

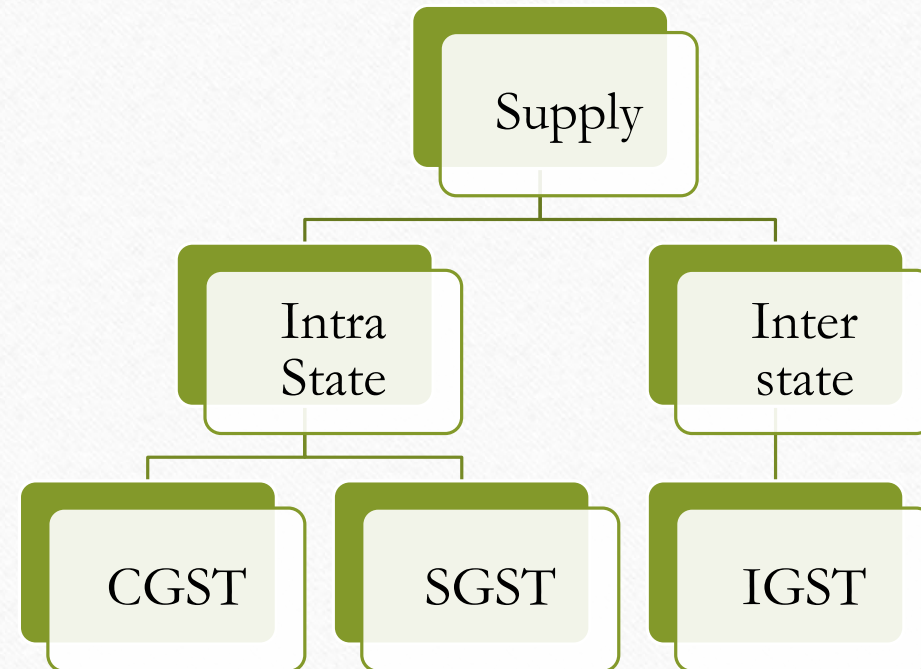
PLACE OF SUPPLY



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Importance of Place of supply under GST

- It helps us ascertain whether the supply is inter state or intra state supply which in turn helps us determining that whether such supply is exigible to CGST+SGST OR IGST
- 4 sections governing place of supply – Section 10 to 13 IGST Act, 2017
- **Note** : Consequences Section 19 of IGST & 77 of CGST Act



INTER STATE SUPPLY

- How a supply is identified as Inter State Supply
- Section 7 of IGST Act, 2017

- **Supply of Goods**

- **7(1)** Subject to provisions of Section 10, where location of supplier and place of supply are in two different states or union territories or a state or UT
- **7(2)** Supply of goods imported into the territory of India, till they cross the customs frontiers of India

- **Supply of Services**

- **7(3)** Subject to provisions of Section 12, where location of supplier and place of supply are in two different states or union territories or a state or UT
- **7(4)** Supply of services imported into the territory of India

- **Supply of Goods or Services or both – Section 7(5)**

- When supplier is located in India and place of supply is outside India,
- **To or by** a SEZ Developer or a SEZ Unit
- In the taxable territory, not being an intra state supply and not covered else where

INTRA STATE SUPPLY

How can a supply be identified as Intra State Supply – Section 8 of IGST Act, 2017

- **Supply of Goods**

- **8(1) Subject to provisions of Section 10**, where location of supplier and place of supply are in the same state or union territory

- **Specific Exclusions**

- ✓ Supply of goods to or by a SEZ Developer or SEZ Unit
- ✓ Goods **imported** in to territory of India
- ✓ Supply made to a tourist referred to in Section 15 – Refund of Integrated tax paid on supply of goods to Tourist leaving India

- **Supply of Services**

- **8(2) Subject to provisions of Section 12**, where location of supplier and place of supply are in same state or union territory

- **Specific Exclusion** - supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Intra-State Supply – Section 8

- *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 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.

Location of the supplier of Service

- 2(15) of IGST/2(71) of CGST “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**

Location of the supplier of Goods

- Not defined in Act or Rules
- Guidance may be taken from the definition of Location of supplier of service as already discussed

Place of supply of goods Sec 10 IGST Act

1. Supply involves **movement** of goods

2. Supply **does not involve movement** of goods

3. Supply involving **bill to ship to transactions**

4. Supply of goods **assembled or installed at a site**

5. Supply of goods **on board a conveyance**

Place of supply of goods other than supply of goods imported into, or exported from India– Section 10 of IGST Act, 2017

Supply	Place of Supply
10(1)(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;

Example

Mr A having registration in Delhi- has purchased furniture from Mr B located in Haryana and **takes delivery in Delhi** itself – Place of supply of goods is the place where the movement of goods terminates for Delhi – i.e. **Delhi**.

