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Introduction and Sec 77

- The basic principle of GST is that it should effectively tax the consumption of such supplies at the destination thereof.
- The place of supply provisions determine the place i.e. taxable jurisdiction where the tax should reach. The place of supply and the location of supplier are the two determinants to ascertain the nature of supply i.e. whether a supply is intra-state or inter-state. In other words, these two factors are required to determine whether a supply is subject to SGST/UTGST plus CGST in a given State/UT or else would attract IGST if it is an inter-State supply.
- This chapter assumes importance as any error in application of CGST+SGST or IGST will **not** be adjusted with one another.

Section 77 of CGST Act, 2017 - (1) A **registered person who has paid the Central tax and State tax** or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, **shall be refunded** the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has **paid integrated tax** on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, **shall not be required to pay any interest on the amount of central tax and State tax** or, as the case may be, the Central tax and the Union territory tax payable.

Section 19 of IGST Act, 2017 - (1) A **registered person who has paid integrated tax** on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, **shall be granted refund** of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has **paid central tax and State tax or Union territory tax**, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, **shall not be required to pay any interest on the amount of integrated tax** payable.

Sec 2(6) of IGST Act, 2017 “EXPORT OF SERVICES” means the supply of any service when,—

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

Sec 2(11) of IGST Act, 2017 “IMPORT OF SERVICES” “import of services” means the supply of any service, where—

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India;

Inter-State Supplies (Sec 7 of IGST Act, 2017) – General Provisions

Sec 7(1) Subject to the provisions of section 10, supply of **goods**, 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 goods in the course of inter-State trade or commerce.

Sec 7(2) 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 commerce.

Sec 7(3) Subject to the provisions of section 12, supply of **services**, where the **location of the supplier** and the **place of supply** are in—

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory, shall be treated as a supply of services in the course of inter-State trade or commerce.

Sec 7(4) 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.

Sec 7(5) Supply of **goods or services** or both,—

- (a) when the supplier is located in India and the place of supply is outside India;
- (b) **to** or **by** a Special Economic Zone developer or a Special Economic Zone unit; or
- (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 inter-State trade or commerce.

Intra-State Supplies (Sec 8 of IGST Act, 2017)

Sec 8(1) Subject to the provisions of section 10, supply of **goods** where the location of the supplier and the place of supply of goods are 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 treated as intra-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 frontiers of India; or
- (iii) supplies made to a tourist referred to in section 15.

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

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer 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 other establishment outside that State or Union territory; or
- iii. an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of **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.

Circular No. 161/17/2021-GST dated 20th Sept, 2021

Para 3.4 Reference is also invited to the definition of “person” as provided under CGST Act 2017, made applicable to IGST Act vide section 2(24) of IGST Act 2017. “Person” has been defined under sub-section (84) of the section 2 of the CGST Act 2017, as under: (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;

Para 3.5. The definitions of company and foreign company have been provided under section 2 of Companies Act 2013, as under: (20) “company” means a company incorporated under this Act or under any previous company law; (42) “foreign company” means any company or body corporate incorporated outside India which— (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner.

Analysis of the issue:

Para 4.1 Clause (v) of sub-section (6) of section 2 of IGST Act, which defines “export of services”, places a condition that the services provided by one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of IGST Act, cannot be treated as export. In other words, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.

Para 4.2 Further, perusal of the Explanation 2 to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office, then the said branch or agency or representational office of the foreign company, located in India, shall be treated as establishment of the said foreign company in India. Similarly, if any company incorporated in India, is operating through a branch or an agency or a representational office in any country outside India, then that branch or agency or representational office shall be treated as the establishment of the said company in the said country.

Para 4.3. In view of the above, it can be stated that **supply of services made by a branch or an agency or representational office of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as “export of services” in view of condition (v) of sub-section (6) of section 2 of IGST Act. Similarly, any supply of service by a company incorporated in India to its branch or agency or representational office, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.**

Para 4.4 From the perusal of the definition of “person” under sub-section (84) of section 2 of the CGST Act, 2017 and the definitions of “company” and “foreign company” under Section 2 of the Companies Act, 2013, it is observed that a company incorporated in India and a foreign company incorporated outside India, are separate “person” under the provisions of CGST Act and accordingly, are separate legal entities. **Thus, a subsidiary/ sister concern/ group concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate “person” under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company.** Accordingly, these two separate persons would not be considered as “merely establishments of a distinct person in accordance with Explanation 1 in section 8”.

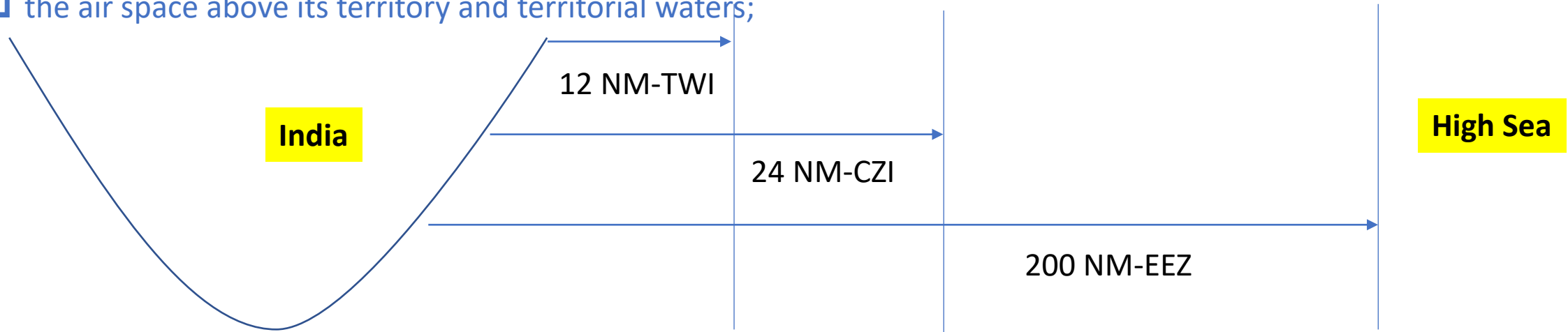
Supplies in Territorial Waters (Sec 9 of IGST Act, 2017)

Sec 9 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.

Sec 2(56) of CGST Act “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;



TWI – Territorial Waters Of India, CZI – Contiguous Zone of India, EEZ – Exclusive Economic Zone - THE TERRITORIAL WATERS, CONTINENTAL SHELF, EXCLUSIVE ECONOMIC ZONE AND OTHER MARITIME ZONES ACT, 1976

Refund of integrated tax paid on supply of goods to tourist leaving India (Sec 15 of IGST Act, 2017)

Sec 15 The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

Explanation.—For the purposes of this section, the term “tourist” means a person not normally resident in India, who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes.

How to Determine Place of Supply

1. In order to determine whether a supply is inter-state or intra-state, one needs to determine as to
 - What is the Location of Supplier? and
 - Secondly, What is the Place of Supply
2. If both the Location of the Supplier and Place of Supply are in same state or same Union Territory, then supply will be intra-state supply.

But there are three exceptions to this rule -

- Supply have been made to or made by SEZ Developer or SEZ Unit, then even if the Location of the supplier and place of supply are in same state or same UT, supply will be inter-state supply
- Similarly, importation of goods till they cross the custom frontiers of India, supply will be inter-state supply
- Also, Supply of goods made to tourist will always be inter-state supply.

3. Following supplies are always inter-state supplies -

- Import of goods till they cross the custom frontiers of India
- Import of services
- when the supplier is located in India and the place of supply is outside India;
- Supply of goods or service to or from SEZ developer or SEZ Unit
- Supply in taxable territory, not being an intra-state supply and not covered elsewhere in section 7.

How to Determine Place of Supply

Place of Supply will be determined as follows -

1. Place of supply of goods, other than supply of goods imported into or exported from India, shall be determined as per **Section 10 (GOODS + DOMESTIC)**
2. Place of supply of goods imported into or exported from India, shall be determined as per **Section 11 (GOODS + IMPORT/EXPORT)**
3. Place of supply of service, where the location of the supplier and the location of the recipient of services is in India, shall be determined as per **Section 12 (SERVICE + LOR+LOS-INDIA)**
4. Place of supply of service, where the location of the supplier or the location of the recipient of service is outside India, shall be determined as per **Section 13 (SERVICE + LOR/LOS-OUTSIDE INDIA)**

Place of Supply of Goods	Place of Supply of Services
Sec 10 : Place of supply of goods, other than supply of goods imported into or exported from India	Sec 12 : Place of supply of service, where the location of the supplier and the location of the recipient of services is in India
Sec 11 : Place of supply of goods imported into or exported from India	Sec 13 : Place of supply of service, where the location of the supplier or the location of the recipient of service is outside India

How to Determine Place of Supply

Sec 2(14) of IGST Act, 2017 “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;

Sec 2(15) of IGST Act, 2017 “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 provision of the supply; and
- (d) in absence of such places, the location of the **usual place of residence** of the supplier;

Sec 2(7) of IGST Act, 2017 “**FIXED ESTABLISHMENT**” means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs;

How to Determine Place of Supply

Sec 2(113) of CGST Act, 2017 “USUAL PLACE OF RESIDENCE” means—

- (a) in case of an individual, the place where he ordinarily resides;
- (b) in other cases, the place where the person is incorporated or otherwise legally constituted;

Sec 2(93) of CGST Act, 2017 “RECIPIENT” of supply of goods or services or both, means—

- (a) where a **consideration is payable** for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where **no consideration is payable** for the supply of **goods**, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where **no consideration is payable** for the supply of a **service**, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall **include an agent acting as such on behalf of the recipient** in relation to the goods or services or both supplied;

How to Determine Place of Supply

Sec 2(105) of CGST Act, 2017 “SUPPLIER” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and **shall include an agent** acting as such on behalf of such supplier in relation to the goods or services or both supplied;

[**Provided that** a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money’s worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims;] [**Proviso inserted by CGST Amendment Act, 2023, w.e.f. 1-10-2023**]

Example – In case of Hotel Industry, if the accommodation services are supplied to Agent and Agent further supplies these services to the final customer. There will be two supplies –

- 1) From Hotel to Agent where agent becomes the recipient of services provided by the Hotel (Supplier)
 - 2) From Agent to Final Customer where final customer becomes the recipient of services provided by the Agent
- Both Hotel and Agent will issue bill of accommodation service and charge same rate of GST.

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

- (a) 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;
- (b) where the goods are delivered by the supplier to a recipient or any other person 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;
- (c) 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 goods at the time of the delivery to the recipient;
- (d) where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly;
- (e) where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

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

Supply involves movement of Goods [Section 10(1)(a)]

S. No.	Circumstances	Place of Supply
Sec 10(1)(a)	where the supply involves movement of goods, <ul style="list-style-type: none"> • by the supplier or • the recipient or • by any other person, 	Location of the goods at the time at which the movement of goods terminates for delivery to the recipient;

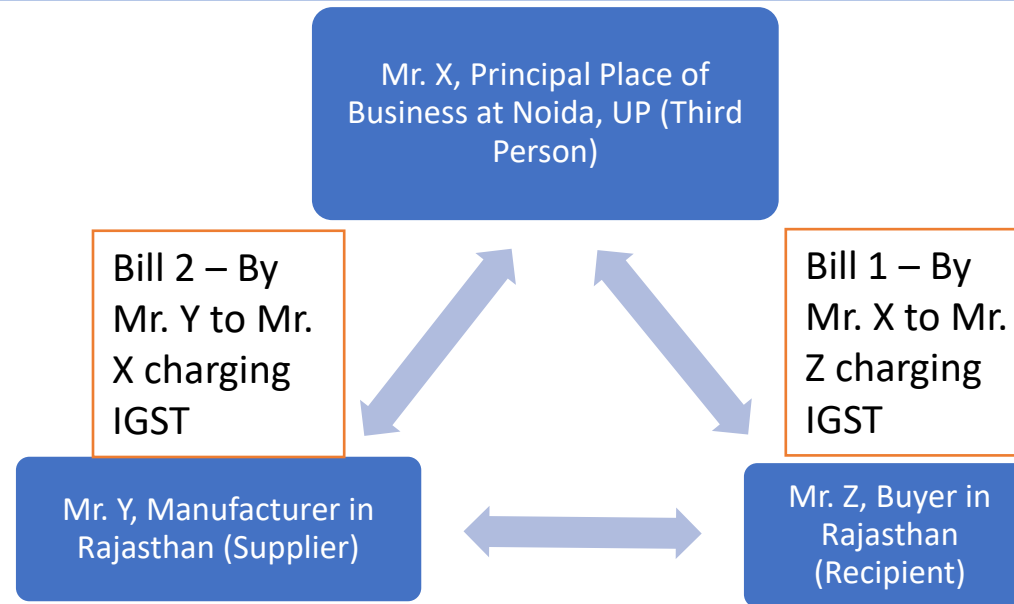
Illustration : Suppose Mr A, is a registered dealer in Gurgaon (Haryana) attends a trade fair in Delhi at Pragati Maidan. He places his order and takes the goods with himself to be used in the course or furtherance of his business. In this case, Place of Supply will be Haryana, even though the movement has been caused by the Recipient himself.

