

SUPPLY UNDER GST

RELEVANT DEFINITIONS

- **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.

- **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**.

- **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 CG or a SG.
- 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 CG or SG.

Examples

Situation	Consideration?
Pizza received for a watch	Yes
Non compete fees paid by a CA to his qualified article, not to take its client and compete in the same field	Yes
Complimentary food offered by a restaurant to a bus driver/conductor as an inducement for getting customers at their restaurant	Yes

- **BUSINESS:**

Includes-

- Any trade, commerce, manufacture, profession, vocation, adventure, wager irrespective of its volume, frequency, continuity, or regularity of such transaction;
- Provision by a club, association, society, **to its members**,
- Admission, for a consideration, of persons **to any premises**; and
- Activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club
- Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

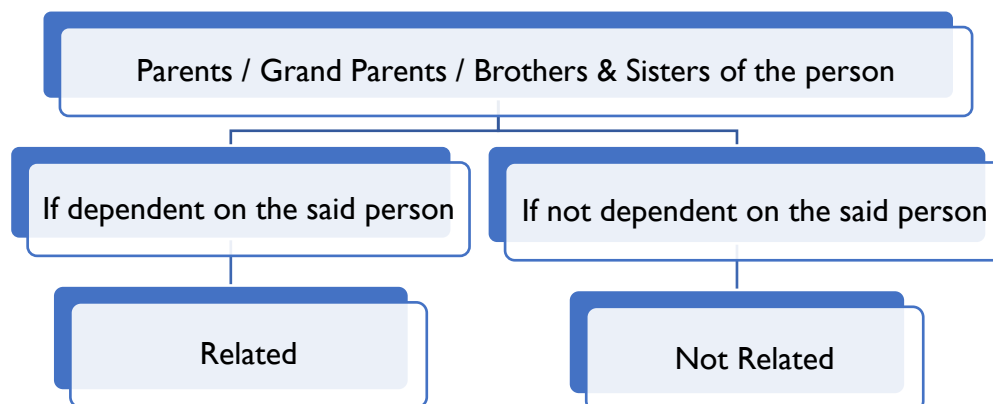
- **RECIPIENT:**

- where a consideration is payable - for the supply of goods or services or both, the person who is liable to pay that consideration,
- where no consideration is payable - for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and
- where no consideration is payable for the supply of a service - the person to whom the service is rendered.

- **FAMILY:**

Means, —

- the spouse and children of the person - always related



CONCEPT OF SUPPLY [SECTION 7 OF CGST ACT]

Section 7	Meaning and scope of supply
Schedule I	Activities to be treated as supply even if made without consideration (Deemed Supply)
Schedule II	Activities or transactions to be treated as supply of goods or as supply of services
Schedule III	Activities or transactions which shall be treated neither as supply of goods nor as supply of services.
Section 8	Taxability of composite and mixed supplies

SECTION 7: MEANING AND SCOPE OF SUPPLY

7(1) Supply includes-

- 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.**
- 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.
- b. **Importation of services**, for a consideration **whether or not in the course or furtherance of business**, and
- c. The activities specified in **Schedule I**, made or agreed to be made **without a consideration.**

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.

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 a supply of services.**

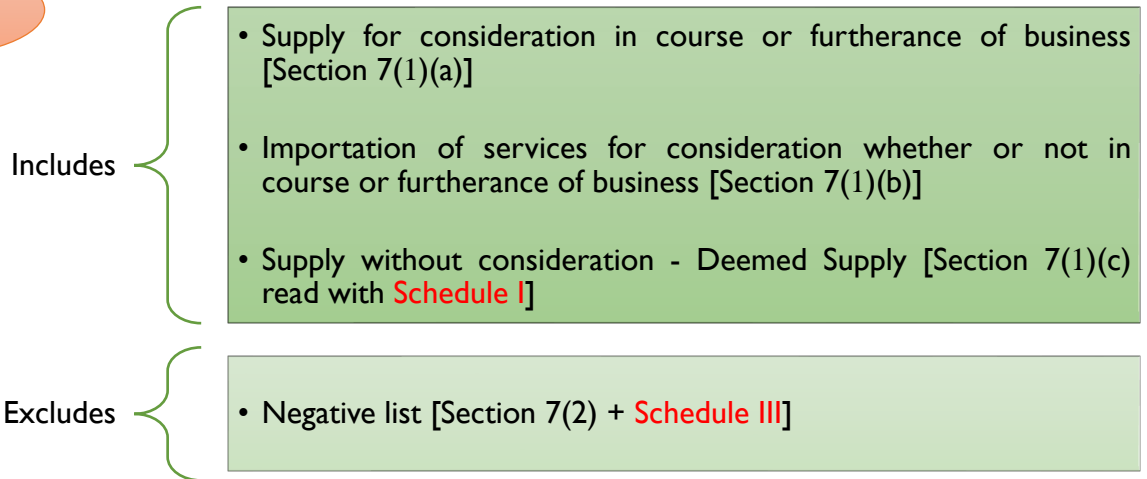
PARAMETERS OF SUPPLY

Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.

