

S.7 Inter State Supply

15 March 2019

22:14

S.7(1): Goods

15 March 2019
22:15

Subject to the provisions of section 10, supply of goods, 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 goods **in the course of inter-State trade or commerce.**

S.11 overrides S.7(1)

16 March 2019
10:27

Section 7(1) is subject to Section 10 but not section 11 hence section 7 shall operate only when supply is not by way of export from or import into India.

For example Mr A in Maharashtra, an directs supply from USA to Mr. B in Maharashtra. Though location of supplier place of supply is In India but this is not intra state supply .

With regard to supply of goods that are imported into the territory of India, by legislative override it is declared that if the goods crossed the customs frontiers of India, the supply will always be in the course of State trade or commerce. Reference may be made to the definition of import of goods [section 2(10)] which adverts to the physical movement of goods into India from a place outside India by the active efforts on the part any person (who may be situated in India or outside India).

Meaning of "In Course of "

16 March 2019

10:26

It is interesting to note that inter-State trade is not simply called 'intra-State trade' but is prefixed 'in the course of'. This prefix is not without reason, because such prefix is missing in relation to State supply. The significance of 'in the course of' is well explained in the decision of **State of Bihar Telco Ltd. 27 STC 127** where the Hon'ble Supreme Court has held that it signifies a series of activities that are all inter-related in an unbroken chain of events so intimately linked to each other that all of them are bound together 'in the course of' such an inter-State trade transaction.

Meaning of Location of Supplier of Goods

16 March 2019
10:28

1. Unlike in the case of services, location of supplier of goods is a term that is not defined in the law. This is **not an oversight of the draftsmen** but a deliberate intention of the lawmakers to leave it to the facts of each case to determine the 'location of supplier of goods'.
2. The point where goods are situated better represents the location of supplier. The location of supplier is therefore **the physical point where the goods are situated under the control of the person** wherever incorporated or registered, ready to be supplied.

Case Study

3. Supplier registered in Delhi **is in control of goods at Maharashtra** and goods are delivered to Madhya Pradesh. In this case place of supply is Madhya Pradesh but where is location of supplier ? Delhi or Maharashtra.

The company in Delhi that collects delivery of the goods in Maharashtra and supplies them from Maharashtra to Madhya Pradesh must be regarded as taxable person in Maharashtra liable to pay IGST on this supply.

This means that, while **a supplier may be registered in one State, and stocks his goods in another** State for any reason, shall be required to take a registration in the second State as well, when he effects a supply of such goods from the State. Merely because the supplier has not obtained a registration in the second State does not alter the fact that the supply is in fact, effected from a State other than the State in which he has obtained registration.

Therefore, the location of the supplier is regarded as the location of the goods the time of removal of such goods for supply

Applicant-importer having its head office at Mumbai is registered with GST - want to import chemicals at Haldia Port, Kolkata but they do not have any separate GST registration in State of West Bengal and want to clear goods from warehouse in Kolkata in name of their Mumbai head office and charge IGST by raising bill from Mumbai - Whether procedure to raise invoice from Mumbai office for imports received at Haldia Port, Kolkata and charging IGST from to their customers is correct - Held, yes - Whether for this transaction, no separate registration in State of West Bengal is required - Held, yes - **Whether since as an importer place of supply for applicant will be Mumbai and goods also will be cleared on name of Mumbai registered address while paying IGST at time of Customs Clearance, it would follow that they can do further transaction mentioning GSTIN of their Mumbai office and, hence, applicants can do transaction on Mumbai Head Office GSTIN and in E-way Bill can mention GSTIN of Mumbai Head Office and dispatch place as Haldia Port - Held, yes [Paras 5 & 6]**

Goods Supplied from Premises of Job Worker

16 March 2019
10:20

in case where goods are sent by the Principal to a job worker and the goods subsequently supplied by the Principal from such job worker's place directly the premises of the Principal's customer, a view can be taken that the 'location supplier' would be the location of the Principal from where the goods were originally sent. Support on this view can be taken from circular no 38/12/2018 dated 26.03.2018 para 9.4 (ii) though there is much doubt if this view is really harmony with the provisions of the law, which require that the Principal the location of the jobworker as his additional place of business in order to supplies directly from the jobworker's location (and an additional place of business ought to be within the same State for which the registration has been obtained) Therefore, in the alternate view, the Principal would be required to obtain a separate registration in the State in which the jobworker is located, in order to effect taxable supplies from the jobworker's premises;

Para 9.4(ii) of Circular 38/12/2018

it is clarified that the time, value and place of supply would have to be determined in the hands of the principal irrespective of the location of the job worker's place of business/premises. Further, the invoice would have to be issued by the principal. It is also clarified that in case of exports directly from job worker's place of business/premises, the LUT or bond, as the case may be, shall be executed by the principal.

Illustration: The principal is located in State A, the job worker in State B and recipient in State C. In case the supply is made from the job worker's place of business / premises, the invoice will be issued by the supplier (principal) in State A to the recipient located in State C. The said transaction will be an State supply. In case the recipient is also located in State A, it will be an intra-State supply.

Clarification on Inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance

16 March 2019

11:02

Circular No. 1/1/2017-IGST Dated the 7th of July, 2017

The issue of inter-state movement of goods like movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the said not involving further supply of such conveyance, including-

- i. Trains,
- ii. Buses,
- iii. Trucks,
- iv. Tankers,
- v. Trailers,
- vi. Vessels,
- vii. Containers,
- viii. Aircrafts,

(a) carrying goods or passengers or both; or

(b) for repairs and maintenance,

[except in cases where such movement is for further supply of the same conveyance] was discussed in GST Council's meeting held on 11th June, 2017 the Council recommended that such inter-state movement shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable IGST

it is hereby clarified that "the inter-state movement of goods like movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the Central Goods and Services Tax Act, 2017, including the ones specified at (i) to (viii) of para 3, may not be treated as supply and IGST will not be payable on such supply.

Inter state movement of tools

16 March 2019
10:21

Inter-state movement of rigs, tools and spares, and all goods wheels [like cranes] was discussed in GST Council's meeting held on 10th November, 2017 and the Council recommended that the circular 1/1/2017-IGST shall mutatis mutandis apply inter-state movement of such goods, and except in cases movement of such goods is for further supply of the same goods, such inter-state movement shall be treated 'neither as supply of goods or supply of service,' and consequently no would be applicable on such movements.

[Circular No. 21/21/2017-GST Dated the 22nd of November, 2017]

Wherein the goods are moved within the State or from the State registration to another State for supply on approval basis

16 March 2019
10:21

Suppliers of jewellery etc. who are registered in one State but may have to visit other States (other than their State of registration) and need to carry the goods (such as jewellery) along for approval. In such cases if jewellery etc. is by the buyer, then the supplier issues a tax invoice only at the time of supply. Since the suppliers are not able to ascertain their actual supplies beforehand while ascertainment of tax liability in advance is a mandatory requirement for registration as a casual taxable person, the supplier is not able to register as a casual taxable person. It has also been represented that such goods are also carried within the same State for the purposes of supply. Therefore, in exercise the powers conferred under section 168 (1) of the Central Goods and Services Act, 2017, for the purpose of uniformity in the implementation of the Act, it has been decided to clarify this matter as follows -

The goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way wherever applicable and the invoice may be issued at the time of delivery of goods. For this purpose, the person carrying the goods for such supply can the invoice book with him so that he can issue the invoice once the supply is fructified.

