# Place of Supply

## Under **GST**

**Chapter V**
**Section 10 - 14**

**CA Annapurna Kabra**
**9972077441**

# Current Provisions - Summary

| Description | Value Added Tax | Central Excise Duty | Service Tax |
|---|---|---|---|
| Principle | Origin Based | Origin Based | Destination Based |
| Determination | Movement of Goods | Removal of Goods | Receipt of Service |
| Imports | No Jurisdiction | No Jurisdiction | Reverse Charge Mechanism |
| Exports | Specific Exemption | Exemption / Rebate Provision | Not Taxable at all |

Dual GST Concept

- CGST & SGST on Intra-State Supplies
- IGST on Inter-State Supplies

# Introduction

- **Article 269A(5)** : Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce

- **279A.(1) :** The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council

- Model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply

# Definitions

- **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.

- **Location of supplier of services** : 'Location of supplier of services' means,-
  (a) where a supply is made from a place of business for which registration has been obtained, the location of such place of business ;
  (b) 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;
  (c) 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
  (d) in absence of such places, the location of the usual place of residence of the supplier;

# Definitions

- **Recipient** : 'Recipient' of supply of goods or services or both 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
  (b) 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 and shall include as agent acting as such on behalf of the recipient in relation to the goods or services or both supplied.

- **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.

# Definitions

- **Location of recipient of services** : 'Location of recipient of services' means,-

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

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

  (c ) 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

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

- **Fixed Establishment**: means a place (other than the registered place of business) which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own.

# Definitions

- **Export of goods** : with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India

- **Export of services** : 'Export of services' means the supply of any service when,-
  (i) the supplier of services is located in India;
  (ii) the recipient of service is located outside India;
  (iii) the place of supply of service is outside India;
  (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
  (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with *Explanation 1 in Section 8*

- **Customs Frontiers of India**: means the limits of a customs area as defined in section 2 of the Customs Act, 1962.

# Definitions

- **Import of goods** : with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

- **Import of services** : 'Import of services' means the supply of any service when,-
  (i) the supplier of services is located outside India;
  (ii) the recipient of service is located in India; and
  (iii) the place of supply of service is in India;

- **Continuous Journey** : means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a any of the legs of the journey for which one or more separate tickets or invoices are issued.

*'Stopover' – means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later* point of time.

# Definitions

- **India** : means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters.

- **Non - Taxable Online Recipient :** means any Government, local authority, governmental authority, an individual or any other person not registered and 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.

*Explanation - For the purposes of this clause, the expression "governmental* authority" means an authority or a board or any other body,—

(*i) set up by an Act of Parliament or a State Legislature; or*

(*ii) established by any Government,*

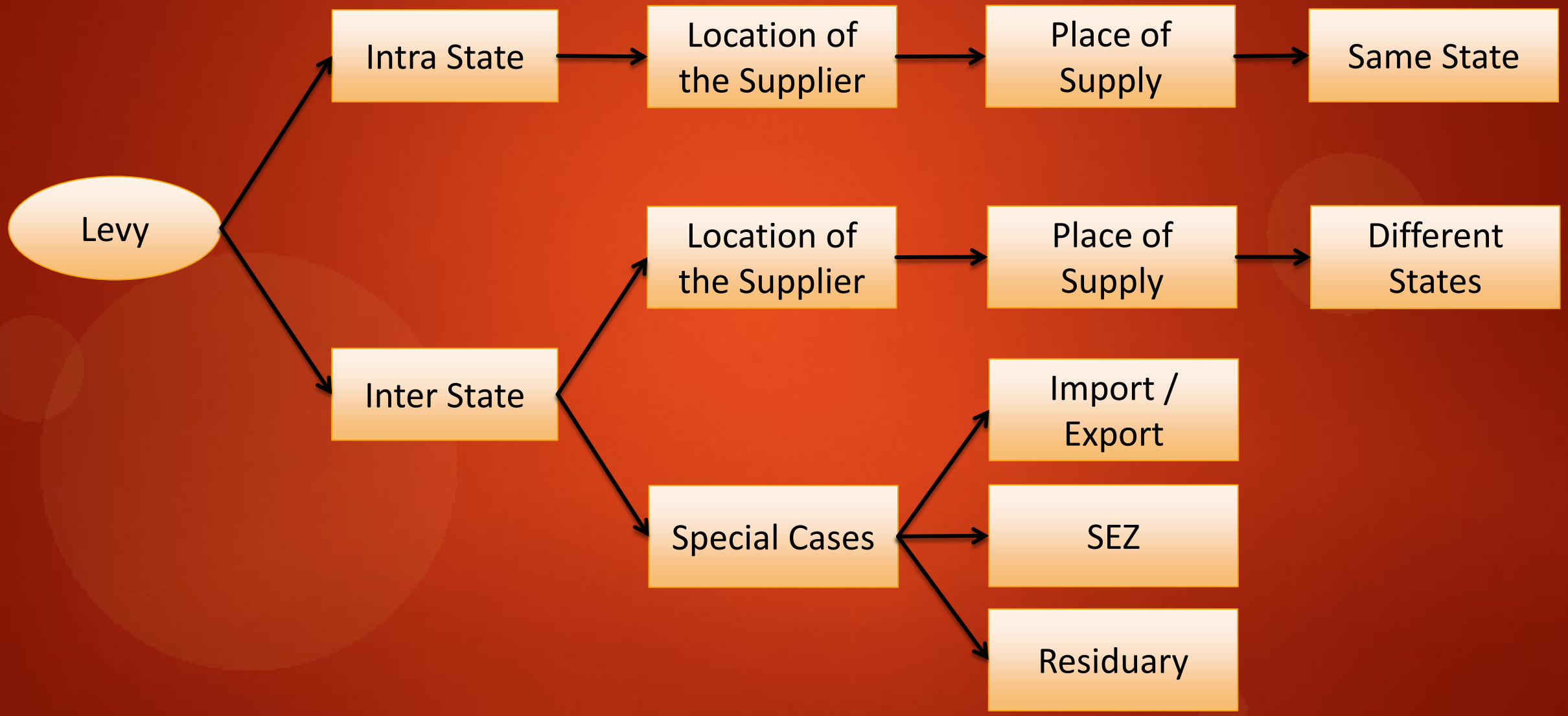
with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution

# Definitions

- **<u>Online Information and Database Access or Retrieval Services</u>** : 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,—

  (*i) advertising on the internet;*
  (*ii) providing cloud services;*
  (*iii) provision of e-books, movie, music, software and other intangibles* through telecommunication networks or internet;
  (*iv) providing data or information, retrievable or otherwise, to any person* in electronic form through a computer network;
  (*v) online supplies of digital content (movies, television shows, music* and the like);
  (*vi) digital data storage; and*
  (*vii) online gaming*