Supply should be made for a consideration.

Supply should be made in the course or furtherance of business.

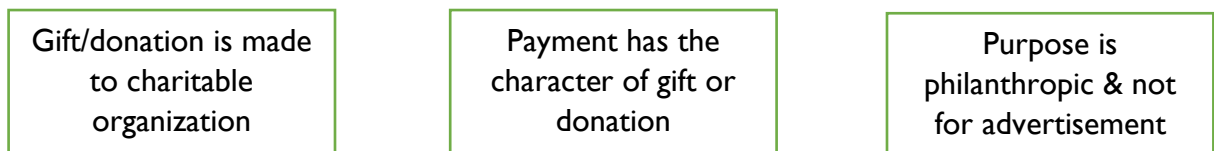
SUPPLY



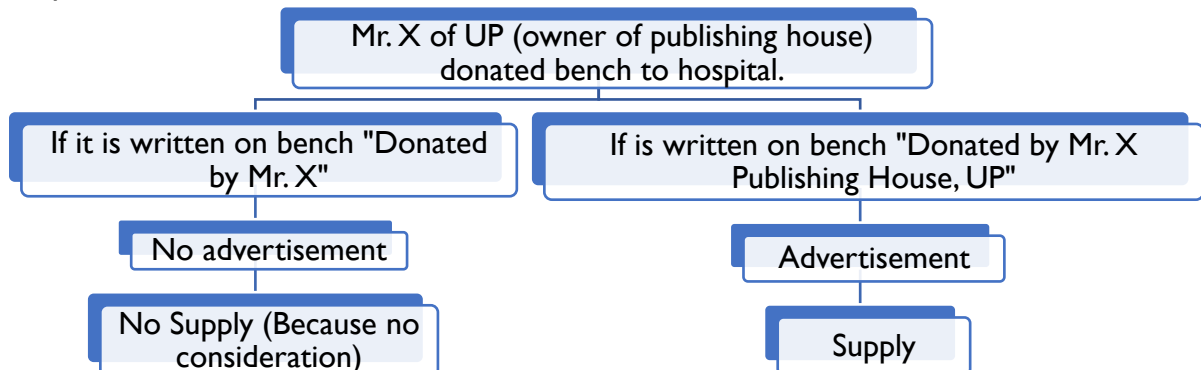
IMPORTANT CIRCULARS

- Donations received by charitable institutions from individual donors without quid pro quo i.e., nothing is to be done by donee in return

GST is not levied when below 3 conditions are satisfied: -



Example: -



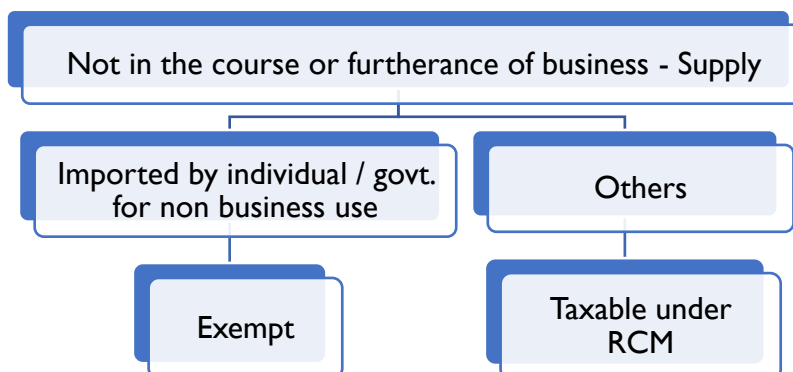
2. Art works sent by artists to galleries for exhibition is not a supply as no consideration flows from the gallery to the artists.
3. Service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or by whatever name it is called (valid on alcoholic licence only, not on other licences) will not be treated as Supply.

ANALYSIS OF SEC 7(1)(a): SUPPLY FOR CONSIDERATION IN COURSE OR FURTHERANCE OF BUSINESS (BOTH GOODS & SERVICES)

- all forms of supply of goods or services or both such as **sale, transfer, barter, exchange, license, rental, lease or disposal**
- made or agreed to be made
- for consideration
- in course or furtherance of business.

