

CHART NOTES

CA INTERMEDIATE

INDIRECT TAX LAWS

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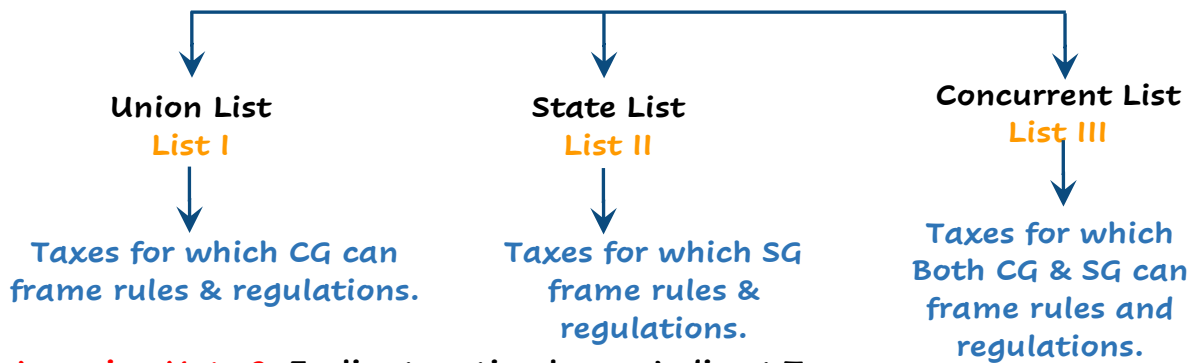
Chapter 1 - GST in India (An Introduction)

Learning Note 1: Constitution Articles, relevant to Taxation Structure:

Article 265: - No tax can be collected without authority of law.

Article 245:- Both Central Govt and State Govt can collect taxes.

Article 246:- 7th Schedule contains following three lists.



Learning Note 2: Earlier taxation law: - Indirect Tax

	Central Excise Duty	Service Tax	Sales Taxes	Customs Duty		
			VAT	CST (Central Sales Tax)		
	Levied on		Intra- state	Inter- state		
1	Taxable	Manufacture	Provision	Sale	Sale	Import/ Export
2	Event	of	of	Goods	Goods	Goods
3	Goods/ Service	Goods paid by	Service	Dealer	Dealer (Selling)	Importer / Exporter
4	Payer	Manufacturer to	Service provider			CG
5	Govt.	CG	CG	SG	SG	CG

Taxes except Customs duty is merged into a new taxation law, and it's

1. Revenue should go to CG & SG

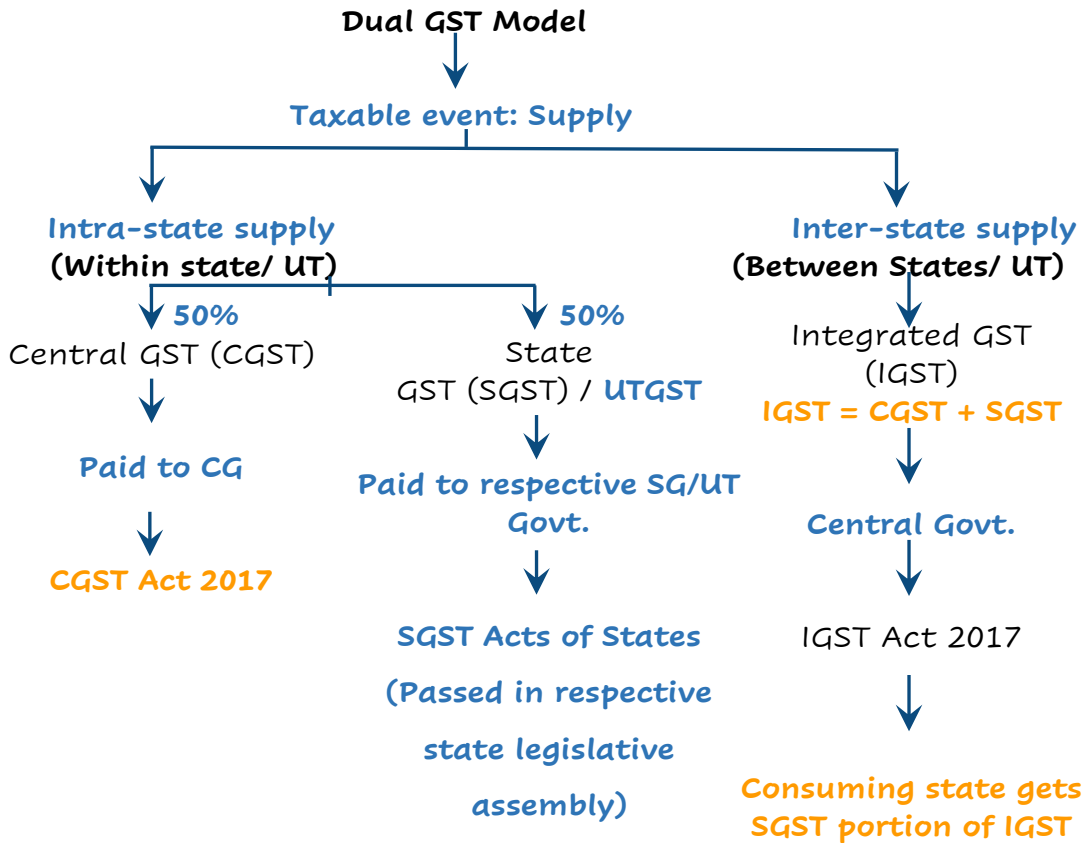
2. Name: Goods & Service [GST]

3. Taxable event: Manufacture & Service & Sale

Commonly called as "Supply"



Learning Note 3: Model of GST in India



Amendment 1

Before

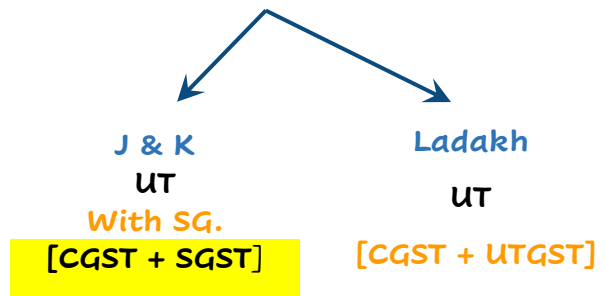
- 29 States
- 7 UT

1. Delhi
2. Puducherry
3. Daman & Diu ← Merged
4. Lakshadweep
5. Andaman
6. Dadra Nagar Haveli
7. Chandigarh

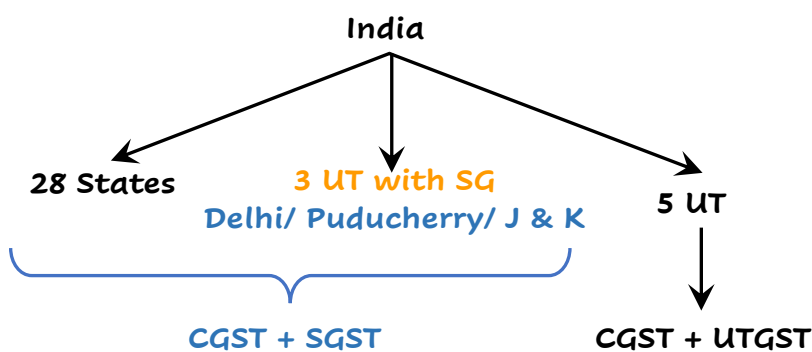
2 Changes

1. Daman & Diu, Dadra Nagar Haveli Union territories got merged into one.

2. Reorganisation of J& K



Final Summary

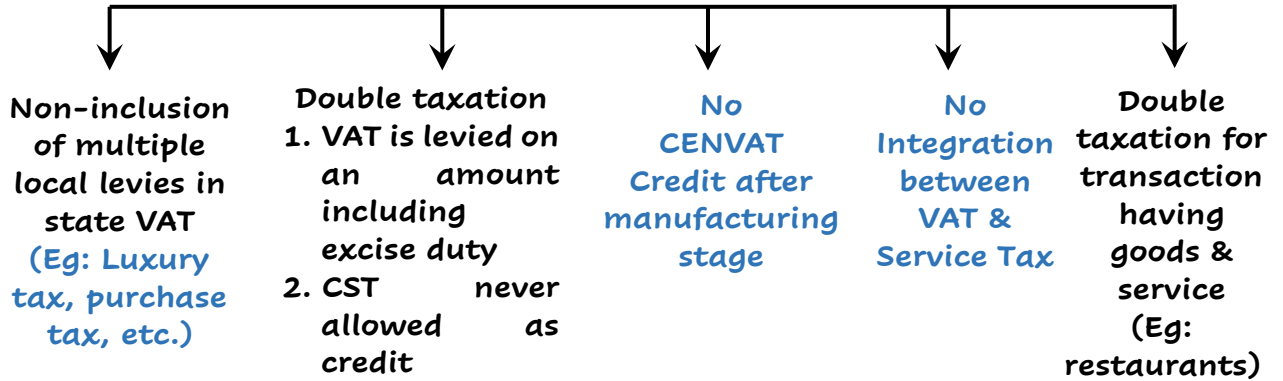


1. Daman Diu
Dadra Nagar Haveli
2. Lakshadweep
3. Andaman
4. Chandigarh
5. Ladakh



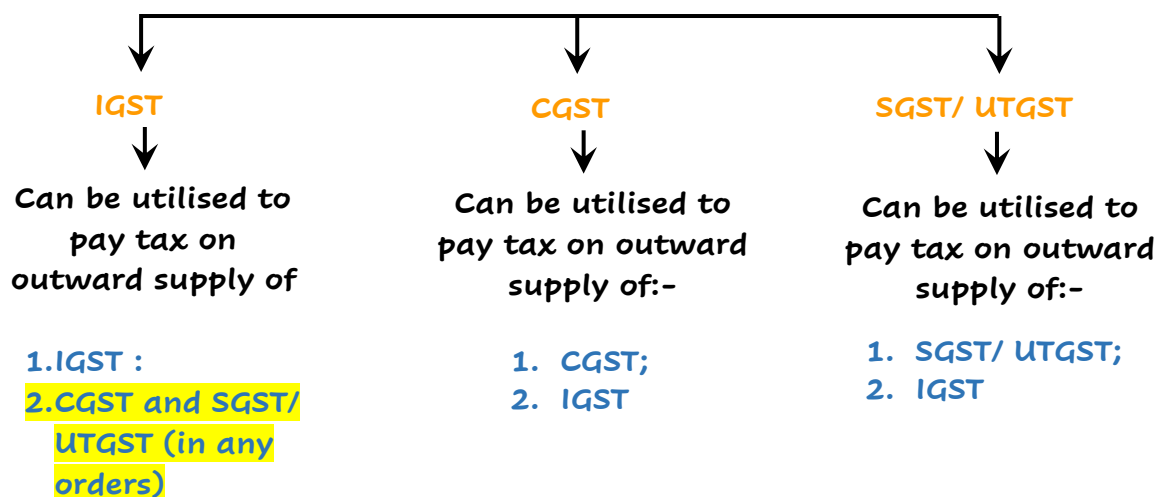
Learning Note 4: Credit - Concept

Deficiencies In Earlier VAT System:



Learning Note 5: Manner of utilisation of credit [S. 49 CGST Act 2017]

Tax paid inward supply:



Amnd. w.e.f. 1st Feb. 2019.

Amendment by CGST (Amendment) Act 2018 w.e.f. 1st Feb. 2019 :-

A new section was introduced **S. 49A**

Which provided for following:

“ITC of IGST shall be utilised fully before ITC of CGST and SGST/UTGST is utilised for discharge of GST liability”.

Another **S. 49B** was introduced which empowered Govt. to notify manner of utilisation of credit.

By using the power conferred to Govt. above, Govt. has notified a new **Rule 88A** which provided for following:

1. ITC of IGST will be first utilised for payment IGST;
2. Remaining ITC of IGST can be utilised for payment of CGST and SGST/UTGST in any order

Revised Ranking of ITC Utilisation.

