

WIRC of Institute of Chartered Accountants of India **GST GYAN SATRA - 3**

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Important Definitions

❑ **“person” includes :**

“person” includes—

- (a) an individual;
- (b) a Hindu undivided family;
- (c) a company;
- (d) a firm;
- (e) a Limited Liability Partnership;
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- (g) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 2(45) of the Companies Act, 2013 (18 of 2013);
- (h) any body corporate incorporated by or under the laws of a country outside India;
- (i) a co-operative society registered under any law relating to cooperative societies;
- (j) a local authority;
- (k) Central Government or a State Government;
- (l) society as defined under the Societies Registration Act, 1860 (21 of 1860);
- (m) trust; and
- (n) every artificial juridical person, not falling within any of the preceding sub-clauses;

❑ Taxable person

- a person who is registered or liable to be registered under section 22 or section 24;

❑ Registered person

- means a person who is registered under section 25 but does not include a person having a Unique Identity Number

“Address of delivery” means the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both

“Continuous supply of goods”

- * 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;

“Continuous supply of services”

- * 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 service as the Central or a State Government may, whether or not subject to any condition, by notification, specify

“Import of service” means supply of service, where

- a) the supplier of service is located outside India
- b) the recipient of service is located in India and
- c) the place of supply of service is in India

“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

“location of the recipient of service” means:

(i) where a supply is received at a place of business for which registration has been obtained, the location of such place of business;

(ii) where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;

(iii) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(iv) in absence of such places, the location of the usual place of residence of the recipient;

“location of the supplier of service” means:

- (i) where a supply is made from a place of business for which registration has been obtained, the location of such place of business ;
- (ii) where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
- (iii) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- (iv) in absence of such places, the location of the usual place of residence of the supplier;

“non-taxable online recipient” means Government, a local authority, a governmental authority, an individual or any person not registered under section 23 of the CGST Act, 2016 receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory;

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

providing cloud services; provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet; providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network; online supplies of digital content (movies, television shows, music, etc.); digital data storage; and online gaming

“recipient” of supply of goods and / or services means-

(a) where a consideration is payable for the supply of goods and / or services, the person who is liable to pay that consideration,

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply;

Explanation.- The expression “recipient” shall also include an agent acting as such on behalf of the recipient in relation to the goods and / or services supplied.

“Related Person” :

- Persons shall be deemed to be ‘related persons’ only if:
 - they are officers or directors of one another’s businesses,
 - they are legally recognized partners in business,
 - they are employer and employee,
 - any person directly or indirectly owns, controls or holds **twenty five** per cent or more of the outstanding voting stock or shares of both of them,
 - one of them directly or indirectly controls the other,
 - both of them are directly or indirectly controlled by a third person,
 - together they directly or indirectly control a third person,
 - they are members of the same family.
- ‘Person’ also includes legal persons;
- Persons shall be deemed to be related where they are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire

“**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

“**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.

“**supplier**” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

“Business” includes -

- a. *any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
- b. *any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*
- c. *any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*
- d. *supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*
- e. *provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*
- f. *admission, for a consideration, of persons to any premises;*
- g. *services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*
- h. *services provided by a race club by way of totalisator or a licence to book maker in such club; and*
- i. *any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;*

“Furtherance of Business” Furtherance means helping or advancement. Business is defined in the Act as stated above, but to determine whether a transaction is in the course of furtherance of business or otherwise, it is essential to apply the test of business to understand:

the nature of activity and the seriousness behind undertaking the activity reasonable continuity, regularity - how much time, money, and effort you put into the activity and future plans for the activity whether sound and recognised business principles are followed and the activity is conducted in a way similar to most businesses in the same trade whether there is an intention is to make a profit The definition of supply is an inclusive definition and not an exhaustive definition and therefore any transaction which meets the conditions of supply would qualify as supply.

“Consideration” in relation to the supply of goods or services or both includes:
(a) 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.

(b) 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:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Meaning & Scope of Supply

“SUPPLY”
(SECTION 7 of
CGST Act 2017
made applicable to IGST /
UTGST / SGST)

1. **Supply** of goods and / or services includes all forms of supply made or agreed to be **made for a consideration** by a person in the course or furtherance of business

- Sale
- Transfer
- Barter
- Exchange
- License
- Rental
- Lease
- Disposal

2. **Importation of services for a consideration**, whether or not in the course or furtherance of business

3. **Activities specified in Schedule I**, made or agreed to be made without consideration

4. **Schedule II** specifies transactions which are to be treated as supply of goods or supply of services