ANALYSIS OF SEC 7(1)(b): IMPORT OF SERVICES FOR A CONSIDERATION WHETHER OR NOT IN THE COURSE OF FURTHERANCE OF BUSINESS

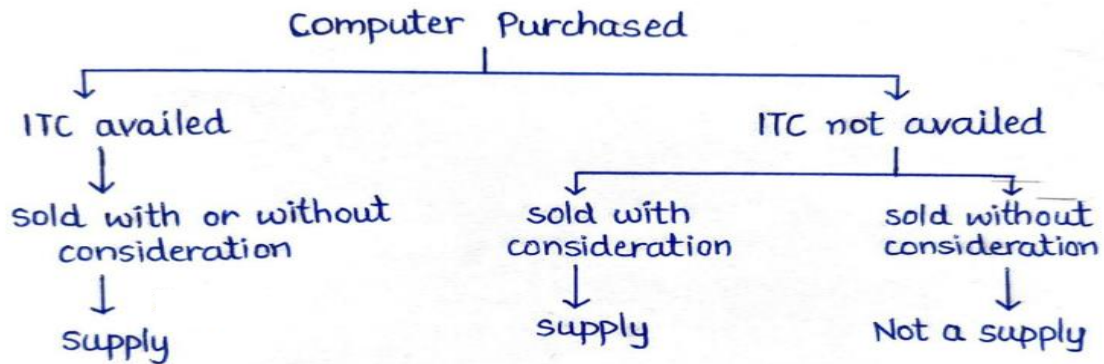
- In the course or furtherance of business – Supply & Taxable under RCM



ANALYSIS OF SEC 7(1)(c) SCHEDULE 1: ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION (DEEMED SUPPLY)

Para I of Schedule I

1. **Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.**



Para II of Schedule I

2. Supply of goods or services or both

- between **related persons** or between distinct persons as specified in section 25
- made in the course or furtherance of business.

❖ Gifts not exceeding ₹ 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 (e.g.: if value is ₹ 51,000, then tax will be liable on ₹ 51,000 not on ₹ 1,000).

RELATED PERSON

- Such persons are officers / directors of one another's business.
- Search persons are legally recognised partners in business.
- Search persons are employer and employee.
- Third person controls / owns / holds (directly/indirectly) $\geq 25\%$ voting stock / shares of both of them.
- One of them controls (directly / indirectly) the other.
- A third person controls directly / indirectly both of them.
- Such persons together control directly / indirectly a third person.
- Such persons are members of the same family.
- One of them is the sole agent / sole distributor / sole concessionaire of the other.

DISTINCT PERSONS SPECIFIED UNDER SECTION 25

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.

The establishments of a person with separate registrations whether within the same State/UT or in different States/UTs are considered as distinct person.

Where a person who has obtained **or is required to obtain registration** in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons. [Section 25(5) of the CGST Act].

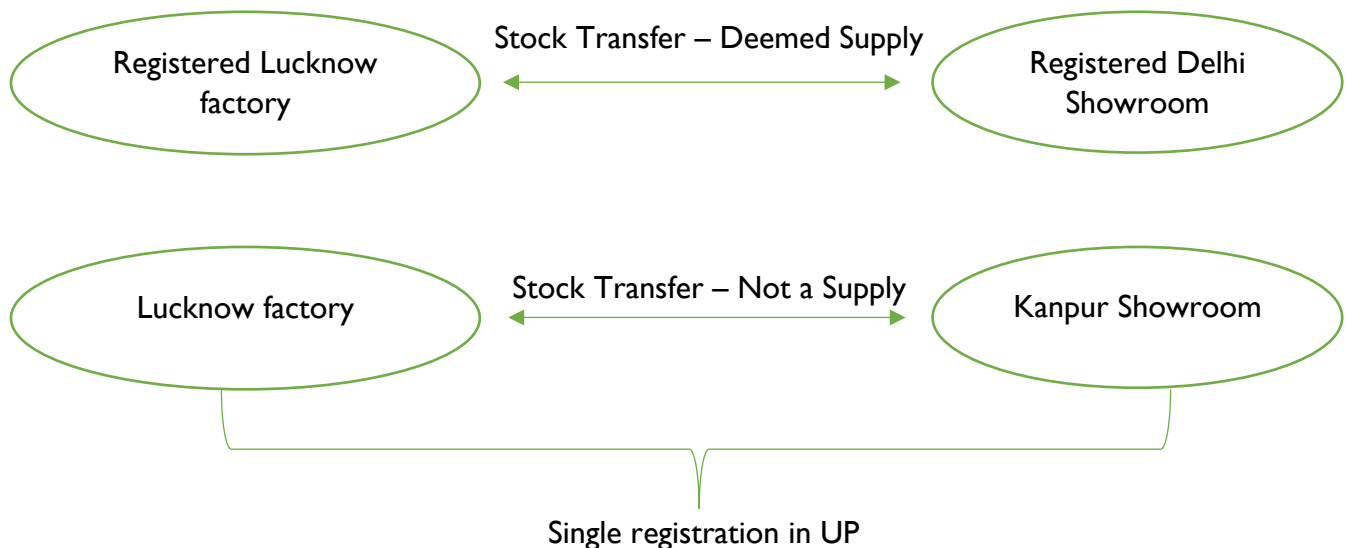
❖ Even if one branch is registered and another branch is not registered (or not liable to register), then also stock transfer will be considered as Supply.

