Levy, Composition, Exemptions, under GST

On 22-05-2017 at BIA for
Members of KSCAA, Bangalore

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Brain Teasers

- **Some months have 30 days, some of them have 31 days, how many of them have 28 days?**

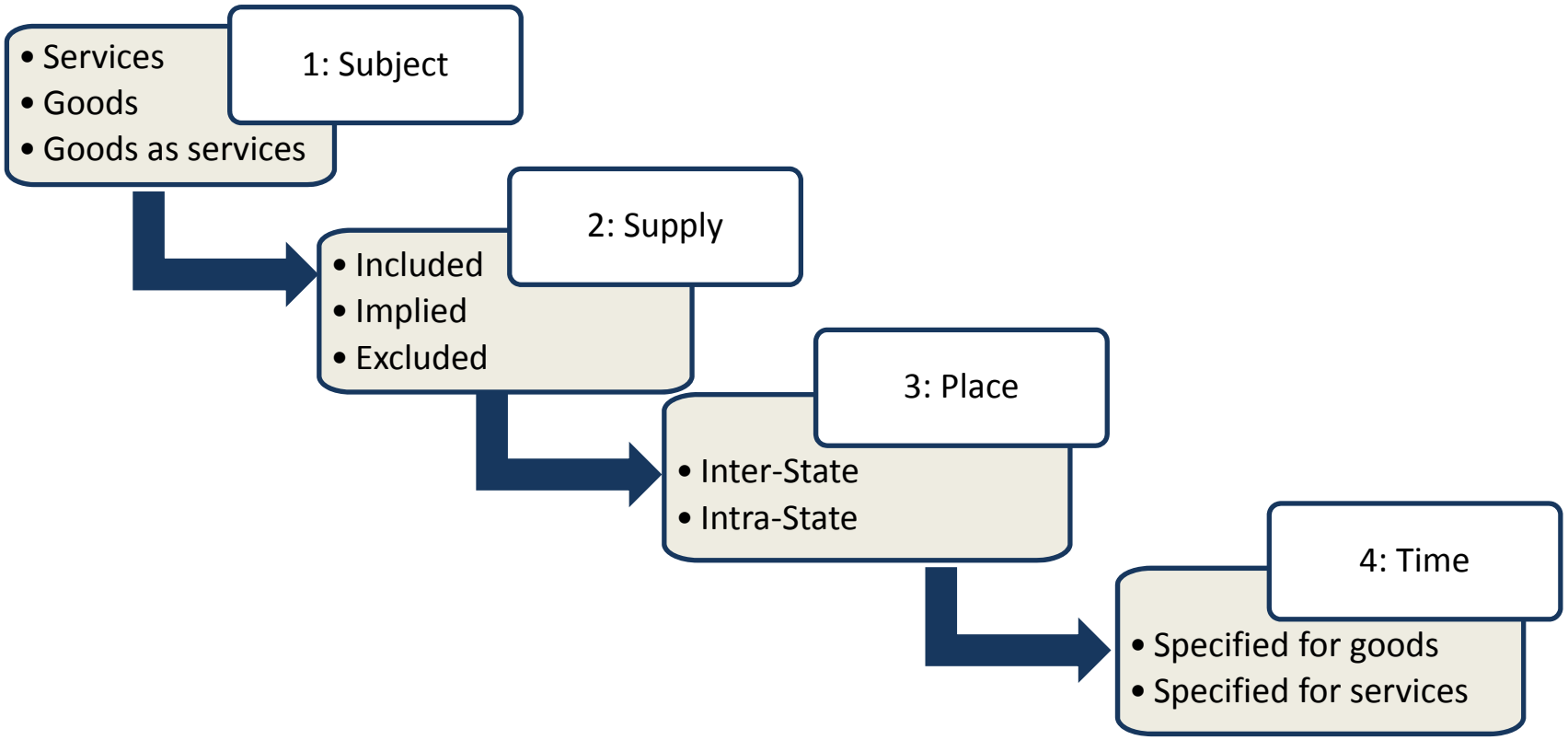
- **I went to bed at 8 o'clock in the evening and wound up the clock and set the alarm to sound at 9 o'clock in the morning. How many hours sleep would I get before being woken by the alarm.**

- **Take 2 apples from 3 apples. How may do you have?**

What is the change?

- Current point of levy in Indirect Tax Laws –
  - VAT is on Sale
  - Service Tax is on Provision of or on agreeing to provide Service
  - Excise duty is on Manufacture
- A Shift in the point of levy to "SUPPLY" – Tax Shall be levied on *"Supply of Goods & Services"*.
- What is supply? How is it different from the current context of Sale, Provision of Service or Removal??

