

GST Registration – Renting of Immovable Commercial Property

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Disclaimer

All views stated are my personal views, they are not binding on ICAI/Study Circle. My personal views may be correct/incorrect as they are expressed based on my understanding of the subject.

All members/listeners are requested to go through tax law provisions on their own and advise their clients accordingly as each situation is peculiar in itself.

All Illustrations provided are imaginary and any resemblance to any situation/s is purely co-incidental and without any intentions to disclose private and confidential information.

GST Registration – Renting of Immovable Commercial Property

Original Query / Point of discussion

Whether GST registration needs to be obtained in each and every state where Immovable Property is located for Renting of Immovable Property E.g. Person in Maharashtra has a Commercial property let out on rent Situated in Gujarat, then do he needs to obtain GST registration in Gujarat (levy CGST + SGST or UTGST) or he can obtain in Maharashtra (levy IGST)?

We are getting both views in discussion :

1. Registration(s) in State of Immovable property and charge CGST+SGST viz. registration in every state as well as union territories as applicable and do all the compliances as applicable
2. Register in 1 state and charge IGST- only one registration and do all the compliances as applicable

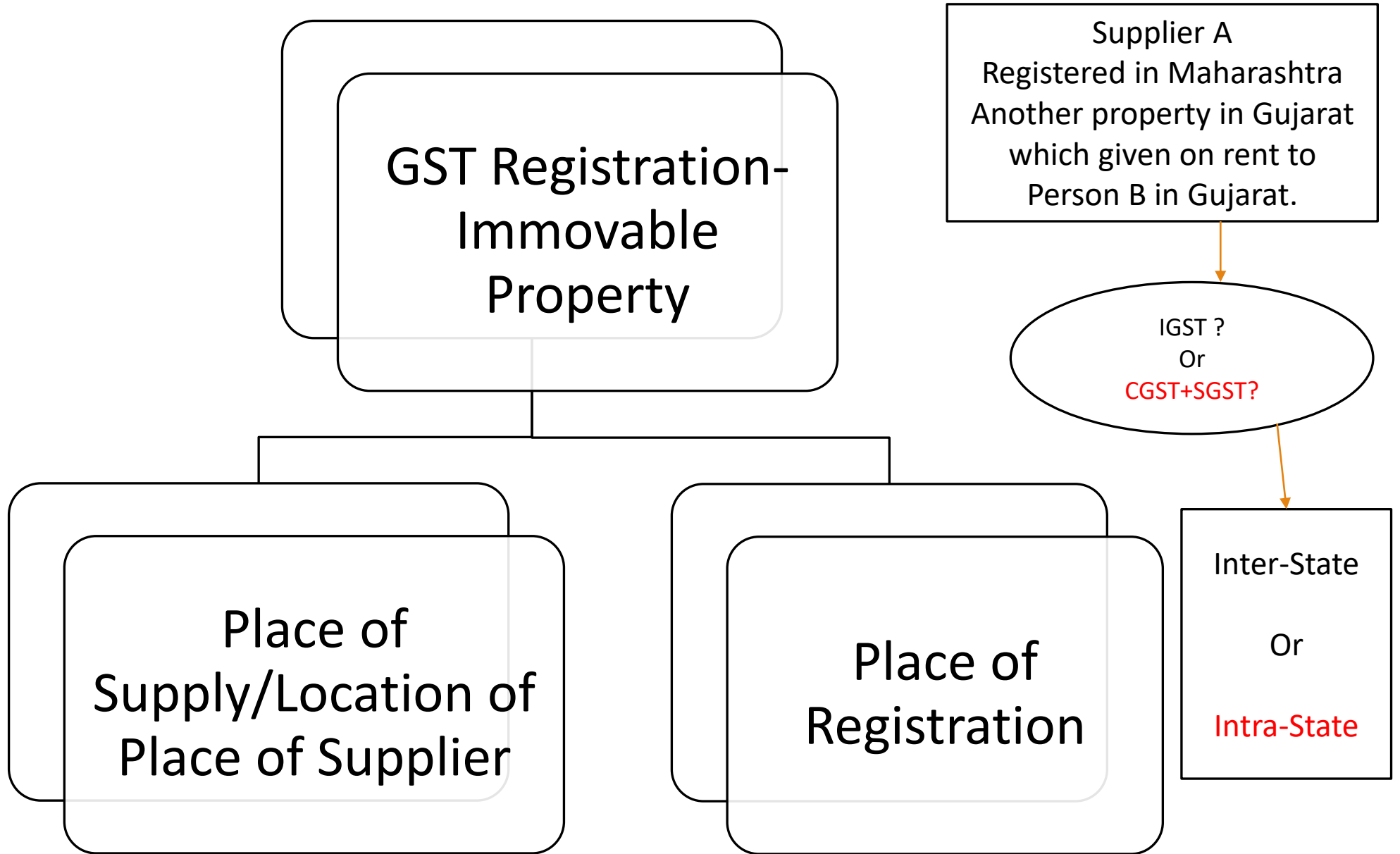
Food for Thought?

