

CHAPTER 2 – SUPPLY

Relevant Sections

Section 7	:	Scope of supply.
Section 8	:	Tax liability on composite and mixed supplies.
Schedule 01	:	Activities to be treated as supply even if made without consideration
Schedule 02	:	Activities or transactions to be treated as supply of goods or supply of services
Schedule 03	:	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services

1. RELEVANT DEFINITIONS

“**person**” includes–

1. an individual;
2. a Hindu Undivided Family;
3. a company;
4. a firm;
5. a Limited Liability Partnership;
6. an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
7. any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);
8. any body corporate incorporated by or under the laws of a country outside India;
9. a co-operative society registered under any law relating to co-operative societies;
10. a local authority;
11. Central Government or a State Government;
12. society as defined under the Societies Registration Act, 1860 (21 of 1860);
13. trust; and
14. every artificial juridical person, not falling within any of the above;

Related persons: A person who is under influence of another person is called a related person like members of the same family. Person also includes legal persons. The term ‘related person’ has been defined in explanation to section 15 as follows:

Persons shall be deemed to be "related persons" if–

1. such persons are officers or directors of one another's businesses;
2. such persons are legally recognised partners in business;
3. such persons are employer and employee;
4. 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;
5. one of them directly or indirectly controls the other;
6. both of them are directly or indirectly controlled by a third person;
7. together they directly or indirectly control a third person; or
8. they are members of the same family;

Also, 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.

Family: means, —

- (i) the spouse and children of the person, and
- (ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person [Section 2(49) of the CGST Act].

“business” includes—

1. any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
2. any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
3. any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
4. supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
5. 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;
6. admission, for a consideration, of persons to any premises;
7. 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;
8. activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and
9. any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

“consideration” in relation to the supply of goods or services or both includes—

- ✓ 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;
- ✓ 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;

Actionable claim: means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either 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 [Section 2(1) of CGST Act read with section 3 of the Transfer of Property Act, 1882].

Specified actionable claim: means the actionable claim involved in or by way of—

1. betting;
2. casinos;
3. gambling;
4. horse racing;
5. lottery; or
6. online money gaming

Online gaming: means offering of a game on the internet or an electronic network and includes online money gaming.

Online money gaming: means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.

Supplier: in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied:

Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.

Virtual digital asset: shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961

Taxable supply: means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108) of CGST Act].

Taxable territory: means the territory to which the provisions of this Act apply.

Money: means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but **shall not include any currency that is held for its numismatic value.**

Local authority means —

- a) A "Panchayat" as defined in clause (d) of article 243 of the Constitution.
- b) A "Municipality" as defined in clause (e) of article 243P of the Constitution.

- c) A Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal fund or local fund.

Explanation.—For the purposes of this sub-clause-

- 1) "local fund" means any fund under the control or management of an authority of a local self-government established for discharging civic functions in relation to a Panchayat area and vested by law with the powers to levy, collect and appropriate any tax, duty, toll, cess or fee, by whatever name called
 - 2) "municipal fund" means any fund under the control or management of an authority of a local self-government established for discharging civic functions in relation to a Metropolitan area or Municipal area and vested by law with the powers to levy, collect and appropriate any tax, duty, toll, cess or fee, by whatever name called.
- d) A Cantonment Board as defined in section 3 of the Cantonments Act, 2006.
- e) A Regional Council or a District Council constituted under the Sixth Schedule to the Constitution.
- f) A Development Board constituted under article 371 and article 371J of the Constitution.
- g) A Regional Council constituted under article 371A of the Constitution.

2. INTRODUCTION TO “SUPPLY” AND WHY IT IS IMPORTANT

- ✓ A taxable event is any transaction or occurrence that results in a tax consequence. Before levying any tax, taxable event needs to be ascertained. It is the foundation stone of any taxation system; it determines the point at which tax would be levied.
- ✓ Under GST, taxable event is SUPPLY. If there is no supply then No GST.
- ✓ For a supply to attract GST, primarily two additional conditions need to be satisfied. These are – (i) supply must be made by a taxable person and (ii) supply must be a taxable supply.

