

India prepares for GST

08 May 2017
Sandeep Sachdeva, Partner

NEW DELHI - MUMBAI - BENGALURU - CHENNAI - HYDERABAD - AHMEDABAD - PUNE
KOLKATA - CHANDIGARH - GURGAON - GENEVA - LONDON

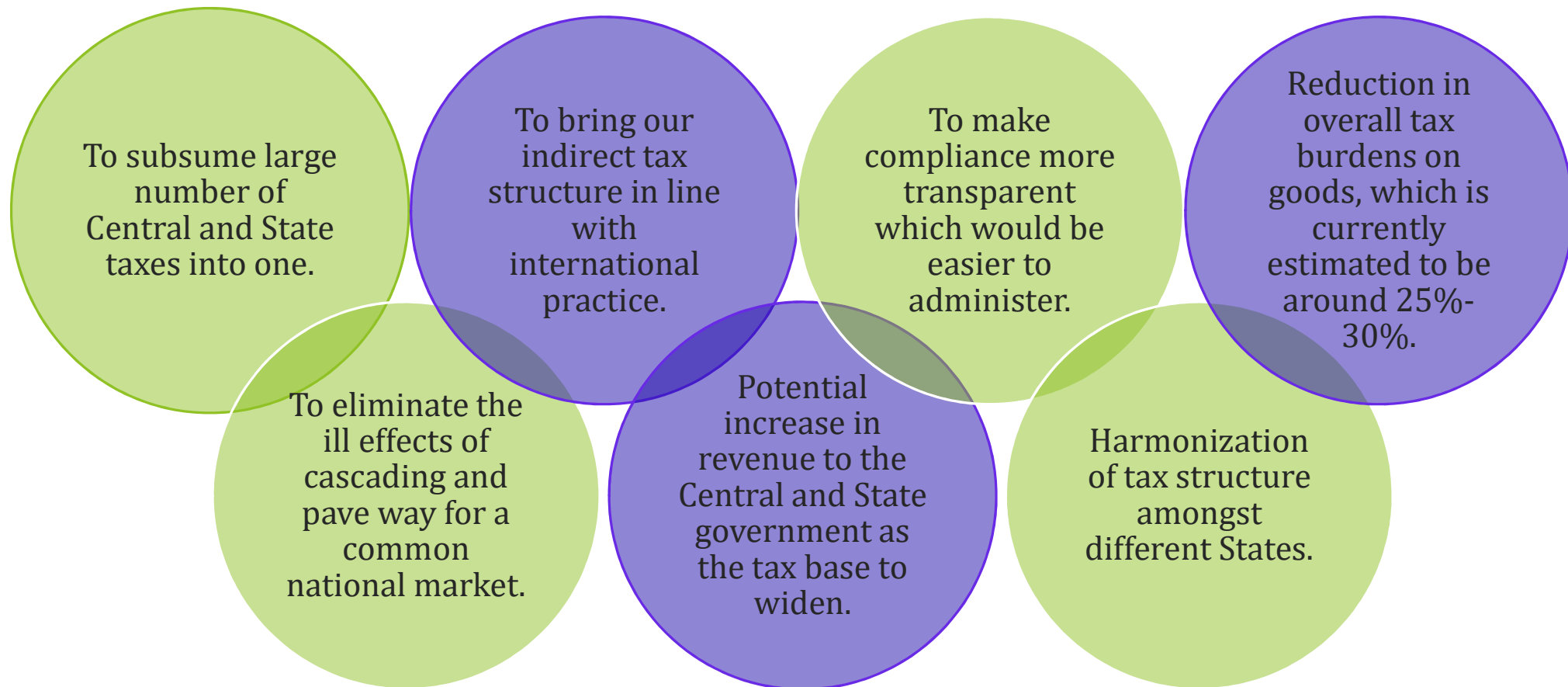
Agenda

- Need for GST
- GST Journey in India
- Salient features of GST
- Dual Structure of GST
- Basics of GST
- Composite and Mixed Supply
- Composition Scheme
- Related Transitional Provisions

Need for GST



WHY THERE IS A NEED FOR GST?