{Para 3 of Circular No. 10/10/2017-GST dated 18-10-17}

Where the supplier carries goods from one State to another and supplies them a different State, will be inter-state supplies and attract integrated tax in terms Section 5 of the Integrated Goods and Services Tax Act, 2017.

{Para 4 of Circular No. 10/10/2017-GST dated 18-10-17}

Clarification on issues regarding of supply by an artist in various States supply of goods by artists from galleries

16 March 2019

10:23

Circular No. 22/22/2017-GST New Delhi, dated 21st December, 2017

The art work for supply on approval basis can be moved from the place of business of the registered person (artist) to another place within the same State or to a place outside the State on a delivery along with the away bill wherever applicable and the invoice may be issued at the time of actual supply of art work.

[Para 3]

It is also clarified that the supplies of the art work from one State to another State will be inter-State supplies and attract integrated tax in terms of section of the Integrated Goods and Services Tax Act, 2017. [Para 4]

It is further clarified that in case of supply by artists through galleries, there consideration flowing from the gallery to the artist when the art works are to the gallery for exhibition and therefore, the same is not a supply. It is only when the buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.

[Para 5]

S.7(3): Services

15 March 2019
22:15

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.

“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;**

[S. 2(71)]

Renting of Immovable Property

Saturday, March 16, 2019
2:33 PM

For example, a company incorporated in Chennai engaged in the business of investment in immovable property and letting them out on rent may have such investments in Chennai and in Hyderabad. By the definition of location of supplier of services being the 'of business', the company has its place of business where its 'seat of management' is located – Chennai.

Accordingly, the location of service provider in relation to the transaction involving renting of immovable property is not where the property let out is situated but the registered office of the company where the management has its seat for decision making. Therefore, in relation to property in Chennai that is out, it is an intra-State supply because location of supplier of services and supply both in Chennai. In respect of its property located in Hyderabad, it is an inter-State supply because the location of supplier of service is in Chennai but place of supply is Hyderabad. Surely, there is no argument to support the view that in every place where property is located the decision to let out such is taken in each such location. On the contrary, all decisions are taken where seat of management is located and therefore, the location of supplier of remains Chennai wherever the let-out properties may be situated. This view not be acceptable to all but merits attention.

S.7(2) Import of Goods

15 March 2019
22:17

Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or

Comments:

For example, goods have been imported from France by a company incorporated and registered in Nasik which landed at Mumbai port but during their clearance are supplied by the Nasik company to a company in Pune, supply continues to be in the course of inter-State trade commerce.

With regard to supply of goods that are imported into the territory of India, by legislative override it is declared the goods crossed the customs frontiers of India, the will always be in the course of inter-State trade or commerce. Reference may be made to the definition of import of goods [section 2(10)] which adverts to the physical movement of goods into India from a place India by the active efforts on the part of any person (who may be situated in India or outside India).

Where an Indian Shipping Company placed a purchase order applicant for certain fuel to be delivered to its vessel 'M' at Singapore Port and applicant in turn placed purchase order 'I', a company registered in England, for delivering fuel to 'M' at Singapore Port and 'I' delivered fuel to vessel 'M' at Singapore Port and raised invoice on applicant and applicant raised invoice on Indian Shipping company, is not liable to pay GST on supply of fuel located outside to customer within India without physically bringing fuel to India

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High Sea Sale

16 March 2019
10:49

High Sea Sale

Transactions taking place before filing of bill of entry are termed as “high sea sale” transactions under common trade practice where the original importer supplies the goods to a third person before the goods are entered for customs. This supply is covered within definition of inter-State supply. Provisions of section (12) of section 3 of Customs Tariff Act, 1975 in as much as in respect of imported goods provides that all duties, taxes, cess’ etc. shall be collected at the time of importation i.e. when the import declarations are filed before the customs authorities for the customs clearance purposes. High sea transactions, though regarded as supply in the course of inter-State trade or commerce, are not subject to levy of IGST as the supply takes place before of Bill of entry and IGST in case of importation of goods can be levied at the of filing of Bill of Entry.

Circular No. 33 /2017-Cus dated the 1st August, 2017

GST council has deliberated the levy of Integrated Goods and Services Tax on sea sales in the case of imported goods. The council has decided that IGST on sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the declarations are filed before the Customs authorities for the customs purposes for the first time. Further, value addition accruing in each such high sale shall form part of the value on which IGST is collected at the time of clearance. **The importer (last buyer in the chain) would be required to furnish the entire chain of documents such as original Invoice, high-seas-sales-contract, details of service charges/ commission paid etc, to establish a link between the first contracted price of the goods and the last transaction.**

W.e.f. 01-02-2019, Schedule III regarding activities and transaction not regarded as supply has incorporated:

“8.

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home (High Sea Sale)

Bonded Warehouse

16 March 2019
10:50

Circular No. 46/2017-Customs dated 24.11.2017

1. in respect of goods stored in a customs bonded warehouse, there is a possibility that certain cases may involve an additional taxable event, if a transfer of ownership of warehoused goods takes place between the importer and another person, before clearance of the goods, whether for home consumption or for export. 5.1 In other words, when goods remain deposited in a customs bonded warehouse and are transferred by the importer to another person, the transaction will be subject to payment of IGST at the value determined as per section 20 of the IGST Act read with section 15 of the CGST Act, 2017 and the rules made thereunder and the tax liability shall be reckoned as per section 9 of the CGST Act, 2017.
2. **Circular 3/1/2018-IGST**
 5. It may also be noted that sub-section (8A) has been inserted in section 3 of the CTA vide section of the Finance Act, 2018, with effect from 31st March, 2018, so as to provide that the valuation for purpose of levy of integrated tax on warehoused imported goods at the time of clearance for home consumption would be either the transaction value or the value as per sub-section (8) of section 3 the CTA (i.e. valuation done at the time of filing the into-bond bill of entry), whichever is higher.
 6. It is therefore, clarified that integrated tax shall be levied and collected at the time of final of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry the value addition accruing at each stage of supply shall form part of the value on which the tax would be payable at the time of clearance of the warehoused goods for home consumption. In other words, the supply of goods before their clearance from the warehouse would not be subject to the levy of integrated tax and the same would be levied and collected only when the warehoused are cleared for home consumption from the customs bonded warehouse.
 7. **This Circular would be applicable for supply of warehoused goods, while being deposited in a customs bonded warehouse, on or after the 1st of April, 2018.**

Clarification regarding tax payment made for supply of warehoused goods while being deposited in a customs bonded warehouse for the period July, 2017 to March, 2018
[Circular No. 91/10/2019-GST Dated the 18th February, 2019]

Attention is invited to Circular No. 3/1/2018-IGST dated 25.05.2018 whereby applicability of integrated tax on goods transferred/sold while being deposited in a warehouse (hereinafter referred to as the "warehoused goods") was In the said circular, it was enunciated that from 1st of April, the supply of warehoused goods before their clearance from the warehouse would not be subject to the levy of integrated tax.

2. It has been brought to notice of the Board that during the period from 1st of July, 2017 to 31st of March, 2018 (hereinafter referred to as the “said period”), the common portal did not have the facility to enable the taxpayer to report payment of tax, in the details required to be submitted in FORM GSTR-1, for such supplies especially where the supplier and the recipient located in the same State or Union territory. Hence taxpayers making such supplies have reported such supplies as intra-supplies and discharged central tax and state tax instead of integrated tax accordingly. Now, representations have been received from trade to clarify the same.

3. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017, hereby issues the following instructions.

4. Supply of warehoused goods while deposited in custom warehouses had the character of inter-State supply as per the provisions of Integrated Goods and Services tax Act, 2017. But, due to non-availability of the facility on the common portal, suppliers have reported such supplies as intra-State supplies and discharged central tax and state tax on such supplies instead of integrated tax. In view of revenue neutral position of such tax payment and that facility to correctly report the nature of transaction in FORM GSTR-1 furnished on the common portal not available during the period July, 2017 to March, 2018, it has been decided that, as a one-time exception, suppliers who have paid central tax and state tax on such supplies, during the said period, would be deemed to have complied with the provisions of law as far as payment of tax on such supplies is concerned as the amount of tax paid as central tax and state tax is equal to the due amount of integrated tax on such supplies.

W.e.f. 01-02-2019, Schedule III regarding activities and transaction not regarded as supply has been incorporated:

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

S.7(4): Import of Service

15 March 2019
22:18

Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

S.7(5)(a): Supplier located in India and Place of Supply located outside India

15 March 2019
22:18

Supply of goods or services or both,—

(a) when **the supplier is located in India** and the place of supply is outside India;

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

Comments:

1. **As per S. 2(5) export of goods**” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India. As per S. 11(b) The place of supply of goods, exported from India shall be the location outside India.

Hence combined reading of S.2(5) along S.11(b) reveals that export of goods is Inter state though not Specifically covered by any of clauses From 7(1) to 7(4).

2. Where location of goods is outside India say USA and supplier is located in India and goods sent to Sri Lanka, then it is not a case of export of goods but still it is inter state supply as per (a). Though w.e.f. 01-02-2019, Schedule III regarding activities and transaction not regarded as supply has incorporated:

“7. Supply of goods **from a place in the non-taxable territory** to another place in the non-taxable territory **without such goods entering into India**.

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside but before clearance for home consumption (High Sea Sale)



3. Here, it is extremely important to note that usage of the ‘supplier is located’ is not to be with ‘location of supplier’. From the previous discussion, it is learnt that location of supplier goods is – physical point where the goods are situated under the control of the person incorporated or registered, ready to be supplied. But, the deliberate departure in usage of the same set of words is almost misleading. Supplier is located in India does not refer to location supplier. Instead, it is a simple question of fact as to where the supplier is located. Please that the ‘supplier’ is none other than the ‘one who supplies’ and not his agent or representative any other person.

The question that arises is – what is the GST impact in case the supplier is located outside and the place of supply is outside India? The Act applies to supplies within the taxable territory and when both – supplier as well as place of supply – being located outside India, the Act does not enjoy any jurisdiction to impose tax even if the recipient is located in India. The destination of consumption being decided by the place of supply provisions and not location of the recipient

Synthite Industries Ltd.

Saturday, March 16, 2019
2:50 PM

The Advance Ruling by the Kerala Authority for Advance Ruling (AAR) in the case of M/s. Synthite Industries Ltd. TS-111-AAR-2018 is relevant note:

The impact of GST on High Sea Sales may be aptly summarised through the four issues that were raised before the AAR for determination by the Authority:

1. Whether GST is payable on goods procured from China, but are not brought into India?
2. Whether GST is payable on the sale of goods to the company in USA, where goods sold are shipped directly from China to USA without entering India?
3. Whether GST would be applicable on goods procured from China (not any specific export order) and the same is directly shipped to a warehouse located in Netherlands?
4. Whether GST would be applicable on sales effected directly from the warehouse in Netherlands to the customers located in that country?

The AAR observed that goods are liable to IGST only when they are imported into India and the IGST is payable at the time of importation of goods into India. All the above queries were answered in the negative as the goods were never imported into India and thus not liable to GST.

S.7(5)(b): Supply to/by SEZ

15 March 2019
22:20

Supply of goods or services or both,—
to or by a Special Economic Zone developer or a Special Economic Zone unit; or
shall be treated to be a supply of goods or services or both in the course of
State trade or commerce.

Comments:

1. The implication of this provision is also that supply by SEZ's inter se – **one unit (or developer) to another SEZ unit (or developer)** – will also be treated as a supply in the course of inter-State trade or commerce.
2.
 - a) Taxable person (non-SEZ) located in Jaipur supplying goods to a SEZ unit located in Jodhpur is a supply in the course of inter-State trade or
 - b) SEZ unit in Kolkata supplying services to another SEZ unit in Kolkata is a supply in the course of inter-State trade or commerce.
 - c) Lease of premises by SEZ developer in Chennai to SEZ unit in that same in Chennai will be a supply in the course of inter-State trade or commerce.
 - d) Supply by SEZ unit in Kochi to a non-SEZ in Kochi will be a supply in the course of inter-State trade or commerce.
 - e) Disposal of scrap by a SEZ developer in Mumbai to a scrap dealer in (outside the zone) is a supply in the course of inter-State trade or
 - f) Export of goods by a SEZ unit to a customer in Italy is a supply in the of inter- State trade or commerce.
3. By virtue of Section 7(5) of the IGST Act, all supplies made by or to SEZ or developers are treated as inter-State supplies. So to say, a small tea vendor (**kinara shop**) supplying evening beverages to an SEZ unit, or an inward supply of office stationery from a small stationery supplier, by an SEZ unit, will be regarded as inter-State supplies. In this regard, it is important to note that the GST Law mandates registration, regardless of the turnover, where a supplier is engaged in effecting inter-State taxable supplies. Although the inclusion of such transactions was, perhaps, not the intent of the legislature, it is noted that there is no relaxation provided in this regard, in respect of mandatory registration in respect of supply of goods.

S.7©: Non Intra State

15 March 2019
22:21

Supply of goods or services or both,—

(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both in the course of State trade or commerce.

Comments:

As per proviso to S.8(1), following supply of goods **shall not be treated as State supply**, namely:—

(i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;

(ii) goods imported into the territory of India till they cross the customs of India; or

(iii) supplies made to a tourist referred to in section 15.

As per proviso to S.8(2), intra-State supply of services shall not include supply services to or by a Special Economic Zone developer or a Special Economic unit.

Hence above supplies shall be treated as inter state supply

Here it is pertinent to note that supplies made to a tourist referred to in 15 are not mentioned in any of the clauses of S.7 to be inter state supply. But implication of S.7(1)© makes it inter state supply

S.8 Intra State Supply

15 March 2019

22:23

S.8(1): Goods

15 March 2019
22:24

Subject to the provisions of section 10, supply of goods the location of the supplier and the place of supply of goods in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be as intra-State supply,namely:—

- (i) supply of goods to or by a Special Economic Zone or a Special Economic Zone unit;
- (ii) goods imported into the territory of India till they cross customs frontiers of India; or
- (iii) supplies made to a tourist referred to in section 15.

Comments:

1. Section 8(1) is subject to Section 10 but not section 11 hence section 7 shall operate only when supply is not by way of export from or import into India.