Case	Location of Supplier	Location of Recipient	Termination of Movement	Place of Supply	Nature of GST Payable
1. Goods dispatched by Supplier	Delhi	Delhi	Delhi	Delhi	CGST + SGST
2. Goods dispatched by Supplier	Delhi	Haryana	Haryana	Haryana	IGST
3. Goods collected by Recipient	Delhi	Haryana	Haryana	Haryana	IGST

Supply involving Movement of goods delivered to recipient on the Instruction of third person – Bill to Ship to Sale [Section 10(1)(b)]

S. No.	Circumstances	Place of Supply
Sec 10(1)(b)	<p>Where the goods are delivered by the supplier</p> <ul style="list-style-type: none">• to a recipient or• any other person 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,	<p>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;</p>

Supply involving Movement of goods delivered to recipient on the Instruction of third person – Bill to Ship to Sale [Section 10(1)(b)]



Example – Mr X (a supplier registered in UP having principal place of business at Noida) asks Mr. Y of Jodhpur, Rajasthan to deliver 50 washing machines to his buyer Mr. Z at Jaipur, Rajasthan. In this case, two supplies are involved, one between Mr. X and Mr. Z and other between Mr. Y and Mr. X

While the former supply is covered under clause (a) of section 10(1), the latter, between Mr Y and and Mr. X is covered under clause (b) of section 10(1). Accordingly, in latter case, the POS of goods is not the location of delivery of such goods Rajasthan but the principal place of business of third person i.e. principal place of business of Mr. X located at Noida,UP.

Supply not involving Movement of goods [Section 10(1)(c)]

S. No.	Circumstances	Place of Supply
Sec 10(1)(c)	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 goods at the time of the delivery to the recipient;
Sec 10(1)(ca)	<p>Where the supply of goods is made to a person other than a registered person,</p> <p>Explanation.—For the purposes of this clause, recording of the name of the State of the said person in the invoice shall be deemed to be the recording of the address of the said person;"</p> <p>[Clause (ca) inserted vide IGST Amendment Act, 2023, w.e.f. 1-10-2023]</p>	The place of supply shall, notwithstanding anything contrary contained in clause (a) or clause (c), be the location as per the address of the said person recorded in the invoice issued in respect of the said supply and the location of the supplier where the address of the said person is not recorded in the invoice.

Example – XZ Ltd. (Mumbai, Maharashtra) opens a new branch office at Gurugram, Haryana. It purchases a building for office from KTS Builders (Gurugram). It also enters into a separate contract with KTS Builders for purchase of pre-installed office furniture and fixtures in the building.

There will be no GST Liability on purchase of building, but office furniture and fixtures will be liable to GST. Since there is no movement of office furniture and fixtures, the POS of such goods is their location at the time of delivery to the recipient (XZ Ltd.) i.e. Gurugram.

Supply not involving Movement of goods [Section 10(1)(d)]

S. No.	Circumstances	Place of Supply
Sec 10(1)(d)	where the goods are assembled or installed at site,	The place of supply shall be the place of such installation or assembly;

Example – Mr. A (New Delhi) purchases a machine from Mr. B (New Delhi) for being installed in his factory at Noida, UP. The POS is the site at which the machine is installed i.e. Noida

Goods supplied on Board a Conveyance [Section 10(1)(e)]

S. No.	Circumstances	Place of Supply
Sec 10(1)(e)	where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle	The place of supply shall be the location at which such goods are taken on board.

In such cases, there are two supplies : supply of goods ‘to’ the operator of the conveyance; and supply ‘by’ the operator to the passenger during the journey ‘in’ the conveyance.

The place of supply appointed under this clause is in respect of the second limb which is supply ‘by’ the operator of the conveyance during its journey to the passenger.

Conveyance includes vessel, aircraft, train or motor vehicle.

The place of supply in respect of first limb of supply will continue to be determined by other provisions of this act.

Example - Mr. X (New Delhi) boards the New Delhi-Kota train at New Delhi.

Goods are also taken on board in New Delhi.

Mr. X purchases the goods at Jaipur during the journey.

The POS of goods is the location at which the goods are taken on board i.e. New Delhi and not Jaipur where they have been sold.

[Sec 2\(34\) of CGST Act, 2017](#) “CONVEYANCE” includes a vessel, an aircraft and a vehicle;

Place of Supply of Goods Imported into or Exported from India [Section 11]

11. The place of supply of goods,—

- (a) imported into India shall be the location of the importer;
- (b) exported from India shall be the location outside India.

Circumstances	POS
Imported into India	Location of Importer
Exported from India	Location outside India

Sec 2(10) of IGST Act, 2017 “IMPORT OF GOODS” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;

Sec 2(5) of IGST Act, 2017 “EXPORT OF GOODS” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

Place of Supply of Services where LOS and LOR is in India [Section 12]

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

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

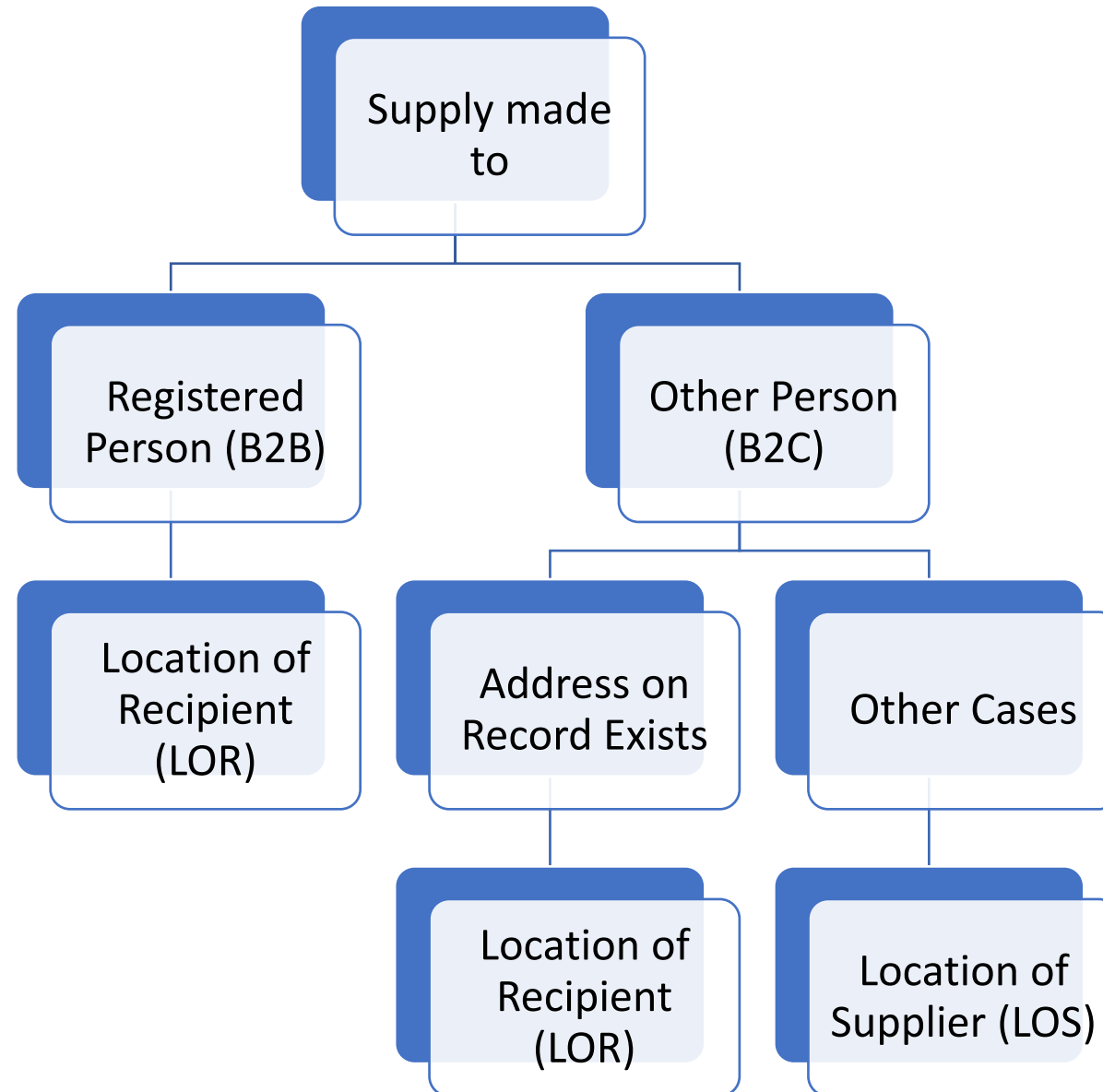
(a) made to a registered person shall be the location of such person;

(b) made to any person other than a registered person shall be,—

(i) the location of the recipient where the address on record exists; and

(ii) the location of the supplier of services in other cases.

Place of Supply of Services where LOS and LOR is in India [Section 12(2)]



Services in Relation to Immovable Property [Section 12(3)]

Sec 12(3) The place of supply of services,—

- (a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or
 - (b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or
 - (c) by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or
 - (d) any services ancillary to the services referred to in clauses (a), (b) and (c),
- shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:

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

Explanation.—Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated 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, in the absence of such contract or agreement, on such other basis as may be prescribed.

Services in Relation to Immovable Property [Section 12(3)]



(a) Directly in relation to an immovable property, including services provided by,

- Architects
- Interior decorators
- Surveyors
- Engineers and other related experts
- Estate Agents



(a) Any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or

POS - Location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located

Services in Relation to Immovable Property [Section 12(3)]



(b) by way of lodging accommodation

- hotel
- Inn
- Guest house
- Home stay
- Club
- Campsite
- House boat
- vessel



(c) by way of accommodation in any immovable property for organising

- any marriage or reception or matters related thereto,
- official, social, cultural, religious or business function
- including services provided in relation to such function at such property;

POS - Location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located

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

Services in Relation to Immovable Property [Section 12(3)]

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

Nature of Supply	Location of Immovable property/boat/vessel	Place of Supply
Supply of services relating to immovable property/boat/vessel including accommodation therein	In India	Location of such immovable property/boat/vessel
	Outside India	Location of the recipient (LOR)

Example –

- i) KTS Builders, Mumbai is constructing a factory building for PLM Pvt. Ltd., Kolkata, in New Delhi. The POS is the location of the immovable property i.e. New Delhi.
- ii) Shah and Shah, architectural firm at Kolkata, has been hired by MKF Builders of Mumbai to draw up a plan for a high rise building to be constructed by them in Ahmedabad, Gujarat. The POS is the place where the immovable property is intended to be located i.e. Ahmedabad.
- iii) Mr. Ramesh, a CA, New Delhi travels to Mumbai for business and stays in a hotel there. The POS of accommodation service is the place where the hotel is located i.e. Mumbai.
- iv) Mr X, a consulting engineer based in Mumbai, Maharashtra renders professional services in respect of an immovable property of Mr. Y, Bangalore located in Australia. Since the immovable property is located outside India, the POS of service is the location of recipient i.e. Bangalore and not the place where the immovable property is located (Australia)

Services in Relation to Immovable Property [Section 12(3)]

Explanation.—Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated 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, in the **absence of such contract or agreement**, on such other basis as may be **prescribed**.

Example of immovable property located in more than one State/Union Territory – Railway line, a national highway or a house boat

Services in Relation to Immovable Property [Section 12(3) read with Rule 4, IGST Rules, 2017]

S. No.	Type of service in relation to immovable property	Factor which determines the proportionate value of service supplied in different States/UT
1.	(i) in case of services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called (except cases where such property is a single property located in two or more contiguous States or Union territories or both) and services ancillary to such services,	the supply of services shall be treated as made in each of the respective States or Union territories, in Proportion to the number of nights stayed in such property;
2.	(ii) in case of all other services in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc., and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in two or more contiguous States or Union territories or both, and services ancillary to such services,	the supply of services shall be treated as made in each of the respective States or Union territories, in Proportion to the area of the immovable property lying in each State or Union territory;
3.	(iii) in case of services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services,	the supply of services shall be treated as made in each of the respective States or Union territories, in Proportion to the time spent by the boat or vessel in each such State or Union territory, which shall be determined on the basis of a declaration made to the effect by the service provider.

Services in Relation to Immovable Property [Section 12(3) read with Rule 4, IGST Rules, 2017]

S. No.	Type of service in relation to immovable property	Factor which determines the proportionate value of service supplied in different States/UT
1.	<p>Lodging accommodation by hotel/inn/guest house etc and ancillary services excluding the property located in 2 or more contiguous States/UT or both</p> <p>Illustration 1 : A hotel chain X charges a consolidated sum of Rs.30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night. The place of supply in this case is both in the Union territory of Delhi and in the State of Uttar Pradesh and the service shall be deemed to have been provided in the Union territory of Delhi and in the State of Uttar Pradesh in the ratio 2:1 respectively. The value of services provided will thus be apportioned as Rs.20,000/- in the Union territory of Delhi and Rs.10,000/- in the State of Uttar Pradesh.</p>	
2.	<p>Other Services provided in relation to immovable property</p> <p>Illustration 2 : There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work has been entrusted to T. The ratio of land in the two states works out to 12:8 or 3:2 (simplified). The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively. The value of the service shall be accordingly apportioned between the States.</p>	
3.	<p>Lodging accommodation by a house boat or vessel and its ancillary services</p> <p>Illustration 3 : A company C provides the service of 24 hours accommodation in a houseboat, which is situated both in Kerala and Karnataka inasmuch as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the states of Kerala and Karnataka, respectively. The value of the service shall be accordingly apportioned between the States.</p>	

Restaurant service, personal grooming/fitness/beauty and health services [Section 12(4)]