Example: Rishabh Enterprises, a registered supplier, owns an air-conditioned restaurant in Virar, Maharashtra. It has opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption.

Since supply of alcoholic liquor for human consumption in Uttarakhand is a non-taxable supply, Rishabh Enterprises is not required to obtain registration with respect to the same in Uttarakhand.

In this case, air-conditioned restaurant in Maharashtra and liquor shop [though unregistered] in Uttarakhand shall be treated as establishment of distinct persons. Supply by Maharashtra restaurant to Uttarakhand shop, in course or furtherance of business even without consideration will qualify as supply.

STOCK TRANSFER



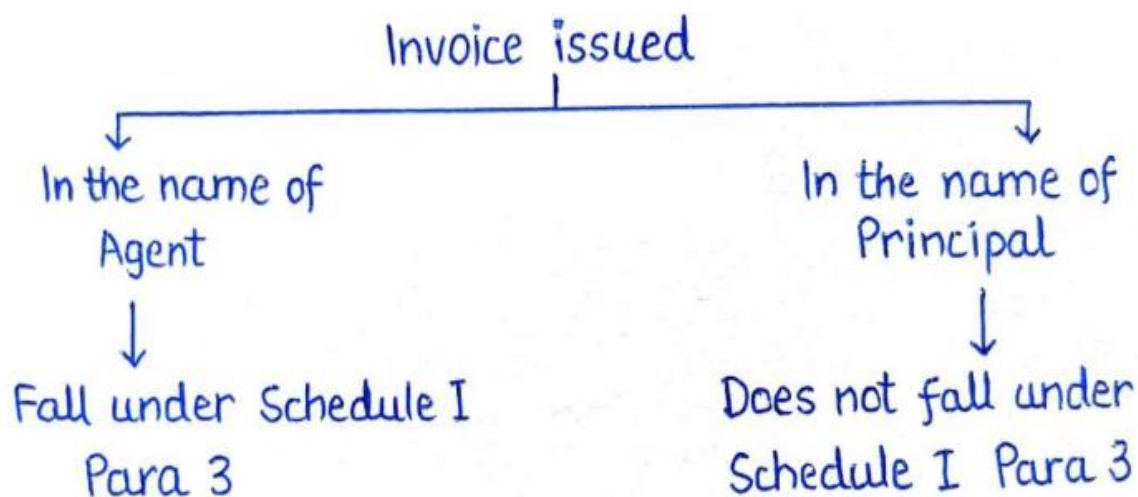
PRINCIPAL- AGENT:**Para III of Schedule I**

Supply of GOODS:

- a. 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.
 - b. 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.
- ❖ In order to determine whether a particular principal-agent relationship falls within the ambit of 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.**

- Where 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
- However, where 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.
- Similarly, where 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.

