

GST

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INPUT TAX CREDIT SCHEME

Definitions

Input tax credit can be claimed on inputs, input services and capital goods

Input - means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business

Input service - means any service used or intended to be used by a supplier in the course or Furtherance of business

Capital goods - means goods, the value of which is capitalized in the books of accounts of the person claiming the credit and which are used or intended to be used In the course or furtherance of Business – what about software capitalized – capital goods or input service

Business - includes any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit or an activity incidental or ancillary, whether or not with volume, frequency etc. – everything under the sun

Conditions

Possession of tax invoice or debit note or such other documents issued by a registered supplier

Receipt of goods or services or both

Tax charged in respect of such supply has been actually paid to the Government – **how does a supplier know?**

Furnished return under section 39

If goods are received in lots or instalments, credit to be taken upon receipt of the last lot or instalment

Buyer has to ensure that he pays the supplier within 180 days from the date of invoice – **buyer's responsibility**

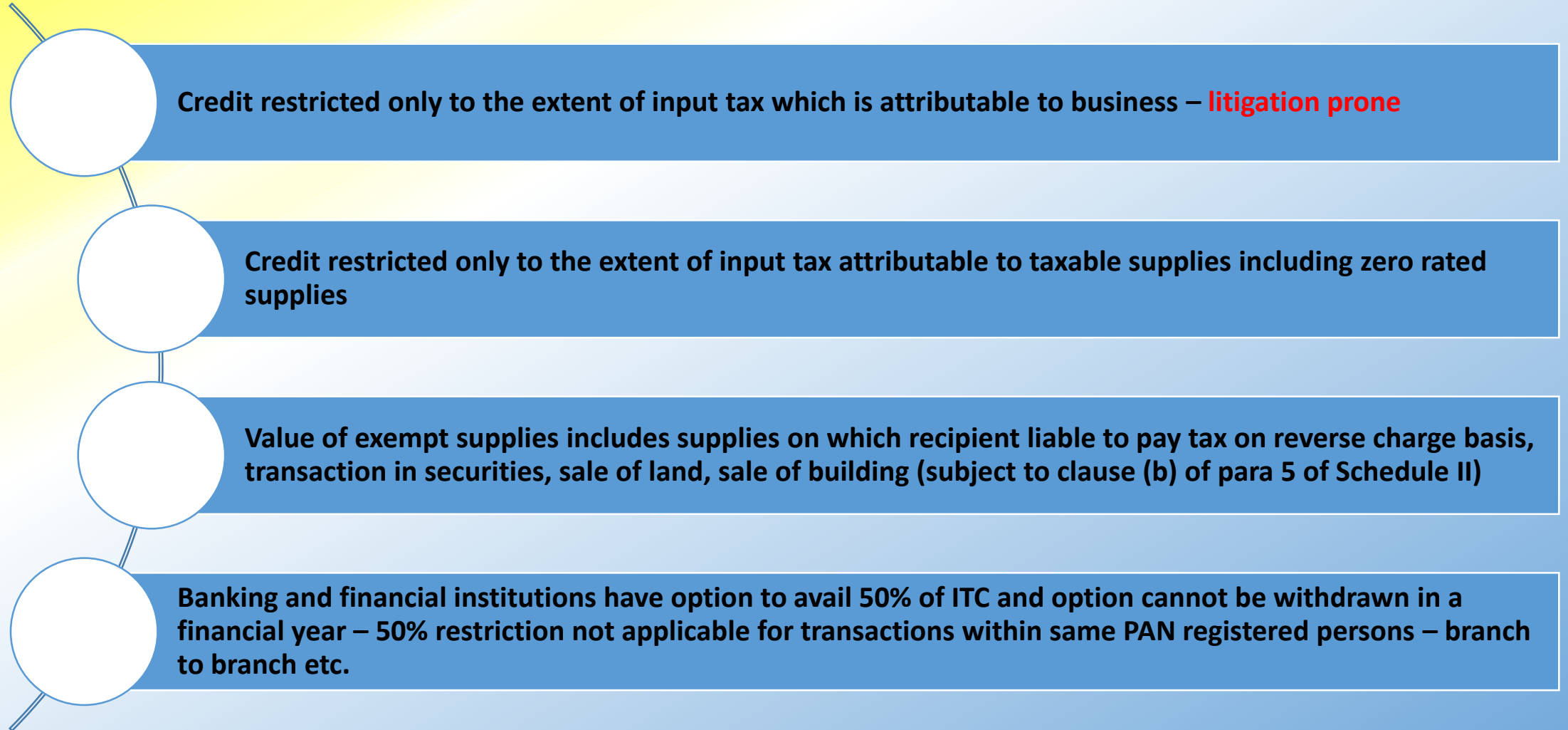
If depreciation is claimed on tax component of capital goods and plant & machinery under Income Tax Act, 1961, ITC to that extent disallowed – **buyer's responsibility**

