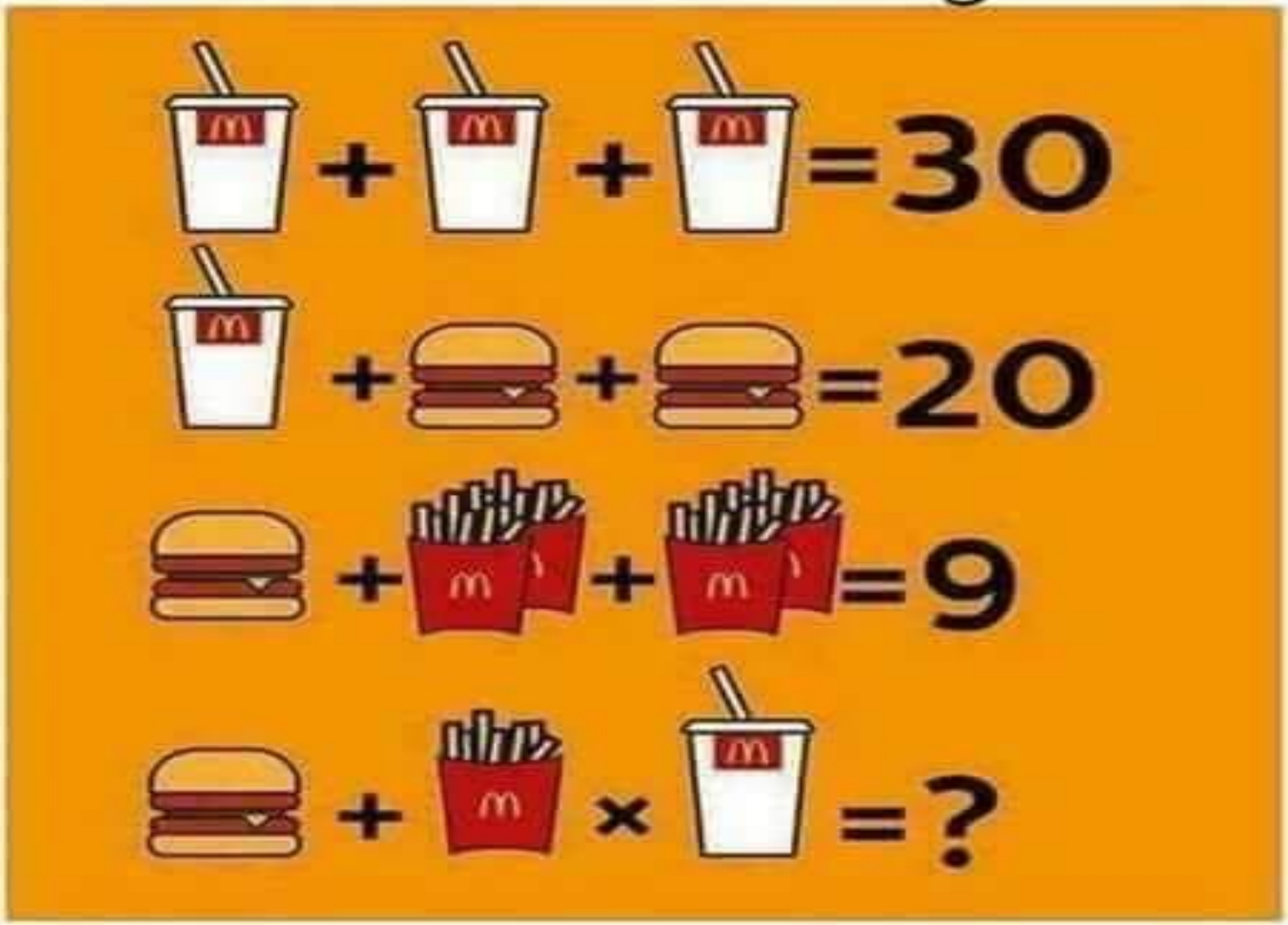
Place of Supply

For members of KSCAA
at VVN Auditorium on 24-06-17

CA Chandrashekar B D
Shekar & Yathish,
Chartered Accountants
Bengaluru

Only for geniuses.
Answer fast if u r a genius.



Place of Supply

Need for POS

- What is the need to define "Place of Supply"?
  - Correct incidence of tax will be known
  - Wrong classification between Inter/ intra state will lead to hardship
    - Sec 19 of IGST Act
    - Sec 77 of CGST Act
  - Wrong payment on a/c of wrong classification refund to be claimed only on tax payment.

Determination

- GST is **destination based consumption tax**,
  - which means tax will be levied where goods and services are consumed and will accrue to that state.
- **Three levels of Tax** - IGST, CGST & SGST
- Based on the **'place of supply'** so determined, the respective tax will be levied.
- IGST is levied = inter-state &
- CGST & SGST are levied = intra-state.

Determination..