ITC	Outward tax liability		
	IGST	CGST	SGST/UTGST
IGST	Rank 1	Rank 2: Any order	
Note: Only after ITC IGST fully utilized.			
CGST	Rank 4	Rank 3	Not permitted
SGST /UTGST	Rank 6	Not Permitted	Rank 5

Learning Note 6: Benefits of GST

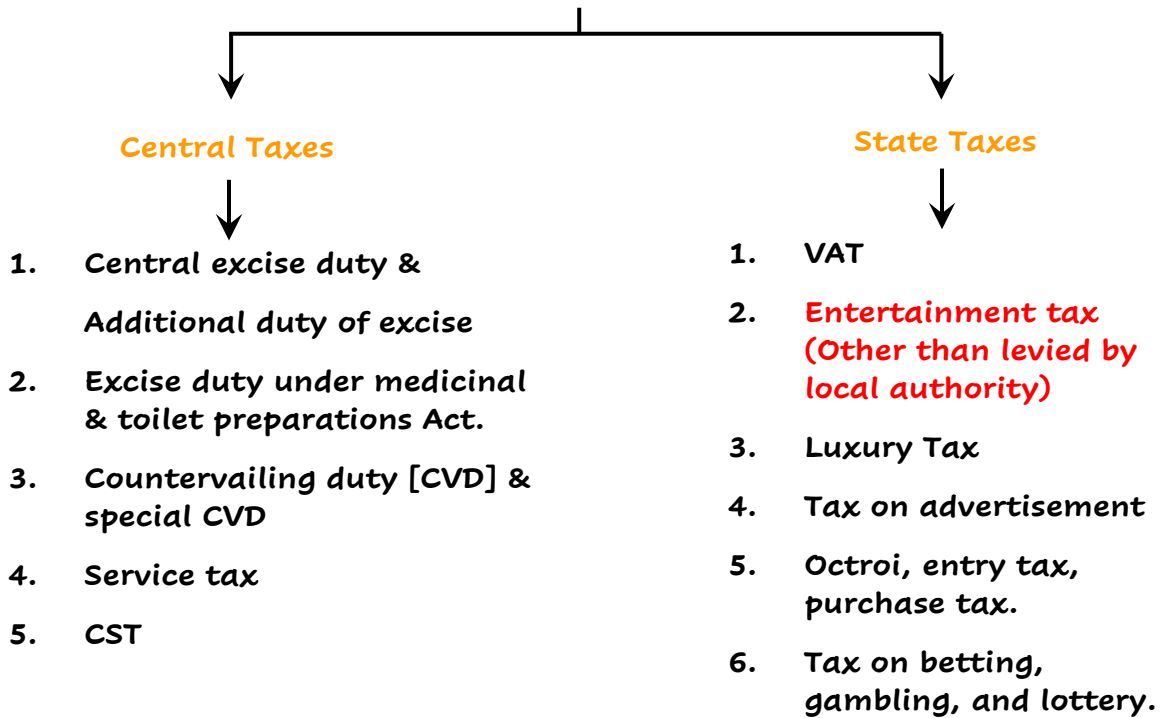
* Benefits to economy	* Simplified tax structure
<ol style="list-style-type: none"> 1. Creation of unified national market 2. Boost to "Make in India" initiative 3. Enhanced investment and employment. 	<ol style="list-style-type: none"> 1. Ease of doing business 2. Certainty in tax administration

* Easy tax compliance	* Advantages to trade & industry
<ol style="list-style-type: none"> 1. Automated procedure with greater use of IT 2. Reduction in compliance cost 	<ol style="list-style-type: none"> 1. Benefits to agriculture and industry 2. Mitigation of ill effects of cascading(Double Taxation). 3. Benefits to small traders and entrepreneurs.



Learning Note 7:

Taxes subsumed under GST



Learning Note 8:

GST Common Portal

↓
www.gst.gov.in

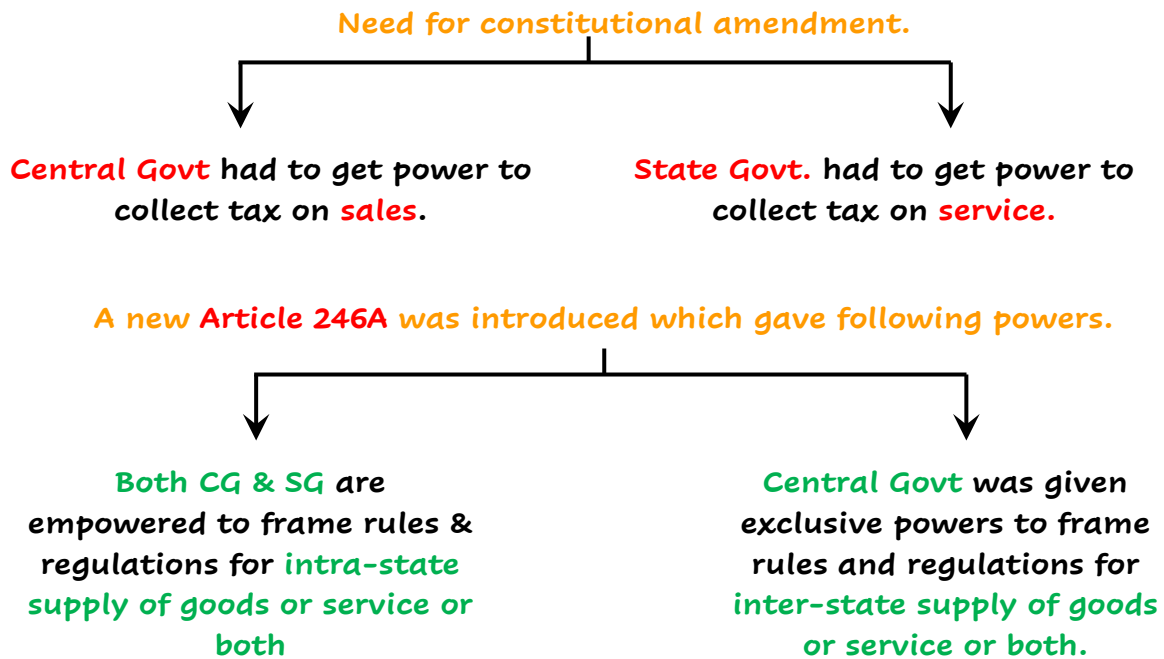
Common interface for both CG & SG compliances

↓
Managed by GST Network [Section - 8 Company]

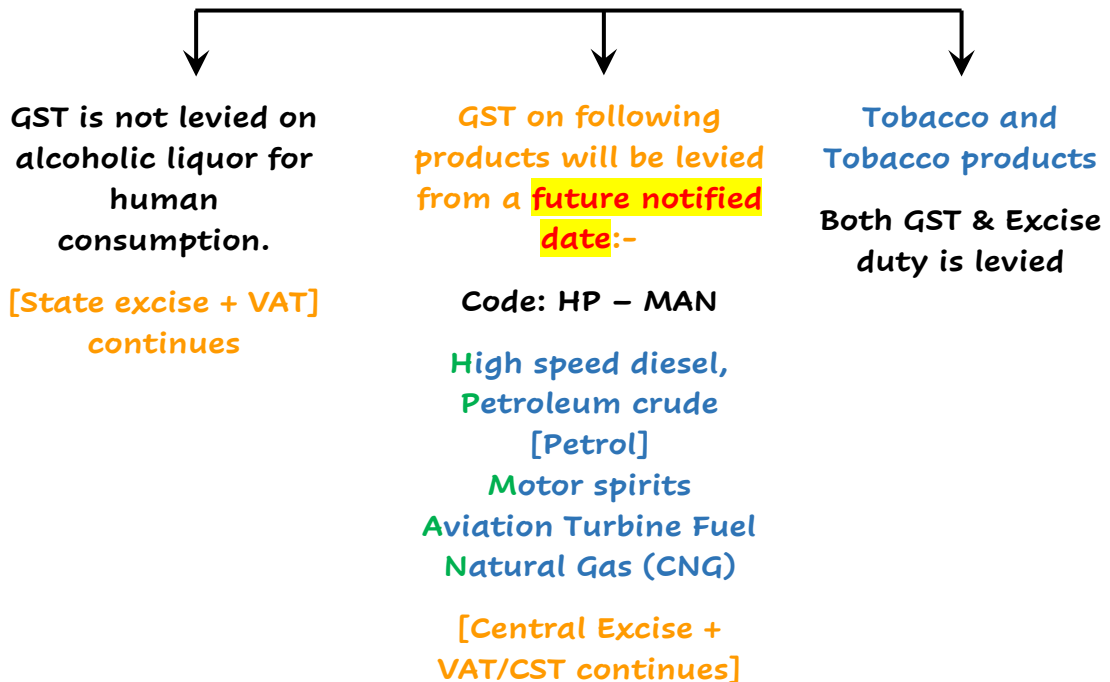
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Functions: Registration, returns, payment, cross checking, Govt. GST share computation, etc.



Learning Note 9: 101st Constitutional Amendment Act, 2016



“GST is levied on supply of all goods or service or both”: However.

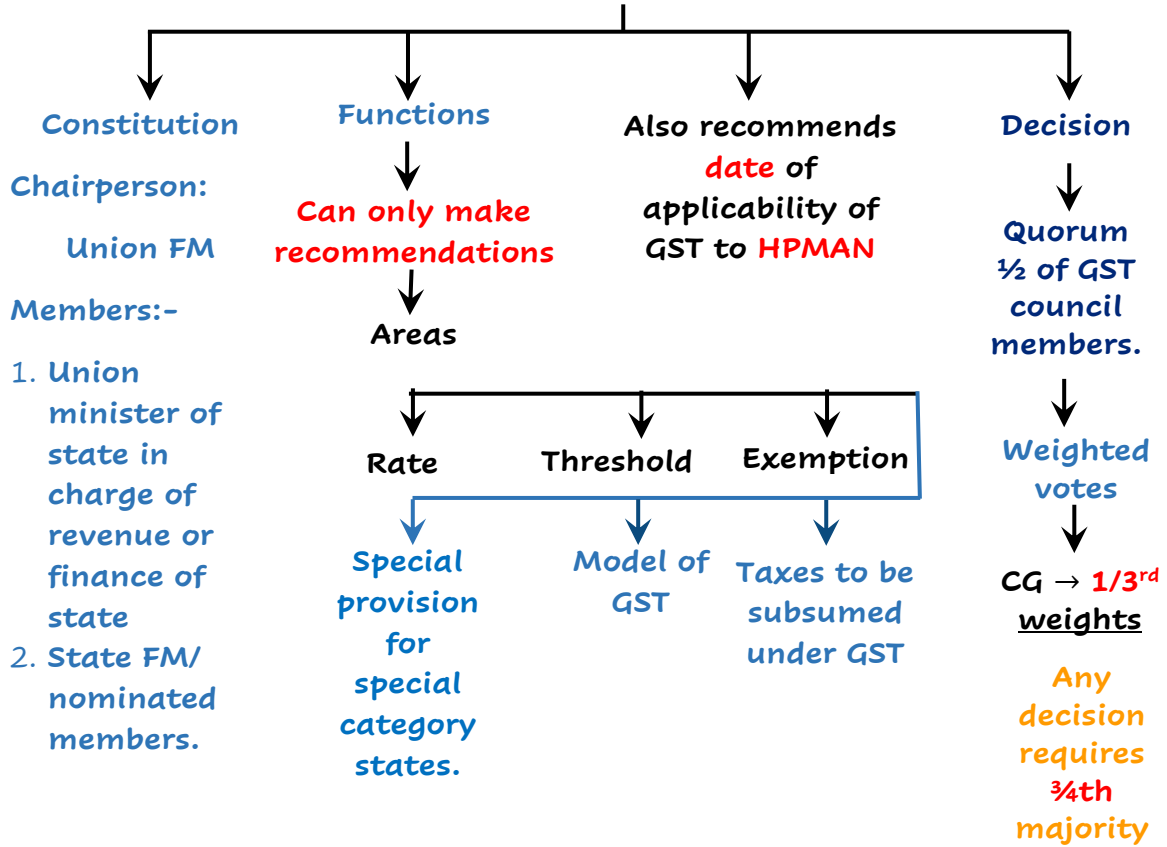


Note: Alcoholic Liquor and Tobacco and Tobacco products come under the category of “Demerited Products” and will be taxed higher

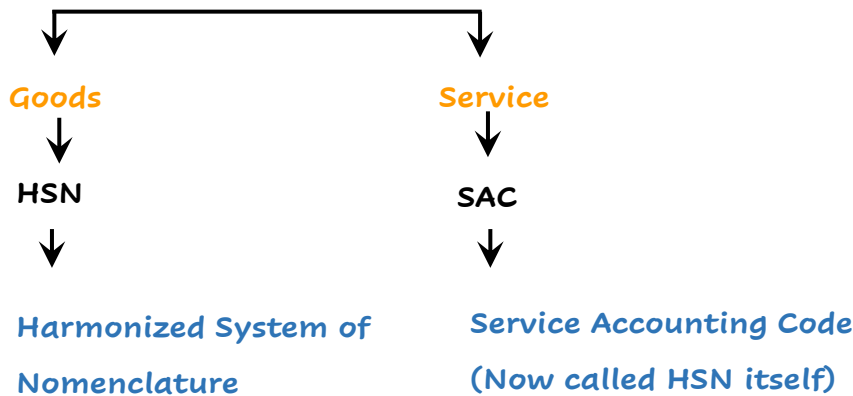


Learning Note 10: GST Council (101st Constitutional Amendment Act, 2016)

New Article 279A empowered president to constitute a common body of state & central Govt. for GST decision making. Hence constituted GST Council.



