



GST

(GOODS AND SERVICES TAX)

The Meaning and Scope of Supply

The taxable event in GST is supply of goods or services or both. Various taxable events like manufacture, sale, rendering of service, purchase, entry into a territory of State etc. have been done away with in favour of just one taxable event i.e. supply. The constitution defines “goods and services tax” as any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption.

The Central and State governments have simultaneous powers to levy GST on Intra-state supply. However, the Parliament alone have exclusive power to make laws with respect to levy of goods and services tax on Inter-state supply.

The term, “supply” has been inclusively defined in the Act. The meaning and scope of supply under GST can be understood in terms of following parameters, which can be adopted to characterize a transaction as supply:

- Supply of goods or services or both (Supply of anything other than goods or services does not attract GST).
- Supply should be made for a consideration.
- Supply should be made in the course or furtherance of business.
- Supply should be a taxable supply.

While these parameters describe the concept of supply, there are a few exceptions to the requirement of supply being made for a consideration and in the course or furtherance of business. Any transaction involving supply of goods or services without consideration is not a supply, barring few exceptions, in which a transaction is deemed to be a supply even if it is without consideration. Further import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.

Supply of Goods or Services or Both

Goods as well as services have been defined in the GST Law. “Goods” has been defined as 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.

“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.

The expression “services” includes facilitating or arranging transactions in securities.

Thus, securities are excluded from the definition of goods as well as that of services. Money is also excluded from the definition of goods as well as services. However, activities relating to 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 are included in services.



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Where certain activities or transactions constitute a supply in accordance with the provisions of section 7 (1) of the CGST Act, 2017, they shall be treated either as supply of goods or supply of services as referred to in Schedule II. Schedule II to the CGST Act, 2017 lists a few activities or transactions which are to be treated either as supply of goods or supply of services only if such activities or transaction constitute a supply in accordance with the provisions of section 7 (1). 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.

Schedule III Supplies

Schedule III to the CGST Act, 2017 spells out activities which shall be treated as neither supply of goods nor supply of services. In other words, these activities are outside the scope of GST. Following are such activities:

1. Services by an employee to the employer in the course of or in relation to his employment;
2. Services by any court (District Court, High Court and Supreme Court) or Tribunal established under any law for the time being in force;
3. (a) the functions performed by the Members of Parliament, Member of State Legislatures, members of Panchayats, Members of Municipalities and Members of other local authorities;
(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, sale of building where the entire consideration has been received after completion certificate is issued or after its first occupation.
6. Actionable claims, other than lottery, betting and gambling. (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.)
7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8. (a) Supply of warehoused goods (warehoused goods as defined in the Customs Act) to any person before clearance for home consumption;
(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

Sr. No. (7) and (8) would imply that out and out supplies (i.e. merchant trading), sale of goods in customs bonded warehouse and High Seas sales are treated as no supply under GST Act. Hence, no GST is payable in such transactions.

Consideration for Supply

Consideration has specifically been defined in the CGST Act, 2017. It can be in money or kind. Any subsidy given by the Central Government or a State Government is not considered as consideration. It is immaterial whether the payment is made by the recipient or by any other person.

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.

Further, when there is barter of goods or services, the same activity constitutes supply as well as a consideration. For example, when a barber cuts hair in exchange for a painting, hair cut is a supply of services by the barber. It is a consideration for the painting received. Similarly, supply of painting is supply by painter and the painting is the consideration for hair cut.

Exception to the Requirement of Consideration

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.

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. 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. However, 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.
3. 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.
4. 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.

Supply in the Course or Furtherance of Business

GST is essentially tax only on commercial transactions. Hence only those supplies that are in the course or furtherance of business qualify as Supply under GST. However, considering the definition of Business, the sale of goods or service even as a vocation is a supply under GST. Therefore, even if a famous politician paints paintings for charity and sells the paintings even as a one-time occurrence, the sale would constitute Supply.

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However, there is one exception to this 'Course or Furtherance of Business' rule i.e., import of services for a consideration. Import of services for consideration, even if not in the course -or furtherance of business are liable to GST.

No GST on Supply not in the Course or Furtherance of Business

As elaborated above, supplies 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. It already has been clarified that sale of old gold jewelry by an individual to a jeweler will not constitute supply as the same cannot be said to be in the course of furtherance of business of the individual.

Supply by a Taxable Person

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. A "taxable person" is a person who is registered or liable to be registered under section 22 or section 24. Hence, 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. It should be noted that GST in India is State-centric. Hence a person making supplies from different States need to take a separate registration in each State.

Further the person has an option to take more than one registration within a State if the person has multiple place of business. 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. A person being a SEZ Unit or SEZ developer shall obtain a separate registration, as distinct from his place of business located outside the SEZ in the same State or Union Territory.

Taxable Supply

For a supply to attract GST the supply must be taxable. Taxable supply has been broadly defined and means any supply of goods or services or both which is leviable to tax under the Act. Exemptions may be provided to the specified goods or services or to a specified category of persons / entities making supply.

Supply in the Taxable Territory

For a supply to attract GST the place of supply should be in whole of India. The place of supply of any goods or services is determined based on Sections 10, 11, 12 and 13 of IGST Act 2017.

Inter/Intra-State Supply

The location of the supplier and the place of supply determine whether a supply is treated as an intra-State supply or an inter-State supply.

Determination of the nature of supply is essential to ascertain whether integrated tax is to be paid or Central plus State tax are to be paid. 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. Whereas, intra-State supply of goods means supply of goods where the location of the supplier and place of supply are in the same State or Union territory. Imports, Exports, Supplies from and to SEZs, etc. are treated as deemed inter-State supplies.

Composite/Mixed Supply

A composite supply means a supply made by a taxable person to a recipient comprising two or more taxable supplies of goods or services or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. For instance, a travel ticket from Mumbai to Delhi may include service of food being served on board, free insurance, use of airport lounge. In this case, transport of passenger, constitutes the pre-dominant element of the composite supply, and is treated as the principal supply and all other supplies are ancillary.

A mixed supply 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 composite supply. For instance, a supply of a package consisting of canned foods, sweets, cakes, etc. when supplied for a single price is a mixed supply.

The GST Law lays down the tax liability on a composite or mixed supply in the following manner.

- Composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as supply of such principal supply.
- Mixed supply comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax.

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