Mr A located in Delhi has purchased furniture from Mr B in Haryana and asked him to **deliver the said goods to his sister in Haryana** - Place of supply - Clause (a) – i.e. **Haryana**

Supply Involves movement of goods

CASE 1

ABC (Supplier)
located in Delhi

Supplies goods to
XYZ (Recipient)
located in Rajasthan

POS Rajasthan

CASE 2

ABC (Supplier)
located in Delhi

Supplies goods to XYZ
(Recipient) comes to Delhi
factory and purchases
goods ex-factory

POS Rajasthan

PLACE OF SUPPLY OF GOODS

Supply

10(1)(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

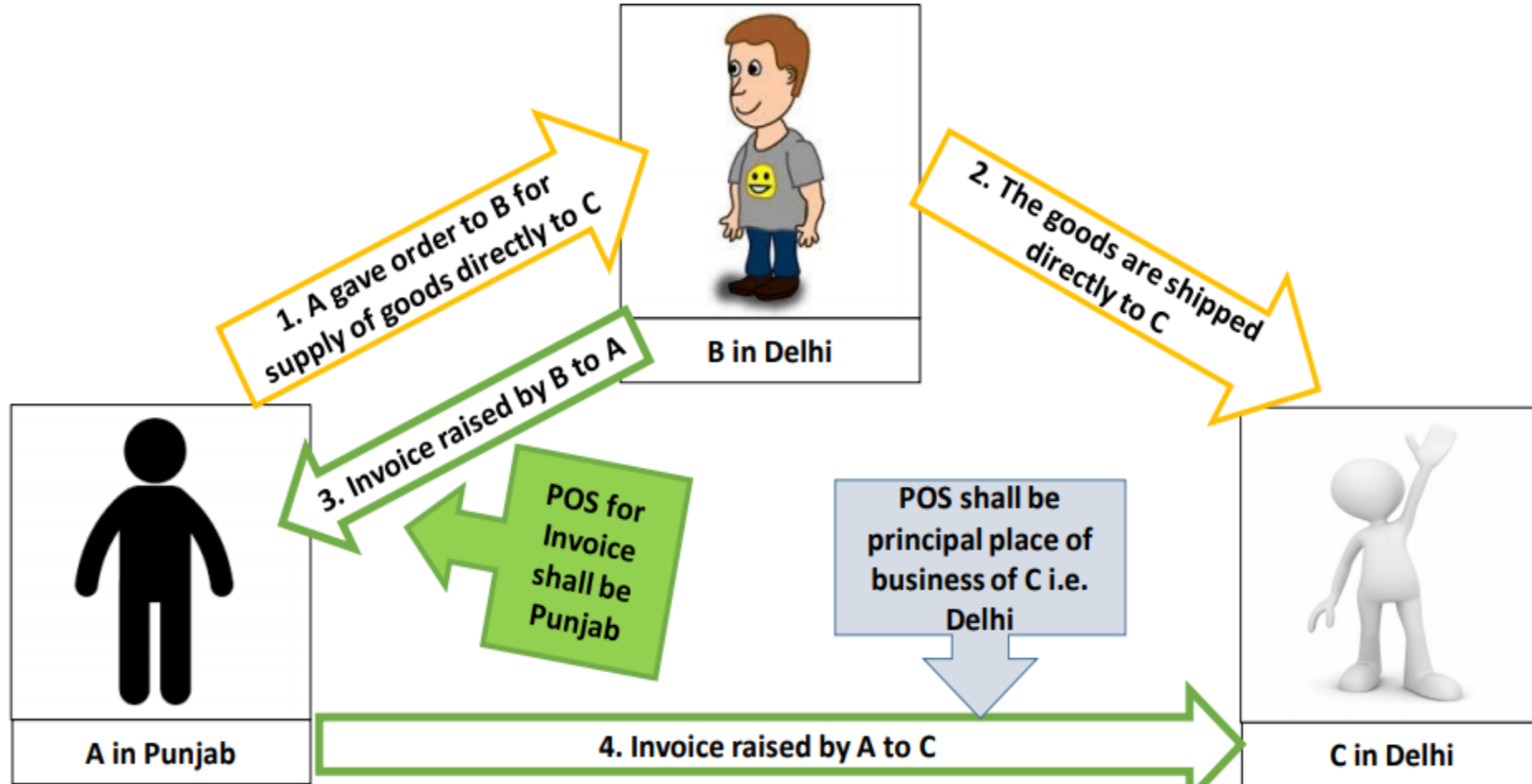
Place of supply

the place of supply of such goods shall be the principal place of business of third person;

