

Concept of Supply under GST

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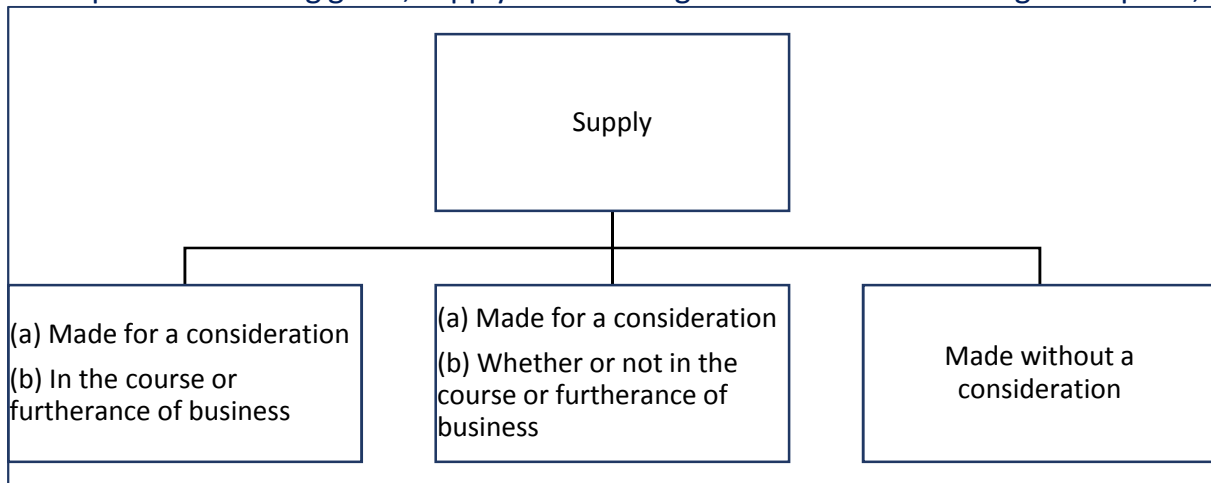


CONCEPT OF SUPPLY UNDER GST

INTRODUCTION

Under GST law, the taxable event is 'Supply'. As per the Revised Model GST law, supply has an inclusive meaning. It illustrates the events which would be covered under supply. At the same time, it can be interpreted that there might be events which is not covered by the definition of supply but still will be considered as supply due to the inclusive nature of the definition.

But as per the meaning given, supply can be categorized into the following three parts;



1. Supply made for a consideration + In the course or furtherance of business

This includes

- all forms of supply of goods and/or services such as
- sale, transfer, barter, exchange, license, rental, lease or disposal
- made or agreed to be made for a consideration
- by a person in the course or furtherance of business.

Illustration 1: An electronics dealer sells a laptop for Rs. 50,000 to earn a profit

2. Supply made for a consideration + whether or not in the course or furtherance of business.

This includes

- Services imported
- For a consideration
- Whether or not in the course or furtherance of business

Therefore, if we have imported any service for which a consideration is payable then it will be a supply.

Illustration 2: Interior designing services provided by a designer sitting in US to a person in India for which he charges \$ 1,000.

It is important to note that, in this example, even if the person in India takes the designing services for his residence, it will be considered as a supply.

3. Supply made without a consideration.

This includes following transactions made or agreed to be made without a consideration;

- i. Permanent transfer/disposal of business assets where input tax credit has been availed on such assets.

Illustration 3: A Businessman disposes off his used computers. He had taken input tax credit on such computer at the time of purchase. This disposal will be treated as supply.

- ii. Supply of goods or services between related persons, or between distinct persons as per Section 10 when made in the course or furtherance of business

Illustration 4: Stock transfer by a company from its branch in Delhi to its branch in Kolkata

- iii. Supply of goods from

- a. Principal → Agent (where agent undertakes to supply goods on behalf of the principal)
- b. Agent → Principal (where the agent undertakes to receive goods on behalf of the principal)

Illustration 5: Goods sent by a clothes wholesaler in Kolkata to his agent in Bihar for sale to the retailers in Bihar will be treated as supply

- iv. 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.

Illustration 6: A company in Kolkata receives technical services from its head office in USA free of cost. This service will be treated as supply.

SUPPLY OF GOODS OR SUPPLY OF SERVICE

The law also provides for the matters which are to be specifically treated as supply of goods or supply of service.

Supply of Goods

The following transactions are to be specifically treated as supply of goods.

1. Transfer of title in goods

Illustration 7: Mr A, a plastic dealer sells plastic to Mr B for Rs. 15,000.

2. Transfer of title in goods by way of an agreement which states clearly that property in goods will pass at a future date, upon payment of full consideration as agreed, like Hire Purchase agreement.

Illustration 8: Mr A sells a refrigerator to Mr B costing Rs. 50,000 on hire purchase basis. Mr B pays Rs 10,000 as down payment and he pays Rs. 2,000 per month for the next 30 months. The ownership and title is transferred to Mr B after full payment.

