

Rajkot Branch of WIRC of ICAI

- Programme** : Sub-regional Conference
- Date & Day** : 17th December, 2017 (Sunday)
- Subject** :
1) Meaning and scope of Supply
2) Levy
3) Business
4) Important Definitions under GST
- Venue** : “ICAI Bhavan”, Giriraj Nagar Main Road, Off Raiya road,
Near 150 ft Ring Road, Rajkot.
- Presented by** : CA Naresh Sheth



GST - Charging and Allied Provisions

Charging Provision: Sec 9 of CGST Act and SGST Act

Levy

There shall be levied a tax called **CGST / SGST**

On

All **intra-state supplies** of **goods** or **services** or both

Except

On the supply of **alcoholic liquor for human consumption**

Value

On the value determined u/s 15 of CGST Act

Rate

At such rates as may be notified by CG in this behalf but **not exceeding 20%** on recommendation of council

Charging Provision: Sec 9 of CGST Act and SGST Act

Collected

Collected in manner prescribed

Payable by

Taxable person

Petroleum &
petroleum
products

Government (on recommendation of GST council) shall levy CGST / SGST on following w.e.f. such date as may be notified:

- Petroleum crude
- High speed diesel
- Motor spirit (Petrol)
- Natural gas
- Aviation turbine fuel

Charging Provision: Sec 9 of CGST Act and SGST Act

RCM

- Government (on recommendation of GST council) may specify categories of goods or services covered under RCM
- CGST / UTGST in respect of supply by unregistered person to registered person shall be paid by registered person under RCM

E-commerce

- Government (on recommendation of Council) specify categories of **services** on which tax to be paid by E-commerce operator
- If no physical presence in taxable territory, any person representing such operator in taxable territory shall be person liable to pay tax
- Neither physical presence nor representative, then such operator shall appoint a person in taxable territory for payment of tax

➤ **Electronic Commerce u/s 2(44) of CGST Act:**

means supply of goods or services or both including digital products over digital or electronic network

➤ **Electronic Commerce Operator u/s 2(45) of CGST Act:**

means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce

Charging Provision - Section 5 of IGST Act

Levy

There shall be levied a tax called **IGST**

On

All **inter-state supplies** of **goods** or **services** or both

Except

On the supply of **alcoholic liquor for human consumption**

Value

On the value determined u/s 15 of CGST Act

Rate

At such rates as may be notified by CG in this behalf but **not exceeding 40%** on recommendation of council

Charging Provision - Section 5 of IGST Act

Collected

Collected in manner prescribed

Payable by

Taxable person

On import
of goods

- IGST to be **levied and Collected** in accordance with the provisions of section 3 of the Customs Tariff Act, 1975
- **On the value** as determined under said Act
- **At the point** when duties of customs are levied on the said goods u/s 12 of the Customs Act, 1962

Charging Provision - Section 5 of IGST Act

Petroleum &
petroleum
products

Government (on recommendation of GST council) shall levy IGST on following w.e.f. such date as may be notified:

- Petroleum crude
- High speed diesel
- Motor spirit (Petrol)
- Natural gas
- Aviation turbine fuel