# Intra State and Inter State Supplies



# Supplies in Territorial Waters

Location of supplier is in territorial waters

↓

Location of such supplier

place of supply is in the territorial waters

↓

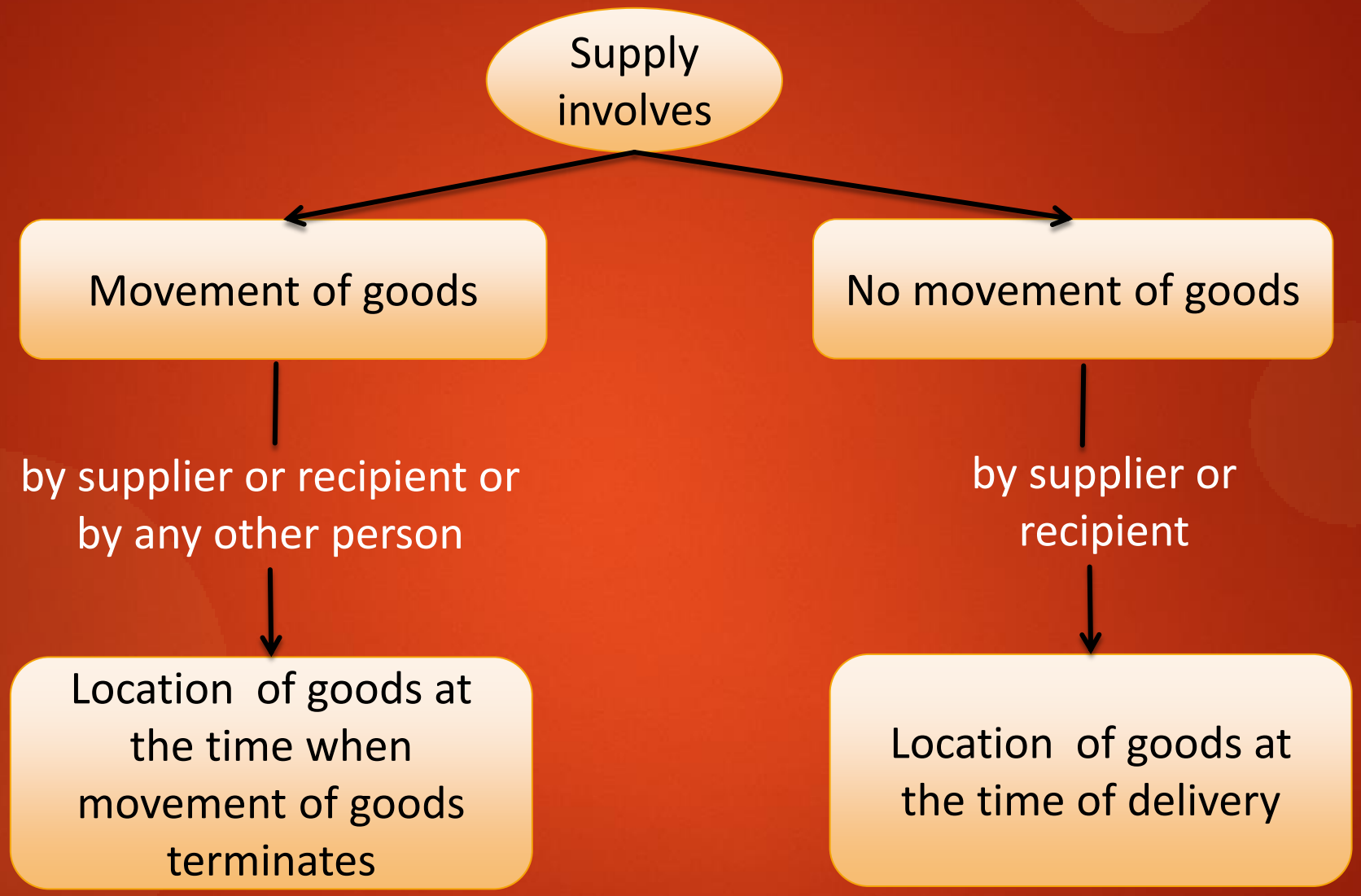
Place of such supply

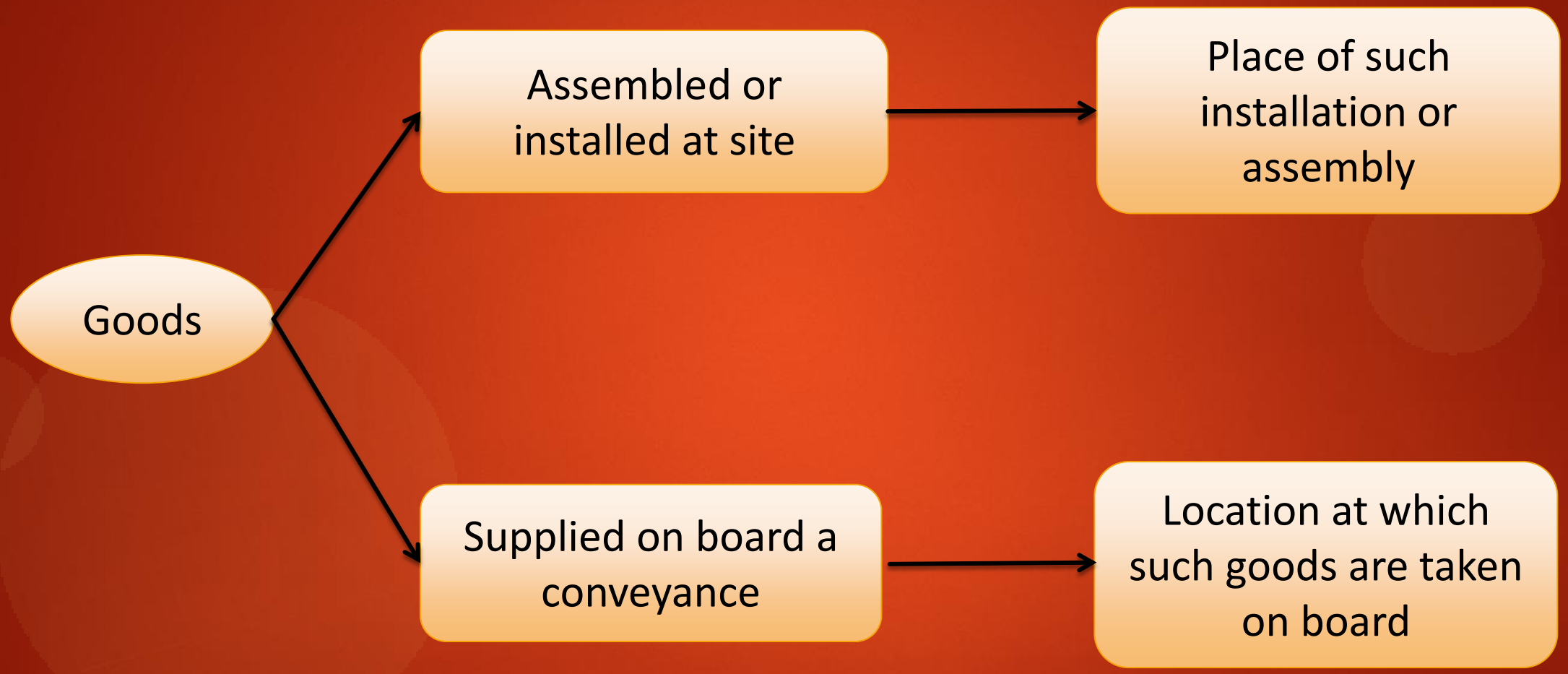
↓

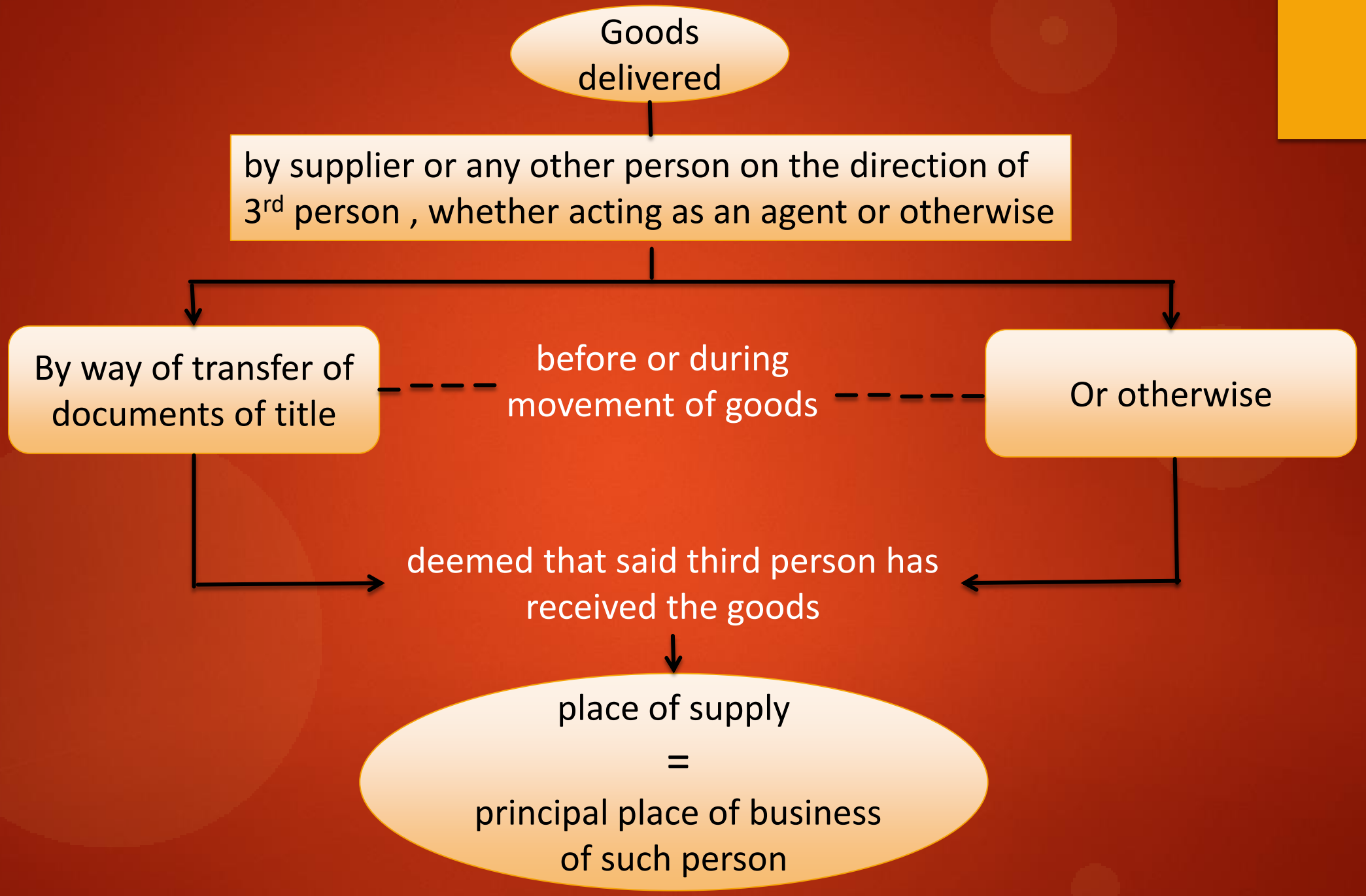
deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located

# Place of supply of goods other than supply of goods imported into, or exported from India

Section 10
Sub section (1) and (2)


Supply involves
Movement of goods
No movement of goods
by supplier or recipient or by any other person
by supplier or recipient
Location of goods at the time when movement of goods terminates
Location of goods at the time of delivery


Goods
Assembled or installed at site
