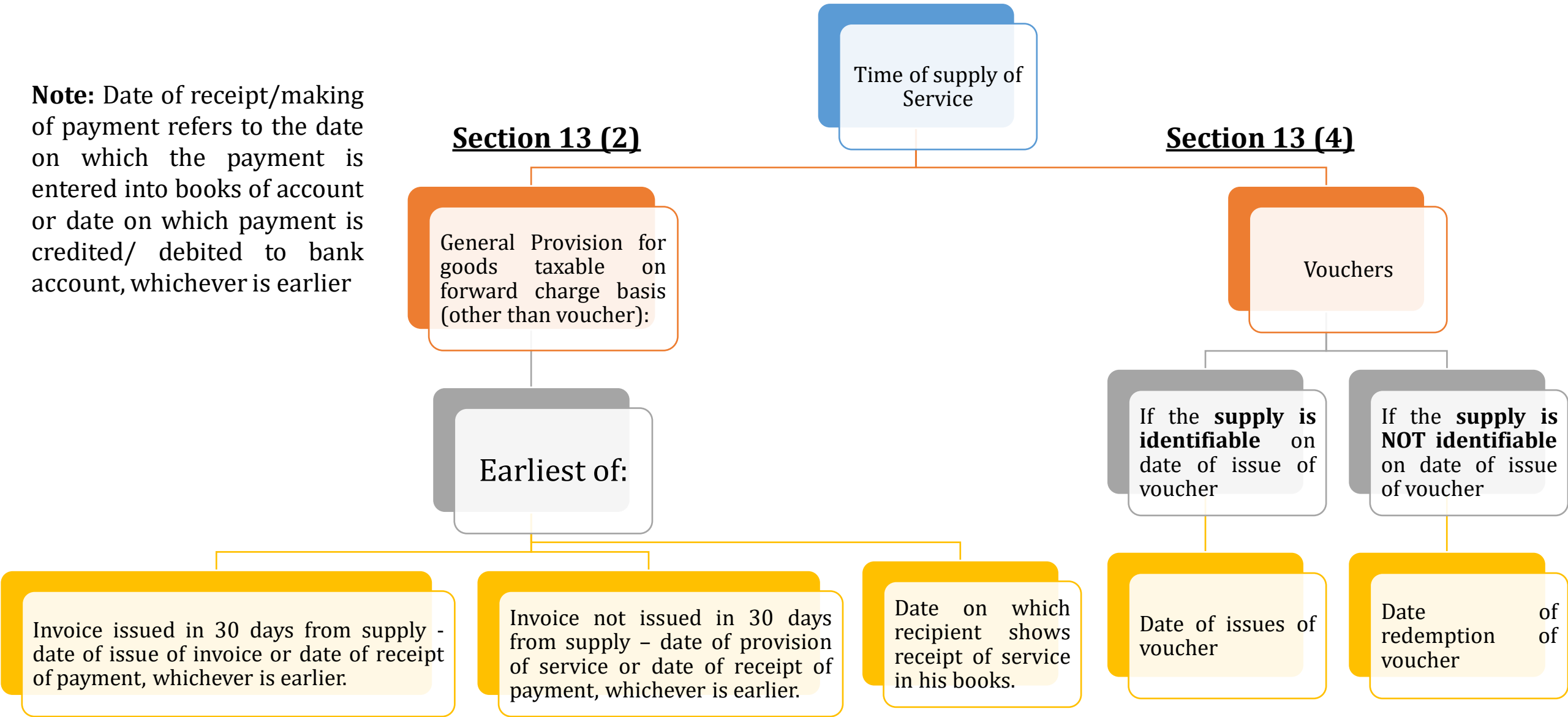
- Where periodical return has to be file – Date on which such return is filed
- In any other case – Date on which CGST/ SGST is paid.