Restaurant



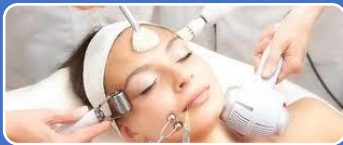
Catering Services



Personal Grooming



Fitness

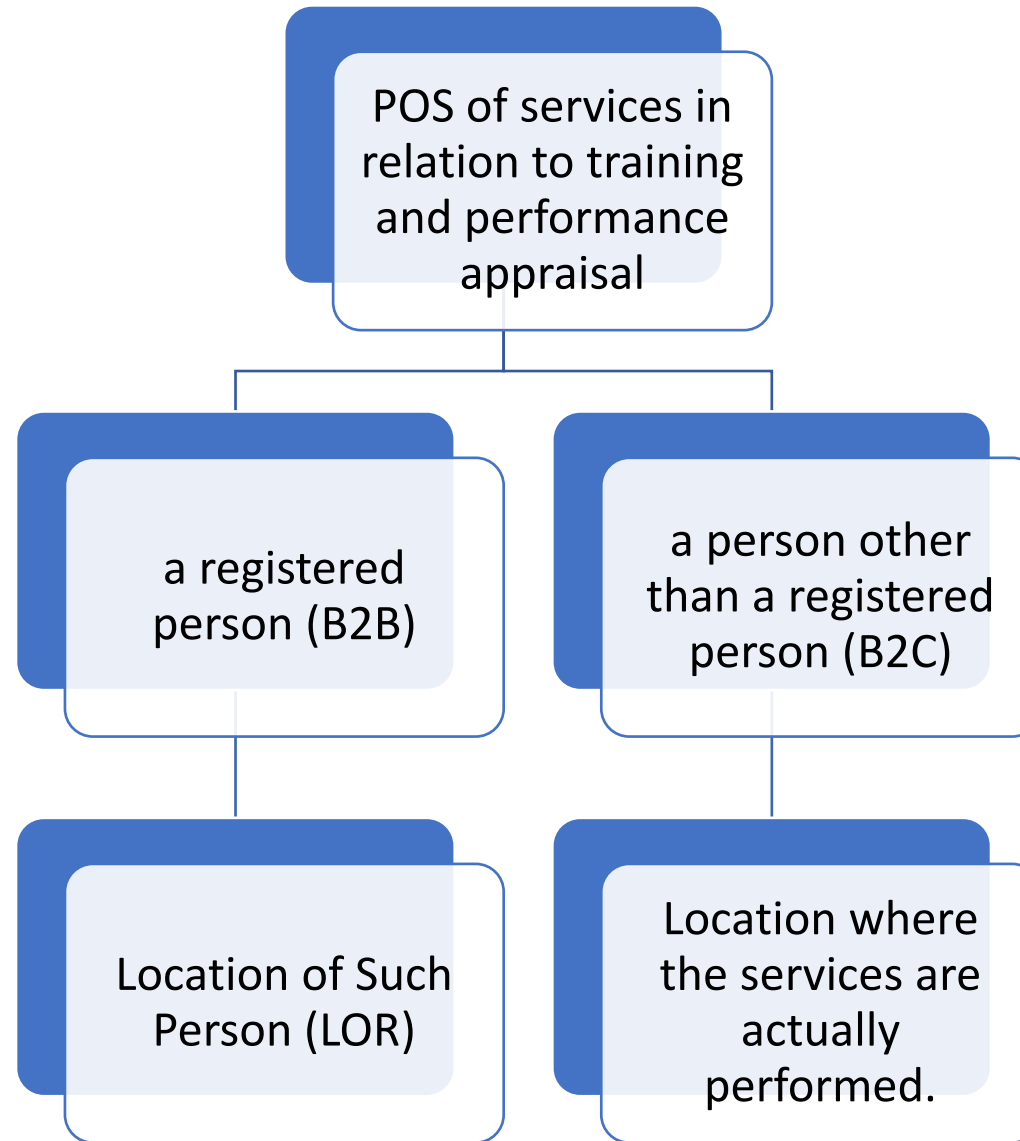


Beauty Treatment



Health service including cosmetic and plastic surgery

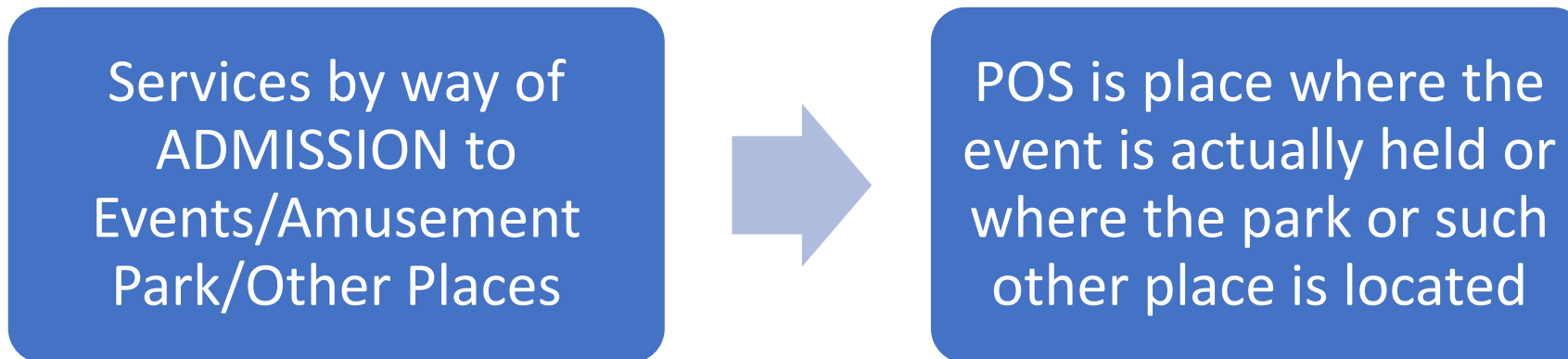
POS - shall be the location where the services are actually performed.



Services by way of ADMISSION to Events/Amusement Park/Other Places [Section 12(6)]

12(6) The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto,

shall be the place where the event is actually held or where the park or such other place is located.



Example – i) Mr. A, a resident of Ghaziabad, UP buys a ticket for a circus organized at Gurugram, Haryana by a circus company based in New Delhi. The POS is the location where the circus is held i.e. Gurugram.

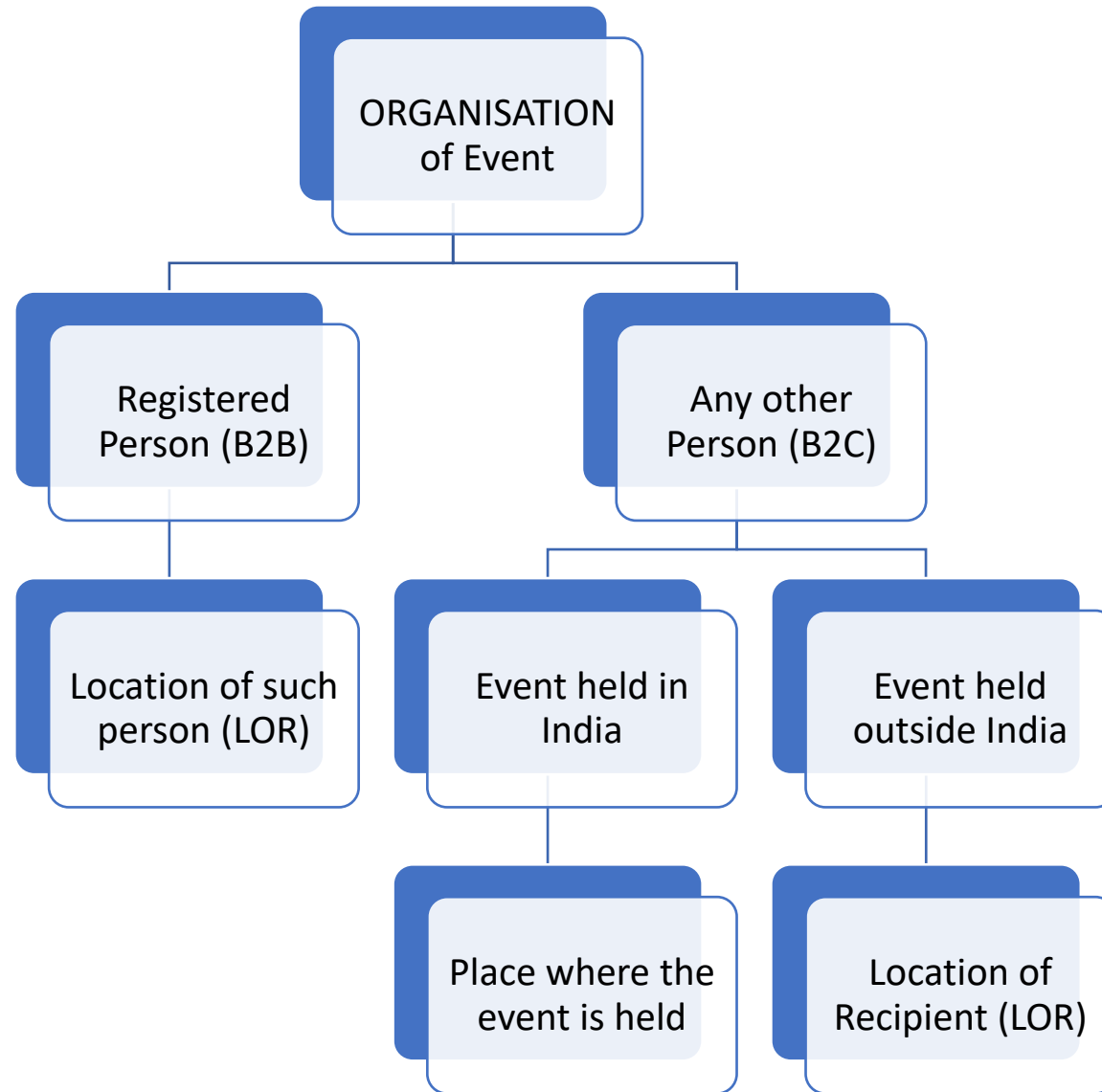
ORGANISATION of Event [Section 12(7)]

12(7) The place of supply of services provided by way of,—

- (a) organisation of a **cultural, artistic, sporting, scientific, educational or entertainment event** including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or
- (b) services **ancillary to organisation of any of the events** or services referred to in clause (a), **or assigning of sponsorship to such events,—**
 - (i) to a registered person, shall be the location of such person;
 - (ii) to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.

Explanation.—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.

ORGANISATION of Event [Section 12(7)]



ORGANISATION of Event [Section 12(7) read with Rule 5 of IGST Rules, 2017]

Example –

1. Media Events, an event management company at New Delhi organizes an award function for Shah Gold Merchants of Ahmedabad (registered in Gujarat), at Mumbai. Since the recipient is a RP, the POS is LOR i.e. Ahmedabad.
2. Media Events, an event management company at New Delhi, organizes an award function for Shah Gold Merchants of Ahmedabad (registered in Gujarat), at Mauritius. Since the recipient is RP, POS is LOR, i.e. Ahmedabad.
3. Big Wedding Planners (Chennai) is hired by Mr. Ramesh (URP based in Hyderabad) to plan and organise his wedding at Delhi. The recipient being an URP and event is held in India, POS is the location where the event is held i.e. Delhi.
4. Big Wedding Planners (Chennai) is hired by Mr. Ramesh (URP based in Hyderabad) to plan and organise his wedding at Bangkok. The recipient being an URP and event held outside India, the POS is LOR i.e. Hyderabad and not the location where the event is held i.e. Bangkok

Explanation.—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**.

Rule 5 - Illustration: An event management company E has to organise some promotional events in States S1 and S2 for a recipient R. 3 events are to be organised in S1 and 2 in S2. They charge a consolidated amount of Rs.10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as Rs. 6,00,000/- in S1 and Rs. 4,00,000/- in S2.

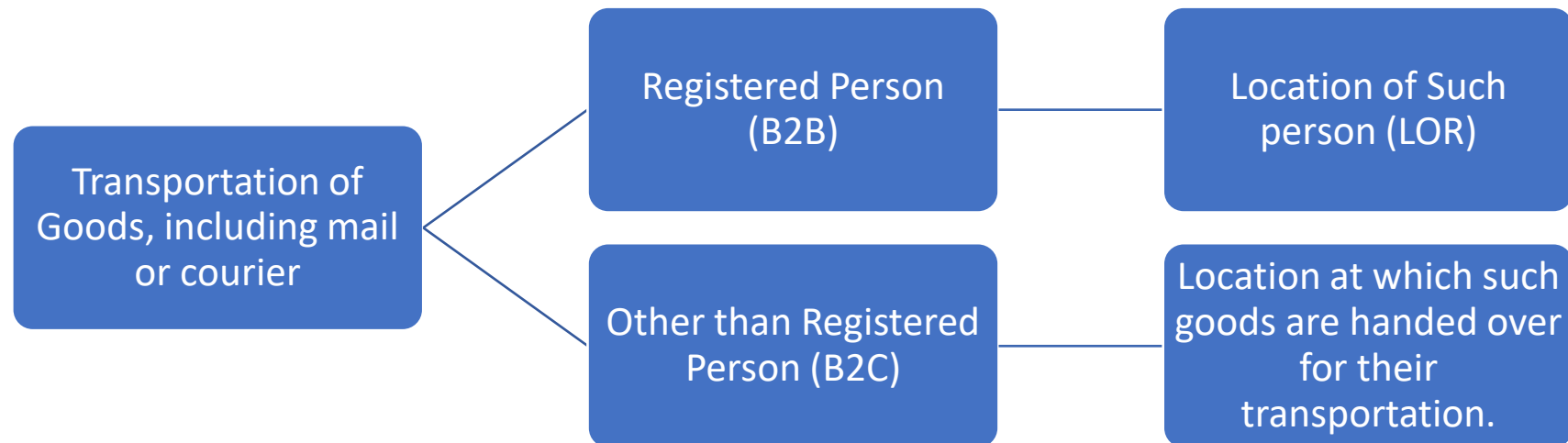
Transportation of Goods including Mail Or Courier [Section 12(8)]

12(8) The place of supply of services by way of transportation of goods, including by mail or courier to,—

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

~~[Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.]~~ **[Omitted vide The FA, 2023, w.e.f. 1-10-2023]**



Transportation of Goods including Mail [Section 12(8)]

Example –

1. M/s XYZ Pvt. Ltd. is a registered company in New Delhi. It sends its courier to Pune through M/s Brue Air Courier Service. The recipient being registered person, the POS is LOR i.e. New Delhi.
2. Mr Y, an unregistered person, of Delhi sends a courier to his brother in Amritsar, Punjab. The recipient being URP, POS is the location where goods are handed over for their transportation i.e. Delhi.
3. SQ Pvt. Ltd., a GTA based in Kanpur, UP, is hired by Haljela Enterprises (registered supplier in Kanpur) to transport its consignment of goods to a buyer in Delhi. The recipient being registered, the POS is LOR i.e. Kanpur, UP.
4. SR Pvt. Ltd., a GTA based in Noida, UP, is hired by Chhaya Trade Links (registered supplier in New Delhi) to transport its consignment of goods to a buyer in Kanpur, UP. The recipient being registered, the POS is the LOR i.e. New Delhi.
5. Mr Sashikant, a manager in a Bank, is transferred from Bareilly, UP to Bhopal, MP. Mr Sashikant's family is stationed in Kanpur, UP. He hires Gupta Carriers of Lucknow, UP (registered in UP), to transport his household goods from Kanpur to Bhopal. The recipient being URP, POS is the location where the goods are handed over for their transportation, i.e. Kanpur.
6. M/s JKS Pvt. Ltd. Is a registered company in Chennai. It ships goods to its customer in London, UK through M/s Strong Logistics, a shipping company. The goods being transported outside India, the POS is the location of destination of such goods, i.e. London (UK)

Brief History of Sec 12(8)–

A disparity was prevalent in export freight, whereby, while engaging an Indian Shipping line / airline for export would attract the levy of GST, engaging a foreign shipping line / airline would not attract the levy of GST. It may be noted that if an Indian Exporter engages a foreign shipping line / airline, it is not an import of service, as one of the conditions for qualifying as import of service is not satisfied, i.e. the place of supply is not in India (Place of supply is destination of goods which is outside India).