- Place of supply is determined based
  - Goods
  - Service

- Linked concepts
  - Location of Recipient of Service
  - Location of supplier of Service

Location of Recipient of Service

Sl No	Case	Location of Recipient of service
A	where a supply is received at a place of business for which the registration has been obtained	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)	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
D	in absence of such places	the location of the usual place of residence of the recipient;

Location of Supplier of Service

Sl. No	Case	Location of Supplier of Services
A	where a supply is made from a place of business for which the 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 (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
D	in absence of such places,	the location of the usual place of residence of the supplier;

Transactions in terms of SUPPLY

- ***DOMESTIC***
  - ***General Rule-***
    1. Location of Supplier
    2. Place of Supply
    - ***INTERSTATE***
      - ***Within India***
      - ***Outside India***
    - ***INTRASTATE***
- ***INTERNATIONAL***
  - ***General Rule-***
    1. Location of Supplier
    2. Place of Supply
    - ***SP***
      LOCATED O/S INDIA
    - ***SR***
      LOCATED O/S INDIA

Place of supply of goods

Sec 10 of IGST Act: Place of supply of goods, other than supply of goods imported/exported

Sl. No	Situations	Place of supply of goods
(1)	Supply involves movement of goods – by supplier/ recipient/ any other person	Location of goods at the time of termination of movement of goods for delivery to recipient

Ex: C of Chennai sells car to B of Bangalore. CAR to be delivered in Bangalore. Place of Supply will be Bangalore as goods have moved from Chennai to Bangalore.

Chennai

Bangalore

Illustration – Supply involves movement of goods – by supplier/ recipient

Movement of goods by	Supplier's factory from where goods are removed	Termination of movement for delivery	Place of supply	Tax Payable
Supplier *(goods dispatched by supplier)*	Orissa	Karnataka	Karnataka	IGST payable at Orissa
	Orissa	Orissa	Orissa	CGST / SGST payable at Orissa
Recipient *(goods collected by recipient)*	Kerala	Goa	Goa	IGST payable at Kerala
	Kerala	Kerala	Kerala	CGST / SGST payable at Kerala

Place of supply of goods

Sec 10 of IGST Act: Place of supply of goods, other than supply of goods imported/exported

If Before Or During Movement Of Goods

- Supplier Acting On Direction Of 3rd Person
- Who May Be An Agent Or Otherwise
- Delivers The Goods
- To Recipient Or Any Other Person
- By Transfer Of Document Of Title etc.

Then it shall be deemed that the third person

has received the goods

Place of Supply:

Principal Place of Business of Third Person

Leg 1 – Supply involves movement of goods – on instruction of 3rd party

Location of Supplier (S)	Place of delivery of Goods (R)	Principal place of 3rd Party (T) who instructed Delivery of Goods	Place of Supply for S	Type of tax payable by S
Hyderabad	Hyderabad	**Mysore**	Mysore	IGST at Hyderabad
Hyderabad	Bangalore	**Bangalore**	Bangalore	IGST at Hyderabad
Hyderabad	Chennai	**Udaipur**	Udaipur	IGST at Hyderabad

Leg 2– Deemed Supply involves movement of goods – on instruction of 3rd party

Location of Supplier (S)	Place of delivery of Goods (R)	Principal place of 3rd Party (T) who instructed Delivery of Goods	Place of Supply for T	Type of tax payable by T
Hyderabad	**Hyderabad**	Mysore	Hyderabad	IGST at Karnataka
Hyderabad	**Amritsar**	Amritsar	Amritsar	CGST + Punj GST at Punjab
Hyderabad	**Mysore**	Mysore	Mysore	CGST + Kar GST at Karnataka
Hyderabad	**Chennai**	Mumbai	Chennai	IGST at Maharashtra

Place of Supply of Goods

Sl No	Nature of Transaction	Place of Supply of Goods
3	Supply without movement of goods	Location of goods at the time of delivery to the recipient

Example

Seller from Karnataka

Buyers from MP

Place of Supply will be the Shop in Karnataka

Illustration– Supply does not involve movement of goods

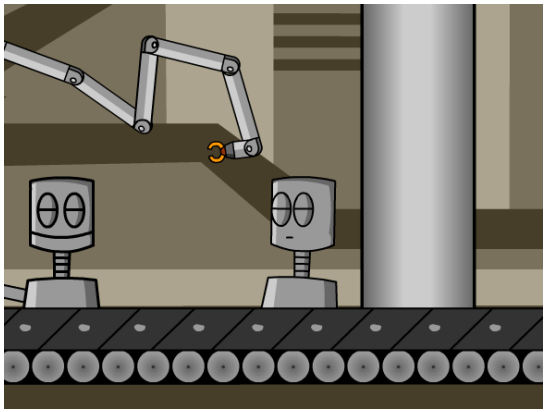
Particulars	Location of Supplier	Location of Recipient	Location of goods	Place of Supply	Type of tax payable
Sale of pre-installed DG Set	Delhi	Mumbai	Mumbai	Mumbai	IGST payable at Delhi
Manufacture of moulds by Job-worker (supplier), sold to the Principal, but retained in job worker's Premises	Tamil Nadu	Kerala	Tamil Nadu	Tamil Nadu	CGST + TN GST payable at Tamil Nadu

Place of Supply of Goods

Sl No	Nature of Transaction	Place of Supply of Goods
4	Assembly or installation at site	Place of assembly or installation

Example

Supplier @ Karnataka



Installation @ Assam

Place of Supply shall be Assam

Recipient @ Kerala

Illustration–assembly/ installation at site

Particulars	Location of Supplier	Regd office of Recipient	Assembly/ installation site	Place of Supply	Type of tax payable
Installation of weigh bridge	Delhi	Bhopal	Bhopal	Bhopal	IGST payable at Delhi
Servers supplied and installed at the office of a marketing firm	Karnataka	Goa	Karnataka	Karnataka	CGST + Kar GST payable at Karnataka
Supply of workstations	Gujarat	Gujarat	Kerala	Kerala	IGST payable at Gujarat

Place of Supply of Goods

Sl No	Nature of Transaction	Place of Supply of Goods
5	Supply on board a conveyance such as vessel, aircraft, train, motor vehicle	Location at which such goods are taken on board.

