

SUPPLY UNDER GST [1](25 - 40 MARKS)

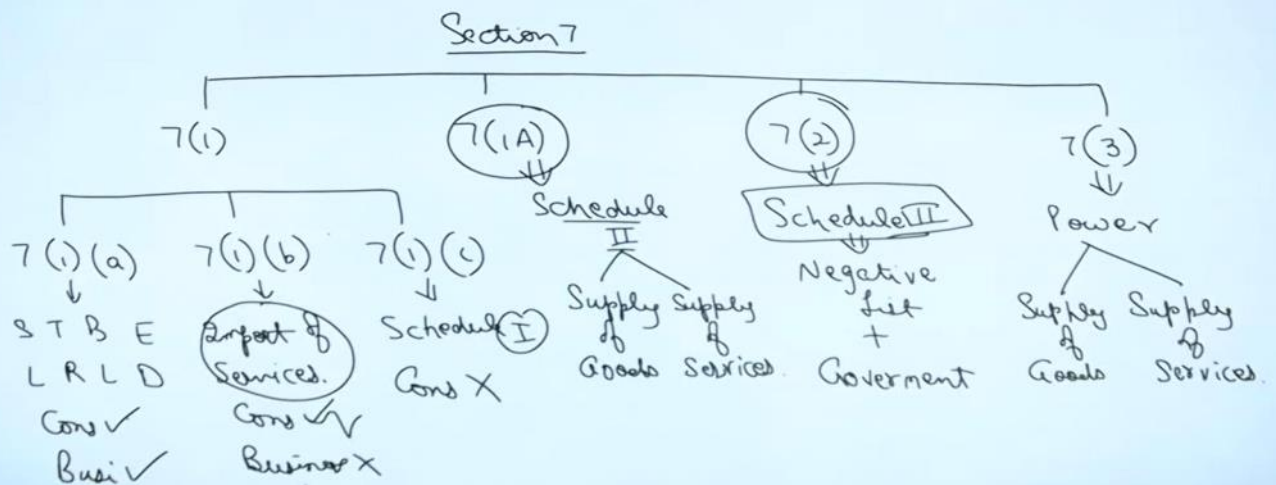
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- **Taxable Event in GST**
 - GST is levied on the "supply" of "goods" or "services" or both.
 - Therefore, the taxable event in GST is "supply".
 - In this chapter, we'll understand the meaning of these terms and understand the scope of supply.
- **SCHEDULE 1 of section 7** - WHAT COMES UNDER SUPPLY WITH OR WITHOUT CONSIDERATION
- **SCHEDULE 2 OF SECTION 7** - WHAT ARE SERVICES AND WHAT ARE GOODS.
- **SCHEDULE 3 OF SECTION 7** - WHAT DOESN'T COMES UNDER SUPPLY WITH OR WITHOUT CONSIDERATION.

1. SECTION 7(1) - SUPPLY INCLUDES

- SECTION 7(1)(A)** - 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.
 - SECTION 7(1)(B)** - import of services for a consideration whether or not in the course or furtherance of business.
 - SECTION 7(1)(C)** - the activities specified in Schedule I, made or agreed to be made without a consideration.
2. **SECTION 7 (1A)** - 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**.
3. **SECTION 7(2)** - Notwithstanding anything contained in **sub-section (1)**,
- (a) activities or transactions specified in **Schedule III**; or
 - (b) 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 as a supply of services.
4. **SECTION 7(3)** - Subject to the provisions of 6[**sub-sections (1), (1A) and (2)**], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—
- (a) a supply of goods and not as a supply of services; or
 - (b) a supply of services and not as a supply of goods.

Analysis of Section 7(1)(a)



- The supply should be of goods or services.
- If anything other than goods or services is supplied, it won't attract GST.
- **Understanding "Sale, Transfer, Barter, Exchange, License, Rental, Lease, Disposal" :**
 - The list of transactions "sale, transfer, barter, exchange, license, rental, lease, or disposal" is not an exhaustive list, but only an illustrative list.
 - This is clear by the use of words "such as".
 - Sale means the transfer of ownership or title by way of selling. Example: A shopkeeper sells a pen for ₹100 to the buyer. After the sale, the pen belongs to the buyer and shopkeeper does not have any right on the pen. This is a transaction of sale.
 - Transfer means to remove from one place or person to another. Example: A company transfers goods from its factory to the depot for sale purposes. This is 'transfer' of goods where the sale has not yet taken place.
 - Barter is when goods or services are supplied in return of goods and services.
 - Example: A doctor got his hair cut from a barber and provides him medical consultancy in return. In this transaction, the doctor provided the medical consultancy services to the barber for which consideration was in the form of hair cutting services provided by the barber. Similarly, the barber provided hair cutting services to the doctor for which consideration was in the form of medical consultancy services provided by the

doctor.

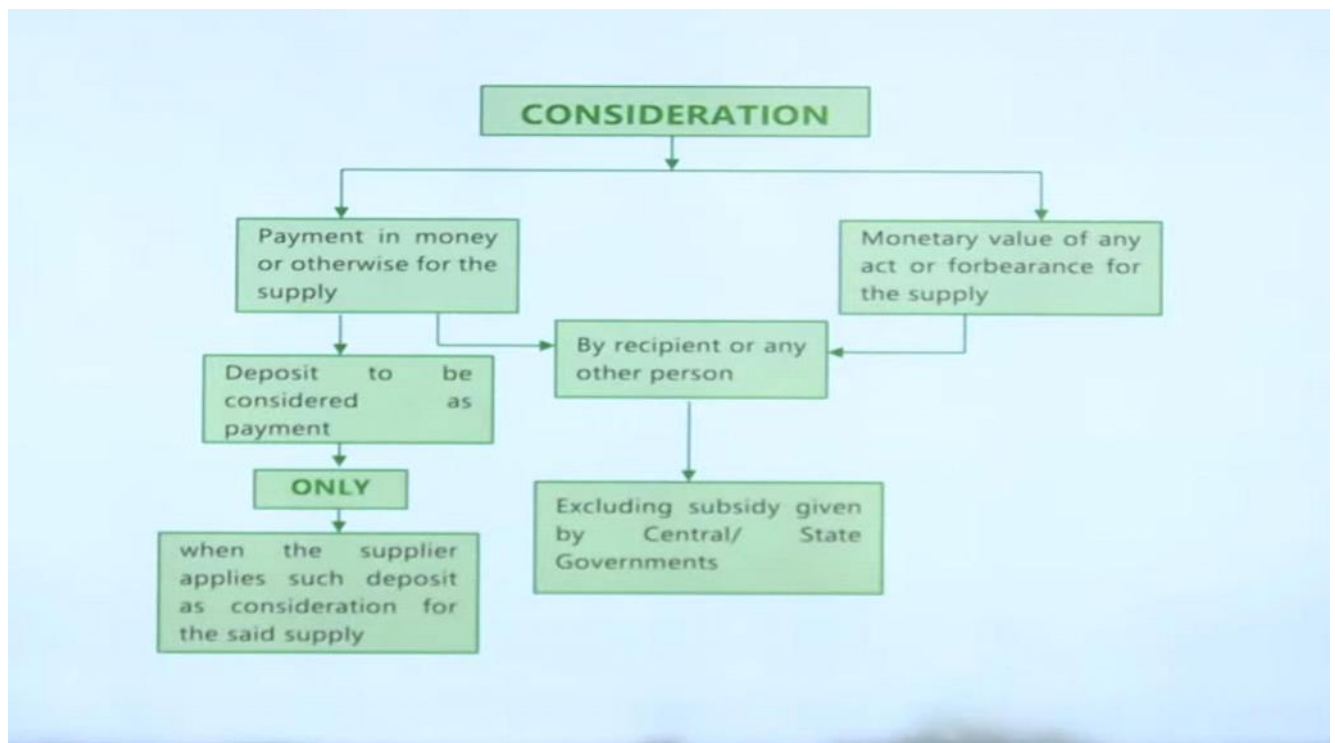
- Exchange could be partly in goods/services and partly in money.
- Example: When a new car worth ₹5,00,000 is purchased in exchange of an old car along with the monetary consideration of ₹4,00,000 paid for the said purchase.
- License is a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful. For example, obtaining drug license for opening a pharmacy shop.
- Rental is an arrangement to rent something.
- Lease means to make a legal agreement by which money is paid in order to use land, a building, a vehicle, or a piece of equipment for an agreed period of time.
- Difference between renting and leasing is that when you rent something, you are not the owner, and cannot make necessary changes, but when you lease something, you can make necessary changes as per your wish.
- Disposal means sale, pledge, giving away, use, consumption or any other dispositioning of a thing.