ITC not allowed after due date of furnishing of Return under section 39 for the month of September in the subsequent financial year – **buyer's responsibility to track the invoices**

Sequence of utilization

| Credit of | Utilization |
|-----------|---|
| IGST | First towards IGST then CGST and later towards SGST |
| CGST | First towards CGST then IGST |
| SGST | First towards SGST then IGST |

Apportionment of credits



Ineligible credits



Motor vehicles & other conveyances except when used for transportation of goods, training, driving, supply of vehicles, conveyances etc.




Supply of goods or services such as outdoor catering, beauty treatment, health services, cosmetic and plastic surgeries etc. except when used in providing similar services



Works contract services unless for further supply of Works contract services and goods or services used in construction of immovable property



Travel benefits extended to employees on leave such as LTC or home travel, membership of club, health and fitness center etc.



Plant and machinery means apparatus, equipment and machinery fixed to earth by foundation or support but does not include land, building or any civil structure, telecom towers, pipelines laid outside the factory – **this is unfair and will lead to cascading effect – all these will be used in business only**

Ineligible credits



Composition supplies

Goods/services meant for personal consumption

Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples – this is unfair – **the authorities should allow remission**

Credit available on rent-a-cab, life insurance and health insurance if Government notifies these as obligatory under any law – **this is mysterious – ITES and Mmanufacturing sector may be at an advantage**

Availability in special circumstances



A registered person shall be entitled to take credit of ITC on goods held in stock on the day preceding the day from which he becomes liable to pay GST.

A person who voluntarily registers will also be eligible to avail ITC on goods held in stock

A person who ceases to be under composition scheme shall also be eligible to claim ITC on goods held in stock and with such reduced availability on capital goods

When an exempt supply becomes taxable supply, ITC will be available as above

Availability in special circumstances



No ITC will be available in these special circumstances after the expiry of one year from the date of issue of tax invoice relating to such supply – **invoices have to be checked to ensure this**

If there is a change in the constitution of registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific transfer of liabilities, unutilized ITC shall be allowed to be transferred

A person who avails composition scheme or if goods or services become wholly exempt from tax, ITC shall be paid back on goods held in stock – balance will lapse – **not advisable to go out of GST**

In case of supply of plant & machinery on which credit has been availed, then proportionate ITC as prescribed has to be paid back with such reduced percentage points or pay tax on transaction value, whichever is higher – **five percentage points per quarter in a year**

Availability in special circumstances



ITC allowed on inputs or capital goods sent to a job worker – even if directly sent to a job worker without being brought to place of business of registered person

If inputs are not received by the principal within one year, it will be deemed that inputs were supplied by the principal to the job worker – **GST liable with interest**

If capital goods are not received back by the principal within three years, it will be deemed that capital goods were supplied by the principal to the job worker – **GST liable with interest**

Input Service Distributor



The diagram consists of four horizontal blue bars, each containing a white circle on the left and a text box on the right. The circles are connected by a vertical line on the left side. The text boxes contain the following rules:

- ISD shall distribute credit of CGST, SGST, UTGST & IGST to its other registered entities with same PAN
- Amount of credit distributed shall not exceed the credit available for distribution
- ITC on services attributable to a recipient shall be distributed only to that recipient
- If credit is attributable to more than one recipient or to all recipients, then distribution will be pro rata on the basis of turnover

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Input Service Distributor



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ISD shall distribute IGST as IGST to every recipient – **Can ISD as a registered person pay IGST on reverse charge basis?**

CGST, SGST, UTGST shall be distributed as such to a recipient in the same State

CGST, SGST, UTGST shall be distributed as IGST to a recipient in another State or UT

ISD shall issue an invoice specific for distribution or a credit note in case of reduction in ITC – in case of reduction, recipient will have to pay differential output tax liability

PLACE OF SUPPLY

Inter-state and Intra-state supplies



When supplier is located in India and the place of supply is outside India – Inter-state

Supplies to or by a Special Economic Zone (developer or unit) – Inter-state

In a taxable territory, not being an intra-state supply and not covered anywhere – Inter-state

When location of supplier and place of supply are in the same state or union territory – Intra-state

Special provisions for different scenarios of supply of goods and services

Inter-state supplies



Location of supplier of goods and place of supply are in two different states, two different union territories, or in a different state and union territory

Supply of goods imported into territory of India, till they cross the customs frontiers – **interesting litigation will be on the cards due to mix up with territorial waters and confusion regarding definition of 'India'**

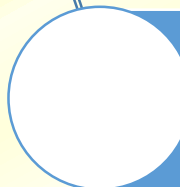
Location of supplier of services and place of supply are in two different states, two different union territories, or a state and a union territory

Supply of services imported into the territory of India shall be treated as inter-state supply – **includes territorial waters and upto EEZ, Continental shelf**

Special circumstances




Supplies made to a tourist will be regarded as inter-state supply only



If location of supplier, or place of supply is in territorial waters, then the place of supply is deemed to be the nearest coastal state – **prone for litigation – which comes first imports through high sea sales or taxation in coastal state**



Each of the establishments whether in the same state, or different state or union territory or within India or outside India shall be treated as distinct



A branch or an agency in any territory will be regarded as a distinct establishment in that territory

Export of goods and services



Export of goods means taking goods out of India to a place outside India

Export of services means supply of a service when supplier is located in India, recipient is located outside India, place of supply of service is outside India, payment in convertible forex

Supplier or service and recipient of service (of same legal person) cannot be establishments of a distinct person – **will not be regarded as exports**