Learning Note 11: Classification





Learning Note 12:

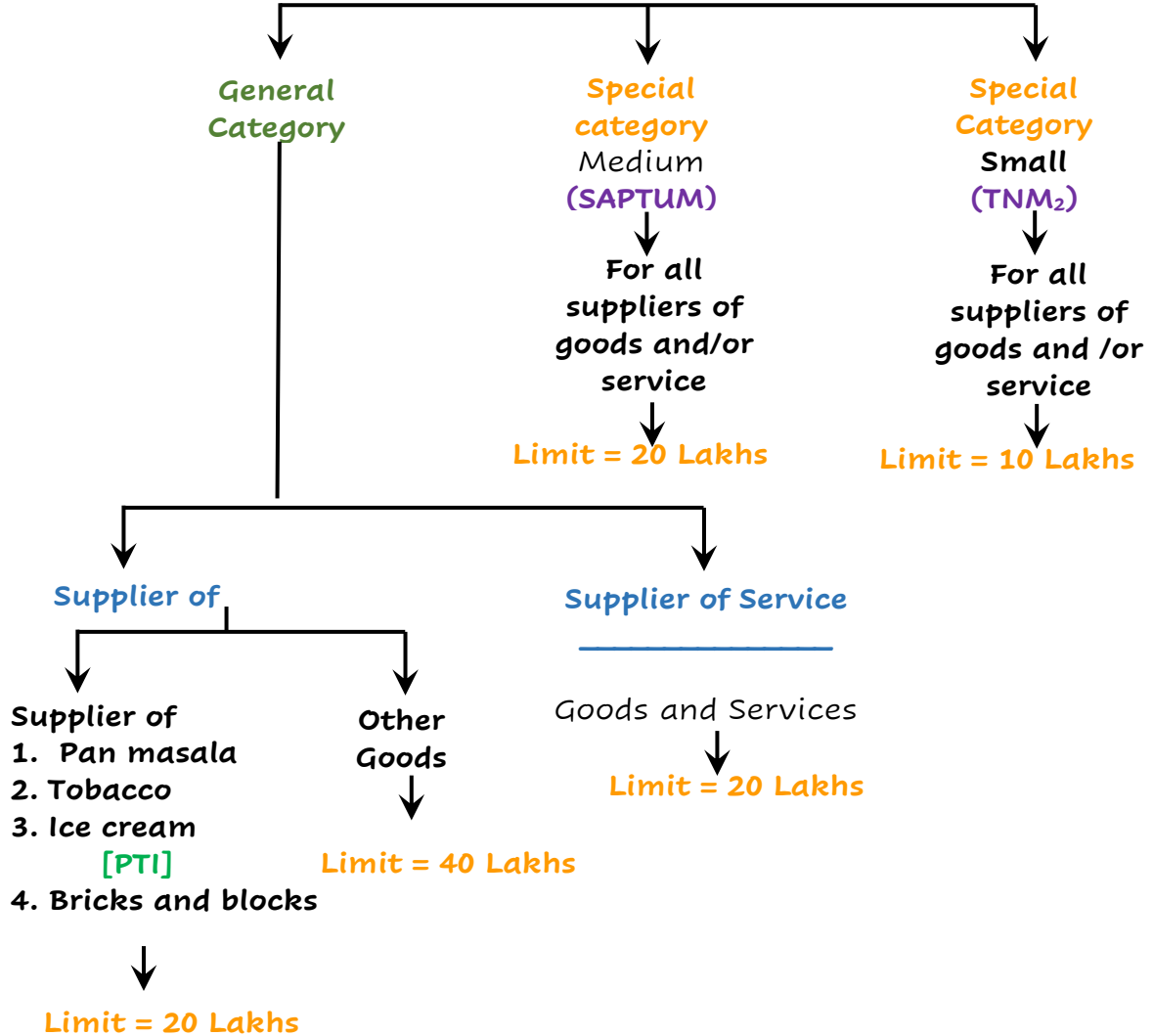
Registration: - Threshold u/s 22 of CGST Act 2017



Basis: - "Aggregate Turnover"



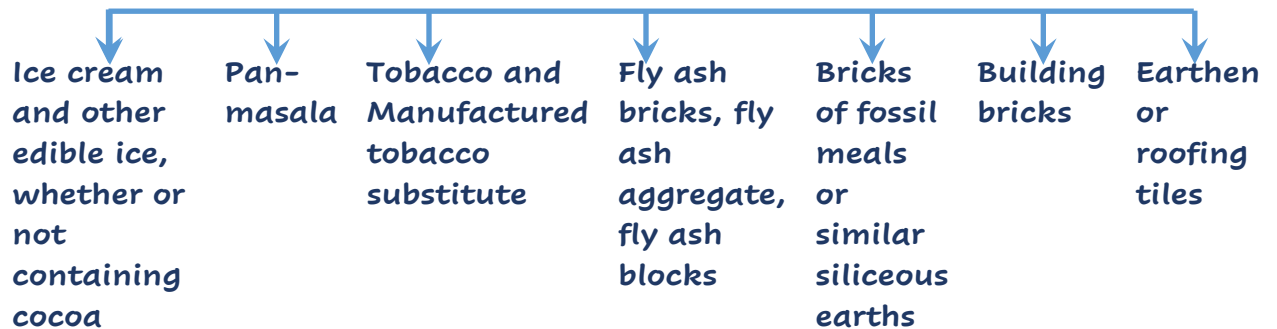
Person who are making intra-state supply of goods and/or service needs to register only if their aggregate turnover exceeds threshold limit: (w.e.f. 1st April 2019)





Amendments

In general category states intra-state supplier of following goods need to register when their AT > 20 Lakhs



SAPTUM → Sikkim + Arunachal Pradesh + Pondicherry + Telangana

Uttarakhand + Meghalaya

TNM₂ → Tripura, Nagaland, Manipur, Mizoram

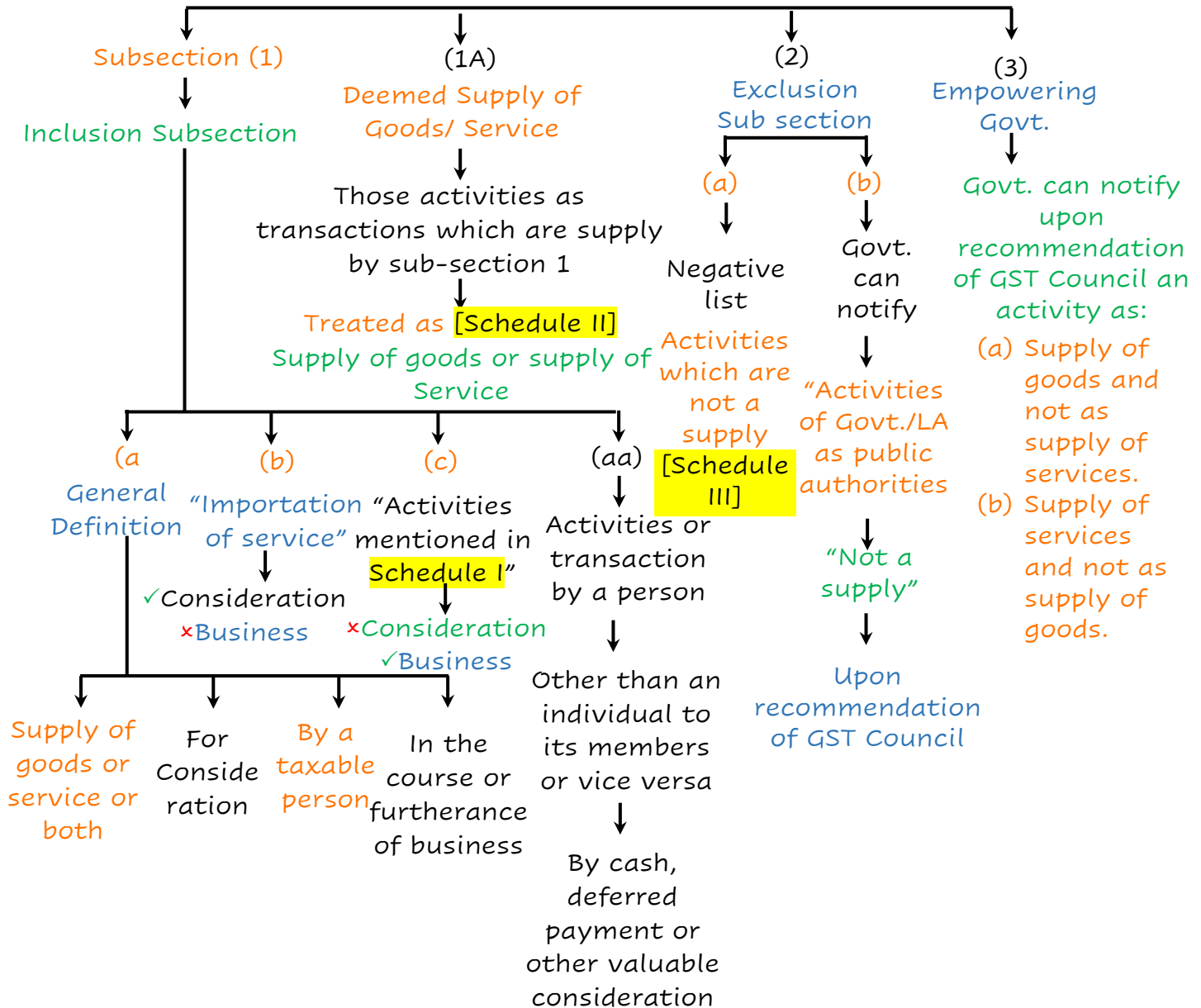
Notes:-

1. Aggregate turnover is a turnover on all India basis for a single PAN
2. If a person has more than one branch, one in lower limit states other in higher limit states, **lower limit** will be applicable provided making taxable supply from such lower limit states.
3. A person can voluntarily obtain registration even if his turnover does not exceed the threshold limit. Once registered he becomes a taxable person. Hence threshold is only for registration, not for payment of tax.