Section 12(6): Interest, late fee or penalty for delayed payment of any consideration: Time of supply

- Date on which the supplier receives such addition in value

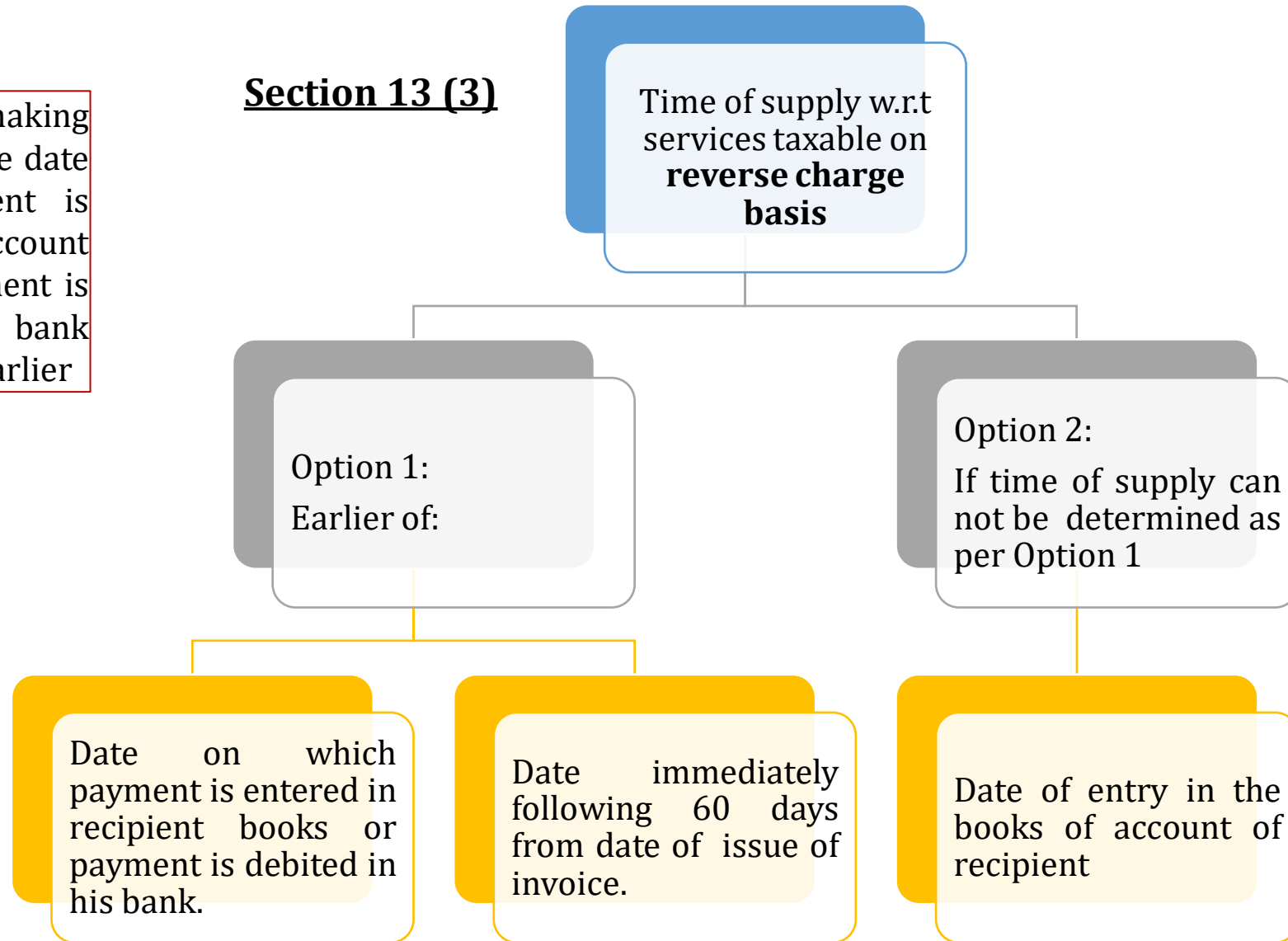
Section 13: Time of Supply of Services:

Note: Date of receipt/making of payment refers to the date on which the payment is entered into books of account or date on which payment is credited/ debited to bank account, whichever is earlier



Section 13: Time of Supply of Services

Note: Date of receipt/making of payment refers to the date on which the payment is entered into books of account or date on which payment is credited/ debited to bank account, whichever is earlier



Section 13: Time of Supply of Services:

In case of associate enterprises, where the supplier of services is located outside India: Time of supply shall be

- Earlier of:
- Date of entry in the books of accounts of the recipient of supply:
- Date of payment.