• **WHAT DOES "MADE OR AGREED TO BE MADE" MEANS :**

- The words "made or agreed to be made" indicate that even if advance money is received, it is treated as supply.

• **WHAT IS "A CONSIDERATION" :**

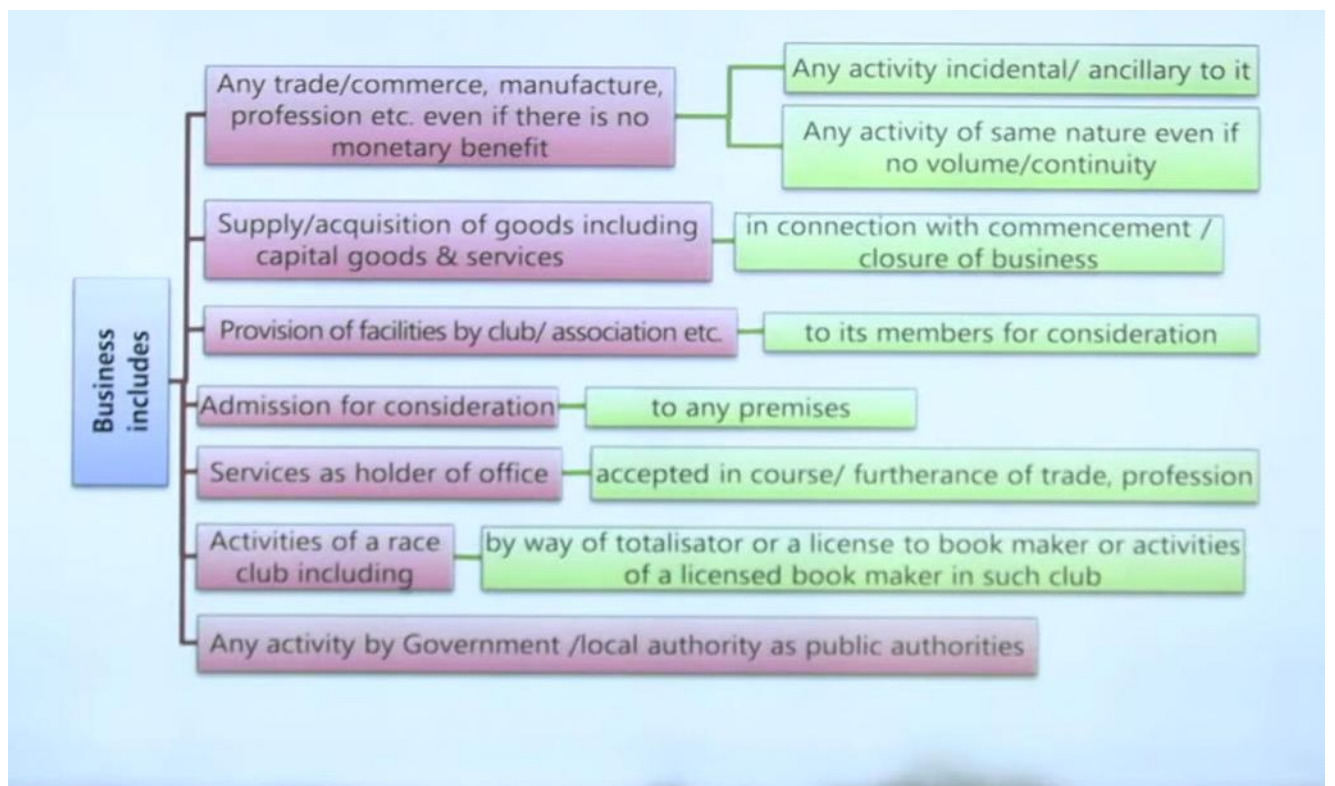
- The supply should be for a consideration.
- Consideration means everything received or recoverable in return for supply or goods or services or both.
- The technical definition of consideration as defined in **Section 2(31)** is: "Consideration" in relation to the supply of goods or services or both 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.
- Payment "made or agreed to be made" means advance is also covered.
- "whether in money or otherwise" means it is not necessary that the consideration has to be in cash or cash equivalents, it could be in kind as well.
- "In respect of" - When you buy something from the market and , that is called paying "in respect of" whatever you bought.
- "in response to" - Suppose I do you a favour, and now, you want to give me something to reciprocate that favour. This is "in response to".
- "for the inducement of" - I'm asking you to do something, but you're not ready to do it. I tell you that if you do it, I'll say good things about you to your crush. This is "for inducement of". I kind a bribed you that persuaded you to do something for me.
- "whether by recipient or by any other person" - This means that consideration can flow from third party as well.
- Subsidies given by the Central or the State Governments are not considered as consideration.
- "Monetary value of an act" - This means that you've given me some money to do something. For example, you give me money to run my classes.
- Monetary value of forbearance" - This means you've given me some money to abstain from doing something. For example, you decide to teach tax from now, so I give you money to not teach tax.
- Apart from above, there's a provision to Section 2(31) which says that 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 that supply.
- "Deposit" is basically kind of a security money which is not specifically earmarked to any particular obligation. For example, when you take a house on rent, you need to give some money to the landlord as "deposit", which you get back when you leave the house. So, this "deposit" is not a consideration.
- However, if the landlord at some later point appropriates this deposit against your rent liability, then it will be treated as a consideration.
- The difference between advance and deposit has been clarified. An advance has to be utilized for the specific purpose for which the advance is made, whereas utilization of a deposit depends entirely on the person with whom it is deposited.
- It has also been clarified by a notification that when an artist supplies his art work to galleries for exhibition, the galleries doesn't pay anything to him, therefore, there is no consideration. However, when somebody selects a particular item provided by the artist and wishes to buy it, then actual supply takes place and GST applies.
- An important feature of consideration is quid pro quo [something for something]. Donations received by the charitable organisations are treated as consideration only if there exists, quid pro quo, i.e., there is an obligation on part of recipient of the donation or gift to do anything (supply a service).