Place of such installation or assembly
Supplied on board a conveyance
Location at which such goods are taken on board


Goods delivered
by supplier or any other person on the direction of 3rd person , whether acting as an agent or otherwise
By way of transfer of documents of title
before or during movement of goods
Or otherwise
deemed that said third person has received the goods
place of supply
=
principal place of business of such person

# Place of supply of goods imported into, or exported from India

Section 11

GOODS

Imported into India

Location of importer

Exported from India

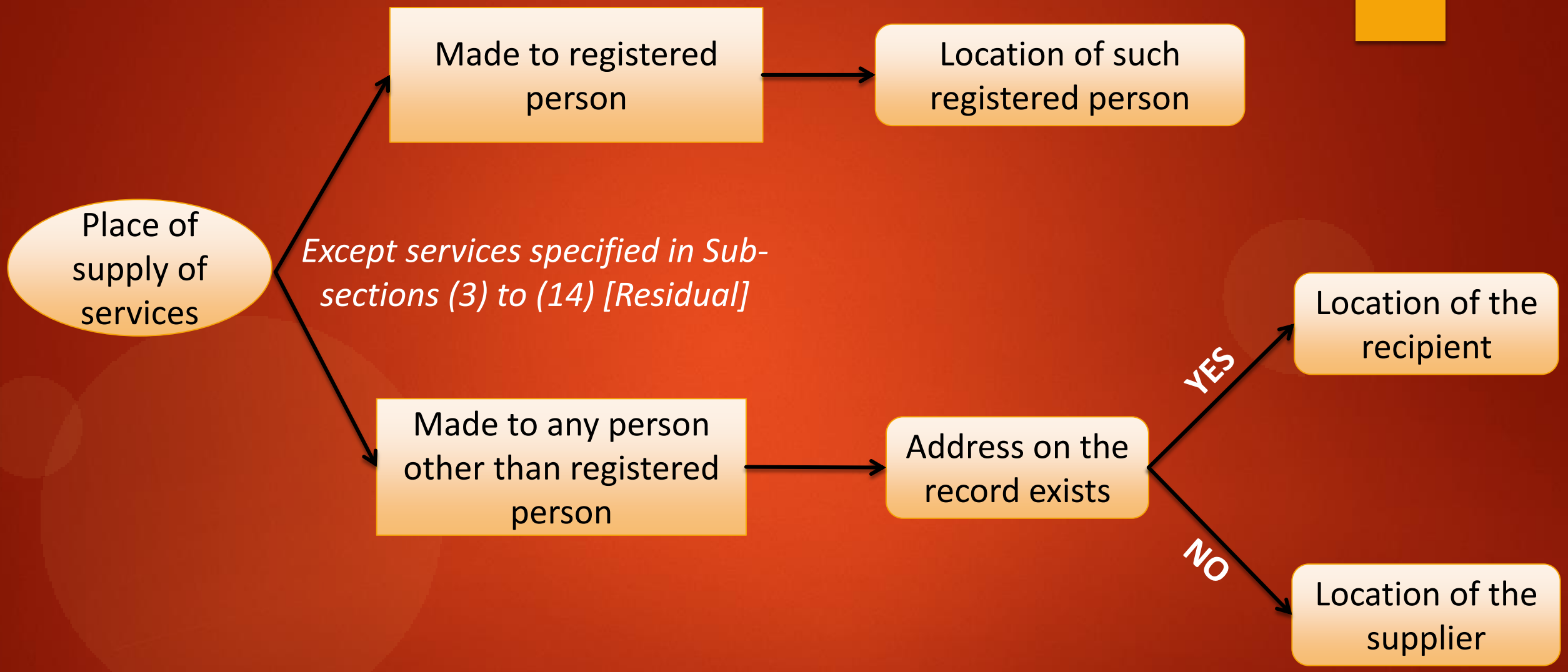
Location outside India

IGST on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the goods other than supply of alcoholic liquor for human consumption under section 12 of the Customs Act, 1962.