Residuary provision: **Section 13 (5)**

Where it's not possible to determine time of supply by (2)/ (3)/ (4) time of supply shall be:

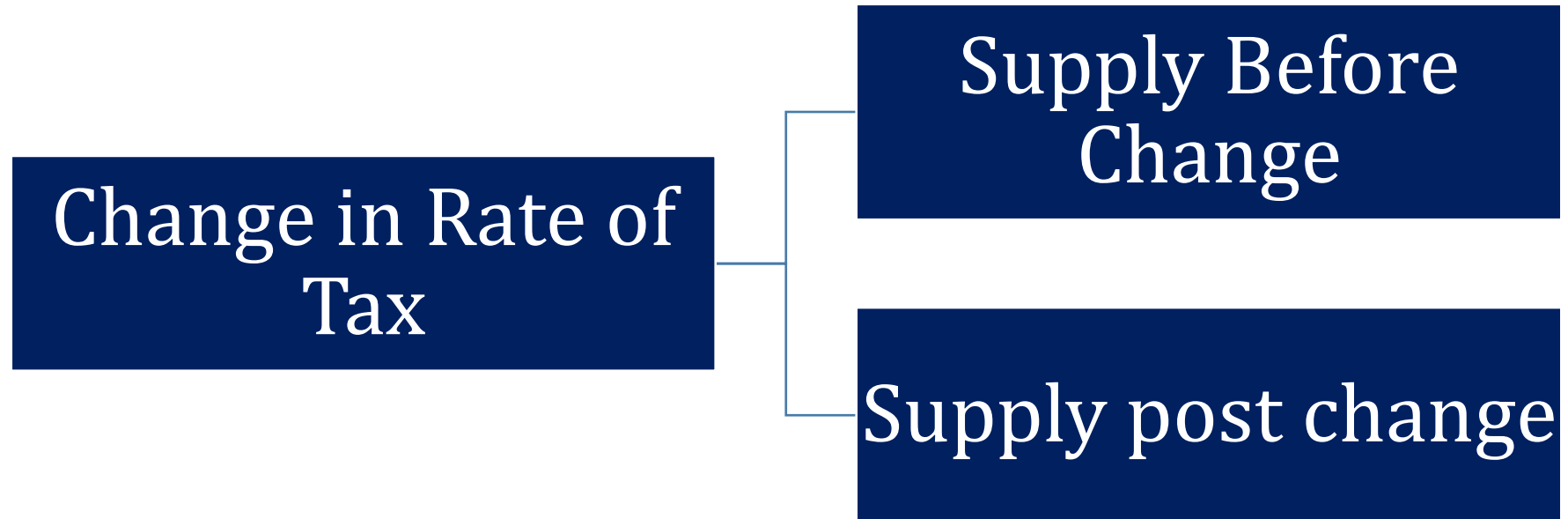
- Where periodical return has to be file – Date on which such return is filed
- In any other case – Date on which CGST/ SGST is paid

Section 13(6): Interest, late fee or penalty for delayed payment of any consideration: Time of supply

- Date on which the supplier receives such addition in value.