If person is having registration in Maharashtra and owning residential property as well as commercial properties all over India viz. every state/every union territory which are given only on rent to various registered persons

- As a professional, are we complicating law by interpreting by going with the flow of water rather trying to swim against the current?*
- What is the intention of legislature economic policy?*
- As a professional, we are also providing services to clients located and registered in other states, so registration requirement is applicable for the renting of property then why the same should not apply to the professionals also.*
- whether in such case whether such person is required to get registered in every state/every territory?*
- Is such person required to do the compliance for every state and union territory every month/every quarter ?*
- Is such person required to do the assessment of such compliance in every state and union territory?*

My considered view, in view of the above analysis only one registration would suffice and such person can charge IGST in the Tax Invoice to be issued u/s 31 of CGST Act, 2017 especially in the cases such person is not carrying on business and doesn't have fixed establishment as envisaged under GST law. Let us examine by diving deep into the points of deliberations under consideration.....which I would be discussing in partsplease one part after another before reaching any conclusion viz. Part 1 to Part 7.....

GST Law
Plain/Complex
???
Deciphering
scheme
Intention of
Legislature
(subsuming of
various taxes to
avoid cascading
effects)



Section 9- Levy and Collection

Intra State Supplies – Part 1

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

Inter State Supplies – Part 2

Section 2 (65) “intra-State supply of services” shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;

IGST Act - Section 8 (2) Subject to the provisions of section 12, supply of services where the **location of the supplier** and the **place of supply of services** are in the same State or same Union territory **shall** be treated as **intra-State supply** :

and

the same is **subject to** the provisions of section 12 “**Place of supply of services where location of supplier and recipient is in India**”.

Section 5- Levy and Collection – IGST Act

Inter State Supplies - Part 3

Sub-section (1) of section 5 has the relevance in the context of the present scenario, which states that

Integrated GST shall be levied on all inter-state supplies of goods or services or both and

collected in such manner as may be prescribed and shall be paid by the taxable person

Relevant Part of Section 5

Section 5(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person :

Section 7- Levy and Collection – IGST Act

Intra State Supplies – Part 4

sub-section (3) of Section 7

“**inter-state supply**” of IGST Act, 2017 states that subject to the provisions of section 12, supply of services, where the *location of the supplier and the place of supply are in two different States*;

Two different Union territories; or a State and a Union territory, shall be treated as a supply of services in the course of inter-State trade or commerce.