For example Mr A in Maharashtra, an importer, directs supply from USA to Mr. B in Maharashtra. Though of supplier and place of supply is In India but this is not state supply

2. For example, a company having its regular registration in Uttar Pradesh has taken a causal registration in Odisha. has purchased certain goods in Odisha and supplying the

same to the customer also in Odisha under two separate transactions of supply, both of them will be intra-State supplies.

3.

S.8(2): Services

15 March 2019
22:25

Subject to the provisions of section 12, supply of services the location of the supplier and the place of supply of are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the intra-State supply of services shall not supply of services to or by a Special Economic Zone or a Special Economic Zone unit.

Explanation 1.—**For the purposes of this Act**, where a person has,—

(i) an establishment in India and any other establishment outside India;

(ii) an establishment in a State or Union territory and any establishment outside that State or Union territory; or

(iii) an establishment in a State or Union territory and any establishment being a business vertical registered within that State or territory,

then such establishments shall be treated as establishments distinct persons.

Explanation 2.—A person carrying on a business through a

branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

Comments:

1. Consider audit services being provided by a Chartered Accountant located in Delhi to a company in Delhi. For purpose of the audit, the Chartered Accountant visits the company's factory located in Noida. Here, although the Chartered Accountant is physically moving to Noida, he is not supplying the audit services from Noida. Here, the transaction will be an intra-State supply from Delhi to
2. The term 'establishment' may be interpreted as being similar to 'fixed establishment' which is defined in this in identical manner with the definition in section 2(50) of CGST Act. It refers to it being 'a place with sufficient degree of permanence and suitable structure to supply services or to receive and use the services'.

S.9 Supplies in Territorial Waters

15 March 2019
22:28

Notwithstanding anything contained in this Act,—

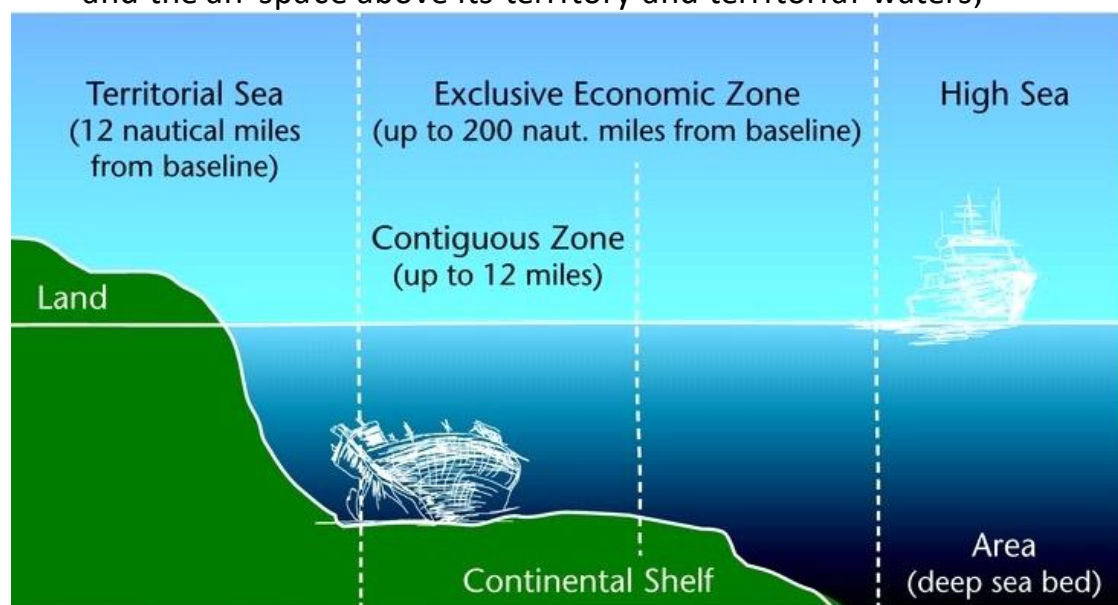
(a) where the location of the supplier **is in the territorial waters**, the location of such supplier; or

(b) where the place of supply **is in the territorial waters**, the place of supply,

shall, for the purposes of this Act, be **deemed to be** in the coastal State or Union territory **where the nearest point of the appropriate baseline is located.**

Comments:

“India” means the territory of India as referred to in article 1 of the Constitution, **its territorial waters**, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters;



2. While the nature of supply in these cases may be inter-State supplies terms of Section 7(5)(c) of the IGST Act – residuary clause), by virtue this Section, the law provides a deeming fiction to reinstate the steps to be applied in Sections 7 and 8 by artificially specifying the

location of 'location of supplier' and the location of 'place of supply'

3. For this reason, clear provisions are laid down as to where on the mass of India, the actual location will be linked to. Please note, the statute uses the expression 'deemed to be' which would supply an artificial meaning.
4. Also, this provision does not seek to violate exclusive jurisdiction of Union on matters of territorial waters but merely establishes a link the land mass of India to overcome judicial intervention or by industry.
5. For example, consider a case where a ship is moored off the coast of Kochi (Kerala) needs a replacement of a crucial part, and such replacement is carried out along with the **supply of the part by a Company located in Karnataka for the shipping company from United Kingdom**. In this case, the place of supply of the part, being the location of the ship (as determined in terms of Section 10) will create doubt about the applicability of GST. By virtue of the provisions of Section 9, it is clear that the place of supply will not be the territorial waters but would be Kochi itself. With this doubt having been resolved, it would be an inter-State taxable supply effected by the Company in Karnataka albeit to the UK Company, while the State tax would be apportioned to the Kerala Government [But this is not export of goods because goods]
6. The non-obstante clause at the beginning of this Section is important overcome any alternative interpretations that may be attempted by reading other provisions of the Act.
7. While it is clear that the location on the landmass that is most proximate to the location in the territorial waters will be the deemed location of the supplier / place of supply, as the case may be, it may noted that the GST Law does not prescribe the methodology for determining the distance between the location in the territorial waters and the landmass.
8. Therefore, the basis adopted for determining the nautical distance computed to determine the territorial waters is to be adopted to determine the distance.
There could be an exceptional case wherein the location in the territorial waters (being the location of the supplier / place of equally proximate from two different States / UTs. Such a scenario not been addressed in this Section and can only be

dealt with as and when it is brought to light.

Place of Supply for Goods

15 March 2019

21:00

GST is understood as a 'destination-based consumption tax' but there is no provision that declares fact. This missing declaration is more than adequately supplied by the principle being embodied in provisions of 'place of supply'. It is here that we find that the destination principle of GST is fully captured. The law maker has declared, in each case of supply, its destination of supply

S.10 Place of supply of goods (other than supply of goods into or exported from India)

15 March 2019
21:00

S.10(1)The place of supply of goods, other than supply of goods imported into, or exported from shall be as under,—

S.10(1)(a) : Supply involves movement

15 March 2019
21:53

where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the **location of the goods at the time at which the movement of goods terminates for delivery to the recipient;**

Comments:

1. This movement, however, can be by the supplier or by the recipient after having disclosed the destination of their movement or journey
2. Movement 'terminates for delivery' requires a brief understanding about manner of concluding delivery. Delivery – **the mode and the time** – is the unilateral choice of the recipient and the supplier has no authority to decide 'how' and 'when' he will deliver the goods to the recipient. It is easy to determine in a contract for supply where it records this 'choice' of the recipient regarding the mode and time of delivery. The supplier is always duty-bound to deliver in exactly the same way –manner and timing – which the recipient dictates. In fact the supplier continues to be obligated until delivery is completed in the way it is stated by the recipient. In other words, delivery is not complete if there is any deviation in either the manner or the timing as compared to that dictated by the recipient. When the delivery is to the satisfaction of the recipient, then the supplier is released from his obligation.

