

Levy under Goods and Services Tax Acts



The Parliament of India has enacted four laws for enforcement of Goods and Services Tax in India, viz., Central Goods and Services Tax Act, 2017 (CGST), Integrated Goods and Services Tax Act, 2017 (IGST), Union Territories Goods and Services Tax Act, 2017 (UTGST) and Goods And Services Tax (Compensation To States) Act, 2017 (“Compensation Act”). The four Acts govern four different levies under the GST regime whereby CGST Act governs the levy of Central portion of GST on all intrastate transactions, IGST Act governs the levy of GST on all inter-state transactions, UTGST Act governs the levy of GST in Union Territories and Compensation Act governs the levy of Compensation Cess to compensate the states losing revenue on enactment of GST. Read on to know more...

Levy under the CGST Act

Section 9 is the charging Section under CGST and provides for four categories of levy of GST on intra state transactions viz., forward charge, reverse charge on purchase from unregistered dealers, reverse charge on specified goods and services and levy on e-commerce companies. The Section further provides for deferment of levy of CGST on

the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel which shall be levied with effect from a later date as may be notified by the Government on the recommendations of the GST Council.

(a) Levy of GST under Forward Charge

The first sub-Section of Section 9 of CGST Act provides for the levy of CGST. Levy Section provides for the following aspects of levy:

- Who shall pay: A Taxable person is only required to pay CGST. Taxable person has been defined to mean a person who is registered or liable to be registered under Section 22 or Section 24. Taxable person is defined either on the basis of



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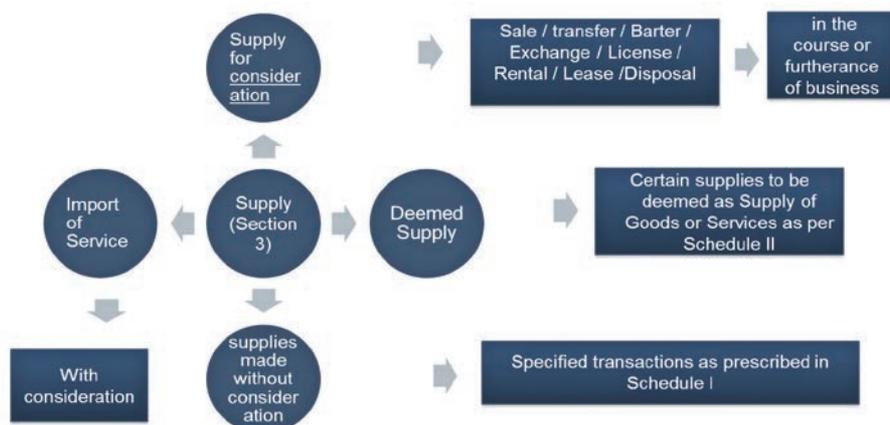
person having aggregate turnover over ₹ 20 lakh (₹ 10 lakh in case of special category states) or certain prescribed class of Suppliers who are required to obtain registrations even when their aggregate turnover is below the threshold limit. Certain prescribed registered persons are Inter-state suppliers, Buyer of Business, In case of Amalgamation/De-merger, Inter-state Taxable Supplier, Persons required to make payment under Reverse Charge, Persons required to deduct tax, Agents of taxable Persons, Input Service Distributor (ISD), Persons supplying goods through Electronic Commerce Operator, Electronic Commerce Operator, Online data base access & Retrieval service operator, Casual and Non-resident Supplier etc.

- **Taxable Event:** Taxable event in case of CGST is intra-State Supply of goods or services or both. We have taken this up separately in the article later. Every taxable supply of Goods or Services is exigible to GST. The levy is based on three key terms – Taxable supply, goods and services, which are explained as follows.

Section 2(108) of CGST Act defines “taxable supply” to mean a supply of goods or services or both which is leviable to tax under this Act. Accordingly, all supply of goods and services except the following shall be taxable supply:

- Supply of Alcohol for human consumption since the
- Non taxable Supplies which shall include supplies whose place of supply is in non taxable territories.