Section 5(2) of IGST Act

RCM

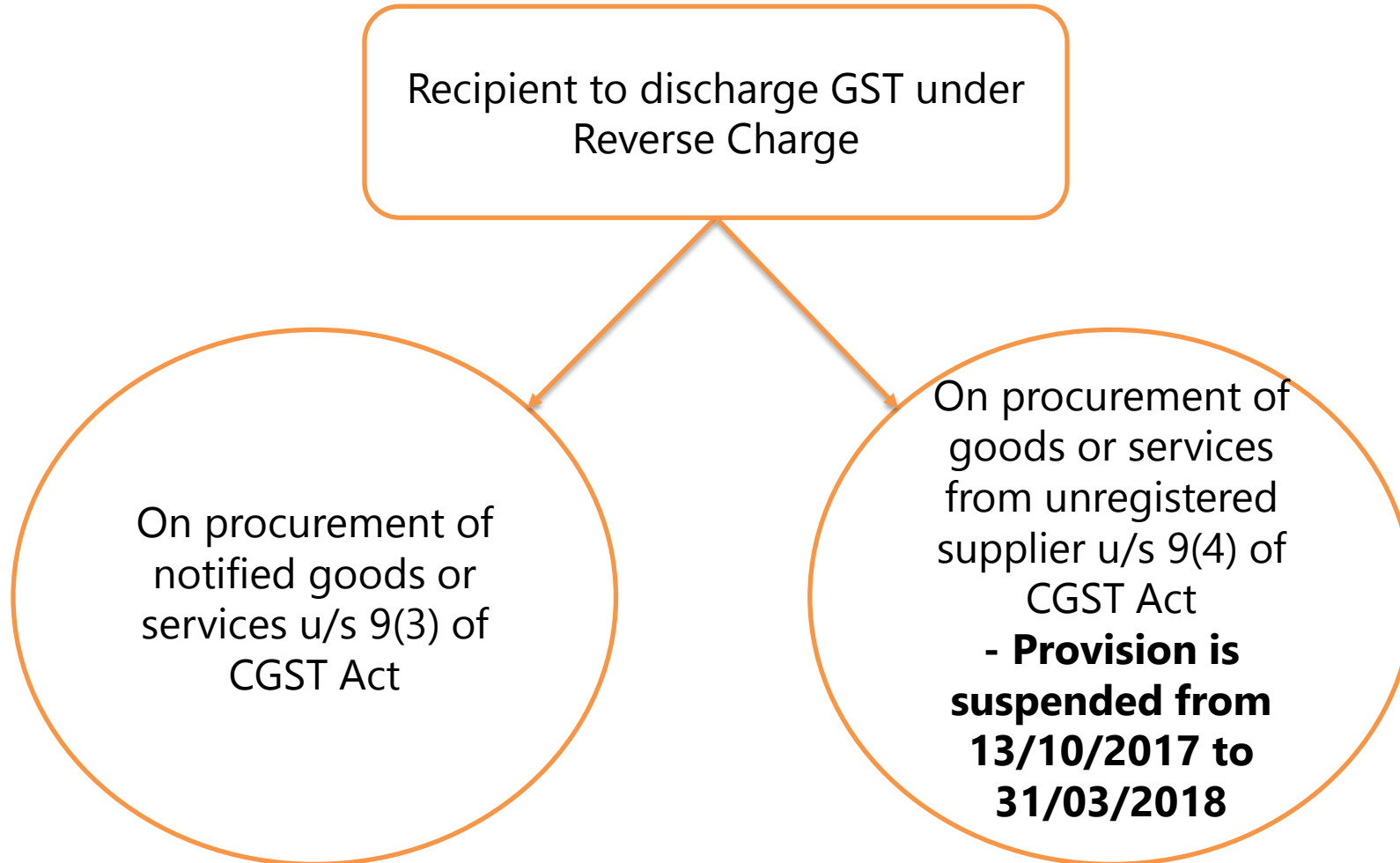
- Government (on recommendation of GST council) may specify categories of goods or services covered under RCM
- IGST in respect of supply by unregistered person to registered person shall be paid by registered person under RCM