3. Transfer or disposal of the goods forming part of the assets of a business, by or under the directions of the person carrying on the business, so as no longer to form part of those assets, whether or not for a consideration.

Illustration 9: Mr A disposes off his old computer for Rs. 1,000

4. Where a person ceases to be a taxable person, any goods forming part of the assets of the business shall be deemed to be supplied by him for business purposes on the date immediately before he becomes non-taxable.

Exception-

(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.

Illustration 10: A sole proprietorship concern's turnover drops below the taxable limit and accordingly the proprietor deregisters himself. So, the assets remaining with him will be treated as a supply to his own self.

However, if its turnover had dropped because he now enters into a partnership, then it will not be considered as a supply.

Also, if he had handed over his business to his employee due to old age, then it will not be considered as supply either.

5. Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

Illustration 11: An unregistered club transfers tennis racquet to a member for Rs. 5,000

Supply of Services

1. Any transfer of goods or right in goods or undivided share in goods without the transfer of title thereof.

Illustration 12: Mr. A gives machinery on hire to Mr. B for Rs. 5,000 per month

2. Any lease, tenancy, easement, licence to occupy land is a supply of services

Illustration 13: Mr. A gives a land on lease to Mr. B for 30 years for Rs.1,00,000 per month.

3. Any lease or letting out of the building including a commercial, industrial or residential complex, either wholly or partly.

Illustration 14: Mr. A rents a flat in Mumbai from Mr. B for his residential purposes for Rs. 20,000 per month

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

Illustration 15: A Ltd, an automobile manufacturer sends its manufactured cars to B Ltd for testing. B Ltd here is providing services to A Ltd.

5. Use of business goods by any person for purposes other than that of the business by or under the direction of the person carrying on that business.

Illustration 16: Mr. Ram, a dealer of laptops, kept one of the laptops for his personal use for 15 days for his brother's wedding.

6. Renting of immovable property

Illustration 17: Mr. Anil gives a parking space on rent of Rs. 5,000 per month to Mr. Sunil.

7. Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly.

Exception: If the entire consideration has been received after the earlier of the following dates, namely

a. Date of completion certificate by competent authority.

b. Date of first occupation

It shall not be treated as supply of service.

Illustration 18: Mr Raj, a promoter, sells a flat in his new building to Mr. Malhotra.

Date of completion certificate – 11th March, 2018

Date of first occupation – 16th March, 2018

The entire consideration is received on 12th March, 2018 i.e. after the earlier of the following two dates namely 11th, 16th i.e. 11th March. It will not be treated as supply in this situation.

If the consideration was received before 11th March, 2018, then it would have been treated as a supply

8. Temporary transfer or permitting the use or enjoyment of any intellectual property right.

Illustration 19: Domino's Pizza allows the use of its patented process to Pizza Hut against consideration of Rs. 10 crore.

9. Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software

Illustration 20: A company pays programmers to develop an inhouse accounting software against payment of Rs. 2 lakhs.

10. Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.

Illustration 21: Mr. X, an employee of Z Ltd. agrees not to work in the same industry for at least 2 years by signing a non-compete agreement and against payment of Rs. 5 lakhs. This refers to refraining from an act.

11. Works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

Illustration 22: Asian Paints agrees to paint Mr. Asish's house for Rs. 3 lakhs. This will be treated as supply of service.

12. Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

Illustration 23: Mr. Rakesh, transfers the right to use a machine to Mr. Shyam in return for Rs. 5,000 per month

13. Supply, by way of or as part of any service or in any other manner whatsoever,
-of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption),
-where such supply or service is for cash, deferred payment or other valuable consideration.

Illustration 24: Blue Fox Restaurant provides food or drinks to customers at its restaurant.

POWERS VESTED WITH THE CG/SG

The Central or a State Government may, upon recommendation of the Council, specify, by notification, the transactions that are to be treated as—

- (a) a supply of goods and not as a supply of services; or
- (b) a supply of services and not as a supply of goods; or
- (c) neither a supply of goods nor a supply of services.

COMPOSITE AND MIXED SUPPLY

“Composite supply” means a supply made

- by a taxable person to a recipient
- comprising two or more supplies of
- goods or services, 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;

Illustration 25: 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.

Taxability

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. The rate will be that of the principal supply.

“**Mixed supply**” means

- 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 26: 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. So, it will be treated as a mixed supply.

Taxability

A mixed supply comprising of two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax. The entire supply will be taxable at that rate

CONCLUSION

In the times to come, the concept of supply will be one of the most pertinent areas of GST. A number of questions will be raised and will be one of the most litigation prone areas. So, it is of utmost importance to intricately evaluate each of the provisions under supply.

(This publication contains information for general guidance only. It is not intended to address the circumstances of any particular individual or entity. Although the best of endeavour has been made to provide the provisions in a simpler and accurate form, there is no substitute to detailed research with regard to the specific situation of a particular individual or entity. S. Khaitan & Associates or any of its officials do not accept any responsibility for loss incurred by any person for acting or refraining to act as a result of any matter in this publication)



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