Export of goods or services or both are zero rated supplies

Import of goods and services



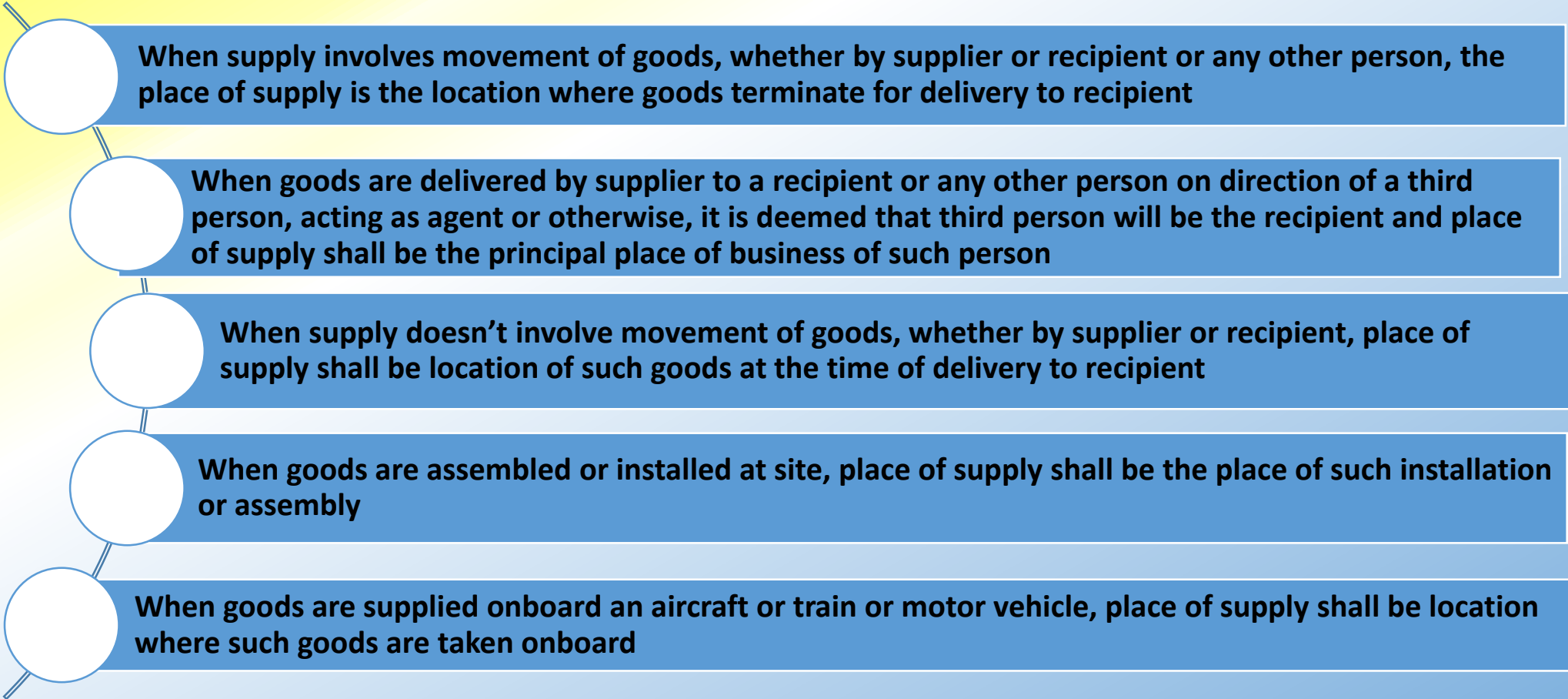
Import of goods means bringing goods into India from a place outside India

Import of services means supply of any service where supplier is located outside India, recipient and place of supply of service are in India

CVD and SAD will be replaced by IGST for goods, in addition to BCD, while import of services will attract IGST

IGST for import of services has to be paid on reverse charge basis by the recipient

Place of supply for goods



When supply involves movement of goods, whether by supplier or recipient or any other person, the place of supply is the location where goods terminate for delivery to recipient

When goods are delivered by supplier to a recipient or any other person on direction of a third person, acting as agent or otherwise, it is deemed that third person will be the recipient and place of supply shall be the principal place of business of such person

When supply doesn't involve movement of goods, whether by supplier or recipient, place of supply shall be location of such goods at the time of delivery to recipient

When goods are assembled or installed at site, place of supply shall be the place of such installation or assembly