# Place of supply of services where location of supplier and recipient is in India

Section 12

Sub section (1) to (14)


Place of supply of services
Made to registered person
Location of such registered person
Except services specified in Sub-sections (3) to (14) [Residual]
Made to any person other than registered person
Address on the record exists
YES
Location of the recipient
NO
Location of the supplier

Place of supply of services

In relation to

Immovable Property

By way of accommodation in any such property for organizing marriage or any other functions

by way of grant of rights to use such property

Directly in relation to the immovable property

By way of accommodation by hotel, home stay, club, etc.,

For carrying out or co-ordination of construction work

Location where the immovable property or boat or vessel as the case may be is located or intended to be located

Any services ancillary thereto

# Continued…

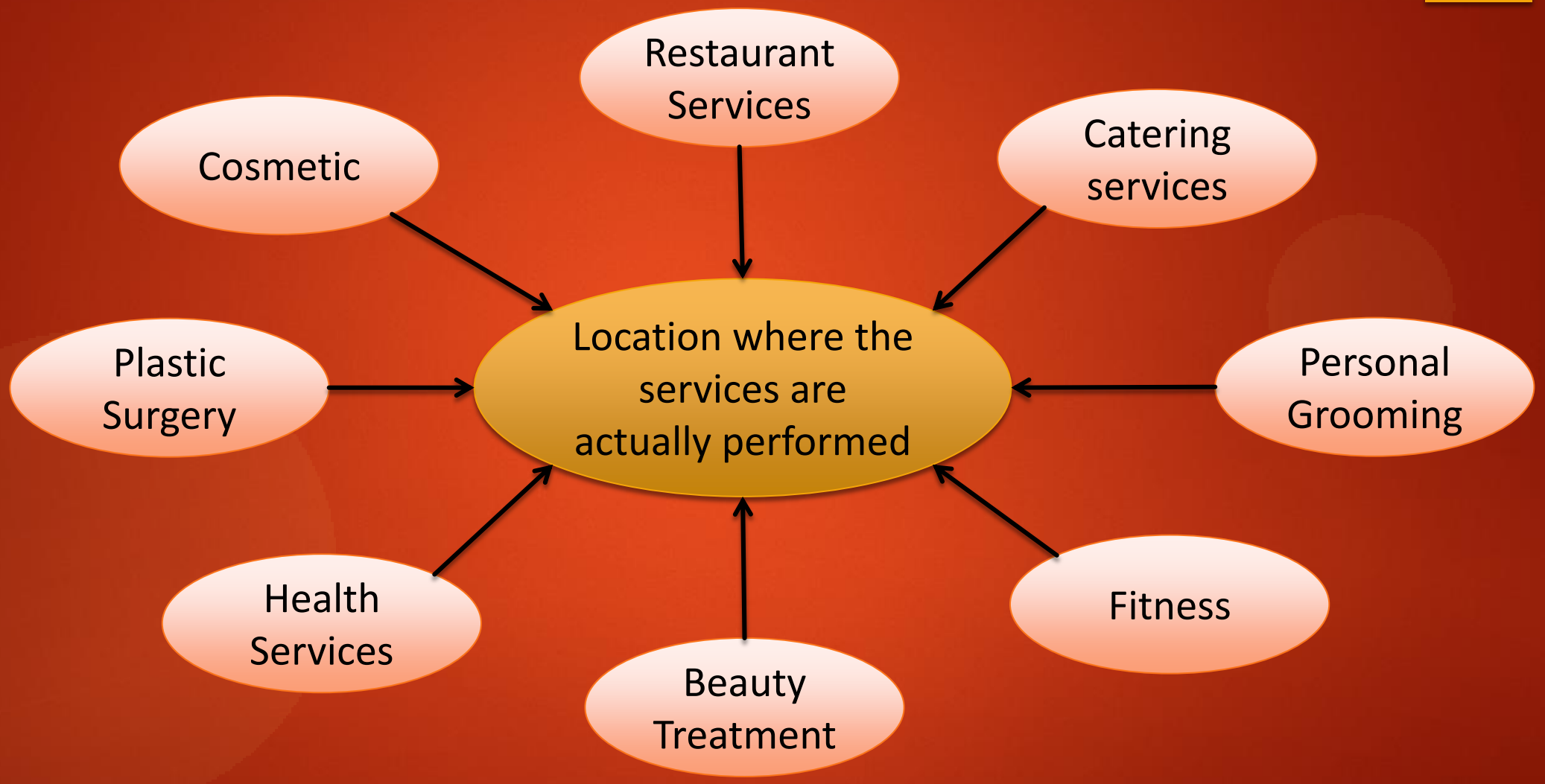
If the immovable property or boat or vessel is located outside India

- Place of supply = Location of the recipient

If the immovable property is located in more than one State or Union Territory

- the supply of services shall be treated as made in each of the respective States or Union Territory in proportion to the value of services separately collected or determined as may be prescribed
- in the absence of the contract, as may be prescribed

