



# Lawgics

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## Section 7 of CGST Act, 2017

### 7. Scope of supply.

(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;

[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation. —For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

(b) import of services for a consideration whether or not in the course or furtherance of business  
2[and];

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(1A) 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.

(2) Notwithstanding anything contained in sub-section (1), —

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of [sub-sections (1), (1A) and (2)], the Government may, on the recommendations 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.

## Our Interpretation

Section	
<b>Section 7(1)(a)</b>	<p>“Supply” includes all forms of <b>supply of Goods or Services</b> or both such as- Sales, Transfer, Barter, Exchange, Licence, Rental, lease or disposal made or agreed to be made <b>for a consideration by a person in the course or furtherance of business.</b></p> <p>Levy of <b>GST</b> comes on one event-i.e., <b>SUPPLY- if NO SUPPLY then NO GST.</b></p> <p><u>For best understanding of word SUPPLY under, we must consider:</u></p> <ul style="list-style-type: none"> <li>• Schedule-I: - Notified activities are supply even without consideration</li> <li>• Schedule-II: - Few Activities whether to be classified as Goods or Services</li> <li>• Schedule-III: - Activities, Neither supply of Goods or Services</li> </ul> <p><b>Four Ingredients of supply:</b></p> <ol style="list-style-type: none"> <li>(i) Goods or Services or both</li> <li>(ii) Made or agreed to be made for a consideration (Schedule 1 is an exception)</li> <li>(iii) Made in the course or furtherance of a business (except Import of services for a consideration)</li> <li>(iv) Supply made to a PERSON (Self supply also attract GST) (Interstate branch transfer)</li> </ol>
<b>Section 7(1) (aa)</b>	<p>This clause was inserted w.e.f. 01-07-2017, retrospectively, by the N. No. 39/2021-CT, dated 21-12-2021 wherein <b>the activities or transactions by a person</b> other than individual, <b>to its members or constituents</b> or vice-versa, for cash, deferred payment or other valuable consideration was <b>included in the scope of supply.</b></p> <p>Explanation says that the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter-se shall be deemed to take place from one such person to another.</p>
<b>Section 7(1)(b)</b>	<p>Import of Services as per Section 2(11) of IGST Act:</p> <ul style="list-style-type: none"> <li>▪ Service PROVIDER must be located OUTSIDE INDIA</li> <li>▪ Service RECIPIENT must be located in INDIA</li> <li>▪ PLACE OF SUPPLY of services is in INDIA</li> </ul> <p>As per Section 7(1)(b), <b>Import of Services</b> means <b>Receipt of services with consideration whether for business or otherwise.</b></p> <p>Even import of services for personal purposes shall be taxable if consideration is involved. Only those transactions shall not come under the ambit of supply, if the person import the services without consideration for personal purpose only.</p>
<b>Section 7(1)(c)</b>	<p><b><u>Activities specified in Schedule I are taxable under GST even without consideration</u></b></p> <p>This section widens the scope of supply by making certain transactions as SUPPLIES even without CONSIDERATION and thus attracting the levy of GST. The exhaustive list is given below and Valuation Rules needs to be followed for arriving at a taxable quantum.</p> <p>The transactions specified in Schedule I are as under:</p> <ol style="list-style-type: none"> <li>1) <b><u>Permanent transfer or disposal of business assets wherein ITC has been availed on such assets.</u></b> It is the essential condition that ITC on such assets has been availed. If No ITC availed, then it is not a supply for taxability purposes. Also, they should be permanently transferred to fall under Schedule I.</li> <li>2) <b><u>Supply of Goods or Services or both between related persons for business purposes even if it is without consideration,</u></b> then it would be treated as supply and would attract GST liability:             <ul style="list-style-type: none"> <li>• Inter State Stock Transfer</li> <li>• Bill to Ship to Transaction between related person for business</li> <li>• Centralized management services procured at head office and enjoyed by various branches</li> <li>• Cash Gift of any amount by employer to employee is not a Supply in view of facts that “Transaction in money” is not a subject matter of supply.</li> </ul> </li> <li>3) <b><u>Supply of Goods (Not the services) between Principal &amp; Agents or vice versa,</u></b> To cover the transaction under this category, it is mandating that actual supply to customer must be initiated by the agent otherwise if principal directly made supply to customer even on the direction of agents, then this transaction will not be covered for supply of goods in terms of schedule-I.</li> </ol>

Example: - Mr A an artist, appoint Mr. B an auctioneer to auction his painting. The Auctioneer did all the working to identify the potential bidders and ultimately painting is delivered to highest bidder. Now whether Mr B is an Agent of Mr A for supply of Goods in terms of Schedule-I.  
 In case, Mr B is raising an invoice on to the highest bidder then Mr. B is an agent of Mr A in terms of schedule-1 but in case bill is raised by Mr A to the highest bidder then the transaction is not covered for supply of goods through agents in terms of schedule-1 and in such a situation, Mr B is merely providing auctioneering services to the principal for which separate billing for his services shall be done as per law. In the nutshell it is concluded that where the Invoice is raised by agent Mr B to the buyer, then he is an agent covered under schedule-I but in case invoice is raised directly by Mr A to the buyer then agent Mr B is not covered under the category of Agent covered under schedule-I.

