

## Chambers of Tax Consultants

<b>Program</b>	:	GST Study and Refresher Course
<b>Date &amp; Day</b>	:	1 <sup>st</sup> November, 2017 (Wednesday)
<b>Subject</b>	:	1) Place of Supply of Goods & Services 2) Cross Border Transactions
<b>Venue</b>	:	RVG Educational Foundation, Lallubhai Shamaldas Road, Andheri (West), Mumbai – 400 058
<b>Presented by</b>	:	CA Naresh Sheth

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## Broad Framework of GST

**Taxable Event**  
- Supply

**When to pay**  
- Time of Supply

**Whom to pay  
(Jurisdiction)**  
- Place of Supply

**How much to pay**  
- Valuation  
- Rate of tax  
- Input Tax Credit

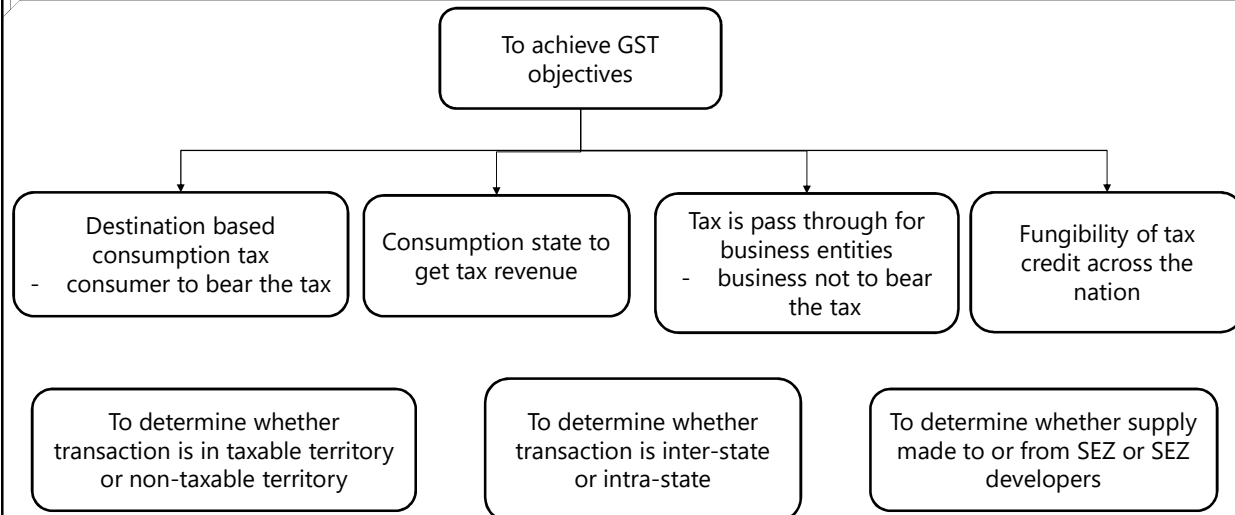
**What compliance to be done**  
- Registration  
- Payment  
- Returns

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## Place of Supply Provisions – Purpose



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## Relevant Definitions

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## Taxable Territory u/s 1(2) of CGST, IGST, UTGST and SGST Act

- Territory to which the provisions of this Act apply:
  - CGST Act applies to whole of **India**
  - IGST Act applies to whole of **India**
  - SGST Act applies to:
    - 29 States; and
    - Delhi & Puducherry (Union territories with legislation)
  - UTGST Act applies to the Union Territories of:

Andaman and Nicobar Islands	Dadra and Nagar Haveli	Daman and Diu
Lakshadweep	Chandigarh	other territory

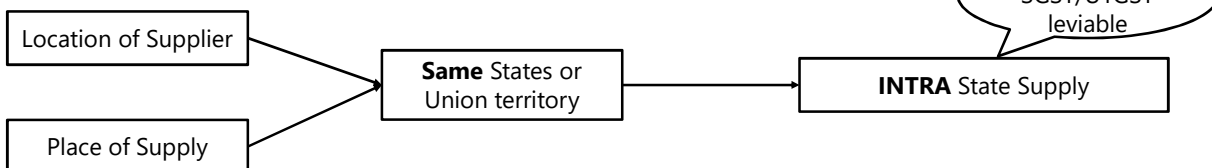
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## 'Intrastate' – Section 8 of IGST Act

### Section 8(1) and 8(2) of IGST Act:



- Following shall not be treated as Intra-state supply of goods or service [proviso to section 8(1) and 8(2)]:
  - Supply of **goods or services to or by** SEZ developer
  - Supply of **goods or services to or by** SEZ unit
  - Supply of **goods** imported into territory of India till they cross the customs frontiers of India
  - Supply of **goods** made to tourist referred to in section 15 of IGST Act:
    - Supply made to non-resident tourist in India who takes such goods outside India will be liable to IGST
    - Said IGST will be refunded to him in manner to be prescribed

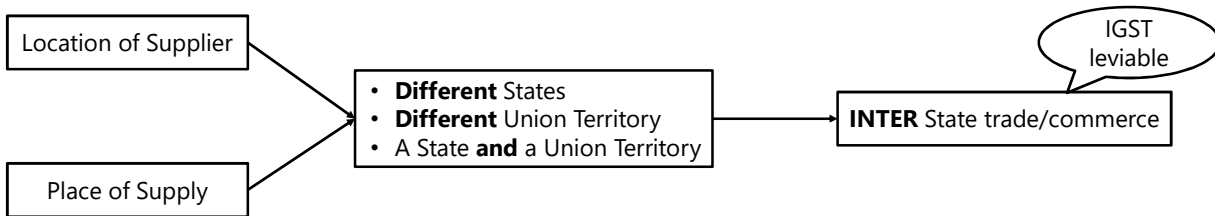
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## 'Interstate' – Section 7 of IGST Act