• **WHO IS "PERSON" :**

- Person here means a taxable person. Please note that we're talking about the supplier. The supplier must be a taxable person. If he supplies goods or services to a non-taxable person, then also there is "supply", and GST provisions are applicable.
- A taxable person means a person who is registered or liable to be registered **u/s 22 or 24**. Therefore, even if the person is not registered, but is liable to be registered, he is considered to be a taxable person, and GST provisions apply.
- **For** a supply to attract GST, the supply must also be taxable. Taxable supply means any supply of goods or services or both which is leviable to tax under GST law.

• **WHAT IS "IN COURSE OR FURTHERANCE OF BUSINESS" :**



• **ANALYSIS OF SECTION 7(1)(B)**

- **As per Section 7(1)(b)**, supply includes import of services for a consideration whether or not in the course or furtherance of business.
- This section is applicable only for the import of services, and not for the import of goods. This means that if you import goods for a consideration which are not in the course or furtherance of business, it won't be treated as a supply.
- Services should be provided for a consideration. This means that if you import services without consideration, it won't be treated as a supply.
- Services imported could be in the course or furtherance of business or not. This means that even if you import some services for a consideration for a personal use, it will constitute a supply.

- **ANALYSIS OF SECTION 7(1)(C)**

- As per Section 7(1)(c), supply includes the activities specified in **Schedule I**, made or agreed to be made without a consideration.
- This means that if an activity is mentioned in **Schedule I**, then even if it is undertaken without a consideration, it will be treated as a supply.

- **ACTIVITIES MENTIONED IN SCHEDULE 1 (without consideration)**

- There are 4 paras in schedule 1 :
- 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 Rs.50,000 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 -
 - By a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - 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.

- **Analysis of Para 1 of Schedule I :**

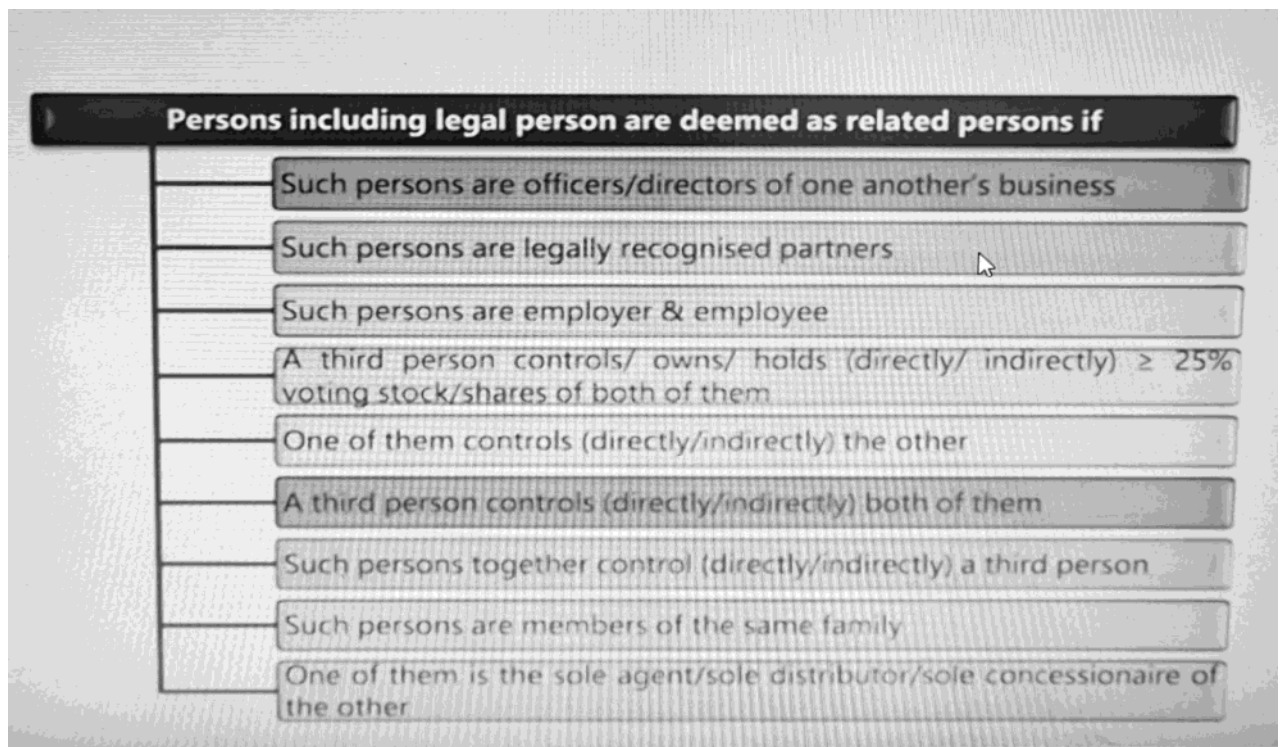
- As per Para 1 of Schedule I, permanent transfer or disposal of business assets where input tax credit has been availed on such assets is considered as supply even it is without any consideration.
- If any entity makes any kind of disposal or transfer of business assets on a permanent basis, even if the transfer is without any consideration, it is treated as supply.
- Please note that the transaction is treated as supply only if ITC has been availed earlier.
- Therefore, in order to qualify as supply, following three conditions need to be satisfied:
 - There must be a disposal or transfer of business assets
 - Such transfer or disposal must be permanent
 - ITC must have been availed on such business assets.
- There are certain assets on which ITC is either blocked, or not available under GST. If such an asset is disposed-off permanently without any consideration, it won't be treated as supply, as the third condition above hasn't been satisfied.
- There could also be a case where ITC was available, but the business didn't avail it. If such an asset is disposed-off permanently without any consideration, it won't be treated as supply, as the third condition above hasn't been satisfied.
- Please note that when a Holding Company transfers assets to its Subsidiary Company at NIL value, that also constitutes a taxable supply.

