

Exemptions [Section 11 r/w NN 12/2017 - CTR] (1/8)

Before learning exemptions under GST following points must be noted: -

- 1) The person supplying exempt supplies will have to **reverse ITC** in accordance with section 17 of CGST Act, 2017.
- 2) **Zero rated** supplies are not exempt supplies thus **ITC can be availed**.
- 3) Even though **exempt supplies are exported**, registered person **can still claim refund** of taxes paid on manufacture / procurement of such exempt supplies.
- 4) As per section 2(47) of CGST Act, 2017 "**exempt supply**" means supply of any goods or services or both which attracts **nil rate** of tax (e.g., fruits & vegetables) or which may be **wholly exempt** from tax under section 11 (to be learnt in this chapter), or under section 6 of the Integrated Goods and Services Tax Act, and includes **non-taxable supply** (e.g., petrol);
- 5) If notification exemption is issued under CGST Act, the registered person can avail the benefit of same in SGST / UTGST Act also, however vice – versa is not possible. Also, notification issued under IGST Act will only be relevant for inter-state supply purposes only not for CGST / SGST purposes.
- 6) Any person engaged **exclusively** in the business of supplying goods or services or both that are not liable to tax or wholly **exempt** from tax under this Act or under the Integrated Goods and Services Tax Act is **not liable to take registration** under GST Act.
- 7) Section 31(3)(c) of the CGST Act provides that a registered person **supplying exempt** goods or services or both or paying tax under the provisions of section **10 of CGST Act (composition) & presumptive levy** shall issue, instead of a tax invoice, a **bill of supply**.
- 8) **For supplying exempt goods E-way bill is not required to be generated.**

WAY AHEAD FOR THIS CHAPTER

| EXEMPTIONS |
|---|
| 1. Charitable Entity |
| 2. Religious Institution |
| 3. Agriculture Sector |
| 4. Government Services |
| 5. Healthcare Services |
| 6. Education Sector |
| 7. Banking & Financial Sector |
| 8. Construction Industry |
| 9. Goods Transportation |
| 10. Passenger Transportation |
| 11. Legal Services |
| 12. Life Insurance |
| 13. General Insurance |
| 14. Leasing Services |
| 15. Artist Services |
| 16. Admission to various events |
| 17. Services by Unincorporated Body / NPO / RWA |
| 18. Miscellaneous Exemptions |
| 19. Indepth Interlinking of Import of Services |
| 20. IGST Exemptions |

"Just when the caterpillar thought the world was ending, he turned into a butterfly."

1. CHARITABLE INSTITUTIONS

In order to avail the benefit of exemption for Charitable Trusts it has to satisfy two conditions: -

- ❖ It should be registered under **Section 12AA or 12AB** of Income Tax Act.
- ❖ It should provide charitable activities

MEANING OF CHARITABLE ACTIVITY:

- ❖ **Care or counselling** of terminally ill person, HIV AIDS, narcotics drugs or alcohol; or public awareness of **preventive health, family planning**
- ❖ Advancement of **educational programmes** or skill development (Abandoned, orphaned or homeless children etc.)
- ❖ Advancement of **religion, spirituality or yoga;**
- ❖ Preservation of **environment** including watershed, forests and wildlife;

OTHER EXEMPTIONS RELATED TO THIS SECTOR:

| | |
|---|---|
| ❖ Training or coaching in recreational activities such as arts, culture provided by INDIVIDUAL including charitable entities is exempt. | Exempt <i>(Word "individual" added NN 4/2022 -CTR dated 13th July, 2022)</i> |
| ❖ Training or coaching in recreational activity in sports is exempt when provided by CHARITABLE ENTITY REGD UNDER 12AA/12AB | Exempt <i>(Re-iterated by NN 4/2022 -CTR dated 13th July, 2022)</i> |
| ❖ Camps where the fee charged includes cost of lodging and boarding where principal activity is charitable activity. (Circular 66/40/2018-GST dated 26-09-2018) | Exempt |
| ❖ Hostel Accommodation for students (Circular 32/06/2018-GST dated 12-02-2018) | Exempt upto Rs. 1000 Per day (If more than that entire is taxable) |
| ❖ Import of Services (other than OIDAR & Import freight) | Exempt |
| ❖ Old age home run by 12AA/AB where consideration is up to Rs. 25,000/- per month per member to its residents aged 60 or more | Exempt (If more than Rs. 25,000/- entire would be taxable) |

2. RELIGIOUS INSTITUTIONS [E. 13]

| Sr. No. | Category | Exemption up to | Notes |
|--|---|--|--|
| 1 | Conduct of religious ceremonies | 100% of supplies made in this nature is exempt | Religious ceremonies are life-cycle rituals including special religious poojas conducted in terms of religious texts by a person so authorized by such religious texts. Occasions like birth, marriage and death involve elaborate religious ceremonies. |
| Renting of precincts of a religious place | | | |
| 2 | Room rent | Taxable if Rs. 1000 or more per day | Precincts of such religious place should be owned or managed by a charitable or religious trust under 12AA of Income Tax Act, 1961; a trust or an institution registered under section 10(23C) (v) of the Income-tax Act or a body or an authority covered under section 10(23BBA) of the said Income-tax Act. |
| 3 | Renting of premises, community halls, Kalyan mandapam or open area etc. | Taxable if Rs. 10,000 or more per day | |
| 4 | Charges for renting of shops or commercial spaces. | Taxable if Rs. 10,000 or more per month | |

Services in respect of religious pilgrimage facilitated by GOI under bilateral arrangement are exempt.

3. AGRICULTURE SECTOR

| Entry No. / Circular | Description - Exemption |
|---------------------------|---|
| 54 | Various services relating to agriculture produce are exempt |
| Circular No. 16/16/2017 | Exemption relating to black tea, white tea, green tea, jaggery, pulses, wholegrain pulse etc. |
| 55 | Intermediate production process as job work except the rearing of horses |
| 53A | Fumigation services |
| 24 | Loading unloading packing storage or warehousing of rice |
| 57 | Services of pre-cooling, ripening, waxing etc for fruits & vegetables are exempt |
| 24B | Services by way of storage or warehousing of cereals, pulses, fruits and vegetables are exempt |
| Circular - 19/19/2017-GST | Milling of Paddy into rice is liable to GST |

Meaning of Agriculture produce: Agriculture Produce means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