Supply has been defined under Section 7 of CGST Act and major constituents of the definition are as under:



Definition of Supply begins with the term includes and then proceeds to draw its meaning from itself, i.e. all forms of supply. The first part of the definition reads as under:

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

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

Thus, while it draws its meaning from itself, it has provided certain examples of supply viz., sale, transfer, barter, exchange, license, rental, lease or disposal. Though the terms are not exhaustive and we cannot say that the meaning of the term Supply is restricted to such transactions only. However, applying the principle of “*Noscitur a Sociis*” and “*Ejusdem generis*”, the nature of any supply sought to be taxed has to take its colour from the inclusive services specified in the definition clause. The clause is yet to be tested in the court of law. Thus, there are absolute transactions which fall within the ambit of supply when made in the course or furtherance of business and certain deemed transactions which are considered as Supply in following cases:

- As per Schedule I when made for without consideration
- As per Schedule II, deemed supply of goods or deemed supply of services.

The above deeming provisions bring along with their own complications. Eg., in schedule II, there are at least three different entries which deem renting of land and building as supply of service. The schedules are an aggregation of existing schedules and part of schedules are replicated from the Declared list of Services under Finance Act,1994 (Services Tax Act) and one of the entries is not proper. Entry

4(c) in Schedule II fails to provide whether it is a supply of goods or a supply of service. The existence of entry in Schedule itself is unnecessary as the Schedule only provides for the activities to be treated as supply of goods or supply of services. Having discussed briefly on aspects of Supply, we shall now discuss the second limb of

levy provision viz., the concept of goods and services as given in Act. "Goods" has been defined in CGST Act as under:

(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

Also, while alcohol has been excluded from the purview of GST, it has been suggested that five petroleum products shall be subsumed later in GST regime. Thus, all movable properties are included in the ambit of Goods. It is important to note that Intangibles qualify as goods and their permanent transfer shall be supply of goods under the GST regime.

"Services" has been defined in CGST Act as under:

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Thus, the entire universe has been divided between goods and services. It is important to understand that proper classification of a supply as goods and services and thereafter in proper category of goods or services is an imperative part of paying proper taxes. Any error in classification can lead to a demand of tax at a later stage.

- Value on which GST shall be levied: CGST being an ad valorem tax, it shall be levied on the value as determined under Section 15 of the CGST Act.

Value as determined under CGST is used for all GST Acts

This is important to note that value as determined by CGST Act is used by all Acts for levy of GST

While alcohol has been excluded from the purview of GST, it has been suggested that five petroleum products shall be subsumed later in GST regime. Thus, all movable properties are included in the ambit of Goods. It is important to note that Intangibles qualify as goods and their permanent transfer shall be supply of goods under the GST regime.

Sub-Section 4 of Section 9 of CGST Act provides for the levy of CGST on an electronic commerce operator in respect of notified categories of intra-State supplies of services if such services are supplied through an electronic commerce operator. Electronic commerce operator has been defined to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

and thus, valuation is supposed to be same across all GST laws.

- Rate: CGST shall be levied at rates as notified by Government but in no case such rates can exceed twenty per cent. It is important to note that only one rate shall be provided for each Goods/services throughout India for CGST.

All SGST Acts and IGST Act shall have their own notified rates

It is important to note that rates shall be notified separately for all goods and services for all SGST Acts and IGST Act. However, it is hoped that the rates shall be almost similar as such rates are to be notified only on the recommendation of GST Council.

(b) Levy of GST under Reverse Charge

Sub-Section 3 of the Section 9 of CGST Act provides for reverse charge liability on certain categories of supply of goods or services or both, which shall be notified by the Government. The tax under this levy shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. Thus, in such cases, the liability has been shifted from the supplier of services to the recipient of services.

Supplier not responsible for payment of tax in such cases

It is important to note that in such cases the supplier is not responsible for payment of tax or for any of the compliances under the statute.

(c) Levy of GST under Reverse Charge when Purchasing from Unregistered Dealer

Sub-Section 4 of Section 9 of CGST Act provides for the levy of CGST on a registered person who

purchases taxable goods or services or both from an unregistered person. It is immaterial whether such person who is the supplier is liable for registration or not, as long as he is unregistered, the liability on such taxable supplies has been shifted to registered taxable person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. Thus, in other words, the Government by shifting liability in case of supplies received from unregistered suppliers has penalised the purchaser for such supplies by making him liable for compliance of tax on such count.

Registered Persons would refrain from purchasing from unregistered dealers

This would lead to refrainment of registered persons from purchasing from an unregistered person as such purchases are adding additional burden of compliance on their part which shall include determination of classification and rate of tax and any error in compliance shall bring additional burden of interest and penalty on such purchaser of goods. Thus, given a choice, most of the registered purchasers would opt to purchase from registered persons.