- **Analysis of Para 2 of Schedule I :**

- As per Para 2 of Schedule 1, 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 is treated as supply even if it is made without consideration.

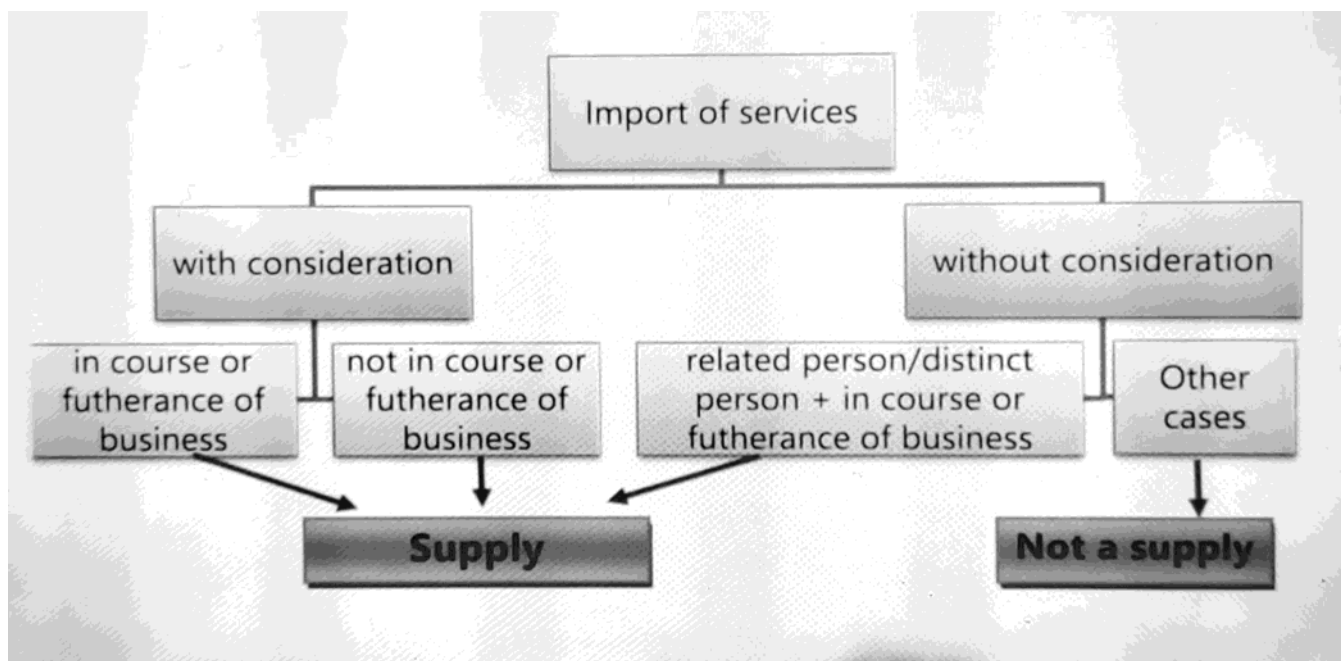
- **Understanding "Related Persons" :**

- A person who is under the influence of another person is called a related person. For example, members of the same family, subsidiaries of a group company, etc.
- Related person is defined in explanation to **section 15**.
- Following is a diagrammatic representation of the definition of related person :



- Please note that even though employer and employee are related persons, the services provided by the employee to the employer in the course of employment are not covered under supply of services as per Schedule III (we'll study it later).
- Also, if the employer gifts an amount up to Rs.50,000 to the employee, it is not treated as a supply. However, if the amount of gift exceeds Rs.50,000, and such gift is in the course or furtherance of business, then it is treated as a supply.

- Perquisites by employer to employee:
 - Since services provided by the employee to the employer are not treated as supply, the consideration to the employee by way of perquisites as per the contractual agreement between them would also not be subjected to GST.
 - Therefore, if the services such as membership of a club, health and fitness centre etc. are provided free of charge to all the employees by the employer, the same shall not be subject to GST.
 - The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost to company.
- **Understanding "Distinct Persons" Under Section 25 :**
 - Before we go through the statutory provisions of 'distinct persons', let us first have an overview of the registration provisions for better understanding of the concept of distinct persons.
 - Under GST law, a supplier is required to obtain State-wise registration.
 - He has to obtain registration in every State/UT from where he makes a taxable supply provided his aggregate turnover exceeds a specified threshold limit.
 - Thus, he is not required to obtain registration from a State/UT from where he makes a non-taxable supply.
Since registration in GST is PAN based, once a supplier is liable to register, he has to obtain registration in each of the States/UTs in which he operates [and makes a taxable supply] under the same PAN.
 - Further, he is normally required to obtain single registration in a State/UT.
 - However, where he has multiple places of business in a State/UT, he has the option either to get a single registration for said State/UT or to get separate registrations for each place of business in such State/UT.
 - Now, let us understand the concept of distinct persons in simple terms.
 - The establishments of a person with separate registrations whether within the same State/UT or in different States/UTs are considered as distinct persons.
 - If a person having one registered establishment in a State/UT has another establishment in a different State/UT [not necessarily registered], these establishments are considered as establishments of distinct persons.
 - Stock transfers or Branch transfers: Under GST, transactions undertaken without consideration will qualify as supply, provided the transfer of goods or services is between:
 - different locations (with separate GST registrations) of same legal entity as these are transactions between distinct persons, or
 - establishments of distinct persons.
 - These transactions are termed as self-supplies.
 - However, transfer between two units of a legal entity under single registration (apparently within same State) will not be considered as supply.
- **Analysis of Para 3 of Schedule I :**
 - **As per Para 3 of Schedule 1**, supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply.
 - Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is considered as supply.
 - Please note that only supply of goods is covered here. This means that supply of services between principal and agent without consideration won't constitute supply.
 - "Agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.
 - "Principal" means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.
 - In order to determine whether a particular principal-agent relationship falls within the ambit of the Para 3 of Schedule I as discussed above or not, the deciding factor is whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not?
 - In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.
 - If the invoice for further supply is being issued by the agent in his name, then, any provision of goods from the principal to the agent would fall within the fold of Para 3 above.
 - If the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Para 3 above.
 - If the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent, then further provision of the said goods by the agent to the principal would be covered by Para 3 above.
- **Analysis of Para 4 of Schedule I :**
 - **As per Para 4 of Schedule I**, import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business shall be treated as "supply".
 - Importation of services covered by **Section 7(1)(b)** does not include importation without consideration.
 - Therefore, this clause is inserted to cover such services that are received from related persons or their establishments outside India without consideration, in the course or furtherance of business.
 - Thus, even if no amount is paid in such case, the value must be determined as per the rules and tax is required to be paid.



