

## The Taxable event in GST – “Supply“

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Taxable event is that event, happening of which attracts liability to tax. **Taxable event** is a very important event in any law as the levy and collection of tax is based on the happening of the taxable event. Although, the taxable event happens to be at a particular point of time, the levy and collection of such tax may be postponed for administrative convenience, to a later date.

*The Article 366 (12A) of the Constitutional (101<sup>st</sup> Amendment) Act, 2016 defines “Goods and Services Tax” as any tax on **supply of goods, or services or both**, except for taxes on the supply of the alcoholic liquor for human consumption.*

**The taxable event in GST is supply of goods or services or both.** Therefore supply will hold the greatest significance and shall be an important event in determining the taxability of all transaction whether commercial or otherwise under the GST regime.

**The term, “supply” has been inclusively defined in the Act.** Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Supply also includes import of services for a consideration whether or not in course or furtherance of business and the activities specified in schedule I (without consideration). Though the terms used are not defined in the Act, dictionary meaning of the same are elaborated below:

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Sale	Transferring the property in goods from one to another, upon valuable consideration.
Transfer	Any transfer of goods or right in goods or of undivided share in goods without transfer of title thereof.
Barter	To exchange one commodity for another without use of money.
Exchange	To swap, to part with, give or transfer for an equivalent with the use of money.
Licence	Permission granted by competent authority to exercise certain privileges without such authorization the

	activity would have constituted as an illegal act.
Rental	Periodical payment for the use of another property.
Lease	Contractual agreement by which one party conveys an estate in property to another party, for a limited period, subject to various conditions, in exchange for something of value, but still remain ownership.
Disposal	To pass or into the control of someone else; to alienate, bestow, or part with.

**The meaning and scope of supply under GST can be understood in terms of following five parameters**, which can be adopted to characterize a transaction as supply:

1. Supply of goods or services. Supply of anything other than goods or services does not attract GST
2. Supply should be made for a consideration
3. Supply should be made in the course or furtherance of business
4. Supply should be made by a taxable person
5. Supply should be a taxable supply.

While these five parameters describe the concept of supply, **there are a few exceptions to the requirement of supply being made for a consideration, in the course or furtherance of business and made by a taxable person.**

### **1. Supply of Goods or Services or Both**

*Section 2(52) of CGST Act 2017 defines “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.*

*Section 2(102) of CGST Act 2017 defines “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.*

Schedule II (read with section 7) to the CGST Act, 2017 lists a few activities which are to be treated as supply of goods or supply of services. For instance, any transfer of title in goods would be a supply of goods, whereas any transfer of right in goods without transfer of title would be considered as services. However, Schedule II is only for classification purpose. Hence, activities/

transactions listed in Schedule II shall be taxed only when they constitute 'supply' in accordance with definition provided in the provisions of Section 7(1)(a), (b) and (c) of the CGST Act. This amendment was made on 1<sup>st</sup> February 2019 and this amendment is applicable on retrospective basis from 1<sup>st</sup> July 2017.

The Government may notify the transactions that are to be treated as -

- Supply of goods and not as a supply of services; or
- Supply of services and not as a supply of goods.

Further Schedule III (read with section 7) to the CGST Act, 2017 specifies activities which shall be treated as neither supply of goods nor supply of services or outside the scope of GST. This includes:

- Services by an employee to the employer in the course of or in relation to his employment.
- Services by any court or tribunal (time being in force).
- Services by MPs, MLAs, Panchayats, Municipalities and member of other local authorities.
- The duties performed by any person who had any post in pursuance of the provisions of the constitution in that capacity.
- Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
- Sale of land (subject to clause (b) of paragraph 5 of schedule II) and sale of building where the entire consideration has been received after completion certificate is issued or after its first occupation.
- Actionable claims are included in the definition of goods, however, Schedule III provides that actionable claims other than lottery, betting and gambling shall be neither goods nor services.
- The activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services. Accordingly, it has been notified that the Central Government or State Government or any local authority in which they are engaged as public authority, by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution is neither a supply of goods nor a supply of service.

Following additional activity to be treated neither as a supply of goods nor a supply of services. This is as per amendment of CGST Act,2018.

- Goods supplied from a place in a non- taxable territory to another place in non- taxable territory without goods entering into India.
- Supply of warehoused goods (bond sales) to any person before clearance for home consumption
- High sea sales

Thereby excluding all the three from the ambit of supply and hence no reversal of ITC credit.