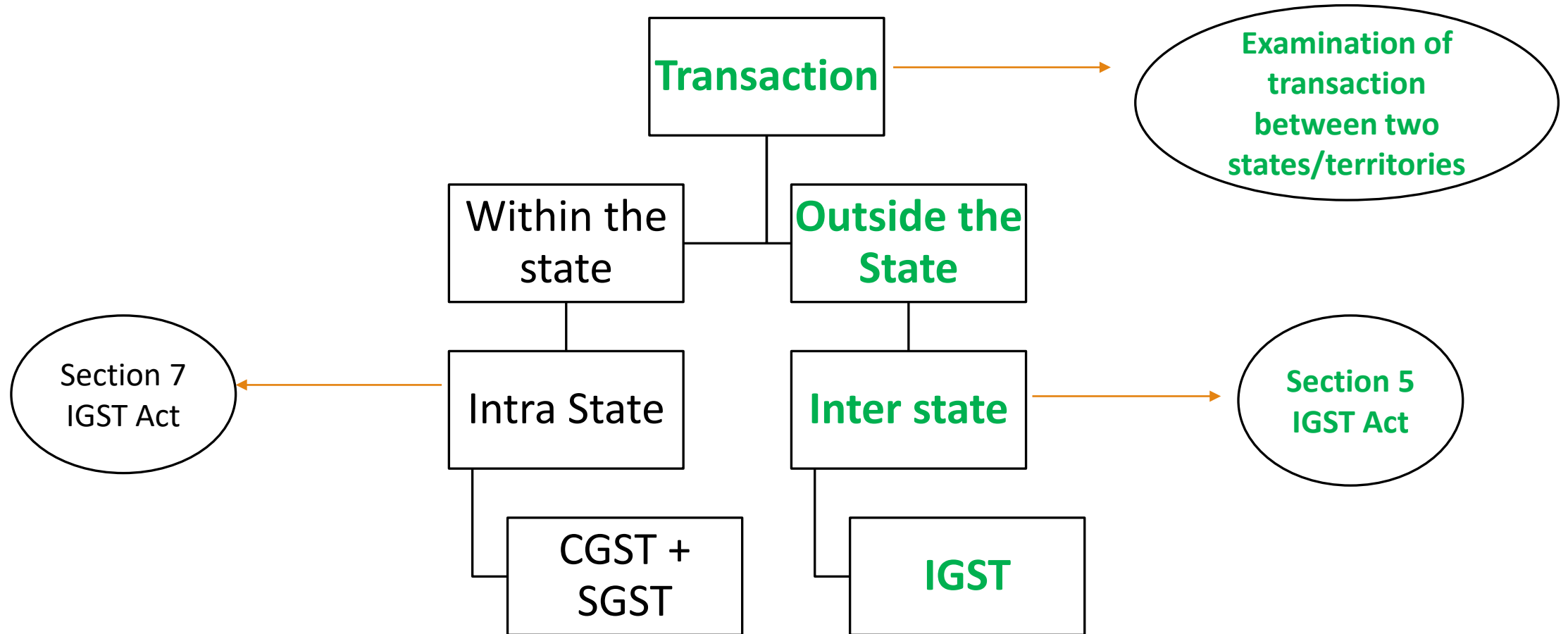
Relevant Part of Section 7

(3) Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in -

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of services in the course of **inter-State trade or commerce**.

Levy and Collection – Summary – Part 1 to 4



Section 12- IGST Act – POS – Services – Supplier/Recipient- located in India

POS - Part 5

Sub-section (3) of section 12 specifically

deals with the place of supply of services in relation to an immovable property which states that

the **place of supply** shall be the location at which the immovable property is located or intended to be located.

Hence, in the present case, “*place of supply of service*” is in **Gujarat**

Relevant Part of Section 12

(3) The place of supply of services, -

(a) **directly** in **relation** to an **immovable property**, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of **construction work**; or

(b) by way of **lodging accommodation** by a hotel, inn, guest house, home stay, club or campsite, by **whatever name called**, and including a house boat or any other vessel; or