Thus government had added a proviso in Sec 12(8) and stated – “In order to provide a level playing field to the domestic transportation companies and promote export of goods, it is proposed that the transportation of goods from a place in India to a place outside India by a transporter located in India would not be chargeable to GST, as place of supply will be outside India.” But as per IGST Act, section 7(5)

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.

As per Section 5 of the IGST Act, IGST is leviable on all inter-state supplies. So the export transportation services provided by Indian Service providers (by aircraft or vessel), would attract IGST!

Transportation of Goods including Mail [Section 12(8)]

Thus thereafter, exemption was added in 20/2018-IGST dt 25-1-2018 but exemption was only time-bound and was extended till 1-10-2022.

Post 1-10-2022, this exemption has not been continued thus now on export freight a disparity is being created, whereby, while engaging an Indian Shipping line / airline for export would attract the levy of GST, engaging a foreign shipping line / airline would not attract the levy of GST.

So, hereafter, Indian Exporters would prefer a foreign shipping line foreign airline, rather than an Indian Shipping line / Indian Airline. Or they should opt for FOB exports and make the foreign importer to pay freight to the Indian Shipping line / Indian Airline, in which case it will amount to export of service in the hands of the Indian shipping line / airline and not attract the levy of GST.

Now w.e.f. 1-10-2023, through The FA, 2023, the government has omitted the proviso to Sec 12(8) as with the withdrawal of exemption, the proviso is not leading to the desired objective of inserting it in the first place. Thus, Clarification issued vide Circular No. 184/16/2022-GST dated 27-12-2022, also becomes redundant with the omission of proviso to Sec 12(8).

The government has w.e.f. 1-10-2023, through The FA, 2023, also omitted Sec 13(9) which stated the POS in case foreign shipping line is used. Thereby, making Sec 13(2), as the section to be used for engaging foreign shipping line. Thus, even engaging foreign shipping line will lead to services becoming 'import of services' and thus now a level playing field of different nature has been established.

Passenger Transportation Service [Section 12(9)]

12(9) The place of supply of passenger transportation service to,—

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2).

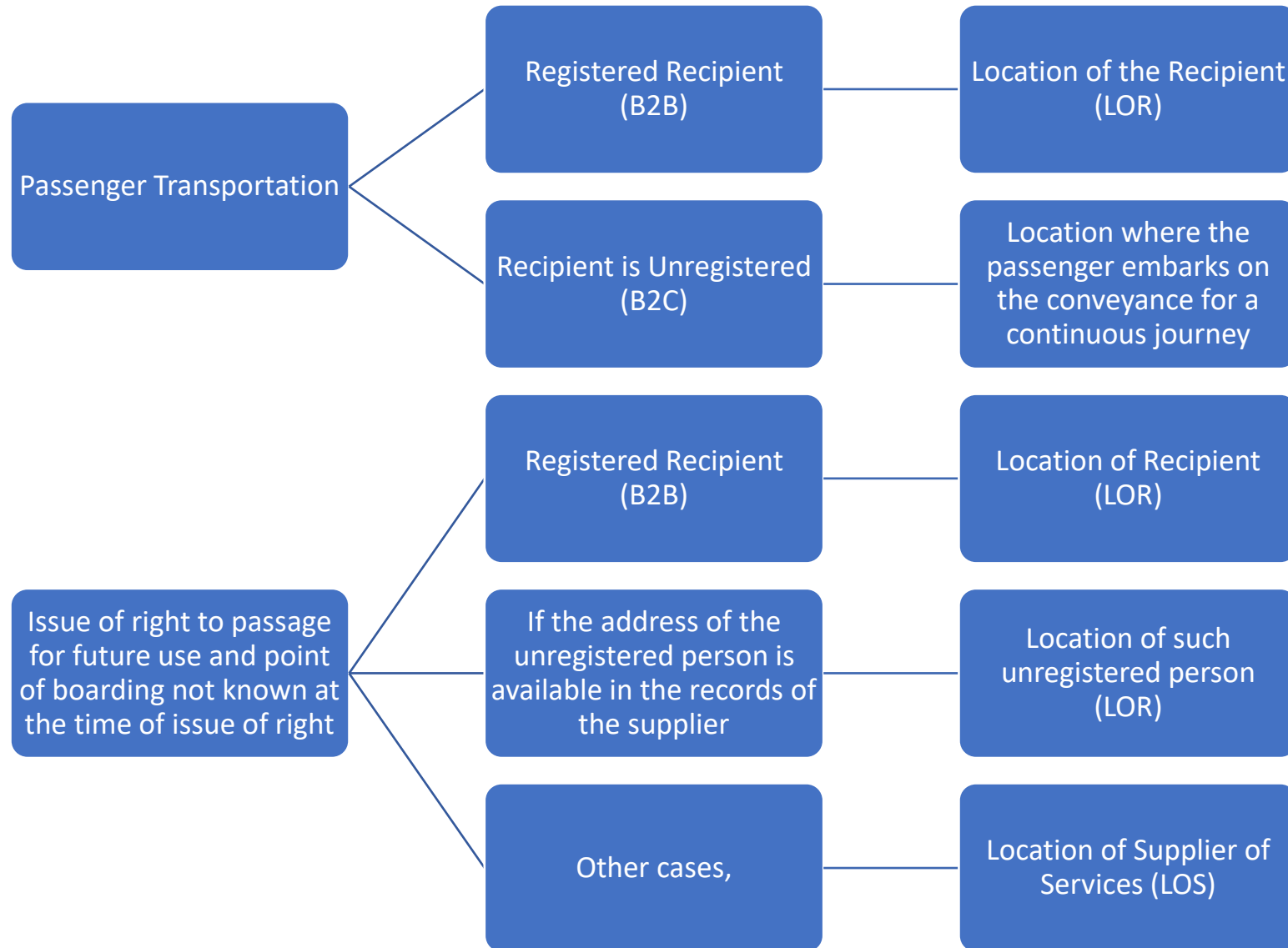
Explanation.—For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.

Sec 2(3) of IGST Act, 2017 “CONTINUOUS JOURNEY” means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which **involves no stopover between any of the legs of the journey** for which one or more separate tickets or invoices are issued.

Explanation.—For the purposes of this clause, the term “stopover” means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time;

Note – Return journey are treated as separate journey even if the tickets for the onward or return journey are issued on the same date.

Passenger Transportation Service [Section 12(9)]



Example –

1. Mr Amir (registered person in Delhi) travels from Mumbai to Bangalore in Airjet flight. Mr. Amir has brought the tickets for the journey from Airjet's office registered in Delhi. The POS is the LOR i.e. Delhi.
2. Mr. Z (unregistered person in Chennai) has come to Delhi on a vacation. He buys pre-paid Delhi Metro Card from Delhi Metro (Delhi) for hassle free commute in the NCR. Recipient being unregistered person, the POS is the address of Mr. Z i.e. Chennai. If the address of Mr. Z is not available with the Delhi Metro, the POS will be the LOS of Service i.e. Delhi.
3. Mr Ram, an unregistered person, based in Gurugram, Haryana books a two-way air journey ticket from New Delhi to Mumbai on 5th December. He leaves New Delhi on 10th December in a late-night flight and lands in Mumbai the next day. He leaves Mumbai on 14th December in a morning flight and lands in New Delhi the same day. The return journey is treated as a separate journey, even if the tickets for the onward and return journey are issued at the same time. Thus, being an URP, the POS for the outward and return journeys are the locations where the unregistered person embarks on the conveyance for the continuous journey i.e. New Delhi and Mumbai respectively.

Examples of issue of right to passage for future use-point of boarding not known at the time of issue of right –

1. An airline may issue seasonal tickets, containing say 10 leaves which could be used for travel between any two locations in the country.
2. The card issued by New Delhi metro could be used by a person located in Noida, Delhi or Faridabad, without the New Delhi metro being able to distinguish the location or journeys at the time of receipt of payment.

Service supplied on board a conveyance [Section 12(10)]

12(10) The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

Services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle



POS is Location of the first scheduled point of departure of that conveyance for the journey

Example – Mr X is travelling from Delhi to Mumbai in an Airjet flight. He desires to watch an English movie during the journey by making the necessary payment. The place of supply of such service of showing ‘movie on demand’ is the first scheduled point of departure of the conveyance for the journey i.e. Delhi

12(11) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall,—

(a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;

(b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;

(c) in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means,—

(i) through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or

(ii) by any person to the final subscriber, be the location where such prepayment is received or such vouchers are sold;

(d) in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:

Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services:

Provided further that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.

Explanation.—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 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.

Telecommunication Service [Section 12(11)]

Nature of Service	Any Other
(a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna,	be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;
(b) in case of mobile connection for telecommunication and internet services provided on post-paid basis ,	be the location of billing address of the recipient of services on the record of the supplier of services;
(c) in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means,—	
(i) through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher,	be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or
(ii) by any person to the final subscriber,	be the location where such prepayment is received or such vouchers are sold;
(d) in other cases, and	be the address of the recipient as per the records of the supplier of services (LOR)
where such address is not available,	the place of supply shall be location of the supplier of services: (LOS)
Provided further that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment,	the location of the recipient (LOR) of services on the record of the supplier of services shall be the place of supply of such services.

Explanation.—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 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**.

Rule 6 of IGST Rules, 2017

(a) The number of points in a circuit shall be determined in the following manner:

(i) in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;

(ii) any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point;

(b) the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of points lying in the State or Union territory.

Illustration 1: A company T installs a leased circuit between the Delhi and Mumbai offices of a company C. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.

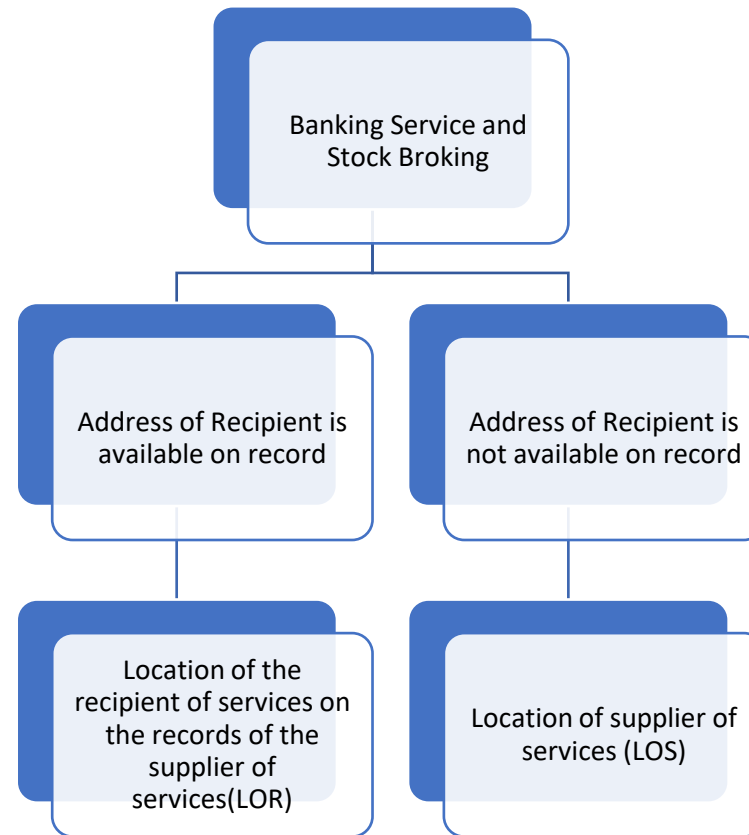
Illustration 2: A company T installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of a company C. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.

Illustration 3: A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.