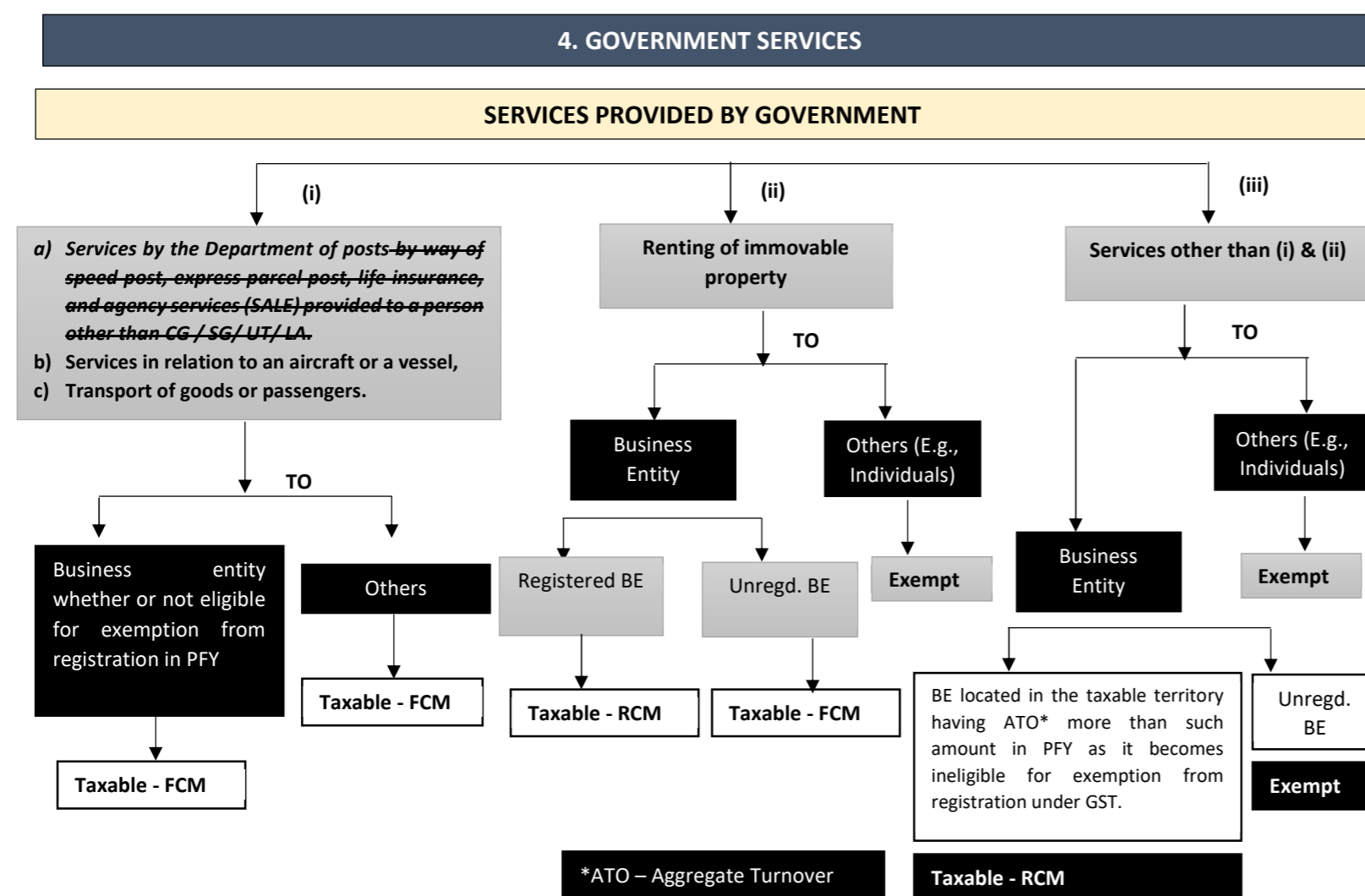
In respect of Agriculture Sector following are exempt:

- ❖ Operations on agriculture produce such as cultivation, Harvesting, Threshing, Testing of Agriculture Produce, Loading / unloading, supply of farm labor, tending, pruning, cutting, which do not alter essential characteristics for primary market are exempt.
- ❖ Renting / Leasing of Agro-machinery or Vacant Land, Services by APMC
- ❖ **Fumigation in warehouse**, Agriculture extension services
- ❖ Pisciculture, sericulture, floriculture
- ❖ Whole gram pulse is agriculture produce but not normal pulse (like dal)

Other Important Points

- 1) Rubber, green tea leaves, coffee is exempt (processed coffee is taxable)
- 2) Lease of vacant land with storage shed meant for agriculture produce are exempt (for other purposes taxable)
- 3) Processed products of Black Tea, Green Tea, White Tea, Jaggery are taxable. However, whole grain pulse is exempt
- 4) 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 are exempt
- 5) Services provided by the National Centre for **Cold Chain Development** under Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination are exempt.
- 6) Cleaning of **wheat outside farm**, **Sales commission for wheat – exempt**
- 7) **Milling of paddy into rice is taxable.**
- 8) Loading, unloading, packing, storage, or warehousing of agriculture produce including rice are exempt.
- 9) Artificial insemination of livestock (*other than horses*) are exempt.
- 10) Testing activities in relation to agriculture produce such as soil testing, animal feed testing etc. are exempt.
- 11) **Services by way of storage or warehousing of cereals, pulses, fruits, and vegetables are exempt**

Exemptions [Section 11 r/w NN 12/2017 - CTR] (2/8)



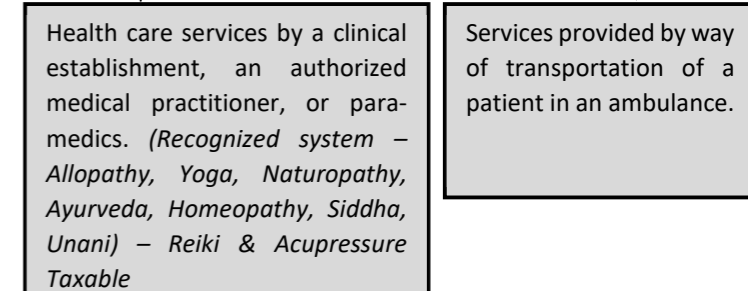
Important Points for Services provided BY CG/SG/UT/LA.:-

- 1) Services of other than (i) above provided by CG/SG/UT/LA to CG/SG/UT/LA are exempt.
- 2) For the purpose of services referred in (ii) & (iii) above, provided by CG/SG/UT/LA where **Gross consideration does not exceed Rs. 5,000** are exempt.
- 3) Services by CG/SG/UT/LA by way of **guaranteeing loan** taken by their undertakings or PSU's from **banking companies & financial institutions** are exempt.
- 4) Services by CG/SG/UT/LA for **testing/calibration/safety check** or certification relating to **protection or safety of workers & consumers** are **exempt**. Further as per circular 100/19/2019-GST – Services provided for **issue of seed certificates / tags** by seed certification agency to seed producing organization are **exempt**. However, **supply of seed tags by other departments / manufacturers** to SG / Seed certification agencies is supply of goods & **taxable**.
- 5) Issuance of passport, visa, driving license, birth certificate or death certificate are exempt
- 6) Services provided way of **tolerating non-performance of a contract** entered into by the CG/SG/UT/LA where payments received **by CG/SG/UT/LA by way of fines, penalty** etc. for tolerating non-performance of contract are **exempt**.
- 7) Excess Royalty Collection Contractor is a person to whom govt authorized to collect royalty on their behalf from mining lease holder. Mining leaseholders are liable to GST under RCM on such services. ERCC & Govt enters into contract wherein ERCC is required to collect the amount as per agreement entered. Accordingly, services supplied by a State Government to Excess Royalty Collection Contractor (ERCC) by way of **assigning the right to collect royalty on behalf of the State Government on the mineral dispatched by the mining lease holders** are exempt. This exemption is restricted to amount of GST paid by mining lease holder and ERCC shall be liable to pay GST on difference between GST exempted & GST paid by mining lease holders if GST paid by mining lease holder is less than amount of GST exempted. **(November, 2019 ICAI Exam Question) (Refer Example on Page 6/8- Exemption)**

Important Points for Services provided TO CG/SG/UT/LA.:-

- 1) Pure services (labor contracts) or; **Composite supplies where value of goods is not more than 25%** of Total value
In relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution are exempt if provided to CG/SG/UT/LA.
- 2) Services by Govt. entity to CG/SG/UT/LA in form of **grants** – **Exempt**
- 3) Services to CG/SG/UT by way of sale of food grains, kerosene, sugar, edible oil, etc. under **Public Distribution System** against consideration in the form of commission or margin (LA not covered) are exempt.
- 4) Services provided to the CG/SG/UT under any **insurance scheme for which total premium is paid by CG/SG/UT** (LA not covered) – exempt
- ~~5) Services by GSTN (GST NETWORK) to CG/SG/UT – exempt~~
- 6) Services provided to CG/SG/UT Administration where **75%** or more of expenditure is borne by them are exempt.
- 7) **Sanitation & Conservancy services are procured by Indian Army or any other Government Ministry/Department which does not perform any functions listed in the 11th and 12th Schedule, in the manner as a local authority does for the general public, they are taxable**

5. HEALTHCARE SERVICES



- 1) **Room rent charged from in-patients** in hospital is **exempt**
- 2) **GST is not applicable on consultancy** by doctor.
- 3) **Treatment of Food Supplied by Hospitals:**
 - i) **Food Supplied** directly by Hospital **to in-patients as advised by doctor** – **Exempt**. (Food Supplied to Attendant of Patient is taxable)
 - ii) **Supply of Food is outsourced** by hospital to another agency – **Agency will charge GST & Hospital will not get ITC** (as providing exempt supplies)
- 4) **GST will not be levied on Retention money**. E.g. If hospital charges Rs. 10,000/- from patient and pays Rs. 7500/- to doctors & keeps Rs. 2500/- with them for ancillary expenses, Rs. 2500 will also be exempt.
- 5) Ambulance services by NHM – **Exempt**
- 6) **Services by recognised rehabilitation professionals** are exempt
- 7) ~~Cord Blood Bank & preservation of stem cells, veterinary services are exempt.~~
- 8) ~~Common Bio-medical waste treatments or disposal – Exempt.~~
- 9) **Health care services exemption is not be available to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding Rs. 5000 per day to a person receiving health care services.**
- 10) **Services provided as IVF (In vitro fertilisation) or ART (Assisted Reproductive Technology) are healthcare services, thus exempt.**

"Successful entrepreneurs are givers and not takers of positive energy."