Section 12- IGST Act – POS – Services – Supplier/Recipient- located in India

POS - Part 5

Sub-section (3) of section 12 specifically

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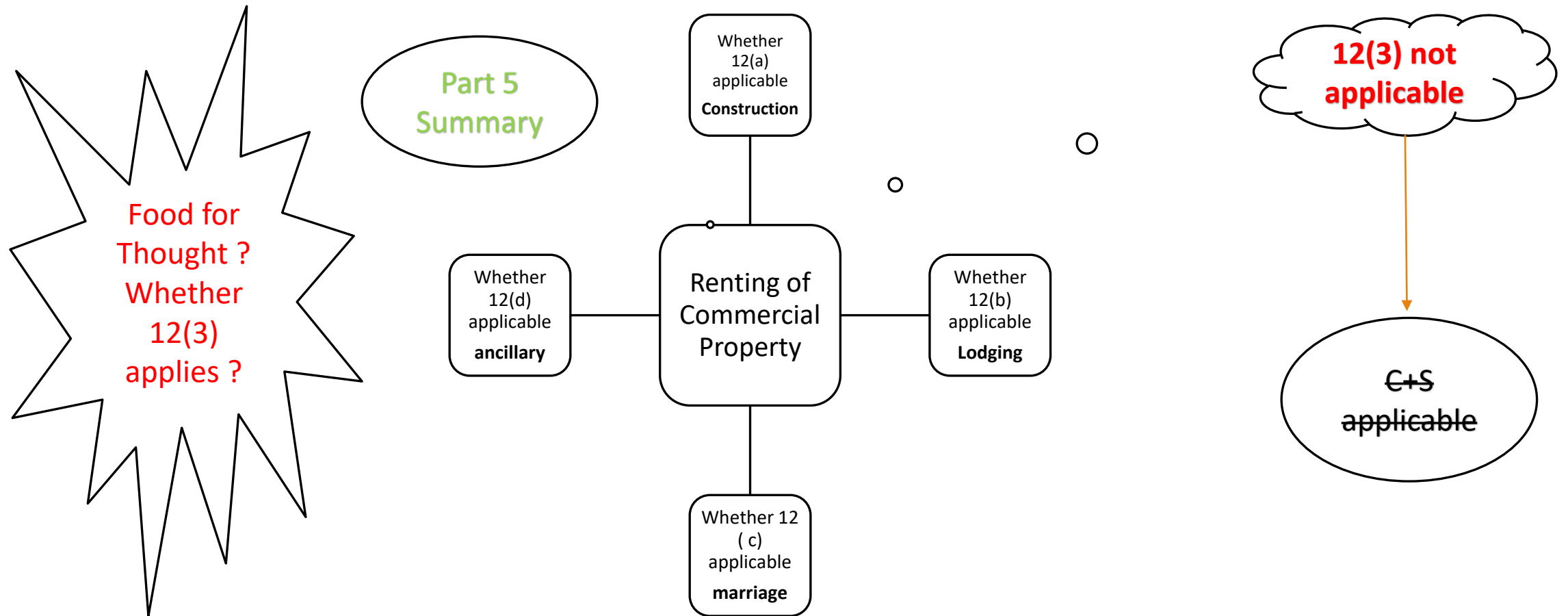
(c) by way of **accommodation** in any immovable property for **organising any marriage or reception or matters related thereto**, official, social, cultural, religious or business function including services provided in relation to such function at such property; or

(d) **any services ancillary** to the services referred to **in clauses (a), (b) and (c)**,

shall be the **location** at which the immovable property or boat or vessel, as the case may be, is located or intended to be located :

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Section 12- IGST Act – POS – Services – Supplier/Recipient- located in India



Section 22- CGST Act – Person Liable for registration

Registration - Part 6

Thus, “**Place of Supply**” provides the destination and is not relevant for registration of an assessee.

Provisions related to registration is provided under section 22 of the Central GST Act, 2017, which states that **every supplier shall** be liable to be **registered** in the State or Union territory, other than special category States, **“FROM” where he makes** a **taxable supply** of goods or services or both, if his **aggregate turnover** in a financial year **exceeds twenty lakh rupees**

Relevant Part of Section 22

SECTION 22. Persons liable for registration. — (1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, **from** where he **makes a taxable supply** of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees :

Location of Supplier of Services – Part 7

Section 2(71) of CGST Act /Section 2(15) of IGST Act

Comment

(71) “location of the supplier of services” means,—

*(a) where a supply is made from a **place of business** for which the registration has been obtained, the location of such place of business;*

*(b) 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;*

*(c) 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 provisions of the supply; and*

*(d) in absence of such places, the location of the **usual place of residence** of the supplier;*

In our matter under consideration –

Clause (a) states that location of supplier means a place of business from where the supply is made only having an immovable property does not qualify the ‘place of business’ of the assessee.