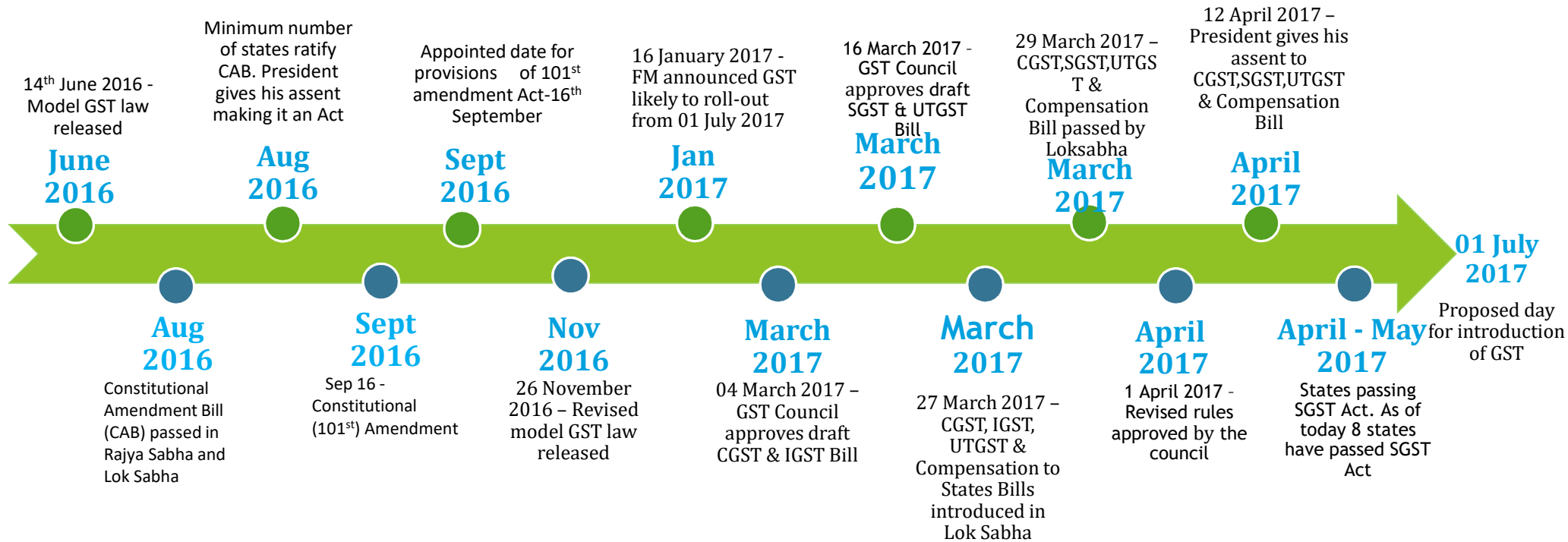


Lakshmi Kumaran
& Sridharan
attorneys

Journey of GST in India



JOURNEY OF GST IN INDIA



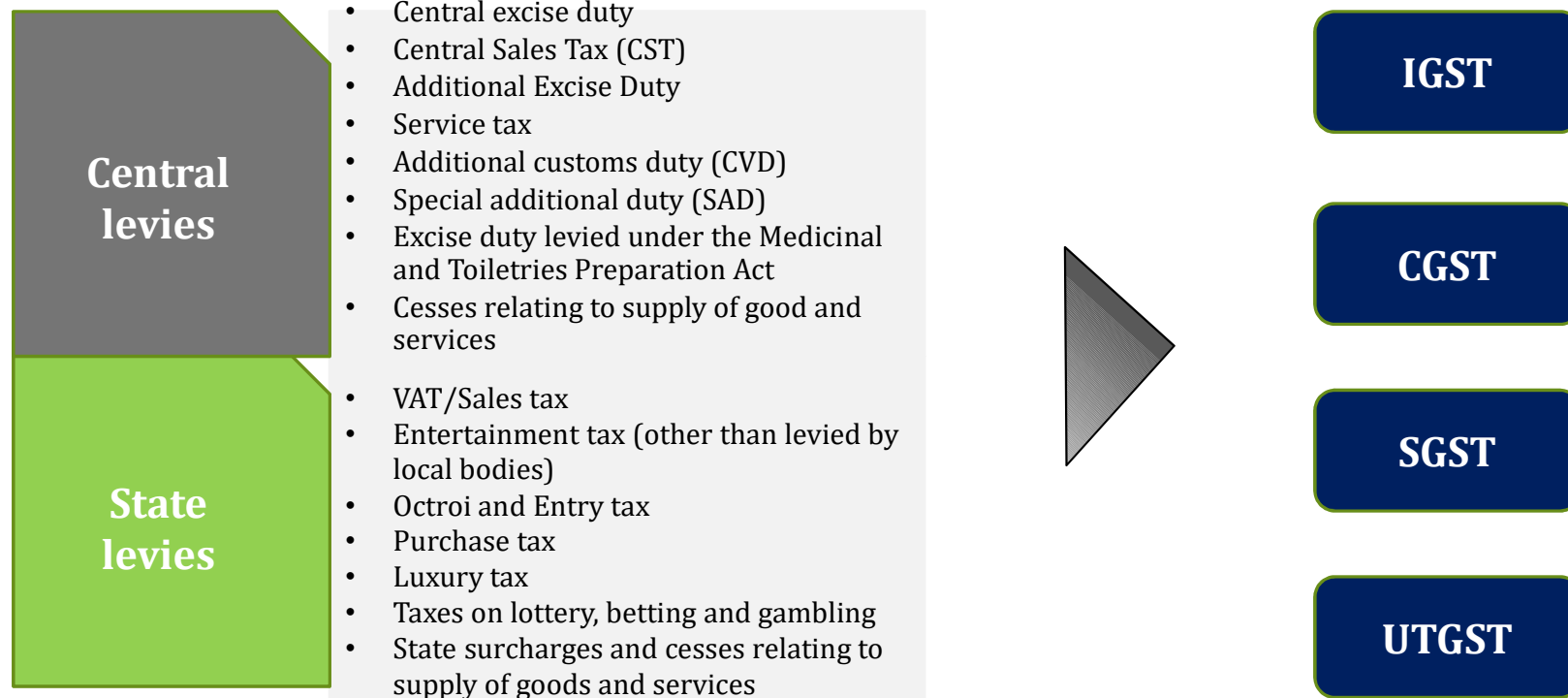


Lakshmi Kumaran
& Sridharan
attorneys

Salient features of GST



DUTIES/TAXES TO BE SUBSUMED



UNLEARNING EXISTING INDIRECT TAXES

UNLEARN = Excise, VAT and Service tax

BUT DON'T UNLEARN EVERYTHING = Few concepts from Excise, Customs, VAT

| Excise | Customs | VAT | CENVAT Credit Rules | Service Tax |
|-------------------|-------------------------|------------------------------|----------------------------|--|
| Transaction Value | Related party valuation | Ineligible ITC | Ineligible ITC | Special valuation rules for certain situations |
| Job Work | Classification – HSN | Matching of ITC with vendors | Proportionate ITC reversal | Time of supply |
| Place of removal | | Annual Audits | Distribution of credit | Place of supply |

SALIENT FEATURES

CGST/IGST would extend to whole of India except the state of Jammu & Kashmir.

GST would be applicable on “supply” of goods or services as against the present concept of tax on the manufacture of goods or on sale of goods or on provision of services.

GST would be based on the principle of destination based consumption taxation as against the present principle of origin based taxation.

GST would not be a cost to the business, unless you are providing exempt supplies and claiming of ITC is specifically blocked.

Rates of GST announced: 5%, 12%, 18% and 28%. Possibility of having two different rates for services (12% and 18%)

The list of exempted goods and services would be common for the Centre and the States.

Facility for centralized registration not available. ISD to continue

SALIENT FEATURES

IGST would be applicable on inter-state transactions and CGST and SGST would be applicable for intra-state transactions.

Import of goods or services would be treated as inter-state supplies and would be subject to IGST in addition to the applicable customs duties.

Exports would be zero-rated.

GST to be calculated on the transaction value (i.e. the price actually paid or payable), where price is the sole consideration and the supplier and the recipient of the supply are not related person.

Intra-state transactions within the same legal entity having single registration, would not be subject to GST.

Unjust enrichment is inbuilt in GST law.

Matching of ITC concept is introduced. System based reporting will have to be followed. Compliance cost to increase.

SALIENT FEATURES

The scope of ITC is wide under GST. However, blocked items include immovable property, works contract services, etc. Capital goods, inputs and input services put at par for claiming of ITC.

GST to trigger upon receipt of advance payments. However, deposit is not part of consideration, unless the same is applied towards supply.

Branch-wise P&L to be maintained for disclosure in Annual Returns.