### Section 7(1) and 7(3) of IGST Act:



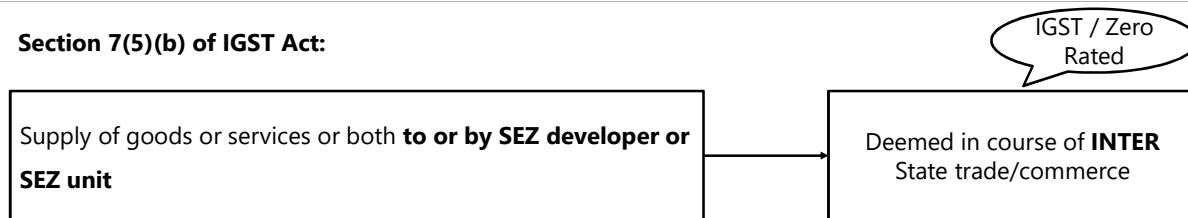
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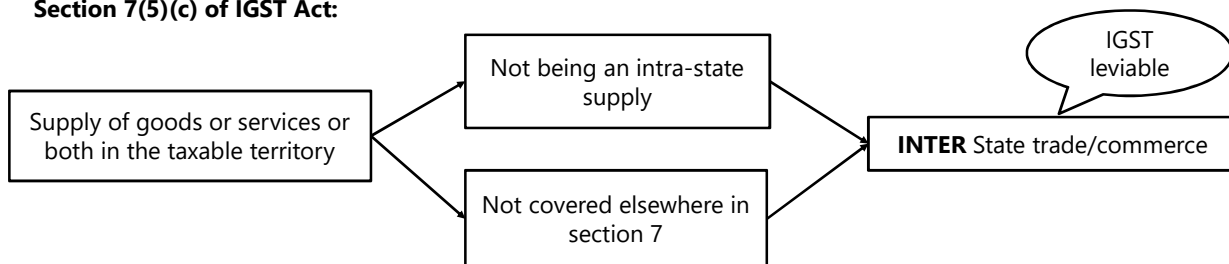
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## 'Interstate' – Section 7 of IGST Act

### Section 7(5)(b) of IGST Act:



### Section 7(5)(c) of IGST Act:



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## Location of Supplier of Service – Section [2(71)] of CGST Act

➤ **“location of supplier of service” means:**

- (i) where a supply is made from a place of business for which **registration** has been obtained, the location of such place of business ;
- (ii) where a supply is made from a place other than the place of business for which registration has been obtained (a **fixed establishment** elsewhere), the location of such fixed establishment;
- (iii) where a supply is made from **more than one establishment**, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- (iv) in absence of such places, the location of the **usual place of residence** of the supplier;

## Location of Recipient of Service – Section [2(70)] of CGST Act

➤ **“location of recipient of service” means:**

- (i) where a supply is received at a place of business for which **registration** has been obtained, the location of such place of business;
- (ii) where a supply is received at a place other than the place of business for which registration has been obtained (a **fixed establishment** elsewhere), the location of such fixed establishment;
- (iii) where a supply is received **at more than one establishment**, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- (iv) in absence of such places, the location of the **usual place of residence** of the recipient

## Other relevant definitions

- **“supplier”** in relation to **any goods or services or both**, shall **mean** [Section 2(105) of CGST Act]:
  - person supplying the said goods or services or both and
  - shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;
- **“recipient”** of supply of **goods or services or both, means** [Section 2(93) of CGST Act]:
  - (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
  - (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
  - (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

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## Other relevant definitions

- **“fixed establishment” means** [Section 2(7) of IGST Act]:
 

a place (other than the place of business) which is characterised by:

  - a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs;
- **“place of business” includes** [section 2(85) of CGST Act]:
  - a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, provides or receives goods or services or both; or
  - a place where a taxable person maintains his books of account; or
  - a place where a taxable person is engaged in business through an agent, by whatever name called
- **“usual place of residence” means** [Section 2(113) of CGST Act]:
  - (a) in case of an individual, the place where he ordinarily resides;
  - (b) in other cases, the place where the person is incorporated or otherwise legally constituted

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## Place of Supply of Goods

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## Place of Supply of Goods (POS) – Basic Framework

Domestic Transactions

Cross border transaction

Section 10(1) – POS to be determined as under

Section	Deals with
10(1)(a)	Supply involving movement of goods
10(1)(b)	Supply of goods on direction of third person
10(1)(c)	Supply not involving movement of goods
10(1)(d)	Supply of installed / assembled goods
10(1)(e)	Supply of goods on board of conveyance / vessel
10(2)	POS cannot be determined in terms of above sections

Section	Deals with
11(a)	Goods imported into India
11(b)	Goods exported from India

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## Supply involving movement of goods

Section	Situation	Place of Supply		
10(1)(a)	Supply involves movement of goods by supplier or <b>recipient</b> or any other person	Location of goods at the time at which the <b>movement of goods terminates for delivery to recipient</b>		
Transaction	Location of Supplier	Location of Recipient	Place of Supply	Tax
Ex-works Sales in same state	Maharashtra	Maharashtra	Maharashtra	CGST & SGST
Door Delivery sale in same state	Maharashtra	Maharashtra	Maharashtra	CGST & SGST
Door Delivery sale in other state	Maharashtra	Goa	Goa	IGST
Ex-Works Sales and Goods delivered in other State – Refer next slide for various scenario	Maharashtra	Goa	???	???

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## Ex – Works Sale

- Ex-Work Sales and good delivered in other State:
  - Seller arranges for transportation at request of buyer and hand overs the goods to transporter
  - Risk & insurable interest in the goods on road is that of buyer
- Ex-Work Sales and goods taken to other State:
  - Buyer arranges for transportation
  - Goods are handed over by seller to the transporter appointed by buyer
  - Risk & insurable interest in the goods on road is that of buyer
- Ex-Work Sales and goods taken to other State:
  - Buyer himself picks up the goods from premises of seller
  - No contract for transportation between buyer and seller
- Ex-Works Sales covered under Section 15 of IGST Act:
  - Foreign Tourist buying the goods from Shop in India :
  - Same goods are taken outside India

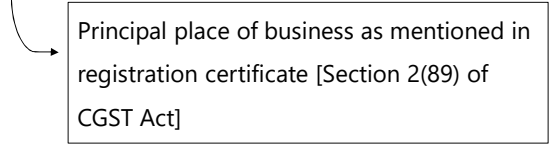
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## Supply of goods on direction of third person (Bill to Ship Transactions)