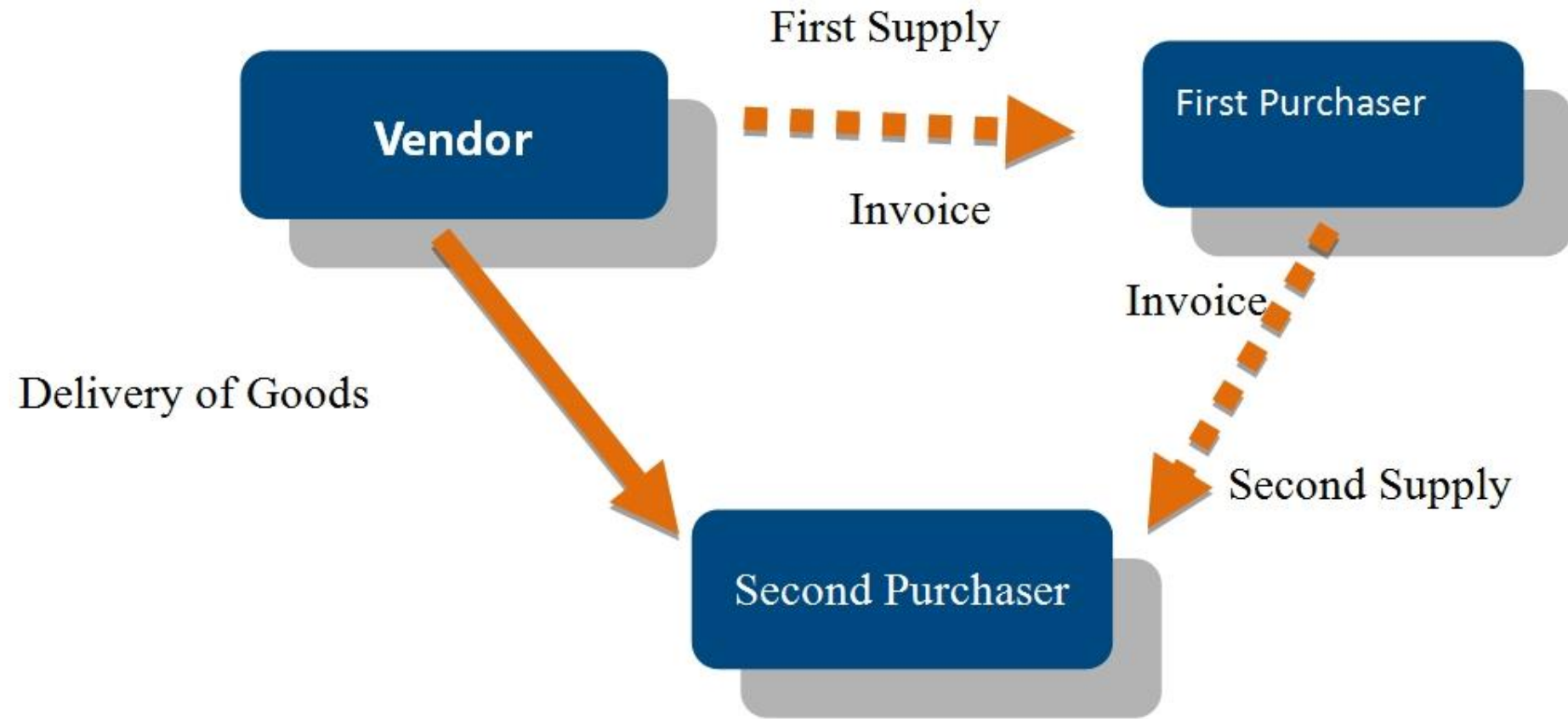
When goods are supplied onboard an aircraft or train or motor vehicle, place of supply shall be location where such goods are taken onboard

Scenarios of movement of goods whether by supplier or recipient or any other person (transporter) section 10(1)(a) of IGST

| Location of supplier | Location of Recipient | Movement of goods | Goods terminate for delivery | Place of supply | Tax |
|-----------------------|-----------------------|---|---|----------------------------------|------------------------|
| Karnataka | Tamil Nadu | From Karnataka to Tamil Nadu | Tamil Nadu | Tamil Nadu | IGST |
| Karnataka | Tamil Nadu | Supplier hands over the goods to transporter ex-works | Tamil Nadu only, though goods are handed over to transporter ex-works | Tamil Nadu | IGST |
| Karnataka (Bangalore) | Karnataka (Bidar) | Goods move through AP but delivered to buyer/recipient in Karnataka | Karnataka | Karnataka | CGST+SGST |
| Karnataka | Tamil Nadu | Buyer takes delivery of goods ex-works and goes to AP | Karnataka | Karnataka or Tamil Nadu or AP ?? | (CGST+SGST) or IGST ?? |