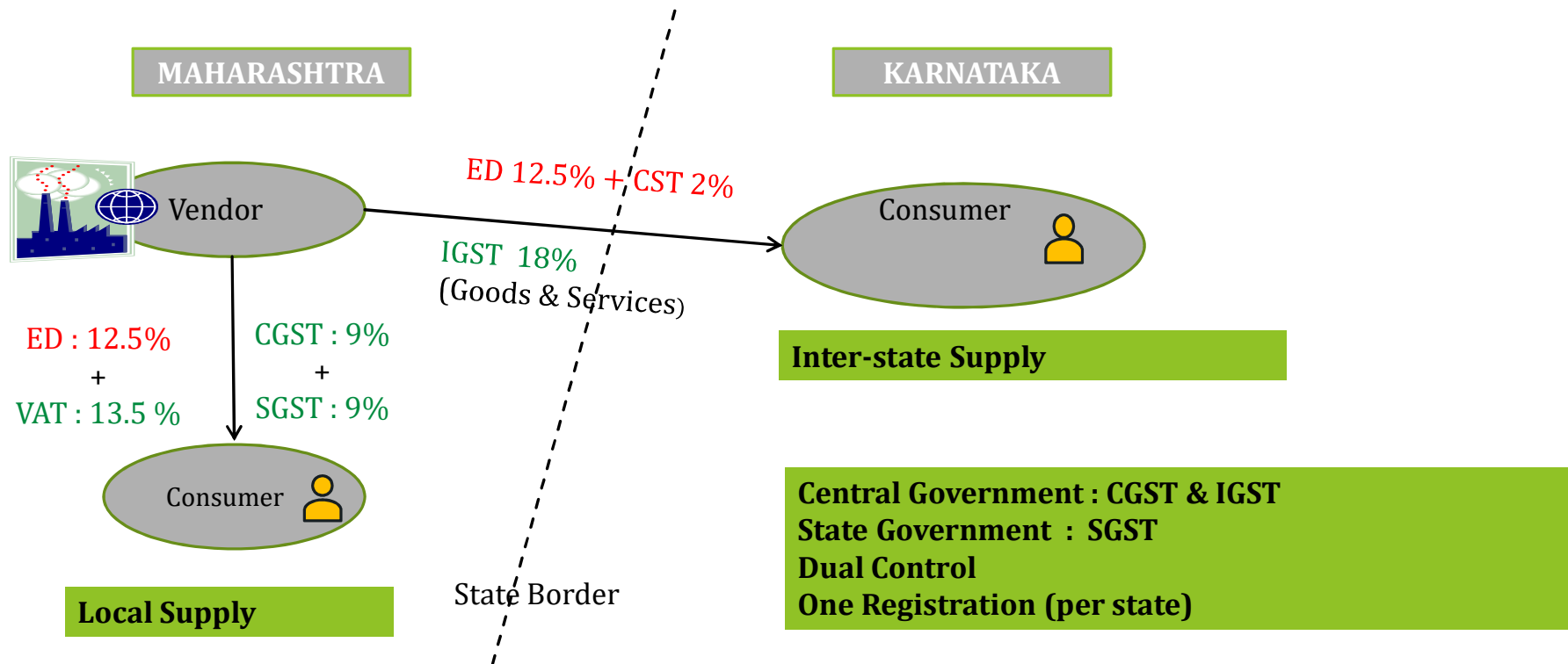
Anti-profiteering provisions introduced to curb sudden spike in prices of goods and/or services.

RCM to apply on purchases made from unregistered person.

Forms to go away. However, tedious documentation requirements viz., receipt voucher, refund voucher, payment voucher, self invoicing, challans, e-way bills, etc.

Dominating nature test re-introduced.

DUAL STRUCTURE OF GST



BASICS of GST

IMPORTANT DEFINITIONS

Taxable Person: Section 2(107)

“means a person who is registered or liable to be registered under Section 22 or Section 24 of the Central Goods and Service Tax Act”

Exempt Supply: Section 2(47)

“means a supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply”

Non-Taxable Supply: Section 2(78)

“means a supply of goods or services or both which is not leviable to tax under Central Goods and Service Tax Act or under the Integrated Goods and Service Tax Act.”

Registered Person: Section 2(94)

“means a person who is registered under Section 25 but does not include a person having Unique Identity Number.”

Works Contract: Section 2(119)

“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 goods (whether as goods or in some other form) is involved in the execution of such contract.”

