

## GOODS & SERVICE TAX

“Concept of SUPPLY  
including analysis of SCHEDULES under  
GST Law”



# SHARNAM LEGAL

ADVOCATES & SOLICITORS

*“Building longterm relations through our work.”*

# **GOODS AND SERVICE TAX**

**WHY GST ? – SOME DISTORTIONS**

**&**

**READINESS FOR GST**

**EFFECTS, BENEFITS, OPPORTUNITY,  
CHALLENGES OR INTRICACIES**

# SUPPLY ????? The General Meaning

## Wikipedia describes Supply as:-

To- give, contribute, provide, furnish, donate, bestow, grant, endow, afford, impart, lay on, come up with, make available, proffer; dispense, allocate, allot, assign, disburse; lavish, shower, regale; serve, confer; Equip, outfit, fit, arm-with provision, providing, furnishing, dissemination, distribution, laying on, sending out, serving

Wikipedia in Economic sense describes Supply as:- the amount of a good or service offered for sale.

Wikipedia as Military requirement describes Supply as:- the provisions stores, stocks, rations, food and drink, foodstuffs, eatables and equipment necessary for an army or for people engaged in a particular project or expedition.

Wikipedia as Fiscal Jargon describes Supply as:- a grant of money by Parliament for the costs of government.

## **Concept of Supply in Economics- Encyclopedia Wikipedia**

- In economics, supply is the amount of something that firms, consumers, laborers, providers of financial assets, or other economic agents are willing to provide to the marketplace.
- Supply is often plotted graphically with the quantity provided (the dependent variable) plotted horizontally and the price (the independent variable) plotted vertically.
- In the goods market, supply is the amount of a product per unit of time that producers are willing to sell at various given prices when all other factors are held constant.

# Meaning and Scope of 'SUPPLY'

## 7. Scope of supply.

(1) For the purposes of this Act, the expression “supply” includes—

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

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

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

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

# Meaning and Scope of 'SUPPLY'

**Sec 7 (2)** Notwithstanding anything contained in sub-section (1),—

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

# Meaning and Scope of 'SUPPLY'

**Sec 7 (3)** Subject to the provisions of sub-sections (1) and (2), the **Government may, on the recommendations of the Council, specify, by notification,** the transactions that are to be treated as—

- (a) a supply of goods and not as a supply of services;
- or
- (b) a supply of services and not as a supply of goods.

# Meaning and Scope of 'SUPPLY'

## 8. Tax liability on composite and mixed supplies.

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

## Essential Elements of SUPPLY

In order to constitute a 'supply', following elements are required to be satisfied:-

- (i) supply should be of goods and / or services;
- (ii) supply is made in the course or furtherance of business;
- (iii) supply is primarily for a consideration or without consideration(if specified);
- (iv) supply is made in the taxable territory;
- (v) supply is a taxable supply; and
- (vi) supply is made by a taxable person.

Under certain circumstances such as importation of service {Section 7(1) (b)} or supplies made without consideration as specified under Schedule-I of CGST Act, where one or more ingredients specified above are not satisfied, the transaction or activity shall still be treated as SUPPLY under GST Law.

# Meaning and Scope of 'SUPPLY'

**Sec 2 (17) "business" includes –**

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;**
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);**
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;**
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;**

# Meaning and Scope of 'SUPPLY'

**Sec 2 (17) "business"** includes –

- (e) provision by a **club, association, society**, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities

# Meaning and Scope of 'SUPPLY'

**Sec 2 (84)** “person” includes—

- (a) an individual; (b) a Hindu Undivided Family; (c) a company; (d) a firm;
- (e) a Limited Liability Partnership;
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;
- (h) any body corporate incorporated by or under the laws of a country outside India;
- (i) a co-operative society registered under any law relating to co-operative societies;
- (j) a local authority; (k) Central Government or a State Government;
- (l) society as defined under the Societies Registration Act, 1860;
- (m) trust; and
- (n) every artificial juridical person, not falling within any of the above;

## What is meant by “supply made in the course or furtherance of business”?

No definition or test as to whether the activity is in the course or furtherance of business has been specified under the CGST Act. However, the following business test is normally applied to arrive at a conclusion whether a supply has been made in the course or furtherance of business:

1. Is the activity, a serious undertaking earnestly pursued?
2. Is the activity is pursued with reasonable or recognisable continuity?
3. Is the activity conducted in a regular manner based on sound and recognised business principles?
4. Is the activity predominantly concerned with the making of taxable supply for consideration/ profit motive?

The test may ensure that occasional supplies, even if made for consideration, will not be subjected to GST.

# Meaning and Scope of 'SUPPLY'

**Sec 2 (31) "consideration"** in relation to the supply of goods or services or both includes—

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

**Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;**

# Meaning and Scope of 'SUPPLY'

## SCHEDULE - I

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION  
[IN TERMS OF CLAUSE (c) OF SUBSECTION (1) OF SECTION 7]

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business: *Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.*

# Meaning and Scope of 'SUPPLY'

## SCHEDULE - I

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION  
[IN TERMS OF CLAUSE (c) OF SUBSECTION (1) OF SECTION 7]

### 3. Supply of goods—

(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or

(b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

# Meaning and Scope of 'SUPPLY'

## SCHEDULE - II

### **ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

#### **1. Transfer**

(a) Any transfer of the title in goods is a **supply of goods**.

