

# **Webinar on “RECENT AMENDMENTS IN GST”**

**Organized by  
THE CHAMBER OF TAX CONSULTANTS**

**Presented by CA RAJIV LUTHIA**

7.(1) For the purposes of this Act, the expression “supply” includes–

(a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) Import of services for a consideration whether or not in the course or furtherance of business; **and**

(c) The activities specified in Schedule I made or agreed to be made without a consideration; **and**

~~(d) The activities to be treated as supply of goods or supply of services as referred to in Schedule II.~~

**“(1A) where certain activities or transactions, constitute a supply in accordance with the provisions of subsection(1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.”**

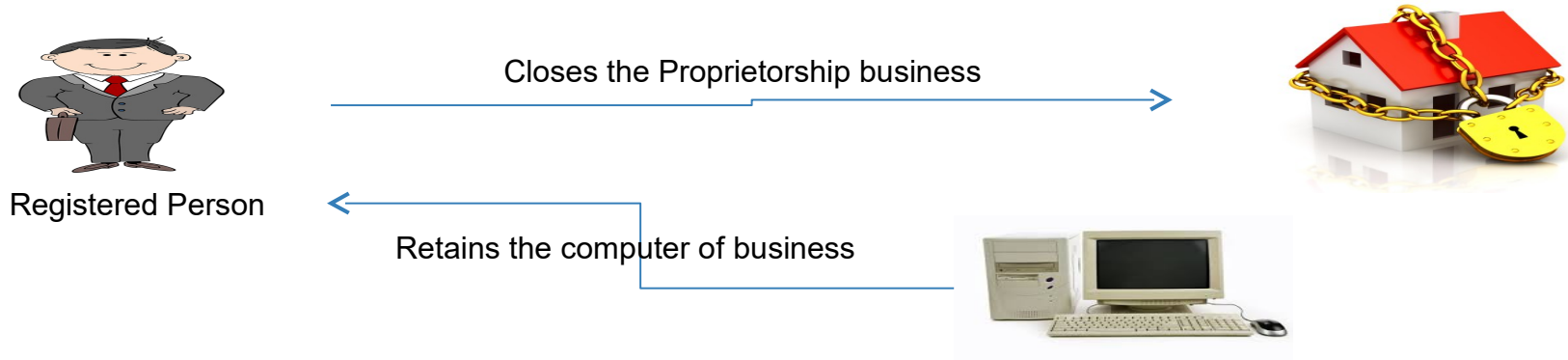
- Sub-section 1(d) which read as Supply Includes.....the activities to be treated as supply of goods or supply of services as referred to in Schedule II... **OMITTED**
- New Sub-section 1A inserted :  
“**where certain activities or transactions, constitute a supply** in accordance with the provisions of sub section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.”
- Clarifying intention of legislature that Schedule II is meant only for classification of activities/transaction either as goods or services
- Schedule II of section 7 was not for treating a transaction as deemed supply.

## ISSUE FOR DISCUSSION – SCHEDULE II

### ➤ Clause 4(c) of Schedule II

“(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.



➤ Whether treated as supply & liable for GST in absence of deeming provision ?

## ISSUE FOR DISCUSSION – SCHEDULE II

- **Clause 5(e) schedule II – Agreeing to the obligation to refrain from an Act, or to tolerate an Act or a situation, or to do an Act**
- **Liquidated damages whether liable to GST ?**
- **Where is element of supply of goods or service**
- **Maharashtra AAR in case of North American Coal Corporation Pvt Ltd. has held that liquidated damages would qualify as a supply of service as per section 5(e) of Schedule II of section 7(1) of CGST Act**

## Interest u/s 50 – GROSS or NET Liability

- In case of **Megha Engineering & Infrastructure Ltd, Telangana High court** has held that held that until a return is filed as self-assessed, no entitlement to credit and no actual entry of credit in Electronic credit ledger takes place. As a consequence, no payment can be made out of such a credit entry. Such tax becomes input tax credit only when a claim is made in returns filed as self-assessed. It is only after a claim is made in return that same gets credited in electronic credit ledger. It is only after a credit is entered in electronic credit ledger that payment can be made. Consequent to delay in filing of returns, payment of tax liability, partly in cash & partly in form of ITC was made beyond the period prescribed and thus, **the liability to pay Interest on gross liability amount arose automatically.**