Charging Provision - Section 5 of IGST Act

E-Commerce

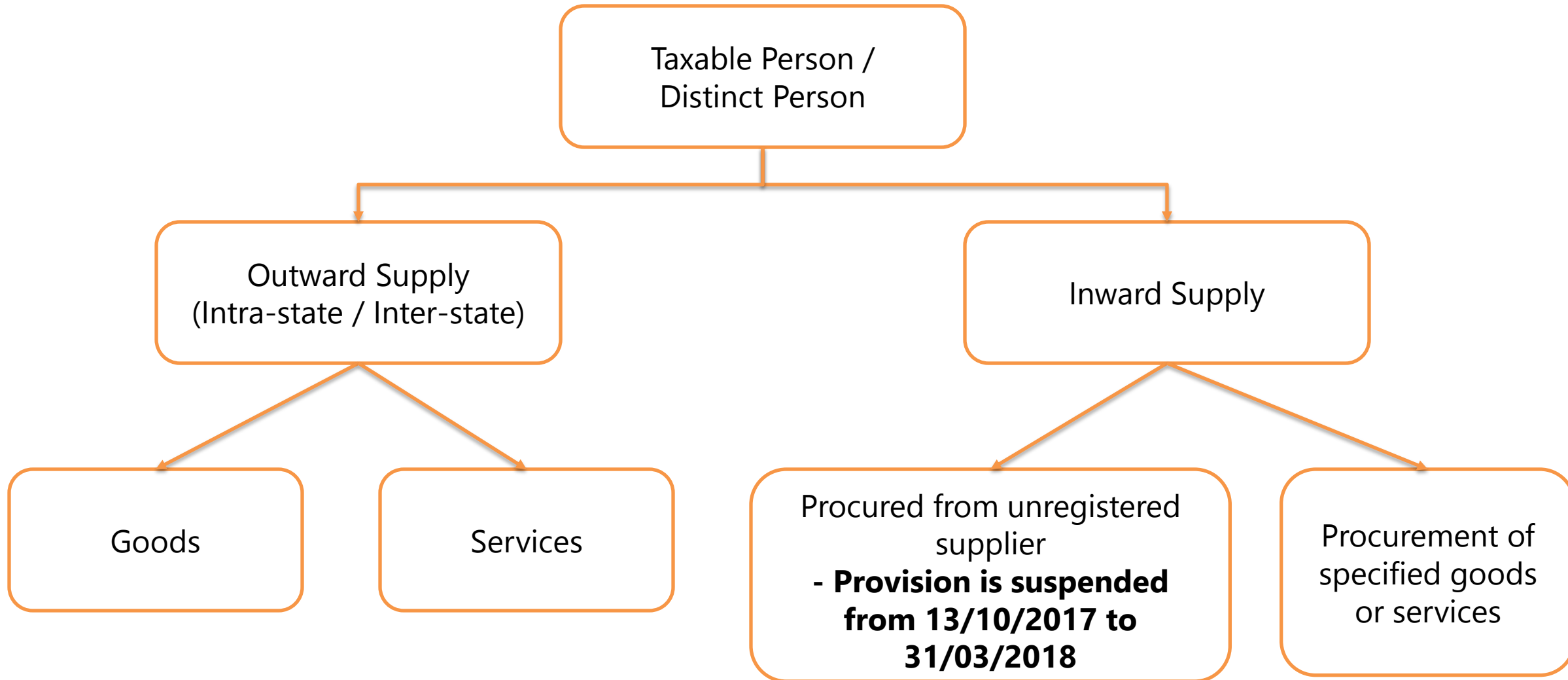
- Government (on recommendation of Council) specify categories of **services** on which tax to be paid by E-commerce operator
- E-commerce operator to be person liable to pay tax
- If no physical presence in taxable territory, any person representing such operator in taxable territory shall be person liable to pay tax
- Neither physical presence nor representative, then such operator shall appoint a person in taxable territory for payment of tax

Reverse Charge Mechanism



- Recipient to discharge GST under RCM as if he is the person liable for paying the tax on supply
- Recipient to make payment on his own account and on own GSTN number
- It is not TDS paid on behalf of supplier
- Recipient is entitled to ITC subject to ITC provisions

GST levy – Trigger points





Supply

Supply – Broad Concept

- **Concept of a supply is broader than a sale :**
 - Transfer of title in goods is required for Sales
 - Supply doesn't require transfer of title in goods
- **Presence of two persons for “taxable supply”:**
 - Pre-requisite for VAT and Service tax
 - Not pre-requisite for Excise
 - Will not be a pre-requisite for GST
 - Even self-supplies may be a taxable supply in GST
- **Presence of Consideration for “taxable supply”:**
 - Pre-requisite for VAT and Service tax
 - Not pre-requisite for Excise
 - Will not be a pre-requisite for GST

Definition of Supply

- Section 7 defines “Supply” to Include.....
- Definition of “Supply” is inclusive definition and hence one has to understand normal meaning of Supply
- Apart from what is provided in the section 3, the transactions covered under the general meaning of supply can also be covered
- **Dictionary meanings of “Supply”:**
 - “Make(something needed or wanted) available to someone; provide”- Oxford Dictionary
 - “To provide materials, goods and services- an act of providing something” – Cambridge Dictionary
 - “To make (something) available to be used : to provide someone or something with : To make available”- Merriam- Webster Dictionary

Relevant extracts of definition of “Supply” under foreign laws

➤ **Australia GST Act u/s 9 and 10 defines “Supply” to mean:**

1) **A supply is any form of supply whatsoever**

2) Without limiting subsection (1), supply includes any of these.....