Banking and Stock Broking Service [Section 12(12)]

12(12) The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:

Provided that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

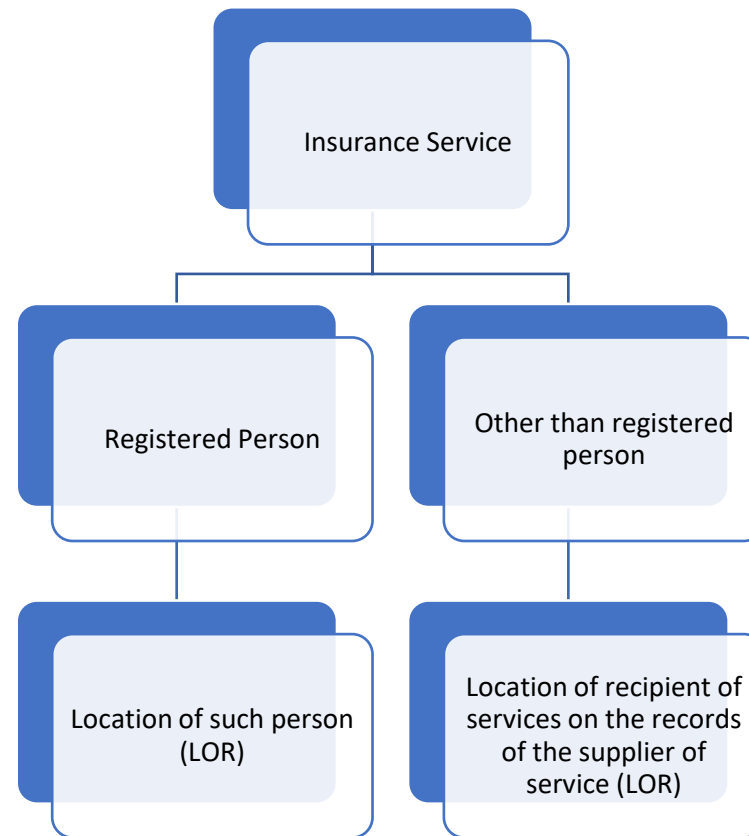


Insurance Service [Section 12(13)]

12(13) The place of supply of insurance services shall,—

(a) to a registered person, be the location of such person;

(b) to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.



Advertisement Service to Government [Section 12(14) read with Rule 3 of IGST Rule, 2017]

12(14) The place of supply of **advertisement services to the Central Government, a State Government, a statutory body or a local authority** meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services 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 or, in the absence of such contract or agreement, on such other basis as may be prescribed.

Advertisement Service to Government [Section 12(14) read with Rule 3 of IGST Rule, 2017]

S.No.	Type of Advertisement	Value of service attributable to dissemination in different State/UT where the advertisement is broadcasted/run/played/disseminated
1.	Advertisement in the case of newspapers and publications,	The amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in a State or Union territory,
2.	Advertisement through printed material like pamphlets, leaflets, diaries, calendars, T shirts etc,	the amount payable for the distribution of a specific number of such material in a particular State or Union territory
3.	Advertisements in hoardings other than those on trains ,	the amount payable for the hoardings located in each State or Union territory
4.	Advertisements placed on trains,	the breakup, calculated on the basis of the ratio of the length of the railway track in each State for that train
5.	Advertisements on the back of utility bills of oil and gas companies etc.	the amount payable for the advertisements on bills pertaining to consumers having billing addresses in such States or Union territory
6.	Advertisements on railway tickets,	the breakup, calculated on the basis of the ratio of the number of Railway Stations in each State or Union territory, when applied to the amount payable for such advertisements
7.	Advertisements over radio stations	the amount payable to such radio station, which by virtue of its name is part of a State or Union territory

Advertisement Service to Government [Section 12(14) read with Rule 3 of IGST Rule, 2017]

S.No.	Type of Advertisement	Value of service attributable to dissemination in different State/UT where the advertisement is broadcasted/run/played/disseminated
8.	Advertisement on television channels,	<p>Amount attributable to the value of advertisement service disseminated in a State shall be calculated on the basis of the viewership of such channel in such State, which in turn, shall be calculated in the following manner, namely: -</p> <ul style="list-style-type: none">(i) the channel viewership figures for that channel for a State or Union territory shall be taken from the figures published in this regard by the Broadcast Audience Research Council;(ii) the figures published for the last week of a given quarter shall be used for calculating viewership for the succeeding quarter and at the beginning, the figures for the quarter 1st July, 2017 to 30th September, 2017 shall be used for the succeeding quarter 1st October, 2017 to 31st December, 2017;(iii) where such channel viewership figures relate to a region comprising of more than one State or Union territory, the viewership figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest Census, to such viewership figures;(iv) the ratio of the viewership figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.
9.	Advertisements at cinema halls	Amount payable to a cinema hall or screens in a multiplex, in a State or Union territory,

Advertisement Service to Government [Section 12(14) read with Rule 3 of IGST Rule, 2017]

S.No.	Type of Advertisement	Value of service attributable to dissemination in different State/UT where the advertisement is broadcasted/run/played/disseminated
10.	Advertisements over internet, the service shall be deemed to have been provided all over India	<p>Amount attributable to the value of advertisement service disseminated in a State or Union territory shall be calculated on the basis of the internet subscribers in such State or Union territory, which in turn, shall be calculated in the following manner, namely:-</p> <ul style="list-style-type: none">(i) the internet subscriber figures for a State shall be taken from the figures published in this regard by the Telecom Regulatory Authority of India ;(ii) the figures published for the last quarter of a given financial year shall be used for calculating the number of internet subscribers for the succeeding financial year and at the beginning, the figures for the last quarter of financial year 2016- 2017 shall be used for the succeeding financial year 2017-2018;(iii) where such internet subscriber figures relate to a region comprising of more than one State or Union territory, the subscriber figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory , as determined in the latest census, to such subscriber figures;(iv) the ratio of the subscriber figures for each State or Union territory as so calculated, when applied to the amount payable for this service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

Advertisement Service to Government [Section 12(14) read with Rule 3 of IGST Rule, 2017]

S.No.	Type of Advertisement	Value of service attributable to dissemination in different State/UT where the advertisement is broadcasted/run/played/disseminated
11.	Advertisements through short messaging service	<p>the amount attributable to the value of advertisement service disseminated in a State or Union territory shall be calculated on the basis of the telecommunication (herein after referred to as telecom) subscribers in such State or Union territory , which in turn, shall be calculated in the following manner, namely:-</p> <ul style="list-style-type: none">(a) the number of telecom subscribers in a telecom circle shall be ascertained from the figures published by the Telecom Regulatory Authority of India on its website www.trai.gov.in ;(b) the figures published for a given quarter, shall be used for calculating subscribers for the succeeding quarter and at the beginning , the figures for the quarter 1st July, 2017 to 30th September, 2017 shall be used for the succeeding quarter 1st October, 2017 to 31st December, 2017;(c) where such figures relate to a telecom circle comprising of more than one State, or Union territory, the subscriber figures for that State or Union territory shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest census, to such subscriber figures.(d) the ratio of the subscriber figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

Advertisement Service to Government [Section 12(14) read with Rule 3 of IGST Rule, 2017]

Illustration: ABC is a government agency which deals with all the advertisement and publicity of the Government. It has various wings dealing with various types of publicity. In furtherance thereof, it issues release orders to various agencies and entities. These agencies and entities thereafter provide the service and then issue invoices to ABC indicating the amount to be paid by them. ABC issues a release order to a newspaper for an advertisement on 'Beti bachao beti padhao', to be published in the newspaper DEF (whose head office is in Delhi) for the editions of Delhi, Pune, Mumbai, Lucknow and Jaipur. The release order will have details of the newspaper like the periodicity, language, size of the advertisement and the amount to be paid to such a newspaper. The place of supply of this service shall be in the Union territory of Delhi, and the States of Maharashtra, Uttar Pradesh and Rajasthan. The amounts payable to the Pune and Mumbai editions would constitute the proportion of value for the state of Maharashtra which is attributable to the dissemination in Maharashtra. Likewise the amount payable to the Delhi, Lucknow and Jaipur editions would constitute the proportion of value attributable to the dissemination in the Union territory of Delhi and States of Uttar Pradesh and Rajasthan respectively. DEF should issue separate State wise and Union territory wise invoices based on the editions.

Illustration: As a part of the campaign 'Swachh Bharat', ABC has engaged a company GH for printing of 100,000 pamphlets (at a total cost of ₹ 100,000) to be distributed in the states of Haryana, Uttar Pradesh and Rajasthan. In such a case, ABC should ascertain the breakup of the pamphlets to be distributed in each of the three States i.e. Haryana, Uttar Pradesh and Rajasthan, from the Ministry or department concerned at the time of giving the print order. Let us assume that this breakup is 20,000, 50,000 and 30,000 respectively. This breakup should be indicated in the print order. The place of supply of this service is in Haryana, Uttar Pradesh and Rajasthan. The ratio of this breakup i.e. 2:5:3 will form the basis of value

Advertisement Service to Government [Section 12(14) read with Rule 3 of IGST Rule, 2017]

attributable to the dissemination in each of the three States. Separate invoices will have to be issued State wise by GH to ABC indicating the value pertaining to that State i.e. ₹ 20,000 - Haryana, ₹ 50,000 - Uttar Pradesh and ₹ 30,000 - Rajasthan.

Illustration: ABC as part of the campaign 'Saakshar Bharat' has engaged a firm IJ for putting up hoardings near the Airports in the four metros i.e. Delhi, Mumbai, Chennai and Kolkata . The release order issued by ABC to IJ will have the citywise, locationwise breakup of the amount payable for such hoardings. The place of supply of this service is in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal. In such a case, the amount actually paid to IJ for the hoardings in each of the four metros will constitute the value attributable to the dissemination in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal respectively. Separate invoices will have to be issued State wise and Union territory wise by IJ to ABC indicating the value pertaining to that State or Union territory.

Illustration: ABC places an order on KL for advertisements to be placed on a train with regard to the "Janani Suraksha Yojana". The length of a track in a state will vary from train to train. Thus for advertisements to be placed on the Hazrat Nizamuddin Vasco Da Gama Goa Express which runs through Delhi, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa, KL may ascertain the total length of the track from Hazrat Nizamuddin to Vasco Da Gama as well as the length of the track in each of these States and Union territory from the website www.indianrail.gov.in. The place of supply of this service is in the Union territory of Delhi and States of Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa. The value of the supply in each of these States and Union territory attributable to the

Advertisement Service to Government [Section 12(14) read with Rule 3 of IGST Rule, 2017]

dissemination in these States will be in the ratio of the length of the track in each of these States and Union territory. If this ratio works out to say 0.5:0.5: 2:2 :3:3:1 , and the amount to be paid to KL is ₹ 1,20,000, then KL will have to calculate the Statewise and Union territory wise breakup of the value of the service, which will be in the ratio of the length of the track in each State and Union territory. In the given example the Statewise and Union territory wise breakup works out to Delhi (₹ 5,000), Haryana(₹ 5,000), Uttar Pradesh (₹ 20,000), Madhya Pradesh (₹ 20,000), Maharashtra (₹ 30,000), Karnataka (₹ 30,000) and Goa (₹ 10,000). Separate invoices will have to be issued State wise and Union territory wise by KL to ABC indicating the value pertaining to that State or Union territory.

Illustration: ABC has issued a release order to MN for display of advertisements relating to the “Ujjwala” scheme on the railway tickets that are sold from all the Stations in the States of Madhya Pradesh and Chattisgarh. The place of supply of this service is in Madhya Pradesh and Chattisgarh. The value of advertisement service attributable to these two States will be in the ratio of the number of railway stations in each State as ascertained from the Railways or from the website www.indianrail.gov.in. . Let us assume that this ratio is 713:251 and the total bill is ₹ 9,640. The breakup of the amount between Madhya Pradesh and Chattisgarh in this ratio of 713:251 works out to ₹7,130 and ₹2,510 respectively. Separate invoices will have to be issued State wise by MN to ABC indicating the value pertaining to that State .

Advertisement Service to Government [Section 12(14) read with Rule 3 of IGST Rule, 2017]

Illustration: For an advertisement on ‘Pradhan Mantri Ujjwala Yojana’, to be broadcast on a FM radio station OP, for the radio stations of OP Kolkata, OP Bhubaneswar, OP Patna, OP Ranchi and OP Delhi, the release order issued by ABC will show the breakup of the amount which is to be paid to each of these radio stations. The place of supply of this service is in West Bengal, Odisha, Bihar, Jharkhand and Delhi. The place of supply of OP Delhi is in Delhi even though the studio may be physically located in another state. Separate invoices will have to be issued State wise and Union territory wise by MN to ABC based on the value pertaining to each State or Union territory.

Illustration: ABC issues a release order with QR channel for telecasting an advertisement relating to the “Pradhan Mantri Kaushal Vikas Yojana” in the month of November, 2017. In the first phase, this will be telecast in the Union territory of Delhi, States of Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. The place of supply of this service is in Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. In order to calculate the value of supply attributable to Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand, QR has to proceed as under—

- I. QR will ascertain the viewership figures for their channel in the last week of September 2017 from the Broadcast Audience Research Council. Let us assume it is 100,000 for Delhi and 200,000 for the region comprising of Uttar Pradesh and Uttarakhand and 100,00 for the region comprising of Bihar and Jharkhand;
- II. Since the Broadcast Audience Research Council clubs Uttar Pradesh and Uttarakhand into one region and Bihar and Jharkhand into another region, QR will ascertain the population figures for Uttar Pradesh, Uttarakhand, Bihar and Jharkhand from the latest census;

Advertisement Service to Government [Section 12(14) read with Rule 3 of IGST Rule, 2017]

- III. by applying the ratio of the populations of Uttar Pradesh and Uttarakhand, as so ascertained, to the Broadcast Audience Research Council viewership figures for their channel for this region, the viewership figures for Uttar Pradesh and Uttarakhand and consequently the ratio of these viewership figures can be calculated. Let us assume that the ratio of the populations of Uttar Pradesh and Uttarakhand works out to 9: 1. When this ratio is applied to the viewership figures of 200,000 for this region, the viewership figures for Uttar Pradesh and Uttarakhand work out to 180,000 and 20,000 respectively;
- IV. in a similar manner the breakup of the viewership figures for Bihar and Jharkhand can be calculated. Let us assume that the ratio of populations is 4:1 and when this is applied to the viewership figure of 100,000 for this region, the viewership figure for Bihar and Jharkhand works out to 80,000 and 20,000 respectively;
- V. the viewership figure for each State works out to Delhi (100,000), Uttar Pradesh (180,000), Uttarakhand (20,000), Bihar (80,000) and Jharkhand (20,000). The ratio is thus 10:18:2:8:2 or 5:9:1:4:1(simplification).
- VI. this ratio has to be applied when indicating the breakup of the amount pertaining to each State. Thus if the total amount payable to QR by ABC is ₹20,00,000, the State wise breakup is ₹ 500,000 (Delhi), ₹ 900,000 (Uttar Pradesh) ₹ 100,000 (Uttarakhand), ₹ 400,000 (Bihar) and ₹ 100,000 (Jharkhand). Separate invoices will have to be issued State wise and Union territory wise by QR to ABC indicating the value pertaining to that State or Union territory.