## Interest u/s 50 – GROSS or NET Liability

- Government through Finance Act, 2019 amended Section 50 to provide that *interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.*
- Thus it is proposed that Interest on GST liability will be NET amount i.e. after setting off Input tax credit.
- **Amendment effective from ??**

# AMENDMENT IN CGST RULES

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## Notification 49/2019-CT dated 9th October, 2019

### › Suspension of registration

- In CGST Rule 21A(3), an explanation has been inserted to clarify that the expression “**shall not make any taxable supply**” shall mean that the registered person shall not issue a tax invoice & shall not charge tax on supplies made by him during the period of suspension of registration.
- In Rule 21A, a new sub rule 5 has been inserted to provide that where any order having the effect of revocation of suspension of registration has been passed, the provisions of section 31(3)(a) – **Issuance of Revised Invoice** and section 40 – **First Return** of CGST Act in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.

### › Condition for claiming ITC – Rule 36

- Sub Rule 4 has been inserted to provide that ITC to be availed by a registered person in respect of **invoices or debit notes**, the details of which have not been uploaded by the suppliers under 37(1), shall not exceed 20% of the eligible credit available in respect of **invoices or debit notes** the details of which have been uploaded by the suppliers under section 37(1)

# Form 3B Snap Shot

## 4. Eligible ITC

Details	Integrated Tax (₹)	Central Tax (₹)	State/UT Tax (₹)	CESS (₹)
<b>(A) ITC Available (whether in full or part)</b>				
(1) Import of goods	₹0.00			₹0.00
(2) Import of services	₹0.00			₹0.00
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)	₹0.00	₹0.00	₹0.00	₹0.00
(4) Inward supplies from ISD	₹0.00	₹0.00	₹0.00	₹0.00
(5) All other ITC	₹0.00	₹0.00	₹0.00	₹0.00
<b>(B) ITC Reversed</b>				
(1) As per Rule 42 & 43 of CGST/SGST rules	₹0.00	₹0.00	₹0.00	₹0.00
(2) Others	₹0.00	₹0.00	₹0.00	₹0.00
<b>(C) Net ITC Available (A) - (B)</b>				
	₹0.00	₹0.00	₹0.00	₹0.00
<b>(D) Ineligible ITC</b>				
(1) As per section 17(5)	₹0.00	₹0.00	₹0.00	₹0.00
(2) Others	₹0.00	₹0.00	₹0.00	₹0.00

CANCEL

CONFIRM

## Example

### For the Month of October, 2019

ITC Available	IGST	CGST	SGST
Import of Goods	Rs. 1,00,000/-	0	0
Import of Service	Rs. 10,000/-	0	0
Inward supplies liable to RCM	0	Rs. 5,000/-	Rs. 5,000/-
Inwards supplies from ISD	0	Rs. 2,000/-	Rs. 2,000/-
All other ITC (incl. re-credit Rs. 10,000 IGST)	Rs. 50,000/-	Rs. 25,000/-	Rs. 25,000/-
<b>Total</b>	<b>Rs. 1,60,000/-</b>	<b>Rs. 32,000/-</b>	<b>Rs. 32,000/-</b>

- ITC appearing in Form 2A for the month of October, 2019 - Rs. 60,000/-
- Amount of ITC that can be availed in Month of October, 2019?