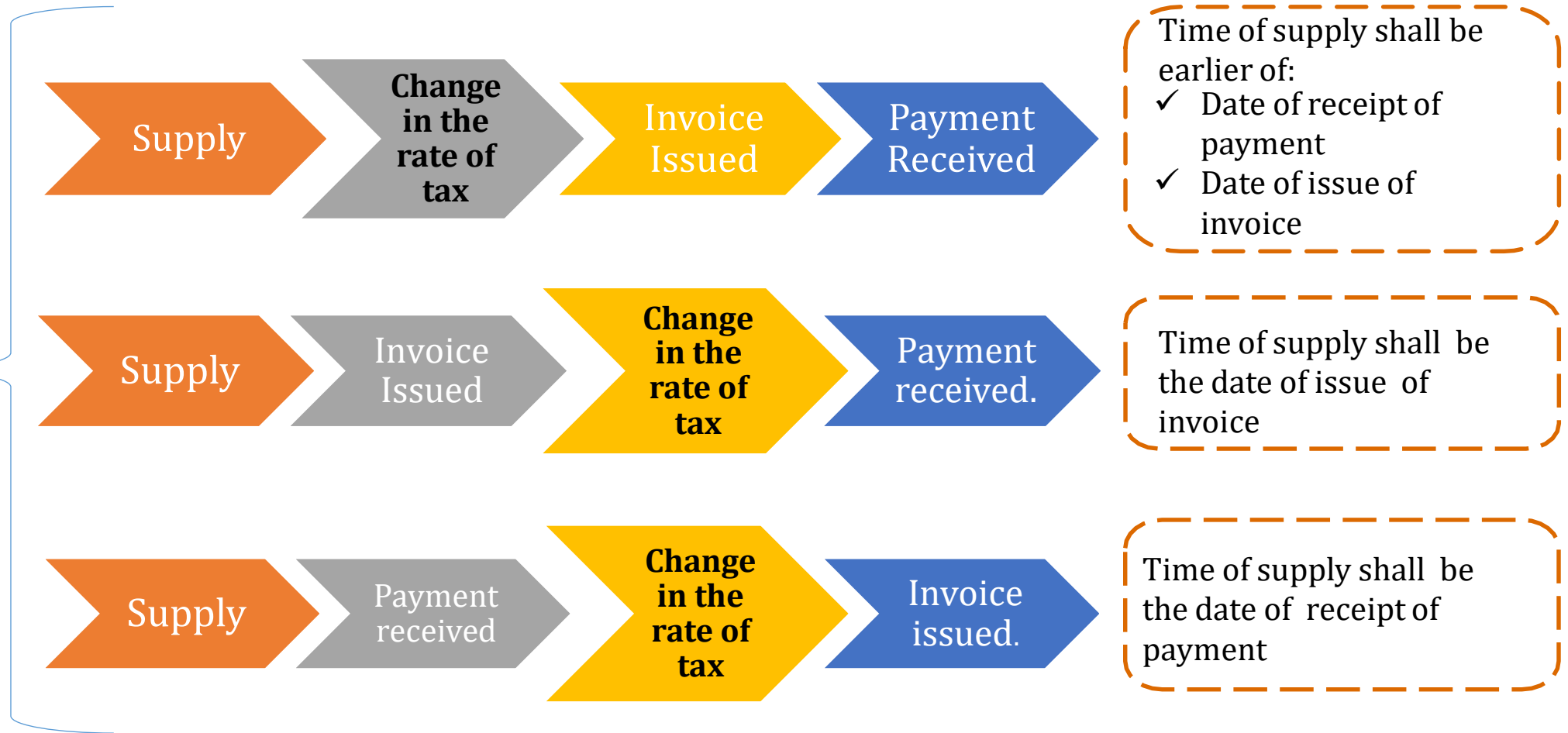
Time of Supply:

□ Section 14: **Change in rate of tax** in respect of supply of goods or services.



Supply before change of rate of Tax:

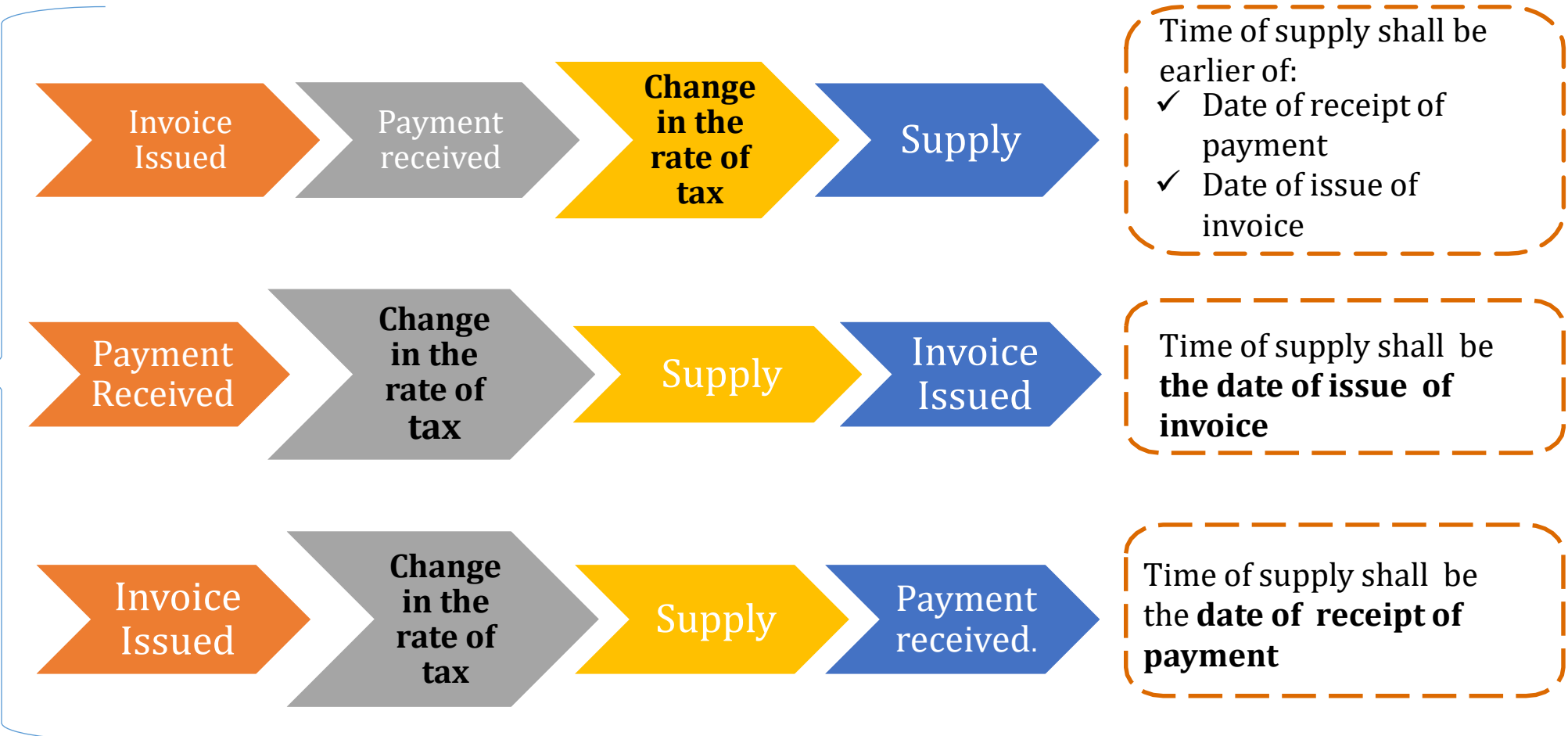
Supply of goods or services taking place **before** change in rate of tax



Note: Date of receipt/making of payment refers to the date on which the payment is entered into books of account or date on which payment is credited/ debited to bank account, whichever is earlier

Supply after change of rate of Tax:

Supply of goods or services taking place **after** change in rate of tax



Note: Date of receipt/making of payment refers to the date on which the payment is entered into books of account or date on which payment is credited/ debited to bank account, whichever is earlier
Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after **four working days** from the date of change in the rate of tax.

Case Study -1:

- ❖ Swami Industries Ltd engaged the services of a transporter for road transport of a consignment on 25th of October and made advance payment for the transport on the same date i.e. 25th October. However, the consignment could not be sent immediately on account of strike in the factory and instead was sent on 27th October. Invoice was received from the transporter on 28nd October.

What is the time of supply of the transporter's service?

Answer:

Time of supply of service taxable under reverse charge is the earlier of the following two dates in terms of section 13(3):

- Date of payment
- 61st day from the date of issue of invoice

In this case, the date of payment **precedes** the date of issue of invoice by the supplier of service. Hence, the date of payment, that is 25th October will be treated as the time of supply of service (Section 13(3))

Case Study - 2:

- ❖ An order is placed on B ltd on 18th August for supply of shoes. B ltd gets the consignment ready & issue the invoice on 2nd December. The customer collects the consignment from the premises of B ltd on 7th December and hands over the payment on the same date, which is entered in the accounts on the next date, 8th October.

What is the time of supply of shoes?

Answer:

Time of supply of goods is the **earlier** of the following two dates in terms of section 12(2):

- Date of issue of invoice/ last date on which the invoice is required to be issued
- Date of receipt of payment
- ✓ The date of receipt of payment will be **earlier of two dates** namely, date of recording the payment in books of accounts and date of crediting of payment in bank accounts.
- ✓ Therefore date of receipt of payment will be 7th December. However, as the invoice date is prior to the date of payment, time of supply will be **2nd December**.