This clause generally covers **Bill to Ship to Model** – For example: **Shyam** who is registered in Delhi has placed an order to **Ram** who is registered in Mumbai to deliver goods in Delhi. – For convenience – **Ram(Mumbai)** placed an order to **Ghanshyam** in Delhi (who is also registered) to deliver the said goods to Shyam in Delhi. In case of supply made by **Ghanshyam(Delhi)**, it shall be deemed that **Ram(Mumbai)** has received such goods. Thus, place of supply of such goods shall be location of **Ram**, i.e. **Bombay**, in spite of the fact that said goods were delivered in Delhi only. Hence, **Ghanshyam(Delhi)** would charge IGST on the same.

Note: Three parties involved. Third person means the one who is neither the consignor nor the consignee.

Case 3: Bill to Ship to Case



PLACE OF SUPPLY OF GOODS

Supply	Place of supply
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;

For example : Over the counter Sale.

(a) A located in Delhi went to a **mall in Mumbai and purchased** goods from the shop and take delivery there itself. In that case, place of supply location of such goods at the time of delivery, i.e. **Mumbai**. Though **address mentioned on the invoice is of Delhi**. The issue arises if it is a B to B supply because A if registered in Delhi and shall not get the credit of CGST and SGST charged by Mumbai dealer.

PLACE OF SUPPLY OF GOODS

Supply	Place of supply
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

For example : Mr A, registered in Delhi has supplied all the parts in SKD of the machinery to Mr B registered in Delhi which are supposed to be assembled at the factory of Mr B which is located at Haryana. In such a case, the place of supply shall be the place of assembly, i.e. Haryana. Billing to Mr B registered in Delhi – charge IGST

Case 4: Goods are assembled or installed at a site

The place of supply shall be the

Place of such installation or assembly

Pizza Hut registered in Delhi- Opening a new branch in Agra- Directs Mr. A of Delhi to install furniture in Agra- Mr. A takes furniture in SKD condition to Agra- Assembles at site in Agra- POS will be Agra- A will charge Pizza Hut IGST with POS as Agra- ITC to Pizza Hut Delhi- ?

PLACE OF SUPPLY OF GOODS

Supply	Place of supply
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.

For example : Packed Food supplied by Airlines on board an aircraft to its passengers during the journey. In such a case – place of supply shall be the location at which such **goods are taken on board**

Note: IRCTC case Law in DVAT

Case 5: Goods are supplied on board a conveyance

The place of supply shall be the

location at which such goods are taken on board

- Train moving from Delhi to Mumbai- A toy vendor boards train at Agra- Supplies on board toys at Bhopal- POS will be Agra
- Train moving from Delhi to Mumbai- Food is boarded on train at Agra- Supply of food at Bhopal- POS ? POS will be Delhi

PLACE OF SUPPLY OF GOODS IN CASE OF EXPORT OR IMPORT OF GOODS – Section 11 of IGST Act, 2017

Supply	Place of supply
(a) where the goods are imported into India,	the place of supply shall be the location of importer
(b) Where goods are exported from India	Place of supply shall location outside India

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

2(5) of IGST: “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India

Supplies in Territorial Water – Section 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.

Supplies in Territorial Water – Section 9

- **Territorial waters**, or a **territorial sea** is a belt of coastal waters that go at most **12 nautical miles (22 km; 14 mi)** from the edge of a coastal state. The territorial sea is land of the state. Ships are let to sail on it. Ownership also extends to the airspace over and seabed below.

PLACE OF SUPPLY OF SERVICES – Section 12 & 13 of IGST Act, 2017

- **Section 12** - Place of supply of services where location of supplier and recipient is in India
- **Section 13** - Place of supply of services where location of supplier or location of recipient is outside India.
- **Why there are two sections dealing with the subject whereas in erstwhile service tax there was single Place of provision of service Rules, 2012 ?**

Place of Supply of Services – Section 12 of IGST Act, 2017

13 categories of services, one of them is a default category, i.e. if any particular activity is not falling under any of the 12 categories, then it shall fall under default category

Supply	Place of Supply
<p>12(3) Immovable Property or house boat or vessel - - Services directly in relation to 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</p>	

Place of Supply of Services – Section 12 of IGST Act, 2017

Supply	Place of Supply
<p>12(3) Immovable Property - Services,</p> <ul style="list-style-type: none">- 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- 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- any services ancillary to the services referred to in clauses (a), (b) and (c)	<p>The place of supply of 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</p>