Exemptions [Section 11 r/w NN 12/2017 - CTR] (3/8)

6. EDUCATION SECTOR [E. 66]

Educational institution means an institution providing services by way of,-

- (i) pre-school education and education up to higher secondary school or equivalent;
- (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force;
- (iii) education as a part of an approved vocational education course.

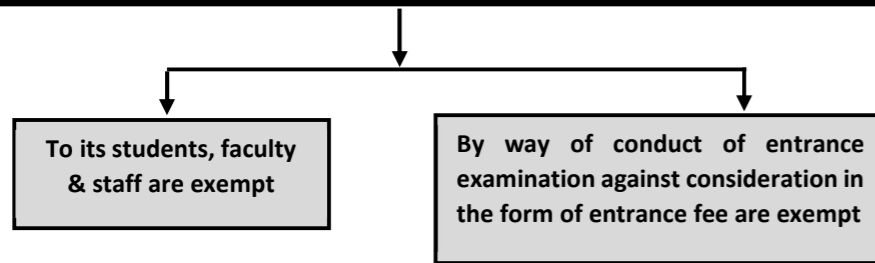
An approved vocational education course means,

Trainings by NCVT & SCVT in designated trade: -

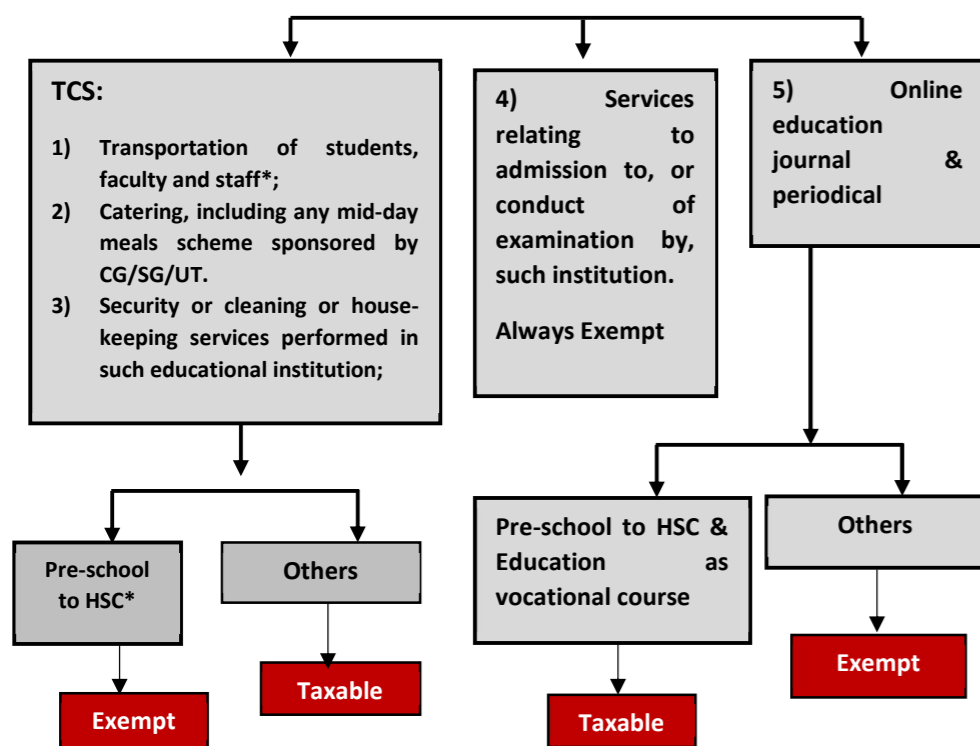
- a) Course run by an Industrial training institute/Industrial training centre affiliated to the National Council for Vocational Training (NCVT) or State Council for Vocational Training (SCVT) offering courses in designated trades notified under the Apprentices Act, 1961 or
- b) A Modular Employable Skill Course, approved by the NCVT.

Educational Services exemption we will learn in 2 parts as below

(A) Provided BY Educational Institutions (OUTPUT SERVICES)



(B) Provided TO Educational Institutions (INPUT SERVICES)



*The supply of services, by way giving on hire the motor vehicle to a person who is providing services to educational institution providing pre-school to HSC education, are exempt. [E. 22(c)]

6. EDUCATION SECTOR [E. 66] [Continued]

Other Important Points: -

- 1) Education as a part of curriculum for obtaining qualification recognized under any law in India is exempt (E.g. Pursuing CA)
- 2) Services provided by Boarding Schools along with residence & food is exempt as predominant supply is of education.
- 3) Service of giving motor vehicle on hire for transportation of students, faculty & staff to educational institution of pre-school to HSC – Exempt.
- 4) Placement services provided to educational institutions are taxable.
- 5) Catering services provided by educational institutions is exempt. However, if provided by third party to educational institutional providing pre-school to HSC education then its exempt, otherwise it would be taxable.
- 6) Services by ITI (Industrial Training Institutes) including private ITI: -

Circular 55/29/2018-GST dated 9th August, 2018

| Sr. No. | Category | Exemption / Taxable |
|---------|---|---------------------|
| 1 | Vocational training provided by private ITIs in designated trades (as per apprentice act e.g. Barber/Hair Cutter/Dresser, CAD-CAM Operator-cum-Programmer, Chemical Laboratory Assistant) | Exempt |
| 2 | Vocational training provided by private ITIs in other than designated trades. | Taxable |
| 3 | Service, provided by a private Industrial Training Institute for conduct of examination against entrance fees [Sl. No. 66 of notification No. 12/2017-CT(Rate)] | Exempt |

- 7) Foreign courses by private institutes are taxable, education for non-recognized qualification are taxable.
- 8) Maritime Institutes are educational institutions under GST Law and the courses conducted by them are exempt from levy of GST.
- 9) **Issuance of migration certificate to the leaving or ex-students – Exempt**

Summary of Taxability of Input & Output Supplies

| Services | Pre-school to HSC | Education as qualification under law (other than pre-school to HSC) | Coaching Centre | NCVT/SCVT |
|---|-------------------|---|-----------------|-----------|
| INPUT SERVICES AVAILED BY THESE INSTITUTIONS | | | | |
| Transportation of students, faculty and staff | Exempt | Taxable | Taxable | Taxable |
| Catering, including any mid-day meals scheme sponsored by CG/SG/UT (OUTDOOR CATERING) | Exempt | Taxable | Taxable | Taxable |
| Security, cleaning house keeping | Exempt | Taxable | Taxable | Taxable |
| Printing of papers content supplied by institutions, Honorarium, rental | Exempt | Exempt | Taxable | Exempt |
| Honorarium to paper setter | Exempt | Exempt | Taxable | Exempt |
| Online education journal | Taxable | Exempt | Taxable | Taxable |
| OUTPUT SUPPLIES PROVIDED BY THESE INSTITUTIONS | | | | |
| Any Services (including catering whether or not inhouse) | Exempt | Exempt | Taxable | Exempt |
| Uniforms (Goods) | Taxable | Taxable | Taxable | Taxable |
| Entrance fees for conduct of exams | Exempt | Exempt | Taxable | Exempt |

TAXABILITY OF COURSES OFFERED BY IIM (INDIAN INSTITUTE OF MGT):

W.e.f. 31st January, 2018 onwards, all **long duration programs** (one year or more) conferring degree/ diploma as recommended by Board of Governors as per the power vested in them under the IIM Act, 2017 including one- year Post Graduate Programs for Executives are **exempt from GST**

All short duration executive development programs or need based specially designed programs (less than one year) which are not a qualification recognized by law **are taxable under GST**

(7) Banking & Financial Sector

1) **Services by RBI – Exempt (TO RBI Taxable).**

Note: - Services to RBI by members of overseeing committee, GST will be paid by RBI under RCM. (Refer RCM Chapter)

- 2) Services by way of—
 - (a) **extending deposits, loans or advances** in so far as the consideration is represented by way of interest or discount (**other than interest involved in credit card services**);
 - (b) inter se **sale or purchase of foreign currency amongst banks or authorized dealers** of foreign exchange or amongst banks and such dealers are exempt.

