



Constitutional Framework

Article 246A is inserted to give powers make laws in relation to GST

| Particulars | Erstwhile | Amended |
|----------------------------------|---|--|
| Addition in Sixth Schedule | | (e) taxes on entertainment and amusements |
| Basic Custom Duty | 83. Duties of customs including export duties | 83. Duties of customs including export duties |
| Central Excise Duty | 84. Duties of excise on tobacco and other goods manufactured or produced in India except— (a) alcoholic liquors for human consumption. (b) opium, Indian hemp and other narcotic drugs and narcotics | "84. Duties of excise on the following goods manufactured or produced in India, namely:— (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel; and (f) tobacco and tobacco products."; |
| State Excise Duty | 51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:— (a) alcoholic liquors for human consumption; (b) opium, Indian hemp and other narcotic drugs and narcotics; | 51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:—(a) alcoholic liquors for human consumption; (b) opium, Indian hemp and other narcotic drugs and narcotics; |



Constitutional Framework

| Particulars | Erstwhile | Amended |
|--|---|---|
| Newspaper tax | 92. Taxes on the sale or purchase of newspapers and on advertisements published therein | Omitted |
| Service Tax | 92C. Taxes on services. | Omitted |
| Entry Tax | 52. Taxes on the entry of goods into a local area for consumption, use or sale therein. | Omitted |
| VAT/ Sales Tax | 54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I. | "54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods."; |
| Advertisemen t Tax | 55. Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television | Omitted |
| Luxury tax, betting, entertainment | 62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling. | "62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.". |

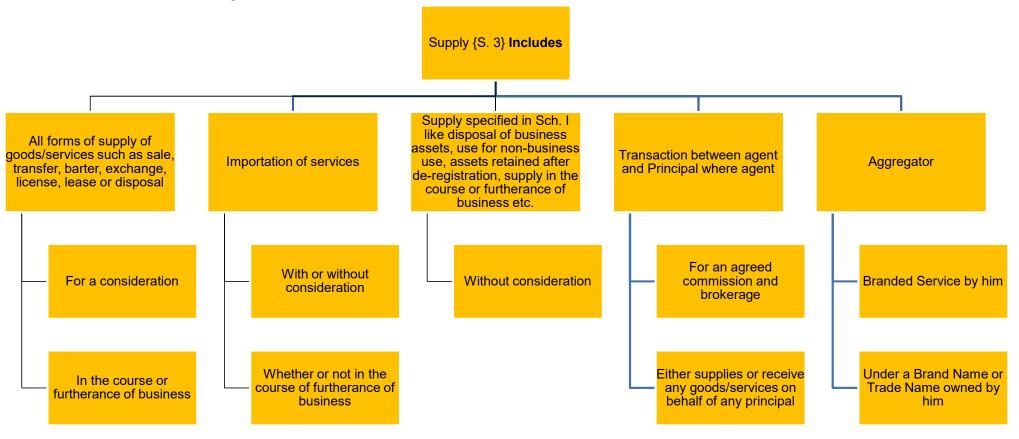


Levy of GST

| Particulars | Levy and Collection of Central/State GST (S. 7) | Levy and collection of IGST (S. 4) |
|-------------------|---|--|
| Levy | (1) There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services at the rate specified in the Schedule to this Act and collected in such manner as may be prescribed. | (1) There shall be levied a tax called the Integrated Goods and Services Tax on all supplies of goods and/or services made in the course of inter-State trade or commerce at the rate specified in the Schedule to this Act and collected in such manner as may be prescribed. |
| By Whom | (2) The CGST/SGST shall be paid by every taxable person in accordance with the provisions of this Act. | (2) The Integrated Goods and Services Tax shall be paid by every taxable person in accordance with the provisions of this Act. |
| Reverse charge | (3) Notwithstanding anything contained in sub-section (2), the Central or a State Government may, on the recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the person receiving such goods and/or services and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to such goods and/or services. | (3) Notwithstanding anything contained in sub-section (2), the Central Government may, on recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the person receiving such goods and/or services and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to such goods and/or services. |



What is Supply?





Goods vs. Services...

Definitions

Under MVAT: Section 2 (12) of Maharashtra Value Added Tax, 2002

"goods" means every kind of movable property <u>not being newspapers</u>, actionable claims, money, <u>stocks</u>, <u>shares</u>, <u>securities or lottery tickets</u> and includes live stocks, growing crop, grass and trees and plants including the produce thereof including property in such goods attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

Under GST

(48) "goods" means every kind of movable property other than actionable claim and money but includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply;

Explanation.— For the purpose of this clause, the term 'moveable property' shall not include any intangible property



...Goods vs. Services...