# Place of supply in case of:

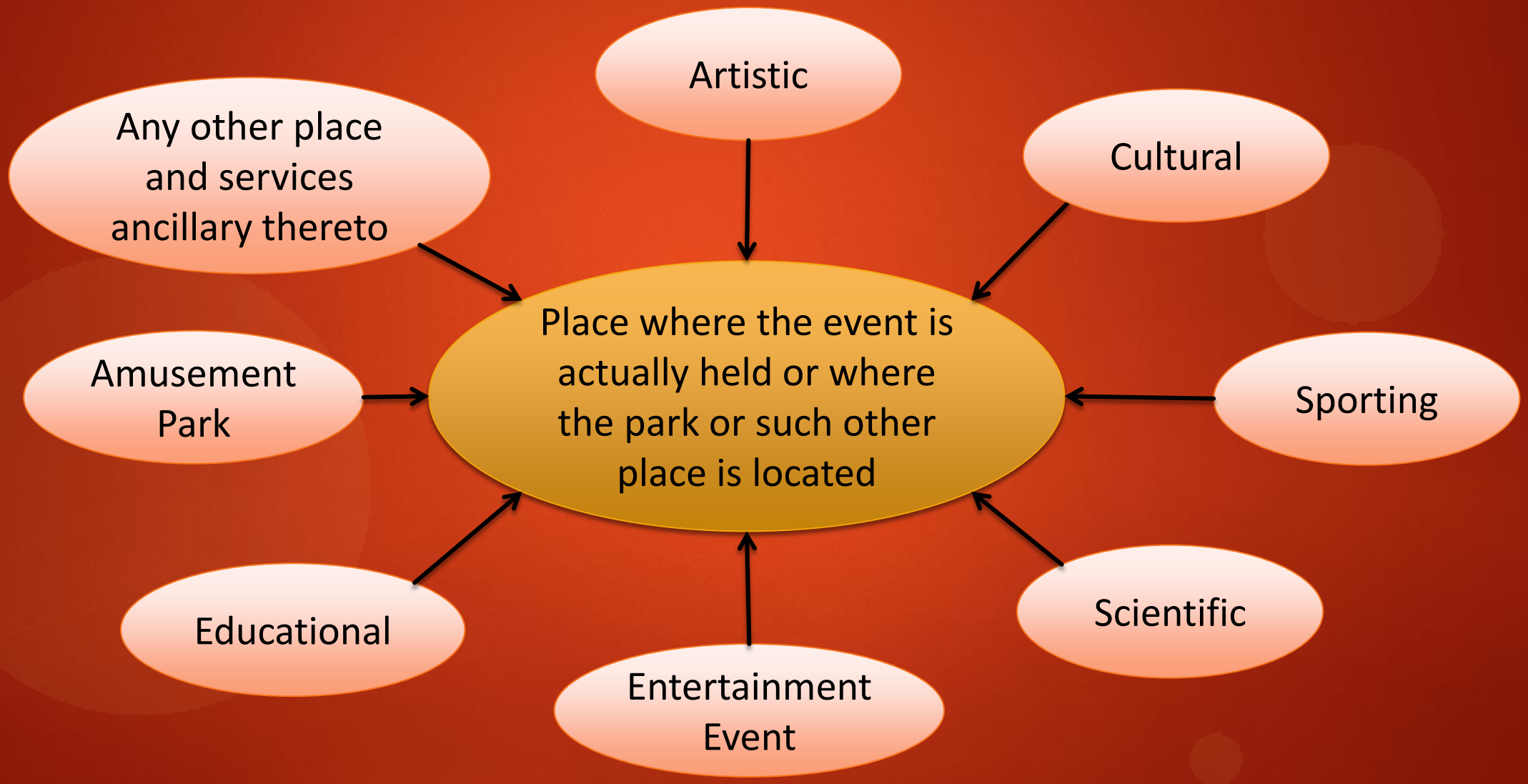


Place of supply of services
In relation to
Training & Performance
Appraisal

Made to registered person → Location of such registered person

Made to any person other than registered person → Location where the services are actually performed

Place of supply of services provide by way of ***admission*** to:



**(a)** Organization of:

- Cultural
- Artistic
- Sporting
- Scientific
- Educational
- Entertainment event

including, supply of services in relation to:

- Conference
- Fair
- Exhibition
- Celebration or similar events

**(b)** Any services ancillary to organization or assigning of sponsorship to such events

to a registered person → location of such registered person

Other than registered person → place where the event is actually held

# Continued…

If the event is held outside India

- Place of supply = Location of the recipient

If the event is held in more than one State or Union Territory

- consolidated amount is charged, the place of supply of such services shall be taken as being in each of the respective States or Union Territories in proportion to the value for services separately collected or determined in terms of the contract
- in the absence of the contract/ agreement, on the basis as may be prescribed

Place of supply of services by way of Transportation of Goods, including by mail or courier

- to a registered person → location of such registered person
- Other than registered person → location at which such goods are handed over for their transportation

Place of supply of services for Transportation of Passengers

to a registered person

location of such registered person

Other than registered person

place where the passenger embarks on conveyance for a continues journey

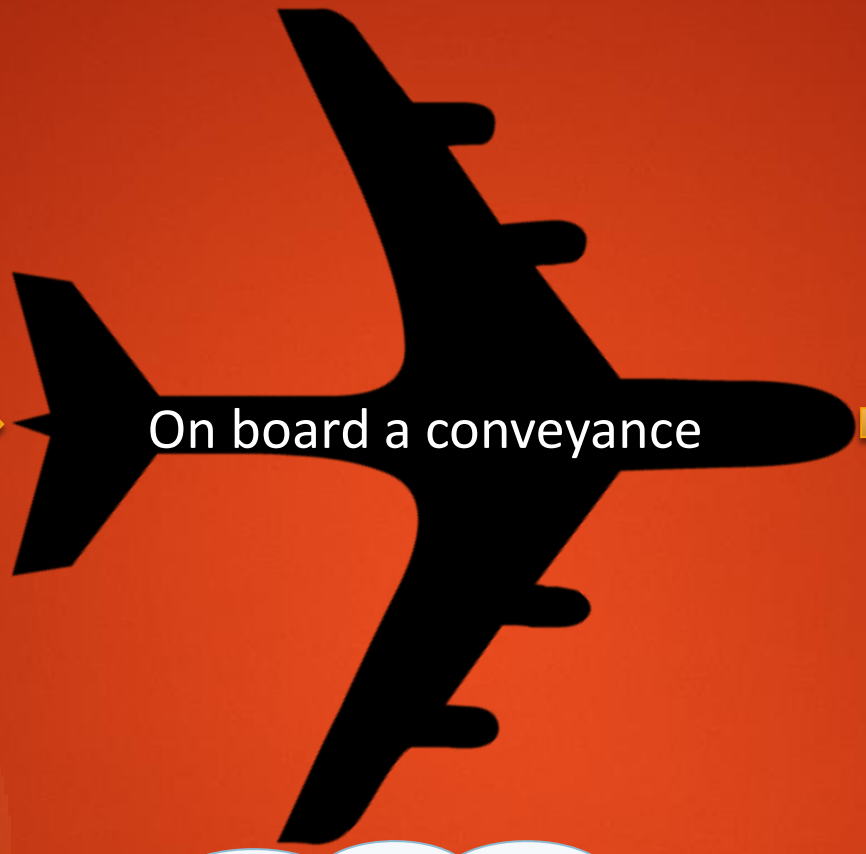
# Continued…

If right to passage is given for future use and point of embarkation is not known at the time of issue of right to passage, place of supply will be

"Return journey shall be treated as separate journey"

- to a registered person
  - location of such registered person
- Other than registered person
  - address on the record exists
    - YES: location of the recipient
    - NO: location of the supplier

Place of supply of service




place of the first schedule point of departure of that conveyance for the journey

Including a vessel, aircraft, train or a motor vehicle

Place of supply of telecommunication services including data transfers, broadcasting , cable and DTH services to ANY person

By the way of fixed telecommunication line, leased circuits, internet leased circuits, cable or dish antenna → Location where such telecommunication line, leased circuits or cable connection or dish antenna is installed for receipt of services

In case of mobile connection for telecommunication and internet services provided on post paid basis → Location of billing address of the recipient of the services on the record of the supplier of services

# Continued…

Place of supply of telecommunication services including data transfers, broadcasting , cable and DTH services to ANY person