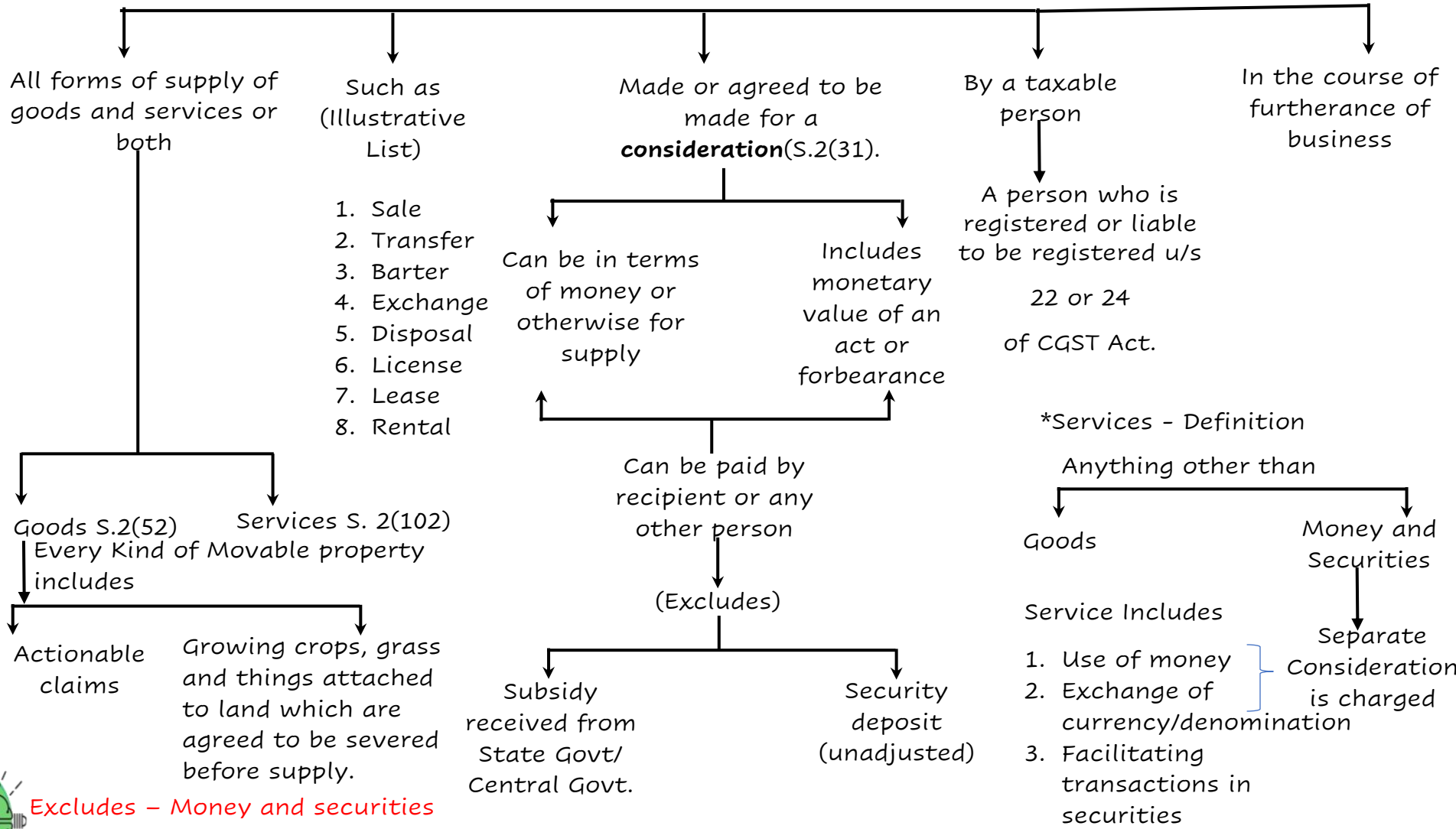
Chapter 2 - Supply under GST

Section 7 of CGST Act 2017



General Definition - Section 7(1)(a)

Supply includes



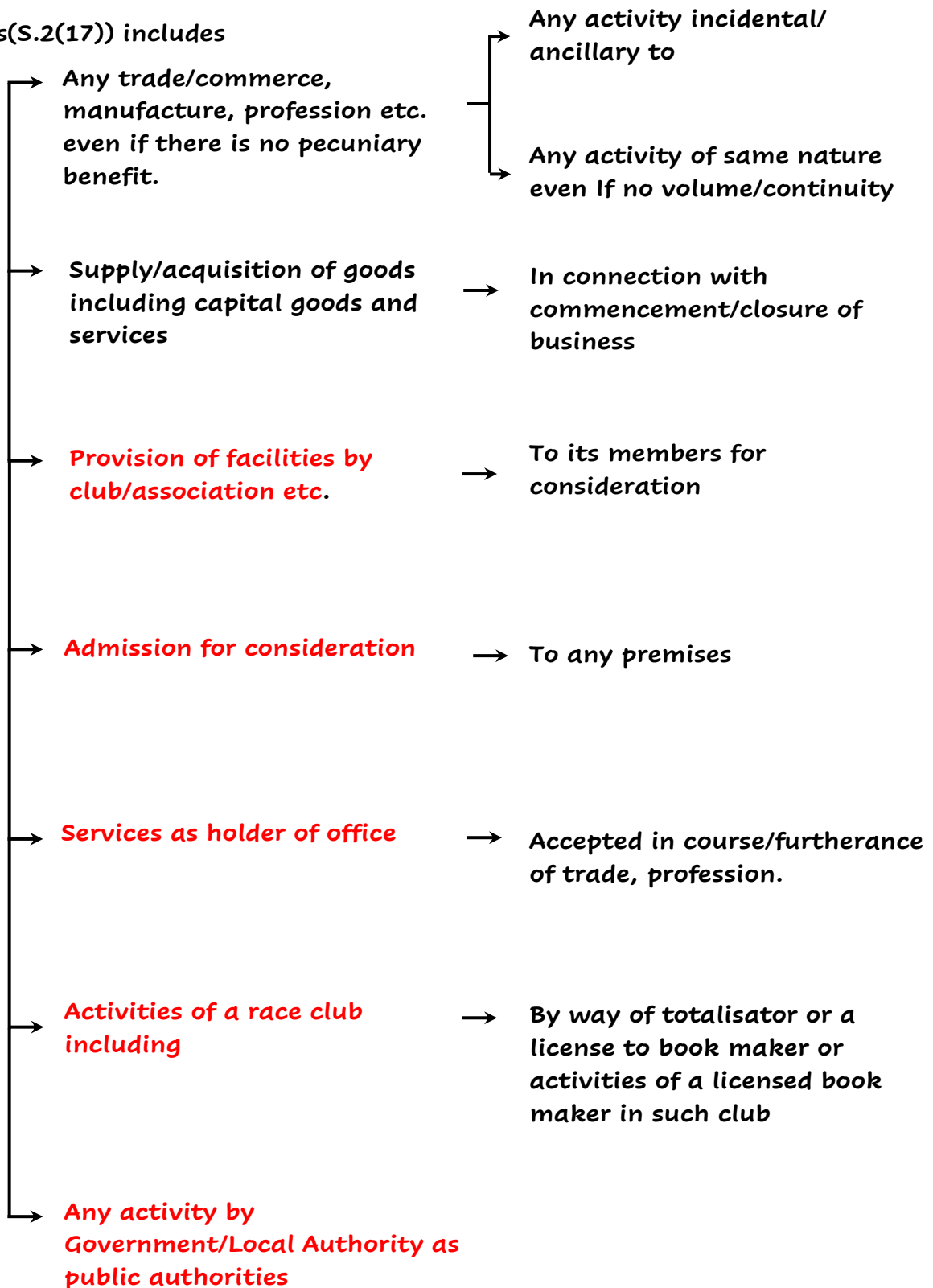
Excludes - Money and securities





In the course of furtherance of business
(Please note only importation of service can be a supply if done not in the course or furtherance of business)

Business(S.2(17)) includes





Clarifications regarding consideration

1. Donations received by charitable institutions from individual donors, without quid pro quo

Donations received by the charitable organisations are treated as consideration only if there exists, quid pro quo

GST is not leviable where all the following conditions are satisfied

- Gift or donation made to a charitable organization
- Gift or donation is made to a Payment has the character of gift or donation
- Payment has the Purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement

- Circular 116/35/2019 GST dated 11.10.2019



GST on display of name of the donor in premise of charitable trust receiving donation

Clarification : Whether such display of names would amount to supply of service?



There is no obligation on the part of recipient of the donation to do anything. It is not aimed at publicity but rather an expression of gratitude.



Hence no GST liability

2. Art works sent by artists to galleries for exhibition –

Not a supply as there is no flow of consideration. If the same art is sold at the exhibition it becomes a supply

3. 'No Claim Bonus' offered by an insurance company to the insured

- There is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and
- NCB cannot be considered as a consideration for any supply provided by the insured to the insurance company.
- It is treated as discount u/s 15(3)(a), recorded in the invoice at the time of supply.

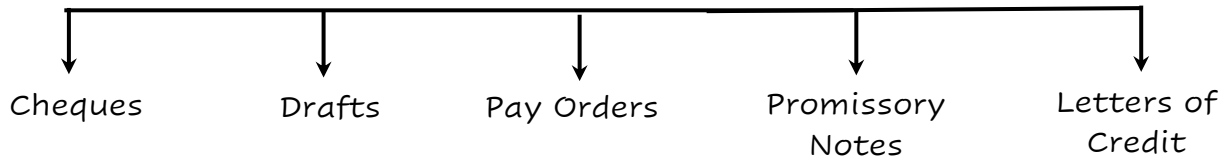


Financial Transactions

Definition of Goods and Services excludes

"money and securities"

↓
Money Includes



Money would also include

Commercial Papers (CP) & Certificate of Deposit

(They are in the nature of promissory notes, issuance of drafts or letter of credits)

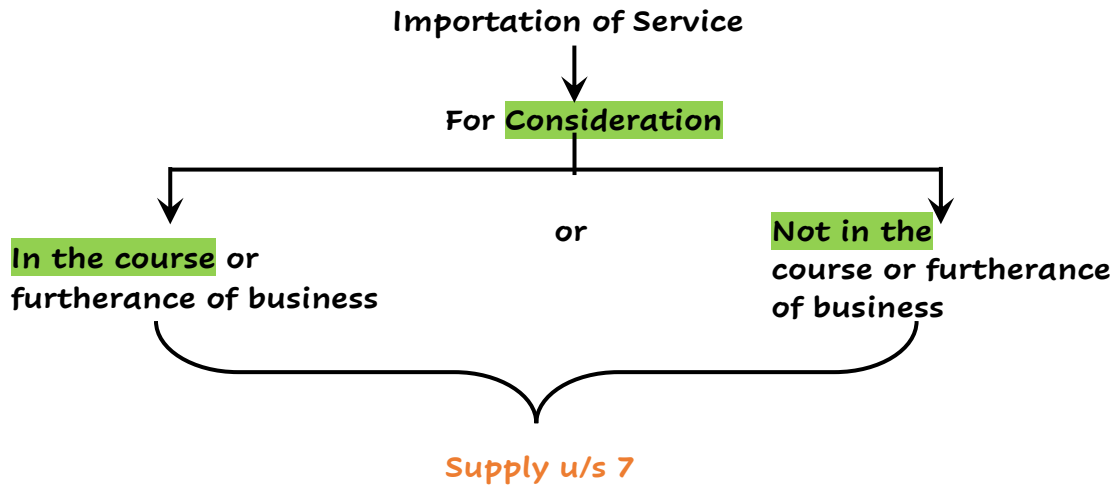
↓
These are **outside the ambit of Supply**

↓
But any **related activities** for which a **separate consideration is charged** will be **chargeable to GST**



