



# Levy and Collection of tax

# What is GST?

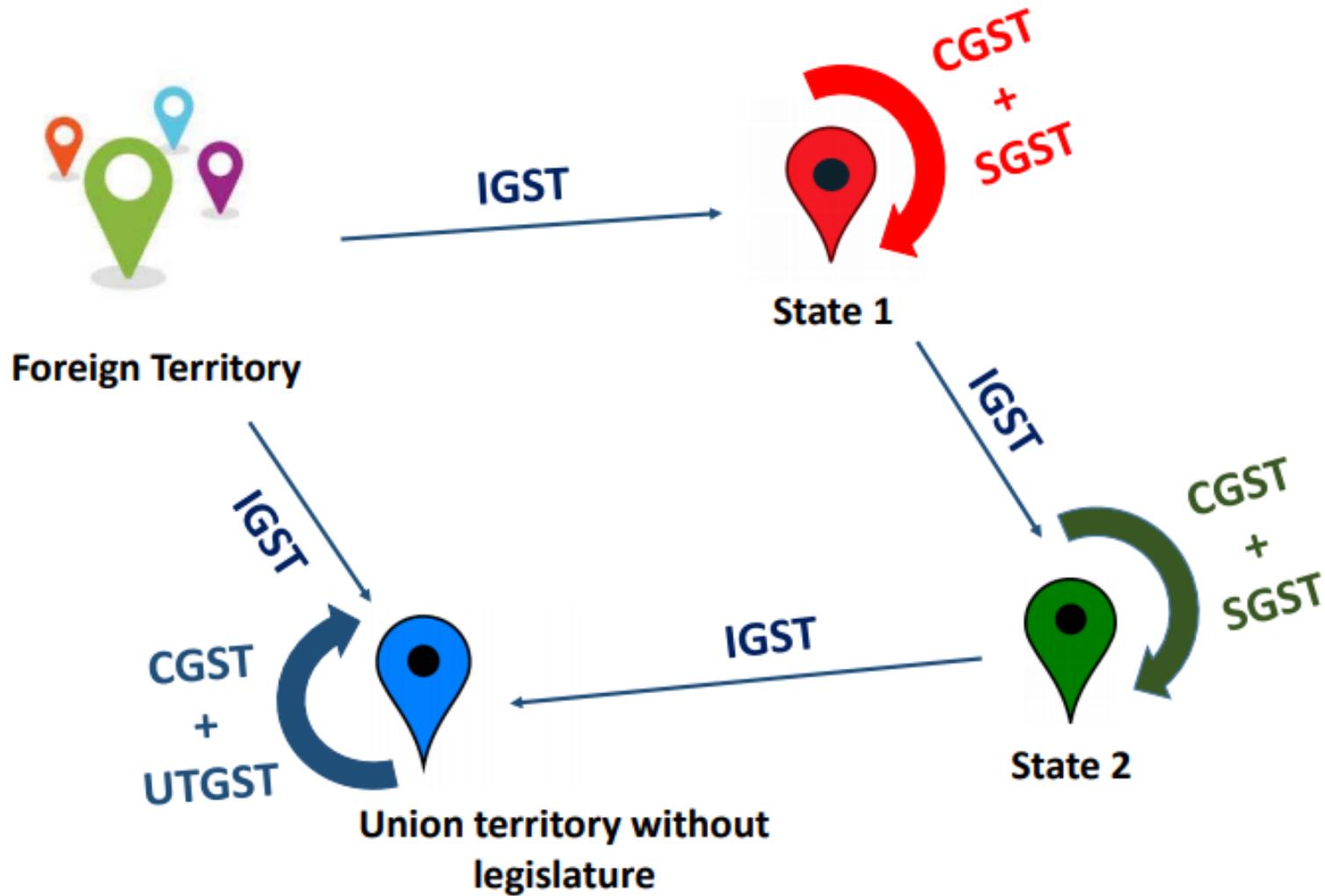


Goods & Services Tax Law in India is a comprehensive, multi-stage, destination-based tax that will be levied on every value addition.

In simple words, GST is an indirect tax levied on the supply of goods and services. GST Law has replaced many indirect tax laws that previously existed in India.



# GST Types



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# Why it is important?