• **Analysis of Section 7(1A) :**

- Under earlier tax regime, the restaurants used to charge both service tax and VAT on the value of food served. This is so because both sale of goods and provision of service were involved and therefore taxable event under both the Statutes i.e., respective VAT law and service tax law got triggered.
- Under GST, the supply by a restaurant is treated as composite supply [concept of composite supply is discussed subsequently in this chapter] since food and service is naturally bundled in ordinary course of business.
- Further, Entry 6(b) of Schedule II specifically provides that such composite supply shall be treated as supply of service.
- Hence, the entire value of invoice shall be treated as value of service and liable to GST accordingly.

• **Schedule II:**

- The matters listed out in Schedule II are primarily those which had been entangled in litigation in the earlier regime owing to their complex nature and susceptibility to double taxation.

• **Schedule II -**

- Para 1

Para No.	Activity/ Transaction	Type	Nature of Supply
1	Transfer	(a) Any transfer of title in goods.	Supply of Goods
		(b) Any transfer of right in goods/undivided share in goods without transfer of title thereof.	Supply of Services
		(c) Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed.	Supply of Goods

Schedule II – Paras 2 and 3

Para No.	Activity/ Transaction	Type	Nature of Supply
2	Land and Building	(a) Any lease, tenancy, easement, licence to occupy land. For example, lease agreement of a land.	Supply of Services
		(b) Any lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or partly. For example, a shop lent out in a busy market area.	Supply of Services
3	Treatment or Process	Any treatment or process which is applied to another person's goods	Supply of Services

Schedule II – Para 4

Stock

Para No.	Activity/ Transaction	Type	Nature of Supply
4	<u>Transfer of Business Assets</u>	(a) <u>Goods forming part of business assets are transferred or disposed off by/under directions of person carrying on the business so as no longer to form part of those assets.</u>	Supply of Goods
		(b) <u>Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/under directions of person carrying on the business.</u>	Supply of Services Imp.

Schedule II – Para 4

		(c) Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person. However, following are the two exceptions: (i) Business is transferred as a going concern to another person (ii) Business is carried on by a personal representative who is deemed to be a taxable person.	Supply of Goods
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Schedule II – Para 5

Para No.	Activity/Transaction	Nature of Supply
5	<p>(a) Renting of immovable property</p> <p>(b) 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 after its first occupation, whichever is earlier.</p> <p>Explanations:</p> <p>(i) The term construction includes additions, alterations, replacements, or remodeling of any existing civil structure.</p> <p>(ii) The expression competent authority means the Government or any authority authorized to issue completion certificate under</p>	Supply of services

Schedule II – Para 5

	<p><u>any law for the time being in force and in case of nonrequirement of such certificate from such authority, from any of the following, namely:</u></p> <ol style="list-style-type: none"> 1. <u>an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or</u> 2. <u>a chartered engineer registered with the Institution of Engineers (India); or</u> 3. <u>a licensed surveyor of the respective local body of the city or town or village or development or planning authority.</u>
	(c) Temporary transfer or permitting use or enjoyment of any intellectual property right
	(d) Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of IT software

Schedule II – Para 5

	(e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act.
	(f) Transfer of right to use any goods for any purpose (whether or not for specified period) for cash, deferred payment or other valuable consideration.

Schedule II – Para 6

Para No.	Activity/Transaction	Nature of Supply
6	<p>Following <u>composite supplies</u>:</p> <p>(a) Works contract; and</p> <p>(b) Supply, by way of or as part of any service or in any other manner whatsoever, of goods being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.</p>	Supply of Services

Schedule II – Para 6

Works Contract means a contract for:			
Building;	Construction;	Fabrication;	Completion;
Erection;	Installation;	Fitting Out;	Improvement;
Modification;	Repair;	Maintenance;	Renovation;
Alteration or Commissioning			
of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.			

Schedule II – Para 7

Para No.	Activity/Transaction	Nature of Supply
7	Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.	Supply of Goods

• Issue with Para 7 of Schedule II :

- Para 7 of Schedule II specifically talks about supply of goods by an unincorporated association or a body of persons to a member.
- There was an ambiguity regarding the provision of services by an unincorporated association or a body of persons to a member.
- Para 7 of Schedule II doesn't talk about provision of services at all. Therefore, there was a confusion as to whether supply of services by an unincorporated association or a body of persons to its member is treated as a supply or not.

Issue with Para 7 of Schedule II

- To remove this ambiguity, a new clause (aa) has been inserted in Section 7(1), which says the term supply includes 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.
- It has also been clarified that notwithstanding anything contained in any other law for the time being in force or any judgement, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such place to another.
- Consequently, Para 7 of Schedule II has now been omitted.
- To sum up, the situation now is, whether an unincorporated association or body of persons supplies any goods, such as air conditioners, or a service, such as payment of their electricity bills, it is treated as a supply.

• SECTION 7(1)(AA) :

- 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. It is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.

• Analysis of Section 7(2) :

- As per Section 7(2)(a) activities or transactions specified in Schedule III shall be treated neither as a supply of goods nor a supply of services.
- As per Section 7(2)(b) 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.

- Certain activities which are mentioned in Schedule III are neither treated as supply of goods, nor supply of services.

- **Schedule III**

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force. Explanation The term "Court" includes District Court, High Court and Supreme Court.
3.
 - a. Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities.
 - b. Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity.
 - c. 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, subject to paragraph 5(b) of **Schedule II**, sale of building.
6. Actionable claims, other than lottery, betting and gambling.
7. Paras 7 and 8 are not in CA Intermediate Syllabus.