(d) Levy of GST in case of e-Commerce Companies

Sub-Section 4 of Section 9 of CGST Act provides for the levy of CGST on an electronic commerce operator in respect of notified categories of intra-State supplies of services if such services are supplied through an electronic commerce operator. Electronic commerce operator has been defined to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. Thus, any supply made through an electronic facility or platform of another person in case of specified services shall shift the onus of all payment of tax and compliance from such supplier to such e commerce operator.

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Section 5 of IGST Act provides levy of IGST on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption. It is important to note that the Act draws the valuation for the levy purpose from Section 15 of the Central Goods and Services Tax Act.

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In this case neither the supplier, nor the receiver of supply is liable but the electronic commerce operator through which such supplies are made shall be the person liable to pay tax and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services. It is pertinent to mention that this provision shall apply to notified categories of services only and goods are not covered within the ambit of this provision. At present also, certain class of e-commerce operators (called aggregators in Service Tax) are liable to pay Service Tax on all services supplied through them.

Supply of Own Goods by e-Commerce Operator

This provision does not exclude own supplies by an e-commerce operator from his own platform. It is important if government clarifies this that in such cases tax may be paid under forward charge and not as an e-Commerce operator.

(e) Composition Levy

As a unique aspect, Section 10 of CGST Act provides for an option to small supplier of goods and restaurant and caterers whose turnover not exceed fifty lakh rupees to pay, in lieu of the tax payable by him under Section 9, an amount calculated at such rate as may be prescribed, but not exceeding as under:

In case of a manufacturer	1% of his turnover in state or UT
In case of restaurants and caterers	2.5% of his turnover in state or UT
In case of other suppliers	0.5% of his turnover in state or UT

Similar levy shall be enforced under the respective SGST Acts and accordingly, a person opting to pay under Composition shall need to pay twice the rate specified above.

Levy under the IGST Act

Section 5 of IGST Act provides levy of IGST on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption. It is important to note that the Act draws the valuation for the levy purpose from section 15 of the Central Goods and Services Tax Act. Further, since IGST incorporates levy by Centre only, it shall be approximately the sum of CGST and SGST and shall not be exceeding forty per cent. It is important to note that tax on Import of Services

shall be levied under this Act only. Also, it has been provided that integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975. Like CGST, IGST provides for levy of tax on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel from a future date.

Further, like CGST, IGST shall also be levied on notified categories of purchase from unregistered dealers, and specified categories of goods and services under reverse charge along with liability on e-commerce operators.

Levy under the UTGST Act

Section 7 of UTGST Act provides for the levy of UTGST. Its important aspects are as follows:

- It provides for levy of UTGST on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption. Thus, on all supplies within UTGST, CGST and UTGST shall be applicable
- It is the common act of all Union Territories and no separate act shall be passed for the five Union Territories

- It is important to note that the Act draws the valuation for the levy purpose from Section 15 of the CGST Act.
- Further, UTGST shall be levied at a rate not exceeding twenty per cent.

Levy of Compensation Cess

Apart from CGST/SGST/IGST, another Compensation Cess shall be levied on certain class of goods under the Compensation Act for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years. Such class of goods and rate of Cess thereon is Pan Masala @130%, Tobacco and manufactured tobacco substitutes at specified rate of Rupees per thousand sticks, Coal, briquettes, etc. @₹400 per tonne, Aerated waters @15%, Motor cars and other motor vehicles @15%, any other supply @15%.

Conclusion

Thus, the liability to pay taxes of GST by different class of persons who are liable for levy under the different acts are summarised as under:

Category of Person	Liability to pay tax					
	Supplier of all goods and services except those specified in other columns	Supplier of specified petroleum products	Supplier of Alcohol for human consumption	Registered Recipient	Unregistered recipient	E Commerce Operator
All Supplies except the ones specified below	Liable	Liable	Liable	Not Liable	Not Liable	Not Liable
Supply of Alcohol for human consumption	Not Liable	Not Liable	Not Liable	Not Liable	Not Liable	Not Liable
Supply of specified Petroleum products	Not Liable	Not Liable	Not Liable	Not Liable	Not Liable	Not Liable
Supplies by an unregistered person	Not Liable	Not Liable	Not Liable	Liable	Not Liable	Liable
Specified Supplies through E Commerce operator	Not Liable	Not Liable	Not Liable	Not Liable	Not Liable	Liable