



SUPPLY UNDER GST

(Part 1)

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Taxable Event - Supply

A taxable event is any transaction or occurrence that results in a tax being levied. Before levying any tax, taxable event needs to be ascertained. It is the foundation stone of any taxation system. It determines the point at which tax would be levied.

Under the earlier indirect tax regime, the framework of taxable event contains variety of interpretations resulting in litigations since decades. The controversies largely related to issues like whether a particular transactions or activities is manufacture or not, whether a particular transaction was a sale of goods or rendering of services etc.

The GST law resolve these issues by laying down on comprehensive taxable event i.e. “Supply” – Supply of goods or services or both. Section 7 of the CGST Act defines supply, hence only if an activity/transactions falls within the definition, GST will be levied on the activity or transaction.

Relevant Definitions

GOODS

means every kind of movable property other than money and securities but includes

- actionable claim,
- growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [Section 2(52)]

SERVICES

means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Relevant Definitions

CONSIDERATION

in relation to the supply of goods or services or both includes:

- any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government,
- the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

It includes any sum paid or payable for supply of goods and/or services. Advances paid, payments made by third person as well, amounts paid as contractual penalties, deposits etc. Any transactions involving supply of goods and/or services without consideration is not a supply unless it is deemed to be a supply under law.

ACTIONABLE CLAIM

means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent [Section 2(1) of CGST Act read with section 3 of the Transfer of Property Act, 1882].

SECTION 7 : MEANING AND SCOPE OF SUPPLY

Sub Section	Clause	Particulars
		Supply includes
1	(a)	All forms of supply of goods or services or both such as <ul style="list-style-type: none">• 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.
	(aa)	The activities or transactions by a person, other than an individual, to its members or constituent or vice versa for cash, deferred payment/other valuable consideration.

Sub Section	Clause	Particulars
1	(b)	Importation 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.
1A		Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated as supply of goods or supply of services as referred to in Schedule II
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, 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 supply of goods nor a supply of services.
3		Subject to sub-section (1), (1A) & (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



Supply should be

- Of goods or services
- Made for a consideration
- Made in the course or furtherance of business



Without Consideration

Schedule I –

Deemed Supply



Import of services for consideration

Not in the course or furtherance of business



Classified either as supply of goods or as supply of services

Schedule II



Neither supply of goods nor supply of services

Schedule III

FORMS OF SUPPLY

EIGHT forms of supply contemplated in section 7(1)(a) are **sale, transfer, barter, exchange, licence, rental, lease or disposal**. These forms of supply are only illustrative and not exhaustive. However, none of these terms have been defined under the Act.

The Exhaustive word means the scope of definitions is wide.

- A shopkeeper sells a pen for Rs. 100 to the buyer. After the sale, the pen belongs to the buyer and shopkeeper does not have any right on the pen. This is a transaction of **sale**.
- A company transfers goods from its factory to the depot for sale purposes. This is '**transfer**' of goods where the sale has not yet taken place.
- When a new car worth Rs. 5,00,000 is purchased in **exchange** of an old car along with the monetary consideration of Rs. 4,00,000 paid for the said purchase. – **Exchange transaction**
- A doctor got his hair cut from a barber and provides him medical consultancy in return. **Barter transaction**

- **Licence** is a permission granted by competent authority to engage in a business or occupation or in an activity otherwise *unlawful*.
- **Rental** is an arrangement to rent something, or the amount of money that you pay to rent something
- **Lease** is to make a legal agreement by which money is paid in order to use land, a building, a vehicle, or a piece of equipment for an agreed period of time.

Under GST, such licenses, leases and rentals of goods with or without transfer of right to use are covered under the supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule II of CGST Act



CIRCULARS

Pertaining to the existence of consideration

Donations received by charitable institutions from individual donors, without quid pro quo (something for something)



- ❑ Donations received by the charitable organizations are treated as consideration only if there exists, *quid pro quo*, i.e., there is an obligation on part of recipient of the donation or gift to do anything (supply a service).
- ❑ Generally, institutions such as religious institutions, charitable organizations, schools, hospitals, orphanages, old age homes etc. receive financial help or any other support in the form of donation or gift from the individual donors.
- ❑ When the name of the donor is displayed in recipient institution's premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and **is not aimed at giving publicity to the donor**, , then it can be said that there is **no supply** of service for the payment in the form of donation.
- ❑ In other words, there is no obligation (*quid pro quo*) on part of recipient of the donation or gift to do anything (i.e. supply a service). Therefore, there is no GST liability on such payment made.

Art works sent by artists to galleries for exhibition

The picture can't be displayed.

Issue:

Artists give their work of art to galleries where it is exhibited. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition, is it Supply?