Important Points

- 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
 - **Planning to be done carefully if property is to be constructed outside India – Construction of House in USA for son in law**
- 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.**

Place of Supply of Services – Section 12 of IGST Act, 2017

Supply	Place of Supply
<p>12(4) Restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery</p>	<p>the place of supply shall be the location where the services are actually performed.</p>
<p>12(5) Services <u>in relation</u> to training and performance appraisal</p> <p>- Whether mere “training” shall be covered here – question for consideration.</p>	<p>In case of unregistered person, services where actually performed,</p> <p>In case of registered person, location of such person</p>

Place of Supply of Services – Section 12 of IGST Act, 2017

Supply	Place of Supply
<p>12(6) services provided by way of <u>admission</u> to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and <u>services ancillary thereto</u></p>	<p>the place of supply shall be the place where the event is actually held or where the park or such other place is located.</p>
<p>12(7) Services provided by way of <i>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</i>; or <u>services ancillary to organisation of any of the events or services</u> referred to in above, or assigning of sponsorship to such events,—</p>	<p>In case of unregistered person, services where event is actually held, In case of registered person, location of such person</p>

Important Points for clause (7)

- If the event is **held outside India**, the **location of the recipient**
- 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.

Place of Supply of Services – Section 12 of IGST Act, 2017

Supply	Place of Supply
12(8) services by way of transportation of goods, including by mail or courier	<p>In case of registered person, location of such person</p> <p>In case of unregistered person, location at which such goods are handed over for their transportation,</p>
<p><u>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 – Why ?</u></p>	
(9) passenger transportation service	<p>In case of registered person, location of such person</p> <p>In case of unregistered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:</p>

Important Points for clause (9)

- **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**.

Important Points for clause (9)

- **2(3) of IGST:** “**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;

POS OF TRANSPORTATION OF PASSENGERS SERVICES – SEC 12(9)

Mr. A resident of Delhi books ticket from Jet Airways, Delhi from Delhi to Toronto (travel date 20.05.2020) another ticket from Toronto to New York (travel date 01.06.2020) and from New York to Delhi (travel date 15.06.2020).

**Delhi- Toronto
LOS- Delhi
POS-Delhi
CGST and SGST**

**Toronto- New York
LOS-Delhi
POS- Toronto
IGST (Section 7(5)(a))**

**New York- Delhi
LOS- Delhi
POS- New York
IGST(Section 7(5)(a))**

M/s XYZ Ltd. registered in Mumbai books ticket for its director Mr. A resident of Delhi through Jet Airways, Delhi from Delhi to Toronto (travel date 20.05.2020) another ticket from Toronto to New York (travel date 01.06.2020) and from New York to Delhi (travel date 15.06.2020).

**Delhi- Toronto
LOS- Delhi
POS-Mumbai
IGST**

**Toronto- New York
LOS-Delhi
POS- Mumbai
IGST**

**New York- Delhi
LOS- Delhi
POS- Mumbai
IGST**

Place of Supply of Services – Section 12 of IGST Act, 2017

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

Place of Supply of Services – Section 12 of IGST Act, 2017

Supply	Place of Supply
<p>(11) Supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall</p> <p>(a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna,</p> <p>(b) in case of mobile connection for telecommunication and internet services provided on post-paid basis</p> <p>(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,</p> <p>(d) in other cases,</p>	<p>The place of supply shall be</p> <p>(a) be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services</p> <p>(b) be the location of billing address of the recipient of services on the record of the supplier of services;</p> <p>(c) (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;</p> <p>(ii) by any person to the final subscriber, be the location where such prepayment is received or such vouchers are sold</p> <p>(d) 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:</p>

Important Points – (11)

- 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 service**
- 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
- 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.**

Place of Supply of Services – Section 12 of IGST Act, 2017

Supply	Place of Supply
(12) Supply of banking and other financial services, including stock broking services to any person	The place of supply 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.	
(13) supply of insurance services	In case of registered person, location of such person In case of unregistered person, shall be the location of the recipient of services on the records of the supplier of services.:

Place of Supply of Services – Section 12 of IGST Act, 2017

Supply	Place of Supply
<p>(14) 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</p>	<p>The place of supply shall be taken <u>as being in each of such States or Union territories</u> 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, <u>in the absence of such contract or agreement, on such other basis as may be prescribed.</u></p>
<p>(2) Default Category of Services</p>	<p>In case of registered person, shall be location of such person In case of unregistered 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.</p>

Place of Supply of Services – Section 13 of IGST Act, 2017

Supply	Place of Supply
(3) (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	The place of supply shall be the location where the services are actually performed

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;

Place of Supply of Services – Section 13 of IGST Act, 2017

Supply	Place of Supply
(3) (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.	The place of supply shall be the location where the services are actually performed

Place of Supply of Services – Section 13 of IGST Act, 2017

Supply	Place of Supply
13(4) 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	The place of supply shall be the place where the immovable property is located or intended to be located
13(5) 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	The place of supply shall be the place where the event is actually held.