Note: -

Service charges collected over and above loan are taxable.

- 3) Services provided by international finance corporation & Asian development bank are exempt.
- 4) GST shall not be charged on charges charged by bank of payment of upto Rs. 2,000/- made by any person through debit / credit card. The said exemption is to encourage online transaction for small amounts made by credit card, debit card, charge card or other payment card service. (Sl. 34)
- 5) Services by an **intermediary of financial services located in a multi services SEZ** with International Financial Services Centre (IFSC) status to a customer located **outside India for international financial services in currencies other than Indian rupees (INR) are exempt.**
- 6) Services by the following persons in respective capacities are exempt—
 - (a) business facilitator (BF) or a business correspondent (BC) to a banking company with respect to accounts in its rural area branch; (*urban area branches covered under RCM*)
 - (b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or
 - (c) business facilitator or a business correspondent to an insurance company in a rural area.

Your circumstances reflect what you have been thinking about

Exemptions [Section 11 r/w NN 12/2017 - CTR] (4/8)

8. CONSTRUCTION INDUSTRY

1) **Pure labour contracts** of construction, or any work of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for **All (Urban) Mission or Pradhan Mantri Awas Yojana** are exempt.

2) Services by way of erection or construction of original works pertaining to single residential unit otherwise as a part of a residential complex;

Residential complex means any complex comprising of a building or buildings, having more than one single residential unit.

3) **Transfer of Development Rights / FSI / Lease Land for construction of residential apartments:** -

Exemption is available to in respect of transfer of development rights, FSI made after 1-4-2019 or upfront amount for long term lease paid after 1-4-2019 to the extent of residential apartments by promoter, when sale is made by promoter during construction (i.e. consideration received before completion certificate or first occupation w.es. earlier)

Amount of Exemption on: -

TDR & FSI for Construction of residential properties OR Long Term Lease (LTL) (>30 years) for construction of residential apartments

GST Payable on TDR / FSI or for LTL construction \times $\frac{\text{Carpet Area of Residential Apt}}{\text{Total Carpet Area of Residential Apt + Commercial Apt.}}$

Further, promoter will be liable to pay GST under RCM on un-booked flats as on date of CC or first occupation whichever is earlier as per below formula:

GST Exempted as per above formula on TDR/FSI or for LTL Construction to the extent of residential apts. \times $\frac{\text{Carpet Area of Residential Apt which remain un-booked on date of CC or first occupation}}{\text{Total Carpet Area of Residential Apt}}$

In simple words, the exemption is to the extent of residential apartments booked before CC or first occupation whichever is earlier.

Location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land are also exempt.

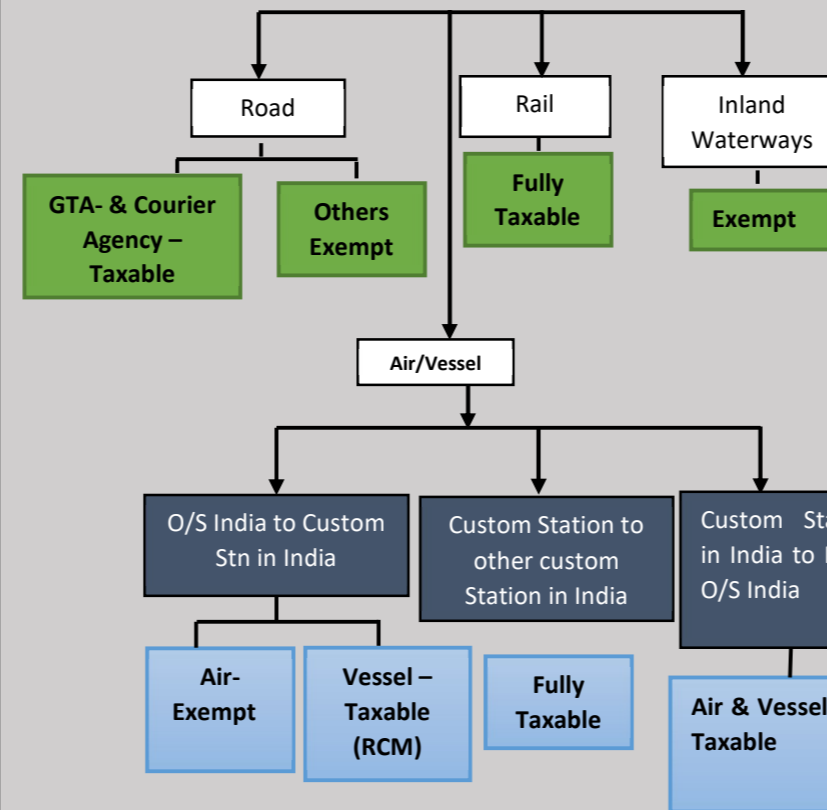
9. GOODS TRANSPORT SECTOR

Services provided by a goods transport agency, by way of transport in a goods carriage of :-

Exemption on Transportation of specific goods & Value exemption:

- ❖ Agricultural produce;
- ❖ ~~Goods, where consideration charged for the transportation of goods transported in a single carriage does not exceed Rs. 1500, OR where consideration charged for transportation of all such goods for a single consignee does not exceed Rs. 750;~~
- ❖ Transportation by rail or a vessel or by GTA of relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; defence or military equipment; newspaper or magazines registered with the Registrar of Newspapers; or materials; agricultural produce; milk, salt and food grain including flours, pulses and rice; and organic manure.
- ❖ ~~Transportation of railway equipment or materials by rail or vessel.~~
- ❖ Services by way of granting National Permit to a goods carriage to operate through-out India/ contiguous States (E. 61A) are exempt.