Advertisement Service to Government [Section 12(14) read with Rule 3 of IGST Rule, 2017]

Illustration: ABC commissions ST for an advertisement on 'Pradhan Mantri Awas Yojana' to be displayed in the cinema halls in Chennai and Hyderabad. The place of supply of this service is in the states of Tamil Nadu and Telangana. The amount actually paid to the cinema hall or screens in a multiplex, in Tamil Nadu and Telangana as the case may be, is the value of advertisement service in Tamil Nadu and Telangana respectively. Separate invoices will have to be issued State wise and Union territory wise by ST to ABC indicating the value pertaining to that State.

Illustration: ABC issues a release order to WX for a campaign over internet regarding linking Aadhaar with one's bank account and mobile number. WX runs this campaign over certain websites. In order to ascertain the statewise breakup of the value of this service which is to be reflected in the invoice issued by WX to ABC, WX has to first refer to the Telecom Regulatory Authority of India figures for quarter ending March, 2017, as indicated on their website www.trai.gov.in. These figures show the service area wise internet subscribers. There are 22 service areas. Some relate to individual States some to two or more States and some to part of one State and another complete State. Some of these areas are metropolitan areas. In order to calculate the State wise breakup, first the State wise breakup of the number of internet subscribers is arrived at. (In case figures of internet subscribers of one or more States are clubbed, the subscribers in each State is to be arrived at by applying the ratio of the respective populations of these States as per the latest census.). Once the actual number of subscribers for each State has been determined, the second step for WX involves calculating the State wise ratio of internet subscribers. Let us assume that this works out to 8: 1 : 2... and so on for Andhra Pradesh, Arunachal Pradesh, Assam..... and so on. The third step for WX will be to apply these ratios to the total amount payable to WX so as to arrive at the value attributable to each State. Separate invoices will have to be issued State wise and Union territory wise by WX to ABC indicating the value pertaining to that State or Union territory.

Advertisement Service to Government [Section 12(14) read with Rule 3 of IGST Rule, 2017]

Illustration: ABC commissions UV to send short messaging service to voters asking them to exercise their franchise in elections to be held in Maharashtra and Goa. The place of supply of this service is in Maharashtra and Goa. The telecom circle of Maharashtra consists of the area of the State of Maharashtra (excluding the areas covered by Mumbai which forms another circle) and the State of Goa. When calculating the number of subscribers pertaining to Maharashtra and Goa, UV has to -

- I. obtain the subscriber figures for Maharashtra circle and Mumbai circle and add them to obtain a combined figure of subscribers;
- II. obtain the figures of the population of Maharashtra and Goa from the latest census and derive the ratio of these two populations;
- III. this ratio will then have to be applied to the combined figure of subscribers so as to arrive at the separate figures of subscribers pertaining to Maharashtra and Goa;
- IV. the ratio of these subscribers when applied to the amount payable for the short messaging service in Maharashtra circle and Mumbai circle, will give breakup of the amount pertaining to Maharashtra and Goa. Separate invoices will have to be issued State wise by UV to ABC indicating the value pertaining to that State.

Illustration: The telecom circle of Andhra Pradesh consists of the areas of the States of Andhra Pradesh, Telangana and Yanam, an area of the Union territory of Puducherry. The subscribers attributable to Telangana and Yanam will have to be excluded when calculating the subscribers pertaining to Andhra Pradesh.

POS in case of Advertising through hoardings and bill-boards

Place of supply in case of supply of services in respect of advertising sector as clarified through Circular No. 203/15/2023-GST dated 27-10-2023 –

Supply of space or supply of rights to use the space on the hoardings/structures belonging to vendor when such space is given for displaying advertisement is being discussed under this heading.

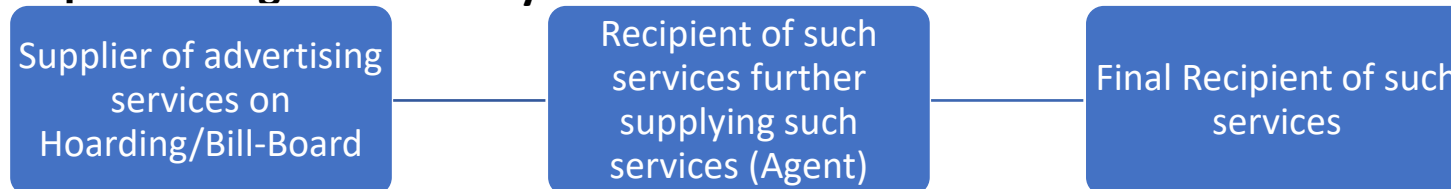
Place of supply of service in such cases shall be governed by the provisions of section 12(3)(a) of IGST Act i.e. it will be covered under renting of immovable property and such a supply will always be liable to CGST+SGST and the recipient will be eligible to take ITC only when he and supplier are situated in the same state.

On the other hand, advertising services may be provided by a supplier, to a recipient on the terms that

- a) Supplier either owns such bill board/hoarding or takes it on rent from another supplier and
- b) held responsible for display of advertisement,

The scenario will become one in which the supplier of services is an agent of the main person supplying service of advertising on hoarding and bill-boards and as per Sec 2(105) of CGST Act, 2017 “Supplier” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

This situation can be depicted diagrammatically as -



POS in case of Advertising through hoardings and bill-boards

So, my interpretation of law is that since supplier includes an agent acting as such on behalf of such supplier and thus agent in this case will also issue invoice of renting of immovable property as per Sec 12(3)(a) and such a supply will always be liable to CGST+SGST and final recipient will be eligible to take ITC only when he and supplier are situated in the same state.

But CBIC has clarified otherwise in its Circular No. 203/15/2023-GST dt. 27-10-2023, and said that such services will be classified as advertising services and place of supply will be determined in terms of Sec 12(2) of the IGST Act, 2017.

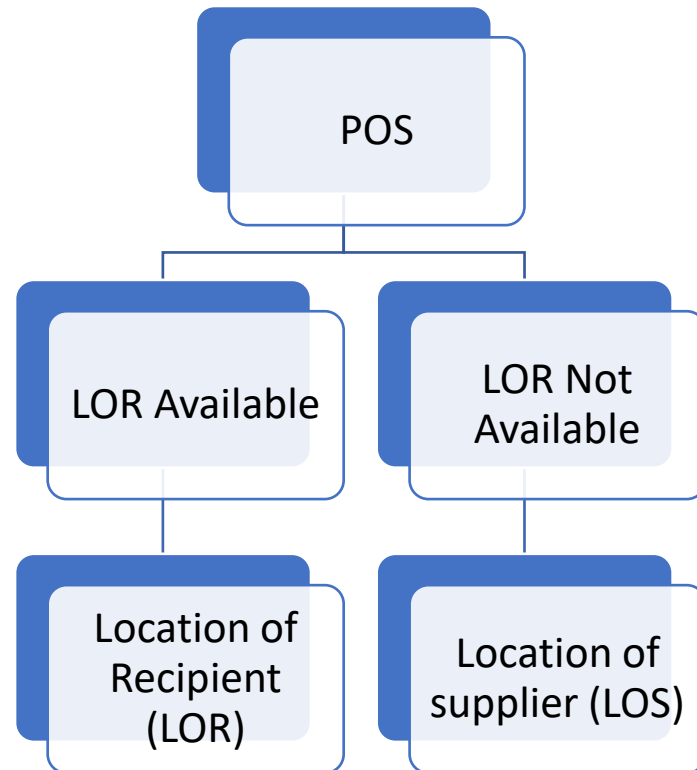
We already know that CBIC circulars are binding on the government and thus, it is in taxpayer's interest to take the benefit of CBIC's benevolence.

Place of Supply of Services where LOS or LOR is outside India [Section 13]

13(1) 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.

13(2) 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:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.



13(3) The place of supply of the following services shall be the location where the services are actually performed, namely:—

(a) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process;

(b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

Performance Based Services [Section 13(3)]

S. No.	Nature of Supply	Place of Supply
1.	Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:	Location where the services are actually performed
2.	Services are provided from a remote location by way of electronic means,	Location where goods are situated at the time of supply of services:
3.	Services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process;	Location of the Recipient or Location of the Supplier, if location of recipient is not available
4.	Services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.	Location where the services are actually performed
5.	Where any services is supplied at more than one location, including a location in the taxable territory (Sec 13(6))	Location in the taxable territory
6.	Where the services are supplied in more than one State or Union territory (Sec 13(7))	Each of the respective States or Union territories

Example –

1. Mr Y (Delhi) imports a machine from Germany for being installed in his factory at New Delhi. To install such machine, Mr. Y takes the service of an engineer who comes to India from Germany for this specific installation. The POS of installation service, which requires the physical presence of machinery, is the location where the service is actually performed, i.e. Delhi.
2. A software company located in USA takes services of a software company located in Bangalore to service its software in USA. The Indian software company provides its services through electronic means from its office in India. The POS is the location where goods are situated at the time of supply of service i.e. USA.
3. ACB Ltd., Hyderabad has exported a machinery to a company in Indonesia. The machine stops functioning and is thus, imported by ACB Ltd. For free repairs in terms of the sale contract. The machine is exported after repairs. The POS of repair service is the location of the recipient i.e. Indonesia.
4. SQ Pvt Ltd. Imports raw diamonds from a diamond merchant in Belgium for the purpose of cutting, polishing and furnishing the same. After the work is completed, the finished diamond are exported to the diamond merchant in Belgium. The POS of job work undertaken by SQ Pvt. Ltd. Is the location of the recipient i.e. Belgium.
5. Mr. C, a hair stylist registered in Delhi, travels to Singapore to provide his services to Mr Y, a resident of Singapore. The POS is the location where the services are actually performed i.e. Singapore.
6. ST Consultants, New Delhi, bags a contract for doing a market research for a vehicle manufacturing company based in South Korea, in respect of its upcoming model of a car. The research is to be carried out in five countries including New Delhi in India. Since the services are supplied at more than one location including a location in the taxable territory, the POS is the location in the taxable territory, New Delhi.

Place of Supply of Services where LOS or LOR is outside India [Section 13]

Circular No. 103/22/2019-GST dt 28-6-2019

S.No.	Issue	Clarification
1.	<p>Various services are being provided by the port authorities to its clients in relation to cargo handling.</p> <p>Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons, movement of unloaded cargo to plot and staking hereof, movement of unloaded cargo to berth, shipment/loading on vessel etc.</p> <p>Doubts have been raised about determination of place of supply for such services i.e. whether the same would be determined in terms of the provisions contained in sub-section (2) of Section 12 or sub-section (2) of Section 13 of the IGST Act, as the case may be or the same shall be determined in terms of the provisions contained in sub-section (3) of Section 12 of the IGST Act.</p>	<p>It is hereby clarified that such services are ancillary to or related to cargo handling services and are not related to immovable property.</p> <p>Accordingly, the place of supply of such services will be determined as per the provisions contained in sub-section (2) of Section 12 or sub-section (2) of Section 13 of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.</p>

Place of Supply of Services where LOS or LOR is outside India [Section 13]

Circular No. 103/22/2019-GST dt 28-6-2019

S.No.	Issue	Clarification
1.	Doubts have been raised about the place of supply in case of supply of various services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India?	<p>Place of supply in case of performance based services is to be determined as per the provisions contained in clause (a) of sub-section (3) of Section 13 of the IGST Act and generally the place of services is where the services are actually performed.</p> <p>But an exception has been carved out in case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.</p> <p>In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India are not put to any use in India, the place of supply would be determined as per the provisions contained in sub-section (2) of Section 13 of the IGST Act.</p>

Circular No. 118/37/2019-GST dt 11-10-2019

S.No.	Issue
1.	<p>A number of companies that are part of the growing Electronics Semiconductor and Design Manufacturing (ESDM) industry in India are engaged in the process of developing software and designing integrated circuits electronically for customers located overseas. The client/customer electronically provides Indian development and design companies with design requirements and Intellectual Property blocks (“IP blocks”, reusable units of software logic and design layouts that can be combined to form newer designs).</p> <p>Based on these, the Indian company digitally integrates the various IP blocks to develop the software and the silicon or hardware design. These designs are communicated abroad (in industry standard electronic formats) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs. In addition, the software developed is also integrated upon or customized to this hardware. On some occasions, samples of such prototype hardware are then provided back to the Indian development and design companies to test and validate the software and design that has been developed to ensure that it is error free.</p> <p>The trade has requested clarification on whether provision of hardware prototypes and samples and testing thereon lends these services the character of performance-based services in respect of “goods required to be made physically available by the recipient to the provider”.</p>

Place of Supply of Services where LOS or LOR is outside India [Section 13]

Circular No. 118/37/2019-GST dt 11-10-2019

S.No.	Clarification
1.	<p>In contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation.</p> <p>Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted.</p> <p>Therefore, it is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.</p>

Service are supplied at more than 1 State [Sec 13(7) read with rule 7 of IGST Rules,2017]

Sec 13(7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be 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.

S.No.	Cases	Manner of computing the proportionate value of service
1.	in the case of services supplied on the same goods,	by equally dividing the value of the service in each of the States and Union territories where the service is performed;
2.	in the case of services supplied on different goods,	by taking the ratio of the invoice value of goods in each of the States and Union territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory;
3.	in the case of services supplied to individuals,	by applying the generally accepted accounting principles.