Under the old regime, taxable events for various taxes were different. For example for excise, the taxable event was manufacture or production of goods in India, for service, the taxable event was provision of service and under VAT/CST it was sale of goods. To replace such multiplicity, **GST has brought a single and unified taxable event which is supply, i.e., tax would be payable on the supply of goods or services.**

# Relevant definitions



**Services: [Section 2(102) of CGST Act]** 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.

**Goods: [Sec. 2(52) of CGST Act]** 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.

# Parameters for supply



**The meaning and scope of supply under GST can be understood in terms of following five parameters, which can be adopted to characterize a transaction as supply:**

- 1) Supply of goods or services. Supply of anything other than goods or services does not attract GST
- 2) Supply should be made for a consideration
- 3) Supply should be made in the course or furtherance of business
- 4) Supply should be made by a taxable person
- 5) Supply should be a taxable supply

The phrase “agreed to be made” signifies that tax is not only payable on supply, that has already been made, but would also be payable in respect to a supply that has been agreed to be made. Hence, even advances received prior to supply is taxable even if the same is in connection to a supply agreed to be made.

# Relevant Sections and Schedule



<b>Section 7</b>	<b>Meaning and scope of supply</b>
<b>Section 8</b>	<b>Taxability of composite and mixed supplies</b>
<b>Schedule I</b>	<b>Matters to be treated as supply even if made without consideration</b>
<b>Schedule II</b>	<b>Matters to be treated as supply of goods or as supply of services</b>
<b>Schedule III</b>	<b>Matters or transactions which shall be treated neither as supply of goods nor as supply of services.</b>

# Meaning of Supply



## Section 7

Supply includes–

- a) 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;
- 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.

## Section 7 (2) Not a Supply

- a) activities or transactions specified in **Schedule III**;
- 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.

## Section 7 (3)

Subject to sub-sections (1) & (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

# Important terms



1. **Sale** : Definition of 'sale' has not been given.
2. **Transfer** : The term 'transfer' which has also been included as a form of supply is also not defined.
3. **Barter** : Transaction which includes an exchange of goods/services.
4. **Exchange** : where the goods are partly paid for in goods and partly in money.
5. **License, lease, Rentals etc** : Under the GST regime, 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.
6. **Consideration** : Consideration does not always means money. It covers anything which might be possibly done, given or made in exchange for something else. Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person.
7. **In the course of furtherance of business** : Business as defined under section 2(17) of the CGST Act, *inter alia*, includes any trade, commerce, manufacture, profession, vocation etc. whether or not undertaken for a monetary benefit. It also includes any activity or transaction which is incidental or ancillary to the aforementioned listed activities.  
In addition, any activity undertaken by the Central Govt. or a State Govt. or any local authority in which they are engaged as public authority shall also be construed as business.  
**Exception** There is one exception to this 'course or furtherance of business' rule i.e., import of services for a consideration.
8. **Distinct person (sec 25)** : A person who has obtained/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**.

# Schedule I Supply Without consideration –Deemed supply



## 1. Permanent Transfer/Disposal of Business Assets

- This clause covers transfer of business assets from holding to subsidiary company for nil consideration.
- This provision would apply only if input tax credit has been availed on such assets.

### Example

- XYZ & Co. donates old laptops to Charitable Schools when new laptops are purchased by business will qualify as supply provided input tax credit has been availed by XYZ & Co. on such laptops.
- A cloth retailer gives clothes from his business stock to his friend free of cost. In this case, transfer of business stock would amount to 'supply' if he had claimed input tax credit on his purchase of the business asset.
- A dealer of air-conditioners permanently transfers an air conditioner from his stock in trade, for personal use at his residence. The transaction will constitute a supply as it is a permanent transfer/disposal of business assets. The only condition is that input tax credit should have been availed on such assets.

## 2. Supply between related person or distinct persons

- Provided it is made in the course or furtherance of business
- Stock transfer or branch transfer
- Supply of goods or services or both between an employer and employee (services provided by an employee to the employer in the course of or in relation to his employment are not treated as supply of services)

Further, Schedule I provides that gifts not exceeding INR 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. However, gifts of value more than INR 50,000 made without consideration are subject to GST, when made in the course or furtherance of business.

## Schedule I Supply Without consideration –Deemed supply



### 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.

#### Example

- ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. For the purpose, ABC Manufacturers Ltd. has supplied the goods to Raghav & Sons located in Haryana. Supply of goods by ABC Manufacturers Ltd. to Raghav & Sons will qualify as supply even though Raghav & Sons has not paid any consideration yet.