Therefore, the additional question of fact to be determined is the mode time of delivery dictated by the recipient and whether the same has been complied with to the satisfaction of the recipient.

3. Consider a case of delivery ex-factory. In such a case, a question may to whether the supply involves movement of goods. However, considering that clause (a) specifies that the movement may be by the supplier or the recipient or any other person, it can be inferred that even a supply with an ex-factory delivery would be considered to a be a supply involving of goods. The law does not provide the meaning of the phrase "terminates for delivery". Delivery may be physical, constructive, implied or in any form. A plain reading of this clause suggests that the delivery is completed exfactory, and accordingly, ex-factory supplies would always be intra-

supplies (unless the supplier or recipient is an SEZ). An alternative view is possible – It may be noted that the delivery for the purpose of the contract law and delivery indicated by this clause may be different. For the purpose the GST law, a supply is effected on removal of goods for delivery, whereas for contract law, the supply may be understood (in of an agreement) to be completed only on acceptance of such goods by the recipient.

Similarly, while the risks and rewards pertaining to the goods being may pass at the factory gate, the movement for delivery of such goods may stand terminated only at the premises of the recipient, considering that movement is undertaken by the recipient for delivery at his own premises.

4. Where payment is made by HO in some state "A" and goods are delivered branch in state "B", where recipient is not registered still place of supply supply shall be state "B"

S.10(1)(b): Bill to Ship to

15 March 2019
21:53

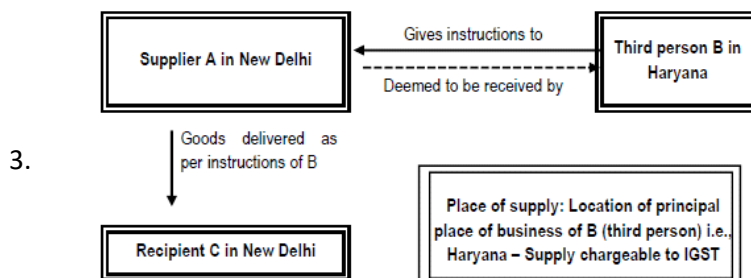
where the goods are delivered by the supplier to a **recipient** or any other on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be **the principal place of business of such person**;

Comments:

1. Even though the definition in section 2(93) refers to recipient as the 'payer the consideration', in this provision, recipient is the one who actually collects the goods. And the third party is one who enjoys privity with the supplier to be able to direct him to deliver the goods.

2. As per S.2(89) of CGST:

"principal place of business" means the place of business specified as the principal place of business in the certificate of registration



S.(10)(1)©: Supply does not involve movement

15 March 2019
21:53

where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such the time of the delivery to the recipient;

Comments:

1. if a company incorporated in Delhi were to place a purchase order on a manufacturer in Maharashtra to produce certain articles and sell it on ex-works basis with instructions to retain it until further instructions. In this supply, though purchase order is from Maharashtra, the location of is Maharashtra and place of supply is also Maharashtra
2. A generator that is bolted to the concrete floor in the basement of a purchased by the tenant and being left behind at the time of rejecting the tenancy, the supply of the generator by the tenant to the landlord for an agreed price is a case of 'supply that does not involve movement of the goods'. In such cases, the place of supply will be where the generator bolted to the concrete floor and without requiring any movement. The landlord (recipient) confirms satisfactory completion of delivery.

S.10(1)(d): Assembly or Installation

15 March 2019
21:53

where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly

Comments:

1. It is important to note that assembly or installation as referred to in this clause is not a 'works contract', which has been classified by law as a supply of services (in paragraph 6(a) of to the CGST Act, 2017) – please note that the concept of works contract would arise only in respect of services, for which the place of supply determined in Section 12 / 13 of the IGST Act
2. The supply addressed in this provision refers to only a supply of goods, being a composite of goods along with some services, or a mixed supply treated as a supply of goods in terms of Section 8 of the CGST Act, 2017. In other words, supply from the place of their origin to the site 'for' assembly or installation is subsumed this provision and merged with the supply to the recipient by virtue of such assembly or installation
3. There is no requirement to vivisect the entire composite supply of goods (not being works contracts) that is a supply-cum-installation into a supply plus- installation. If such vivisection to be done, then in every instance of supply-cum-installation, the supplier will become a 'casual taxable person' in the State where assembly or installation is required.

S.10(1)(e): On board

15 March 2019
21:53

where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a vehicle, the place of supply shall be the location at which such goods are taken on board.

Comments:

1. Such transactions also cover two supplies – first being the supply of goods ‘to’ the operator of the conveyance, and second being the supply of such goods as goods or as services, ‘by’ the operator to the passenger (or any other person), during the journey ‘in’ the conveyance.
2. The place of supply appointed under this clause is in respect of the second limb, and for the supply of goods, being the supply of goods by the operator of the conveyance during its journey to the passenger. Therefore, supply of goods being food or beverages on board a conveyance would be outside the scope of this clause, that such supply is treated as a composite supply of services in terms of paragraph 6(b) of Schedule II to the CGST Act, 2017. In this regard, it is important to note that the Authority for **Advance Ruling, Delhi in case of Deepak & Co. on 28-03-2018 (“AAR-Delhi”)** in the case of supplies on trains by IRCTC has ruled that a train is a mode of transport and hence cannot be regarded as a restaurant, eating joint, mess or canteen. Therefore, the supply of goods, i.e., food and beverages (cooked / MRP / packed including water) on board a train shall be regarded as a pure supply of goods, since it does not have any element of service. In such a case, the place of supply shall be determined under this clause.

GST on providing catering services in train [Order No. 2/2018 dated 31-03-2018]

Different GST rates are being applied for mobile and static catering in Railways which is presently leading to a situation whereby the same (selected by Indian Railways/IRCTC) supplying the same food would be subjected to different GST rates depending on whether it is mobile or static catering, as also which variant of mobile catering it is [pre-paid (without option), pre-paid (with option) or post-paid]. The rate difference is in the same food being supplied at two different rates to the railway passengers, which is anomalous.

The passenger is not aware as to the GST rate applicable to the food by him/her. This may also lead to unnecessary litigation and thus further strengthens the need for uniform application of tax rate in respect of food and drinks in/by Railways.

With a view to remove any doubt or uncertainty in the matter and bring uniformity in the rate of GST applicable for all kinds of supply of food and drinks made available in trains, platforms or stations, it is clarified with approval of GST Implementation Committee, that the GST rate on supply of

food and/or drinks by the Indian Railways or Indian Railways Catering Tourism Corporation Ltd. or their licensees, whether in trains or at (static units), will be 5% without ITC.

Supply of food by Railways or IRCTC or licensees [Sl No. 7(ia) inserted by 13/2018-CTR dated 26-07-2018]

Supply, of goods, being food or any other article for human consumption any drink, by the Indian Railways or Indian Railways Catering and Corporation Ltd. or their licensees, whether in trains or at platforms

Provided that credit of input tax charged on goods and services used in supplying the service has not been taken

Withdrawal of Order No. 2/2018 [Circular No. 50/2018 dtd 31-07-2018]

The contents of the Order No 02/2018-Central Tax dated 31.03.2018 have been incorporated in Sl. No. 7(ia) of the Notification No. 13/2018-Central Tax(Rate), dated 26.07.2018 amending the Notification No. 11/2017-Tax (Rate) dated 28th June 2017.