➤ **United Kingdom u/s 5(2) of VAT Act, 1994:**

• Subject to any provisions made by that Schedule and to Treasury orders under sub-sections (3) to (6) below-

a) **“supply” in this Act includes all forms of supply,**

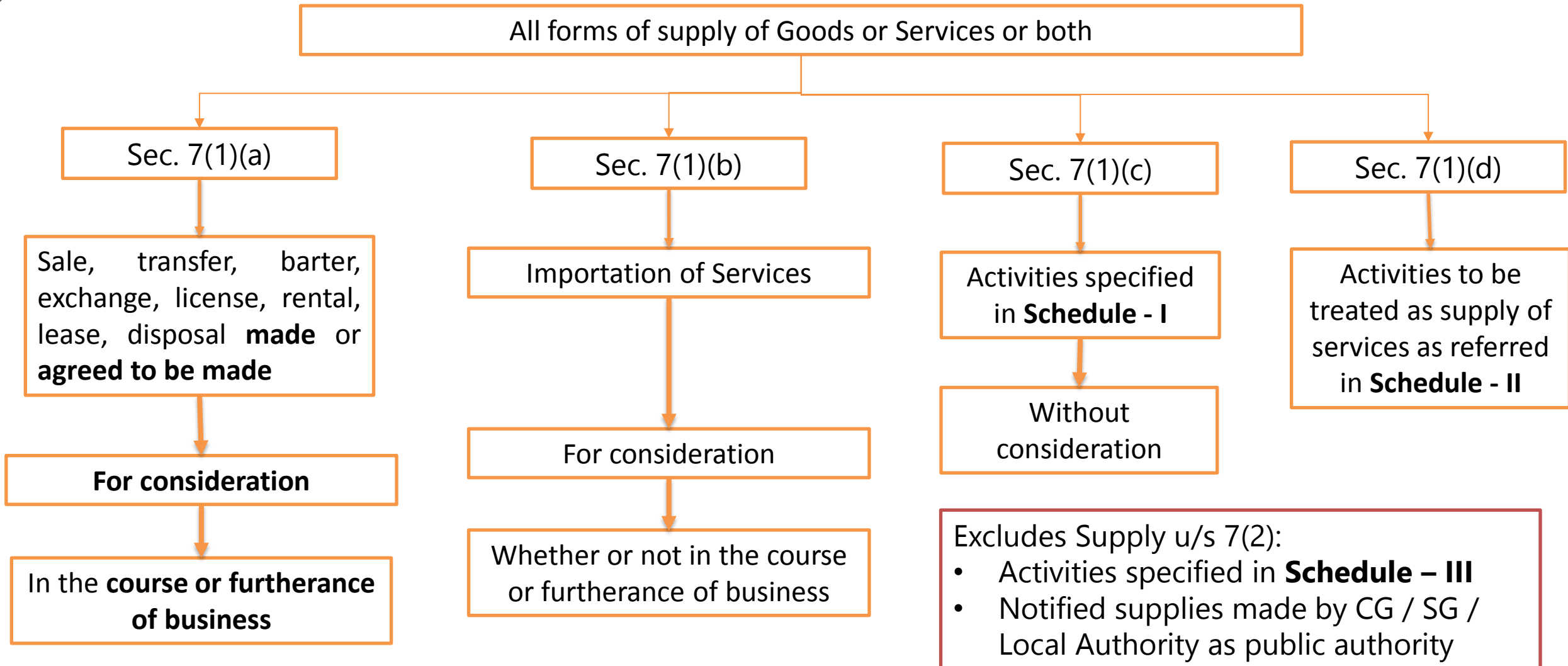
➤ **Malaysian GST Act u/s 4 defines “Supply” to mean:**

• **All forms of supply**, including supply of imported services, done for a consideration and anything which is not a supply of goods but is done for a consideration is a supply of services

➤ **Canadian GST Act defines “Supply to mean:**

• Subject to sections 133 and 134, **the provisions of property or a service in any manner**, including sale, transfer, barter, exchange, license, rental, lease, gift or disposition

Supply u/s 7(1) of CGST Act



'Business' [section 2(17) of CGST Act]