Example –

A train starts from Delhi for Bangalore. On the way water bottle cartons are taken on board at Agra that are purchased by passengers during the journey from Agra to Bangalore. The place of supply of water bottles is Agra.

Illustration–Supply of goods supplied on board a conveyance

Particulars	Location of Supplier	Loading of Goods	Passenger boards at	Place of Supply	Type of tax payable
Supply of canned aerated drinks on a Flight	Punjab	Punjab	Delhi	Punjab	CGST + Pun GST payable at Punjab
Sale of Haldirams mixtures by their sales person during the journey	Pune	Goa	Hyderabad	Goa	IGST payable at Pune
Sale of sun-glasses on a ship	Bangalore	Chennai	Cochin	Chennai	IGST payable at Bangalore

Place of Supply of Goods

Goods Imported into India

Place of Supply shall be the location of the Importer

Goods Exported from India

Place of Supply shall be the location outside India

High sea sale???

Continue to be excluded from purview of GST or treated as interstate supply -IGST????

Illustration–Import of Goods

Sl no	Location of Supplier	Loading of Goods before supply	Goods supplied to	Location of Recipient	Place of Supply
1	Thailand	Thailand	**Assam**	Assam	Assam
2	China	China	**Kashmir**	Haryana	Kashmir
3	Sri Lanka	Sri Lanka	**Kerala**	Kerala	Kerala
4	Karnataka	Iran	**Dubai**	Karnataka	Not an import

Illustration–Export of Goods

Sl no	Location of Supplier	Loading of Goods before supply	Goods supplied to	Location of Recipient	Place of Supply
1	Assam	Assam	**Thailand**	Assam	Thailand
2	Tamil Nadu	Kashmir	**China**	California	China
3	Sri Lanka	Kerala	**Sri Lanka**	Sri Lanka	Sri Lanka
4	Karnataka	Dubai	**Iran**	Iran	Not an export

Place of supply of services

Section 12 of IGST Act:

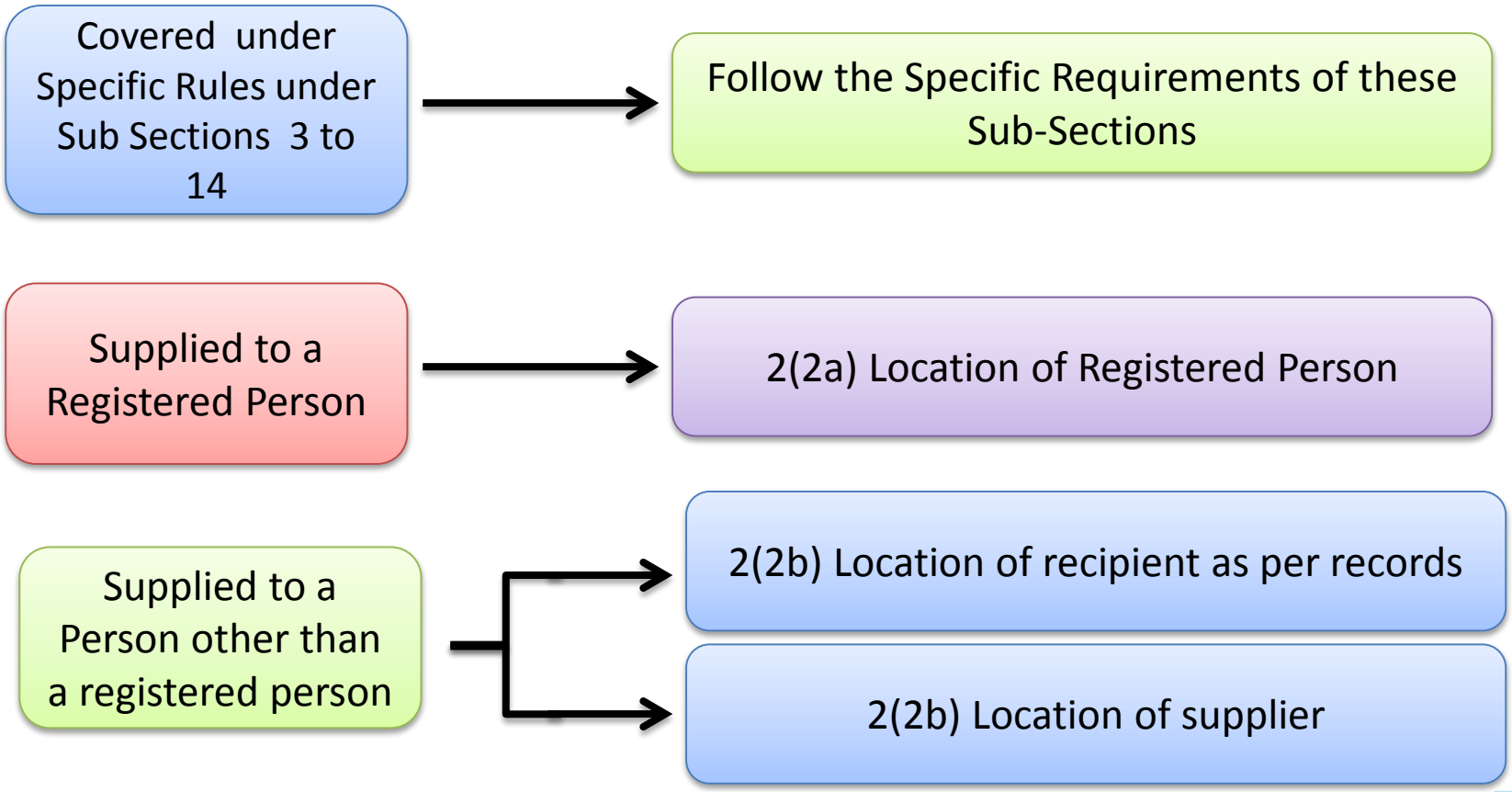
Place of supply of services where

the location of the supplier AND

the location of the recipient **ARE IN INDIA**

Place of supply of services

Section 12 of IGST Act - When location of supplier of service and location of recipient of service is in India



POS – Immovable Property

(3) Relation to immovable property (architects/decorators etc), lodging accommodation (including house boat/vessel), accommodation for functions & ancillary services

- Location of such immovable property
- If location of immoveable property/boat/vessel is outside India, then place of supply is location of recipient

POS – Immovable Property

	Situation	Place of Supply
Ex:	If Mr. A of Chennai has property in Delhi and avails architect services from B of Bengaluru	Place of supply would be Delhi as the supplier, recipient and property are located in India
	If such property is located in Japan	Place of supply will be Chennai that is to say location of service recipient
	Stay in Delhi by Auditor of Bangalore	Place of Supply is Delhi

POS – Performance Based

(4) Restaurant, catering, personal grooming, fitness, beauty treatment cosmetic & plastic surgery - Performance Based

Location where services actually performed

Person comes form Karnataka

Restaurant @ Kerala

POS will be Kerala

POS – Training/Per Appraisal

(5) Services in relation to training & performance appraisal

- Location of registered person receiving the services
- If person not registered - place where services performed

Services done @ Karnataka

Person receiving service @ Maharashtra

POS will be Maharashtra or Karnataka

POS – Admission

(6) Admission to events/ amusement parks & ancillary services

Location where event is held or park is situated

Mr. X of J & K

Wonder la @ Bangalore

POS will be Bangalore

POS – Events

(7) Organization of events & ancillary services & assigning of sponsorship of such events

Location of registered person receiving the services
- If person not registered - Place where event actually held
- If event held outside India, then location of recipient

Event @ Karnataka

Recipient @ MP

POS will be either
- MP or
- Karnataka

POS – Courier

(8) Transportation of goods, including mail/courier

Location of registered person receiving the services

- If person not registered – place where such goods are handed over for their transportation.

Transportation to Tamil Nadu

Registered person @ Gurugram

POS will be Gurugram only

POS – Passenger Transportation

(9) Passenger transportation service

- Location of the registered person
- If person not registered – place where the passenger embarks on the conveyance for the continuous journey.

Transportation from Karnataka

Registered person @ Delhi

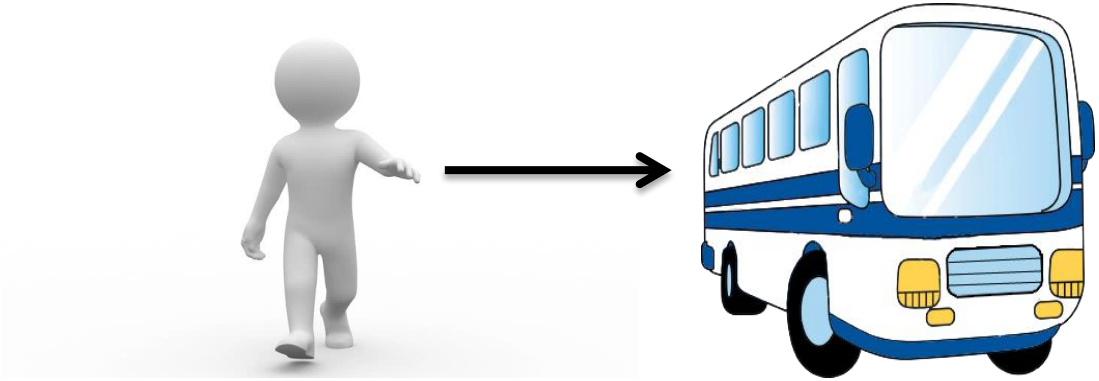
POS will either be
- Delhi or
- Karnataka

POS – Services on board

(10) Service on board a conveyance such as vessel, aircraft, train or motor vehicle

Location of the first scheduled point of departure of that conveyance for the journey.