Definitions

Under GST

(88) "services" means anything other than goods;

Explanation: Services include intangible property and actionable claim but does not include money

Under Service Tax (Section 66B (44) of the Finance Act, 1994)

"service" means any activity carried out by a person for another for consideration, and includes a declared service, but shall not include—

- (a) an activity which constitutes merely,—
- (i) a transfer of title in goods or immovable property, by way of sale, gift or in any other manner; or
- (ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of clause (29A) of article 366 of the Constitution; or
- (iii) a transaction in money or actionable claim;
- (b) a provision of service by an employee to the employer in the course of or in relation to his employment; excluded from the scope of 'taxable person'
- (c) fees taken in any Court or tribunal established under any law for the time being in force



...Goods vs. Services...

Schedule II

Transfer

- (1) Transfer of the title in goods supply of goods
- (2) Transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof supply of services
- (3) Transfer of title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment of full consideration as agreed supply of goods

Land and Building

- (1) Lease, tenancy, easement, licence to occupy land supply of services
- (2) Lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly supply of services

Any treatment or process which is being applied to another person's goods - supply of services

Transfer of business assets

Application of business assets for private use: Supply of Service

Sale of business assets (including to by another person to recover any debt): Supply of goods



...Goods vs. Services...

Schedule II

Declared services defined under the Finance Act, 1994 – Supply of Service

- construction of a complex, building, civil structure or a part thereof, including a complex or building
 intended for sale to a buyer, wholly or partly, except where the entire consideration has been received
 after issuance of completion certificate, where required, by the competent authority; or before its first
 occupation, whichever is earlier ambiguous language
- Service portion in the execution of a works contract; works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- transfer of goods by way of hiring, leasing, licensing or in any such manner without transfer of right to use such goods; transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration – Supply of Goods



Consideration?

Definition of 'Consideration' as per Clause 28

"consideration" in relation to the supply of goods and/or services to any person, 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 and/or services, whether by the said person or by any other person;
(b) the monetary value of any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods and/or services, whether by the said person or by any other person:

Provided that a deposit, whether refundable or not, given in respect of the supply of goods and/or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply;

To qualify as a consideration there has to be a sufficient nexus between the supply and the consideration



Consideration – Case Study

Facts of the Case

Company 'A' is engaged in operating an oil refinery. Company's business consisted of processing the oil companies' products in return for fees. During the 1970s the Government encouraged company to undertake substantial borrowings to carry out a large expansion of the refinery. The Government gave company certain assurances as to the level of profits it would achieve in a series of "support letters". Ten years later, the Government changed its policy and passed legislation to this effect and negotiated an end to the support letters.

An agreement was reached between the Government and the taxpayer in which the Government has agreed to:

- (i) repay the company A's loans; and
- (ii) Pay INR 1000 crore in 3 instalments over three years.

The payments of INR 1000 crore were conditional on the refinery remaining operational on each payment date.

The High Court held that the payments were not in consideration for the supply of services by company to its customers and hence not liable to GST. (Since no Direct nexus was established between the Supply and Consideration)



What is supply made in the course or furtherance of business?

FAQs

Q 9. What do you mean by "supply made in the course or furtherance of business"?

Ans. No definition or test has been specified under the Model GST Law. However, the following business test is normally applied to arrive at a conclusion:

- 1. Is the activity, a serious undertaking earnestly pursued?
- 2. Is the activity is pursued with reasonable or recognisable continuity?
- 3. Is the activity conducted in a regular manner based on sound and recognised business principles?
- 4. Is the activity predominantly concerned with the making of taxable supply for consideration/ profit motive? The test may ensure that occasional supplies, even if made for consideration, will not be subjected to GST

Q 5. In respect of exchange of goods, namely gold watch for restaurant services will the transaction be taxable as two different supplies or will it be taxable only in the hands of the main supplier?

Ans. No. In the above case the transaction of supply of watch from consumer to the restaurant will not be an independent supply as the same is not in the course of business. It is a consideration for a supply made by the restaurant to him. The same will be a taxable supply by the restaurant.



Schedule I – Supply without Consideration

Matters to be treated as supply without consideration

- ➤ Permanent transfer/disposal of business assets
- > Temporary application of business assets to a private or non-business use
- > Services put to a private or non-business use
- ➤ Assets retained after deregistration
- ➤ Supply of goods and/or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business. whether includes branch transfers, stock transfers, free samples etc.?

(Supply of goods by a registered taxable person to a job-worker shall not be treated as supply of goods)



Taxable Person-section 9

A person who carries on any business at any place in India/State and who is registered or required to be registered under Schedule III of the Act;

An agriculturist shall not be considered as a taxable person. Further, "agriculturist" means a person who cultivates land personally, for the purpose of agriculture;

Aggregate Turnover*

- INR 20 Lakh in a Financial Year * (Liable for registration > 9 Lakhs)
 INR 10 Lakh in a Financial Year in case of NE States including Sikkim. (Liable for registration > 4 Lakhs)

* Aggregate Turnover means: All taxable and non-taxable supplies + Exempt supplies + Export of goods or services (of a person having same PAN-All India basis) [Excluding taxes under CGST,SGST and IGST Act] (it does not include supplies on tax is paid under RCM)