Scenarios of movement of goods where goods are delivered by supplier to recipient or any other person on directions of a third person

| Location of supplier | Location of third person's principal place of business (Bill to) | Location of Recipient (Ship to) | Place of supply | Tax |
|----------------------|--|--|---|--|
| Karnataka | Karnataka | Tamil Nadu | Karnataka | CGST+SGST |
| Karnataka | Andhra Pradesh | Tamil Nadu | Andhra Pradesh | IGST |
| Karnataka | Andhra Pradesh | Karnataka (both recipient and third person are one and the same with branches in AP & Kar) | Andhra Pradesh | IGST |
| Karnataka | Tamil Nadu | USA | Not Tamil Nadu as this will be regarded as export | This provision not applicable for export |



Place of supply for services (when location of recipient and supplier are in India)



Place of supply made to a registered person shall be location of such person

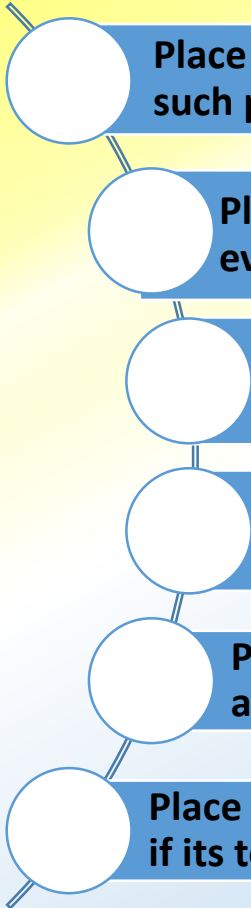
Place of supply made to any person other than registered person shall be location of recipient where address on record exists or location of supplier itself – **better to know your customer – kyc norms**

Supplies in relation to an immovable property (architects, interior decorators etc.), lodging/accommodation at hotel, social or official functions at hotels shall be location of immovable property/hotels – **cannot avail ITC as these will be B2C supplies especially hotels**

If in above location of immovable property is outside India, then location of recipient

Supply of services in restaurant, catering services, grooming, fitness etc. location where they are actually performed - **cannot avail ITC as these will be B2C supplies – some of the services are of course ineligible**

Place of supply for services (when location of recipient and supplier are in India)



Place of supply in relation to training and performance appraisal to registered person shall be location of such person, to an unregistered person location where actually performed - **ITC?**

Place of supply in case of admission to cultural, artistic, entertainment events etc. are location where event is actually held

Place of supply for organization of cultural, artistic, sporting, entertainment events in relation to a conference or fair etc. or any ancillary services to the above, to a registered person, location of such person

If in above location is outside India, then location of recipient; if provided to an unregistered person, then place of supply is where event is held

Place of supply for transportation of goods to a registered person shall be location of such person; to an unregistered person, location where goods are handed over for transportation

Place of supply of passenger transportation service to a registered person shall be location of such person, if its to an unregistered person, shall be place where passenger embarks for a continuous journey – **ITC?**

Place of supply for services (when location of recipient or supplier is outside India)



Place of supply of services shall be location of the recipient of service

Place of supply in certain instances shall be location where the services are actually performed

Services in r/o of goods which are required to be made physically available by recipient to supplier – if service is from remote location, place of supply shall be location of goods situated at the time of supply of service