Transportation Started @ Goa



POS will be Goa

Registered person embarking @ Delhi

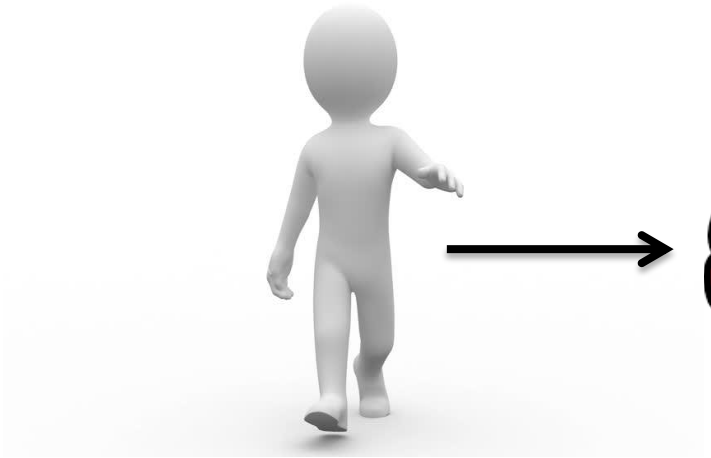
Place of Supply of Service

(11) Telecommunication Services

Post-paid mobile and internet service

→ Location of Service recipient

Billing done from Delhi



POS will be Mumbai

Registered Person @ Mumbai

Place of Supply of Service

(12) Prepaid mobile, internet service and direct to home television service through voucher or any other means

Through selling agent or a reseller or a distributor	→	**Location of Service recipient**
By any person to the final subscriber	→	**Where such pre-payment is received or voucher sold**
In other cases, through internet banking or e payment mode	→	**The location of recipient of services on the records of the supplier**
Fixed telecommunication line, leased circuit, cable or dish antenna	→	**Where telecommunication line, antenna is located**

Place of supply of services

(12) Banking or other financial services including stock broking

→

- Location of the service receiver on the record of the service provider.
- If location of recipient is not on record of supplier, the place of supply shall be location of the supplier of services.

Person located @ Mumbai

Bank @ Mysore

POS will either be
- Mumbai or
- Mysore

Place of supply of services

(13) Insurance services

- In case of registered person – location of such person
- Other than registered person - location of the service receiver available on the records of the supplier of service.

Insurance Company @ Dehradun

Person located @ Manipal

POS will either be
- Manipal or
- Dehradun

Place of supply of services

(14) Advertisement services to the central government, state government, a statutory body or a local authority meant for identifiable states.

Each such State of supply

POS may be all over India

Place of supply of services

Section 13 of IGST Act:

Place of supply of services where

the location of the supplier or

the location of the recipient **IS OUTSIDE INDIA**

POS – Actual performance

Section 13 of IGST Act: Place of supply of services **where the location of the supplier or the location of the recipient is outside India**

(3) (a) Services supplied in respect of goods that are required to be made physically available by the recipient of service to the supplier of service, for providing service

Proviso – when services are provided from a remote location by way of electronic means

Performance Based Supply

Location at which services are actually performed.

Place where the goods are located when services are provided.

Exemption: Service supplied in respect of goods are temporarily imported into India for repairs and are exported after repairs without being put to any use in India, other than that which is required for such repairs

POS – Actual performance

Performance Based Supply

Example 1: Equipment sent from Bangalore to Germany for repairs

Germany, As the goods have to be made physically at Germany.

Example 2: Goods are repaired in Mysore by a foreign technician

Mysore, being the place where goods are repaired

Example 3: Services given from remote location – Repaired computer remotely which Located in Japan

Japan, being the place of goods repaired

POS – Actual Performance

13 (3) (b) Services supplied

- to an individual, represented either as the recipient of service or
- a person acting on behalf of the recipient, require physical presence of the receiver
- the person acting on behalf of the recipient

Location where the services are actually performed

Example
Person from Mysore is going to UK for plastic surgery.

Place of supply will be UK

POS – Actual Performance

13 (4) Services provided directly related to an Immovable property including

- services of experts and estate agents,
- supply of hotel accommodation by a hotel, inn, guest house, club or campsite (by whatever name called)
- grant of rights to use immovable property, etc

where the immovable property is located or intended to be located

Illustration

- **Services related to Immovable Property-**
  - Giving of legal opinion by expert of Bangalore. wrt applicability of GST on proposed building project of Singapore??
  - Survey of site by Indian firm before commencing construction in Dubai??