Section	Situation	Place of Supply
10(1)(b)	<ul style="list-style-type: none"> <li>Where goods are delivered by supplier to <b>recipient</b> or other person (before or during their movement): <ul style="list-style-type: none"> <li><b>on direction of third person</b> (whether acting as an agent or otherwise)</li> <li>by way of transfer of documents of title to the goods or other wise</li> </ul> </li> </ul>	Principal place of business of third person 

Transaction	Location of Supplier	Location of Recipient	Location of Buyer (Third party)	Place of Supply	Tax
Dealer selling goods to buyer (third party) directly delivered to: <ul style="list-style-type: none"> <li>Customers of buyer</li> <li>Job worker of buyer</li> <li>Own units in other States</li> </ul>	Maharashtra	Gujarat	Maharashtra	Maharashtra	CGST&SGST
	Maharashtra	Maharashtra	Gujarat	Gujarat	IGST
	Maharashtra	UAE	Maharashtra	Maharashtra	CGST&SGST

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## Transit Sales

Transaction	Location of Supplier	Location of buyer	Location of Recipient	Place of Supply	Tax
Goods sold and invoiced by supplier A to buyer B and title documents are endorsed by B to C and ultimate delivery made to C	Mumbai	Nagpur	Party C in Indore	Maharashtra	CGST+SGST
Subsequent sale of goods in transit by B to recipient C (Invoice raised by B on C)	Party B in Nagpur	Party C in Indore	Party C in Indore	Madhya Pradesh	IGST

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## Supply does not involve movement of goods

Section	Situation	Place of Supply
10(1)(c)	Supply does not involve movement of goods	Location of such goods at the time of delivery to recipient

Transaction	Location of Buyer	Location of Owner	Location of Factory	Place of Supply	Tax
Stock and DG set sold by factory owner to person who has taken factory on lease	Gujarat	Gujarat	Maharashtra	???	???*
Machinery given on lease with option to buy it in stipulated period	Gujarat	Maharashtra	Gujarat	Gujarat	IGST

\*Depends on whether Owner of factory is registered for factory location at Maharashtra

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## Supply of installed / assembled goods

Section	Situation	Place of Supply
10(1)(d)	Installation/assembly at site	Place of such installation or assembly

Transaction	Location of Supplier	Location of Buyer (H.O)	Plant location of buyer	Place of Supply	Tax
Sale of machine in CKD form, assembled and installed at site in India	Maharashtra	Maharashtra	Haryana	Haryana	IGST
Sale of machine in CKD form, assembled and installed outside India [section 11(b)]	Maharashtra	Gujarat	UAE	UAE	Export – Zero rated

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## Supply of goods on board of conveyance / vessel

Section	Situation	Place of Supply
10(1)(e)	Where goods are supplied on board a conveyance (vessel/train/aircraft/motor vehicle)	Location at which such <b>goods are taken on board</b>

Transaction	Goods taken on board at	Location of Airlines [Supplier]	Sale in air zone of	Place of Supply	Tax
On board sale of perfume by Jet Airways (Mumbai – Leh)*	Mumbai	Delhi	Punjab	Mumbai	IGST
Supply of perfume by Jet airways (Delhi – Dubai – London)	Delhi	Delhi	Dubai	Delhi	CGST+SGST

\* Goods are taken on Board from various States. Difficult to keep record of goods sold from which lot?

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## Place of supply cannot be determined with reference to Section 10(1)

Section	Situation	Location of Supply
10(2)	Where the place of supply cannot be determined in terms of sub section (1)	Location at which such <b>goods shall be determined in the manner to be prescribed</b>

No such rules are prescribed till date

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## Section 11 – POS of goods imported into or exported from India

Section	Situation	Location of Supply
11(a)	Where the Goods are imported into India	Location of the importer.
11(b)	Where the goods are exported from India	Location outside India.

Transaction	Location of Supplier	Location of Recipient	Place of Supply	Tax
Import of Perfumes	London	Bangalore*	Karnataka	IGST
Export of spices	Kerala	U.K.	U.K.	Exports – zero rated

\* Perfumes cleared at Mumbai Airport by employee or agent of Bangalore based Importer

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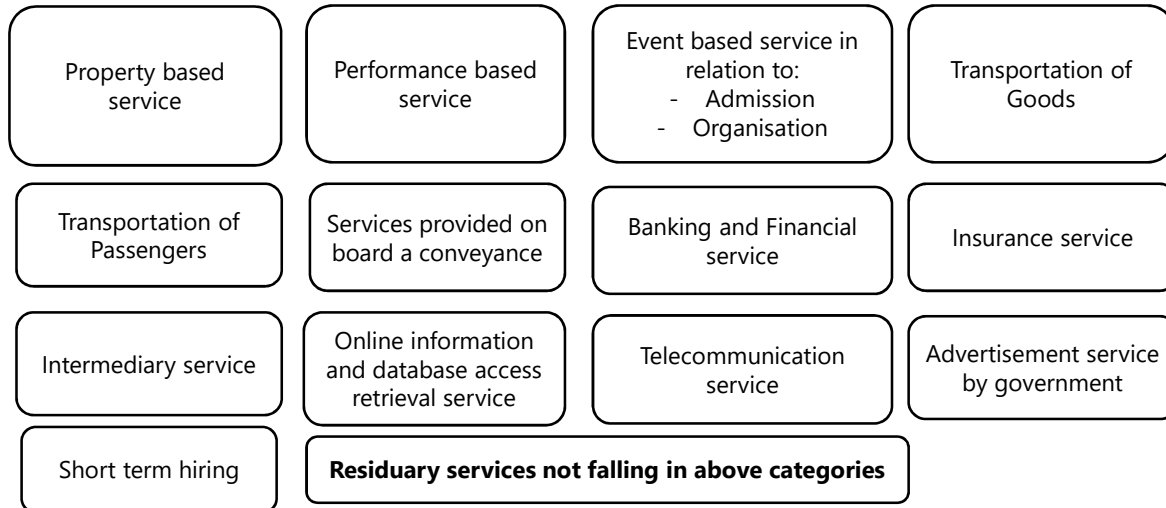
Place of Supply of Services

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## Place of Supply – Categories of service