- **Analysis of Para 1 of Schedule III :**

- Para 1 of Schedule III specifies that services by an employee to the employer in the course of, or in relation to his employment is neither supply of goods, nor supply of services.
- Therefore, any service provided by an employee to the employer in the course of, or in relation to his employment is outside the ambit of GST.
- Please note that only services that are provided by the employee to the employer in the course of employment are outside the realm of supply.
- However, services provided outside the ambit of employment for a consideration would qualify as supply.
- Amounts received by an employee from the employer on premature termination of contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, this amount is not treated as supply.
- Any amount paid by employer to employee for not joining a competing business is paid for providing the service of forbearance to act and cannot be considered for providing services in the course of employment. Hence, this amount is leviable to GST.
- Amounts received by an employee from the employer on premature termination of contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, this amount is not treated as supply.
- Any amount paid by employer to employee for not joining a competing business is paid for providing the service of forbearance to act and cannot be considered for providing services in the course of employment. Hence, this amount is leviable to GST.
- Services provided by casual worker to employer who gives wages on daily basis to the worker are services provided by the worker in the course of employment. Hence, this is not treated as supply.
- Casual workers employed by a construction contractor for execution of a building contract for him are services in the course of employment. Hence, this is not treated as a supply.
- However, when the contractor provides services to his client by deploying these workers, it cannot be said that the workers are providing services to the client in the course of, or in relation to their employment. Hence, amount charged by the contractor from the client is liable to GST if other conditions of taxability are present.
- Casual workers employed by a security services agency for provision of security services to a client are also services in the course of employment. Hence, this is not treated as a supply.
- Services provided on contract basis by a person to another i.e., principal- to-principal basis are not services provided in the course of employment.
- Whole-Time Directors or Executive Directors:
 - Any whole-time director or executive director is generally regarded as the employee of the company.
 - Therefore, any payment made to them is not treated as supply.
 - There could be cases when a person, who is a whole-time director of a company, or an executive director of a company, or any director, by whatever name called provides services to the company both, in the course of employment, as well as not in course of employment.
 - In such cases, it'll have to be seen what portion of such person's remuneration is treated as Salaries by the company in its books of accounts.
 - The portion of the remuneration treated as salaries would not be subject to GST, while GST would be leviable on the balance remuneration
- Independent Directors, Nominee Directors, or Non-Executive Directors:
 - Independent Directors, Nominee Directors, or Non-Executive Directors are not regarded as employees of the company.
 - Hence, activities carried by them for consideration are not excluded from scope of supply.
 - Accordingly, remuneration paid to such directors shall be liable for GST.
 - It must be noted that services provided by the directors to its company are chargeable to GST under reverse charge basis, i.e., the company receiving the service is liable to pay GST thereon.

- **Analysis of Para 2 of Schedule III:**

- Para 2 of Schedule II specifies that services by any court or Tribunal established under any law for the time being in force are neither treated as a supply of goods, nor a supply of services.
- For the purpose of this para, the term "Court" includes District Court, High Court and Supreme Court.
- The court or tribunal supplies judicial services to the appellant who files appeals, petitions, special leave petitions.
- Fees is charged at the time of filing of appeal, petition, etc.
- The quantum of fees is specified in the statutes.
- As per Para 2 of Schedule II, any fees taken in any Court or tribunal established under any law for the time being in force is outside the scope of supply.
- Therefore, no GST is applicable on such fees, as provision of these services by court or tribunal is neither treated as a supply of goods, nor a supply of services.

- **Analysis of Para 3 of Schedule III:**

- As per Para 3 of Schedule III, the following transactions or activities shall be regarded neither as supply of goods nor supply of services:
- Functions performed by MPs, MLAs, etc.: The functions performed by the Members of Parliament, Members of the State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
- Duties performed by Constitutional Functionaries: Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity. For example, duties performed by President of India, Vice President of India, Prime Minister of India, Chief Justice of India, Speaker of the Lok Sabha, Chief Election Commissioner, Comptroller and Auditor General of India, Chairman of Union Public Service Commission, Attorney General of India, in that capacity.
- Duties performed by Chairperson/Members of Government Bodies: 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.
- **Analysis of Para 4 of Schedule III**
 - Para 4 of Schedule III specifies that services of funeral, burial, crematorium, or mortuary including transportation of the deceased shall not be regarded as supply of services, hence will be outside the purview of GST.
- **Analysis of Para 5 of Schedule III**
 - Before discussing Para 5 of Schedule III, let's revisit Para 5(b) of Schedule II.
 - As per Para 5(b) of Schedule II, 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 after its first occupation, whichever is earlier is treated as a supply of services.
 - As per Para 6 of Schedule III, transactions in actionable claims, other than lottery, betting, and gambling are considered neither as supply of services nor as supply of goods.
 - Actionable claim means a claim to any debt, for example, right to recover insurance money, claim for arrears of rent, claims for future rents (if these can be assigned), unsecured loans, unsecured debentures, bills of exchange, promissory notes, bank guarantee, Fixed Deposit Receipt, right to the benefit of a contract, etc.
- **Analysis of Para 6 of Schedule III**
 - As per Para 6 of Schedule III, transactions in actionable claims, other than lottery, betting, and gambling are considered neither as supply of services nor as supply of goods.
 - Actionable claim means a claim to any debt, for example, right to recover insurance money, claim for arrears of rent, claims for future rents (if these can be assigned), unsecured loans, unsecured debentures, bills of exchange, promissory notes, bank guarantee, Fixed Deposit Receipt, right to the benefit of a contract, etc.
 - As per Para 6 of Schedule III transactions in actionable claims are neither treated as a supply of goods nor a supply of services.
 - However, lottery, betting, and gambling are the exceptions.
 - Therefore, lottery, betting and gambling are treated as supply.
 - All other actionable claims are outside the ambit of definition of supply.
 - Supply of lottery tickets will be liable for GST.
 - Similarly, GST will be payable on supply of betting and gambling.
- **Taxability of Tenancy Rights Under GST**
 - Pagadi system, i.e., transfer of tenancy rights against tenancy premium, is prevalent in some States.
 - In Pagadi system, the tenant acquires tenancy rights in the property against payment of tenancy premium (pagadi).
 - The landlord may be owner of the property, but the possession of the same lies with the tenant.
 - The tenant pays periodic rent to the landlord as long as he occupies the property.
 - The tenant also usually has the option to sell the tenancy right of the said property.
 - In such a case, he is required to share a percentage of the proceeds with owner of land, as laid down in their tenancy agreement.
 - Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.
 - It has been clarified that the activity of transfer of tenancy right against consideration [i.e., tenancy premium] is squarely covered under supply of service liable to GST.
 - It is a form of lease or renting of property and such activity is specifically declared to be a service in Para 2 of Schedule II, i.e., any lease, tenancy, easement, licence to occupy land is a supply of services.
 - Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST.
 - Merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST.
 - The transfer of tenancy rights cannot be treated as sale of land/ building in para 5 of Schedule III.
 - Thus, it is not a negative list activity and consequently, a consideration for the said activity shall attract levy of GST.
 - To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable per-se.
 - Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.
 - However, renting of residential dwelling for use as a residence) is exempt.
 - Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt.
 - As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.
- **Analysis of Section 7(2)(b)**
 - As per Section 7(2)(b) 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.
 - **Local Authority means:**
 - Panchayat
 - Municipality
 - Municipal Committee, Zilla Parishad, 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 or local fund
 - Cantonment Board
 - Regional Council or a District Council
 - Development Board