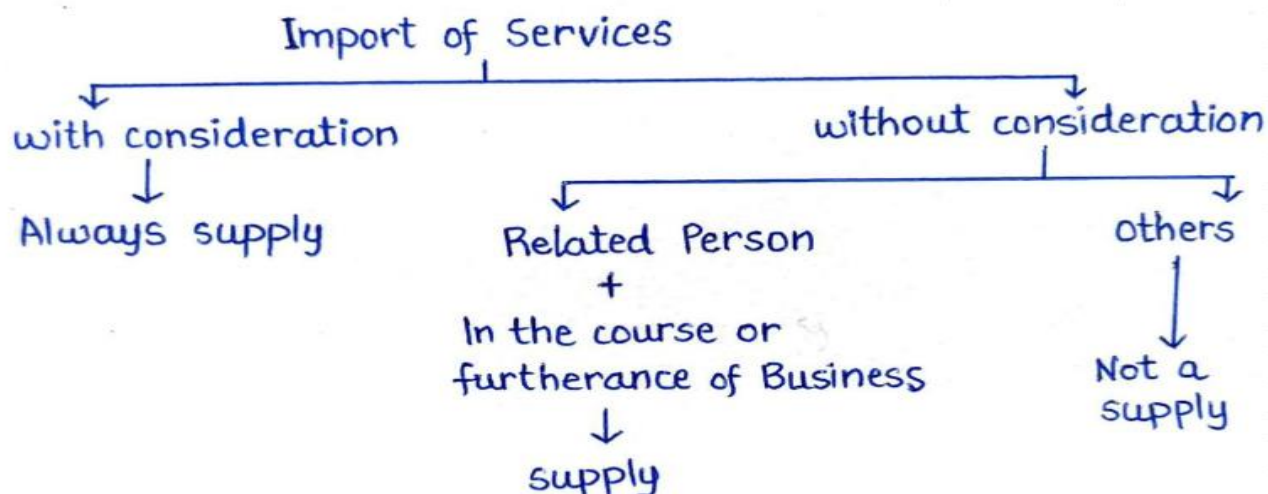


IMPORTATION OF SERVICES IMPORT OF SERVICES BY A PERSON

Para IV of Schedule I

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”.



Examples:

1. Jhumroo Associates received legal consultancy services from its head office is located in Malaysia. The head office has rendered such services free of cost to its branch office. Since Jhumroo Associates and the head office are related persons, services received by Jhumroo Associates will qualify as supply even though the head office has not charged anything from it.
2. Chakmak, a proprietor registered in Delhi, has sought architect services from his son located in US, with respect to his newly constructed house in Delhi.

Although services have been received by Chakmak without consideration from his son- a related person, yet it will not qualify as supply since the same has not been received in course of furtherance of business.

However, if in the above case, Chakmak receives architect services without consideration from his son with respect to his office in Delhi, the same shall be treated as supply because the same have been received in the course of business.

3. Mr. Ankit imported interior designing services for his house from his son Mr. John (lives in USA) for \$ 10,000.
Taxable under RCM (Because with consideration always taxable)

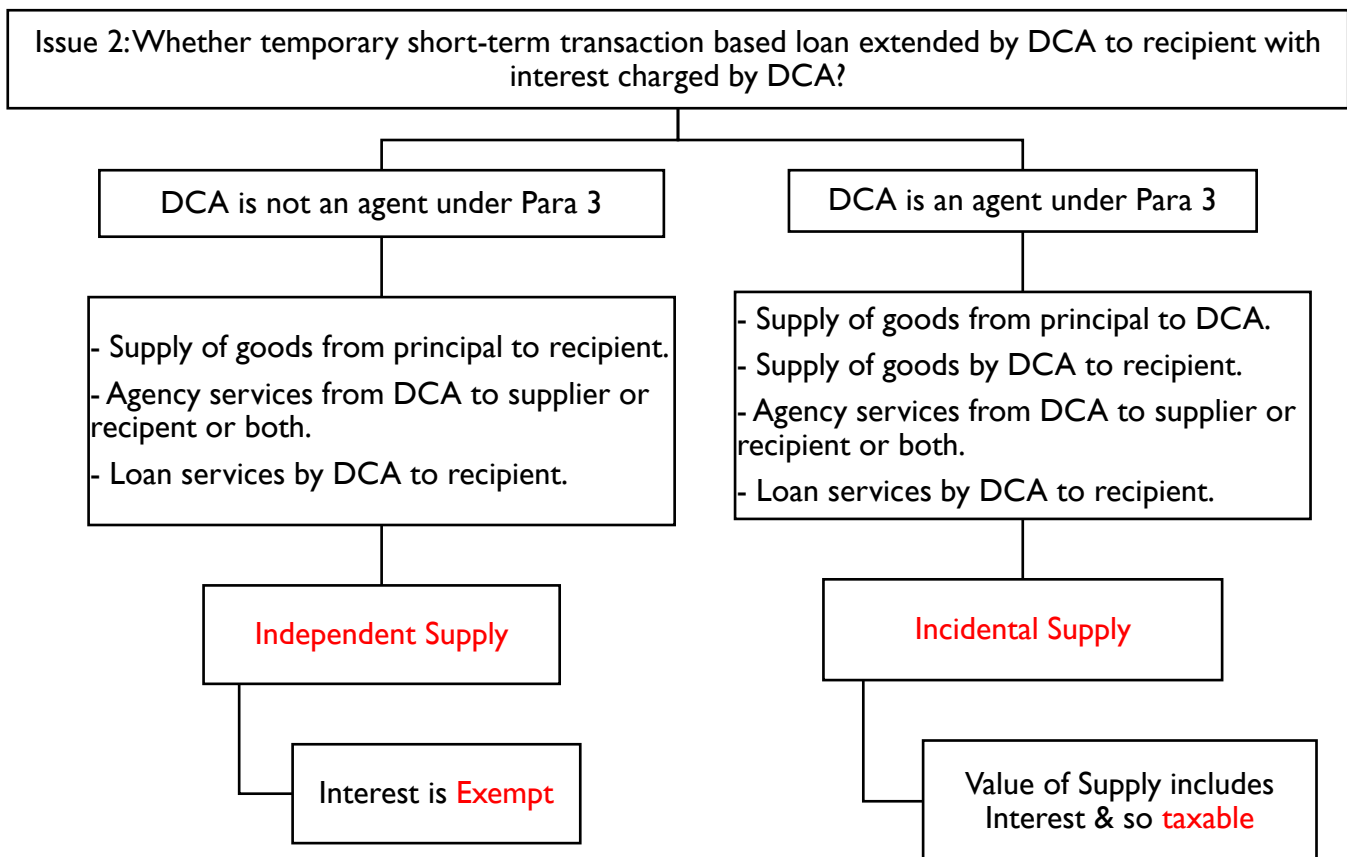
4. Mr. Ankit imported interior designing services for his house from his son Mr. John (lives in USA) for free.
Not a Supply
5. Mr. Ankit imported interior designing services for his office from his son Mr. John (lives in USA) for free.
Supply (although without consideration but from related person + in course / furtherance of business)