5. Following shall be treated neither as a supply of goods nor a supply of services

- Activities Or Transactions specified in SCHEDULE III
- Activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as notified by government on recommendation of Council

6. Government to notify transactions which will be treated as supply of goods and not supply of services or vice versa

“Sale” means

- Sale is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer. (Ref: Lexicon Dictionary)
- "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. (Ref: Transfer of Property Act, 1882)
- “Sale" with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes,
(i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

- (iii) a delivery of goods on hire-purchase or any system of payment by installments;
 - (iv) a 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;
 - (v) the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
 - (vi) a supply, by way of or as a part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,
[but does not include a mortgage or hypothecation of or a charge or pledge on goods].
- (Ref: The CST Act, 1956)

“Transfer” means

Transfer with its grammatical variations and cognate expressions, includes letting on hire, lending, giving and parting with possession.

Transfer is an act or transaction by which property of one person is vested by him in another

Transfer is a larger word and sale is a specific word. A transfer may be by means of a lease, mortgage or sale or in any other mode

“Barter” means

To exchange one commodity for another without the intervention of money

“Exchange” means

When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things, being money only, the transaction is called an “exchange”.

(Ref: Transfer of Property Act, 1882)

“License” means

License means where one person grants to another or to a definite number of other person, right to do, for continue to do, in or upon the immovable property of the granter, something which would, in absence of such right, be unlawful and such right does not amounts to an judgement or in the interest of property, the right is called a license.

“Lease” means

Lease means any agreement or arrangement whereby the right to use any goods for any purpose is transferred by one person to another whether or not for specified period for cash, deferred payment or other valuable consideration without the transfer of ownership and includes a sub-lease but does not include any transfer on hire purchase or any system of payment of instalments

“Rental” means

Rent means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or any building (including factory building) together with furniture, fittings, and the land appurtenant thereto, whether or not such building is owned by the payment. (Ref: Lexicon Dictionary)

Rental means an item that is leased out for a specific amount of time and is governed by either a verbal or written agreement.

“Disposal” means

Disposal does not only mean dismissal. Disposal includes dismissal but is not confined thereto. (Ref: Lexicon Dictionary)

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
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:
3. **Gifts to Employees by Employer exceeding Rs.50,000/-** treated as supply of goods or services or both.
4. **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.
5. 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.

1. Transfer

- (a) any transfer of the title in goods is a supply of goods;
- (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
- (c) 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.

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.

3. Treatment or process

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

4. Transfer of business assets

Following shall be treated as supply of goods

(a) Goods forming part of the assets of a business transferred or disposed of by or under the directions of the person carrying on the business, whether or not for a consideration

(b) Goods held or used for the purposes of the business put to any private use or used, or made available to any person for use, for purpose other than purpose of the business, whether or not for a consideration

(c) Goods forming part of the assets of any business carried on by him 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.

5. Supply of services

Following shall be treated as supply of services

- (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.
- (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

5. Supply of services

Explanations

"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:—

- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
- (ii) a chartered engineer registered with the Institution of Engineers (India); or
- (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

"construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

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.

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.

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.
3.
 - 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.

Explanation - "court" includes District Court, High Court and Supreme Court.

- High Sea Sale
- Sale of Goods - Drop Shipments
- Sale from Private Bonded Warehouse / Public Bonded Warehouse
- Sale to or from SEZ / FTWZ
- Supply to Employees
- Transactions from C2B
- Free of Cost Supply
- Compensation
- Sale of Car
- Slum Sale
- Gift

“Composite Supply” means a supply made by a taxable person to a recipient comprising two or more supplies of goods or services, 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;

“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;

“Principal Supply” 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;

- * Combo Pack
- * Schemes
- * Conditional Vouchers
- * In-Divisible Contracts
- * Divisible Contracts

Charging Section

❑ Section 7(1) of IGST Bill - Supplies of goods and / or services in the course of inter-State trade or commerce

- **Supply of goods / services when location of supply & place of Supply are in :**
 - (a) 2 different States;
 - (b) 2 different Union territories; or
 - (c) a State and a Union territory
- **Supply of goods imported into the territory of India till they cross the customs frontiers of India**
- **Supply of services imported into the territory of India**
- **Supply of goods or services or both,—**
 - (a) when the supplier is located in India and the place of supply is outside India;
 - (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
 - (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section.

❑ **Section 8 of IGST Bill**

- Supply of goods - location of the supplier and the place of supply of goods are in the same State or same Union territory
- Supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory
- Distinct persons:
 - ✓ an establishment in India and any other establishment outside India
 - ✓ an establishment in a State or Union territory and any other establishment outside that State or Union territory
 - ✓ establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory
- Person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory

❑ Deemed Export :

Sec. 147. The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

1. Supply of goods by a registered person to a holder of AA
2. Supply of capital goods by a registered person to a holder EPCG
3. Supply of goods by a registered person to EOU
4. Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June 2017 (as amended) against AA.