- Regional Council
- The Government has notified that services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution are treated neither as a supply of goods nor as a supply of service.
- Grant of Alcoholic Liquor Licence:
 - The Government has notified that services by way of grant of alcoholic liquor license by the State Governments are treated neither as a supply of goods nor as a supply of service.
 - Such licence is granted against consideration in the form of licence fee or application fee or by whatever name it is called.
 - This special dispensation is applicable only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States.
 - Hence, this is not applicable/has no precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.
 - It may be noted that services provided by the Government to business entities including by way of grant of privileges, licences, mining rights, natural resources such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST.
 - Tax is required to be paid by the business entities on such services under reverse charge.
- **Analysis of Section 7(3):**
 - As per Section 7(3), the Central Government may notify such other transactions to either qualify as 'supply of goods' or as 'supply of services'.
 - This notification must be issued only upon recommendations from the Council.
 - Section 7(3) is subject to section 7(1), 7(1A) and 7(2) of CGST Act, 2017.
 - Thus, notification issued under section 7(3) of CGST Act cannot override any provision of section 7(1), 7(1A), or section 7(2) of CGST Act, 2017.
- **Non-Supplies Clarified by way of Clarification:**
 - Inter-State movement of various modes of conveyance:
 - Inter-State movement of various modes of conveyance between distinct persons including Trains, Buses, Trucks, Tankers, Trailers, Vessels, Containers, Aircrafts,
 - carrying goods or passengers or both; or
 - for repairs and maintenance,
 - shall be treated 'neither as a supply of goods nor supply of service' and therefore not be leviable to IGST.
 - However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance.
 - Inter-State movement of rigs, tools and spares, and all goods on wheels (like cranes) - Same as above.
- **Definition of 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.
- **Analysis of Definition of Goods:**
 - Movable Property:
 - The definition of goods itself provides that only movable property shall be considered as goods.
 - To be called goods, the articles must be such as are capable of being bought and sold in the market.
 - The articles must be something, which can ordinarily come or can be brought to the market to be bought or sold.
 - Thus, immovable properties that are attached to earth, cannot be considered as goods.
 - Money is specifically excluded from the definition of goods.
 - Securities:
 - Securities are specifically excluded from the definition of goods.
 - The implication of exclusion of securities from the definition of goods is that activities that are in the nature of transfer of title by way of sale, redemption, purchase or acquisition of securities on principal-to-principal basis are outside the ambit of supply.
 - Please note that "securities" does not include units of unit linked insurance policies.
 - Actionable Claim:
 - Actionable Claim has been specifically included in the definition of goods.
 - However, as per Schedule III of the CGST Act, 2017, actionable claims are neither treated as supply of goods, nor as supply of services.
 - Therefore, if an unsecured debt is transferred to a third person for a consideration, it will not be subject to GST.
 - It is to be noted that three actionable claims, i.e., lottery, betting, and gambling, do come under the purview of GST.
 - Growing Crops:
 - The definition of goods specifically includes 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.
 - Severability is important element while deciding on the nature of the property, and this element can be established by ascertaining the nature of the property, intention of the parties, and the terms of the contract between them.
 - Standing trees are not goods and not taxable.
 - However, standing timber falls under the ambit of "goods" because timber trees are severed from the land for the purpose of sale and hence, they become a commercial commodity.
- **Definition of 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.
- **Analysis of Definition of Services:**
 - Meaning of service in common parlance:
 - Service is a type of economic activity that is intangible, is not stored, and does not result in ownership.
 - A service is consumed at the point of sale.
 - The benefit of service may last longer.
 - Activities which are regarded only as transaction in money are not covered in this definition.
 - If I give you a ₹2,000 note, and you transfer ₹2,000 to my google pay, it is said to be an activity regarded only as transaction in money because only the form of money has changed.

- If I give you ₹1,00,000 and you give me dollars in exchange without charging any commission, it is an activity regarded only as transaction in money because only the currency has changed.
 - If I give you a ₹2,000 note, and you give me 4 notes of ₹500 each, this is said to be an activity regarded only as transaction in money because only the denomination has changed.
- However, if for any of the above services, a separate fee was charged, it would not be regarded only as a transaction in money, and would therefore, be subject to GST.
- When you deposit your money in your bank account, you are giving the bank the permission to use your money, for which the bank pays you a fee, which is called interest. This is a supply of service.
- However, if you give your money to someone without charging anything, such as, when a father gives money to his children, then such activity is regarded only as a transaction in money, and GST is not leviable.
- Securities:
 - Transaction in securities is not a service.
 - However, brokers provide services to facilitate the purchase and sale of securities, and for this, they charge a fee, called brokerage.
 - Therefore, this is a supply of service leviable under GST.
- **Different Types of Supplies Under the GST Law:**
 - Taxable Supply
 - Non-Taxable Supply
 - NIL Rated Supply
 - Exempt Supply
 - Zero Rated Supply
 - Inward Supply
 - Outward Supply
 - Composite and Mixed Supply
- **Taxable Supply:**
 - Taxable supply means a supply of goods or services or both which is leviable to tax.
 - The transaction must involve either goods, or services, or both of them.
 - Such goods or services should not be specified under Schedule III (neither a supply of goods, nor a supply of services)
 - The transaction should fall within the meaning of 'supply' in terms of Section 7 of the CGST Act.
 - The supply should be leviable to GST.
- **Non-Taxable Supply:**
 - Non-taxable supply means a supply of goods or services or both which is not leviable to tax under this Act, or under the IGST Act.
 - A transaction must be a 'supply' as defined under the GST law, to qualify as a non-taxable supply.
 - Supplies that are excluded from the scope of taxation under GST are covered by this definition, i.e., alcoholic liquor for human consumption.
 - Stock transfers to unit within the State for which no separate registration is obtained, which does not qualify as a 'supply' cannot be said to be a non-taxable supply. Transactions specified in Schedule III, which are neither treated as a supply of goods, nor a supply of services cannot be said to be non-taxable supplies.
 - Supplies that enjoy the benefit of wholly exempted from taxes, nil rated supplies and zero-rated supplies are also not covered under the ambit of non-taxable supplies. This is because such supplies are in fact liable to tax, only the tax is exempted by virtue of an exemption notification, or the tax rate is NIL.
- **NIL Rated Supply:**
 - Goods or services on which GST rate of 0% is applicable, are called NIL rated goods or services.
 - Such goods or services, on which GST rate of 0% is applicable, are listed in schedule 1 under GST rate schedule.
 - Example of Nil rated supplies are salt, jaggery, cereals, etc.
- **Exempt Supply:**
 - Exempt supply means supply of any goods or services or both which attracts NIL rate of tax, or which may be wholly exempt from tax under Section 11, or under Section 6 of the IGST Act, and includes non-taxable supply.
 - Exempt supplies comprise of the following three types of supplies:
 - Supplies taxable at a NIL rate of tax
 - Supplies that are wholly exempted from CGST or IGST, by way of a notification
 - Non-taxable supplies (such as alcoholic liquor for human consumption)
 - The following aspects need to be noted:
 - Zero-rated supplies such as exports would not be treated as supplies taxable at NIL rate of tax, and hence, are not considered as exempt supplies.
 - Input tax credit attributable to exempt supplies will not be available for utilizations/set-off.
- **Zero-Rated Supply:**
 - "Zero rated supply" means any of the following supplies of goods or services or both, namely:
 - export of goods or services or both; or
 - supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.
- **Need for Zero-Rated Supply:**
 - We just saw that input tax credit attributable to exempt supplies is not available for utilisation/set-off.
 - This means that exempt supplies are not truly exempt, as the raw materials or input services which were used to supply the exempt supplies have been subjected to GST, and we're not even getting its ITC credit.
 - Though the output suffers no tax, the inputs and input services have suffered tax and since availing of tax credit on input side is not permitted, it becomes a cost for the supplier.
 - By zero rating, it is meant that the entire value chain of the supply is exempt from tax.
 - This means that in case of zero rating, not only is the output exempt from payment of tax, but there is also no bar on taking/availing credit of