Hence Order No 02/2018-Central Tax dated 31.03.2018 is withdrawn w.e.f 27.07.2018.

3.

S.10(2): Place of Supply not determinable

15 March 2019
22:04

Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.

Place of Supply of Goods imported into or exported from India

15 March 2019

21:02

1. Transactions of merchanting trade – where the goods are procured from one country and are directly dispatched without their entering India, will not be a supply in the 'taxable territory' of India. Such transactions will be included for a financial effect in the books of accounts, without invoking the levy provisions under the GST laws.
2. Another form of international supply commonly known as "high sea sales" – is also a that transpires outside the taxable territory and accordingly, does not attract the incidence of
3. Re-import of export goods will however, be liable to GST.
4. It is interesting to note that 'location of supplier or recipient' are not relevant in this Section.

S.11(a): Import

15 March 2019
22:05

The place of supply of goods,—

(a) imported into India shall be the location of the importer

Comments:

1. **S.2(10): “import of goods”** with its grammatical variations and cognate expressions, **means bringing goods into India from a place outside India;**

2. IGST Exemptions/Concessions under GST [As per discussions in the GST Council Meeting held 18th/19th May, 2017]

<https://cbec-gst.gov.in/pdf/igst-exemption-concession-list-03.06.2017.pdf>

S.11(b): Export

15 March 2019
22:05

The place of supply of goods,—

(b) exported from India shall be the location outside India

Comments:

1. **S.2(5)export of goods”** with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India
2. While payment in convertible foreign exchange is for services including transactions involving goods treated as services till 31-1-19, the same is not a criterion for determining whether a of goods is an export of goods or import of goods.
3. Exports, are always determined based on their ‘ship to’ location being a place outside India whether or not the additionally qualify for the zero rated benefit under section 16.
 - a) If the goods are billed outside India but shipped in India, it is not export of goods.
 - b) If goods are billed in India but shipped outside India, it is export of goods

Place of supply for services

17 January 2019

17:42

S.12 Place of Supply for Domestic Services

17 January 2019

17:37

In respect of the following 12 categories of services, the place of supply is with reference to a proxy. Rest of the services are governed by a default provision.

S.No.	Nature of Supply of Service	Place of Supply

(ii) For the rest of the services other than those specified above,

S.12(1) Application

15 March 2019
21:05

S.12 (1) The provisions of this section shall apply to determine the place of supply of services where location of supplier of services and the location of the recipient of services is in India.

(Where the location of supplier of services and the location of the recipient of services is in India)

“location of the recipient of services” means,—

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

(b) 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;

(c) 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

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

[S. 2(70)]

S.12(2) : Default Provisions

15 March 2019
21:08

A default provision has been provided in section 12(2) of IGST as under:

The place of supply of services, except the services specified in sub-sections (3) to (14),—

S.No.	Description of supply	Place of Supply
1	B2B	Location of such Registered Person
2	B2C	(i) Location of the recipient where the address on record exists, and (ii) Location of the supplier of services in other

There could be a scenario where multiple POS in the same invoice to a particular customer because supply of distinct goods and goods, or services and services, or goods and services may get covered. such a case, the supplier has to issue a separate invoice where each invoice has only one POS. This method is also supported by the fact that Form GSTR-1 (Outward supply) returns does not allow one to key in 2 different POS for the same invoice.

S.12(3) : Services in relation to immovable property

15 March 2019
21:09

12(3)(a)	<p>Directly in relation to:</p> <ol style="list-style-type: none">1. Immovable Property2. Including Services provided by<ol style="list-style-type: none">a) Architectsb) Interior Decoratorsc) Surveyorsd) Engineers and Other Related Experts ore) Estate Agents3. Services provided by way of grant of right to use immovable property4. Carrying Out of Work5. Co-ordination of Construction Work	<p>Location at which the immovable property or boat or vessel is or intended to be located</p> <p>Provided that if the location of the immovable property or boat or vessel is or intended to be located outside India, the place of supply be the location of the recipient.</p> <p>It shall apply where location of recipient is India</p> <p><i>Explanation.</i>—Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, the absence of such</p>
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		contract or agreement, on such other basis as may be prescribed.
12(3)(b)	<p>By way of Lodging Accommodation by:</p> <ol style="list-style-type: none"> 1. Hotel 2. Inn 3. Guest House 4. Home Stay 5. Club or Campsite, by whatever name called 6. Including House Boat or any other Vessel 	
12(3)(c)	<p>By way of Accommodation in Immovable Property for organizing any:</p> <ol style="list-style-type: none"> 1. Marriage 2. Reception 3. Matters Related there to 4. Official Functions 5. Social Functions 6. Cultural Functions 7. Religious Functions or 8. Business Functions 9. Including services in to such functions at such property 	
12(3)(d)	Any services ancillary to the services referred to in clauses (a), (b) and (c),	

Comments

1. Goods required in construction activity received as stock before being

assigned to any particular site will not be determined by this provision but the general provision. For example, steel purchased in bulk and sent to a central warehouse being deployed to any specific site

S.12(4): Restaurant and Catering

15 March 2019

21:11

12(4)	<ol style="list-style-type: none">1. Restaurant and catering services,2. personal grooming,3. fitness,4. beauty treatment5. Health service Including<ol style="list-style-type: none">a) Cosmetic Surgery andb) Plastic Surgery	Location where the services are actually performed
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S.12(5) Training and Performance Appraisal

15 March 2019

21:18

12(5)	Training and performance appraisal	B2B: Location of such Registered Person B2C: Location where the services are actually performed
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E.g.: In case of a corporate training organized by a training institute in Mumbai for a registered corporate client in Bangalore, the consideration is paid by the corporate through the individual participants who would be required to pay a certain delegate fee.

Hence, the POS has to be determined on the basis of location of the recipient being the corporate and not based on the place where the services are actually performed.

S.12(6) Admission to Event

15 March 2019

21:21

12(6)	Admission to :	Place where the event is actually held or where the park or the other place is located
	<ol style="list-style-type: none">1. Cultural Event2. Artistic Event3. Sporting Event4. Scientific Event5. Educational Event6. Entertainment Event7. Amusement Park8. Admission to any other place9. Ancillary Services	

S.12(7): Event Organization

15 March 2019
21:22

<p>12(7) (a)</p>	<p>Organization of :</p> <ol style="list-style-type: none"> 1. Cultural Event 2. Artistic Event 3. Sporting Event 4. Scientific Event 5. Educational Event 6. Entertainment Event <p>Including Supply of Service in relation to:</p> <ol style="list-style-type: none"> 1. Conference 2. Fair 3. Exhibition 4. Celebration or 5. Similar Events 	<p>B2B: Location of such Registered Person</p> <p>B2C: Location where the event is actually held and if the event is held outside India, the place supply shall be the location of the recipient</p> <p>It shall apply where location of recipient is in <i>Explanation.</i>—Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.</p>
<p>12(7) (b)</p>	<p>Services Ancilliary to organization of or services referred 12(7)(a)</p> <p>OR</p> <p>Assigning of Sponsorship to <u>such events</u></p>	

Comments:

1. Where the event is organized in a ground or field being an immovable property, the service of securing the location has, as its place of supply, determined

foregoing provision but the rest of the services of organizing the event alone will fall in this

2 On a comparison of this provision with the previous provision, the striking difference is that in B2B transaction for admission to an event, the POS would be the location of the event whereas of organizing the event is based on the location of the recipient in case of B2B supplies (i.e., where recipient is a registered person).