(b) Any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof, is a **supply of services**.

(c) Any transfer of title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment of full consideration as agreed, is a **supply of goods**.

#### **2. Land and Building**

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

(b) Any lease or letting out of the **building** including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a **supply of services**.

# Meaning and Scope of 'SUPPLY'

## SCHEDULE - II

### **ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

#### **3. Treatment or process**

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

#### **4. Transfer of business assets**

(a) Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a **supply of goods** by the person.

(b) Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of Services.

Contd.

# Meaning and Scope of 'SUPPLY'

## SCHEDULE - II

### **ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

(c) Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

- (i) the **business is transferred as a going concern** to another person; or
- (ii) the **business is carried on by a personal representative who is deemed to be a taxable person.**

# Meaning and Scope of 'SUPPLY'

## SCHEDULE - II

### ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

5. The following shall be treated as “supply of service”

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the **entire consideration** has been received after issuance of completion certificate, where required, by the competent authority or **after its first occupation, whichever is earlier.**

# Meaning and Scope of 'SUPPLY'

## SCHEDULE - II

### **ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

*Explanation for 5 (b) .- For the purposes of this clause-*

*(1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:-*

*(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or*

*(ii) a chartered engineer registered with the Institution of Engineers (India); or*

*(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;*

*(2) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure;*

# Meaning and Scope of 'SUPPLY'

## SCHEDULE - II

### **ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

#### **5. The following shall be treated as "supply of service"**

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of **information technology software;**

(e) **agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;**

(f) **transfer of the right to use any goods** for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; and

# Meaning and Scope of 'SUPPLY'

## SCHEDULE - II

### **ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

#### **6. Composite supply**

The following composite supplies shall be treated as a **supply of services**, namely:—

- (a) works contract as defined in clause (119) of section 2; and
- (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

# Works Contract – Services

Even when there is transfer of property in goods during execution of any works contract, such composite contract shall be classified as supply of services and the entire value shall be taxed accordingly and no more bifurcation of such contract by way of Value of Goods or Value of Services is required in future.

However, this treatment of works contract and un-amended Article 366(29A) in the Constitution leaves us with one thought as to whether the said Article still determines the nature of works contract or not.

# Meaning and Scope of 'SUPPLY'

Sec 8 Tax liability on composite and mixed supplies.

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

(a) a composite supply **comprising two or more supplies**, one of which is a **principal supply**, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

# Meaning and Scope of 'SUPPLY'

## SCHEDULE II

### **ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

#### **7. Supply of Goods**

The following shall be treated as **supply of goods**, namely:—

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

## **ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES** **SCHEDULE III**

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any Court or Tribunal established under any law for the time being in force.
- 3.(a) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
  - (b) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
  - (c) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

## ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES SCHEDULE III

4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. **Sale of land** and, subject to clause (b) of paragraph 5 of Schedule II, **sale of building**.
6. **Actionable claims**, other than lottery, betting and gambling.

## FOCUS AREAS UNDER GST FOR BUSINESS

Financial Impact due to Change in Law for collecting and payment of Indirect Tax

Cash Flow Impact of change in rates and other aspects

Timing Effect on requirement of finance for GST

Logistics Optimization Opportunities

Restructuring of Transactions vis-à-vis actual impact of GST

Re-visiting the contracts - assessing and effectuating the GST Impacts

Transition of IT Systems providing Zero defect compliance of GST

Stakeholders Training as a Team for better Compliance

Assistance in Compliance and Advisory Support

Analysis of available Composition / Abatement Schemes/Anti profiteering measures.

Transition of Processes and Rationalization of Compliance Mechanism



# THANK YOU

**Sharnam Legal Offices:**

“Sharnam” R-13/24, 1<sup>st</sup> Floor (Entry from Gate 1), Raj Nagar, Opp. ALT Centre, Ghaziabad, Uttar Pradesh, India – 201002

Office No. 634, 6<sup>th</sup> Floor, Tower – B, Alphathum, Plot No.1, Sector - 90, Noida, Uttar Pradesh, India – 201305

Tel +91-120-2820380/ 2821407 / +91- 9205001461

Email: [office@sharnamlegal.com](mailto:office@sharnamlegal.com) / [updates@sharnamlegal.com](mailto:updates@sharnamlegal.com)

**Associate Offices:**

Delhi, Mumbai, Prayagraj, Lucknow, Calcutta, Chandigarh, Bengaluru, Chennai & Jaipur

**Key Contact:**

**Mukul Gupta**

**Advocate**

**+91-9811023739**

[www.gsttaxlaw.com](http://www.gsttaxlaw.com)

**Prateek Gupta**

**Advocate**

**+91-9654140247**

[www.sharnamlegal.com](http://www.sharnamlegal.com)



**SHARNAM LEGAL**

ADVOCATES & SOLICITORS

*“Building longterm relations through our work.”*