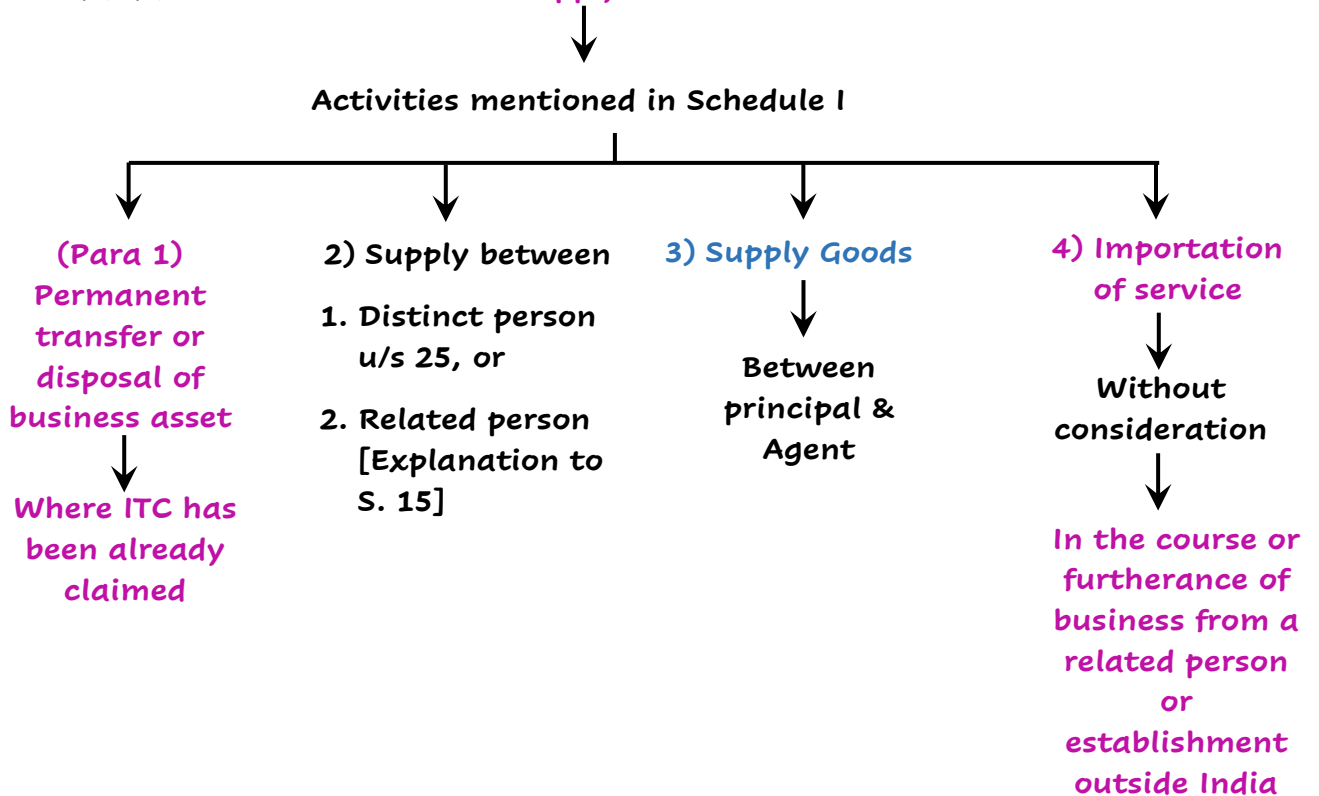
S.7 (1) (b) :

Supplier → Outside India
Recipient → in India



S.7 (1) (c) :

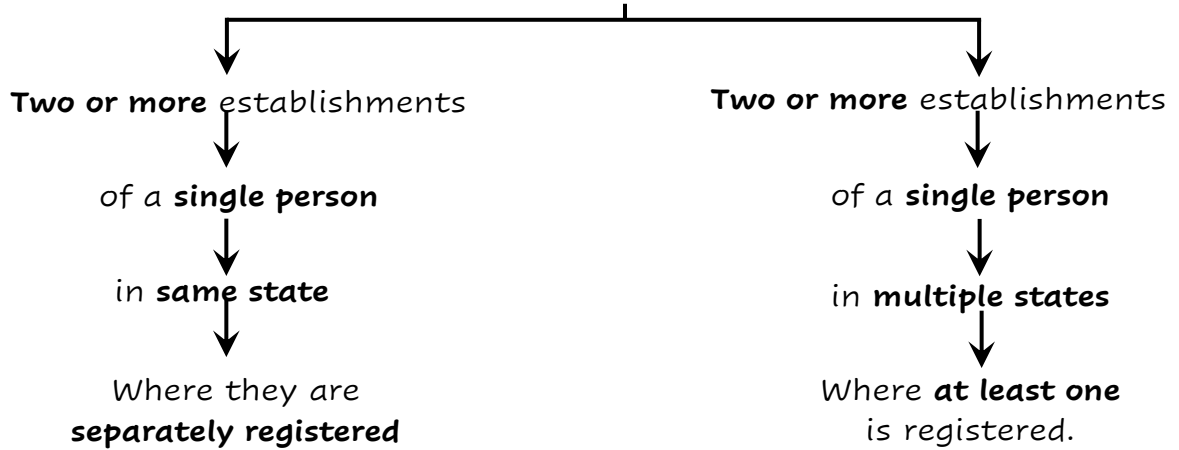
Deemed supply without consideration





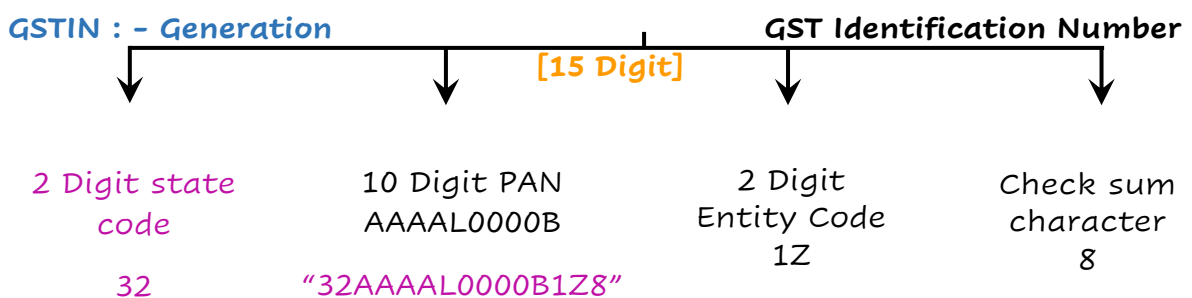
Para 2 : Supply between related person or distinct person is a supply even without consideration

A. Distinct Person u/s 25



Note:

1. A person needs to obtain registration in every state in which he makes a **taxable supply** from
2. He can voluntarily take separate registration for two or more place of business in same state.
3. If a person has one unit inside SEZ and other unit in non-SEZ area of same state, he is madatorily required to take two registrations.

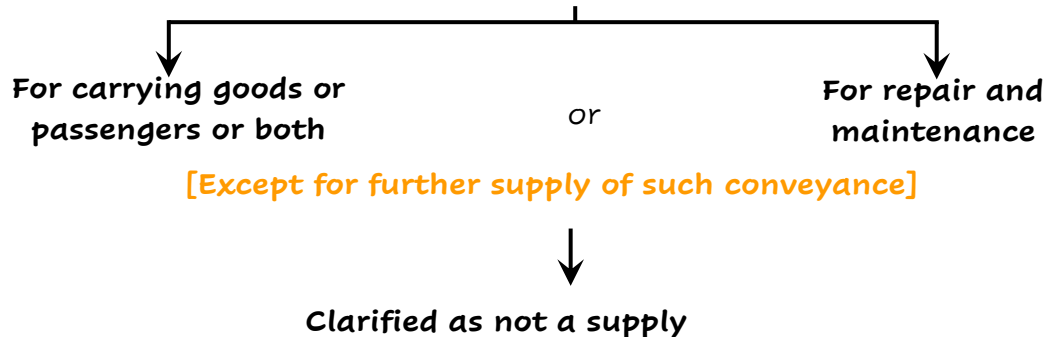




Clarificatory Circular:-

1. Circular 1/1/2017 IGST dated 07.07.2017

Inter-state movement of conveyance [Eg: Trains, Truck, vessels, containers etc.] between distinct persons



Same clarification is applicable to inter state movement of rigs, tools and spares and all goods on wheel (like cranes) between distinct person. Clarified as “not a supply” → Circular 21/21/2017 – GST dated 22.11.17

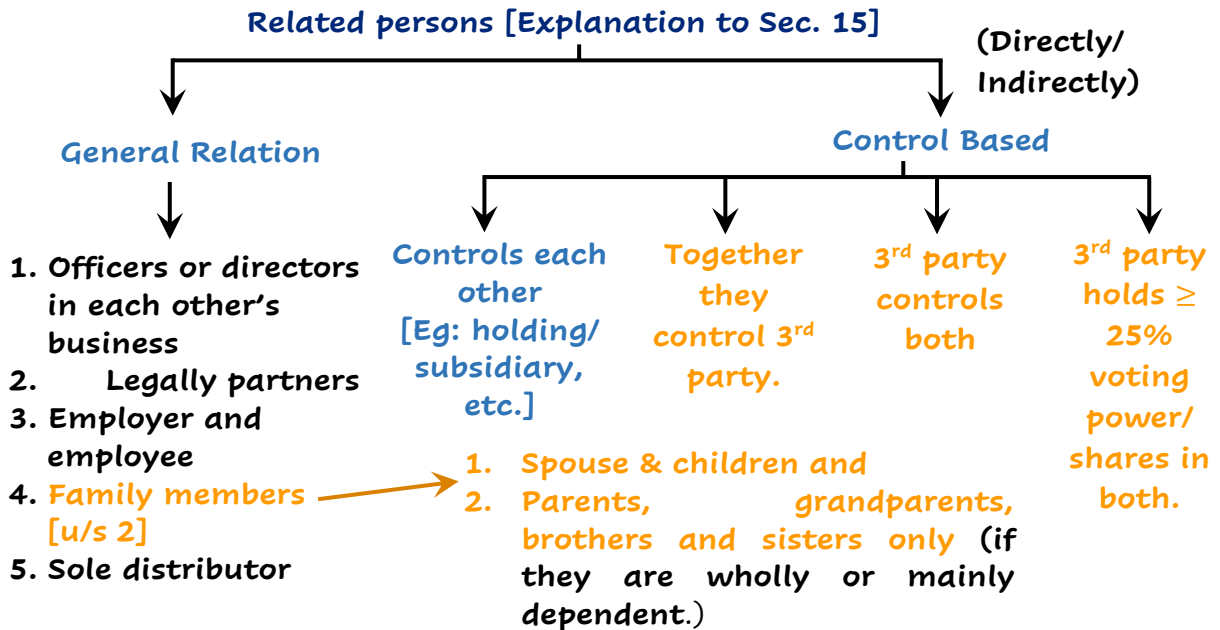
Notes:

- 1. Supply of goods other than above is a supply even without consideration between distinct person.**
- 2. When there is transfer of goods for reasons other than supply, instead of tax invoice a document called “Delivery Challan” will be issued under rule 55 of CGST rules 2017.**
- 3. Same clarification applicable for CGST and SGST also (Intra-state Supply).**