POS – Admission

13(5) admission to, or organization of:

a cultural, artistic, sporting, scientific, educational, or a celebration, conference, fair, exhibition, or similar events

Services ancillary to such admission

where the event is actually held

Event @ Karnataka

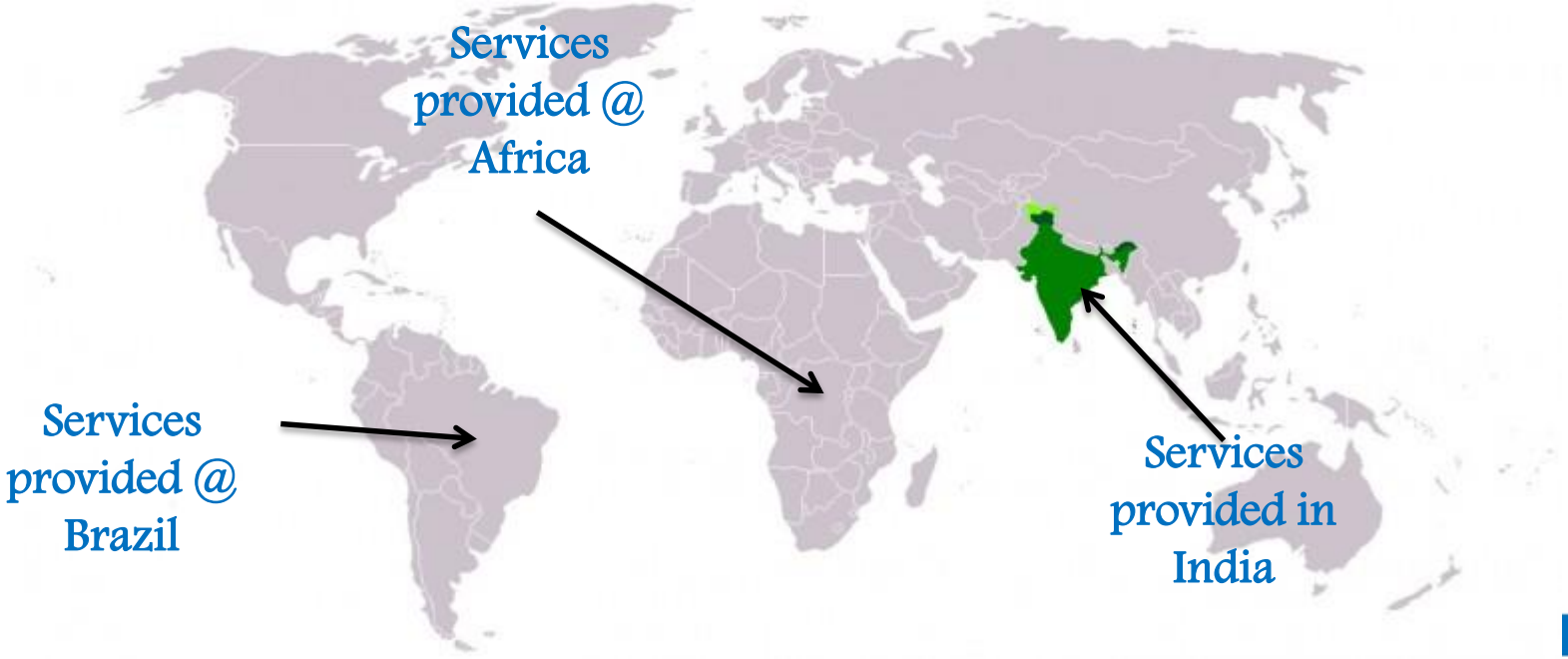
Recipient of MP

POS will Karnataka

POS – Multi location based services

13 (6) Multiple location based supply of 13(3)/(4)/(5) where one of the location is in taxable territory.

Location of Such taxable territory



Illustrations

- Admission to science congress event to foreign client in Bangalore.-POS-Bangalore.
- Multiple location services done-regarding
  - Location of Immovable Property
  - Services related to goods/ performed in physical presence/where event held
- One portion- construction of mall in Bangalore+ 1 in Hong Kong/repairs of aircraft in Bangalore+ Japan/event in chain of global peace events held in Singapore/Bangalore USA –**all done vide contract with foreign client-fully taxed in Bangalore. India??**
- Can split and have separate contract for Bangalore leg???

POS – More than one state

13(7) Services of 13(3)/(4)/(5) Supplied in more than one State / UT

- Taken in such States in proportion
- ascertained from the terms of the contract or agreement entered
- in absence of above, as may be prescribed

Illustrations

- Services related to repair of goods done in Chennai + Bangalore. + New Jersey / where event held in Chennai + Bangalore + Texas
- Partially in Chennai/Bangalore. India - taxed in Chennai/Bangalore-value in terms of contract
- Can split and have separate contract for Bangalore/Chennai leg???