Levy & Collection



WHERE TO LOOK FOR

- CGST ACT
  - Sec 7-11
  - Schedule 1
  - Schedule 2
  - Schedule 3

- IGST ACT
  - Sec 5-6

Draft Rules
-Composition Rules
-Determination of Value of Supply

LEVY	SEC. 9 OF CGST	SEC. 5 OF IGST

What is the levy on	Supply of goods and/or services
At what rate	To be notified – but shall not exceed 20%.
On what value	Value determined in terms of Section 15 of CGST
When CGST+SGST would apply	On intra- state supply of goods &/Services
When IGST would apply	On inter- state supply of goods &/Services
How to determine place of supply	Refer to Sections 10 to 14 of IGST

GST – Rates

- Proposals as regards rate of duty
  - Separate tax rate for precious metals
  - Cess over peak rate of 28% on specified luxury/sin goods

- Ceiling rates prescribed under various bills are as under:
  - CGST – 20%
  - IGST – 40%
  - Cess under GST (Compensation to States) Bill/Act

- The rate slabs which have been discussed are set out below:
  - Various goods/services will be fitted into these rate slabs based on the principle of 'revenue equivalence'

Basics of Levy under GST

- *Supply* of *Goods/Services*
- CG/SG can notify category of Goods/Services on which ***Reverse Charge*** to apply.
- CG/SG can notify category of Goods/Services on ***URD purchases***.
- CG/SG can notify category of Services on which ***ecommerce operator*** would be liable to pay for ***services supplied through*** them.

Basics of Levy under GST

Out side Levy

- Alcholic Liquor for human consumption

Supply to be taxed in future

- Supply of Petroleum Crude,
- High speed diesel
- Motor spirit (petrol)
- Natural Gas
- Aviation Fuel

Levy shall be ***with effect from such date as may be notified*** by Govt on recommendation of council

Concept of Supply

- Expression of supply includes-
- Supply of Goods and Services.
- Supply to be in the course or furtherance of business
- Supply to be for a Consideration.

Levy -Goods/Services

- Goods –
  - Means every kind of movable property
  - Other than money
  - Other than Securities
  - Includes actionable claims
  - *NO specific exclusion for intangible property*
- Service –
  - Anything other than goods is a service
  - Other than money
  - Other than Securities
  - Includes activity of changing of money from one form to another for a consideration

Exception to "Consideration" condition

- Disposal of Assets, if Input Tax Credit (ITC) is availed.
- Supply to Related Persons.
- Supply between Business Verticals
- Supply between branches located in different states
- Gifts not exceeding Rs. 50,000/- in a FY by an employer to an employee
- Supply from Principal to Agent and vice versa
- Import of services by a taxable person from a related person/other estd in the course or furtherance of business

Is it a “Good” or “a Service”??!!

- Transfer of title in goods?
- Right to use goods?
- Transfer of right to use goods?
- Transfer of title in goods where property in goods passes on a future date on payment of instalments?
- Any treatment or process which is being applied to another person’s goods?
- Goods put to private/non business use, even without consideration?

Is it a “Good” or “a Service”??!

- Works Contract/Construction of a building?
- Temporary transfer/permitting usage of IPR?
- Development, Design, programming, customization etc of a software?
- Agreeing to refrain from an Act?
- Supply of Food in a restaurant?

Issue is it a “Good” or “a Service”??!

- Long term lease ?
- Hire purchase ?
- Goodwill ?
- Stolen goods ?
- Free Samples ?
- Perquisites ?
- Renting of immovable property ?

Neither Supply of “Goods” nor of “Services”!

- Employee to Employer
- Services by any Court
- Functions performed by MPs, MLAs, etc
- Funeral/burial services/ambulance
- Sale of land, sale of building
- Actionable claims, other than lottery, betting and gambling

Actionable Claim

Sec 3 of Transfer of Property Act,1882

- any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property,
- any beneficial interest in movable property not in possession, actual or constructive, of the claimant which the Civil Courts recognise as affording grounds for relief,
- whether such debt or beneficial interest be existent, accruing, conditional or contingent.