Taxable Person-section 9

Every supplier shall be liable to be registered <u>in the State</u> from where he makes a taxable supply of goods/services if his aggregate turnover in a financial year exceeds prescribed limit

Compulsory registration

- Person making inter-state supply
- Casual taxable persons
- persons who are required to pay tax under reverse charge
- non-resident taxable persons,
- Deductor of tax
- ISD, e-commerce operator, agent, aggregator, person supplying goods through aggregator

Not considered taxable person

- Services provided by an employee to his employer in the course of or in relation to his employment
- Persons exclusively supplying non taxable goods and/or services
- A person covered under <u>reverse charge</u> <u>mechanism</u> <u>receiving service</u> of value not exceeding ____ rupees for personal use



Taxable Person-section 9

"casual taxable person" means a person who occasionally undertakes transactions involving supply of goods and/or services in the course or furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business;

Vs.

"non-resident taxable person" means a taxable person who occasionally undertakes transactions involving supply of goods and/or services whether as principal or agent or in any other capacity but who has no fixed place of business in India;

"non-taxable territory" means the territory which is outside the taxable territory;

"taxable territory" means the territory to which the provisions of this Act apply

As per Section 1 (2) the Act extends to the whole of India / State's name



Composition Levy

Permitted by Proper officer

Aggregate turnover in an FY does not exceed 50 Lakh

Not applicable if any inter-state supplies of goods/services

All registered taxable person, having same PAN has to opt for the composition scheme

Person shall not collect any tax

Person shall not be entitled for any input tax

Not applicable on taxes paid under RCM



Composition levy (pay at a prescribed rate > 1%)

Composition Scheme FAQs

FAQs

Q 8. Will a taxable person be eligible to opt for composition scheme only for one out of 3 business verticals?

Ans. No, composition scheme would become applicable for all the business verticals/registrations which are separately held by the person with same PAN

Q 15. What are the penal consequences if a taxable person violates the condition and is not eligible for payment of tax under the Composition scheme?

Ans. Taxable person who was not eligible for the composition scheme would be liable to pay tax, interest and in addition he shall also be liable to a penalty equivalent to the amount of tax payable. (Section 8 (3) of the MGL)



Power to grant exemption from GST

Central or a State Government can exempt whole or any part of tax

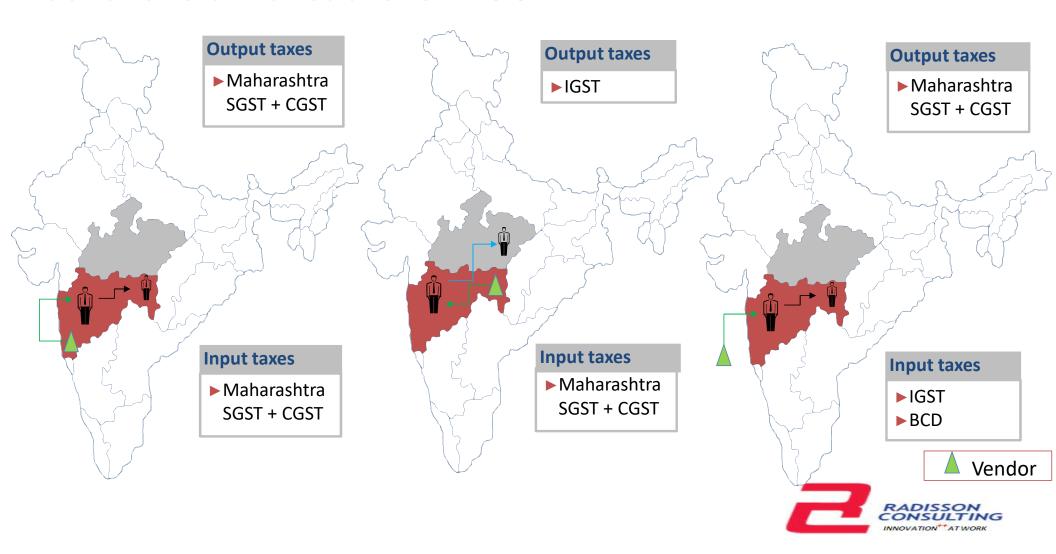
➤ If it is necessary in the public interest so to do, it may, on the recommendation of the Council, by notification, exempt generally either absolutely or subject to such conditions

Explanation.- Where an exemption under sub-section (1) in respect of any goods and/or services from the whole of the tax leviable thereon has been granted absolutely, the taxable person providing such goods and/or services shall not pay the tax on such goods and/or services.

- ➤ If it is necessary in the public interest so to do, it may, on the recommendation of the Council, by special order in each case, exempt from payment of tax, under circumstances of an exceptional nature
- Can Insert an explanation in exemption notification or order and every such explanation shall have effect retrospectively
- Every notification and every order issued unless otherwise provided, come into force on the date of its issue in the Official Gazette



Illustrations of transactions in GST



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