3. MEANING OF GOODS & SERVICES

Why to differentiate between Goods & Service

It is important to classify supply either as supply of goods or supply of services because of following reasons.

1. Rates of tax for goods (HSN wise) and Rates of tax for Services (SAC wise) is different.
2. Time of supply for goods and for supply of services is different.
3. Place of supply for goods and for services is different.
4. Conditions for export of goods and export of services is different.
5. Conditions for applicability of composition levy is different for supply of goods and for supply of services.

Section 2(52). GOODS

- 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.

Note 1: Movable means anything which can be shifted from one place to another as it is.

Note 2: Actionable claims are unsecured debt, arrears of rent.

Note 3: Money shall be treated as goods so long as same is not used as legal tender as held by High Court of Bombay in CMS Info Systems Ltd. 2019 [Therefore Van used for transportation of money ITC available]

Section 2(102). SERVICES

- 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.

Explanation. —For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities.

Note: The Maharashtra AAR held that children are not goods and therefore not subjected to GST when prospective parents pay to adopt a child.

4. SCOPE OF SUPPLY - SECTION 7

- ✓ “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**;
 - the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.
 - import of services for a consideration whether or not in the course or furtherance of business and;
 - the activities specified in Schedule I, made or agreed to be made without a consideration
- ✓ where **certain activities** or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.
- ✓ Notwithstanding anything contained in sub-section (1), —
 - activities or transactions specified in Schedule III; or
 - such 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.
- ✓ The Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as-
 - a supply of goods and not as a supply of services; or
 - a supply of services and not as a supply of goods.

Few Important points

1. Various forms of supply contemplated in section 7(1)(a) are sale, transfer, barter, exchange, licence, rental, lease or disposal. These forms of supply are only illustrative and not exhaustive
2. Consideration does not always mean money. It can be in money or in kind. It covers anything which might be possibly done, given or made in exchange for something else. Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person. However, any subsidy given by the Central Government or a State Government is not considered as consideration.
3. 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.

4. Any transaction involving supply of goods and/or services without consideration is not a supply unless it is deemed to be a supply under Schedule I of the CGST Act.
5. For any trade, commerce, or any other similar activity to qualify as business, frequency, volume, continuity or regularity of such transaction is not a pre-requisite.
6. Since 'business' includes vocation, therefore sale of goods or service as a vocation is also a supply under GST.
7. Facilities provided by the club/association to its members for consideration are provided in course or furtherance of business.
8. Admission of persons to any premises for a consideration is also included in business.
9. Business includes activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club.
10. The activities or transactions (involving supply of goods or services) between a person, other than an individual, (i.e. association, club, etc.) and its members or constituents, for cash, deferred payment or other valuable consideration are covered within the ambit of 'supply'. Doctrine of mutuality is not applicable on such transactions.

Some Examples of whether supply made in course or furtherance of business

1. Sundaram Acharya, a famous actor, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust – 'Kind Human'. The sale of paintings by the actor qualifies as supply.
2. A Resident Welfare Association provides the service of depositing the electricity bills of the residents in lieu of some nominal charges. Provision of service by a club or association or society to its members is treated as supply as this is included in the definition of 'business'.
3. Services by way of admission to circus, cinema halls, amusement parks including theme parks, water parks, etc. are considered as supply as these are services by way of admission of persons to any premises for a consideration.
4. Royal Turf Race Club is engaged in facilitating the wagering (betting) transactions on horses placed through totalisator. For providing the service of facilitating wagering transactions, Royal Turf Race Club gets commission which is deducted and retained by the club from the total bet value. Said services amount to supply as the activities of a race club are included in business.

5. SCHEDULE I- ACTIVITIES TO 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.
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.
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.