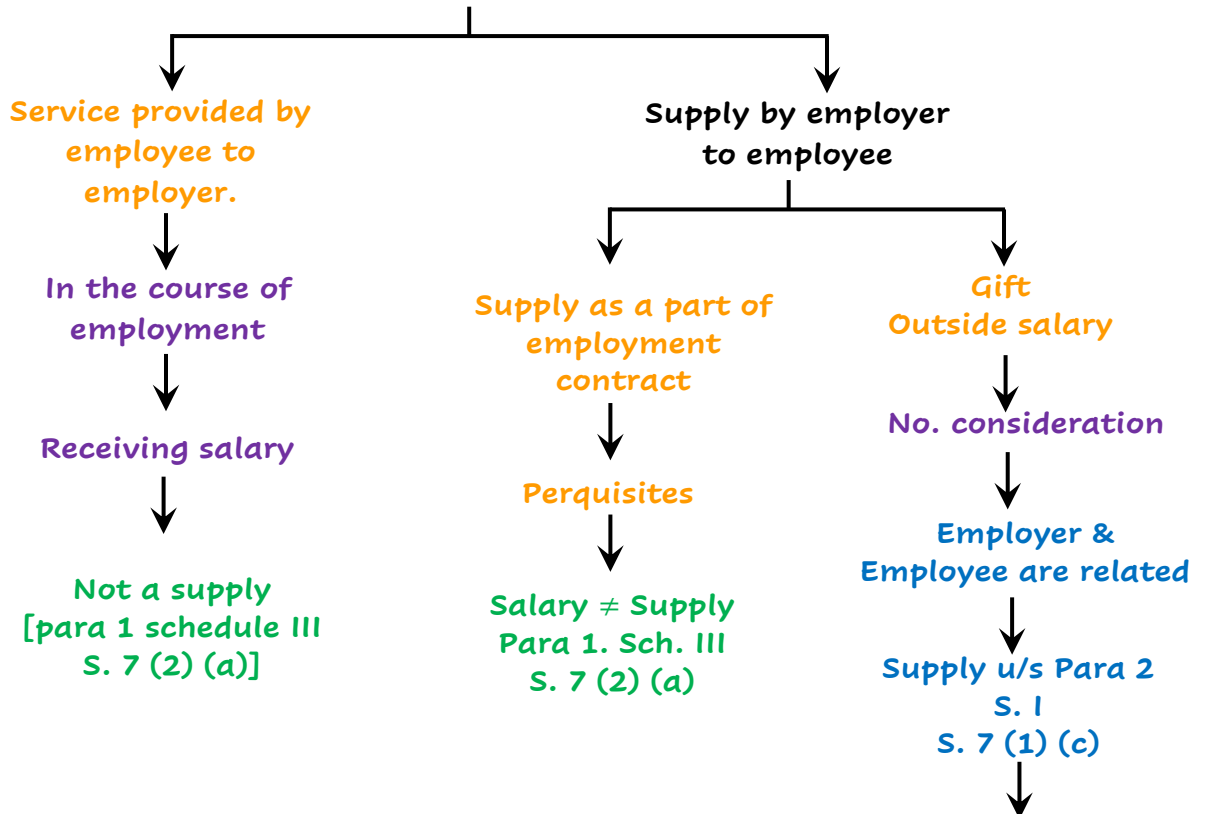


A. Related Person

Supply between related person is a supply even without consideration.



Employer & employee are related persons



Note: Gift per employee per financial year up to Rs.50,000 is exempted.
(Not considered as supply)



Clarification:

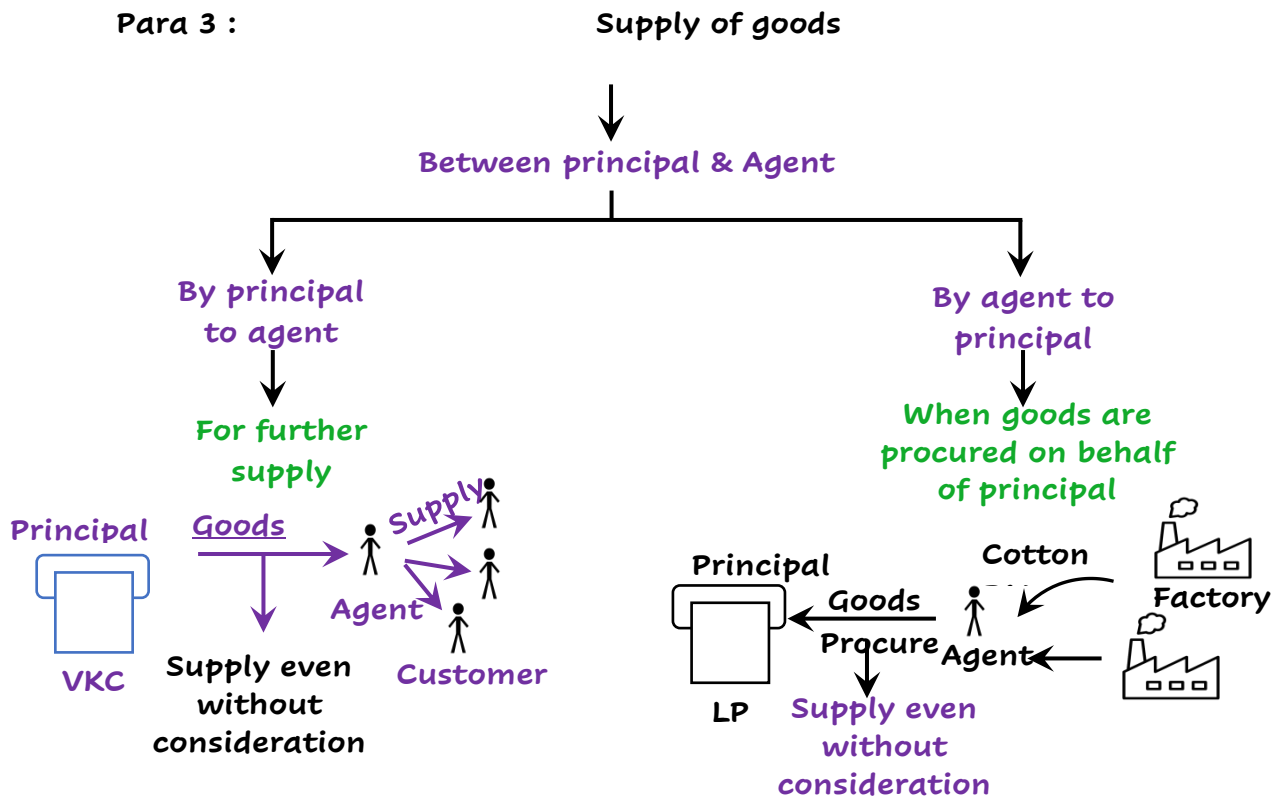
Circular No: 172/04/2022: Perquisites provided by employer to employee as per employment contract:



Clarified "will not be subject to GST"

Schedule III, Service by employee to employer in the course of employment is not a supply. Perquisites are a consideration for the same.

Para 3 :



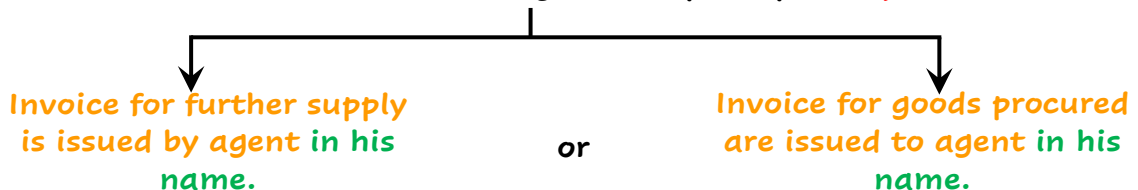
(Circular 57/31/2018 GST dated 04.09.2018)

Clarification on an agent is para 3 agent or not :-

Para 3 is applicable only for an agent for supply of goods not for service



An Agent Will be considered as agent for supply of goods without consideration between agent and principal **only** if





Clarification of DCA ⇒ Circular 73/47/2018



Del-Credere Agent (DCA): Guarantees payment to the supplier. Hence will be eligible for a higher commission. In order to provide timely payment to principal supplier, DCA resorts various methods such as short-term transaction loans, recovering amount from buyer with interest at a later date.

Circular clarifies of goods in such cases



Whether DCA is a para 3 Agent?
⇒ Invoice issued in the name of DCA
circular 57/2017

Following supplies take place in such case:

1. Supply of goods by principal to DCA
2. Further supply of goods by DCA to recipient.
3. Agency service by DCA to Principal.



Since DCA is a para 3 agent for supply of goods, credit facility by DCA to customer is no longer a separate supply rather interest on delayed payment of consideration for supply of goods



Hence interest will be added to value of supply of goods by DCA to recipient u/s 15 (2) (d)

Following supplies take place:

1. Supply of goods by principal to recipient
2. Agency service by DCA to principal
3. Supply loan service by DCA to recipient.



Hence credit facility is an independent activity

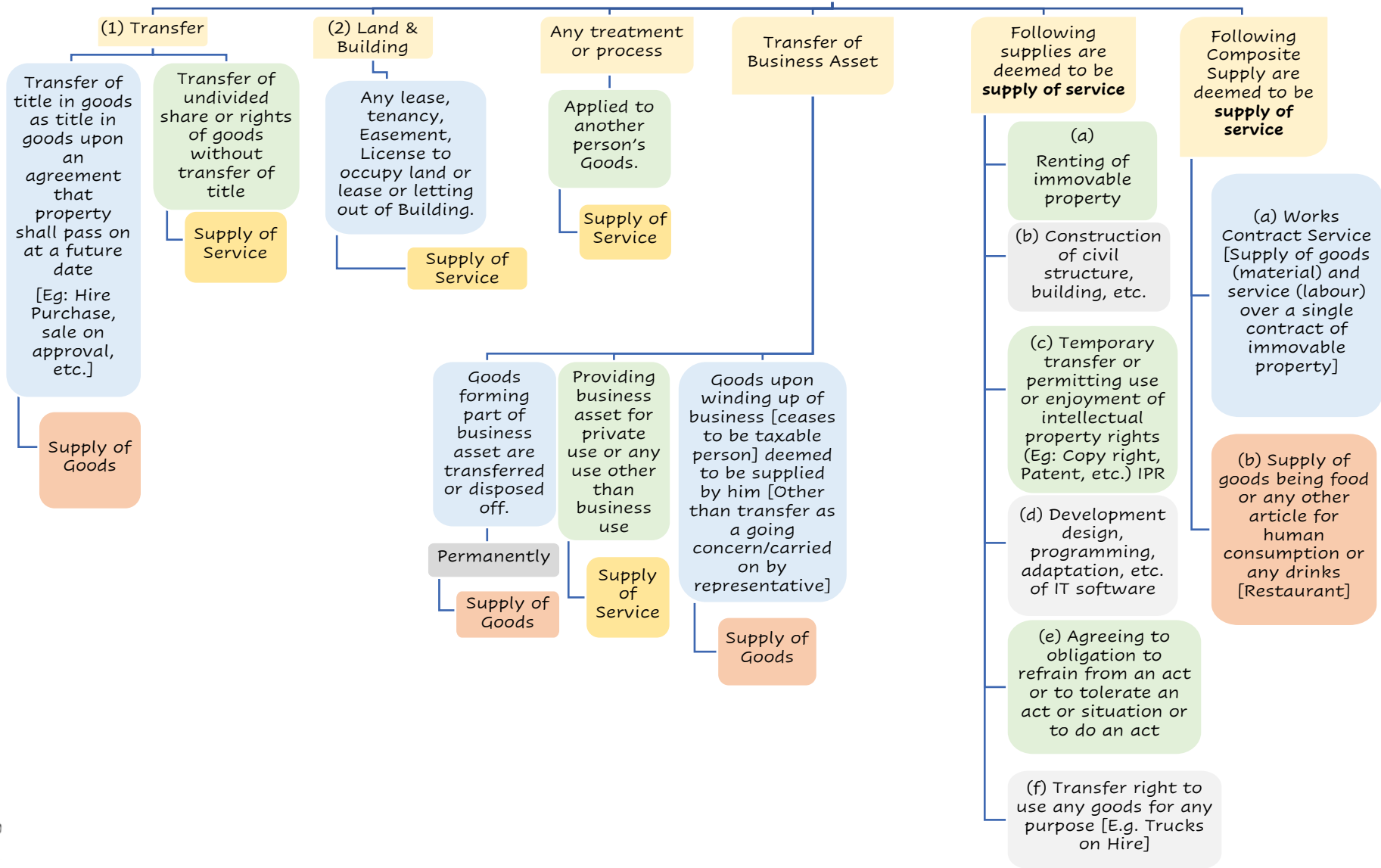


Interest is not included in value of goods



Interest on loan is exempted vide notification No. 12 /2017

Activities or transaction which are supply u/s 7(1) are treated as supply of goods or service as per schedule II