➤ Business includes:

| | | | |
|------------|-------------|---------------|---------------------------------|
| • Trade | • Commerce | • Manufacture | • Profession |
| • Vocation | • Adventure | • Wager | • Or any other similar activity |

- Whether or not for pecuniary benefit
 - Activities or transaction incidental or ancillary to above
 - Irrespective of volume, frequency, continuity or regularity of such transactions
 - Supply / acquisition of goods (Including capital assets) and services in connection commencement or closure of business
 - Provision of facilities / benefits to its members by:
 - Club
 - Association
 - Society
 - Or any such body
- For subscription / other consideration

'Business' [section 2(17) of CGST Act]

- Admission of person(s) to any premises for consideration
- 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 commerce or vocation
- Services provided by a race club by way of totalisator or a licence to book maker in such club
- Any activity undertaken by CG or SG or local authority in which they are engaged as public authorities

Supply in the course or furtherance of Business

➤ **Press Release dated 13/07/2017 – Sale of jewellery:**

- Even though the sale of old gold by an individual is for a consideration, it cannot be said to be in the course or furtherance of his business (**as selling old gold jewellery is not the business of the said individual**), and hence does not qualify to be a supply per se. **Person making a supply in the personal capacity is not considered as a supply.**

➤ **Q 10 on Page 48 of FAQ released on 31/03/2017:**

- An individual buys a car for personal use and after a year sells it to a car dealer. Will the transaction be a supply in terms of MGL?

Ans.: No, because supply is not made by the individual in the course or furtherance of business. Further, no input tax credit was admissible on such car at the time of its acquisition as it was meant for non-business

use

Supplies without consideration under Schedule I

- **Permanent transfer / disposal of business assets where ITC has been availed on such assets**
 - Disposal of computer to charitable organization
 - Proprietor/ partners transferring goods for personal use
- **Supply of goods or services between related persons or between distinct persons specified u/s 25 when made in course or furtherance of business:**
 - Branch / Depot transfer
 - Services provided by Head Office/ corporate office to its Branch offices or regional offices
 - Supply by employer to employees –
 - gifts not exceeding Rs. 50,000 in value in a financial year shall not be treated as supply

Supplies without consideration under Schedule I

➤ **Supply of goods by or to agent:**

- by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or
- by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal

➤ **Importation 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.

Schedule II – Matters to be treated as deemed supply of 'goods' or 'services' u/s 7

| Transaction | Nature of Supply | Clause |
|---|------------------|--------|
| Transfer of title in goods | Goods | 1(a) |
| Transfer of: <ul style="list-style-type: none"> • rights in goods; or • undivided share in goods | Service | 1(b) |
| } Without transfer of title | | |
| Transfer of title in goods at future date upon payment of full consideration | Goods | 1(c) |
| Lease, tenancy, easement, license to occupy land | Service | 2(a) |
| Lease or letting out of building including commercial, industrial or residential complex (wholly or partly) for business or commerce | Service | 2(b) |
| Treatment or processing of other's goods (job work) | Service | 3 |

Schedule II – Matters to be treated as deemed supply of 'goods' or 'services' u/s 7

| Transaction | Nature of Supply | Clause |
|---|------------------|--------|
| <p>Transfer of business assets:</p> <ul style="list-style-type: none"> • Transfer / disposal of goods forming part of business asset (with or without consideration) • When a person ceases to be a taxable person except when: <ul style="list-style-type: none"> ▪ Business transferred as going concern ▪ Business carried on by a personal representative (deemed to be a taxable person) | Goods | 4(a) |
| <ul style="list-style-type: none"> • Business assets put to private use or for any purpose other than business (With or without consideration) | Service | 4(b) |
| Renting of immovable property | Service | 5(a) |
| Sale of under construction flats / units (money received before CC or First occupation certificate) | Service | 5(b) |
| Temporary transfer or permitting use or enjoyment of IPR | Service | 5(c) |
| Development, design, programming, customization etc. of IT Software | Service | 5(d) |

Schedule II – Matters to be treated as deemed supply of 'goods' or 'services' u/s 7

| Transaction | Nature of Supply | Clause |
|---|------------------|--------|
| Agreeing to the obligation to: <ul style="list-style-type: none"> • Refrain from an act; or • Tolerate an act or situation; or • Do an act | Service | 5(e) |
| Transfer of right to use any goods for any purpose whether or not for specified period for consideration | Service | 5(f) |
| Works Contract including transfer of property in goods | Service | 6(a) |
| Supply of food as a part of service (Outdoor catering and restaurant sale) | Service | 6(b) |
| Supply of goods by an unincorporated association to its members | Goods | 7 |