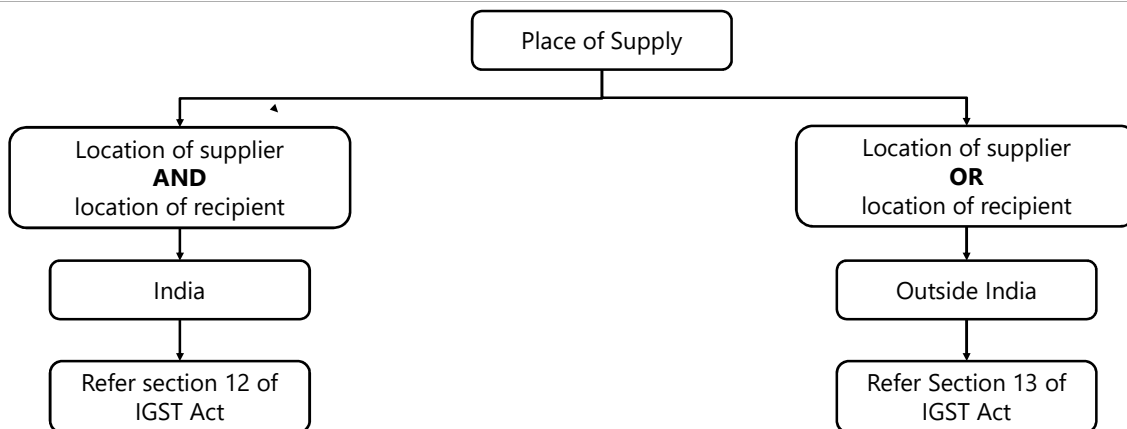


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## Place of Supply for service – Basic Framework



Whether place of supply provisions apply when both service provider and service receiver are located outside India?

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## PoS for service basic framework – SP & SR in India u/s 12

### **Section 12(1): Where the location of supplier of service and location of the recipient of service is in India, place of supply is determined in accordance with following provisions:**

- Section 12(2) - Residuary where sub section (3) to (14) does not apply
- Section 12(3) - Property based services & ancillary services
- Section 12(4) - Performance based services (Restaurant / Catering / Grooming etc.)
- Section 12(5) - Training and Performance appraisal related services
- Section 12(6) - Admission to an event(cultural/artistic/sporting etc.) & ancillary services
- Section 12(7) - Organisation of an event(cultural/artistic/sporting etc.) & ancillary services
- Section 12(8) - Goods transportation services

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## PoS for service basic framework – SP & SR in India u/s 12

- Section 12(9) - Passenger transportation services
- Section 12(10) - Services on Board a conveyance such as vessel, aircraft, train or motor vehicle
- Section 12(11) - Supply of telecommunication services
- Section 12(12) - Banking and other Financial services
- Section 12(13) - Insurance Services
- Section 12(14) - Advertisement Services

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## PoS for service basic framework – SP or SR outside India u/s 13

**Section 13(1): Where the location of the supplier or the location of recipient is outside India, place of supply is determined in accordance with following provisions:**

- Section 13(2) – Residuary where sub section (3) to (13) does not apply
- Section 13(3) – Performance based services
- Section 13(4) - Property based services & ancillary services
- Section 13(5) – Services by way of admission to, or organisation of cultural/artistic/sporting event
- Section 13(6) – Services provided at more than one location
- Section 13(7) – Services provided in more than one state

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## PoS for service basic framework – SP or SR outside India u/s 13

- Section 13(8):
  - Banking services
  - Intermediary services
  - Short term hiring
- Section 13(9) – Services of transportation of goods, other than by way of mail or courier
- Section 13(10) – Passenger transportation of services
- Section 13(11) – Services provided on Board a conveyance during the course of passenger transport operation
- Section 13(12) – Online information and database access or retrieval services
- Section 13(13) – Power to CG to notify any service or circumstance in respect of which POS is place of effective use and enjoyment of service

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## Property based services – Both SP and SR in India

Section	Situation	Location of Supply
12(3)(a)	Directly in relation to immovable property <b>including</b> : <ul style="list-style-type: none"> <li>Architects / Interior decorators / Surveyors/ Engineers and other related experts / Estate agents</li> <li>Grant of right to use immovable property</li> <li>Carrying out / co-ordination of construction work</li> </ul>	<ul style="list-style-type: none"> <li><b>Location at which immovable property</b> or boat or vessel is located or intended to be located</li> <li>If the location of the immovable property / boat / vessel is <b>located or intended to be located outside India, the place of supply shall be the location of the Recipient</b></li> <li>If property is located or intended to be located in more than one state or union territory: <ul style="list-style-type: none"> <li>If contract/agreement entered – supply deemed to be made in each of the state or union territory at proportionate value</li> <li>If contract/agreement not entered – reasonable basis as may be prescribed</li> </ul> </li> </ul>
12(3)(b)	Lodging accommodation by hotel, inn, guest house, home stay, club or campsite, by whatever name called and including a house boat or any other vessel	
12(3)(c)	Accommodation in any immovable property for organising: <ul style="list-style-type: none"> <li>Marriage or reception or matters related therewith</li> <li>Official, social, cultural, religious, business function</li> </ul> Including services provided in relation to such function at such property	
12(3)(d)	Any services ancillary to the services referred above in (a), (b) and (c)	

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## Property based services – SP or SR outside India

Section	Situation	Location of supply
13(4)	Supply of services <b>directly in relation to an immovable property including</b> : <ul style="list-style-type: none"> <li>Services by experts and estate agents</li> <li>Hotel accommodation by hotel, inn, guest house, homestay, club or campsite, by whatever name called</li> <li>Grant of rights to use immovable property</li> <li>Services for carrying out or co-ordination of construction work including architects or interior decorator</li> </ul>	Place where <b>immovable property is located or intended to be located</b> <ul style="list-style-type: none"> <li>Subject to section 13(6) and 13(7)</li> </ul>

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## Property based services – Probable coverage

➤ **Others by implication:**

Repair, Maintenance and Management of property	Services incidental to hotel such as pick up – drop service, health fitness service, decoration for function
Electricity charges to tenants	Mining

➤ **Whether following are property based services?**

Pest control service	Security service	Lawyer service
Insurance service	Housekeeping	Warehousing

➤ What about catering and event management done at marriage reception organised in any hotel?