## Example

- The sub rule 36(4) states that ITC availed in respect of **Invoice & debit note**.....
- ITC availed on Import of Goods, Import of Service, ITC availed on RCM are not required to be taken in account for reversal of ITC under said Rule.
- In given example, ITC that can be availed in month of october, 2019 is Rs. 2,02,000/- (i.e.  $60,000 + (60,000 * 20\% = 12,000) + 10,000$  (re-credit) + 1,00,000 + 10,000 + 5,000 + 5,000)

## ISSUE

- If in the given example, if one of the vendor files his GSTR 1 for month of October, 2019 in December, 2019, then how to compute the Eligible ITC for month of October, 2019??
- Further, few vendor having turnover of less than 1.5 crore is required to file GSTR 1 on quarterly basis. They how to compute the eligible ITC?
- For computing reversal of 20% of eligible ITC, do we need to check cumulative balance of amount appearing GSTR 2A or month balance appearing in GSTR 2A?
- Whether Rules can override Act? No corresponding restriction provided in Act. This rule may be challenged.

### ➤ Form and manner of submission of monthly return- Rule 61

Gujarat High Court in case of AAP & Co.Vs Union of India has held that **an order stating that the form of return specified for section 39 is FORM GSTR-3 and not FORM GSTR-3B**, therefore last date for availing input tax credit relating to invoices and debit note issued during the period July 2017 to March 2018 should be

- Due date of filing of return under section 39 in FORM GSTR-3 for the month of March 2019
- Actual date of filing annual return

whichever is earlier.

Form GSTR-3B is not a substitute of FORM GSTR-3. It is only a temporary arrangement till due date of filing the return in FORM GSTR-3 is notified.

## Notification 49/2019-CT dated 9th October, 2019

- Rule 61 has been amended to provide that “where a return in **FORM GSTR-3B** is required to be furnished by a person referred to in sub-rule (1) then such person shall not be required to furnish the return in **FORM GSTR-3**”.
- This amendment is inserted to reverse the decision of Hon’ble Gujarat High court decision in case of AAP & Co. wherein court has held that GSTR 3B is not a return under section 39(1).



## Notification 49/2019-CT dated 9th October, 2019

- **Rule 117** has been amended to extend the availment of transitional credit in Form GSTR TRAN-1 from 31st March 2019 to 31st December, 2019 and Form GSTR TRAN-2 till 31st January, 2020 for those taxpayers/registered persons **who could not submit the said declaration by the due date on account of technical difficulties.**
- A new Form DRC 01A has been notified for intimating tax, Interest & Penalty by Tax Authority before service of SCN u/s 73(1) & Section 74(1). Response to DRC 01A shall be filed by taxpayer in Form DRC 01A (Part B).
- The voluntary payment of taxes shall continue to be paid using DRC – 03.

JOB WORK



## Notification 20/2019-CT (Rate) dated 30th Sept, 2019 – w.e.f 1st October, 2019

- Government vide notification 20/2019-CT (Rate) dated 30th September, 2019 has notified specific the rate of GST on “**SERVICE BY WAY OF JOB WORK**” as under

<b>Entries in Serial number 26 of Not. 11/2017-CT(R)</b>	<b>Rate</b>
ib) Services by way of job work in relation to diamonds falling under chapter 71 in the First Schedule to the Customs Tariff Act, 1975	0.75%
ic) Services by way of job work in relation to bus body building	9%
id) <b>Services by way of job work other than (i), (ia), (ib) and (ic) above</b>	<b>6%</b>

- i) Service by way of job work in relation to printing of Newspaper, Textile & textile Product etc.
- ia) Service by way of job work in relation to manufacture of umbrella etc

# ISSUE - 1

- In Entry 26, sub entry (id) has been inserted which provide that GST on “**Service by way of Job Work**” other than (i), (ia), (ib) & (ic) above shall be charge at **6%**
- In Entry 26, there is a sub entry (iv) which provide that **Manufacturing services on physical inputs (goods) owned by others**, other than (i), (ia), (ib), (ic), (id), (ii), (iia) and (iii) above shall attract GST @ **9%**
- How to classify about Job work activity, whether falling under Entry 26(id) or Entry 26(iv)?