➤ **Relevance of bifurcating above transactions as goods or services:**

- Place of supply
- Time of supply
- Rates

Schedule III – Activities or transactions not to be treated as supply

- **Services by employee to employer in the course of or in relation to his employment**
 - Supply of goods by employee to employer – taxable supply
 - Supply of goods/ services by employer to employee – taxable supply [not taxable up to Rs. 50,000]
- **Services by any Court or Tribunal established under any law for the time being in force (court includes district court, High Court and Supreme Court)**
- **Functions or duties performed by:**
 - Members of Parliament
 - Members of State Legislature
 - Members of Panchayats
 - Members of Municipalities

Schedule III – Activities or transactions not to be treated as supply

- Members of other local authorities
 - any person who holds any post in pursuance of the provisions of the Constitution in that capacity
 - 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
- **Services of funeral, burial, crematorium or mortuary including transportation of the deceased**
 - **Sale of land and sale of building [subject to clause 5(b) of Schedule II]**
 - **Actionable claims, other than lottery, betting and gambling**

Composite Supply

➤ **Composite supply means [sec 2(30) of CGST Act] :**

- 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**

Principal supply means supply of goods or services which constitutes predominant element of composite supply and to which any other supply forming part of composite supply is ancillary

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 the principal supply.

- 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**

Mixed Supply

➤ **Mixed supply means [sec 2(74) of CGST Act] :**

- **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 drink 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

- A mixed supply comprising two or more supplies shall be **treated as supply of that particular supply which attracts the highest rate of tax**



Goods and Services

Definition of 'Goods'

➤ **Goods means** [section 2(52) of CGST Act]:

- Every kind of movable property

- Other than:

- **Money [Sec. 2(75)]**

- **Securities [Sec. 2(101)]**

- But includes

- **Actionable claim [sec 2(1)];**

Clause 6 of Schedule III:

Actionable claims other than lottery, betting and gambling are neither to be treated as supply of goods or nor supply of service

- Growing crops, grass and things attached to or forming part of land which are agreed to be severed before supply or under contract of supply

➤ In addition to above, Schedule II deems certain supply to be that of goods

Definition of 'Service'

- **Services means** anything other than [section 2(102) of CGST Act]:

| | | |
|-------|-------|----------|
| Goods | Money | Security |
|-------|-------|----------|

- **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

In addition to above, Schedule II deems certain supply to be that of services



Taxable person & Distinct person

Person [Section 2(84) of CGST Act]

➤ “Person” includes -

| Individual | HUF | Company | Firm |
|-----------------|---|--|--|
| LLP | AOP or BOI, whether incorporated or not, in India or outside India | Corporation established by or under Central, State or Provincial Act | Government company |
| Local Authority | body corporate incorporated by or under the laws of a country outside India | co-operative society registered under any law relating to cooperative societies | society as defined under the Societies Registration Act, 1860 (21 of 1860) |
| Trust | Central or state government | every artificial juridical person, not falling within any of the preceding sub-clauses | |

Taxable Person and Registered Person

- **Taxable person means** [Section 2(107) of CGST Act]:
 - a person who is registered; or
 - liable to be registered under section 22 or section 24;

- **Registered person means** [Section 2(94) of CGST Act]:
 - a person who is registered u/s 25 of CGST Act; but
 - does not include a person having a Unique Identity Number

Distinct Person

➤ **Distinct person u/s 25(4) and (5) of CGST Act:**

- A person having registration in more than one state or union territory to be treated as distinct person in respect of each such registration
- Different establishments of same person in more than one state or union territory to be treated as establishments of distinct persons