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## Property based services - Illustrations

Transaction	Location of Supplier	Location of Recipient	Location of Property / Vessel	Place of Supply	Tax
Architect fees for plan approval	Bangalore	Mumbai	Bangalore	Karnataka	CGST+SGST
Architect fees for hotels located in various states	Bangalore	Mumbai	Pune, Goa and Bangalore	All 3 states proportionately	<b>IGST:</b> Maharashtra and Goa <b>CGST+SGST:</b> Karnataka
Architect fees for Dubai hotel	Bangalore	Mumbai	Dubai	Maharashtra	IGST
Architect fees for Dubai hotel	Dubai	Mumbai	Dubai	Dubai	No tax

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## Performance based services – Both SP and SR in India

Section	Situation	Location of supply
12(4)	Supply of services: <ul style="list-style-type: none"> <li>• Restaurant and catering</li> <li>• Personal grooming</li> <li>• Fitness</li> <li>• Beauty treatment</li> <li>• Health service including cosmetic/plastic surgery</li> </ul>	Location where services are actually performed
12(5)	Supply of services in relation to <b>training and performance appraisal</b>	<b>Service recipient is registered person:</b> Location of such person <b>Service recipient is not registered person:</b> Location where services are actually performed

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## Services in respect of goods – SR or SP outside India

Section	Situation	Location of supply
13(3)(a)	Services supplied <b>in respect of goods</b> <ul style="list-style-type: none"> <li>• That are required to be made <b>physically available by recipient of service to supplier of service</b> or to a person acting on behalf of the supplier of service</li> <li>• in order to provide service</li> </ul>	Location where services are actually performed  - Subject to section 13(6) and 13(7)

- Goods temporarily come into possession of supplier of service
- It will not cover services where supply of goods by service receiver is not crucial for rendering of services:
  - Sample products given for Market research
  - Pen drive / CD supplied to consultant
- Probable coverage:

Repairs & Maintenance of goods	Technical testing and analysis	Dry Cleaning	Storage and warehousing
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## Services in respect of goods – SP or SR outside India

Section	Situation / points for consideration	Location of supply
1 <sup>st</sup> Proviso to sec 13(3)(a)	<p>If above Services are <b>provided from a remote location</b> by way of electronic means</p> <p><b>Probable coverage:</b></p> <ul style="list-style-type: none"> <li>• Management of software</li> <li>• Maintenance of software</li> <li>• Repair of sophisticated machine electronically</li> </ul>	<b>Location where goods are situated at the time of supply</b>
2 <sup>nd</sup> Proviso to sec 13(3)(a)	<p>Service in respect of goods that are temporarily imported into India for repairs for re-export</p> <p><b>Points for consideration:</b></p> <ul style="list-style-type: none"> <li>• Section 13(3) is not applicable to above service. Hence said service will fall under general section i.e. section 13(2)</li> <li>• It will cover repair of following: <ul style="list-style-type: none"> <li>○ Foreign ship / aircraft</li> <li>○ Machinery from abroad</li> </ul> </li> </ul>	<p><b>Location of service receiver</b></p> <p>Location of service provider, where location of service recipient not available</p>

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## Personal services – SR or SP outside India

Section	Situation / points for consideration	Location of supply
13(3)(b)	<p>Services supplied to an individual, represented either as the recipient of service or a person acting on behalf of the recipient which require <b>physical presence of the receiver</b> or the person acting on behalf of the recipient, <b>with the supplier of service</b></p>	<p>Location where services are actually performed</p> <p>- Subject to section 13(6) and 13(7)</p>

➤ Probable coverage:

Beauty treatment	Massage / Spa	Personal grooming	Restaurant service
Photography service	Health & Fitness	Coaching classes	Personal security services

## Personal services - Illustrations

Transaction	Location of Supplier	Location of Recipient	Services performed at	Place of Supply	Tax	Remark
Beautician services to film producer for film shoot at Goa	Mumbai	Mumbai	Goa	Goa	IGST	Whether foreign artist has to take registration as non-resident taxable person? Or IGST to be paid by production company under RCM?
	UK	Mumbai	Goa	Goa	IGST	
Corporate training	Mumbai	Co. A in Mumbai	Goa	Maharashtra	CGST + SGST	

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## Service in respect of goods- Illustrations

Transaction	Location of Supplier	Location of Recipient	Services performed at	Place of Supply	Tax	Remark
Repairs & maintenance service	Mumbai	Co. A in Mumbai	Mumbai	Maharashtra	CGST + SGST	Falls under Residuary section 12(2)
	Mumbai	Canada	Mumbai	Canada	Export	2 <sup>nd</sup> proviso to sec 13(3)(a) – re-export
Software maintenance or software update (provided from remote location)	Mumbai	Software in Karnataka	Karnataka	Karnataka	IGST	
	Mumbai	Software in Canada	Canada	Canada	Export	

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## Event based services – Both SP and SR in India

Section	Situation	Location of supply
12(6)	<p><b>Admission to:</b></p> <ul style="list-style-type: none"> <li>• Cultural</li> <li>• Artistic</li> <li>• Sporting</li> <li>• Scientific</li> <li>• Educational</li> <li>• Entertainment event or</li> <li>• amusement park or any other place; AND</li> </ul> <p>Services ancillary thereto</p>	<p>Place where event is actually held</p> <p>OR</p> <p>Location of park or such other place</p>

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## Event based services – Both SP and SR in India

Section	Situation	Location of supply
12(7)(a) and 12(7)(b)	<p>➤ <b>Organization of</b></p> <ul style="list-style-type: none"> <li>• cultural</li> <li>• artistic</li> <li>• sporting</li> <li>• scientific</li> <li>• educational or</li> <li>• entertainment event; <b>including:</b></li> </ul> <p>Supply of service in relation to a <b>conference, fair, exhibition, celebration or similar events</b></p> <p>➤ Services ancillary to organisation of any of the above events or services; OR</p> <p>➤ Assigning of sponsorship of any of above events</p>	<p><b>Service Recipient is Registered person:</b> Location of such person</p> <p><b>Service Recipient is Other person:</b> Place where event is held</p> <p>If <b>event is held outside India</b>, the place of supply shall be the <b>location of the recipient</b></p> <p>If event is held in more than one state or union territory:</p> <ul style="list-style-type: none"> <li>• If contract/agreement entered – supply deemed to be made in each of the state or union territory at proportionate value</li> <li>• If contract/agreement not entered – reasonable basis as may be prescribed</li> </ul>