## ISSUE – 1...contd

- Section 2(68) defines “Job work” means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly
- Example: Polishing of Furniture, Powder coating or Electro-plating etc.
- Section 2(72) defines “Manufacturer” means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term “manufacturer” shall be construed accordingly
- Example : Making Shirt out of Cloth, Making furniture out of wood

HOTEL ACCOMMODATION,  
FOOD & BEVERAGE

## Notification 20/2019-CT (Rate) dated 30th Sept, 2019...**W.e.f 1st October, 2019**

- Government vide notification 20/2019-CT (Rate) dated 30th September, 2019 has reduced the rate of GST on “**Hotel Accommodation**” as under

<u>Value of supply of Unit of Accommodation</u>	<u>Old CT Rate</u>	<u>New CT Rate</u>
Below Rs. 1,000 per day	Exempt	Exempt
Equal to Rs. 1,000 per day	6%	Exempt
Above Rs.1,000 but below Rs.2,500	6%	6%
Equal to & Above Rs. 2,500 but below Rs. 7,500	9%	6%
Equal to Rs. 7,500/-	14%	6%
Above Rs. 7,500	14%	9%

## Notification 20/2019-CT (Rate) dated 30th Sept, 2019.. **W.e.f 1st October, 2019**

- Government vide notification 20/2019-CT (Rate) dated 30th September, 2019 has reduced the rate of GST on “**Restaurant Service**” as under

<u>Particulars</u>	<u>Old CT Rate</u>	<u>New CT Rate</u>	<u>Condition</u>
Supply of ‘Restaurant service’ <u>other than</u> at “ <b>specified premises</b> ”	2.5% or 6% or 9%	2.5%	ITC charged on goods and services used in supplying the service has not been taken
Supply of ‘ Restaurant Service’ at “specified premises”	9%	9%	NIL

- “**Specified premises**” means premises providing ‘hotel accommodation’ services having declared tariff of **any** unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent”
- In case of different tariff rate depend upon type of Room ?????



## Notification 20/2019-CT (Rate) dated 30th Sept, 2019

- Government vide notification 20/2019-CT (Rate) dated 30th September, 2019 has reduced the rate of GST on “**Outdoor Caterer**” as under

<u>Particulars</u>	<u>Old CT Rate</u>	<u>New CT Rate</u>	<u>Condition</u>
<p>Supply of ‘<b>outdoor catering</b>’, at premises <b>or</b></p> <p><b>Composite supply of ‘outdoor catering’ together with renting of premises</b> (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) at premises</p> <p><u>other than ‘specified premises’</u> provided by any person <u>other than-</u></p> <p>a) suppliers providing ‘hotel accommodation’ at ‘specified premises’, or</p> <p>b) suppliers located in ‘specified premises’.</p>	9%	2.5%	ITC charged on goods and services used in supplying the service has not been taken

## Notification 20/2019-CT (Rate) dated 30th Sept, 2019

<u>Particulars</u>	<u>Old Rate</u>	<u>New Rate</u>	<u>Condition</u>
Accommodation, food and beverage services <b>other than</b> (i) to (v) above	9%	9%	NIL

### Explanation :

- a) For the removal of doubt, it is hereby clarified that, supplies covered by items (ii), (iii), (iv) and (v) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5), **which is a mandatory rate and shall not be levied at the rate as specified under this entry.**
- b) This entry covers supply of 'restaurant service' at 'specified premises
- c) This entry covers supply of 'hotel accommodation' having value of supply of a unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.
- d) This entry covers supply of 'outdoor catering', provided by suppliers providing 'hotel accommodation' at 'specified premises', or suppliers located in 'specified premises

## Notification 20/2019-CT (Rate) dated 30th Sept, 2019 – **Transfer of Development right**

- Entry 2A. Where a **Registered** person transfers development right or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the value of construction service in respect of such apartments shall be deemed to be equal to the total Amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development right or FSI (including additional FSI), nearest to the date on which such development right or FSI (including additional FSI) is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 above.
- Para 2A of Notification 11/2017-CT (Rate) is amended to omit the word “Registered”, resulting thereby **GST on development right transferred by unregistered person to Promoter/builder is made liable to Tax**

# REVERSE CHARGE MECHANISM

The background features a light blue gradient with several geometric shapes. A large, dark blue trapezoidal shape is positioned in the upper left, extending towards the center. Below it, a bright orange horizontal bar with a pointed right end is located. The overall design is clean and modern.