Illustration-1: A company C which is located in Kolkata is providing the services of testing of a dredging machine and the testing service on the machine is carried out in Orissa and Andhra Pradesh. The place of supply is in Orissa and Andhra Pradesh and the value of the service in Orissa and Andhra Pradesh will be ascertained by dividing the value of the service equally between these two States.

Illustration-2: A company C which is located in Delhi is providing the service of servicing of two cars belonging to Mr. X. One car is of manufacturer J and is located in Delhi and is serviced by its Delhi workshop. The other car is of manufacturer A and is located in Gurugram and is serviced by its Gurugram workshop . The value of service attributable to the Union Territory of Delhi and the State of Haryana respectively shall be calculated by applying the ratio of the invoice value of car J and the invoice value of car A, to the total value of the service.

Service are supplied at more than 1 State [Sec 13(7) read with rule 7 of IGST Rules,2017]

Sec 13(7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be 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.

S.No.	Cases	Manner of computing the proportionate value of service
		Illustration-3: A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles.

Service in relation to Immovable Property [Section 13(4)]

Sec 13(4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

S. No.	Nature of Supply	Place of Supply
1.	Services supplied directly in relation to an immovable property, <ul style="list-style-type: none">• including services supplied in this regard by experts and estate agents,• supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called,• grant of rights to use immovable property,• services for carrying out or co ordination of construction work,• including that of architects or interior decorators,	Location of immovable property
2.	Above services supplied at more than one location, including a location in the taxable territory (Sec 13(6))	Location in the taxable territory
3.	Above services supplied in more than one State/Union territory (Sec 13(7))	Each of State/Union Territory

Example –

1. Mr. C, an architect (New Delhi), provides professional services to Mr. Z of New York in relation to his immovable property located in Pune. The POS is the location of immovable property, i.e. Pune.
2. Mr. D, an architect (New Delhi), enters into a contract with Mr. Y of New York to provide professional services in respect of immovable properties of Mr. Y in Pune and New York. Since the immovable properties are located in more than one location including a location in the taxable territory, the POS is the location in the taxable territory i.e. Pune.

Service by way of admission to and/or organization of events or celebrations [Section 13(5)]

13(5) The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held.

S. No.	Nature of Supply	Place of Supply
1.	Services supplied by way of admission to, or organisation of <ul style="list-style-type: none">• a cultural, artistic, sporting, scientific, educational or entertainment event, or• a celebration, conference, fair, exhibition or• similar events, and of services ancillary to such admission or organization	Place where the event is actually held
2.	Above services supplied at more than one location, including a location in the taxable territory (Sec 13(6))	Location in the taxable territory
3.	Above services supplied in more than one State/Union territory (Sec 13(7))	Each of State/Union Territory

Example –

1. A circus team from Russia organizes a circus in New Delhi. The POS is the location where the event is actually held i.e. New Delhi
2. An event management company registered in New Delhi organises an art exhibition displaying works of an international painter based in Dubai. The exhibition is organised in 3 countries including New Delhi. Since the service is supplied at more than one location including a location in taxable territory, POS is New Delhi.

Banking and Financial services, Intermediary services and Hiring of means of transport

[Section 13(8)]

13(8) The place of supply of the following services shall be the location of the supplier of services, namely:—

- (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
- (b) intermediary services;
- (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of 1 month.

S. No.	Nature of Supply	Place of Supply
1.	Services, namely:— (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders; (b) intermediary services; (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of 1 month.	Location of supplier of services (LOS)

Sec 2(13) “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 own account;

Case Law – M/s Infinera India Pvt Ltd, AAAR Karnataka, Order No. KAR/AAAR-09/2019-20 dt 20-1-2020 –

Marketing services provided by 100% subsidiary where price decisions and negotiations are done with the customer by Holding Co. in USA will come under the purview of Intermediary service.

Banking and Financial services, Intermediary services and Hiring of means of transport

[Section 13(8)]

Circular No. 159/15/2021-GST dated 20th Sept, 2021

1. Clarification on doubts related to scope of “Intermediary”

Para 2. Scope of Intermediary services –

2.1 ‘Intermediary’ has been defined in the sub-section (13) of section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST” Act) as under– “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 own account.

2.2 The concept of ‘intermediary’ was borrowed in GST from the Service Tax Regime. The definition of ‘intermediary’ in the Service Tax law as given in Rule 2(f) of Place of Provision of Services Rules, 2012 issued vide notification No. 28/2012-ST, dated 20-6-2012 was as follows: “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ‘main’ service) or a supply of goods, between two or more persons, but does not include a person who provides the main service or supplies the goods on his account;”

2.3 From the perusal of the definition of “intermediary” under IGST Act as well as under Service Tax law, it is evident that there is broadly no change in the scope of intermediary services in the GST regime vis-à-vis the Service Tax regime, except addition of supply of securities in the definition of intermediary in the GST Law.

Banking and Financial services, Intermediary services and Hiring of means of transport

[Section 13(8)]

Para 3. Primary Requirements for intermediary services –

The concept of intermediary services, as defined above, requires some basic prerequisites, which are discussed below:

3.1 Minimum of Three Parties: By definition, an intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons. It is thus a natural corollary that the arrangement requires a minimum of three parties, two of them transacting in the supply of goods or services or securities (the main supply) and one arranging or facilitating (the ancillary supply) the said main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service. An intermediary essentially “arranges or facilitates” another supply (the “main supply”) between two or more other persons and, does not himself provide the main supply.

3.2 Two distinct supplies: As discussed above, there are two distinct supplies in case of provision of intermediary services; (1) Main supply, between the two principals, which can be a supply of goods or services or securities; (2) Ancillary supply, which is the service of facilitating or arranging the main supply between the two principals. This ancillary supply is supply of intermediary service and is clearly identifiable and distinguished from the main supply. A person involved in supply of main supply on principal to principal basis to another person cannot be considered as supplier of intermediary service.

3.3 Intermediary service provider to have the character of an agent, broker or any other similar person: The definition of “intermediary” itself provides that intermediary service provider means a broker, an agent or any other person, by whatever name called...”. This part of the definition is not inclusive but uses the expression “means” and does not expand the definition by any known expression of expansion such as “and includes”.

[Section 13(8)]

The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a subsidiary role for the intermediary. It must arrange or facilitate some other supply, which is the main supply, and does not himself provides the main supply. Thus, the role of intermediary is only supportive.

3.4 Does not include a person who supplies such goods or services or both or securities on his own account: The definition of intermediary services specifically mentions that intermediary “does not include a person who supplies such goods or services or both or securities on his own account”. Use of word “such” in the definition with reference to supply of goods or services refers to the main supply of goods or services or both, or securities, between two or more persons, which are arranged or facilitated by the intermediary. It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal to principal basis, the said supply cannot be covered under the scope of “intermediary”.

3.5 Sub-contracting for a service is not an intermediary service: An important exclusion from intermediary is sub-contracting. The supplier of main service may decide to outsource the supply of the main service, either fully or partly, to one or more sub-contractors. Such sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary. For instance, ‘A’ and ‘B’ have entered into a contract as per which ‘A’ needs to provide a service of, say, Annual Maintenance of tools and machinery to ‘B’. ‘A’ subcontracts a part or whole of it to ‘C’. Accordingly, ‘C’ provides the service of annual maintenance to ‘A’ as part of such sub-contract, by providing annual maintenance of tools and machinery to the customer of ‘A’, i.e. to ‘B’ on behalf of ‘A’.

Some illustration have also been given to clarify the above points.

[Section 13(8)]

Some illustration have also been given to clarify the above points.

Illustration 1 'A' is a manufacturer and supplier of a machine. 'C' helps 'A' in selling the machine by identifying client 'B' who wants to purchase this machine and helps in finalizing the contract of supply of machine by 'A' to 'B'. 'C' charges 'A' for his services of locating 'B' and helping in finalizing the sale of machine between 'A' and 'B', for which 'C' invoices 'A' and is paid by 'A' for the same. While 'A' and 'B' are involved in the main supply of the machinery, 'C', is facilitating the supply of machine between 'A' and 'B'. In this arrangement, 'C' is providing the ancillary supply of arranging or facilitating the 'main supply' of machinery between 'A' and 'B' and therefore, 'C' is an intermediary and is providing intermediary service to 'A'.

Illustration 2 'A' is a software company which develops software for the clients as per their requirement. 'A' has a contract with 'B' for providing some customized software for its business operations. 'A' outsources the task of design and development of a particular module of the software to 'C', for which "C" may have to interact with 'B', to know their specific requirements. In this case, 'C' is providing main supply of service of design and development of software to 'A', and thus, 'C' is not an intermediary in this case.

[Section 13(8)]

Illustration 3 An insurance company 'P', located outside India, requires to process insurance claims of its clients in respect of the insurance service being provided by 'P' to the clients. For processing insurance claims, 'P' decides to outsource this work to some other firm. For this purpose, he approaches 'Q', located in India, for arranging insurance claims processing service from other service providers in India. 'Q' contacts 'R', who is in business of providing such insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges P a commission or service charge of 1% of the contract value of insurance claims processing service provided by 'R' to 'P'. In such a case, main supply of insurance claims processing service is between 'P' and 'R', while 'Q' is merely arranging or facilitating the supply of services between 'P' and 'R', and not himself providing the main supply of services. Accordingly, in this case, 'Q' acts as an intermediary as per definition of sub-section (13) of section 2 of the IGST Act.

Illustration 4 'A' is a manufacturer and supplier of computers based in USA and supplies its goods all over the world. As a part of this supply, 'A' is also required to provide customer care service to its customers to address their queries and complains related to the said supply of computers. 'A' decides to outsource the task of providing customer care services to a BPO firm, 'B'. 'B' provides customer care service to 'A' by interacting with the customers of 'A' and addressing / processing their queries / complains. 'B' charges 'A' for this service. 'B' is involved in supply of main service 'customer care service' to 'A', and therefore, 'B' is not an intermediary.

Transportation Service [Section 13(9), 13(10), 13(11)]

~~[13(9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.] [Omitted vide The FA, 2023, w.e.f. 1-10-2023]~~

13(10) The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.

13(11) The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

S. No.	Nature of Supply	Place of Supply
1.	Services of transportation of goods, other than by way of mail or courier,	Destination of such goods
2.	Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey
3.	Services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board	First scheduled point of departure of that conveyance for the journey.

Taxability of satellite launch services

Issue - Taxability of satellite launch services provided to both international and domestic customers by ANTRIX Corporation Limited which is a wholly owned Government of India Company under the administrative control of Department of Space (DOS).

Clarification – In the above context, the legal provisions in GST laws are as under:

a) Export of services is defined in IGST Act in Section 2(6) where the following 5 conditions have been prescribed as necessary for a supply to qualify as export of service:

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

One of the five conditions for a supply of service to be considered as “export of service” is that the place of supply of service is outside India.

b) Section 13(9) of the IGST Act provides that where location of supplier of services or location of recipient of services is outside India, the place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods. However, where location of supplier and recipient of services is in India, then the place of supply is governed by section 12 (8) of the IGST Act, which stipulates that place of supply will be the location of the recipient of services provided he is registered; if not registered, then the place of supply will be the place where goods are handed over for their transportation.

Transportation Service [Section 13(9), 13(10), 13(11)]

Circular No. 2/1/2017-IGST dated 27-9-2017 has clarified that POS of satellite launch services supplied by ANTRIX Corp Ltd., a wholly owned Govt of India Company, to international customers would be outside India in terms of section 13(9) and such supply which meets the requirements of section 2(6), will constitute export of service and shall be zero rated in accordance with section 16.

W.e.f. 16-10-2020, “Satellite Launch Services Supplied by Indian Space Research Organisation (ISRO), ANTRIX Corp Ltd. Or New Space India Ltd. Has been exempted from GST vide NN 5/2020-CT(R), dated 16-10-2020 by inserting entry no. 19C in Mega Exemption List (i.e. NN 12/2017-CT(R)).

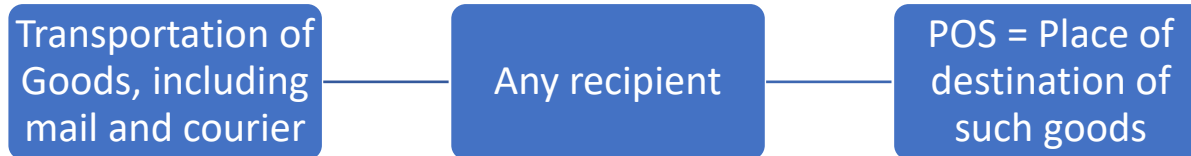
Further it is clarified through Circular No. 164/20/2021-GST dated 6th Oct, 2021 that the satellite launch services supplied by M/s New Space India Limited (NSIL), a wholly owned Government of India Company under the administrative control of Department of Space (DoS) to international customers will be treated as as ‘Export of Service’. This is because satellite launch services supplied by NSIL are similar to those supplied by ANTRIX Corp Ltd. And circular no. 2/1/2017-IGST dated 27-9-2017 is applicable to NSIL also.

Transportation Service [Section 13(9), 13(10), 13(11)]

Place of supply in case of supply of service of transportation of goods, including through mail and courier after amendment as Clarified through Circular No. 203/15/2023-GST dated 27-10-2023 –

Place of Supply (POS) of service of transportation of goods, including through mail and courier as specified in Sec 13(9) has been omitted w.e.f. 1-10-2023, in cases where location of supplier of services or location of recipient of services is outside India.

POS - Before amendment



Meaning thus that in case of goods being exported, place of supply of export freight (Air/Ocean Freight) will be export location where the goods are destined, irrespective of the fact whether the recipient is registered or unregistered or whether location of recipient is known or unknown.