Exemption on Mode of Transportation of Goods

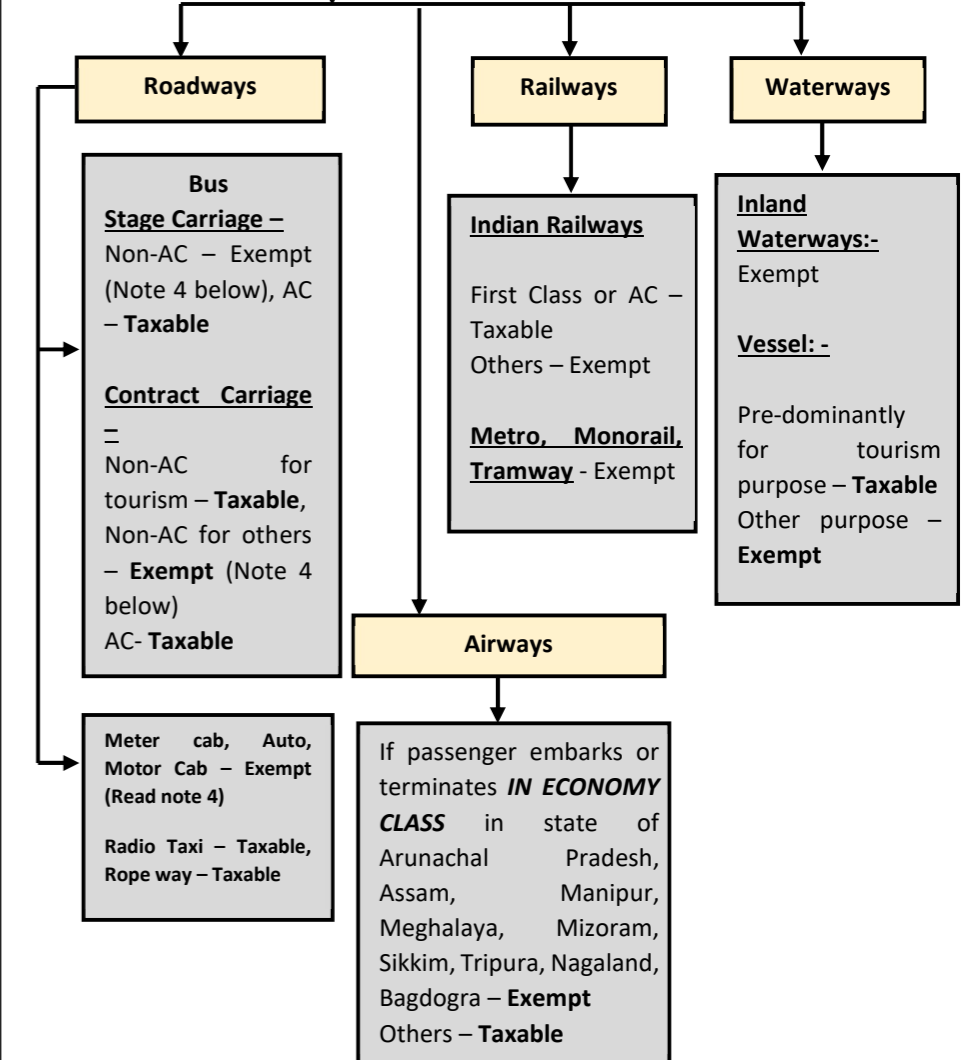


Supply through pipelines or conduit are fully taxable

Other Important Points: -

- 1) GST on supply of services associated with transit cargo to Nepal and Bhutan are exempt. In this regard, it is clarified that exemption under Entry 9B covers services associated with transit cargo both to and from Nepal and Bhutan.
- 2) GST is not leviable on private ferry used for passenger transportation. It is further clarified that, the expression 'public transport' used in the exemption notification only means that the transport should be open to public. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.

10. PASSENGER TRANSPORT SECTOR



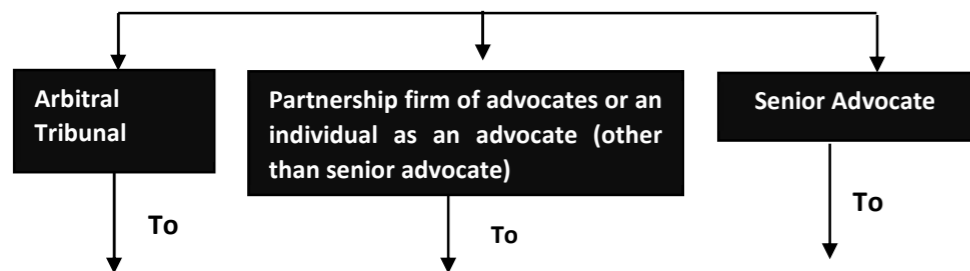
Other Important Points: -

- 1) Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.
- 2) **Services provided by a tour operator to foreign tourist which is performed partly in India and partly outside India is exempt to the extent of the value of the tour operator service which is performed outside India. (Refer last page)**
- 3) Example of Contract Carriage, if a bus is operating between Mumbai & Delhi, it must pick up all its passengers before leaving Mumbai & must drop all its passengers at Delhi & not have any stops in between.
- 4) Stage Carriage can be understood as a MV adapted to carry more than 6 passengers (excluding driver) at separate fares for individual depending on length of journey.
- 5) The services would not be exempt if they are provided through an electronic commerce operator and notified under section 9(5) of CGST Act. (Please refer Section 9(5) wherein few service providers are notified in this regard)
- 6) **Non - AC contract carriage is hired for a period of time - Taxable.**
- 7) **Non - AC contract carriage taken as passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time is exempt**

"Whenever you see a successful person, you only see the public glories, never the private sacrifices to reach them."

Exemptions [Section 11 r/w NN 12/2017 - CTR] (5/8)

11. Legal Service by



- ❖ Any person other than a business entity; or
- ❖ A business entity with an aggregate turnover upto such an amount in preceding FY as makes it eligible for exemption from registration under CGST Act, 2017 (*hereinafter "Small Business entities"*)
- ❖ CG/SG/UT/LA, Governmental Authority, Government Company.

ARE EXEMPT.

Further, Partnership firm of advocates or an individual as an advocate (**other than senior advocate**) providing legal services to an advocate or Partnership firm of advocates – Exempt

Now let us understand the taxability of Senior Advocate providing services to partnership firm of advocates:-

In order to answer this question following 2 questions need to be addressed:

(i) Whether such services are taxable?

Ans: Yes, the said services are taxable. Since exemption is only when partnership firm or individual advocates (**OTHER THAN SENIOR ADVOCATE**) provides services to partnership firm or individual advocates. Thus, if supplier is senior advocate and services are provided to any "business entity" then the same is taxable if business entity has turnover of more than such an amount in PFY which makes them ineligible for exemption from registration.

As per Notification 12/2017 - CTR; "business entity" means any person carrying out business. Thus, individual or partnership law firm is a business entity for the limited purpose of notification 12/2017 - CTR (**for determining taxability not charge**)

(ii) What would be charge of Tax - FCM or RCM?

In order to understand charge under reverse charge or forward charge, we shall check notification 13/2017 - CT(R), wherein there is one entry which provides supply of legal services to business entities.

As per Explanation (c) to Notification 13/2017 - CTR; "business entity located in the taxable territory who is litigant, applicant or petitioner, as the case may be, shall be treated as the person who receives the legal services for the purpose of this notification.

Thus, definition of business entities are different for both notifications. Thus, services provided by senior advocate to other advocates would be chargeable to tax under **FORWARD CHARGE MECHANISM.**

The GST Law has been borrowed from erstwhile Service Tax Law, the footprints of taxability of services provided by senior advocate to other advocates can be traced back to Para No. 6 of F. No. 334/8/2016-TRU dated 29th February, 2016 which states "Service tax in the above instances would be levied under forward charge".

(ICAI VIEW – RCM, SO IN EXAM WRITE RCM TAXABILITY)

Summary Taxability of Legal Services

| Service recipient | Supplier - Senior Advocate | Supplier - Individual advocate or Partnership firm of advocates (Other than Senior Advocate) |
|---|----------------------------|--|
| Other than B.E. | Exempt | Exempt |
| B.E. having turnover of less than threshold in PFY (registered in CY) | Exempt | Exempt |
| CG, SG, UT, LA, Govt. Authority, Govt. company | Exempt | Exempt |
| Individual advocate or Partnership firm of advocates or senior advocate | Taxable, FCM | Exempt |
| B.E. having turnover more than threshold in PFY (registered in CY) | Taxable, RCM | Taxable, RCM |

12. LIFE INSURANCE BUSINESS

- ❖ Services of life insurance business provided by way of annuity under the **National Pension System** regulated by Pension Fund Regulatory and Development Authority of India (PFRDA) under the Pension Fund Regulatory and Development Authority Act, 2013 (23 of 2013);
- ❖ Life Insurance to members of army, navy, Airforce, under group insurance scheme of CG are exempt.
- ❖ W.e.f. 1st October, 2019, Services of life insurance provided or agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the Group Insurance Schemes of the concerned Central Armed Police Force are exempt
- ❖ Coastal Guards under Naval Group Insurance Funds are also exempt.
- ❖ Life Insurance scheme **under various schemes:-** (only imp covered)
 - (i) Janashree Bima Yojna
 - (ii) Life – Micro insurance product approved by IRDA having **MAXIMUM cover of Rs. 2,00,000/- are exempt**
 - (iii) PM Jeevan Bima Yojana
 - (iv) PM Jan Dhan Yojana & Vaya Vandan Yojna are exempt

13. GENERAL INSURANCE BUSINESS (ONLY IMP COVERED)

- ❖ Hutt / Cattle Insurance
- ❖ Insurance for Tribals
- ❖ PM Fasal Bima Yojna
- ❖ PM Suraksha Bima Yojna
- ❖ Nirmaya Health Insurance Scheme
- ❖ w.e.f. 1st October, 2019; Bangla Shasya Bima (Entry 35) are exempt. Note: - Re-insurance of above is also exempt.