Concept of Supply – Sec. 7 GST ACT

Section 7 - Meaning and scope of supply	
Section 7(1)(a)	Section 7(1)(b)
All forms of supply of goods and/ or services, - for a consideration - in the course or furtherance of business such as: - sale, transfer, - barter, exchange, - license, rental, - lease or disposal	Importation of service, - for a consideration - whether or not in the course or furtherance of business

Business [sec.2(17a)]

INCLUDES

- TRADE
- COMMERCE
- MANUFACTURE
- VOCATION
- PROFESSION
- ADVENTURE
- WAGER
- any other similar activity

whether or not it is for a pecuniary benefit;

Business [sec.2(17b)]

INCLUDES

- TRADE
- COMMERCE
- MANUFACTURE
- VOCATION
- PROFESSI ON
- ADVENTURE
- WAGER
- any other similar activity

any transaction in connection with or incidental or ancillary to the above,

Business [sec.2(17c)]

INCLUDES

- TRADE
- COMMERCE
- MANUFACTURE
- VOCATION
- PROFESSION
- ADVENTURE
- WAGER
- any other similar activity

any transaction in the nature of the above, whether or not there is volume, frequency, continuity or regularity of such transaction;

Business [sec.2(17d)]

INCLUDES

SUPPLY OF GOODS

ACQUISITION OF GOODS

CAPITAL ASSETS

In connection

COMMENCEMENT OF BUSINESS

CLOSURE OF BUSINESS

Business [sec.2(17e)]

INCLUDES

PROVISIONS OF FACILITIES & BENEFITS TO ITS MEMBERS BY

CLUB

ASSOCIATION

SOCIETY

ANY SUCH BODY

→

FOR SUBSCRIPTION

OR

ANY OTHER CONSIDERATION

Business [sec.2(17f)]

INCLUDES

ADMISSION OF PERSONS TO ANY PREMISES

FOR

CONSIDERATION

Business [sec.2(17g)]

Services supplied by a person

Of his trade, profession or vocation

As the holder of an office

Which has been accepted by him

In the course or furtherance

Business [sec.2(17h)]

services provided by a race club

by way of totalisator or a licence

to book maker in such club;

Explanation.- Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities shall be deemed to be business.

Forms of Supply	*Two parties*	Money consideration	Willing buyer	Willing seller	Permanent alienation	Valid object
Sale	✓	✓	✓	✓	✓	✓
Transfer	✓	✓	✓	✗	✓	✓
Barter	✓	✗	✓	✓	✓	✓
Exchange	✓	✗	✓	✓	✓	✓
License	✓	✓	✓	✓	✗	✓
Rental	✓	✓	✓	✓	✗	✓
Lease	✓	✓	✓	✓	✗	✓
Disposal	✓	✓	✗	✓	✓	✓ / ✗

Concept of Supply – Sec. 7 GST ACT

Section 7 - Meaning and scope of supply	
Section7(1)(c)	Sec 7(2)
Supplies specified* - To be treated as supplies made without a consideration *Schedule I: 1. Permanent transfer/ disposal 2. Supplies between related persons/ distinct persons in the course or furtherance of business 3. Supply of goods by principal (or agent) to agent (or principal) 4. Importation of service from a related person, etc.,	• Activities note treated neither as supply of goods/ services • Activities by CG/SG/etc.,

Consideration 2(31)

- In relation to supply of goods/service
  - Includes any payment or monetary value of act or forbearance – made or to be made – whether for money or otherwise – inrespect to or in response to, or for inducement of – whether by recipient or by any other person but
  - Shall not include
    - Subsidy given by SG/CG
  - Deposit – Not to be considered as payment for supply till it is applied for consideration for such supply

Related persons – Expl – 15(1)

a) persons shall be deemed to be "related persons" if only -

(i) they are officers or directors of one another's businesses;

(ii) they are legally recognized partners in business

(iii) they are employer and employee

(iv) 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;

(v) one of them directly or indirectly controls the other

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or they are members of the same family;

b) The term "person" also includes legal persons.

c) Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

Govt related services, not treated as Supply

- Yet to be notified
- **Indicative list (Earlier Model law)**
- Government to Government like CG to SG/vice versa/between departments of govt.
- Following services to individuals –
  - Passport, Visa, DL, Birth/Death Certificate
- Services entrusted to municipality
- Health care and educational services
- Services of registration under any law

Composite Supply or Mixed Supply

- What is Composite Supply?
- What is Mixed Supply?
- Works Contract Vs Composite Supply Vs Mixed Supply

Some practical business scenarios

- Packing material along with goods supplied
- Buy one get one offers
- Supply and installation of Electronic gadgets
- Sale of material along with transportation
- Airline ticket with food
- Accommodation with free breakfast
- A/c with installation

Composite Supply [Sec.2(30)]

SUPPLY CONSISTING OF

two or more goods

two or more services

a combination of goods and services

which are naturally bundled and supplied in conjunction

with each other in the ordinary course of business

one of which is a principal supply;

Illustration *: Where goods are packed and transported with insurance, the supply of* goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply.

