

SYNOPSIS

7. Scope of supply

8. Tax liability on composite and mixed supplies

7. Scope of supply

7.1 Supply shall include business supplies for consideration, transactions for consideration between non-individual persons and their members or constituents, imports of services for consideration, and activities specified in Schedule I without consideration.¹

Section 7(1) of the CGST Act, 2017 gives "supply" an inclusive and broad meaning. It covers supplies of goods or services made or agreed to be made for a consideration in the course or furtherance of business, such as a shop selling furniture to a customer, and consideration may be monetary or non-monetary. It also covers activities or transactions between a person, other than an individual, and its members or constituents, or vice versa, for cash, deferred payment or other valuable consideration, such as a club providing facilities to its members for a fee. Import of services for a consideration is a supply whether or not it is made in the course or furtherance of business, so it includes imports for personal use. Schedule I treats certain activities as supplies even when made without consideration. For example, permanent transfer or disposal of business assets on which input tax credit was availed counts as a supply. A transaction can therefore qualify as a supply without any payment, but only where Schedule I or another statutory provision applies. Section 7(1) is subject to Sections 7(2) and 7(3).

¹ CGST Act, 2017 s 7(1)

Schedule I (Activities to 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 person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

7.1A Supplies shall be classified as supplies of goods or services in accordance with Schedule II.²

Section 7(1A) of the CGST Act, 2017 provides that once an activity qualifies as a supply under Section 7(1), Schedule II determines whether it is treated as a supply of goods or a supply of services. For example, when a business sells a machine and transfers its ownership to the buyer, it is a supply of goods. If the business rents out the machine while retaining ownership, it is a

² CGST Act, 2017 s 7(1A)

supply of services. Schedule II therefore clarifies how an existing supply is classified for GST purposes; it does not, by itself, make an activity a supply.

Schedule II (Activities or transactions to be treated as supply of goods or supply of services):

1. Transfer

- (a) any transfer of the title in goods is a supply of goods;
- (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
- (c) 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.

2. Land and Building

- (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
- (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process

Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets

- (a) 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

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assets, such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him 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, unless--

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

## 5. Supply of services

The following shall be treated as supply of services, namely:--

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation.--For the purposes of this clause--

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(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:--

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) 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.

## 6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:-

(a) works contract as defined in clause (119) of section 2; and

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(b) 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.

**7.2 Activities or transactions specified in Schedule III and notified public-authority activities shall be treated as neither a supply of goods nor a supply of services.<sup>^3</sup>**

Section 7(2) of the CGST Act, 2017 excludes certain activities from the meaning of “supply,” so GST is not charged on those activities. These include activities listed in Schedule III and specified activities performed by the Central Government, State Governments or local authorities as public authorities, where notified by the Government on the GST Council’s recommendations. For example, an employee’s work for an employer in the course of employment falls under Schedule III; therefore, GST is not payable on the salary received for that work. Government activities qualify for the public-authority exclusion only when covered by the relevant notification.

**Schedule III (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.
2. Services by any court or Tribunal established under any law for the time being in force.
3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

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(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(c) the 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 clause (b) of paragraph 5 of Schedule II, sale of building.

6. Actionable claims, other than specified actionable claims.

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;

(aa) Supply of goods warehoused in a Special Economic Zone or in a Free Trade Warehousing Zone to any person before clearance for exports or to the Domestic Tariff Area;

(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.

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<sup>3</sup> CGST Act, 2017 s 7(2)

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9. Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in co-insurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.

10. Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.

Explanation 1.--For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

Explanation 2.--For the purposes of 6[clause (a) of] paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962 (52 of 1962).

Explanation 3.--For the purposes of clause (aa) of paragraph 8, the expressions "Special Economic Zone", "Free Trade Warehousing Zone" and "Domestic Tariff Area" shall have the same meanings respectively as assigned to them in section 2 of the Special Economic Zones Act, 2005 (28 of 2005).

7.3 The Government may, by notification, classify transactions as supplies of goods or services.⁴

⁴ CGST Act, 2017 s 7(3)

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Section 7(3) of the CGST Act, 2017 empowers the Government, on the recommendations of the GST Council and subject to the other provisions of Section 7, to issue an official notification specifying whether a transaction is to be treated as a supply of goods or a supply of services. For example, if the Government issues a valid notification classifying a particular type of equipment supply with installation as a supply of services, businesses covered by that notification must treat it as a service for GST purposes.

## **8. Tax liability on composite and mixed supplies**

**A composite supply shall be taxed as its principal supply; a mixed supply shall be taxed at the highest applicable rate among its constituent supplies.<sup>^5</sup>**

Under Section 8 of the CGST Act, 2017, the tax treatment of supplies made together depends on whether they form a composite supply or a mixed supply. A composite supply consists of two or more taxable supplies that are naturally bundled and supplied together in the ordinary course of business, one of which is the principal supply, meaning the predominant element to which the others are ancillary (Sections 2(30) and 2(90)). The entire bundle is taxed at the rate applicable to that principal supply. For example, where goods are ordinarily supplied with packing, transport and insurance, the goods are the principal supply, and their GST rate applies to the whole transaction. A mixed supply consists of two or more individual supplies made together for a single price that do not constitute a composite supply (Section 2(74)). A gift hamper containing independently saleable items would ordinarily be a mixed supply if those items are not naturally bundled. A mixed supply is taxed

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at the rate applicable to the item that attracts the highest rate of tax. For illustration, if a hamper's items attract GST rates of 5% and 18%, the entire hamper would be taxed at 18%. These rates are illustrative, and the current rate for any actual item should be confirmed. The distinction therefore turns on whether the supplies are naturally bundled in the ordinary course of business. If they are not, and they are sold together for a single price, the bundle is a mixed supply. Whether a particular bundle is composite or mixed depends on its facts.

⁵ CGST Act, 2017 s 8

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