After amendment w.e.f. 1-10-2023, POS will be determined as per R-13(2) of CGST Rules, 2017 as clarified in Circular No. 203/15/2023-GST dt. 27-10-2023

Hence, after 1-10-2023, in case of export freight (Air/Ocean Freight), place of supply will be the location of the supplier in case the location of recipient is not available, making it a case of intra-state supply. Refund of tax amount will not be allowed in such cases even if other conditions of export of services are fulfilled.

Residual Power of Central Government [Section 13(13)]

13(13) 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

S. No.	Nature of Supply	Place of Supply
1.	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	

Residual Power of Central Government [Section 13(13)]

Notification No. 4/2019-IT dt 30-9-2019 w.e.f. 1-10-2019

In exercise of the powers conferred by sub-section (13) of section 13 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), the Central Government, on being satisfied that it is necessary in order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, on the recommendations of the Council, hereby notifies following description of services or circumstances as specified in Column (2) of the Table A, in which the place of supply shall be the place of effective use and enjoyment of a service as specified in the corresponding entry in Column (3), namely

Table A

Sl. No.	Description of services or circumstances	Place of Supply
1.	Supply of research and development services related to pharmaceutical sector as specified in Column (2) and (3) from Sl. No. 1 to 10 in the Table B by a person located in taxable territory to a person located in the non-taxable territory.	The place of supply of services shall be the location of the recipient of services subject to fulfillment of the following conditions:- (i) Supply of services from the taxable territory are provided as per a contract between the service provider located in taxable territory and service recipient located in non-taxable territory. (ii) Such supply of services fulfills all other conditions in the definition of export of services, except sub- clause (iii) provided at clause (6) of Section 2 of IGST Act, 2017 (i.e. the place of supply of service is outside India;)
2.	Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business.	The place of supply of services shall be the location of the recipient of service. (Inserted vide Notification No. 2/2020-IT dt 26-3-2020, w.e.f. 1-4-2020)

Residual Power of Central Government [Section 13(13)]

Notification No. 4/2019-IT dt 30-9-2019 w.e.f. 1-10-2019

Table A

Sl. No.	Description of services or circumstances	Place of Supply
3.	Supply of maintenance, repair or overhaul service in respect of ships and other vessels, their engines and other components or parts supplied to a person for use in the course or furtherance of business	The place of supply of services shall be the location of the recipient of service. [Inserted vide Notification No. 3/2021-IT dated 2nd June, 2021, w.e.f. 2-6-2021]

Note –

1. This entry was inserted because our service industry was becoming uncompetitive as there was high GST in these services. Now, the government has changed the POS provision so the supply of MRO service in respect of a ship/vessel of foreign recipients becomes export of services and thus Indian suppliers of MRO services will again be in a position to win back contracts from foreign shipping companies.
2. In the absence of such notification, the POS of such MRO service provided by an Indian supplier to a foreign shipping company would have been the location where the services are actually performed, determined in terms of sec 13(3)(a) of the IGST Act.

Residual Power of Central Government [Section 13(13)]

Notification No. 4/2019-IT dt 30-9-2019 w.e.f. 1-10-2019

Table B

Sl. No.	Description of services or circumstances	Place of Supply
1.	Integrated discovery and Development	This process involves discovery and development of molecules by pharmaceutical sector for medicinal use. The steps include designing of compound, evaluation of the drug metabolism, biological activity, manufacture of target compounds, stability study and long-term toxicology impact.
2.	Integrated development	
3.	Evaluation of the efficacy of new chemical/ biological entities in animal models of disease	This is in vivo research (i.e. within the animal) and involves development of customized animal model diseases and administration of novel chemical in doses to animals to evaluate the gene and protein expression in response to disease. In nutshell, this process tries to discover if a novel chemical entity that can reduce or modify the severity of diseases. The novel chemical is supplied by the service recipient located in non-taxable territory.
4.	Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays	This is in vitro research (i.e. outside the animal). An assay is first developed and then the novel chemical is supplied by the service recipient located in non-taxable territory and is evaluated in the assay under optimized conditions.
5.	Drug metabolism and pharmacokinetics of new chemical Entities	This process involves investigation whether a new compound synthesized by supplier can be developed as new drug to treat human diseases in respect of solubility, stability in body fluids, stability in liver tissue and its toxic effect on body tissues. Promising compounds are further evaluated in animal experiments using rat and mice.

Residual Power of Central Government [Section 13(13)]

Notification No. 4/2019-IT dt 30-9-2019 w.e.f. 1-10-2019

Table B

Sl. No.	Description of services	Place of Supply
6.	Safety Assessment/ Toxicology	Safety assessment involves evaluation of new chemical entities in laboratory research animal models to support filing of investigational new drug and new drug application. Toxicology team analyses the potential toxicity of a drug to enable fast and effective drug development
7.	Stability Studies	Stability studies are conducted to support formulation, development, safety and efficacy of a new drug. It is also done to ascertain the quality and shelf life of the drug in their intended packaging Configuration
8.	Bio-equivalence and Bioavailability Studies	Bio-equivalence is a term in pharmacokinetics used to assess the expected in vivo biological equivalence of two proprietary preparations of a drug. If two products are said to be bioequivalent it means that they would be expected to be, for all intents and purposes, the same. Bioavailability is a measurement of the rate and extent to which a therapeutically active chemical is absorbed from a drug product into the systemic circulation and becomes available at the site of action.
9.	Clinical trials	The drugs that are developed for human consumption would undergo human testing to confirm its utility and safety before being registered for marketing. The clinical trials help in collection of information related to drugs profile in human body such as absorption, distribution, metabolism, excretion and interaction. It allows choice of safe dosage.
10.	Bio analytical studies	Bio analysis is a sub-discipline of analytical chemistry covering the quantitative measurement of drugs and their metabolites, and biological molecules in unnatural locations or concentrations and macromolecules, proteins, DNA, large molecule drugs and metabolites in biological Systems

Online information and database access or retrieval services (OIDAR) [Section 13(12)]

13(12) The place of supply of online information and database access or retrieval services(OIDAR) shall be the location of the recipient of services.

S. No.	Nature of Supply	Place of Supply
1.	<p>Online information and database access or retrieval (OIDAR) services</p> <p>Explanation.—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 noncontradictory conditions are satisfied, namely:—</p> <ul style="list-style-type: none">(a) the location of address presented by the recipient of services through internet is in the taxable territory;(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 services settles payment has been issued in the taxable territory;(c) the billing address of the recipient of services is in the taxable territory;(d) the internet protocol address of the device used by the recipient of services is in the taxable territory;(e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;(f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;(g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.	Location of the recipient of services (LOR)

Sec 14 (1) of IGST Act, 2017

On supply of online information and database access or retrieval (**OIDAR**) services by any person located in 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 (**OIDAR**) services by any person located in a non taxable territory and

received by a non-taxable 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 authorise 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 authorise 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.

Sec 14 (2) of IGST Act,2017 The supplier of online information and database access or retrieval services (**OIDAR**) 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:

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.

Sec 2 (16) of IGST Act, 2017 (16) “**NON-TAXABLE ONLINE RECIPIENT**” means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation.—For the purposes of this clause, the expression “unregistered person” includes a person registered solely in terms of clause (vi) of section 24 of the CGST Act, 2017’;

[Definition of NTOR amended through the FA, 2023, w.e.f. 1-10-2023, it earlier read as

“Non-taxable online recipient” means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services (OIDAR) in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.”

Note –

- ✓ Through this change the government has reduced the no. of people from the definition of OIDAR, which erstwhile included “Government, local authority, governmental authority”.
- ✓ Amended meaning of expression “unregistered person” includes persons stated in “Sec24(vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act” These persons are effectively Government deptt, Local Authorities, Government agencies, Authority having 51% or more participation by government, Society of Govt., PSU which have to deduct TDS u/s 51. So effectively, only those govt. organizations which are required to deduct TDS and unregistered persons are entitled to the provisions of OIDAR.
- ✓ The government has at the same time removed the words “in relation to any purpose other than commerce, industry or any other business or profession”. So now even if OIDAR services has been obtained for business purpose, OIDAR will be under obligation to pay GST on it.

Sec 2 (17) of IGST Act, 2017 “**ONLINE INFORMATION AND DATABASE ACCESS OR RETRIEVAL SERVICES**” means services whose delivery is mediated by information technology **over the internet** or an electronic network and the nature of which renders their supply [~~**essentially automated and involving minimal human intervention**~~] and impossible to ensure in the absence of information technology and includes electronic services **such as,—**

- (i) advertising on the internet;
- (ii) providing cloud services; **(Google Drive)**
- (iii) provision of e-books, movie, music, software **(McAfee)** and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like); **(Netflix)**
- (vi) digital data storage; and
- (vii) online gaming;

[Words deleted vide The FA, 2023, w.e.f. 1-10-2023]

OIDAR

Services whose delivery is mediated by information technology **over the internet** or an electronic network (**Condition A**)



Services essentially automated and involving minimal human intervention, such that it is not possible to ensure the absence of information technology (**Condition B**)



OIDAR

Service	Whether Condition A is fulfilled	Whether condition B is fulfilled	Whether it is OIDAR services or not
PDF document manually emailed by provider	Yes	No	Yes (Earlier – No)
PDF document automatically emailed by provider's system	Yes	Yes	Yes
PDF document automatically downloaded from site	Yes	Yes	Yes
Stock photographs available for automatic download	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable PDFs	Yes	Yes	Yes
Online course consisting of pre-recorded videos and downloadable PDFs plus support from a live tutor	Yes	No	Yes (Earlier – No)
Individually commissioned content sent in digital form, eg photographs, reports, medical results	Yes	No	Yes (Earlier – No)

Sec 2(11) of IGST Act “**IMPORT OF SERVICES**” means the supply of any service, where—

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India;

Q Who pays tax on import of service for personal purpose for a consideration?

A Tax is paid by Importer on RCM if the nature of services is other than OIDAR.

Eg Mr. X of Delhi is constructing a house for his personal use. He availed the services of an architect in California and paid \$ 20,000 for it. In this case Mr. X will be liable for payment of GST in RCM.

GST on import of services

1. If consideration is paid: GST on import of services will be applicable and tax will be paid on RCM.

However, If import of **OIDAR** is made by an **unregistered person** for **personal use**. It is a supply but RCM not applicable and supplier will be liable to take registration and pay tax for it. Eg. Godaddy supplying services of Domain Names and Webhosting to unregistered person for personal use will charge GST on Forward Charge Mechanism.

If import is of OIDAR service in any other case then RCM will be applicable.

2. If Consideration is not paid: GST on import of services will be applicable only if Services are imported for business purpose and from related parties and tax will be paid on RCM.

BEFORE AMENDMENT

Import of Service

Business Purpose

Personal Purpose

With
Consideration

Without
Consideration

With Consideration (Sec 7(1)(b))

Without
Consideration
(Like Facebook)

Taxable on RCM

Taxable only if Between
Related Parties
(Schedule 1 para 4).
Taxable on RCM

Services - OIDAR

Other Than OIDAR

Out of GST

By OIDAR if Recipient is
Non-taxable Online
Recipient

Importer on RCM if
Recipient is other than
Non-taxable Online
Recipient

By Importer on RCM

AFTER AMENDMENT w.e.f. 1-10-2023

Import of Service

Business Purpose

Personal Purpose

With Consideration

Without Consideration

With Consideration (Sec 7(1)(b))

Without Consideration (Like Facebook)

Other than from
OIDAR – Taxable on
RCM

By OIDAR – Taxable
on FCM

Taxable only if
Between Related
Parties (Schedule 1
para 4). Taxable on
RCM

Services - OIDAR

Other Than OIDAR

Out of GST

By OIDAR if
Recipient is Non-
taxable Online
Recipient

Importer on RCM if
Recipient is other
than Non-taxable
Online Recipient

By Importer on
RCM

POS in case of co-location Service as clarified through Circular No. 203/15/2023-GST dated 27-10-2023

A business/company who avails the co-location services primarily seek security and upkeep of its server/s, storage and network hardware; operating systems, system software and may require to interact with the system through a web-based interface for the hosting of its websites or other applications and operation of the servers.

Such services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers.

It has been clarified by CBIC in its circular No. 203/15/2023-GST dated 27-10-2023 that such services are covered under the default place of supply provision i.e. sub-section (2) of Section 12 of the IGST Act. Thus, location of recipient of co-location service will be the place of supply. Meaning thereby that even if the recipient is in different state than that of the supplier, the recipient will be entitled to ITC.

POS of Co-location Services

Positions might have looked different had the CBIC clubbed these services under Sec 12(3) i.e. services of renting of immovable property, in which case the recipient would have been entitled to his credit only if the location of recipient and location of supplier are in the same state.

However, CBIC has further clarified that in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located.

So, the businesses should be smart to avoid such kind of agreements in order to take benefit of this circular.

Online Money Gaming

Sec 14A of IGST Act – Specified actionable claims supplied by a person located outside taxable territory.

(1) A supplier of online money gaming as defined in clause (80B) of section 2 of the CGST Act, 2017, not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay integrated tax on such supply.

(2) For the purposes of complying with provisions of sub-section (1), the supplier of online money gaming shall obtain a single registration under the Simplified Registration Scheme referred to in sub-section (2) of section 14 of this Act:

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the 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 shall 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.

(3) In case of failure to comply with provisions of sub-section (1) or sub-section (2) by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act."

[Section inserted vide IGST Amendment Act, 2023, w.e.f. 1-10-2023]

Sec 2(80A) of the CGST Act, 2017 – Definition of Online gaming

"online gaming" means offering of a game on the internet or an electronic network and includes online money gaming;

Sec 2(80B) of the CGST Act, 2017 – Definition of Online money gaming

"online money gaming" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force;

Sec 2(117A) of the CGST Act, 2017 – Definition of Virtual Digital Asset

"virtual digital asset" shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961

[Clause inserted vide CGST Amendment Act, 2023, w.e.f. 1-10-2023]