# Notification 22/2019-CT (Rate) dated 30th Sept, 2019...**W.e.f 1st October, 2019**

## > Author

Category of Supply	Supplier of Service	Recipient of Service
Supply of services by an author by way of transfer or permitting the use or enjoyment of a copyright covered under 13(1)(a) of the Copyright Act, 1957 relating to original literary works to a publisher.	Author	Publisher located in the taxable territory:

**Provided that nothing contained in this entry shall apply where, the author has taken registration and filed a declaration, in the form at Annexure I, within time limit prescribed therein, under forward charge and to comply with all the provisions of Act as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of **1 year** from the date of exercising such option**

Hitherto Author, music composer, photographer & artistic were already covered under RCM

## Notification 22/2019-CT (Rate) dated 30th Sept, 2019

### › Rent-a-cab

Category of Supply	Supplier of Service	Recipient of Service
Services provided by way of renting of a motor vehicle <u>provided to a body corporate.</u>	<b>Any person</b> <u>other than a body corporate</u> , <b>paying</b> *** Central tax at the rate of 2.5% on renting of motor vehicles with ITC only of input service in the same line of business	Any body corporate located in the taxable territory.

\*\*\*Should be read as “Liable to Pay central....”. Otherwise the scope/intention of entry gets defeated.

- Rent a cab operate having aggregate supply below 20 Lakh in F.Y & was not registered for payment of GST. Is his supply now taxable under RCM?

› Service of Lending of Securities

Category of Supply	Supplier of Service	Recipient of Service
<b>Services of lending of securities</b> under Securities Lending Scheme, 1997 (“Scheme”) of Securities and Exchange Board of India (“SEBI”), as amended.	<b>Lender</b> i.e. a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI	<b>Borrower</b> i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI.

## Circular No. 119/38/2019-GST dated 11th Oct, 2019

In relation Service of Lending securities, government has clarified as follows

- **Securities** as defined in section 2(h) of the SCRA, 1956 are **not covered in the definition** of goods under section 2(52) and services under section 2(102) of the CGST Act. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.
- The explanation added to the definition of “services” w.e.f. 01.02.2019 i.e.” includes facilitating or arranging transactions in securities” is only clarificatory in nature and does not have any bearing on the taxability of the services that of lending securities. Service of Lending securities was taxable from 1st July, 2017.
- The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities. The clause 4 of para 4 relating to the Scheme under the Securities Lending Scheme, 1997 doesn't treat lending of securities as disposal of securities and therefore is not excluded from the definition of services.



## Circular No. 119/38/2019-GST dated 11th Oct, 2019

- The lender temporarily lends the securities held by him to a borrower and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the lended securities after stipulated period of time. The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST since 01.07.2017.
- The supply of lending of securities under the scheme is classifiable under heading 997119 and is leviable to GST@18% under Sl. No. 15(vii) of Notification No. 11/2017- CT ®
- For the past period i.e. from 01.07.2017 to 30.09.2019, GST is payable under forward charge by the lender and request may be made by the lender (supplier) to SEBI to disclose the information about borrower for discharging GST under forward charge. **The nature of tax payable shall be IGST.** However, if the service provider has already paid CGST / SGST / UTGST treating the supply as an intra-state supply, such lenders shall not be required to pay IGST again in lieu of such GST payments already made.

## Circular No. 119/38/2019-GST dated 11th Oct, 2019

- With effect from 1st October, 2019, the borrower of securities shall be liable to discharge GST as per Sl. No 16 of Notification No. 22/2019-Central Tax (Rate) dated 30.09.2019 under reverse charge mechanism (RCM). The nature of GST to be paid shall be IGST under RCM.
- Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.

## ISSUE – 2

- On 1st July, 2019, Mr. A (**an Investor**) having 5,000 shares of Reliance Industries, lends the same to Mr. B (**Trader**) for 10 days.
- Mr. B pays securities lending charges of Rs. 30,000/- to Mr. A.
- Whether Mr. A will require to pay GST on lending fees received by him?
- Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person **in the course or furtherance of business**
- Can Mr. A (an investor) said to be in course or furtherance of business????
- What will happen if lending happen on 1st October, 2019?