- 4) **Import of services (not goods) by a person from a related person for business purpose**, Entry 4 of Schedule-I says Import of services from a **related person** for business purpose even without consideration is a supply under GST liable to tax on the valuation as per rules. It means if a businessman takes architectural services from her SISTER in USA for constructing his office premises, then this transaction attracts GST even without consideration but if same businessman constructs his Residential House and takes same services, then it is not a supply and No GST shall be levied. Earlier, the IMPORTER under clause 4 of schedule-I was only a Taxable Person but after the CGST(Amendment) Act, 2018 w.e.f 01.02.2019, now any person is covered as an Importer who received services from outside India from related person for business purpose though without consideration. It means person having turnover less than the threshold limit if imports service from relative without consideration for business purpose the he needs to get himself Registered under GST though not liable for registration otherwise. Same logic applies to those persons whose turnover exceeds threshold but not liable for registration like suppliers of making exclusive exempt supplies.

Section  
7(1A)

**Activities or Transactions to be treated as supply of Goods or supplies of Services (Schedule-II)**

Schedule-II is formed to classify whether particular Activity is a supply of Goods or Services. These are the following entries in Schedule-II:

**1. Transfer**

1(a) Transfer of Goods with ownership and possession is called supply of Goods (like Sales Transactions)

1(b) In case, ownership is not transferred and only possession transferred then it is a case of Supply of Services (Like rental, leasing etc.) and also in case of undivided share in property is transferred of Joint Owned property then also it is a case of Supply of Services (like living or controlling right in joint property)

1(c) Where transfer of title is done at a later stipulated future date though possession given immediately, such a transfer is called Supply of Goods (Like hire purchase / Instalment sales, where ownership is transferred on payment of full consideration / instalment.)

**2. Land and Building**

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

2(b) Any lease or letting out of building whether, commercial, industrial or residential for business purpose is a supply of services.

Please note that transfer or sales of Land or Building is outside the preview of GST but it uses or right to use are subject to GST in certain cases. Notification No. 4/2018 Central Tax (Rate) dated 25.01.2018 clarify that in case of Joint Development Agreement (JDA), the activity of providing the right to construct on a land belonging to the owner, is an independent supply in the hands of the owner and that supply, is treated as a supply of services in terms of this clause.

Transfer of tenancy right to a new tenant against consideration in the form of tenancy premium is taxable.

Services provided by outgoing tenant by way of surrendering the tenancy right against consideration is liable to GST.

**3. Treatment or Process**

Any treatment or process which is applied to another person's goods is a supply of services like Repairs or Job Work or AMC contracts.

**4. Transfer of business Assets**

4(a) Where business assets are transferred or disposed off permanently then it is a supply of Goods like Sales Transactions.

4(b) Where business assets are transferred or disposed off temporarily for use by others, the usage or making available of such goods is a supply of services.

4(c) Where any person ceases to be a taxable person, any assets forming part of his business 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-

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

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

#### **5. Supply of Services**

5(a) Renting of Immovable Property.

5(b) Construction Services means construction of complex, building, civil structure except where entire consideration received after the issuances of completion certificate or its first occupation, whichever is earlier. Construction also includes Addition, Alteration, Replacement or Remodelling. This entry No. 5 of Schedule-II must be read with Entry No. 5 of Schedule-III of the Act.

5(c) Temporary transfer or permitting the use or enjoyment of any intellectual property right. Intellectual property in common parlance includes- Copyright, Patents, trademarks, Design or any other similar rights to an intangible property. For Example, Know how, Trade Secrets, Processes, Information, etc. These transfers must be temporary in nature to qualify as supply of services. If it is permanent transfer then it is supply of Goods. Permitting the use or enjoyment of UNREGISTERED INTELLECTUAL PROPERTY is also a taxable supply as there is no requirement that the intellectual property must be registered with any of the statutory authorities.

5(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of Information Technology Software. In common parlance, if any software is a customized software, then it is a supply of service but if it is a Ready-made Software then it is supply of Goods.

5(e) Refrain from an act or tolerant an act, is a taxable supply of services under GST. Like Non-Competence fee, Late Delivery Charges etc.

5(f) Transfer of right to use any goods- for consideration, is a supply of service liable to taxation.

#### **6. Composite Supply**

This clause mainly deals with composite supplies whose concepts is separately discussed in section 8 of CGST Act but below mentioned 2 entries would be considered as supply of services as per Schedule-II.

(i) Work Contract Services (only in relation to immovable property)

(ii) Restaurant Services, outdoor caterers, mandap keepers, Banquets etc. (This clause does not cover serving of Alcoholic Liquor as it is out of ambit of GST)

Section  
7(2)(a)

#### **Activities or transaction specified in Schedule-III are neither a supply of Goods nor supply of services:**

Schedule-III of the CGST Act, list out certain activities / transactions which shall not be considered as supply and hence not leviable to GST.