IMPORTANT DEFINITIONS

Goods: Section 2(52)

“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: Section 2 (102)

“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”

Capital goods: Section 2 (19)

“means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business”

Job work: Section 2(68)

“means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly”

DEFINITION OF 'BUSINESS'

Business means and includes:

The term 'Business' has a very wide connotation which includes:

- any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity or any activity in connection with or incidental or ancillary, whether or not for a pecuniary benefit.
- any activity or transaction, whether or not there is volume, frequency, continuity or regularity of such transaction.
- supply or acquisition of goods including capital goods and services in connection with commencement or closure of business.
- provision by a club, association society or any such body (for a subscription or any other consideration) of the facilities or benefits to its members.
- admission, for a consideration, of persons to any premises
- services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation.
- services provided by a race club by way of totalizator or a license to book maker in such club.
- any activity or transaction undertaken by Central/State Government or local authority in which they are engaged as public authorities.

CHARGING PROVISIONS

CGST Act (Section 9) and IGST Act (Section 5)

- Applicable on intra-state supply and inter-state supply of goods and/or services.
- Taxable value is to be calculated as per Section 15 and at such rates as prescribed not exceeding 20% (in CGST) and 40% (in IGST).
- Payable by the taxable person.
- In certain cases, taxes are to be paid by the recipient on reverse charge basis (including purchases from non registered person)
- Government to specify certain services on which the tax shall be payable by e-commerce operator, if such services are supplied through it.

Importation of goods

- The IGST on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

Exclusions: Alcoholic Liquor for human consumption, petroleum products.

SCOPE OF 'SUPPLY'

Supply Includes:

- All forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- Import of services for a consideration whether or not in the course or furtherance of business;
- The activities specified in **Schedule I**, made or agreed to be made without a consideration; and
- The activities to be treated a supply of goods or supply of services as referred in **Schedule II**.

Activities neither treated as supply of goods nor a supply of services:

- Activities or transactions specified in **Schedule III**; or
- 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.

Schedule I

'SUPPLY' – SCHEDULE I

Supplies without consideration: Deemed as supply

- Permanent transfer/disposal of business assets in respect of which credit has been taken.
- Supply of goods and/or services between related person or between distinct person, when made in course or furtherance of business (i.e. transactions between HO and branch/depot having separate registration).
- Supply of goods between principal and agent or vice versa.
- Importation of services by a taxable person from a related person or from any other establishment outside India.

Note: Gifts by an employer to an employee will not be treated as a supply if the value is within Rs. 50,000/- in a financial year.

Some examples of 'deemed' supply includes:

- Transfer of goods from one factory to another factory in different state
- Stock transfer of goods to depots from one state to another state
- Sales support provided by the sales branch to the HO
- Support provided by HO to the depots/sales offices
- Support provided by overseas HO to the subsidiary in India
- Gifts, promotional items given to customers
- Insurance, transportation on FOC basis to employees
- Interest free loans to employees
- Samples

Whether supply under warranty would be a deemed supply?

Whether benefits to employees be treated as part of remuneration?

Goods supplied for incineration?

FOC supplies under the contract.
Whether to be part of the valuations?

RELATED AND DISTINCT PERSON

persons shall be deemed to be “related persons” if–

- such persons are officers or directors of one another’s businesses;
- such persons are legally recognised partners in business;
- such persons are employer and employee;
- any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
- one of them directly or indirectly controls the other;
- both of them are directly or indirectly controlled by a third person;
- together they directly or indirectly control a third person;
- they are members of the same family; or
- Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

Distinct Person

- 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 this Act.
- 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 for the purposes of this Act.

Schedule II

'SUPPLY' – SCHEDULE II

Key activities to be treated as “Supply of Goods”

- Any transfer of the title in goods is a supply of goods.
- 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, is a supply of goods.
- where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.
- Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

- Hire purchase
- Own your car scheme to employees

'SUPPLY' – SCHEDULE II

Key activities to be treated as “Supply of Services”

- Transfer of rights in goods or of undivided shares in goods without the transfer of title thereof.
- Goods held or used for private use or for any purpose other than business.
- Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce either wholly or partly.
- Any treatment or process which is applied to another person’s goods.
- Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software.
- Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.
- Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.
- Works contract as defined in clause (119) of section 2.
- 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.

- AMCs
- Job work activity (with or without) the material incorporated by the job worker.
- Car to key managerial person during its employment.
- Liquidated damages, notice period recovery.