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## Event based service – SP or SR outside India

Section	Situation	Location of supply
13(5)	<b>Admission to or organisation of:</b> <ul style="list-style-type: none"> <li>• cultural</li> <li>• artistic</li> <li>• sporting</li> <li>• scientific</li> <li>• educational</li> <li>• entertainment event</li> <li>• a celebration, conference, fair, exhibition, or similar events, and</li> </ul> Services ancillary to such admission or organisation	<b>Place where the event is actually held</b> - Subject to section 13(6) and 13(7)

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## Event based service - Illustrations

Transaction	Location of Supplier	Location of Recipient	Event Held / Park at	Place of Supply	Tax
Entry to IPL match in Mumbai	Mumbai	Gujarat	Maharashtra	Maharashtra	CGST & SGST
	Mumbai	Australia	Maharashtra	Maharashtra	CGST & SGST
Organisation of IIFA awards in Malaysia by an event management company	Mumbai	IIFA trust registered in Mumbai	Malaysia	Maharashtra	CGST & SGST
	Malaysia		Malaysia	Malaysia	No tax
Sponsorship of IPL	IPL Federation in Mumbai	Pepsi in Mumbai	Delhi / Mumbai / Kolkata	Multiple States	Proportionately

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## Other provisions

Section	Situation	Location of supply
13(6)	Following services supplied <b>at more than one location</b> , including a location in the taxable territory: <ul style="list-style-type: none"> <li>• Performance based [section 13(3)]</li> <li>• Immovable property based [section 13(4)]</li> <li>• Admission and organisation of event [section 13(5)]</li> </ul>	<b>Location in the taxable territory</b>
13(7)	Following services supplied <b>at more than one State or Union Territory</b> : <ul style="list-style-type: none"> <li>• Performance based [section 13(3)]</li> <li>• Immovable property based [section 13(4)]</li> <li>• Admission and organisation of event [section 13(5)]</li> </ul>	<b>Contract/agreement available:</b> Respective State or Union territory in specified proportion  <b>Contract/agreement not available:</b> Reasonable basis as may be prescribed

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## Transportation of Goods

Section	Situation	Location of supply
<b>Both SP and SR in India:</b>		
12(8)	Transportation of goods <b>including by mail or courier</b>	<b>Service Recipient is Registered person:</b> <ul style="list-style-type: none"> <li>• Location of such person</li> </ul> <b>Service Recipient is other person:</b> <ul style="list-style-type: none"> <li>• Location at which such <b>goods are handed over for their transportation</b></li> </ul>
<b>SP or SR outside India:</b>		
13(9)	Transportation of goods other than by way of mail or courier	Place of destination of the goods
13(3)(a)	Transportation of goods by mail or courier	Location where services are actually performed - Subject to section 13(6) and 13(7)

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## Transportation of Goods - Illustrations

Transaction	Goods transported from	Destination of goods	Location of service recipient	Place of Supply	Tax
Transportation of goods from Mumbai	Mumbai	Gujarat	Co A in Gujarat	Gujarat	IGST
	Mumbai	Gujarat	Mr. A of Gujarat	Maharashtra	CGST + SGST
Transportation of goods from Mumbai by Indian shipping company	Mumbai	Canada	Co. A in Mumbai	Maharashtra	CGST + SGST
	Mumbai	Canada	Canadian Co.	Canada	Export
Transportation of goods by foreign shipping co. from Canada to Mumbai	Canada	Mumbai	Mumbai	Maharashtra	IGST
	Canada	Mumbai	Canadian Co.	Maharashtra	???

## Transportation of passenger – Both SP and SR in India

Section	Situation	Location of supply
12(9)	Passenger Transportation	<p><b>Service Recipient is registered person:</b> Location of such person</p> <p><b>Service Recipient is other person:</b> Location where passenger embarks on the conveyance for a continuous journey</p>
Proviso to 12(9)	Passenger Transportation where: <ul style="list-style-type: none"> <li>Right to passage is given for future use; and</li> <li>Point of embarkation is not known at time of issue of right to passage</li> </ul>	<p><b>Service Recipient is registered person:</b> Location of such person</p> <p><b>Service Recipient is other person:</b></p> <ul style="list-style-type: none"> <li>Location of recipient (where address on record exists)</li> <li>Location of Supplier of Services (in other cases)</li> </ul> <p><b>Explanation :</b> In case of return journey, it shall be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.</p>

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## Transportation of passenger – SP or SR outside India

Section	Situation	Location of supply
13(10)	Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey

Transaction	Location of Supplier	Location of Recipient	Location where passenger embarks for continuous journey	Place of Supply	Tax
Flight from Mumbai to Canada by Air India  (Mumbai – Delhi – Istanbul – Canada)	Mumbai	Director of Co. A registered in Delhi	Mumbai	Delhi	IGST
	Mumbai	Director of Co. A registered in Delhi	Istanbul	Delhi	IGST
	Mumbai	Mr A of Mumbai (unregistered person)	Mumbai	Mumbai	CGST + SGST
	Mumbai	Mr A of Mumbai (unregistered person)	Istanbul	Istanbul	Export only if Forex received

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## Services supplied on board a conveyance

Section	Situation	Location of supply
<b>Both SP and SR in India:</b>		
12(10)	Services supplied on board a conveyance (vessel, aircraft, train or motor vehicle)	First Scheduled point of departure of that conveyance for the journey
<b>SP or SR outside India:</b>		
13(11)	Services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board	First scheduled point of departure of that conveyance for the journey.