In case where mobile connection for telecommunication, internet service and DTH services are provided on pre-payment basis through a voucher or any other means

Through a selling agent or a re-seller or a distributor of subscriber identity module card or recharge voucher

Address of the selling agent or a re-seller or a distributor as per the records of the supplier

By any other person to the final subscriber

Location where such pre payment is received or such vouchers are sold

## Continued…

Place of supply of telecommunication services including data transfers, broadcasting , cable and DTH services to ANY person

In any other cases

Address of the recipient is available in the records of the supplier

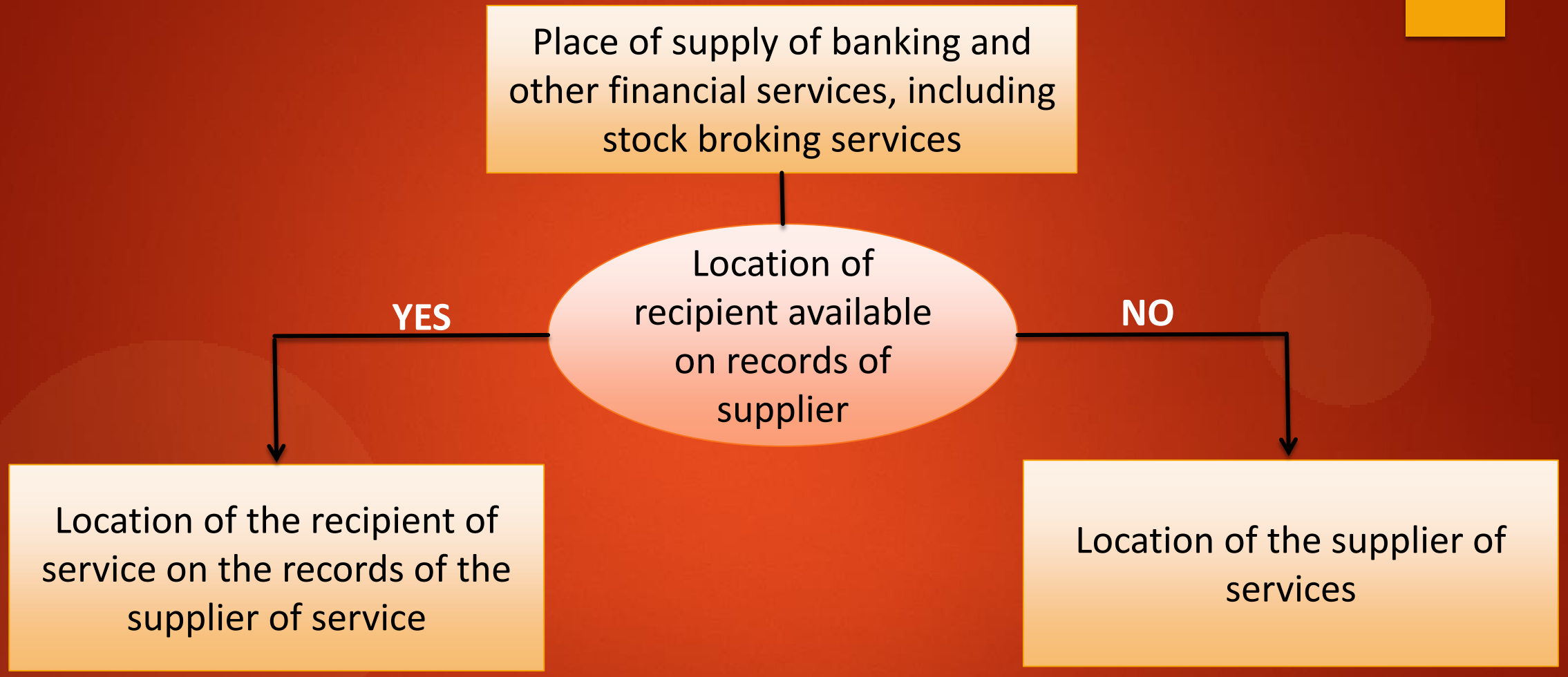
**YES**

Address of the recipient as per the records

**NO**

Location of the supplier of services

If per paid service is availed or the recharge is made through internet banking or other electronic mode of payment , *Place of supply = Location of the recipient on the records of the supplier*


Place of supply of banking and other financial services, including stock broking services
Location of recipient available on records of supplier
YES
NO
Location of the recipient of service on the records of the supplier of service
Location of the supplier of services

**Insurance Services**

to a registered person → location of such registered person

Other than registered person → location of the recipient on the records of the supplier

Place of supply of advertisement services

**TO**

- Central Government
- State Government
- Statutory Body
- Local Authority

**Meant for the States or Union Territories identified in the contract or agreement**

- shall be taken as being in each such State or Union Territories
- value of such supplies specific to each State or Union Territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union Territories as may be determined in terms of the contract or agreement entered
- in the absence of such contract or agreement, on such other basis as may be prescribed

# Place of supply of services where location of supplier or location of recipient is outside India

Section 13

Sub section (1) to (13)

***Residual***

Place of supply of services except specified in sub-sections (3) to (13)

Location of recipient available in ordinary course of business

**YES**

Location of the recipient of service

**NO**

Location of the supplier recipient of services

*Place of supply of services = Place where the services are actually performed*

Services supplied in respect of goods which are required to be made **physically available** by the recipient to the supplier of services or to a person acting on behalf of supplier

Services supplied to an individual, represented either as recipient of service or person acting on behalf of recipient, who should be **physically present** with the supplier

**Provided**

Services are provided from a **remote location** by way of **electronic means**

↓

Location where such **goods are situated** at the time of supply of services

**Provided further**

This clause **does not apply** in case of

↓

Services supplied in respect of goods which **are temporarily imported** to India for repairs and are exported after repairs without being put to any other use in India

