



GST

(GOODS AND SERVICES TAX)

THE MEANING AND SCOPE OF SUPPLY

The taxable event in GST is supply of goods or services or both. Various taxable events like manufacture, sale, rendering of service, purchase, entry into a territory of state etc. have been done away with in favour of just one event i.e. supply. The constitution defines “Goods and Services Tax” as any tax on supply of goods, or services or both, except for taxes on the supply of the alcoholic liquor for human consumption.

The Central and State governments will have simultaneous powers to levy the GST on Intra-State supply. However, the Parliament alone shall have exclusive power to make laws with respect to levy of Goods and Services Tax on Inter-State supply.

The term, “supply” has been inclusively defined in the Act. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:

1. Supply of goods or services. Supply of anything other than goods or services does not attract GST
2. Supply should be made for a consideration
3. Supply should be made in the course or furtherance of business
4. Supply should be made by a taxable person
5. Supply should be a taxable supply
6. Supply should be made within the taxable territory

While these six parameters describe the concept of supply, there are a few exceptions to the requirement of supply being made for a consideration and in the course or furtherance of business. Any transaction involving supply of goods or services without consideration is not a supply, barring few exceptions, in which a transaction is deemed to be a supply even without consideration. Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.



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Supply of Goods or Services or Both

Goods as well as services have been defined in the GST Law. The securities are excluded from the definition of goods as well as that of services. Money is also excluded from the definition of goods as well as services, however, 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 are included in services.

Schedule II to the CGST Act, 2017 lists a few activities which are to be treated as supply of goods or supply of services. For instance, any transfer of title in goods would be a supply of goods, whereas any transfer of right in goods without transfer of title would be considered as services.

Further Schedule III to the CGST Act, 2017 spells out activities which shall be treated as neither supply of goods nor supply of services or outside the scope of GST. This includes:

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
3. Sale of land and sale of building where the entire consideration has been received after completion certificate is issued or after its first occupation.

Actionable claims are included in the definition of goods, however, Schedule III provides that actionable claims other than lottery, betting and gambling shall be neither goods nor services.

Supply for Consideration

Consideration has specifically been defined in the CGST Act, 2017. It can be in money or in kind. Any subsidy given by the Central Government or a State Government is not considered as consideration. It is immaterial whether the payment is made by the recipient or by any other person.

A 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 the said supply.

Further, when there is barter of goods of services, the same activity constitutes supply as well as a consideration. When a barber cuts hair in exchange for a painting, hair cut is a supply of services by the barber. It is a consideration for the painting received.

However, there are exceptions to the requirement of 'Consideration' as a pre-condition for a supply to be called a supply as per GST. As per schedule to CGST Act, 2017, activities as mentioned below shall be treated as supply even if made without consideration:

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: Provided that gifts not exceeding fifty thousand rupees 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— (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or (b) 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 taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Supply in the Course or Furtherance of Business

GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Hence, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business as defined in the Act. Sale of goods or service even as a vocation is a supply under GST. Therefore, even if a famous politician paints paintings for charity and sells the paintings even as a one-time occurrence, the sale would constitute supply.

However, there is one exception to this 'Course or Furtherance of Business' rule i.e., import of services for a consideration.

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Supply by a Taxable Person

A supply to attract GST should be made by a taxable person. Hence, a supply between two non-taxable persons does not constitute supply under GST. A “taxable person” is a person who is registered or liable to be registered under section 22 or section 24. Hence, even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered but has taken voluntary registration and got himself registered is also a taxable person.

It should be noted that GST in India is State-centric. Hence, a person making supplies from different States needs to take separate registration in each State. Further, the person may take more than one registration within a State if the person has multiple business verticals. A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of GST. Hence, a supply between these entities constitutes supply under GST.

Taxable Supply

For a supply to attract GST, the supply must be taxable. Taxable supply has been broadly defined and means any supply of goods or services or both which, is leviable to tax under the Act. Exemptions may be provided to the specified goods or services or to a specified category of persons/entities making supply.

Supply in the Taxable Territory

For a supply to attract GST, the place of supply should be in India except for the State of Jammu and Kashmir. The place of supply of any goods or services is determined based on Sections 10, 11, 12 and 13 of IGST Act 2017.

Inter/Intra State Supply

The location of the supplier and the place of supply determines whether a supply is treated as an Intra State supply or an Inter State supply. Determination of the nature of supply is essential to ascertain whether integrated tax is to be paid or Central plus State tax are to be paid. Inter- State supply of goods means a supply of goods where the location of the supplier and place of supply are in different States or Union

territories. Intra State supply of goods means supply of goods where the location of the supplier and the place of supply are in the same State or Union territory. Imports, Supplies from and to SEZs are treated as deemed Inter-State supplies.

Composite/Mixed Supply

A composite supply means a supply made by a taxable person to a recipient comprising two or more supplies of goods or services or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. For instance, a travel ticket from Mumbai to Delhi may include service of food being served on board, free insurance, and the use of airport lounge. In this case, the transport of passenger, constitutes the pre-dominant element of the composite supply, and is treated as the principal supply and all other supplies are ancillary.

The GST Law lays down the tax liability on a composite or mixed supply in the following manner.

1. Composite Supply comprising two or more supplies one of which, is a principal supply, shall be treated as supply of such principal supply.
2. Mixed Supply comprising two or more supplies, shall be treated as supply of that particular supply which attracts the highest rate of tax.



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