☐ Sec 9 of CGST Act 2017 / Sec 5(1) of IGST Act 2017 / Sec 7 of UTGST Bill 2017 / Sec 7 of SGST Bill (Proposed)

- CGST & SGST / UTGST on Intra-State Supply OR IGST on Inter-State Supply of goods & Services except for supply of alcoholic liquor on human consumption on the value to be determined in accordance with Sec 15 and the rate not exceeding of 40% or at the rate to be notified
- CGST & SGST / UTGST or IGST on supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel will be levied only when notified by the Government on the recommendations of GST Council
- IGST will be leviable on importation of goods as well as supply of zero rated goods under the claim of refund

❑ **Sec 9 of CGST Act 2017 / Sec 5(1) of IGST Act 2017 / Sec 7 of UTGST Bill 2017 / Sec 7 of SGST Bill (Proposed)**

- Reverse Charge also will be applicable when goods or services received from **unregistered person** and for notified categories of Goods or Services OR both and to be payable by the recipient. This provision has been **deferred** vide Notification Number 38/2017 Central Tax (Rate) dated 13th October 2017
- **E-Commerce Operator** to pay the tax on specified categories of services which are routed through the operator and such E-Commerce operator will have to obtain registration in Taxable Territory either himself or through his authorized representative / appointed person.

- Percentage of Service Tax payable by Service Providers : NIL
- Percentage of Service Tax payable by any Person other than Service Providers : 100%

Service	Service Provider	Recipient of Service
Taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory other than non-assessee online recipient (OIDAR)	Any person who is located in a non-taxable territory	Any person located in the taxable territory other than non-assessee online recipient (Business Recipient)
Services provided or agreed to be provided by a goods transport agency (GTA) in respect of transportation of goods by road	Goods Transport Agency (GTA)	(a) any factory registered under or governed by the Factories Act, 1948; (b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; (c) any co-operative society established by or under any law; (d) any person registered under CGST/SGST/UTGST Act; (e) any body corporate established, by or under any law; or (f) any partnership firm whether registered or not under any law including association of persons. (g) Casual taxable person

Levy & Collection : Services under Reverse Charge

- Percentage of Service Tax payable by Service Providers : NIL
- Percentage of Service Tax payable by Nay Person other than Service Providers : 100%

Service	Service Provider	Recipient of Service
Services provided or agreed to be provided by an individual advocate or firm of advocates by way of legal services, directly or indirectly	An individual advocate or firm of advocates	Any business entity
Services provided or agreed to be provided by an arbitral tribunal	An arbitral tribunal	Any business entity
Sponsorship services	Any person	Anybody corporate or partnership firm
Services provided or agreed to be provided by Government or local authority excluding,- (1) renting of immovable property, and (2) services specified below- (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Government; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	Government or local authority	Nil

- ❑ Percentage of Service Tax payable by Service Providers : NIL
- ❑ Percentage of Service Tax payable by Any Person other than Service Providers : 100%

Service	Service Provider	Recipient of Service
Services provided or agreed to be provided by a director of a company or a body corporate to the said company or the body corporate;	A director of a company or a body corporate	A company or a body corporate
Services provided or agreed to be provided by an insurance agent to any person carrying on insurance business	An insurance agent	Any person carrying on insurance business
Services provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company	A recovery agent	A banking company or a financial institution or a non-banking financial company.
Services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in non-taxable territory to a person located in non-taxable territory	Importer as defined under clause (26) of section 2 of the Customs Act, 1962
Transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works	Author or music composer, photographer, artist, etc	Publisher, Music company, Producer

- ❑ Percentage of Service Tax payable by Service Providers : NIL
- ❑ Percentage of Service Tax payable by any Person other than Service Providers : **100% by Electronic Commerce Operator**

Service	Service Provider	Recipient of Service
Radio taxi or Passenger Transport Services provided through electronic commerce operator	Taxi driver or Rent a cab operator	Any person

Service	Supplier of goods	Recipient of Service
Cashew nuts, not shelled or Peeled	Agriculturist	Any registered person
Bidi wrapper leaves (tendu)	Agriculturist	Any registered Person
Tobacco leaves	Agriculturist	Any registered Person
Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent
Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
Raw cotton	Agriculturist	Any registered person
Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government, State Government, Union territory or a local authority	Any registered person

Thank You..



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