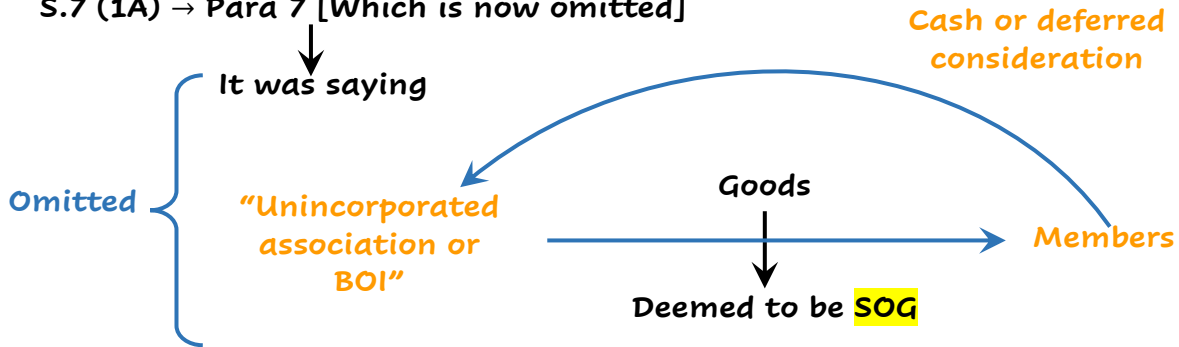


Case discussion: Amendment

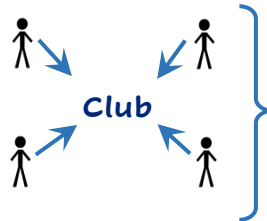
Introduction of Sec. 7(1)(aa)

Earlier

S.7 (1A) → Para 7 [Which is now omitted]



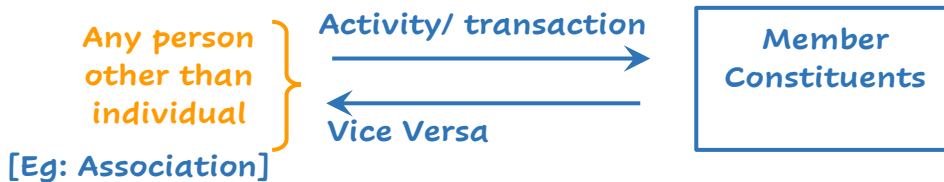
Association and its members



Qn:
Is association different from its members?

[w.e.f. 1st July 2017]

To avoid confusion : retrospectively a new clause was introduced : S.7(1) (aa) :



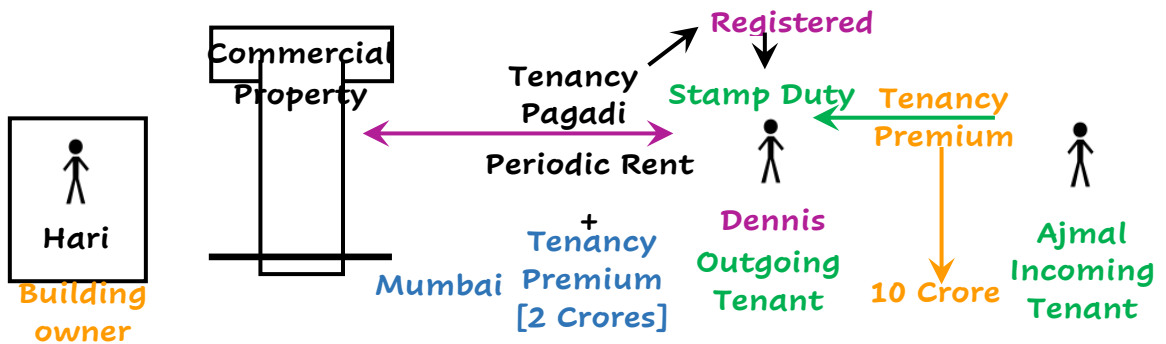
For cash/ deferred consideration or any other valuable consideration

It will be treated as "SUPPLY"

Explanation: For the above provision person other than individual and its members are deemed to be two separate person.



Circular 44/18/2018 : - Pagadi System/ Tenancy Rights



Clarification : - Whether Tenancy premium and periodic rent are subject to GST?

Tenancy is supply of service as per para 2 Schedule II

Hence GST is payable.

Please note, Transfer of tenancy rights for a premium is a separate supply of service and subject to GST.

Note: If the property in question is a residential property given on tenancy for residential purpose to unregistered person, tenancy premium and periodic rent are exempted from GST as per Notification 12/2017.

Circular No: 178/10/2022: - GST on Liquidated Damages, breach of contract penalty, etc.

Provision of the law: Schedule II: Para 5(e)

Following activity is deemed to be supply of service: -

“Agreeing to the obligation to: -

To refrain from an act.

To tolerate an act/situation.

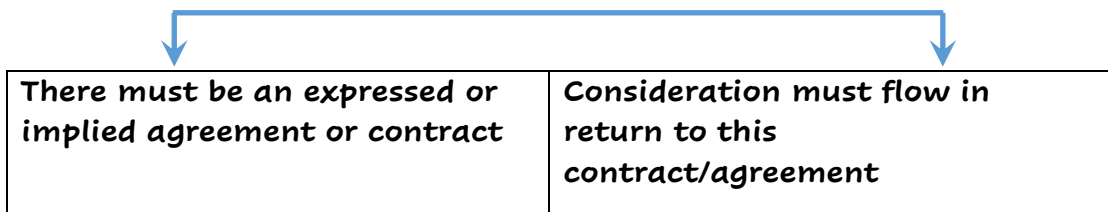
To do an act.

<p>Eg:</p> <p>(i) Non-compete contract in a product, service or geographical area against consideration</p>	<p>Eg: Shop owner allowing hawker/peddler shop to run in front of his shop upon a</p>	<p>Eg: Industrial unit installing additional zero/emission measures for a consideration from</p>
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	monthly consideration	a RWA (Residential Welfare Association)
(ii)	Contract to refrain from constructing more floors in a housing project for a consideration to not block sunlight for another project.	

To summarise, the activity must comply following conditions.



Clarificatory Circular : Taxability of certain transactions: -

i. Liquidated Damages

- It can't be said to be consideration received for tolerating the breach or non-performance.
- It is a measure of loss and damage that parties agree due to breach of contract
- The contract here is entered for execution and not for its breach.
- **Hence it does not constitute consideration for supply and are not taxable.**

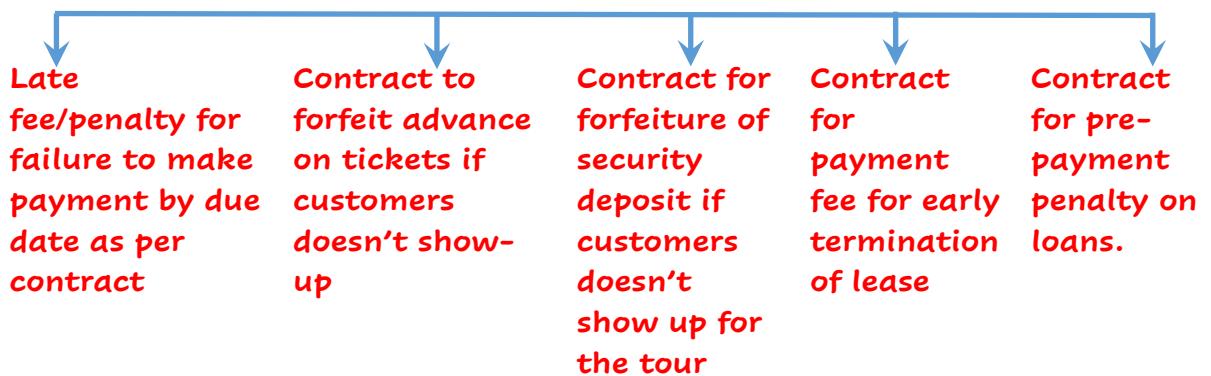
Examples: Liquidated Damages

Damages resulting from –	Penalty for delayed construction of house	Forfeiture of earnest money by seller of an immovable property or Govt. when bidder does not act after winning bid of natural resources
1. Damages to property		
2. Negligence		
3. Piracy		
4. Unauthorised use of trade name, copyright		

Doesn't constitute supply.



- However, in following cases, it would be considered as supply



These are ancillary to principal supply for which contract is signed, they shall be assessed as principal supply. Hence, it will be exempt only if principal supply is exempt.

ii. Cheque Dishonour Penalty

- Here the payment never implies tolerating an invalid cheque.
- Hence it is not a consideration for any service
- It is not taxable

iii. Penalty imposed for violation of laws.

- It is not a consideration as it never implies tolerating violation
- Hence it is not taxable.

iv. Forfeiture of salary or payment of bond for not serving contract period.

- It is entered to discourage non-service candidate to take up employment
- It does not constitute consideration
- Hence it is not taxable

v. Late payment surcharge/fee.

- Ancillary supply to principal supply
- Hence taxable as principal supply

vi. Fixed charges for electricity

- Both fixed charges and variable charges are charges for sale of electricity.
- Hence it is not taxable as electricity is exempt from GST

vii. Cancellation charges or forfeiture of advances

- The fee constitute cost of arranging goods or services for transportation or tour.
- Constitute supply and taxable in the same rate of original supply which is now cancelled

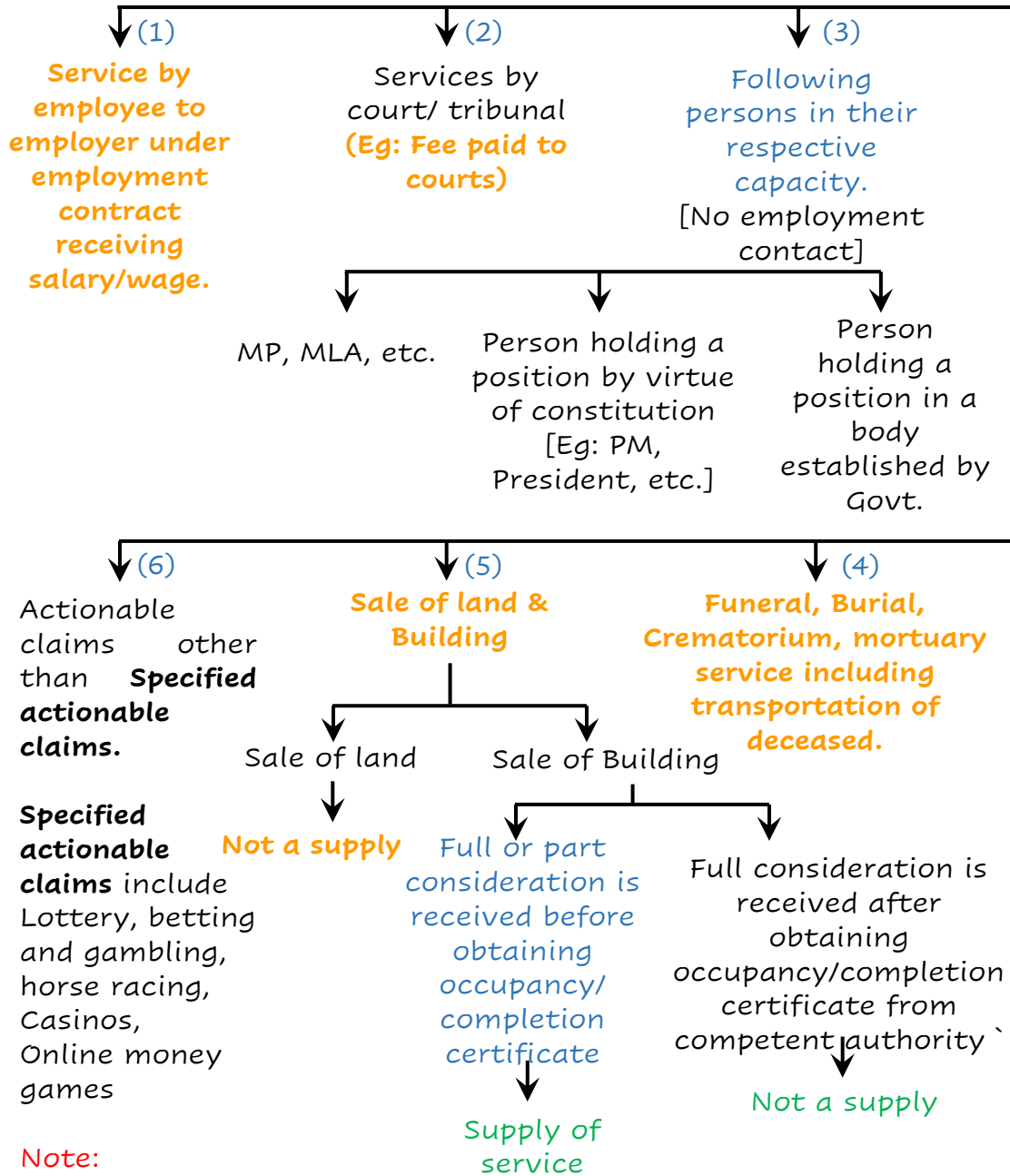


s.7 (2) (a) : Activities which are neither supply of goods nor supply of service.