Is person carrying on business from Gujarat in our matter? For that we need to examine, place of business definition.....

Place of Business – Part 7

Section 2(85) of CGST Act

Comment

(85) “**place of business**” includes —

(a) 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, supplies or receives goods or services or both; or

(b) a place where a **taxable person** maintains his books of account; or

(c) a place where a **taxable person** is engaged in business through an agent, by whatever name called;

In our matter under consideration , **person** is ordinarily carrying out its business and maintains its books of account from Mumbai and thus, **only** having an **immovable property in Gujarat** does not qualify the ‘**place of business**’ of the assessee to be in Gujarat.

Is person giving property on rent carrying on business , answer is “ No”

Location of Supplier of Services – Part 7

Section 2(71) of CGST Act /Section 2(15) of IGST Act

Comment

(71) “location of the supplier of services” means,—

(b) 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**;

Section 2 (50) **“fixed establishment”** means a place (other than the registered 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;

In our matter under consideration –

By merely having an immovable property in the State of Gujarat , the test of having human and technical resources is not qualified. Hence, the same is not covered under the definition of fixed establishment.

Whether the person renting property is providing human technical resources to supply such renting of premises services ? – No , he is letting out his premises on rent isn't it ? Yes he is just letting out.

Location of Supplier of Services – Part 7

Section 2(71) of CGST Act /Section 2(15) of IGST Act

Comment

(71) “location of the supplier of services” means,—

*(c) 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 provisions of the supply; and***

*(d) in absence of such places, the location of the **usual place of residence** of the supplier;*

Section 2 (113) **“usual place of residence”** means —

(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**;

In our matter under consideration –
Clause (c) not applicable.

As per clause (6), usual place of residence in our case is Maharashtra and not Gujarat. So person should take registration only in Maharashtra and not Gujarat.

Conclusion

Reading all the parts together viz. part 1 to 7, as well as considering the intention of the legislature of subsuming of various taxes to avoid cascading effects and reading all the provisions simultaneously together viz. CGST & IGST Acts as discussed in earlier slides, it may be concluded that location of the assessee as supplier of service is in Maharashtra. Hence, assessee if already registered in Maharashtra has no liability to get itself registered in state of Gujarat and location of recipient of services and place of supply is in the state of Gujarat where immovable property is situated. Thus, the supply made in question would be inter-state supply as per the definition under Section 7 of the IGST Act, 2017. Further can we conclude that merely having an immovable property does not qualify the test of having place of business or fixed establishment and the assessee is liable to take registration in the state of usual place of residence from where such supply is made by such person. In addition, process of providing IGST mechanism to avoid cascading effects of input tax and compensation payable to states for their share of revenue arising due to implementation of GST validates the above conclusion in general.

Conclusion

A registered person making supply of renting of commercial property under GST Act, 2017 as per facts provided or points of discussion in the presentation shared would offer such income to tax under the head “Income from House Property” u/s 22 of the Income Tax Act 1961 and not under the head as “Profits and Gains of Business or Profession” u/s 28 of the Income Tax Act 1961. Thus, such supply under GST law would be termed as “Inter-state supplies” and such person would issue Tax Invoice u/s 31 of the CGST Act 2017 by charging IGST and complying with law accordingly. I hope this clarifies the query of the Querist based on provisions discussed analytically to the best of my ability and understanding.

To conclude, I most respectfully submit that all readers should read law provisions very carefully before reaching any conclusions as GST Law is just five year old (all of us are students of GST, no one is senior or junior to my understanding), further one should think holistically to examine any such situations. Whatever I have learnt till today, it is just because of my seniors/social media interactions who have always guided me. Let me say that GST is still at the nascent stages of its implementation and isn't it really simple to understand and apply in day to day operations by layman???

SURROUND YOURSELF WITH PEOPLE WHO TALK ABOUT VISION AND IDEAS NOT PEOPLE

Appreciated all of You.



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