Schedule III

'SUPPLY' – SCHEDULE III

Activities or transactions which are neither Supply of Goods nor Supply of Services

| Employment | Courts | Diplomats | Funeral |
|--|--|---|---|
| <ul style="list-style-type: none"> Services by an employee to an employer in the course of or in relation to his employment | <ul style="list-style-type: none"> Services by any court (including district court, high court and supreme court) or tribunal established under law for the time being in force | <ul style="list-style-type: none"> Services by a foreign diplomatic mission located in India | <ul style="list-style-type: none"> Services of funeral, burial, crematorium or mortuary including transportation of the deceased |
| Elected Representatives/ Government officials | | Sale of Land and Building | Actionable Claim other than lottery |
| <ul style="list-style-type: none"> Functions performed by an MP, MLA, members of panchayats, municipalities and local authorities Person who hold post under constitution Duty by any person as chairman/member/director in a body established by CG/ SG or local authorities | | Sale of land and, subject to 5(b) of Schedule II, sale of building | Betting and gambling? |

Composite and Mixed Supply

COMPOSITE AND MIXED SUPPLY

Composite Supply

“Composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, 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.

Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

Principal supply

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.



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.

Illustration: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.



COMPOSITE AND MIXED SUPPLY

Some indicators on 'Composite Supply'

- The components are sold as a package at a single price.
- The components are advertised as a package.
- The different components are not available separately.
- Goods are physically packaged together (e.g. a plastic toy enclosed in a packet of cereal).
- It would not normally make sense to supply part of the package independently (e.g. a new fridge and its delivery from the warehouse).
- Although components are separately priced, the value of each component is arbitrarily assigned.
- The customer perceives what they receive as a single supply, not independent components (e.g. one supply of a tailor-made suit, not separate supplies of cloth and tailoring services).
- The different components are aspects of the quality or grade of the overall supply.
- The different components are integral to one main supply. If one or more of the components is removed, the nature of the main supply would be affected.
- The separation of components, on an invoice or otherwise, is artificial.
- Some components are clearly incidental or ancillary to an identifiable main supply.

Some indicators on 'Mixed Supply'

- Separate pricing where separate prices on different components of the supply are listed out.
- The individual components are not integral to each other.
- A single price is charged for separate principal supplies.
- The components are available separately.
- There is time differential between parts of the supply.
- The components are not interdependent or connected.

Source: Guide on Supply issued by Royal Malaysian Customs Department
Copyright (c) 2017 Lakshmikumaran & Sridharan

Composition Scheme

COMPOSITION SCHEME

Purpose

This scheme is mainly to cater to small taxpayers with an aggregate turnover in a F.Y. up to [Rs. 50 lakhs].

Under the scheme, a taxpayer shall pay tax as a percentage of his turnover during the year. The floor rate of tax:

For manufacturer – 1%

For Hotel – 2.5%

For others – 0.5%

Features

- Registration is optional.
- The person cannot claim ITC.
- GST cannot be collected.
- Carry forward of the existing credit to GST regime is not allowed
- Issue “bill of supply”.
- Quarterly returns have to be filed instead of monthly returns.

Ineligibility

- Supply of services (other than hotels)
- Supply of exempted goods
- Inter-state supply of goods
- Supply of goods through an E-commerce operator
- Manufacturer of goods notified as per the recommendation of the GST council

Related Transitional Provisions

RELATED TRANSITIONAL PROVISIONS

Every registered person under the existing law shall be given a provisional registration certificate which shall be replaced with final certificate of registration subject to fulfilment of such conditions as may be prescribed.

The goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under GST.

No tax shall be payable on goods, to the extent the tax was leviable on the said goods under the VAT Act of the state.

No tax shall be payable on services, to the extent the tax was leviable on the said services under the Finance Act.

Where tax was paid on any supply both under the VAT and under the Finance Act, tax shall be leviable under the Central Goods and Services Act and the taxable person shall be entitled to take credit of VAT or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

QUESTION AND ANSWER

L&S OFFICES



INTERNATIONAL

GENEVA

lsgeneva@lakshmisri.com

LONDON

lslondon@lakshmisri.com

INDIA

NEW DELHI

lsdel@lakshmisri.com

GURGAON

lsgurgaon@lakshmisri.com

MUMBAI

lsbom@lakshmisri.com

CHANDIGARH

lschd@lakshmisri.com

BENGALURU

lsblr@lakshmisri.com

PUNE

lpune@lakshmisri.com

CHENNAI

lsmds@lakshmisri.com

KOLKATA

lskolkata@lakshmisri.com

HYDERABAD

lshyd@lakshmisri.com

AHMEDABAD

lsahd@lakshmisri.com

Committed to International
Standards in
Quality and Information Security



www.lakshmisri.com

If you wish to subscribe to GST updates, please send an e-mail to gst@lakshmisri.com