Clarification of issues pertaining to Del-credere agent (DCA)

- DCA guarantees the payment to the supplier.
- Where the buyer fails to make payment to the principal by due date, DCA makes payment to principal on behalf of the buyer.
- DCA collects the payment from the buyer along with interest.

Issue 1: Whether a DCA falls within the scope of Para 3?

- If invoice is issued by DCA in his own name – DCA covered under Para 3
- If invoice issued by DCA in the name of principal – DCA not covered under Para 3



SCHEDULE II: ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR AS SUPPLY OF SERVICES

Section 7(1A) classifies certain activities / transactions constituting supply, either as supply of goods or supply of services. Schedule II to the CGST Act contains the list of activities or transactions which have been classified either as supply of goods or supply of service.

The matters listed out in Schedule II are as follows: -

Para No.	Activity / Transaction	Type	Nature of Supply
1.	Transfer	(i) Title in goods	Goods
		(ii) Title in goods under an agreement that property shall pass at a future date.	
		Right / undivided share in goods without transfer of title in them.	Services
2.	Land and Building	Lease, tenancy, easement, licence to occupy land.	Services
		Lease / letting out of building including a commercial / industrial / residential complex for business / commerce, wholly / partly.	Services
3.	Treatment or Process	Applied to another person's goods.	Services
4.	Transfer of Business Assets	Goods forming part of business assets are transferred / disposed off by / under directions of person carrying on business so as no longer to form part of those assets.	Goods
		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.	Services
		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. Exceptions: ➤ Business transferred as a going concern. Business carried on by a personal representative who is deemed to be a taxable person.	Goods