Transaction	1 <sup>st</sup> Scheduled point of departure	Location of supplier	Boarding point	Place of supply	Tax
Catering in train	Mumbai	Delhi	Baroda	Mumbai	IGST
	Delhi	Delhi	Baroda	Delhi	CGST+SGST

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## Banking and Financial Services

Section	Situation	Location of supply
<b>Both SR and SP in India:</b>		
12(12) & Proviso to 12(12)	Banking and financial services, <b>including stock broking services</b> to any person	<ul style="list-style-type: none"> <li>• Location of service recipient on records of supplier</li> <li>• Where the location of recipient of service is not on records of supplier, location of supplier of service</li> </ul>
<b>SP or SR outside India:</b>		
13(8)(a)	Services supplied by a Banking Company/ Financial institution/ Non Banking Financial company to <b>account holders</b>	Location of the supplier of service

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## Insurance Services

Section	Situation	Location of supply
<b>Both SP and SR in India:</b>		
12(13)	Insurance Services	<p><b>Service Recipient is Registered person:</b> Location of such person</p> <p><b>Service Recipient is other person:</b> Location of recipient of services on the records of supplier of services</p>
<b>SP or SR outside India:</b>		
13(2)	Insurance Service	Location of service recipient; or Location of service provider where location of service recipient not available

- Whether Insurance of a property falls under section 12(13) / 13(2) or under property based service?

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## Section 13(12) – Online information and database access or retrieval services

Section	Situation	Location of supply										
13(12)	Online information and database access or retrieval services.	Location of Recipient of service										
<p><b>Section 2(17) of IGST Act defines “Online Information and database access or retrieval services” to mean:</b>            services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,—</p> <table border="1"> <tr> <td>advertising on the internet</td> <td>providing cloud services</td> </tr> <tr> <td>online gaming</td> <td>digital data storage</td> </tr> <tr> <td colspan="2">online supplies of digital content (movies, television shows, music and the like)</td> </tr> <tr> <td colspan="2">providing data or information, retrievable or otherwise, in electronic form through a computer network</td> </tr> <tr> <td colspan="2">provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet</td> </tr> </table>			advertising on the internet	providing cloud services	online gaming	digital data storage	online supplies of digital content (movies, television shows, music and the like)		providing data or information, retrievable or otherwise, in electronic form through a computer network		provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet	
advertising on the internet	providing cloud services											
online gaming	digital data storage											
online supplies of digital content (movies, television shows, music and the like)												
providing data or information, retrievable or otherwise, in electronic form through a computer network												
provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet												

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## Intermediary and hiring service (Short Period)

Section	Situation	Location of supply
<b>Both SP and SR in India:</b>		
12(2)	Intermediary Services	<p><b>Service Recipient is registered person:</b>            Location of such person</p> <p><b>Service Recipient is other person:</b></p> <ul style="list-style-type: none"> <li>• Location of recipient (where address on record exists)</li> <li>• Location of Supplier of Services (in other cases)</li> </ul>
	Services consisting of hiring of means of transport including yachts but <b>excluding aircrafts and vessels</b> , up to a period of one month	
<b>SP or SR outside India:</b>		
13(8)(b)	Intermediary Services	Location of supplier of service
13(8)(c)	Services consisting of hiring of means of transport including yachts but <b>excluding aircrafts and vessels</b> , up to a period of one month	

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## Intermediary service - Illustrations

Location of intermediary	Location of Principal	Place of Supply	Tax
Mumbai	Nagpur	Maharashtra	CGST+SGST
Mumbai	Delhi	Delhi	IGST
Mumbai	UK	Mumbai	CGST + SGST
UK	Mumbai	UK	No tax

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## Section 12(11) – Telecommunication Services

Section	Situation	Location of supply
<b>12(11)</b>	<b>Telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person:</b>	
12(11)(a)	By way of fixed telecommunication line, leased circuits, internet leased circuits, cable or dish antenna	Location of telecommunication line, leased circuits, internet leased circuits, cable or dish antenna is installed for receipt of services
12(11)(b)	Post paid mobile connection for telecommunication and internet	Location of billing address of recipient of service on record of supplier of service
12(11)(c)	Pre paid mobile connection for telecommunication, internet and direct to home television services <b>through Voucher or any other means</b>	<p><b>(i) selling agent / re-seller / distributor of SIM card or recharge voucher:</b> Address of selling agent / re-seller / distributor as per the records of the supplier at the time of supply</p> <p><b>(ii) Any person to the final subscriber:</b> Location where such pre-payment is received or where such vouchers are sold</p>

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## Section 12(11) – Telecommunication Services

Section	Situation	Location of supply
2 <sup>nd</sup> Proviso	Prepaid service availed or recharge made through internet banking or other electronic mode of payment	Location of recipient of service services on record of the supplier of services
12(11)(d)	If not covered in (a), (b) and (c) above	Address of the recipient as per records of the supplier of the service
1 <sup>st</sup> Proviso	Where the address of the recipient as per records of supplier of service is not available	Location of the supplier of service.

### Explanation:

If leased circuit is installed in more than one state or union territory:

- If contract/agreement entered – supply deemed to be made in each of the state or union territory at proportionate value
- If contract/agreement not entered – reasonable basis as may be prescribed

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## Section 12(14) – Advertisement Services

Section	Situation	Location of supply
12(14)	Advertisement service provided to Central government, State Government, Statutory body or local authority meant for the States or Union Territory	<p><b>Contract/agreement available:</b></p> <p>Respective State or Union territory in specified proportion</p> <p><b>Contract/agreement not available:</b></p> <p>Reasonable basis as may be prescribed</p>

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## Residual

Section	Situation	Location of supply
12(2)	Not falling under section 12(3) to 12(14)	<p><b>Service Recipient is registered person:</b> Location of such person</p> <p><b>Service Recipient is other person:</b></p> <ul style="list-style-type: none"> <li>• Location of recipient (where address on record exists)</li> <li>• Location of Supplier of Services (in other cases)</li> </ul>
13(2)	Not falling under sections 13(3) to 13(13)	Location of service recipient; or Location of service provider where location of service recipient not available

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## Other provisions

Section 13(13)	In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service
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## Place of Supply for service – Conflict between two provisions

- Under Service Tax, **Rule 14 of Place of Provision of Service Rules, 2012** provides that where the provision of service, is prima facie, determinable in terms of more than one rule, it shall be determined **in accordance with Rule that occurs later among Rules that merit equal consideration**
- **Under GST, no provision as to determination of POS where supply apparently falls in more than one category**
- Hence, how to determine place of supply in case of following services:

Insurance in respect of property	Section 12(3) – property based service Section 12(13) – in relation to insurance service
Pest Control	Section 12(3) – Property based service Section 12(2) – Residual category
Housekeeping service	
Security	

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## No provision for Advance Ruling

- Advance ruling can be sought out for following under Section 97(2) of CGST Act :
  - classification of any goods or services or both;
  - applicability of a notification issued under the provisions of this Act;
  - determination of time and value of supply of goods or services or both;
  - admissibility of input tax credit of tax paid or deemed to have been paid;
  - determination of the liability to pay tax on any goods or services or both;
  - whether applicant is required to be registered;
  - whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
- Does this mean that one cannot go to Advance Ruling Authority for any clarification on Place of Supply?