Mixed Supply [Sec.2(74)]

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

Illustration: 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.

Works contract [Sec.2(119)]

and includes contract for

building | construction | fabrication | completion

erection | installation | fitting out | improvement

modification | repair | maintenance | renovation

alteration | commissioning

of any immovable property

wherein transfer of property in goods
is involved in the execution of such contract

Identifying Composite/Mixed Supply

Description	Composite Supply	Mixed Supply
Naturally bundled	Yes	No
Supplied together	Yes	Yes
Can be supplied separately	No	Yes
One is predominant supply for recipient	Yes	No
Other supply is not 'aim in itself' of recipient	Yes	No
Each supply priced separately	No	No
All supplies are goods	Yes	Yes
All supplies are services	Yes	Yes
One supply is goods and other supply is services	Yes	Yes

While, the above tests could be guiding principles in determining as to whether a supply is composite or mixed supply the end user test could be adopted as one of the criteria; Every supply will have to be independently analysed.

Taxes not in GST

- Stamp Duty
- Professional Tax
- Motor Vehicle Tax
- STT
- Electricity Tax
- Excise Duty on petroleum Products
- Toll Tax
- Basic Custom Duty
- Road Goods & Passenger Tax
- Safeguard duty
- Entertainment tax levied by Local Bodies
- Inland water goods
- Excise on alcohol / Liquor
- Land & Buildings, mineral rights

Supply

- Supply comprises:
  - Included supplies
  - Implied supplies (Sch I)
  - Excluded supplies
- Chargeability to tax:
  - Forward charge on supplier
  - Reverse charge on imports
  - Reverse charge on URD Purchases
  - Lateral charge (e-commerce)
- Supply characterization:
  - Composite supply or
  - Mixed supply

- Cases to consider:
  - *Purpose* of supply – business or not
  - Same *forms of supply* apply to services
  - Supply by casual taxable person
  - ISD or inter-branch service transfer
  - Intra-State stock transfer
  - Free samples and warranty
  - Material supplied for job-work
  - Sch II not exhaustive but specific
  - No supply, no tax but no credit too

Principles Determining Supply as inter-State or intra-State

Section 7 of IGST Act, 2016 – Principles to determine a supply as an inter-State Supply

Determination of supply of goods/services as Inter-State supply

CRITICAL factors:

- **Must be in DIFFERENT STATES/ UNION TERRITORY**
  a) **Location of the supplier** and
  b) **Place of supply** determined u/s 10 to 14 of IGST Act

Specific INCLUSIONS:

- Supply of **goods in the course of import**, till they cross the customs frontiers of India
- Supply of **services into India – Suply to be treated Interstate**
- Supply when **place of supply is outside India** but supplier is in India
- Supply to or by a **SEZ** developer or an SEZ unit

GST on Goods

Intra-State Supply

CGST-SGST

'From' location 'To' location

- Dual tax – CGST-SGST
- Registered office not relevant; location of goods is relevant
- Intra-State supply, if 'from' and 'to' in one State

Inter-State Supply

'To' location

IGST

- One tax – IGST (higher rate)
- Movement for 'delivery' relevant; even stock-transfer taxable
- Imports – basic customs + IGST

GST on Services

Intra-State Supply

CGST-SGST

Supplier's address of GST registration

Place of usage of service

- Dual tax – CGST-SGST
- Place of usage relevant
- 'Test' of such place listed for various services

Inter-State Supply

Place of usage of service or recipient's address of GST registration

IGST

- One tax – IGST (higher rate)
- Imports – receiver to pay IGST
- When 'place of usage' not fixed, use recipient's address

Section 8 of IGST Act, 2016 – Principles to determine a supply as an intra-State Supply

Determination of supply of goods and/ or services as Intra-State supply

- CRITICAL factors:

  Where the below 2 are in the SAME STATE

  a) Location of the supplier and

  b) Place of supply determined u/s 10-14 of IGST Act

- Specific EXCLUSIONS:
  - Supplies to or by a SEZ developer/ SEZ unit;
  - Importation of goods till they cross the customs frontiers of India

THANK YOU

For any clarification

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