S.12(8):Goods Transportation

15 March 2019

21:24

12(8)	Transportation of goods, including mails or courier	B2B: Location of such Registered Person B2C: Location at which such goods are handed over for their transportation
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S.12(9) Passenger Transportation

15 March 2019
21:24

12(9)	Passenger Transportation	<p>B2B: Location of such Registered Person</p> <p>B2C: Place where the passenger embarks on the conveyance for a continuous journey</p> <p>Return Journey is separate Journey</p> <p><i>Explanation.</i>—For the purposes of this sub-section, the return journey 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> <p>Where Point of Embark is not Known</p> <p>Provided that where the right to passage is given for future use and the point of embarkation is not known at the time issue of right to passage, the place of supply of such shall be determined in accordance with the provisions of section (2).</p> <p>[E.g. Circular Journey Tickets where fare is paid according to distance and not for distance between two stations]</p>
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S.12(10): On Board Service

15 March 2019

21:24

12(10)	Services on board a Conveyance, Including <ol style="list-style-type: none">1. a vessel,2. an aircraft,3. a train or4. a motor vehicle,	Location of the first scheduled point of departure of that conveyance for the journey
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Comments:

Please note that by this logic, it is possible that the place of supply is determined to be a place in the route which has passed crossed even before the passenger availing the service embarks the The registered recipient receiving any services on board through its employees / directors would the ITC on the said transaction in case the location of the registered recipient and the first schedule point of departure are in two different States.

S.12(11) Tele communication Service

15 March 2019
21:25

12(11)	<p>Telecommunication Services including transfer, broadcasting, cable and direct to home television services</p> <p>Telecommunication service” means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means</p> <p>[S. 2(110)]</p>	
12(11)(a)	<p>Services by way of</p> <ol style="list-style-type: none">1. Fixed telecommunication line,2. Leased circuits,3. Internet leased circuit,4. cable or5. dish antenna, <p><i>Explanation.</i>—Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.</p>	<p>Location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;</p>

12(11)(b)	Mobile connection for telecommunication and internet services provided on post-basis ,	Location of billing of the recipient of services on the record of the supplier services
12(11)(c)	Mobile connection for internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means	
12(11)(c)	Through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher	Address of selling agent or re-seller or distributor as per the record of the at the time of supply
12(11)(c) (ii)	By any person to the final subscriber,	Location where such prepayment is received or such are sold;
12(11) 2 nd Proviso	If such pre-paid service is availed or the recharge is made through internet or other electronic mode of payment	The location of the recipient of services on the record of the supplier services shall be the place of supply of services.
12(11)(d)	In other cases	The address of the

		<p>recipient as per the records of the supplier of services and</p> <p>where such address is available, the place of supply shall be location of the supplier services:</p>
12(11)(d) 1st	where the address of the recipient as per the records of the supplier of services is available	location of supplier of services:

S.12(12) : Banking & Other Financial Service

15 March 2019
21:26

12(12)	Banking and other financial services Including Stock broking services	Location of the recipient of services on the records of the supplier Location of the supplier of services if location of the recipient of services is not available
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Comments: The services referred in this provision are not services 'by' a banking or financial but services 'of' banking and financial services. As such, the service is to be examined and not the service provider. Classification of services to identify the applicability of this provision is an exercise that is to be undertaken.

S.12(13) Insurance Service

15 March 2019

21:27

12(13)	Insurance services	B2B: Location of such Registered Person B2C: Location of the recipient of services on the of the supplier
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S.12(14) Advertisement service to Government

15 March 2019
21:27

12(14)	<p>Advertisement services to</p> <ol style="list-style-type: none">1. The Central Government2. State Government3. Statutory4. Local Authority <p>Meant for the States or Union territories identified in the contract or agreement</p>	<p>The place of supply shall be taken as being in each States or Union Territories identified in the or agreement.</p> <p>Value of Supply of Service Attributable to each or UT</p> <p>In proportion to the amount attributable to provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard</p> <p>In the absence of such contract or agreement, on such other basis as may be prescribed.</p>
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S.13 Place of supply for cross border supplies

17 January 2019

17:39

S.13(1) Application

15 March 2019
21:32

The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

S.13(2): Default Provisions

15 March 2019
21:33

a default provision has been provided in Section 13(2) as under:

The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services

S.NO.	Description of Supply	Place of Supply
1.	Any	Location of the recipient of service If location of recipient is not available <u>in the ordinary course of business</u> , The location of the supplier of service

S.13(3): Performance based services

15 March 2019
21:33

13(3)	<p>Services supplied in respect of goods</p> <p>(a) required to be made physically available by the recipient of the service to the supplier of service or any person acting on behalf of supplier of service</p>	<p>The location where the services are actually performed,</p> <p>The location where the are situated at the time of supply of service</p> <p>Hence in such cases place of supply shall be outside and not the location of at the time of supply of service</p>
	<p>from a remote location by way of electronic means [First Proviso to S. 13(3)(a)]</p> <p>(Not applicable in case of goods that are temporarily imported into India for repairs and re exported) [2nd Proviso to S. 13(3)(a)]</p>	
13(3) (b)	<p>Services supplied to an individual, represented as recipient or a person acting on behalf of recipient and the physical presence of the recipient or person acting on behalf of recipient</p>	<p>The location where the services are actually performed</p>

S.13(4): Services in relation to Immovable Property

15 March 2019
21:33

13(4)	Directly in relation to:	Location at which the immovable property located or Intended to be located
	<ol style="list-style-type: none">1. Immovable Property2. Including Services provided by<ol style="list-style-type: none">a) Architectsc) Interior Decoratorsd) Expertse) Estate Agents3. Services provided by way of of right to use immovable property4. Carrying Out of construction Work5. Co-ordination of Construction Work5. Supply of Accommodation by:<ol style="list-style-type: none">a) Hotelb) Innc) Guest Housed) Club or Campsite, by whatever name called	

S.13(5): Admission/Organizing Event

15 March 2019

21:33

13(5)	Admission or Organization of : <ol style="list-style-type: none">1. Cultural Event2. Artistic Event3. Sporting Event4. Scientific Event5. Educational Event6. Entertainment Event7. Conference8. Fair9. Exhibition10. Celebration or11. Similar Events12. Services Ancilliary to Organization or Admission	The place where the event is actually held
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S.13(6): Multi Territories

15 March 2019

21:33

13(6)	<p>If the three types of services are supplied at more than one locations. i.e.,</p> <ul style="list-style-type: none">(i) Goods & individual related [S. 13(3)](ii) Immovable property-related [S. 13(4)](iii) Event related [S. 13(5)] <p>At more than one location, including a location in the taxable territory</p>	<p>Its place of supply shall be the location in the taxable territory where the greatest proportion of the service is provided</p>
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S.13(7): Multi states