- taxes paid on the input side for making/providing the output supply.
 - Such an approach makes the goods or services zero rated in true sense.
- **Inward Supply:**
 - "Inward Supply" in relation to a person, shall mean receipt of goods or service or both whether by purchase, acquisition, or any other means with or without consideration.
 - Note that the definition of "Inward Supply" doesn't use the word "supply", but uses the word "receipt", and therefore, has a larger scope.
 - Also note that the definition doesn't mention "taxable person", but uses the word "person", and therefore, all kinds of persons are covered, whether registered, or unregistered taxable person, or person not liable to tax.
- **Outward Supply:**
 - "Outward Supply" in relation to a taxable person means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease, or disposal, or any other mode, made or agreed to be made by such person in the course or furtherance of business.
 - Please note that here, the definition has used the word "supply", therefore, for a transaction or activity to qualify as an outward supply, it must first be a 'supply' in terms of the GST Law, unlike inward supplies, which could merely be receipts, not amounting to supply.
 - Also note that the definition has specifically used the word "taxable person"; therefore, only a taxable person can provide outward supplies. It should also be noted that the phrase 'outward supply' can be applied to a supply only when it is made in the course or furtherance of business. For example, if a business asset is put to personal use, even though it is deemed to be a supply (as per Para 1 of Schedule I), it cannot be said to be an outward supply as it is not made in the course or furtherance of business.
- **Composite Supply and Mixed Supply:**
 - GST is payable on individual goods or services or both at the notified rates.
 - The application of rates poses no problem if the supply is of individual goods or individual services, which is clearly identifiable and such goods or services are subject to a particular rate of tax.
 - However, in certain cases, supplies are not such simple and clearly identifiable supplies.
 - Some of the supplies are a combination of goods, or combination of services, or combination of goods and services both, and each individual component of such supplies may attract a different rate of tax.
 - In such a case, the rate of tax to be levied on such supplies may be a challenge.
 - It is for this reason, that the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies.
 - In order to determine whether the supplies are 'composite supplies' or 'mixed supplies', one needs to determine whether the supplies are naturally bundled or not naturally bundled in ordinary course of business.
 - The concept of 'naturally bundled' supplies is emanating from the definition of 'composite supply'.
- **Composite Supply:**
 - Composite supply means a supply made by a taxable person to a recipient and:
 - comprises two or more taxable supplies of goods or services or both, or any combination thereof;
 - are naturally bundled and supplied in conjunction with each other, in the ordinary course of business
 - one of which is a principal supply [Section 2(30)].
 - This means that in a composite supply, goods or services or both are bundled owing to natural necessities.
 - The elements in a composite supply are dependent on the 'principal supply'.
 - Principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.
- **How to Determine Whether Services are Naturally Bundled in the Ordinary Course of Business?**
 - The perception of the consumer or the service recipient: If large number of service recipients of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.
 - For example, a mobile phone is always sold with a battery. Therefore, two goods are bundled naturally.
 - Majority of service providers in a particular area of business provide similar bundle of services. For example, majority of flights provide catering services onboard. Therefore, two services are bundled naturally.
 - Nature of Various Services Bundled:
 - The nature of the various services in a bundle of services also helps in determining whether the services are bundled in the ordinary course of business.
 - If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service, it is said to be a composite supply.
 - For example, service of stay in a hotel is often combined with provision of breakfast and dinner provided free of cost during the stay. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.
 - Other illustrative indicators indicative (but not determinative) of bundling of services in the ordinary course of business are:
 - The elements are normally advertised as a package.
 - The different elements are not available separately.
 - The different elements are integral to one overall supply. If one or more is removed, the nature of the supply would be affected.
 - Please note that no straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.
- **How to Determine Tax Liability of Composite Supplies?**
 - A composite supply comprising of two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply.
 - Accordingly, the entire value of composite supply [i.e., main supply + ancillary supply(ies)] shall be classified under the category of main supply and shall be taxed at the GST rate applicable to the main supply.
- **CBIC Clarifications on Certain Composite Supplies:**
 - Supply of printed books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such printed goods
 - When the publisher provides the content to the printing press, and the printing press prints it using its own material, including paper,

etc., and supplies it to the publisher, supply of printing is the principal supply, and the supply of material is ancillary to it. Therefore, it is treated as a supply of services.

- When the author (owner of the intangible rights) provides the content to the printing press, and the printing press prints it using its own material, including paper, etc., and supplies it to the author, supply of printing is the principal supply, and the supply of material is ancillary to it. Therefore, it is treated as a supply of services.
- When a customer/recipient goes to a printer and asks him to print some content on the envelopes, letter cards, etc., supply of the envelopes, letter cards, etc. is the principal supply and the printing is ancillary to it. Therefore, it is treated as supply of goods. For example, you decide to gift a loved one a customised coffee mug with their name and photo printed on it. The supplier will supply you with the mug. This is supply of goods, and the customised printing is considered ancillary to it.

- **Mixed Supply:**

- 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 a composite supply
- The individual supplies are independent of each other and are not naturally bundled.

- **How to Determine if a Particular Supply is a Mixed Supply?**

- A supply can be a mixed supply only if it is not a composite supply.
- Therefore, it can be said that if the transaction consists of supplies which are not naturally bundled in the ordinary course of business, it would be a mixed supply.
- A mixed supply comprising of two or more supplies shall be treated as supply of that particular supply that attracts highest rate of tax.

- **More Than One Supply Made Together and Taxed at the Individual Rates:**

- There can be a case where an activity/transaction involves more than one supply of goods or services or both, but neither they are composite supplies nor can be categorised as mixed supplies, that is, all supplies carry independent significance.
- In such a case, if separate consideration is indicated against each supply, each such supply shall be charged at the respective rate applicable to that particular supply.
- For example, in case of servicing of cars involving supply of both goods (spare parts) and services (labour) where the value of goods and services are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.