



HSKA

GST – IT and ITeS

Gyansatra Series - 2

Export of Services

○ Conditions to be satisfied

- Supplier of service located in India
- Recipient of service located outside India
- Place of Supply of service is outside India
- Payment in convertible foreign exchange (Indian rupees wherever permitted by RBI)
- Exporter and Importer not merely establishments of a distinct person

○ Execution of LuT – Mandatory?

- Only in cases where refund is being applied
- Procedural Non Compliance
- Condonation by Commissioner

Place of Supply is outside India

- Services supplied in respect of goods which are required to be made physically available by the recipient of service for the purpose of providing the service - **Place where services are performed**
 - Exception - Temporary Import for repair or process or treatment without put to use in India
 - Notification 4/2019 - To avoid double taxation in respect of pharma companies
- Circular 118/2019 - Electronics Semi-conductor and Design Manufacturing Industries
 - Software Development
 - Design Services
 - Testing on Prototypes
 - Clarified that the entire process is a composite supply of software development / design services and **place of supply is outside India**

Place of Supply is outside India

- Intermediary Services - **Place where service provider is located**
 - Intermediary - a broker, an agent or any other person, by whatever name called, who arranges or **facilitates** the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account
- Circular 107/2019 - ITeS provided on own account even to the Customer of the overseas client
 - (i) back office operations; (ii) call centres or contact centre services; (iii) data processing and data mining; (iv) insurance claim processing; (v) legal databases; (vi) creation and maintenance of medical transcription excluding medical advice; (vii) translation services; (viii) payroll; (ix) remote maintenance; (x) revenue accounting; (xi) support centres; (xii) website services; (xiii) data search integration and analysis; (xiv) remote education excluding education content development; or (xv) clinical database management services excluding clinical trials
 - Withdrawn by Circular 127/2019

Place of Supply is outside India

○ Intermediary - Circular 159/2021

- Minimum Three Parties
- Two Distinct Supply – Main Supply and Ancillary Supply
- Facilitate the transaction between buyer and seller
- P2P supply is not intermediary service
- Sub-contracting is not intermediary service
- Education Guide – Service Fee is a %age of the contract value

○ Other Factors

- Marketing v Market Research
- Identifying Clients v Interacting with pre-identified clients
- Cost plus v Based on revenue generated
- Consideration irrespective of business earned
- Employee Composition – Marketing v Engineers

Mere Establishments of Distinct Person

- Expl 1 to Section 8 of IGST Act - Establishments treated as distinct persons
 - An Establishment in India and any other establishment outside India
- Transactions with Overseas Branch
 - Exports to branches will not qualify to be export
 - Notification 15/2018 - SI No. 10F – Exempts services between Indian Branch and Foreign Branch
 - Reversal of specific ITC and common ITC
- Transactions with Overseas Sister Concerns
 - Separate Entity – Cannot be treated as establishment of Exporter
 - Clarified *vide* Circular No 161/17/2021
- Import of Services from Overseas Branches
 - Liable to GST under RCM since they are distinct persons

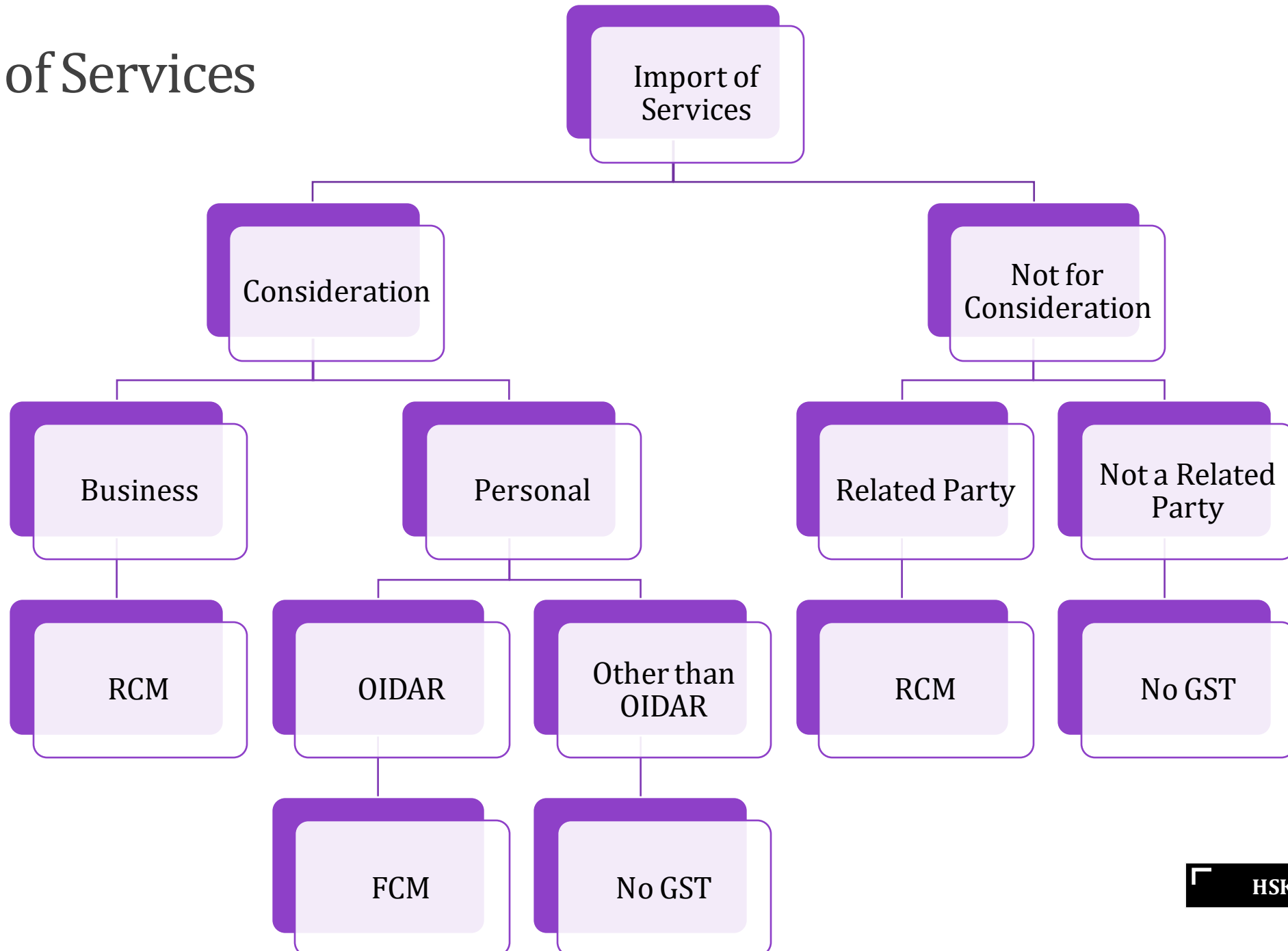
Receipt of Money in convertible foreign exchange