POS – Banking, intermediary

13(8) Services supplied by

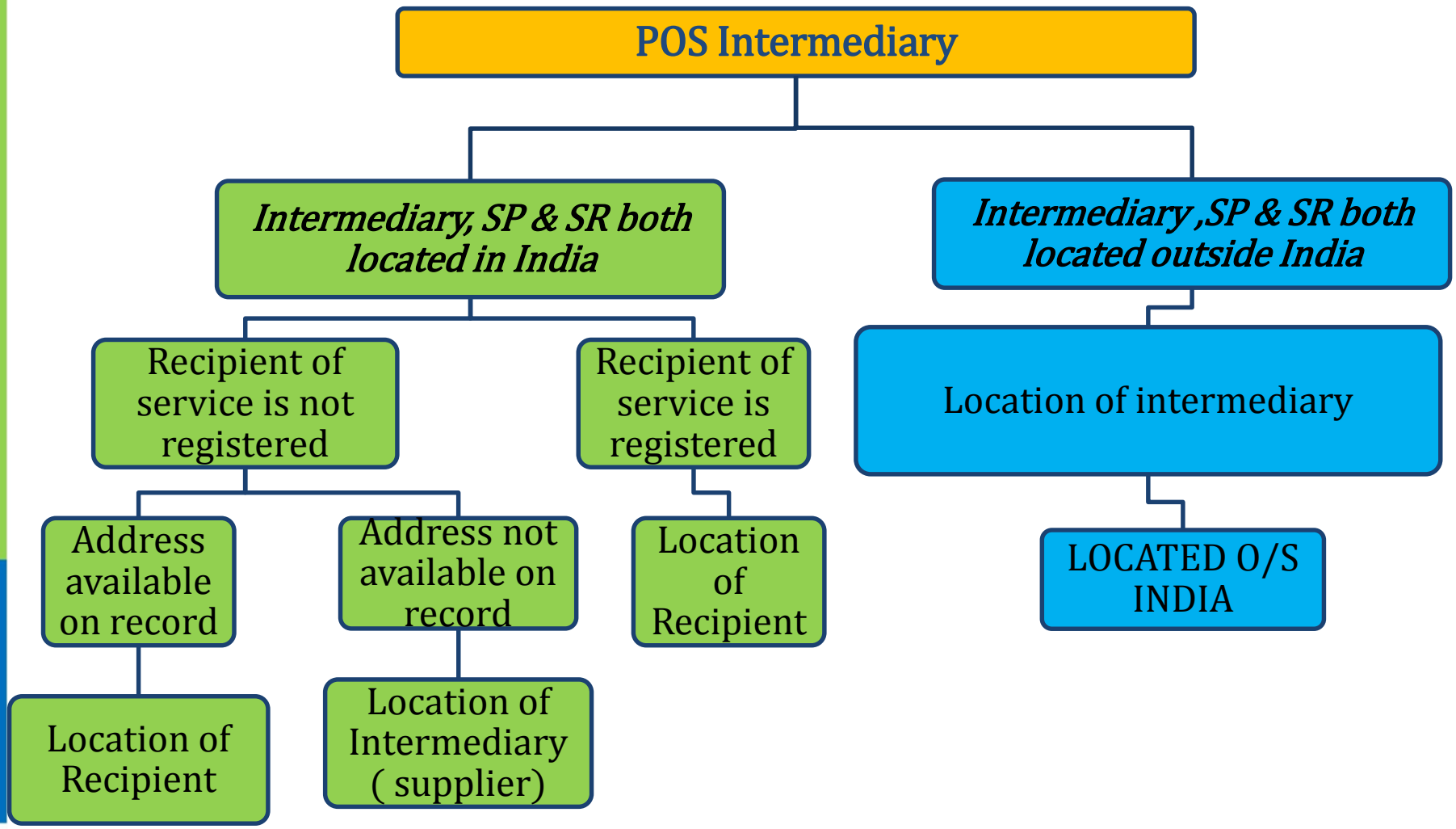
- A banking company, or a financial institution, or NBFC, to account holders
- Intermediary services
- Consisting of hiring of means of transport, including yachts upto a period of one month of transport, other than aircraft/vessels

Place of Supply will be Location of the supplier of service

Illustrations

- Intermediary services to foreign principal– taxable even when paid in CFE - old issue continues……
- Silver lining-
  - when intermediary service provided by foreign vendor- not taxable under reverse charge

POS - Intermediary



POS~ Transportation

13 (9) Services of transportation of goods, other than by way of mail or courier

→ Place of destination of the goods

Goods provided for transport @ Mangalore

Sent to Germany

POS will be Germany

POS~ Transportation

13 (10) Passenger transportation service

Place where the passenger embarks on the conveyance for a continuous journey

Person form Karnataka

Goes to Africa

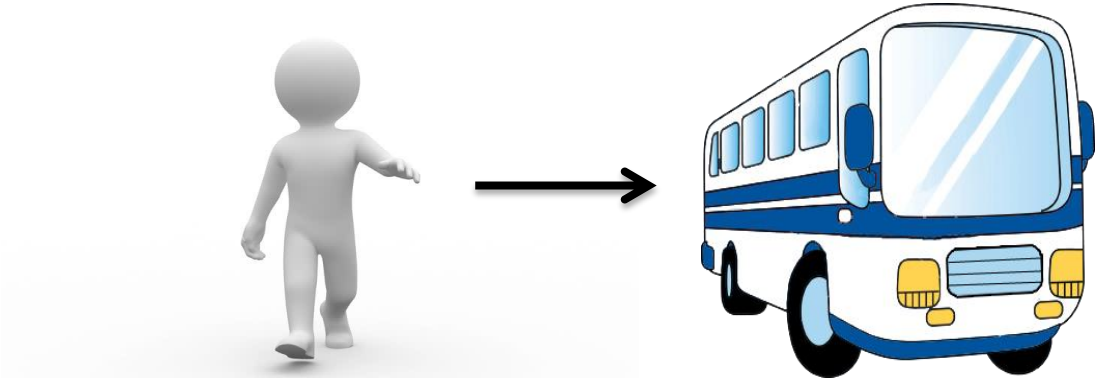
POS will be India since the embarking @ Bangalore