14. LEASING SERVICES

Lease Long term (> 30 years) – Charges payable as upfront amount is exempt if it is

- ❖ Provided by SG Industrial Development or entity having ownership >20% of CG/SG/UT and,
- ❖ Provided to Industrial units or developers in any industrial / financial business

15. ARTIST SERVICES

Services by an artist by way of a performance in folk or classical art forms of Music, or Dance, Theatre, if the consideration charged for such performance is upto Rs. 1,50,000/- are exempt. This exemption shall not apply to service provided by such artist as a brand ambassador.

16. ADMISSION TO VARIOUS EVENTS

- (i) Services by way of admission to a museum, national park, wildlife sanctuary, tiger reserve or zoo.
 - (ii) Services by way of admission to a protected monument so declared under the Ancient Monuments and Archaeological Sites and Remains Act 1958 or any other law for time being in force.
 - (iii) Services by way of right to admission to, -
 - ❖ Circus, dance, or theatrical performance including drama or ballet;
 - ❖ Award function, concert, pageant, musical performance or any sporting event other than a recognized sporting event;
 - ❖ recognised sporting event & planetarium
- where the consideration for admission in not more than Rs. 500 per person are exempt.

"Try not to become a person of success, but rather try to become a person of value."

Exemptions [Section 11 r/w NN 12/2017 - CTR] (6/8)

17. SERVICES BY UNINCORPORATED BODY OR NOT FOR PROFIT ORGANISATION

(i) Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –

- ❖ As a trade union;
- ❖ For the provision of carrying out any activity which is exempt from the levy of GST;
- ❖ Up to an amount of **Rs. 7,500/-** per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex.

Legal position on taxability of maintenance charges collected by RWA (Circular No.109/28/2019- GST dated 22nd July, 2019)

| Particulars | Case I | Case II | Case III | Case IV |
|---|--|---------------------------------|---------------------------------|---------------------------------|
| Annual Turnover | More than Rs. 20L/- | More than Rs. 20L/- | Less than or equal to Rs. 20L/- | Less than or equal to Rs. 20L/- |
| Charges per month per member for each residential apartment | More than Rs. 7,500/- | Less than or equal to Rs. 7,500 | More than Rs. 7,500/- | Less than or equal to Rs. 7,500 |
| Taxability | Taxable | Exempt | Exempt | Exempt |
| Notes | Entire amount is taxable not just in excess of Rs. 7,500/- | NA | NA | NA |

ITC on Inputs / Input Services & Capital Goods

- ❖ RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fittings etc.) and input services such as repair and maintenance services provided: -
- ❖ Amount charged by RWA is more than Rs. 7,500/- per month per member & RWA is registered under GST (i.e. annual turnover is more than Rs. 20 Lakhs).
- ❖ Further, it is important to note that if charges per member are less than or equal to Rs. 7,500/- and RWA is registered under GST, RWA shall be liable to reverse ITC as per Section 17 of CGST Act)

18. MISCELLANEOUS EXEMPTIONS (ONLY IMP)

- 1) Services provided to a **recognised sports body** by (a) an **individual** as a player, referee, umpire, coach or team manager for participation in a sporting event organised by a recognized sports body; (b) **another recognised sports body is exempt.**
- 2) **Royalty & License Fees included in transaction value u/r 10(1)(c) of Customs Valuation Rules is exempt.**
- 3) GTA Services to recipient registered only for the purpose of deduction of TDS is exempt.
- 4) Services by **sponsorship** of event organised by **National Sports Federation**, Indian Sport Council for Deaf, Paralympic, Indian Olympic Association etc. **are exempt**
- 5) Services by **National Skill development corporation** / sector skill council in relation to recognised skill development program **is exempt.**
- 6) Transfer of business as a going concern is exempt
- 7) Services by way of **renting of residential dwelling to any person other than registered person for use as residence is exempt**
- ~~8) **Services by a hotel, inn, guest house, club or campsite etc. for residential or lodging purposes, having value of supply of a unit of accommodation less than or equal to Rs. 1000 is exempt.**~~
- 9) Services by way of **giving on hire** to
 - (a) To a **state transport undertaking**, a motor vehicle meant to carry > 12 passengers;
 - (b) To a **GTA**, a means of transportation of goods; or
 - (c) **Motor vehicle for transport of students, faculty and staff**, to a person providing services of transportation of students, faculty and staff to an **educational institution** providing services by way of **pre-school education and education upto higher secondary school or equivalent.**
 - (d) to a local authority, an Electrically operated vehicle meant to carry more than twelve passengers; to a goods transport agency, a means of transportation of goods. **are exempt.**

[Renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles is not eligible for exemption under notification 12/2017 – CTR.]
- 10) Service by way of access to a road or a bridge on payment of **toll charges or Additional toll / fees collected from non-fastag vehicle is exempt**
- 11) Transmission or distribution of electricity by an **electricity transmission or distribution utility – exempt.**
- 12) Services provided by an incubatee up to a total turnover of Rs. 50 Lakhs in a financial year subject to the following conditions, namely: -
 - (a) the **total turnover had not exceeded Rs. 50 lakhs during the preceding financial year;** and
 - (b) a period of **three years has not elapsed** from the date of entering into an agreement as an incubatee are exempt
- ~~13) **Services by way of licensing, registration and analysis or testing of food samples supplied by the Food Safety and Standards Authority of India (FSSAI) to Food Business Operators are exempt**~~
- ~~14) **Services by way of slaughtering of animals is exempt.**~~
- 15) Services by way of **public conveniences** such as provision of facilities of bathroom, washrooms, lavatories, urinal or toilets **are exempt.**
- 16) Service provided by (FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 Women's World Cup 2020 to be hosted in India is exempt
- 17) Services by way of right to admission to the events organised under FIFA U-17 Women's World Cup 2020 **whenever rescheduled are exempt.**
- 18) Satellite launch services supplied by Indian Space Research Organisation, Antrix Corporation Limited or New Space India Limited are exempt w.e.f. 16th October, 2020 vide NN 05/2020 CT(R) dated 16th October, 2020.

1) ANALYSING CONCEPT OF ERC CONTRACTOR

It is pertinent to note that there are two considerations flowing from miner to state govt. viz. Dead (fix) Rent at periodic interval & Royalty to State Government. Dead Rent is pre-determined amount, royalty % is determined on suitable basis such as % of sales by miner etc.

Excess Royalty Collection Contract” means a contract for specified mineral(s) and area given to collect royalty in excess of annual dead rent, on behalf of the Government from the holder of mining lease (s) under the contract whereunder the contractor shall pay a fixed amount annually to the Government as per terms of the contract.

Example if ONGC Limited has obtained license from Maharashtra State Government. Maharashtra State Govt. agrees to receive dead rent of Rs. 5,00,000/- per annum. Further, they agree that royalty shall 10% of Sales value for first 3 years i.e. contract period. Maharashtra SG appoints Mr. Kumar as a person to collect revenue for this contract. Maharashtra State assigns right to collect royalty from ABC Ltd to Mr. Kumar for Rs. 85,00,000. Thus, Mr. Kumar is treated as ERCC. Determine Taxability in below cases

- i) ONGC Ltd. was able to sell 8,30,00,000 of mineral
 - ii) ONGC Ltd. was able to sell 5,50,00,000 of mineral
- Let us understand taxability of above example as per Entry 65B & Notification 13/2017 – CTR.

Case (i) ONGC Ltd. was able to sell 8,30,00,000 of mineral

➤ Tax Impact on Miner – ONGC

Thus, ONGC is liable to pay GST under reverse charge as per entry no. 4 of Notification 13/2017 – CTR
Amount on which reverse charge is to be discharged: -

- a) Fixed Rentals: - Rs. 5,00,000 x 3 years = 15,00,000
 - b) Royalty: - 8,30,00,000 x 10% = 83,00,000
- Totalling to Rs. 98,00,000 x 18% = 17,64,000**
(Please note that Tax has to be discharged in accordance with Time of Supply provisions)

➤ Tax Impact on ERCC Contractor i.e. Mr. Kumar

As per Entry No. 65B Mr. Kumar will get an exemption of Rs. 85,00,000. Since total tax is paid by ONGC Ltd. on amount exceeding 85,00,000/-. ERCC will not be liable to pay tax.