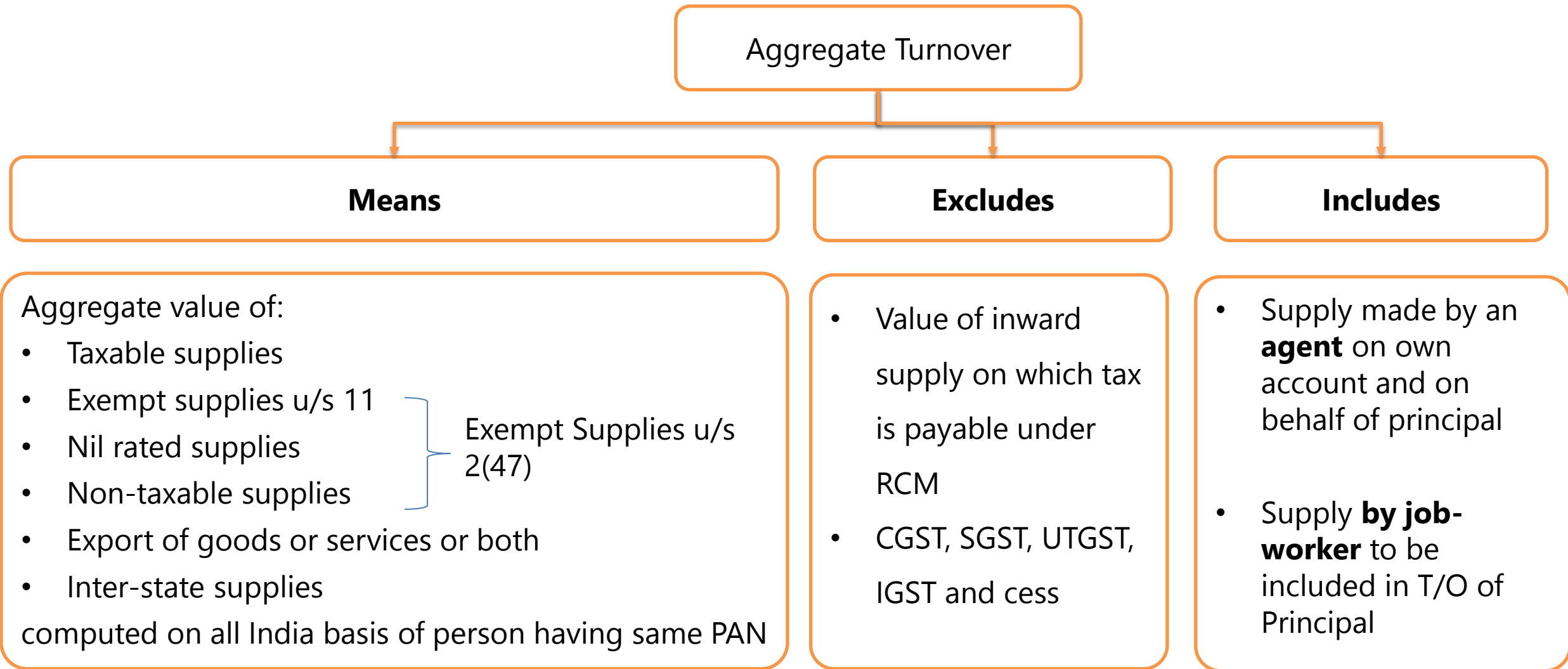
➤ **Distinct person means** [explanation 1 to section to section 8 of IGST Act]:

- An establishment in India and any other establishment outside India
- An establishment in a State or Union territory and any other establishment outside that State
- An establishment in a State or Union territory and business vertical registered within that state or union territory

Persons liable to be registered – Section 22

| | |
|-------------------------------------|--|
| Every supplier | Aggregate turnover exceeds Rs. 20 lakh (Rs 10 lakhs for special category states) |
| Existing assesses | Assesses under excise, service tax, VAT and other laws which are to be subsumed in GST w.e.f. appointed day |
| Transferee or successor of business | Where business is transferred as a going concern w.e.f. date of such transfer or succession |
| Transferee of business | In case of amalgamation / demerger by order of HC w.e.f. date on which ROC gives certificate of incorporation giving effect to order of HC |

Aggregate Turnover [Section 2(6) r.w. sec 22 of CGST Act]



Aggregate Turnover [Section 2(6) r.w. sec 22 of CGST Act]

- Non-taxable supply is defined u/s 2(78) of CGST Act to mean supply of goods or service which is not leviable to tax:
 - Alcohol for human consumption
 - Petroleum products such as petrol, diesel, etc