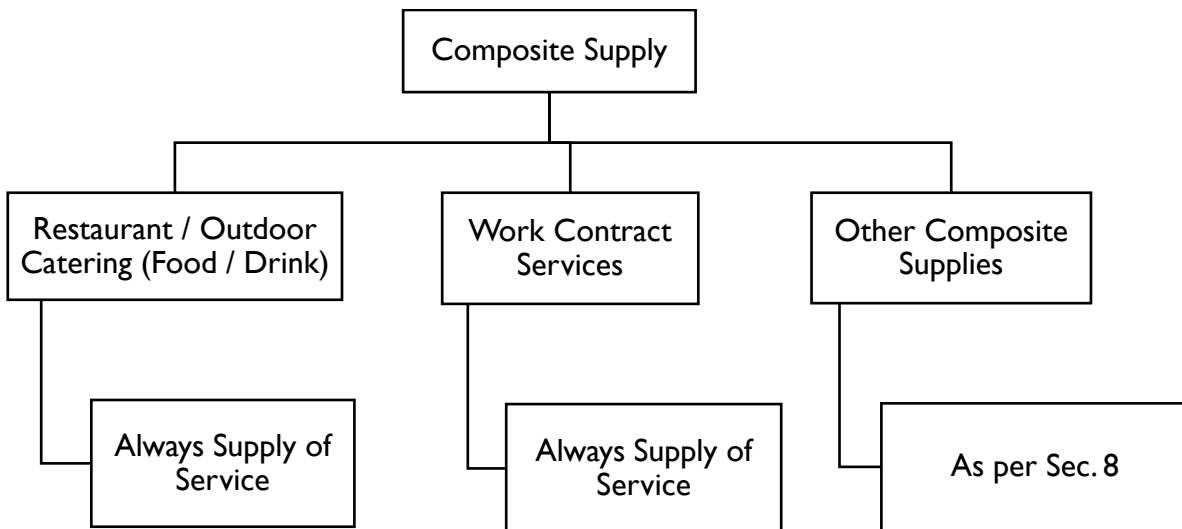
5.	Renting of immovable property	Services
	Construction of complex, building, civil structure, etc.	
	Temporary transfer or permitting use or enjoyment of any intellectual property right.	
	Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of IT software	
	Agreeing to obligation to refrain from an act, or to tolerate an actor situation, or to do an act.	
	Transfer of right to use any goods for any purpose	
6.	<p>Following composite supplies:-</p> <ul style="list-style-type: none"> ➤ Works contract ➤ Supply of goods, being food or any other article for human consumption or any drink. 	Services

Analysis

1. Construction of Building

- Sale of Under Constructed units —————> Supply of Service
- Sale of Completed units —————> Negative list (Not a supply)

2. Composite Supply



SCHEDULE III: ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS SUPPLY OF GOODS NOR AS SUPPLY OF SERVICES

Non-supplies under GST [Section 7(2)(a) read with Schedule III]

Para No.	Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
1.	Services by an employee to the employer in the course of or in relation to his employment. <u>PERQUISITES PROVIDED BY EMPLOYER TO THE EMPLOYEES AS PER CONTRACTUAL AGREEMENT are not taxable.</u>
2.	Services by any court or Tribunal established under any law for the time being in force.
3.	a) Functions performed by Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities & 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; or 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.	Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8.	a) Supply of warehoused goods to any person before clearance for home consumption. b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

ANALYSIS OF SCHEDULE III

Services by Employee	In relation to employment	Negative List
	Not related to employment	Supply of Service
Actionable Claims	Except Lottery, Betting & Gambling	Negative List
	Lottery, Betting & Gambling	Supply of Service

SECTION 8: TAX LIABILITY ON COMPOSITE AND MIXED SUPPLIES

STATUTORY PROVISIONS

Clauses	Particulars
	The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: -
(a)	a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply ; and
(b)	a mixed supply comprising of two or more supplies shall be treated as supply of that particular supply that attracts highest rate of tax .

COMPOSITE SUPPLY

Consists of

- two or more taxable supplies,
- are naturally bundled
- one of which is a principal supply.

Note: In case of Composite Supply there might be **two cases**:

- ❖ Single price is charged for complete bundle (no separate price is given for Individual Products): **GST is Levied @ Principal product tax rate.**
- ❖ Different prices are shown for different products in Invoice but they are composite in nature, then also **GST is Levied @ Principal product tax rate on whole value.**

MIXED SUPPLY

Consists of

- 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.

SOME IMPORTANT & RELEVANT CLARIFICATIONS

1. Sales Promotion Schemes: The goods or services which are supplied free of cost (without any consideration) shall not be treated as “supply” except in case of activities mentioned in Schedule I of the CGST Act. In view of the same, few sales promotion schemes have been examined as under:

- **Free samples and gifts:** Samples which are supplied free of cost, without any consideration, do not qualify as “supply” under GST, except where the activity falls within the ambit of Schedule I of the CGST Act.
- **Buy one get one free offer:** It may appear at first glance that in case of offers like “Buy One, Get One Free”, one item is being “supplied free of cost” without any consideration. In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly.

2. Taxability of ‘tenancy rights’ under GST:

Activity of transfer of tenancy right against consideration [i.e., tenancy premium] is squarely covered under supply of service liable to GST.

3. Clarification on taxability of printing contracts:

Printing contracts are **composite supply**.

In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing is the principal supply and therefore such supplies would constitute supply of service.

In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods.

4. Clarification regarding servicing of cars involving both supply of goods (spare parts) and services (labour):

The taxability of supply would have to be determined on a case-to-case basis looking at the facts and circumstances of each case.

Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.