Case (ii) ONGC Ltd. was able to sell 5,50,00,000 of mineral

➤ Tax Impact on Miner – ONGC

Thus, ONGC is liable to pay GST under reverse charge as per entry no. 4 of Notification 13/2017 – CTR
Amount on which reverse charge is to be discharged: -

- a) Fixed Rentals: - Rs. 5,00,000 x 3 years = 15,00,000
 - b) Royalty: - 5,50,00,000 x 10% = 55,00,000
- Totalling to Rs. 70,00,000 x 18% = 12,60,000/-**
(Please note that Tax has to be discharged in accordance with Time of Supply provisions)

➤ Tax Impact on ERCC Contractor i.e., Mr. Kumar

As per Entry No. 65B Mr. Kumar will get an exemption of Rs. 85,00,000 when he will pay this amount to SG (at first instance). However, since ONGC Ltd. discharged tax on Rs. 70,00,000/-, ERCC Contractor has to pay GST on shortfall of Rs. 15,00,000 [85,00,000 (-)70,00,000].

2) Liquidated Damages: -

(a) Fines / Penalties or liquidated damages payable to Government

As per entry 62 of NN 12/2017 – CTR Fines / Penalties or liquidated damages payable to Government or Local Authority are Exempted, therefore, **NO GST IS CHARGED NOR EVEN PAYABLE ON RCM BASIS.**

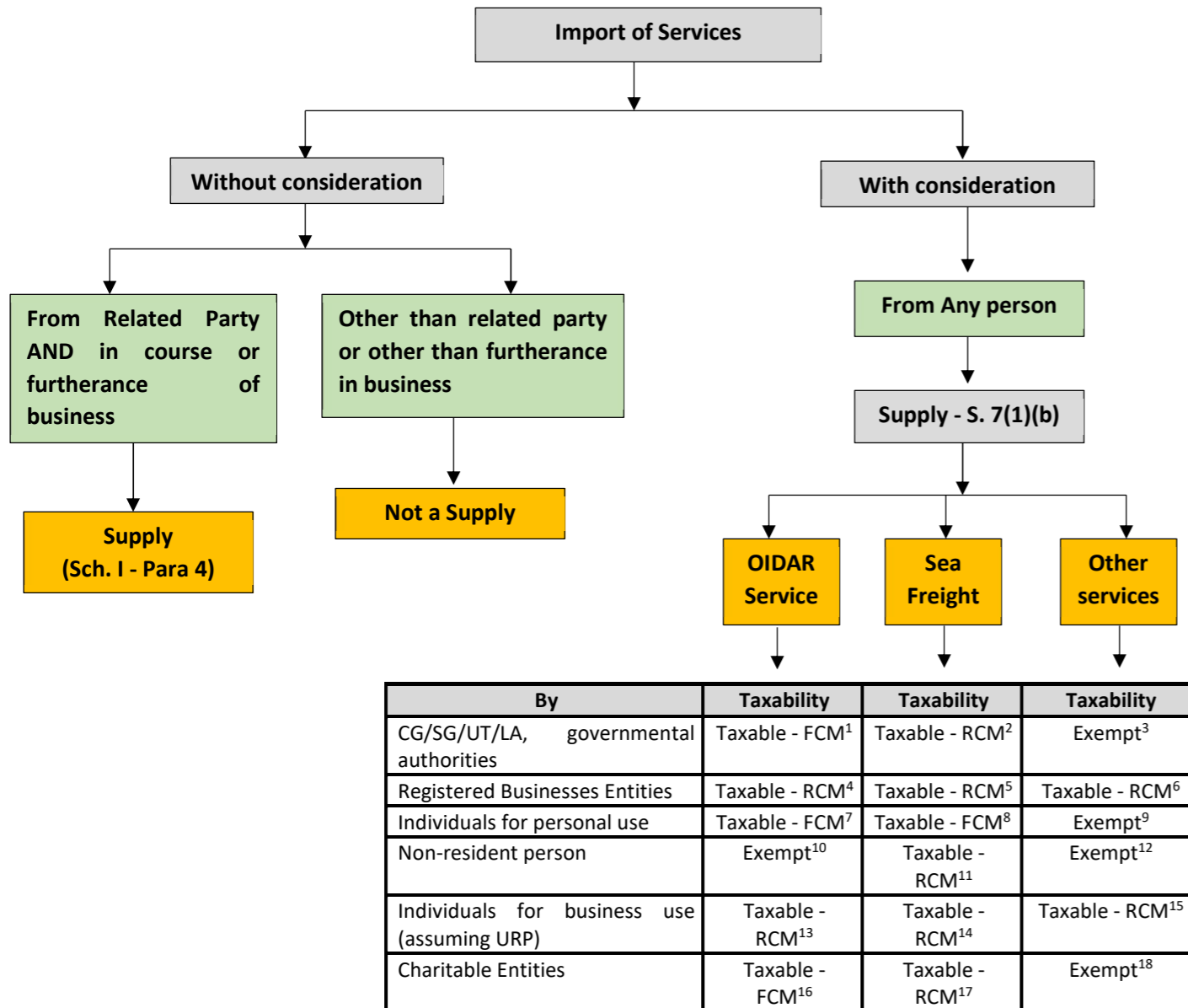
(b) Fines / Penalties or liquidated damages payable by Government

In this case contractor issues invoice on the Government or Local Authority to Recover Penalty / Compensation/ LD, GST IS PAYABLE on the amount of Penalty or liquidated damages claimed by the Contractor on the Government or Local Authority. However, as per Circular 178/10/2022, Liquidated damages will not be “supply.”

Work to become a resourceful person, make yourself a treasure of knowledge. Do not work only for money, it shall be a by-product. Live a life with a purpose, otherwise you will be alive without liveliness - CA Keval Mota

Exemptions [Section 11 r/w NN 12/2017 - CTR] (7/8)

19. INDEPTH INTERLINKING CHART FOR TAXABILITY OF IMPORT OF SERVICES
 [Harmonious reading of S. 2(16) & S. 14 of IGST Act, Notification 10/2017 - IT(R), Notification 9/2017 - IT(R), Section 7 of CGST Act, Schedule I to CGST Act]