##### **1) Service by an employee to the employer in relation to his employment**

Please note that services of Employee are covered here as No Supply for GST taxability purpose. Employee can be permanent, temporary, casual, full time, part time, or working on hourly basis, etc. All such employees are covered here. So, first ingredient is to have a relationship of Employer & Employee. Second point is that Service must be provided in terms of the employment (Whether written or oral).

Please note that the other services (out of employment) if provided by employee then the same shall be chargeable to GST. The same way, if some goods are provided by employee, then it is a case of supply of goods by employee to be considered separately as this clause covers only services and not goods.

Amount received by the employee on pre-mature termination, is not in relation to the terms of employment so the same is taxable as supply of services by the employee.

Self-employed person under a contract of service cannot be covered under Employer-Employee relationship. Services provided on contract basis will not be considered as services provided by employee.

##### **2) Service by any court or tribunal**

The courts or Tribunals supplies judicial services to the litigants who files appeals, petitions, writs, SLP and normally filling fee are charged from the litigants. These receipts by courts or tribunals are **NOT SUPPLY** under GST.

- 3) **(a) Service provided by MP, MLA, Panchayat members, Municipalities members, Local Authorities Members**  
 The functions & duties performed by these members in their official capacities and such services are not supplies under GST but in case any of these members gets consideration for any act or performance out of his official capacity then that supply is subject to GST.  
 For Example, any such member comes in any television advertisement and in such situation, the amount so received by him shall be liable to GST and shall be taxed subject to threshold limit for Registration.
- (b) Duties performed by persons who hold posts as per constitution**  
 The constitution of India provides for various authorities like Election Commission of India, Central Electricity Regulatory Authority, TRAI, National commissions, etc. Various persons are appointed on various posts for discharge of many functions or duties. Such services provided by such persons to various commission / authorities are not a supply under GST.
- (c) Duties performed by any persons as Chairperson, member or a director in a body established by Central Government, State Government, Local authorities and who is not deemed as an employee of that body**  
 Such services provided by such persons to various bodies are not a supply under GST provided duties are performed in official capacity and no employer employee relationship exist between such person and body established.
- 4) **Service of Funeral, Burial, Crematorium, Mortuary and transportation of deceased person.**  
 Services of Funeral, burial, crematorium or mortuary including transportation of the deceased by any mode of transportation have been provided as exclusion from the purview of GST under this entry. Since the term “funeral”, burial or “cremation” have been used, these services will cover all kinds of religions. In some religions, the deceased are put to funeral. In some other religions, the dead bodies are put to burial. Similarly, other modes of cremating the dead bodies will be covered.
- 5) **Sale of Land & Building**  
 Sale of Land & Building during construction is a supply of services but Sale of Land & Building after completion certificate is a sale of immovable property and not liable to GST.
- 6) **Actionable claim other than lottery, betting & gambling is not a supply under GST.**  
 Actionable claims are not liable to GST.
- 7) **Supply of Goods between Non-taxable territories**  
 When a registered taxpayer makes both the transactions of purchase and sales from place other than INDIA then it is a NO supply for GST Taxation purpose. Example, Mr Aviral, a Registered dealer in Delhi buys goods from USA and sells to Japan without Goods being entered into India then it is a case of supply of Goods between non-taxable territories and hence it is not a supply under GST Act.
- 8) **(a) Supply of warehoused goods to any person before clearance for home consumption. (High Sea Sales)**
- 8) **(b) Supply of Goods by consignee to any other person, by endorsement of documents of title to the goods, after the goods dispatch from port of origin outside India but before clearance for home consumption. (High Sea Sales)**

Clause 8 to Schedule-III provides that aforesaid two transactions being in the nature of High Sea Sales are not a Supply and hence not liable to GST. This is done to avoid double taxation on the transactions.

Section  
7(2)(b)

**Activities to be notified by the Government which shall neither be supply of Goods nor Supply of Services.**

This section provides that all such activities / functions which are in the nature of public services and are performed by Central Government, State Government or Local Authorities, on the recommendation of the GST council, shall not be considered as Supply.

Notification No. 14/2017 CT (Rate) dated 28.06.2017, Notification No. 16/2018 CT (Rate) dated 26.07.2018 and Notification No. 25/2019 CT (Rate) dated 30.09.2019 are issued in this regard.

Section  
7(3)

**Power of government to notify any transaction as supply of services or supply of goods by way of Notification**

This Section empowers the Government to issue notification to clarify any doubted activities to give clarity as to whether such activity is supply of Goods or supply of services.

Government has issued numerous clarifications like:

- Circular No. 72/46/2018 CGST Dated 26.10.2018 on Return of expired goods specifically for pharmaceutical companies.
- Circular No. 108/27/2019 GST dated 18.07.2019 on Goods sent / taken out of India for Exhibition or on Consignment basis for the Export Promotion.

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