5. Clarification regarding retreading of tyres is a supply of goods or services?

Retreading of tyres, which is a **composite supply**, the pre-dominant element is the process of retreading which is a supply of service.

Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods.

6. Clarification regarding Cost Petroleum

When an oil exploration & production contractor gets a license/lease to explore/mine the petroleum crude and/or natural gas from the Govt. it enters into a Production Sharing Contract (PSC) with Govt. The relationship of the contractors with the Govt. is of licensor/lessor & licensee/lessee.

The value of petroleum which the contractor is entitled to take in a year for recovery of the contract costs is called the cost petroleum & the total value of petroleum produced & saved from the contract area in a particular period, as reduced by cost petroleum is called the profit petroleum.

The govt's share of **profit petroleum** paid by contractor to govt. for grant of lease is **exempt from GST**. The **cost petroleum is not taxable** as it is not a consideration received by the contractor for services provided to govt.

7. Clarification regarding moulds and dies

Moulds & dies owned by Original Equipment Manufacturers (OEM) are sent free of cost to component manufacturer, in course or furtherance of business, **do not constitute supply** as they are not related persons or distinct persons and there is no consideration involved.

8. Clarification on GST applicability on Liquidated Damages, Compensation and Penalty arising out of breach of contract or other provisions of law

“Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” has been specifically declared to be a supply of service in para 5(e) of Schedule II of CGST Act if the same constitutes a “supply” within the meaning of the Act.

The above statement has following 3 parts:

Parts	Example
Agreeing to the obligation refrain from an act	Non-Compete Agreements
Agreeing to the obligation tolerate an act or a situation	A shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker.
Agreeing to the obligation to do an act	An Industrial unit agrees to install equipment for zero emission/discharge residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

Taxability of various transactions:

Transaction	Taxability
Liquidated damages	<ul style="list-style-type: none"> ➤ Liquidated damages are compensation payable for breach of contract to the aggrieved party. ➤ Where an amount is paid only to compensate for injury, loss or damage suffered by aggrieved party, then such payments are merely flow of money and are not a consideration for any supply. Hence, such payment do not constitute consideration for a supply and are not taxable. ➤ E.g., Damages resulting from damage to property, penalty stipulated in a contract for delayed construction of houses.
Cheque dishonor	<ul style="list-style-type: none"> ➤ The supplier wants payment to be received on time & there is never an implied or express offer/willingness of supplier. ➤ Therefore, cheque dishonor fine is not a consideration and not taxable.
Penalty imposed for violation of laws	<ul style="list-style-type: none"> ➤ Not a consideration for any supply received and not taxable. ➤ E.g., Traffic violations, pollution norms or other laws
Forfeiture of salary or payment of bond amt in event of employee leaving employment before minimum agreed period	<ul style="list-style-type: none"> ➤ Not taxable since it is incorporated in employment contract to discourage non-serious employees & also employee does not get anything in return from employer against payment of such amount.
Late payment fees or surcharge	<ul style="list-style-type: none"> ➤ The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. Since, it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc., it should be assessed at the same rate as the principal supply.
Fixed Capacity charges for Power	<ul style="list-style-type: none"> ➤ The minimum fixed charge is payable even if '0' units of electricity is consumed so thus not taxable as electricity is exempt from GST.
Cancellation charges	<ul style="list-style-type: none"> ➤ The amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies are elements of composite supply and should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services. ➤ Forfeiture of earnest money is not a consideration for any supply and is not taxable.

9. Clarifications regarding applicability of GST on Sale of Land after levelling, laying down of drainage lines, etc.

- (i) Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the CGST Act, 2017 and accordingly does not attract GST.
- (ii) However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

10. No supply of service by the insured to the insurance company in lieu of 'No Claim Bonus' offered by said insurance company to him

As per practice prevailing in the insurance sector, the insurance companies deduct 'No Claim Bonus' from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance period(s). The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB.

It is, therefore, clarified that 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.

SUPPLY SUMMARY CHART (SECTION 7)

Section	Sec 7(1)(a)	Sec 7(1)(b)	Sec 7(1)(c)
Includes	All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease, or disposal.	Import of Services	Activities specified in Schedule I: <ul style="list-style-type: none"> • Permanent transfer / disposal of business asset. • Supply to related / distinct person in course of business. • Principal / Agent • Import of Services from related person in course of business.
Purpose	in the course or furtherance of business	Whether or not in the course or furtherance of business	-
Consideration	YES	YES	NO
Sec 7(1A)	Supply mentioned in Schedule II		
Sec 7(2)	Neither supply of Goods nor Service - Schedule III and Liquor Licence		