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## Cross Border Transactions

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## Territorial Jurisdiction

**INDIA**  
[Section 2(56) of CGST Act]

29 State and  
7 Union territories  
-Clause (2) & (3) of  
Article 1 of Constitution

- Territorial waters,  
Seabed and the Subsoil  
underlying such water
- continental shelf,
- EEZ or any other  
maritime zone

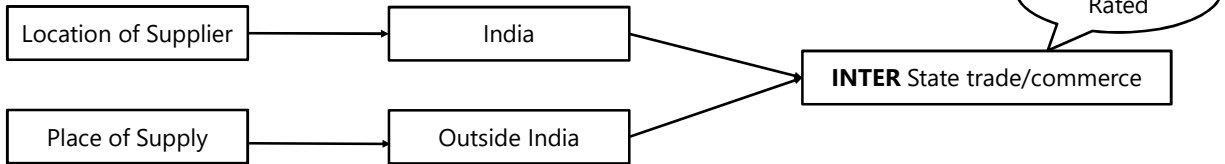
Air space above its territory  
and territorial waters

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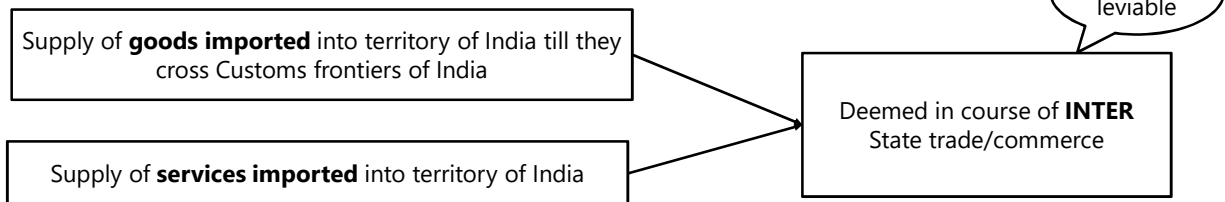


## 'Interstate' – Section 7 of IGST Act

### Section 7(5)(a) of IGST Act (Export):



### Section 7(2) and 7(4) of IGST Act (Import):



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## Import of goods u/s 2(10) r.w. sec 5 of IGST Act

- Term "Import of goods" is defined u/s 2(10) of IGST Act to mean bringing goods into India from a place outside India
- Goods imported into territory of India **till they cross Customs frontiers of India** deemed to be in course of inter-state trade or commerce [section 7(2) of IGST Act]
- "**customs frontiers of India**" means the limits of a customs area as defined in section 2 of the Customs Act, 1962 [section 2(4) of IGST Act].
- Basic Customs Duty will continue to be leviable on CIF value declared as per Customs Valuation Rules
- IGST will be payable on import of goods in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 [proviso to section 5(1) of IGST Act]:
  - **At the point** when duties of customs are levied on the said goods u/s 12 of the Customs Act, 1962
  - **On the value** as determined under Customs Tariff Act, 1975

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## Import of service u/s 2(11) of IGST Act

- Section 2(11) of IGST Act provides that a supply will be considered as an **“Import of service”** if:
  - a) The supplier is located outside India,
  - b) The recipient is located in India,
  - c) The place of supply of service is in India, and
- Supply of services in course of import into territory of India deemed to be in the course of inter-state trade or commerce [Section 7(4) of IGST Act]
- IGST will also be payable on import of services for consideration whether such import is :
  - in course or furtherance of business
  - for personal use
- IGST will be payable by recipient of services under Reverse Charge

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## Export of Goods [Sec 2(5)] & Zero Rated Supplies [Sec 2(23)]

- **“Export of goods”** with its grammatical variations and cognate expressions means [section 2(5)]:
  - Taking goods out of India
  - To place outside India
- **Zero Rated Supply** [sec 2(23) of IGST Act] shall have meaning assigned to it in Section 16
- **Section 16 of IGST Act:**
  - “zero rated supply” means any of the following supplies of goods or services or both –
    - Export of goods or services or both; or
    - Supply of goods or services or both to a SEZ developer or an SEZ unit
  - Subject to provisions of sub section (5) of section 17 of the CGST Act, credit of input tax may be availed for making zero rated supplies, even if that supply is an exempt supply

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## Deemed Exports

- Deemed Exports means such supplies of goods as may be notified under Section 147 [Section 2(39) of CGST Act]
- "Deemed exports" [Section 147 of CGST Act]
  - Such supply of goods as notified by Government
  - where goods supplied do not leave India, and
  - payment for such supplies is received either in Indian Rupees or in convertible foreign exchange, if such goods are manufactured in India
- Supply of goods by registered person to EOU will be treated as deemed exports [Notification No. 48/2017-Central Tax dt. 18.10.2017]

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## Export of Service [Section 2(6) of IGST Act]

- **"Export of service" means the supply of any service when [section 2(6)]:**
  - Supplier of service is located in India
  - the recipient of service is located outside India
  - the place of supply of service is outside India
  - the payment for such service has been received by the supplier of service in convertible foreign exchange; and
  - the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8

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## Issues

- Whether high sea sales are liable to GST:
  - Circular No. 33/2017-Customs dated 01.08.2017 clarifies that IGST on high sea sale of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. at the time of clearance from customs port
  - No circular or clarification under GST law
- Whether out and out exports (third party exports) is liable to GST:
  - A dealer in India buys the goods from China and directly ships from China to USA
- Celebrity receiving costly car as a 'gift' from his overseas fan (non-related party), whether it is liable to IGST while paying the custom duty

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**THANK YOU**

**naresh.sheth@nashah.com**

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