### 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.

#### 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 the head office has not charged anything from it.

## Schedule II Activities to be treated as supply of goods or supply of services



S.No	Transaction	Type	Nature of supply
1	Transfer	Title in goods	Supply of Goods
		Right in goods/ undivided share in goods without transfer of title in goods	Supply of Services
		Title in goods under an agreement which stipulates that property shall pass at a future date.	Supply of Goods
2	Land and Building	Lease, tenancy, easement, licence to occupy land	Supply of Services
		Lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or partly	Supply of Services
3	Treatment or Process	Applied to another person's goods Eg. Job Work' performed by a job worker like dyeing of fabric in various colours.	Supply of Services
4	Transfer of Business Assets	Goods forming part of business assets are transferred or disposed off by/under directions of person carrying on the business so as no longer to form part of those assets, whether or not for consideration	Supply of Goods
		Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/under directions of person carrying on the business, whether or not for consideration. Eg. A director using car provided by the company for personal travels.	Supply of Services

## Schedule II Activities to be treated as supply of goods or supply of services



S.No	Transaction	Type	Nature of supply
		<p>Goods forming part of assets of any business carried on by a person, who ceases to be a taxable person, 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.</p> <p>Eg. A, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him and GST shall be payable.</p> <p><u>Exceptions:</u></p> <p>a) Business is transferred as a going concern to another person.</p> <p>b) Business is carried on by a personal representative who is deemed to be a taxable person.</p>	Supply of Goods
5	<p>a) Renting of immovable property</p> <p>b) Construction of complex, building, civil structure, etc. 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.</p> <p>The term construction includes additions, alterations, replacements, or remodeling of any existing civil structure.</p> <p>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:—</p> <ol style="list-style-type: none"> <li>i. an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or</li> <li>ii. a chartered engineer registered with the Institution of Engineers (India); or</li> <li>iii. a licensed surveyor of the respective local body of the city or town or village or development or planning authority.</li> </ol>		Supply of Service

## Schedule II Activities to be treated as supply of goods or supply of services



S.No	Transaction	Nature of supply
	c) Temporary transfer or permitting use or enjoyment of any intellectual property right	Supply of services
	d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software. Eg. Supply of GST related software to businesses for smooth processing of returns and accounts is supply of service.	
	e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.	
	f) Transfer of right to use any goods for any purpose	
6	Following composite supplies :- <ul style="list-style-type: none"> <li>• Works contract services: Means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract [Section 2(119) of CGST Act].</li> <li>• 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.</li> </ul>	Supply of Service
7	Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration. Eg. A local club supplies snacks etc. to its members during its monthly meeting for a nominal payment.	Supply of Goods

# Negative list under GST



## Schedule III Neither 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.  
Explanation – The term "Court" includes District Court, High Court and Supreme Court.
3.
  - a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
  - b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
  - c) 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 paragraph 5(b) of Schedule II, sale of building.
6. Actionable claims, other than lottery, betting and gambling.

## Activities /Transactions notified by the Government

- Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution.

## Section -8 Composite and Mixed Supplies



### Composite Supply

- means a supply made by a taxable person to a recipient and:
- comprises two or more taxable supplies of goods or services or both, or any combination thereof.
- are naturally bundled and supplied in conjunction with each other, in the ordinary course of business
- one of which is a principal supply [Section 2(30) of the CGST Act].

Principal supply [Section 2(90) of CGST Act] 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.

### Example

- Suvarna Manufacturers entered into a contract with XYZ Ltd. for supply of readymade shirts packed in designer boxes at XYZ Ltd.'s outlet. Further, Suvarna Manufacturers would also get them insured during transit. In this case, supply of goods, packing materials, transport & insurance is a composite supply wherein supply of goods is principal supply.
- When a consumer buys a television set and he also gets warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance services are ancillary.
- A travel ticket from Mumbai to Delhi may include service of food being served on board, free insurance, and the use of airport lounge. In this case, the transport of passenger, constitutes the pre-dominant element of the composite supply, and is treated as the principal supply and all other supplies are ancillary.

Note: Works contract and restaurant services are classic examples of composite supplies. However, the GST law identifies both as supply of services and such services are chargeable to specific rate of tax mentioned against such services

## Section -8 Composite Supplies



**How to determine whether the services are bundled in the ordinary course of business?**

- The perception of the consumer or the service receiver
- Majority of service providers in a particular area of business provide similar bundle of services
- There is a single price or the customer pays the same amount, no matter how much package they actually receive or use
- The elements are normally advertised as a package
- The different elements are not available separately
- The different elements are integral to one overall supply. If one or more is removed, the nature of the supply would be affected

**No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.**

## Section -8 Mixed Supplies



### Mixed Supply 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 [Section 2(74) of the CGST Act].

The individual supplies are independent of each other and are not naturally bundled.

### How to determine if a particular supply is a mixed supply?

- A supply can be a mixed supply only if it is not a composite supply.
- It can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business then it would be a mixed supply.
- Once the amenability of the transaction as a composite supply is ruled out, it would be a mixed supply, classified in terms of supply of goods or services attracting highest rate of tax.

### Example

- A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink 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.
- A shopkeeper selling storage water bottles along with refrigerator. Bottles and the refrigerator can easily be priced and sold independently and are not naturally bundled. So, such supplies are mixed supplies.

THANK YOU

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