- Sub-contracting – Circular 78/2018
- XYZ Inc, USA hires ABC Limited, India to render certain services. PQR Pte Limited, Singapore renders 40% of these services. US entity pays 40% to Singapore Entity and Balance to Indian Entity
 - Exports in the hands of Indian Entity – 100%
 - Imports liable under RCM in the hands of Indian Entity – 40%
 - Procedural Compliance – General / Specific Approval by RBI to retain forex outside India

Receipt of Money in convertible foreign exchange

- Permitted by RBI in Indian Rupee
- Circular 88/2019
 - Linked to Master Circular issued under FEMA - Export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan
- Services to Nepal and Bhutan
 - Notification 42/2017 - Sl No. 10D – Exemption from GST - Supply of Services with Place of Supply being Nepal and Bhutan, in INR
 - Treated as Exempt Supply – Explanation under Rule 43 amended by Notification 3/2019
- Master Circular by RBI on Exports - (vii) International Trade Settlement in Indian Rupees (INR) - Updated as on November 22, 2023

Import of Services



Import of Services

- Forex Remittances as per Notes to Accounts
 - Bifurcate between Goods, Cap Goods and Services
 - Refer to cases where TDS deducted under Income Tax Act

- Payments by Grossing Up TDS
 - Section 15 – Including any taxes other than GST
 - Amount liable to be paid by the supplier but incurred by the recipient

- Transactions with related party
 - Liable even if there is no consideration
 - Deputation of Manpower - Northern Operating Systems Pvt. Ltd – Hon'ble SC Decision
 - Time of Supply – Passing entries in the books of accounts or actual payment date WEE

Employees

○ Employee Benefits

- Employee to Employer in the course of Employment – Sch III
- Employee and Employer are related parties
- Transaction between related parties without consideration is taxable – Sch I

- Gifts upto Rs 50,000 - Not Taxable
- Gifts > Rs 50,000 – Taxable

- Perquisites – Circular 172/ 2022 - *perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee*

- Chargeable from Employees (Concessional / Otherwise)
 - Cab Hire Charges
 - Food to Employees
 - Gym Subscription
- Eligibility of ITC
- Personal Consumption
- Products given at Concessional Rate

Reverse Charge Mechanism

- Reimbursement of Expenses to Employees
 - Hotel, Cabs and Food – Within India / Outside India
 - Software Subscription through Director Credit Card

- Car
 - Passenger Transport Service
 - **Vehicle Hire Charges**
 - Circular 177/2022 - Sl No. 15
 - Renting, Hiring or Leasing of Motor Vehicle – Credit not available
 - Passenger Transport Services – Credit may be available

Other Issues for consideration

- Cross Charge v ISD
 - Specific to Branch
 - Common to Branches(s) - Third Party Vendor
 - Internal Costs
 - Valuation

- Refund of Accumulated ITC
 - Export without payment of Taxes
 - Export with payment of Taxes
 - Refund of Capital Goods

- Supplies to EOU
 - Deemed Export
 - Full Refund of Tax charged on invoice

- SEZ
 - Separate GST Registration
 - Exemption to authorized operations
 - Endorsement on the Invoices
 - RCM – Import of Services and Domestic Supplies

- ITC on Fitouts
 - Not capitalized to such property
 - Not used for construction
 - Plant and Machinery
 - Movable Assets

Team HSKA

Thank You

 Hanish S

 99168 36166

 hanish@hskaadvisors.com

 www.hskaadvisors.com