Clarification:

- ❑ At the time of sending to art galleries for exhibition: **No Consideration: not a supply.**
- ❑ When a buyer selects a particular art work displayed at the gallery: **it's a sale for a consideration, hence supply.**

'No Claim Bonus' offered by an insurance company to the insured



Issue:

The issue which arose for consideration was whether the deduction on account of 'No Claim Bonus' (NCB) allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company.

Clarification:

- ❑ The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB.
- ❑ There is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and NCB cannot be considered as a consideration for any supply provided by the insured to the insurance company.

FINANCIAL TRANSACTIONS



The definitions of 'goods' and 'services' specifically exclude both money and securities.

- The definition of **money** includes instruments like cheques, drafts, pay orders, promissory notes, letters of credit, etc. Therefore, activities that are only transactions in such instruments would be outside the definition of service.
- Money would also include transactions in Commercial Paper and Certificate of Deposit, issuance of drafts or letters of credit, etc. While these transactions are outside the ambit of supply,
- The related activity for which a separate consideration is charged, is **chargeable to GST** if other elements of taxability are present.

- The term '**securities**' shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (SCRA) [Section 2(101)].
- In this regard, there may arise a doubt as to whether a 'derivative' is included within the meaning of 'securities' above and whether derivatives are liable to GST?
- Before that, let us understand what a derivative means in simple terms. **Derivatives** are financial contracts/instruments that derive their value from something else, like an underlying asset. They are kind of bets or agreements based on the price/performance of the underlying asset, rather than owning that asset directly.
- Derivatives are included in the definition of securities under SCRA. As **Derivatives fall in the definition of securities, they are neither goods nor services and hence, are not liable to GST.**

It is important to note that GST would be levied on service charges normally charged for various transactions in money including charges for making drafts, issuance charges for letter of credit, etc or service charges or service fees or documentation fees or broking charges or such like fees or charges charged on the derivatives/futures contracts/forward contracts, since the same would be a consideration for provision of service.

GST IMPLICATIONS

FUTURE CONTRACT

- Future contracts are in the nature of derivatives, these qualify as 'securities' and thus, are **not subject to GST**.
- where the Future contracts have a **delivery option** and the settlement of contract takes place by way of **actual delivery** of underlying commodity/currency, then such **Future contracts would be treated as normal supply of goods and liable to GST**.

FORWARD CONTRACT

- Where the settlement takes place by way of net settlement of differential of the forward rate over the prevailing market rate on the settlement date, the same would be falling within the purview of 'securities' and thus, are **not chargeable to GST**.
- Where the settlement takes place by way of **actual delivery** of underlying **commodity/currency**, then such forward contracts would be treated as **normal supply of goods and liable to GST**.

GST IMPLICATIONS

SECURED DEBT

- Sale, purchase, acquisition or assignment of a secured debt **does not constitute a transaction in money**, it is in the nature of a derivative and hence a security.

INSTRUMENTS

- Transactions in instruments like interest rate swaps, and foreign exchange swaps would be **excluded from the definition of 'supply'** since such instruments are derivatives, being securities, based on contracts of difference.

GST IMPLICATIONS

Services by way of extending deposits, loans or advances

- the consideration is represented by way of interest or discount is exempt from the levy of GST.

LENDING OF SECURITIES – SECURITIES LENDING SCHEME ('SLS')

- Securities are neither covered in the definition of goods nor covered in the definition of services. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.
- The SLS doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services.
- However, the lending fee charged from the borrower of securities is **taxable under GST** and commission charged by intermediaries to facilitate are also **taxable**

ANALYSIS OF SECTION 7 (1) (aa)

- the activities or transactions, by a **person, other than an individual**,
- to its **members or constituents** or vice versa,
- for cash, deferred payment or other valuable consideration.

Explanations clarified that the person and its members or constituents shall be deemed to be two separate persons.