POS ~Services on Board conveyance

13 (11) Services provided on a board a conveyance in course of passenger transport operation

First scheduled point of departure of that conveyance for the journey

Schedule point
@ Uttar Pradesh



Registered person embarking @ Agra and services provided

POS will be Uttar Pradesh

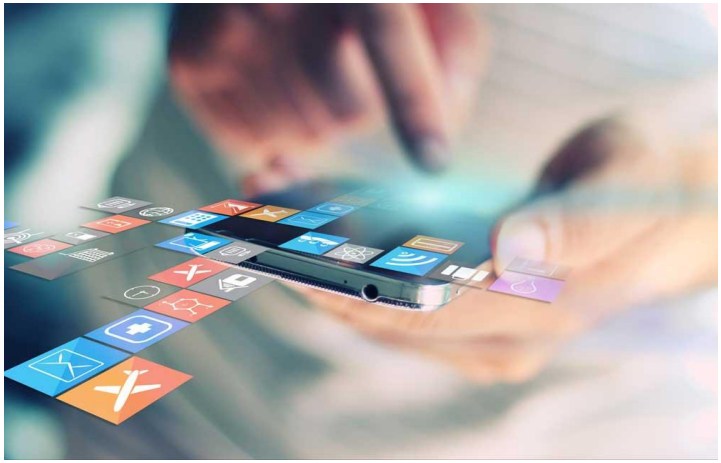
POS ~OI&ADRS

13 (12) online information and database access or retrieval services

→ Location of recipient of service

OIADRS from USA

Registered person @ Delhi



POS will be Delhi being recipient of service

Illustrations

- Services provided on a board conveyance passenger transport-
  - Flight Bangalore to Delhi- video game- **POS -** Bangalore
  - OIDAR- location of recipient

POS – Expln OIDARS

13(12) Explanation (Only for OIDARS) : Person receiving services shall be **deemed to be located in the taxable territory** if **any two of the following non contradictory conditions are satisfied,** namely:-

(a) the location of address presented by the recipient of service via internet is in taxable territory;

(b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of service settles payment has been issued in the taxable territory;

(c) the billing address of recipient of service is in the taxable territory

POS – Expln OIDARS

(d) the internet protocol address of the device used by the recipient of service is in the taxable territory;

(e) the bank of recipient of service in which the account used for payment is maintained is in the taxable territory;

(f) the country code of the subscriber identity module (SIM) card used by the recipient of service is of taxable territory;

(g) the location of the fixed land line through which the service is received by the recipient is in taxable territory.

How to enforce this provision??????

How to determine internet based address/billing address of recipient/IP address of device used in taxable territory???

How to get a representative person taxed

POS – Power of CG

13(13) In order to prevent:

- double taxation or
- non-taxation of the supply of a service or
- for the uniform application of rules

The Central Government shall have the power to notify any description of service or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

Online Information Database Access Retrieval (OIDAR)

Supplier	Supplier of Services in non-taxable territory		
Recipient	B2C (non-taxable online recipient – NTOR)	Intermediary (deemed to be recipient supplying to NTOR)	B2B (all others)
Tax Payer	Overseas supplier	Recipient	Recipient
Tax Payment	Forward Charge (through representative)	Forward Charge	Reverse Charge

Example of OIDAR

Illustration	Includes	Excludes
Online advertising E.g. Google	• Banner ads, pop-up ads, sponsored ads, etc.	• Preparation of content for online display like production, distribution and services of intermediaries • Advertisement in newspaper, on posters and on television
Cloud services E.g. Amazon Web Services	• Webhosting • Data warehousing	• Software license issued by delivery of key number to remotely download via FTP

Ex of OIDAR

Illustration	Includes	Excludes
e-books, movies, music, software and other intangibles E.g. Gaana.com & Netflix	• Access to content permitted only 'online' even if stored in cache on user-end device but not allowing (official) permanent download	• Downloadable e-books, movies, music, etc. which are available for offline viewing without any mandatory e-check of the user credentials • Content provided through dedicated user-end device for use of content
Online gaming E.g. Zapak.com	• Live Gaming	• Computer / mobile games to be used after downloading to user-end device

Ex of OIDAR

Illustration	Includes	Excludes
Online data or information E.g. LinkedIn, Taxindiaonline.com	• Paid websites that provide Information • Free sites with valuable information – if not treated as 'supply', ITC will not be available but if treated as 'supply, output tax will apply on like-kind-and-quality or cost-plus basis	• Net banking where banking information is accessed online but merely incidental to offline banking Transactions • Electronic commerce • Non-commerce and information portals
Online supply of digital Content E.g. Setmax online, YouTube	• TV programs and movies supplied over the internet like monitored by issuing user login / password	• Online order processing in respect of offline supply of Goods • Services of lawyers and financial consultants who advise clients through email

Questions

- Services provided by Indian Architect to an Indian resident constructing a building in London
- Organizing an event viz IPL series in Multiple states
- Person travelling from Mumbai to Goa and back to Mumbai
- Mumbai based event co organizes an event in London for a Bangalore based Tax payer

Think outside the box

If not now then when lets make a new beginning……

THANK YOU

For any clarification

Shekar@ca-sny.com