15 March 2019
21:33

13(7)	<p>If the three types of services are supplied In more than one State or Union Territory</p> <p>i.e.,</p> <p>(i) Goods & individual related [S. 13(3)]</p> <p>(ii) Immovable property-related [S. 13(4)]</p> <p>(iii) Event related [S. 13(5)]</p>	<p>Its place of supply shall be taken as being in each state in proportion to the value of services separately collected or determined terms of contract or agreement entered into in this regard.</p> <p>In the absence of such contract or on such other basis as may be prescribed.</p>
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S.13(8) : Banking/Intermediary/Hiring

15 March 2019
21:33

13(8) (a)	<p>Services provided by banking company or financial institution or NBFC to account holders</p> <p>“account” means an account <u>bearing interest</u> to the depositor, and includes a non-resident external account and a non-resident ordinary account;</p> <p>[Hence for current accounts and OD Accounts, of recipient and not the location of supplier shall be place of supply]</p>	Location of the supplier of Service
13(8) (b)	<p>Intermediary Services</p> <p>intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his account; [S. 2(13)]</p>	Location of the supplier of Service
13(8) (c)	<p>Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month</p>	Location of the supplier of Service

S.13(9) : Goods Transportation

15 March 2019

21:33

13(9)	Transportation of goods (other than or courier)	The place of destination of goods
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S.13(10): Passenger Transportation

15 March 2019

21:33

13(10)	Passenger transportation	Place where the passenger embarks on the conveyance for a continuous journey
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S.13(11): On Board Services

15 March 2019

21:33

13(11)	Services on-board a Conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board	The first scheduled point of departure of that conveyance for the journey
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S.13(12): OIDAR Services

15 March 2019
21:33

13(12)	<p>Online information and database access or Services</p> <p><i>Explanation.</i>—For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non contradictory conditions are satisfied, namely:—</p> <p>(a) the location of address presented by the recipient of services through internet is in the taxable territory;</p> <p>(b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of settles payment has been issued in the taxable territory;</p> <p>(c) the billing address of the recipient of services is in the taxable territory;</p> <p>(d) the internet protocol address of the device used by the recipient of services is in the taxable territory;</p> <p>(e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;</p> <p>(f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;</p> <p>(g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory</p>	The location of recipient of service
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S.13(13) : Place of Effective Enjoyment

15 March 2019
21:33

In order **to prevent double taxation or non-taxation of the supply of a service**, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

Export/Import of Service

17 January 2019

17:40

Export/Import of services

Exports [S. 2(6)]	Imports [S.2(11)]
Means the supply of any service, where: (a) the supplier of service is located in (b) the recipient of service is located outside India, (c) the place of supply of service is India, (d) the payment for such service has been received by the supplier of service in convertible foreign exchange, and (e) the supplier of service and the of service are not merely of a distinct person in accordance with explanation 1 of section 8	Means the supply of any service, where (a) the supplier of service is located outside India, (b) the recipient of service is located in India, and (c) the place of supply of service is in India

Place of Supply Issues Clarifications

17 January 2019
17:41

Accommodation Services to SEZ

1. Issue: Whether services of short accommodation, conferencing, banqueting etc provided to SEZ developer/SEZ Unit should be treated as Inter state supply or Intra state supply ?

Clarification:

1.1 As per section 7(5) (b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act in short), the supply of goods or services or both a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply services by way of accommodation in any immovable property for organizing any functions shall be the location at which the property is located. Thus, in such cases, if the location of the and the place of supply is in the same State/ Union territory, it be treated as an intra-State supply.

1.2 **It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.**

1.3 In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.

1.4 It is therefore, clarified that services of short term conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

[Circular 48/22/2018 dated 14-06-2018]

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Place of Supply for IT/IT Enabled Services provided to clients

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[Press Release No. 123 dated 12-12-2017]

It was reported in certain sections of the Press that tax officials had

raised tax demand in respect of export of IT/IT enabled services provided to clients abroad and that this had been done on the basis place of supply rules in respect of these services which were apparently provided in India and therefore were liable to be taxed.

In a subsequent development, the Commissioner (Appeals) set aside the orders of the lower adjudicating authority where refund was disallowed and has also upheld the orders where refund had been granted. Thus, the apprehensions expressed in those sections of the Press about the negative effects on the software industry are without basis.

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Service Tax Circular 209/1/2018-ST dated 04-05-2018

This circular explains the manner in which the place of provision be determined in case of development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software.

Software being intangible, does not have a unique existence and can exist on different servers at the same point in time. The version customised, adapted, upgraded etc. will only be a copy of the Servers themselves are of different types, ranging from file servers (which make files available to workstations on a network), web (computer systems that host websites), remote servers (allow users gain access to files and print services on the Local Area Network remote location), proxy servers (an intermediary server between a client application and another server), dedicated servers (single computer in a network reserved for serving the needs of the network) etc. There is also what is called "virtualisation of servers" which to the masking of server resources, including the number and of individual physical servers, processors and operating systems, server users. The server administrator uses a software application divide one physical server into multiple isolated virtual The exact location of the server is neither always known to the provider nor is its knowledge essential for providing the service. Limited access to the software for a limited period through protocols is given to the service provider by the recipient of service enable the former to provide the service. Only the recipient of has control over who accesses the software, when it can be for how long and for what purpose

Applying the definition of "declared services" in section 66E(d) of Finance Act, 1994, and the provisions of POPS, to the specific cases services of development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software, the conclusions which can be are as follows:

- a) in the case of services where data, instructions etc. are so as to develop software, i.e. development, design and programming of information technology software, the place of provision of service is the location of the recipient of the
- b) in the case of services on software involving testing, debugging, modification etc. i.e. customisation, adaptation, upgradation, enhancement, implementation of information technology software, the place of provision of service is the location of the recipient of the service.

Therefore, in both the above cases, the place of provision of service the location of the recipient of the service

S.14 Special Provisions for payment of Tax by a supplier of Online Information and Database access or retrieval Services

27 November 2018

18:40

S.14(1) Liability to pay IGST

17 January, 2019
12:23 PM

On supply of online information and database access or retrieval services by any person a non-taxable territory and received by a non-taxable online recipient, **the supplier of services** located in a non-taxable territory shall be the person **liable for paying integrated tax** on such supply of services:

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a nontaxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:—

- (a)** the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;
- (b)** the intermediary involved in the supply does not authorize the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;
- (c)** the intermediary involved in the supply does not authorize delivery; and
- (d)** the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

Grant of registration [R.14]

17 January, 2019
12:46 PM

Submission of application in Form GST REG-10 [R.14(1)]

Any person supplying online information and database access or retrieval services **from a place outside India to a non-taxable online recipient** shall electronically **submit an application** for registration, duly signed or verified through electronic verification code, in **FORM GST REG-10**, at the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

Grant of Registration in Form GST REG-06 [R.14(2)]

The applicant referred to in **sub-rule (1)** shall be **granted registration**, in **FORM GST REG-06**, subject to such conditions and restrictions and by such officer as may be notified by the Central Government on the recommendations of the Council.

S.14(2) Single registration for payment of IGST

17 January, 2019
12:34 PM

The supplier of online information and database access or retrieval services **referred to in sub-section (1)** shall, for payment of integrated tax, take a **single registration** under the **Simplified Registration Scheme to be notified by the Government:**

Representative to get registered and to pay IGST

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:

Provided further that if such supplier **does not have a physical presence or does not have a representative** for any purpose in the taxable territory, **he may appoint a person** in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.