Place of supply of services

directly in relation to

Immovable Property

by way of grant of rights to use such property

Supplied by experts and estate agents

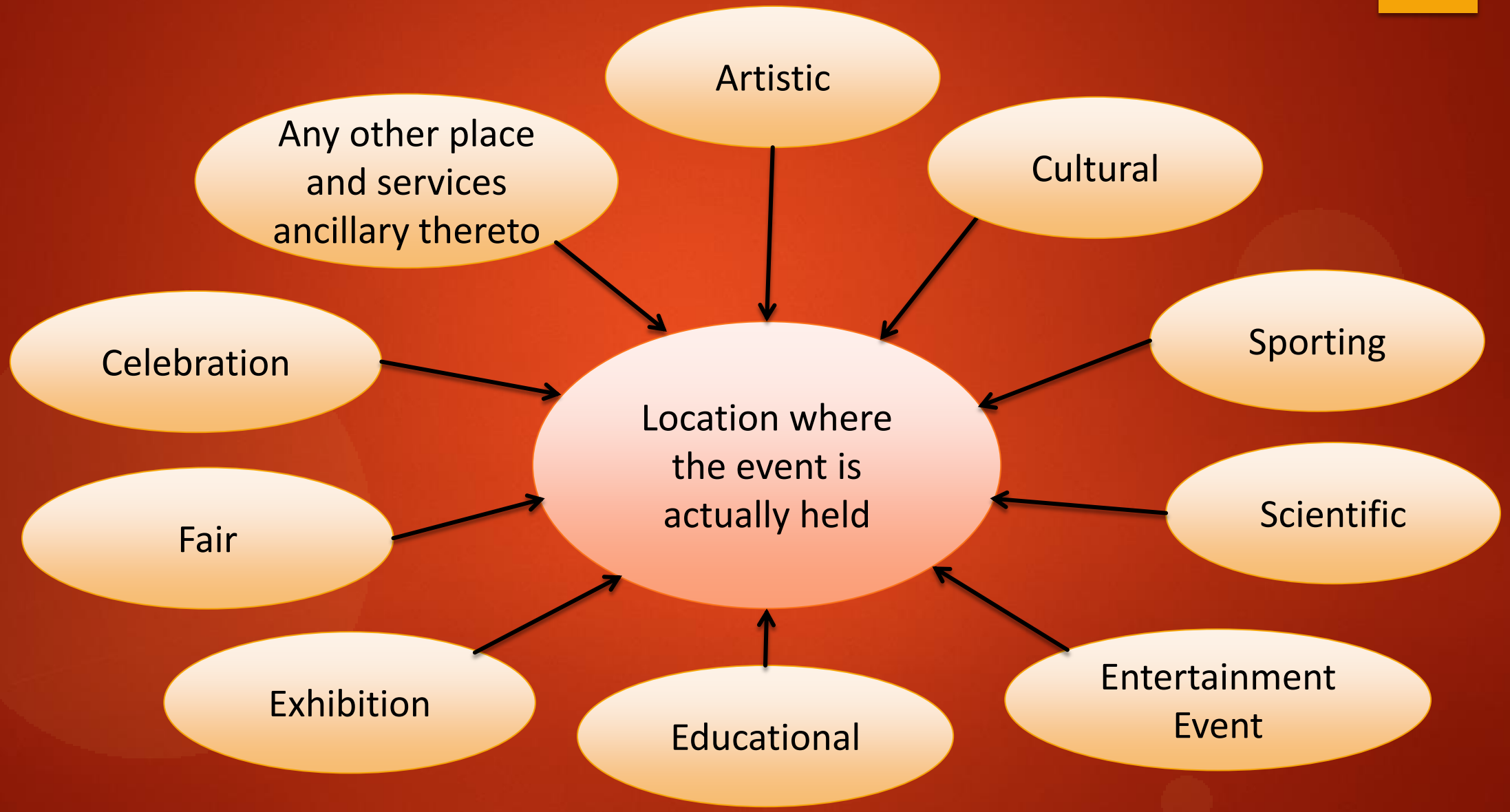
Supplied by architects or interior decorators

For carrying out or co-ordination of construction work

Place where the immovable property is located or intended to be located

By way of accommodation by hotel, home stay, club, etc.,

Place of supply of services provide by way of ***admission*** to or ***organization*** of:



If the services are supplied in more than one location, including a location in taxable territory

- Place of supply = Location in the taxable territory

If the services are supplied in more than one State or Union Territory

- the place of supply of such services shall be taken as being in each of the respective States or Union Territories in proportion to the value for services separately collected or determined in terms of the contract
- in the absence of the contract/ agreement, on the basis as may be prescribed

*Place of supply of services = Location of the supplier of the services*

Services by banking company, or a financial institution, or a non-banking financial company to its account holders

Intermediary services

Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month

Place of supply of online information database access or retrieval services

→

Place of supply of services = location of the recipient of services

→

Recipient shall be **deemed* to be located in the taxable territory

** If any two of the following non-contradictory conditions are satisfied*

1. Location of address presented by recipient through internet is in taxable territory
2. Card used by the recipient to make payment has been issued in the taxable territory
3. Billing address of the recipient of services is in the taxable territory
4. Internet protocol address of the device used by the recipient is in taxable territory
5. Bank of the recipient from which payment is maintained in taxable territory
6. Country code of the subscriber identity module card used by recipient is in taxable territory
7. Location of the fixed land line through which the service is received by recipient in taxable territory

| | |
|---|---|
| Place of supply of services of transportation of goods other than by the way of mail or courier | Place of destination of such goods |
| Place of supply of services of transportation of passengers | Place where the passenger embarks on the conveyance for a continuous journey |
| Place of supply of services provided on board a conveyance during the course of a passenger transport, including services to be wholly or substantially consumed while on board | First scheduled point of departure of that conveyance for the journey |

In order to prevent double taxation or non-taxation of the supply of a service, or for uniform application of rules, Government shall have the power to notify any services or circumstances in which place of supply shall be the place of effective use and enjoyment of a service

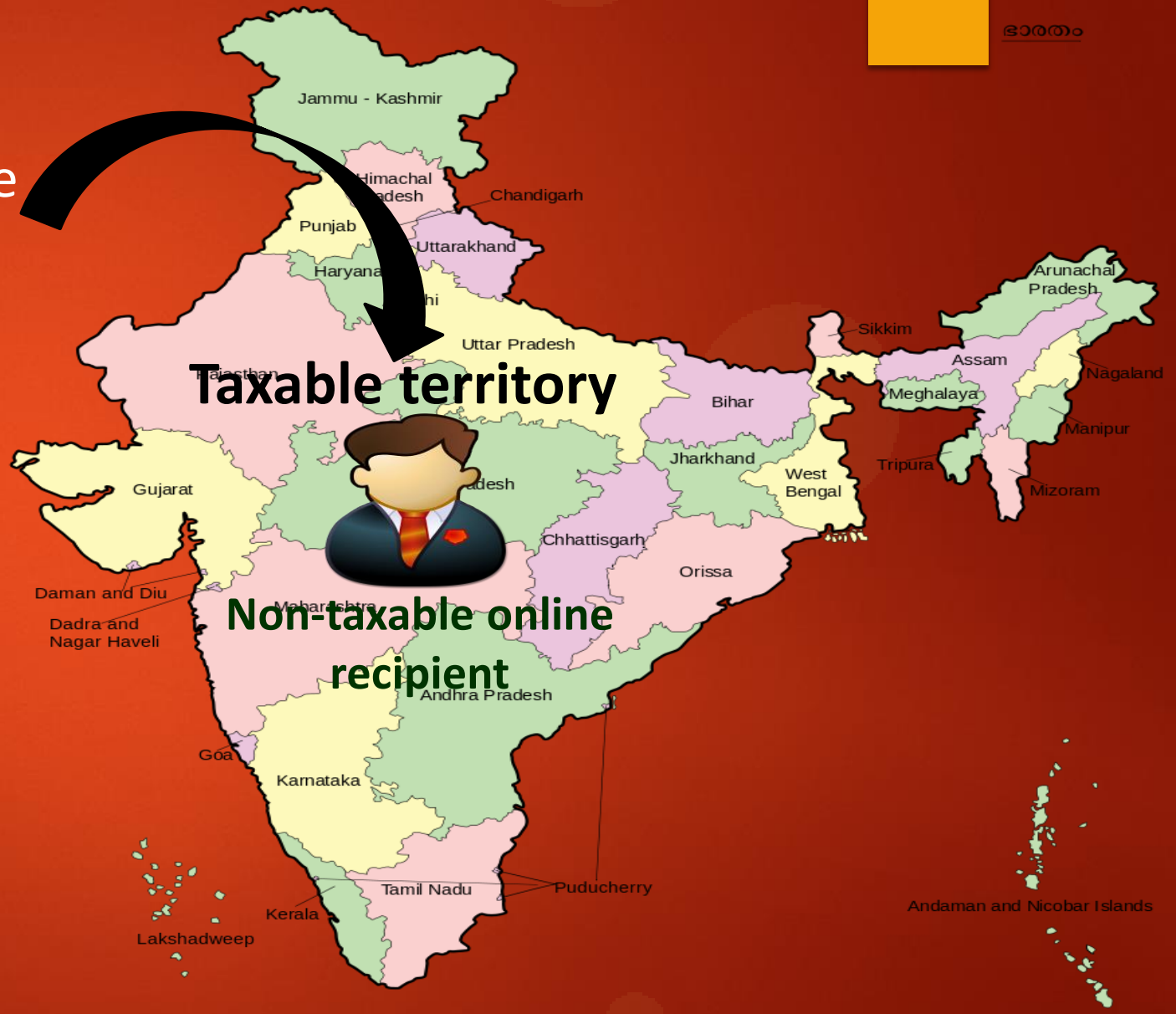
# Special provision for payment of tax by a supplier of online information and database access or retrieval services