Case Study - 3:

- ❖ 100 books of Sodexo coupons are sold to a company on 9th August for being distributed to the employees of the same company. The coupons are valid for 6 months and can be used against purchase of food items. The employees use them at various stores for purchase of various edible items on different dates.

What is the date of supply of coupons?

Answer:

As coupons can be used for a variety of **food items**, which are taxed at different rates, the supply cannot be identified at the time of purchase of the coupons.

Therefore, the time of supply of the coupons is the **date of their redemption** in terms of section 12(4).

Advance Ruling – Whether a Supply is a supply of Goods or of Service?

- **In re Vesuvius India Ltd (GST AAR West Bengal)**
- **Question:**
- Whether the activity proposed to be undertaken under Contract Management System (CMS) will result in Supply of goods & services within the meaning of the term under CGST/WBGST Act, 2017?
- **Order:**
- Activities the Applicant proposes to undertake are services associated with manufacturing of metal, and may be termed as “continuous supply of service” within the meaning of Section 2(33) of the GST Act, provided the service is agreed to be provisioned for a period exceeding three months.
- The time of supply shall be the date of issue of invoice in terms of Section 13(2) (a), read with Section 31(2) of the GST Act and Rule 47 of the GST Rules.

Case Study - 4:

- ❖ An online portal(www.lootlo.com), owned by K ltd, raises invoice for database access on L Ltd on 21st Feb. The payment is made by L ltd via Cheque on 25th Feb, which is received & entered in the accounts of K ltd on 28th February. K ltd encashes the Cheque & thereafter grants access to the database to L ltd from 3rd March. Meanwhile, the rate of tax changed from 1st March.
- What is the time of supply of service?

Answer:

As issuance of invoice and receipt of payment (entry of the payment in K Ltd's accounts) occurred before the change in rate of tax, the time of supply of service by the online portal is **earlier of the *date of issuance of invoice* (21st February) or **date of receipt of payment** (25th February)**. This would be so even though the service commences after the change in rate of tax (Section 14(b)(ii))

Questions Please!



CA Rohit Kumar Singh – TaxMarvel Consulting

Professional Qualifications:

Rohit is a **Chartered Accountant (CA)**, **Company Secretary (CS)**, **Cost Accountant (CMA)** and **Gold Medallist Law (LLB) Graduate**. He has also passed **Diploma in Information Systems Audit** (ICAI) and **Associate of Insurance Institute of India** (AIII)

CA Rohit Kumar Singh is founder of **TaxMarvel Consulting Services LLP**, a niche consulting firm which provides GST, Corporate Laws, Income Tax and outsourcing services to Corporates and MSME.

He was head of **GST Business (GST Suvidha Provider) of Karvy Data Management Services Limited (KDMSL)**. KDMSL was ranked as one of the Top 5 GSPs in India. He was credited to have set up the GST Compliance and advisory services for several niche Corporates and Public Sector Undertakings (PSU's).

Earlier, Rohit was Manager at **PriceWaterHouse Coopers Private Limited (PwC)**, Hyderabad, and has headed Commercial Functions (Indirect Taxes, Insurance and Internal Audit) function of Transmission and Distribution Division of **Gammon India Limited**.

Rohit is regular presenter and speaker at various national seminars for GST/Indirect Taxes. He is an empanelled **faculty for GST at ICAI and ICMAI**. He has taken more than 75 national seminars on GST and regularly conducts online GST Sessions for professionals and Senior Management. He represents clients for Advance Rulings and Departmental appeals.

He is a regular blogger and contributes to articles on GST and Indirect taxes in various online forums such as caclubindia.com, taxguru and other online platforms.

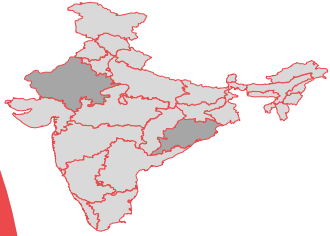
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About us

Who we are, what we do and contact us!



Our Presence



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- ❖ TaxMarvel is founded by Chartered accountants, Company Secretaries and Management Graduates who have extensive industry expertise. **A Ma ind**
- ❖ The founders have experience in Big4 consulting firm at a managerial level and has also headed a leading GST Suvidha Provider (GSP). **c G SP).**

Thank you

Thanks for your Patience and Time