OTHER IMPORTANT  
AMENDMENTS

## Notification 21/2019-CT dated 30th October, 2019

- Sr. No. 19A/ 19B has been amended to extend the exemption of services by way of transportation of goods by an aircraft/ vessel from customs station of clearance in India to a place outside India till 30th September 2020. Earlier it was exempted only upto 30th September 2019.
- Sr. No. 24B has been inserted to exempt “services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea”

## Notification 23/2019-CT dated 30th October, 2019

- An explanation in Notification 4/2018-CT (Rate) has been inserted which provide that “Nothing contained in this notification shall apply with respect to the development rights supplied on or after 1st April, 2019”.
- Thus said notification has put a retrospective sunset clause on applicability of Notification No. 04/2018- (CT Rate) dated January 25, 2018

## Notification 25/2019-CT dated 30th October, 2019

- Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called” is neither supply of goods nor a supply of service.

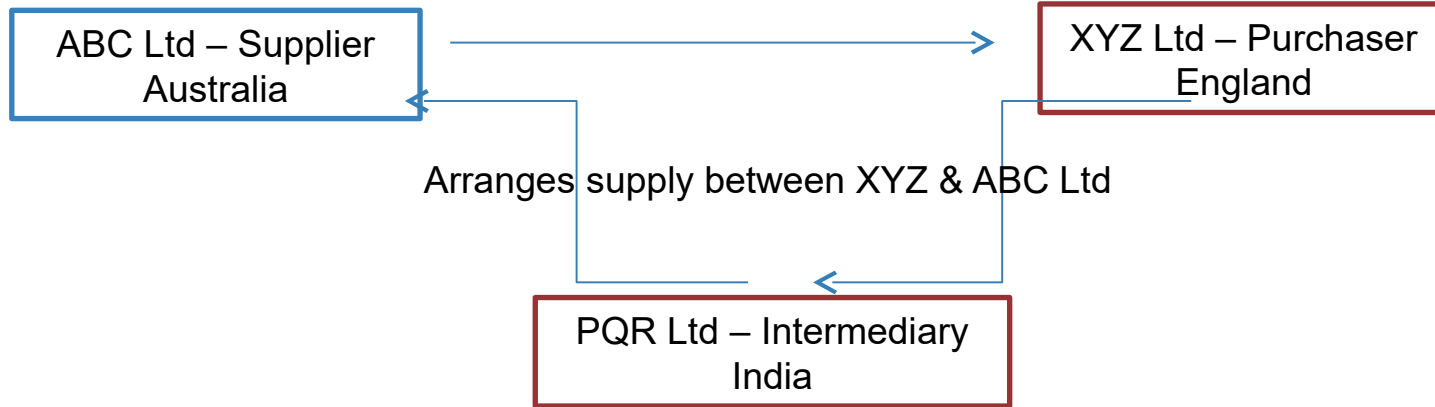
## Notification 47/2019-CT dated 9th October, 2019

- Provided option to taxpayer who aggregate turnover in a financial year does not exceed **2 crore** from filing annual return u/s 44(1) for Financial Years 2017-18 & 2018-19.
- The said annual return shall be deemed to be furnished on due date if it is not filed before the due date.
- How Department will complete assessment when annual return is not filed?
- Will the scrutinize GSTR 3B & GSTR 1 or the auto population of data in GSTR 9 will be treated as Annual return & accordingly assessment will be carried out?
- Annual return is a facility/opportunity to rectify the error committed while filing Monthly returns, hence It is advisable to file Annual return



## Notification 20/2019-IT dated 30th September, 2019

- **CBIC vide Notification No. 20/2019 – IT (Rate) dated 30th September, 2019** has made amended notification 9/2017-IT (Rate) to exempt Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory



- Above Transaction is exempted w.e.f 1st October, 2019

WITH KNOWLEDGE..... WE KNOW THE WORDS,  
BUT WITH EXPERIENCE..... WE KNOW THE MEANING



**CA. RAJIV LUTHIA**

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