Negative list - Schedule III

Schedule III (Negative List)



Note:
Un-secured debt not a supply



“Specified actionable claim” as defined in section 2(102A) of the CGST Act, 2017 means the actionable claim involved in or by way of: -

- (i) betting;
- (ii) casinos;
- (iii) gambling;
- (iv) horse racing;
- (v) lottery; or
- (vi) online money gaming;

Supply of Online Money Gaming under IGST Act [NN 03/2023 – IT w.e.f. 1st October, 2023]

By Virtue of NN 03/2023 IT the supply of **online money gaming** shall be **treated as the goods** however, on **import of which GST shall be collected** as per section 5(1) of IGST Act (not as per customs). **Supply of online money gaming** is goods as it is defined in the definition of **specific actionable claims** (S. 2(102A) of CGST Act)

S.7 (2) (b) :



➤ Govt has made following notification in this regard.

1. Services by way of activities in relations to functions entrusted to a panchayat/ municipality under article 243G/243W. ⇒ Not a supply

Eg : Urban planning, waste management, etc.

Amendment

2. Notification No. 25/2019 ⇒ Central Tax & Notification 24/2019
Integrated Tax Dated 30-09-2019
Service by way of grant of Alcoholic liquor licence ⇒ Not a supply

Circular 121/40/2019 → clarifies that above provision is only applicable for grant of liquor licenses by state government. [Not a supply]

Other licenses like mining, etc is subject to GST under reverse charge mechanism by Business entities.

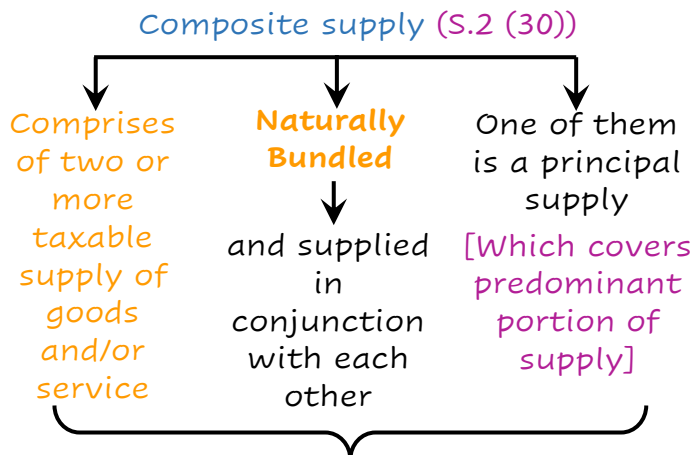
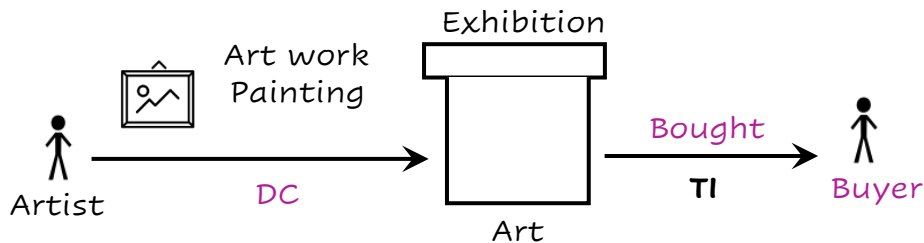


Circular 22/22/2017 → GST dated 21/12/2017

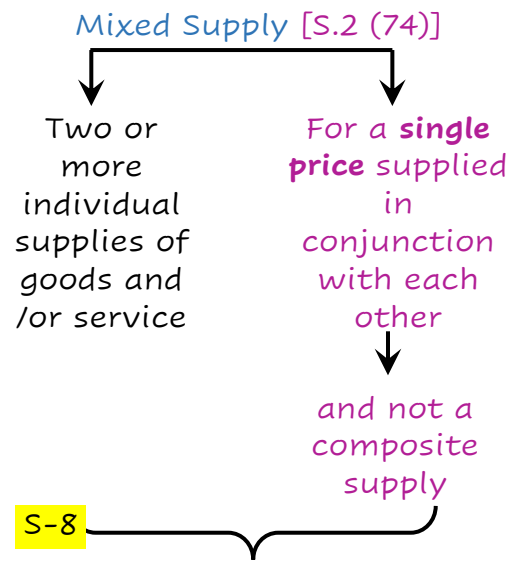
Artwork sent by artists to art galleries for exhibition is not a supply [No consideration]



Invoice will be issued only when buyer buys the art work displayed at art gallery.



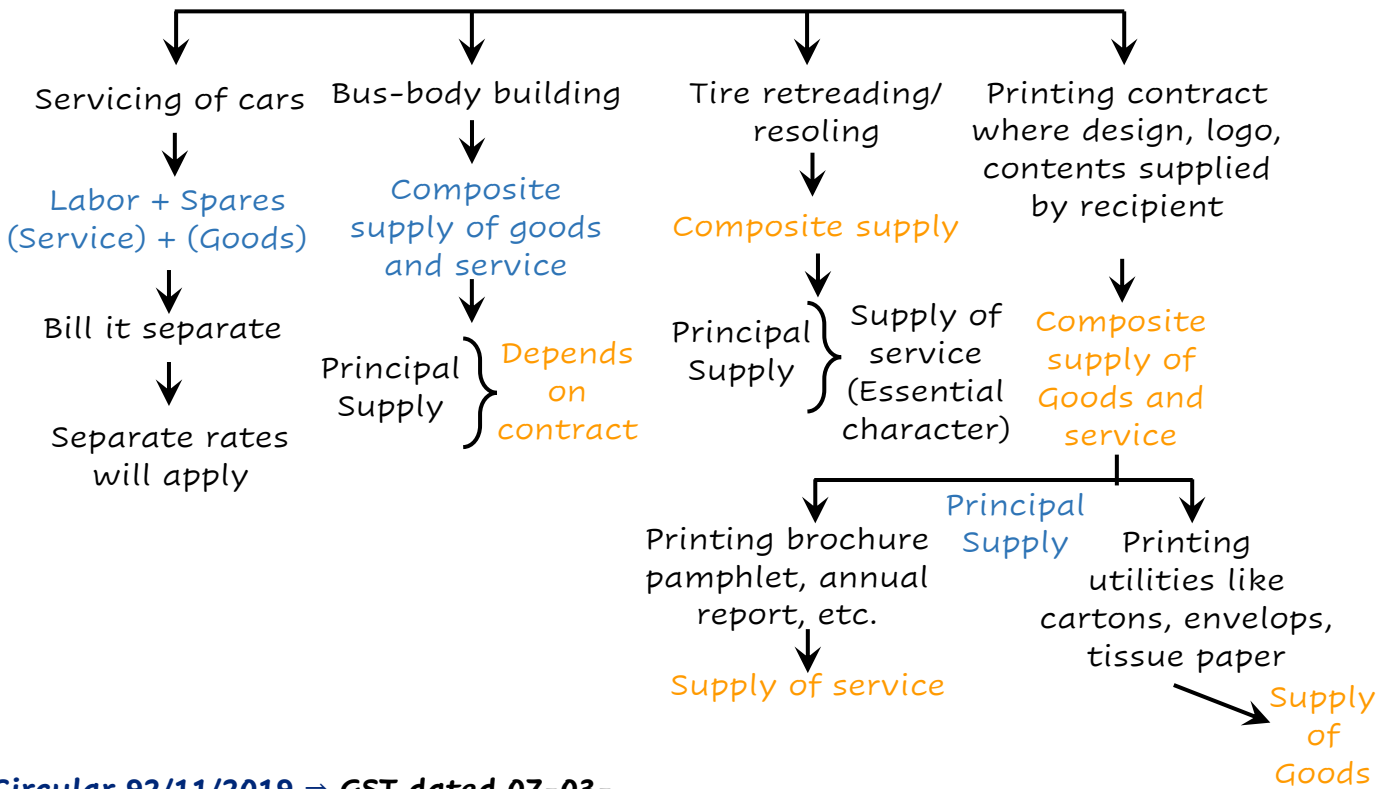
S.8 : If supply is composite supply, it will be treated as supply of principal supply. Rate of **principal supply** will be applicable to entire supply.



S-8 If supply is mixed supply it will treated as supply of such individual supply which attract **highest rate** of tax

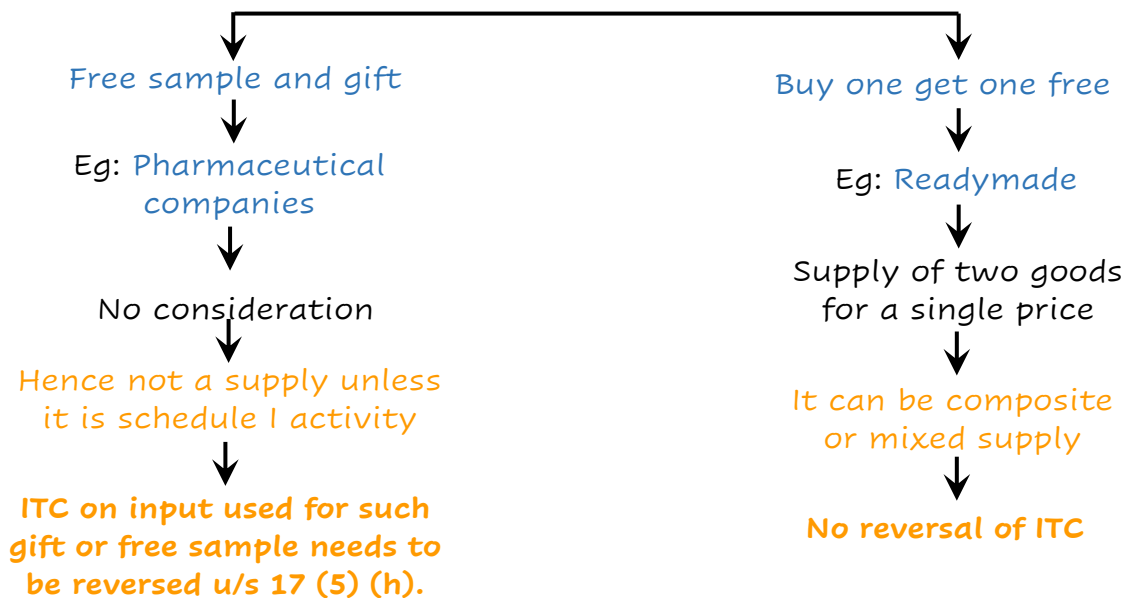


Clarificatory Circulars



Circular 92/11/2019 ⇒ GST dated 07-03-2019

Sales Promotion Schemes





1. Supply of food and beverages at cinema halls taxable as restaurant service dated. 01.08.2023 vide **Circular No. 201/13/2023 GST**

Clarification

- (i) supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as:
 - (a) the **food or beverages are supplied by way of or as part of a service**, and
 - (b) supplied **independent of the cinema exhibition service**.

- (ii) where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the **test of composite supply**, the entire supply will attract GST at the **rate applicable to service of exhibition of cinema** (principal supply).

2. Clarification on taxability of shares held in a subsidiary company by holding company dated. 17.07.2023 vide **Circular No. 196/08/2023 GST**

Purchase or sale of shares or securities is neither a supply of goods nor a supply of services.

The activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to subsidiary company just because of a specific entry under SAC i.e. 997171 Services provided by holding companies – Holding of securities



"cannot be taxed under GST."