| Sr. No. | Notation | Imported By | Provision |
|---------|----------------|---|---|
| 1 | OIDAR Services | CG/SG/UT/LA, governmental authorities | CG/SG/UT/LA, governmental authorities are non-taxable online recipients. Services provided by OIDAR service provider located in NTT to NTOR is taxable under forward charge [S. 2(16) & S. 14 of IGST Act] |
| 2 | Sea Freight | CG/SG/UT/LA, governmental authorities | Services of transportation of goods from vessel by importer are covered under reverse charge and tax shall be payable by "Importer of Goods". [Notification 10/2017 - IT(R)]. Thus, taxable under reverse charge. |
| 3 | Other Services | CG/SG/UT/LA, governmental authorities | As per Notification No. 9/2017 - IT (R) services other than OIDAR & Sea freight imported by these entities are exempt . |
| 4 | OIDAR Services | Registered Businesses Entities | Registered business entities are not non-taxable online recipients. Thus, the services imported by them would be taxable under reverse charge [Section 2(16) of IGST Act, read with Section 14 of IGST Act & Notification 10/2017 - IT (R)] |
| 5 | Sea Freight | Registered Businesses Entities | Registered business entities being importer would be liable to pay tax under reverse charge [Notification 10/2017 - CTR] |
| 6 | Other Services | Registered Businesses Entities | Registered business entities are not non-taxable online recipients. Services received by persons other than non-taxable online recipients would be taxable under reverse charge. Thus, registered business entities would be liable to pay tax under reverse charge [Section 2(16) of IGST Act, read with Notification 10/2017 - IT (R)] |
| 7 | OIDAR Services | Individuals for personal use | Individuals using OIDAR services for personal purposes are non-taxable online recipients. Services provided by OIDAR service provider located in NTT to NTOR is taxable under forward charge [S. 2(16) & S. 14 of IGST Act] |
| 8 | Sea Freight | Individuals for personal use | Generally when goods are imported by Individual, freight forwarder clears the goods and freight is paid by freight forwarder and then recovered from individual. Thus, freight forwarder will charge GST on supply of those services under forward charge . |
| 9 | Other Services | Individuals for personal use | As per Notification No. 9/2017 - IT (R) services other than OIDAR & Sea freight imported by these persons are exempt. Thus, these services would be exempt . |
| 10 | OIDAR Services | Non-resident person | Services imported by non-resident person including OIDAR services, are exempt from GST by virtue of notification 9/2017 - IT (R). |
| 11 | Sea Freight | Non-resident person | Services imported by non-resident person OTHER than sea freight, are exempt from GST by virtue of notification 9/2017 - IT (R). Thus, sea freight would be taxable under reverse charge accordingly, importer (NR) would be liable to pay tax under reverse charge . |
| 12 | Other Services | Non-resident person | Services imported by non-resident person including OIDAR services, are exempt from GST by virtue of notification 9/2017 - IT (R). |
| 13 | OIDAR Services | Individuals for business use (assuming URP) | Individuals using OIDAR services for commercial purposes are not non-taxable online recipients. Thus, services provided by OIDAR service provider located in NTT to other than NTOR is taxable under reverse charge [S. 2(16) & S. 14 of IGST Act r/w NN 10/2017 - IT(R)] |
| 14 | Sea Freight | Individuals for business use (assuming URP) | Unregistered business entities being importer would be liable to pay tax under reverse charge [Notification 10/2017 - CTR] |
| 15 | Other Services | Individuals for business use (assuming URP) | Unregistered business entities being other than NTOR would be liable to pay tax under reverse charge [Notification 10/2017 - CTR] |
| 16 | OIDAR Services | Charitable Entities | Charitable entities are non-taxable online recipients as they provide services other than commerce, industry or any other business or profession. Services provided by OIDAR - NTT to NTOR is taxable under forward charge. [Section 2(16) of IGST Act, read with Section 14 of IGST Act & Notification 10/2017 - IT (R)] |
| 17 | Sea Freight | Charitable Entities | Services of transportation of goods from vessel by importer are covered under reverse charge and tax shall be payable by "Importer of Goods". [Notification 10/2017 - IT(R)]. Thus, taxable under reverse charge. |
| 18 | Other Services | Charitable Entities | As per Notification No. 9/2017 - IT (R) services other than OIDAR & Sea freight imported by these entities are exempt . |

"I have not failed. I've just found 10,000 ways that won't work."

Exemptions [Section 11 r/w NN 12/2017 - CTR] (8/8)

20. MISCELLANEOUS IGST EXEMPTIONS & ANALYSIS

| Sr. No. | IGST Exemptions [NN 9/2017 - ITR] |
|--|--|
| 1. | Services received by the RBI, from outside India in relation to management of foreign exchange reserves |
| 2. | Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India . |
| 3. | Services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons [in accordance with Explanation 1 in section 8 of the IGST Act] provided the place of supply of the service is outside India [in accordance with section 13 of IGST Act]. |
| <p>Analysis: As per section 2(5) of IGST Act, export of goods means taking goods out of India to a place outside India. As per section 2(6) of IGST Act, a supply of service shall be treated as exported when below conditions are cumulatively satisfied.</p> <ul style="list-style-type: none"> (i) the supplier of service is located in India; (ii) the recipient of service is located outside India; (iii) the place of supply of service is outside India; (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by RBI. (v) The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8; <p>Since export of service to own establishment is not an export, whether it will be covered under ambit of tax. The answer to this is "no". As per aforementioned entry government has clarified the position that Services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons are exempt. Thus, no tax would be payable. However, it will call reversal of Input Tax Credit.</p> | |
| 4. | Import of services by United Nations or a specified international organisation for official use of the United Nations or the specified international organisation. Specified international organisation means an international organisation declared by the Central Government in pursuance of section 3 of the United Nations (Privileges and Immunities Act) 1947, to which the provisions of the Schedule to the said Act apply. |
| 5. | Intra-State supplies received by a TDS deductor from any unregistered supplier exempt from CGST. Intra-State supplies of goods or services or both received by a deductor under section 51, from any unregistered supplier, is exempt provided registration is not taken by such deductor to make any taxable supply. [There are 2 registrations for deductor, one works like TAN in income tax, i.e., to deduct tax & another to provide services i.e., normal registration. |
| <p>Analysis: Thus, Tax shall not be deducted at source when unregistered persons supply to persons who are responsible to deduct tax (Government Agencies).</p> | |
| 6. | Services imported by unit/developer in SEZ exempt from IGST All services imported by a unit/developer in the Special Economic Zone (SEZ) for authorised operations are exempt from the whole of the integrated tax leviable thereon under section 3(7) of the Customs Tariff Act, 1975 read with section 5 of the IGST Act, 2017 [Notification No. 18/2017 IT (R) dated 05.07.2017]. |
| <p>Analysis:</p> <ul style="list-style-type: none"> (i) It is pertinent to note that, services imported by SEZ are exempt from GST if they are for carrying out authorised operations. Authorised operations have been notified by laws governing SEZ. Total 64 services are there which are called as authorised operations. (ii) The question here arises that, whether services provided from DTA to SEZ would be exempt or not, it is to be noted that, supply of services to SEZ is zero rated supply. Since, the supply is zero rated the question of taxability does not arise. Reverse charge is just a mechanism to pay tax by recipient only when supply is chargeable to tax. In case of SEZ, the supply is zero rated, thus, in my opinion tax is not payable under reverse charge. However, contrary views are available in market, which proclaims SEZ to claim refund of tax paid under Reverse charge. | |
| 7. | Central Government's share of profit petroleum exempted from CGST Intra-State supply of services by way of grant of license or lease to explore or mine petroleum crude or natural gas or both, has been exempted from so much of CGST as is leviable on the consideration paid to the Central Government in the form of Central Government's share of profit petroleum as defined in the contract entered into by the Central Government in this behalf. [Notification No. 5/2018 CT (R) dated 25.01.2018]. |
| Parallel exemption from IGST has been extended to inter-State supply of such services vide Notification No. 5/2018 IT (R) dated 25.01.2018. | |

SERVICES TO FOREIGN TOURIST WHERE TOUR IS PERFORMED PARTLY IN India AND OUTSIDE India [ENTRY 52A]

Tour operator service, which is performed partly in India and partly outside India, supplied by a tour operator to a foreign tourist, to the extent of the value of the tour operator service which is performed outside India are exempt.

However, value of the tour operator service performed outside India shall be such proportion of the total consideration charged for the entire tour which is equal to the proportion which the number of days for which the tour is performed outside India has to the total number of days comprising the tour, or 50% of the total consideration charged for the entire tour, whichever is less.

Further that in making the above calculations, any duration of time equal to or exceeding 12 hours shall be considered as one full day and any duration of time less than 12 hours shall be taken as half a day.

Explanation. - "foreign tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

Illustrations:

- (a) A tour operator provides a tour operator service to a foreign tourist as follows: - (a) 3 days in India, 2 days in Nepal; Consideration Charged for the entire tour: Rs.1,00,000/- Exemption: Rs.40,000/- (=Rs.1,00,000 x 2/5) or, Rs.50,000/- (= 50% of Rs.1, 00, 000/-) whichever is less, i.e., Rs.40, 000/-(i.e., Taxable value: Rs.60, 000/-);
- (b) 2 days in India, 3 nights in Nepal; Consideration Charged for the entire tour: Rs.1,00,000/- Exemption: Rs.60,000(=Rs.1, 00, 000/- x 3/5) or, Rs.50, 000/- (= 50% of Rs.1,00,000/-) whichever is less, i.e., Rs.50, 000/- (i.e., Taxable value: Rs.50, 000/-);
- (c) 2.5 days in India, 3 days in Nepal; Consideration charged for the entire tour: Rs.1,00,000/- Exemption: Rs.54,545 (=Rs.1,00,000/- x 3/5.5) or, Rs.50, 000/- (= 50% of Rs.1,00,000/-) whichever is less, i.e., Rs.50,000/-(i.e., Taxable value: Rs.50, 000/-).

"If you don't value your time, neither will others. Stop giving away your time and talents - start charging for it.