## **2. Supply for Consideration**

*Section 2(31) of CGST Act 2017 defines “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.*

However, there are exceptions to the requirement of ‘Consideration’ as a pre-condition for a supply to be called a supply as per GST. As per schedule I to CGST Act, 2017, activities as mentioned below shall be treated as supply even if made without consideration:

- Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- 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: Provided that gifts not exceeding fifty thousand

rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

- 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.
- Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business. Import of services from related parties or any of their establishment outside India in the course or furtherance of business, now taxable for all the persons instead of taxable person, which means if any person imports services from related person, even without consideration then such person needs to take compulsory registration and pay tax under RCM. This is as per amendment as per CGST Act, 2018.

### **3. Supply in the Course or Furtherance of Business**

GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Hence, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business as defined in the Act.

*Section 2(17) of CGST Act 2017 defines “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.*

No definition or test has been specified to find out whether the activity is in the course or furtherance of business. However, the following business test is normally applied to arrive at a guiding factor about whether it is in the course or furtherance of business or not:

- i. Whether the activity is seriously and earnestly pursued?
- ii. Whether the activity is pursued with reasonable or recognizable continuity?
- iii. Whether the activity is conducted in a regular manner based on sound and recognized business principles?
- iv. Whether the activity is predominantly concerned with the making of taxable supply for consideration/ profit motive?

However, there is one exception to this 'Course or Furtherance of Business' rule i.e., import of services for a consideration. Thus Supply includes import of services for a consideration whether or not in the course or furtherance of business. This implies that import of services even for personal consumption would be considered as supply and consequently, would be liable to tax. Imports of service shall be taxable on reverse charge basis, i.e, in the hands of the recipient of service. The threshold limit clause shall not apply here.

#### **4. Supply by a Taxable Person**

*Section 2(107) of CGST Act 2017 defines "taxable person" means a person who is registered or liable to be registered under section 22 or section 24.*

A supply to attract GST should be made by a taxable person. Hence, a supply between two non-taxable persons does not constitute supply under GST. Even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered but has taken voluntary registration and got himself registered is also a taxable person. However, there is exception to this rule, supply from a non-taxable person to a registered person incase of RCM will attract GST.

Notification no.5/2017- Central Tax dated 19-06-2017, exempts a person who is engaged in making only supplies of taxable goods or services or both on

which reverse charge applies, from obtaining registration under GST. Hence, to conclude, a non-taxable person can also make a taxable supply in above scenario (subject to section 9(3) of CGST Act).

It should be noted that GST in India is State-centric. Hence, a person making supplies from different States needs to take separate registration in each State. A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of GST. Hence, a supply between these entities constitutes supply under GST.

## **5. Taxable Supply**

*Section 2(108) of CGST Act 2017 defines “taxable supply” means a supply of goods or services or both which is leviable to tax under this Act*

For a supply to attract GST, the supply must be taxable supply. Taxable Supply can be either Inter State Supply or Intra State Supply.

- **Inter State Supply**

Inter- State supply of goods means a supply of goods where the location of the supplier and place of supply are in different States or Union territories, then IGST has to be paid. Imports, Supplies from and to SEZs are treated as deemed Inter-State supplies.

- **Intra State Supply**

Intra State supply of goods means supply of goods where the location of the supplier and the place of supply are in the same State or Union territory, then CGST and SGST/UTGST has to be paid.

Various types of supplies which are not liable to tax are :

- **Exempt supply**

*Section 2(47) of CGST Act 2017 defines “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply.*

Thus, It can be construed that an Exempted supply includes three types of supply :

- Supply attracting Nil Tax rate
- Wholly Exempt under Section 11 of the CGST Act or section 6 of the IGST act.
- Non-taxable Supply

It is pertinent to note that :

- Definition of Aggregate Turnover includes Exempt Supply .
- Input Tax Credit is not available in case you have an Exempt outward Supply.

Notification no.02/2017 – Central Tax ( Rate ) dated 28-06-2017 as amended are exempted goods and its supply is Exempt Supply. Notification no.12/2017 – Central Tax ( Rate ) dated 28-06-2017 as amended are exempted services and its supply is exempted supply.

Example : To list a few – Milk, Fruits, Vegetables, Pure Services provided to Government, Services by way of health care services etc.

- **Non-taxable supply**

*Section 2(78) of CGST Act 2017 defines “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act.*

Example : Alcoholic liquor for human consumption, Petroleum products etc

- **Nil rated supplies**

Such Supply of goods or services which attracts nil rate of tax. It is Pertinent to note that , there is not a single good specified in the tariff schedule of GST at Nil rated. However there is one entry in List of Services.

As per notification no.11/2017 – Central Tax (Rate) dated 28-06-2017, there is **only one entry** (heading 9972 is also nil entry) notified nil rated (heading 9986).

Example : Services notified nil rated are:

- (i) Support services to agriculture, forestry, fishing, animal husbandry.
- (ii) Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits and vegetables which do not change or alter the essential characteristics of the said fruits or vegetables.