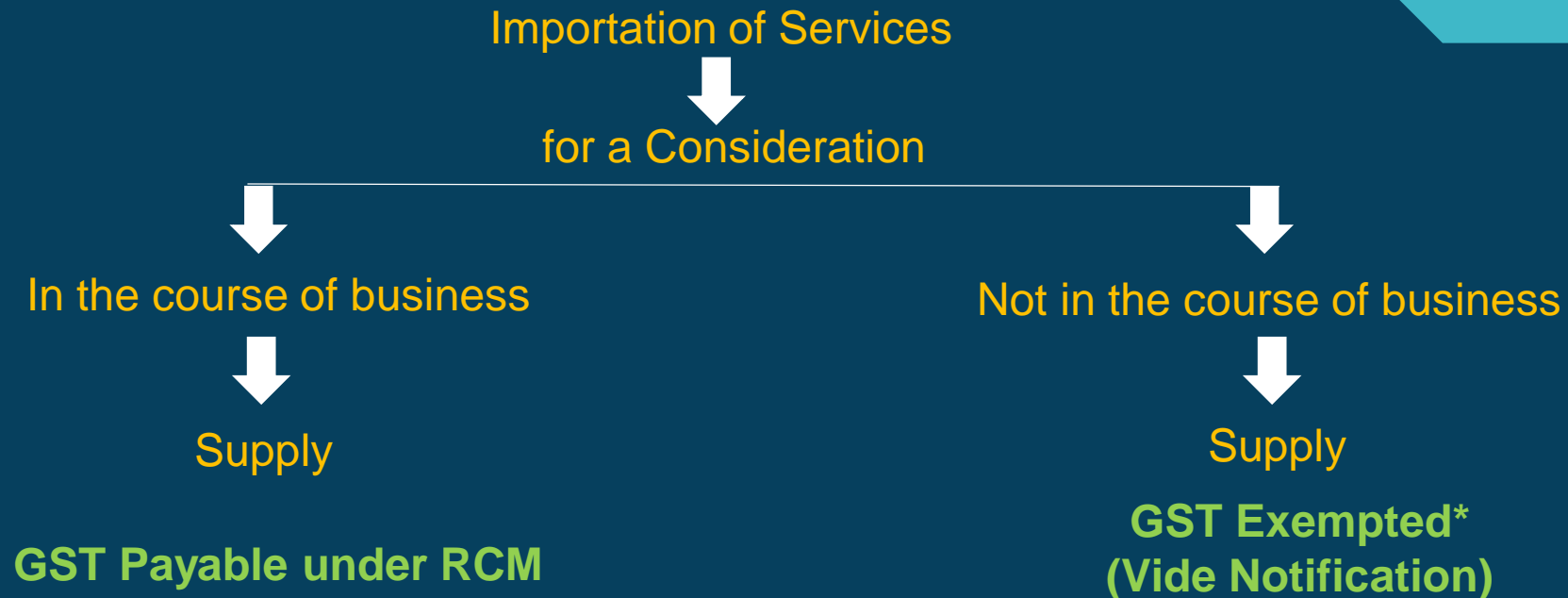
Example : Club house and members of club treated to be as Separate person and any activities or transactions between them is as Supply.

- (1) Resident Welfare Association (RWA) of Sanskriti Society supplies air- conditioners to its members at a concessional price.
- (2) A Resident Welfare Association collects maintenance charges from its members for services provided.

Here, in both the aforesaid examples, it shall be deemed that the Resident Welfare Association (RWA) and its members are two separate persons and it shall be deemed that the supply has taken place from Resident Welfare Association (RWA) to its members.

ANALYSIS OF SECTION 7 (1) (b)

- **Importation of services,**
 - For a **Consideration,**
 - Whether or not in the course or furtherance of **business**



Ram, a proprietor, has received the architect services for his personal residence from an architect located in New York at an agreed consideration of \$ 15,000. The import of services by Ram is supply under section 7(1)(b) though it is not in course or furtherance of business.

Exemption is not applicable in case OIDAR services(Netflix) provided to Unregister Person, in that case FCM is applicable

ANALYSIS OF SECTION 7 (1) (c)

The said section is pertaining to Deemed Supply. Activities specified in **Schedule I** made or agreed to be made without consideration.

1. Permanent Transfer/Disposal of Business Asset where ITC availed:

Any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration. Following conditions need to be satisfied :-

- ❑ There must be a disposal or transfer of business assets
- ❑ Transfer/disposal must be permanent, and
- ❑ ITC must have been availed on such business assets.

Example:

- 1) XYZ & Co. donates old laptops to charitable schools will qualify as supply provided input tax credit has been availed by XYZ & Co. on such laptops.
- 2) A dealer of air-conditioners permanently transfers the motor vehicle free of cost. ITC on said motor vehicle is blocked. The transaction will not constitute a supply as the condition of availment of ITC on the business asset transferred is not fulfilled.

2. Supply between related person or distinct persons:

Supply of goods or services or both between related persons or between distinct persons will qualify as supply, **provided it is made in the course or furtherance of business.**

Person shall be deemed to be related if

- Such persons are officers or directors of one another businesses – **two common directors**;
- Such persons are employer and employee - **but other than salary**;
- One of them directly or indirectly control the others – **control means 50% share in another company**;
- Together they directly or indirectly control a third person or they are members of the same family;
- Such persons are legally recognized partners in business;
- Any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
- Both of them directly or indirectly controlled by a third person; and
- Persons who are associated in the business of one another in that one is sole agent or sole distributor.