Section 14
Sub section (1) and (2)

Person liable for paying IGST on supply of services

Non-taxable territory

Supplier of above service

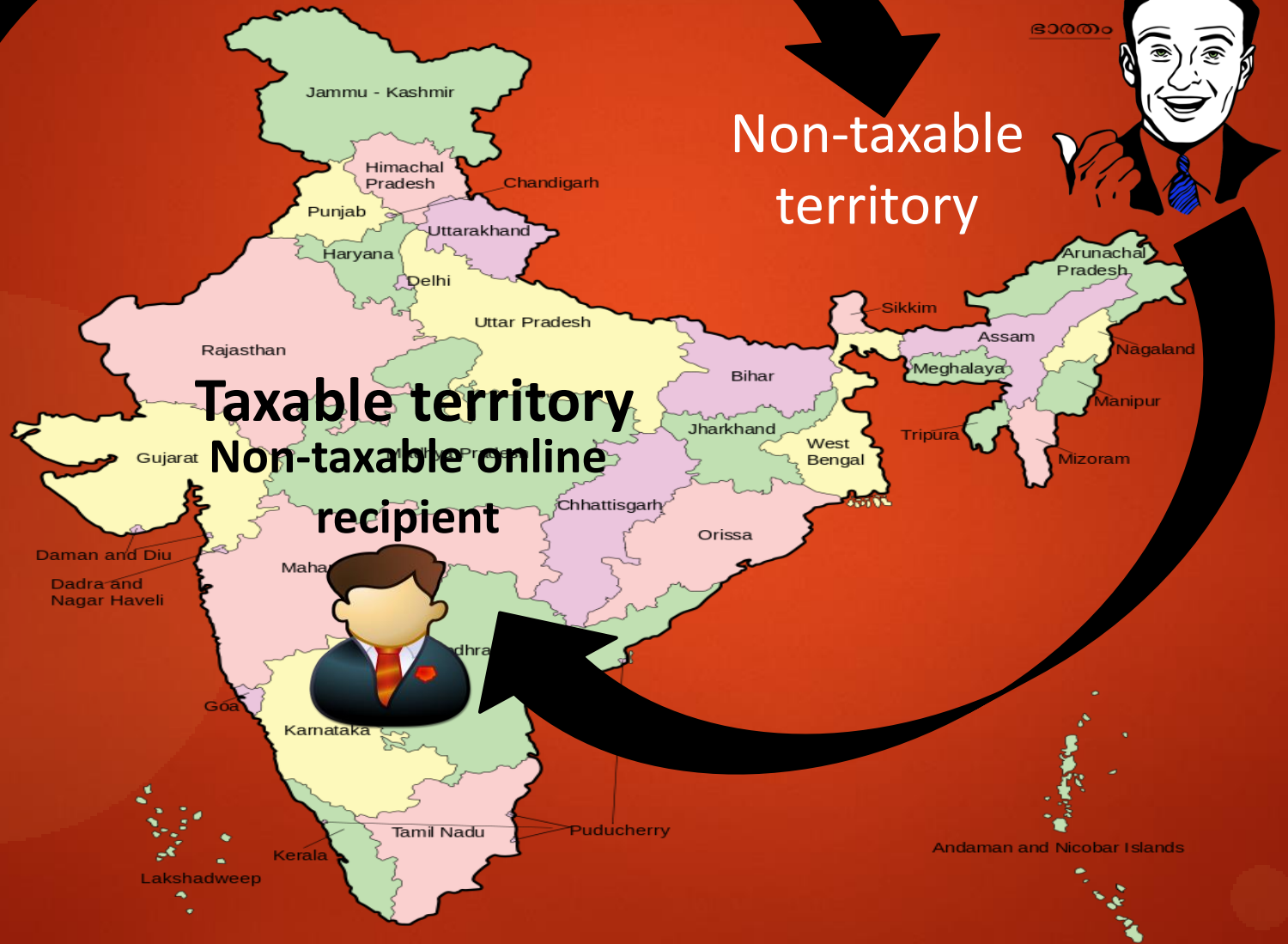


# Continued…

## Provided that in case of

Non-taxable territory

Supplier of such services




Non-taxable territory

Intermediary facilitating such supply of services

Deemed to be the recipient of such services

# Continued…

Non-taxable territory

Intermediary facilitating such supply of services

Satisfy the following conditions:-

1. the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply **clearly identifies the service** in question and its supplier in non-taxable territory;
2. the intermediary involved in the supply **does not authorize the charge** to the customer **or take part in its charge** which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;
3. the intermediary involved in the supply **does not authorize delivery**; and
4. the general terms and conditions of the supply are **not set by the intermediary** involved in the supply but by the supplier of services.

# Continued…

Non-taxable territory

Supplier of such services

For the payment of IGST, he shall take a single registration under simplified registration scheme to be notified by the Government

**Located Taxable territory**

**Representing the supplier for any purpose in taxable territory**

Shall get registered and pay IGST on behalf of the supplier

- Provided further that if such supplier **does not have a physical presence or does not have a representative** for any purpose **in the taxable territory**, he **may appoint a person in the taxable territory** for the purpose of paying integrated tax and **such person shall be liable for payment of such tax**.

# Refund of IGST to International Tourist

- The IGST paid by tourist leaving India on any supply of goods taken out of India by him
- Shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed

*Explanation* – *"Tourist" means a person* not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.``

# Zero Rated Supply

Zero rated supply

**Means**

- export of goods or services or both
- supply of goods or services or both to a SEZ developer or a SEZ unit.

credit of input tax may be availed for making zero-rated supplies

# Continued…

A registered person making zero rated supply shall be eligible to claim refund under either of the following options

he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, **without payment of integrated tax** and claim refund of unutilized input tax credit

he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on **payment of integrated tax** and claim refund of such tax paid on goods or services or both supplied

in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

# Any Questions?

# THANK YOU!