Compulsory registration – Section 24

| | | |
|--|---------------------------------------|---|
| Persons making inter-state supply | Casual taxable person | Persons required to pay tax under RCM |
| Agent | Input service distributor | Non resident taxable person |
| Electronic commerce operator liable to pay tax u/s sec 9(5) | Every E-commerce operator | Person who supplies through E-commerce operator [other than supplies u/s 9(5)] who are required to collect tax u/s 52 |
| Every person supplying online information and database access or retrieval services from outside India to unregistered taxable person in India | Persons required to deduct TDS u/s 51 | such other person or class of persons as may be notified by CG or SG on recommendation of Council |

Compulsory registration u/s 24 of CGST Act

➤ **Inter-state supply**

- Trader having a nominal inter-state supply will be liable to register even if his aggregate turnover is less than 20 lakhs
- Above provision does not apply to service provider w.e.f 13/10/2017 [Notification no. 10/2017-Integrated tax dated 13/10/2017]
- Above provision does not apply to supplier of handicraft goods w.e.f 14/09/2017 [Notification no. 8/2017-Integrated tax dated 14/09/2017]

➤ **Reverse charge mechanism**

- Society is liable to reverse charge in respect of GTA services, etc will have to compulsorily register
- A trader having turnover less than Rs. 20 lakhs and avails GTA services will have to compulsorily register

➤ **Supply through e-commerce operator**

- A person having turnover less than 20 lakhs but having sale of Rs. 1000 through e-commerce operator will be liable to be registered
- Above provision does not apply to service provider making supplies to e-commerce operator w.e.f 15/11/2017 [Notification no. 65/2017-Central tax dated 15/11/2017]

Persons not liable to be registered – Section 23

- Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or are wholly exempt from tax under CGST Act or under IGST Act
 - Section 24 requiring mandatory registration does not apply to above
- Agriculturist, to the extent of supply of produce out of cultivation of land
- A person providing only those services on which recipient is liable to pay tax u/s 9(3) of CGST Act [Notification no. 5/2017-Central tax dated 19.06.2017]



Case Studies

Whether following are Supply as defined u/s 7?

- Free samples by pharmaceutical company
- Free stay at hotel to relatives
- Foreign Architect services for construction of residential bungalow
- Rehab flats received by society on redevelopment project
- Land owners receiving the flats on area sharing basis in joint development project
- Services provided by co-operative housing societies to its members
- Activities carried out by charitable / religious trust and NGOs:
 - Donations – voluntary and corpus
 - Dharamshala receipts
 - Paathshala receipts
 - Bhojanshala receipts
 - Receipts for certain religious activities

Whether following are Supply as defined u/s 7?

- Personal assets or articles sold through OLX, Quikr, etc
- Whether following facilities provided to employees will be liable to tax:
 - Canteen facilities:
 - Statutorily required to be provided under Factories Act
 - Required to be provided as per employment contract
 - Provided voluntarily and free of cost
 - Pick up and drop facility
- Transfer of development rights by society or land owner to developer
- Sale of TDR by developer to other developer
- Long term lease of land / building

Whether following are Supply as defined u/s 7?

- Lease / renting of residential house
- Insurance claim received against loss of business assets
- Sale of business as a going concern
- Partner working for the firm for remuneration
- Lost, stolen and destroyed goods

Whether following are taxable persons?

- A hospital having pharmacy shop
- A lawyer providing legal services to business entities. Whether answer will change if he sells his old computer for Rs. 20,000?
- A person dealing in agricultural products but selling gunny bags in scrap
- A educational institution selling paper scrap
- Doctor having medical practice of Rs. 30 lakhs p.a. and rent of commercial premises of Rs. 1.20 lakhs p.a. will be liable for registration
- Petrol pump owner providing services like PUC, air filling, puncture repair and also selling of lubricant oil, coolant, etc even if turnover of such item is less than Rs. 20 lakhs
- Owner of wine shop selling scrap of corrugated boxes
- 100% export unit not having local sales

Words of Caution

- Views expressed are the personal views of faculty based on his interpretation of GST Act.
- Presentation is based on CGST Act, IGST Act, UTGST Act and relevant notifications and press releases
- This educational meeting is arranged with a clear understanding that the Faculties will not be responsible for any error, omission, commission and result of any action taken by a member or anyone on the basis of this presentation.



THANK YOU

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