Shall be deemed to be related.

Distinct Persons [section 25 of CGST Act]

- A person who has obtained or is required to obtain more than one registration, whether in one state/Union territory or more than one state/Union territory shall, in respect of each such registration, be treated as distinct persons. Further, where a person who has obtained or is required to obtain registration in a state or Union territory in respect of an establishment, has an establishment in another state or Union territory, then such establishments shall be treated as establishments of distinct persons.

Example: Mohan, a CMA, has registered head office in Delhi. He has also obtained registration in the state of West Bengal in respect of his branch office. Mohan shall be treated as distinct persons in respect of registrations in West Bengal and Delhi.

3. Principal - Agent

Supply of goods by a principal to his agent without consideration where the agent undertakes to supply such goods on behalf of the principal is considered as supply. Similarly, supply of goods by an agent to his principal without consideration where the agent undertakes to receive such goods on behalf of the principal is considered as supply.

Points which merit consideration, in this regard, are as follows:

- Only supply of goods is covered here;
- Supply of goods between principal and agent without consideration is also supply.

Example:

- XYZ Motors Ltd. engaged Asian Cars Ltd. as an agent to sell cars on his behalf. For this purpose, XYZ Motors Ltd. has supplied 20 cars to the showroom of Asian Cars Ltd located in Haryana. Supply of cars XYZ Motors Ltd to Asian Cars Ltd will qualify as supply.

DECIDING FACTOR - (PRINCIPAL - AGENT RELATIONSHIP)

Where the invoice is issued by the agent to customer in the name of :

Principal

Agent

Whether he will be an agent in terms of Para 3 of Schedule I?

No

Yes

EXAMPLE :

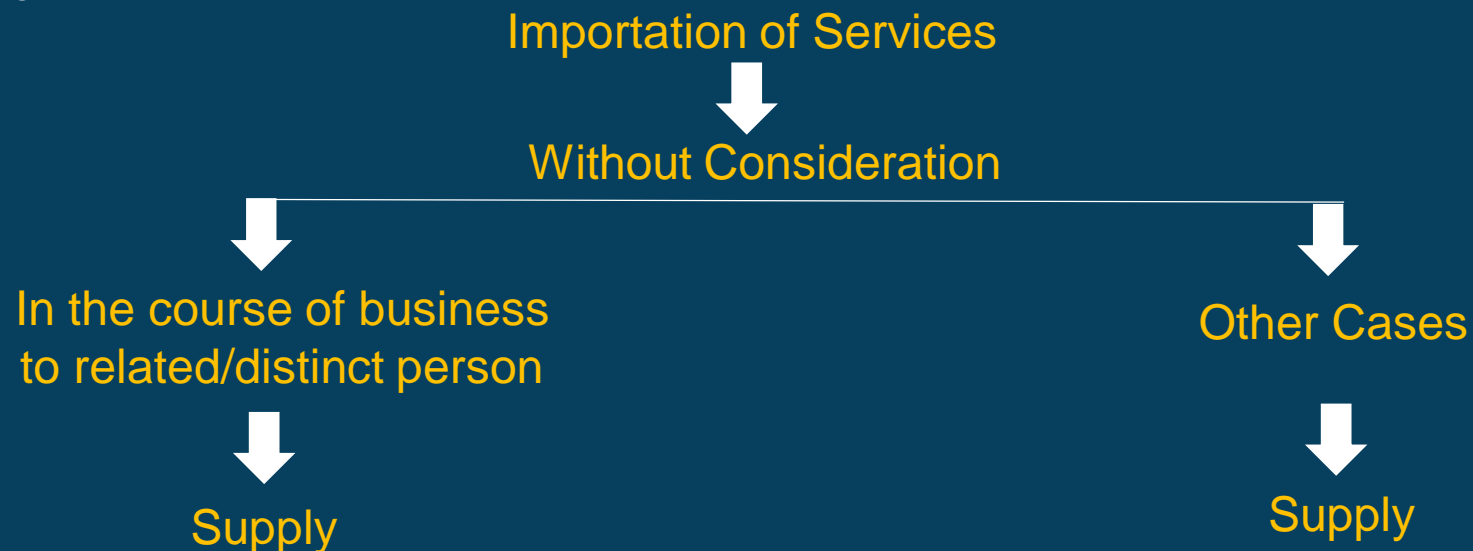
A C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F commission agent is an agent of the principal for the supply of goods in terms of Para 3 of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.

4. Importation of services

Import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business shall be treated as “supply”.

Example:

ABC Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such services free of cost to its branch office. Since ABC associates and the branch office are related persons, services received by ABC Associates will qualify as supply even though head office has not charged anything from it.





Thank You