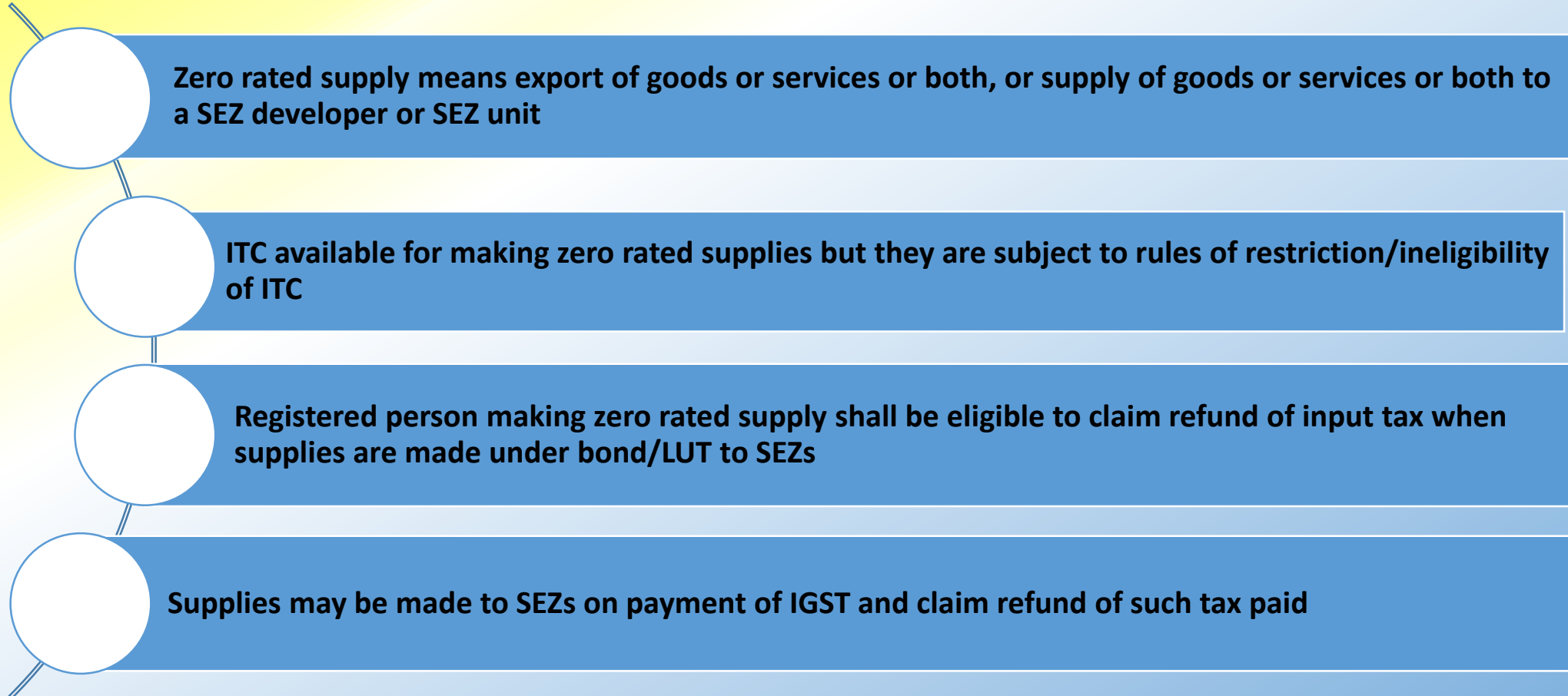
Services supplied to an individual which requires physical presence of recipient-individual, shall be location of such recipient – **if recipient is in India and supplier is from outside India, individual has to pay IGST on reverse charge – compulsory registration too. What if recipient flies out and gets services**

Supply of services in relation to an immovable property, supply of accommodation by hotel, inn, services for construction work including architects/interior decorators, shall be location of immovable property

Place of supply for services (when location of recipient or supplier is outside India)

- If services are provided to more than one location including that of taxable territory, then place of supply shall be location in taxable territory
- If services are provided in more than one state then place of supply shall be in each of the respective states and value will be in proportion to value of services provided in each state
- Place of supply in case of banking/financial company, intermediary services, services of hiring of conveyances for a period of one month shall be location of supplier
- Place of supply in r/o transportation of goods shall be place of destination of goods
- Place of supply in r/o passenger transportation services shall be place where passenger embarks on conveyance for continuous journey

Zero rated supplies





THANK YOU