Important Points

- Where any services referred to in clause (3), (4), (5), is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.
- Where the services referred to in clause (3), (4), (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.

Place of Supply of Services – Section 13 of IGST Act, 2017

Supply	Place of Supply
<p>13(6). (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;</p> <p>(b) intermediary services;</p> <p>(c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.</p> <p><i>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; - Section 2(13)</i></p>	<p>The place of supply shall be the location of the supplier of services</p>
<p>13(7) supply of services of transportation of goods, <u>other than by way of mail or courier</u></p>	<p>The place of supply shall be the place of destination of such goods.</p>

Place of Supply of Services – Section 13 of IGST Act, 2017

Supply	Place of Supply
13(8). Supply in respect of <u>passenger transportation services</u>	The place of supply shall be the place where the passenger <u>embarks on the conveyance for a continuous journey.</u>
13(9) Supply of services <u>provided on board a conveyance</u> during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board	The place of supply shall be the <u>first scheduled point of departure</u> of that conveyance for the journey.
13(10) Supply of <u>online information and database access or retrieval services</u>	The place of supply shall be the <u>location of recipient of services</u>

Place of Supply of Services – Section 13 of IGST Act, 2017

Section 2(17) of IGST Act, 2019 - Online information and database access or retrieval services “OIDAR” 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;
- iii. provision of e-books, movie, music, software 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);
- vi. digital data storage; and
- vii. online gaming;

Place of Supply of Services – Section 13 of IGST Act, 2017

Supply	Place of Supply
<p>13(11) Supply of maintenance, <u>repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components</u> or parts supplied to a person for use in the course or furtherance of business. (w.e.f <u>01.04.2020</u>) vide Notification No. 2/2020 dated 26.03.2020</p>	<p>The place of supply of services shall be the <u>location of the recipient of service</u></p>
<p>(12). Supply of <u>research and development services related to pharmaceutical sector</u> by a person located in taxable territory to a person located in the non-taxable territory (w.e.f <u>01.10.2019</u>) vide Notification No 4/2019 dated 30.09.2019</p>	<p>The place of supply of services shall be the location of the recipient of services subject to fulfilment of the following conditions:-</p> <ul style="list-style-type: none"> (i) Supply of services from the taxable territory are provided as per a contract between the <u>service provider located in taxable territory and service recipient located in non-taxable territory.</u> (ii) Such supply of services fulfils <u>all other conditions in the definition of export of services,</u>

Place of Supply of Services – Section 13 of IGST Act, 2017

Supply	Place of Supply
13(2). Default Category of Services	The place of supply shall be the location of recipient of services.
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.	

BILCARE LTD. [2019] 106 TAXMANN.COM 408 (AAR - MAHARASHTRA)

Facts

- The applicant-company is engaged in providing various types of services to its foreign clients. The nature of services provided includes a) storage and distribution services which includes receipt, storage, distribution, return and destruction of IPs (Investigational Products/Drugs) in India b) packaging services of primary packaging which includes blistering, bottling; liquid and ointment filling, etc., of tablets, liquids, ointments, creams, etc.

Issue

- It seeks advance ruling whether the said services provided to foreign clients outside India and for which the place of supply is in the taxable territory shall be liable to Integrated Tax or CGST and SGST for the purpose of levy of Goods and Services Tax (GST) under the GST law.

BILCARE LTD. [2019] 106 TAXMANN.COM 408 (AAR - MAHARASHTRA)

Held

- The location of the recipient is outside India, the services supplied are in respect of goods which are made physically available by the recipient of the services to the supplier of the services for the services to be performed and, therefore, the provisions of sub-section (3)(a) of section 13 are squarely applicable for the supply in the instant case. • Since the 'place of supply' is in India, the provisions of section 2(6) are not applicable and, therefore, their supply cannot be considered as Export of Services as per the GST law. • Since 'Place of Supply' and the 'service provider' are in the same state, CGST and SGST are payable for this transaction.

Our Opinion

- For packaging transaction it is correct that the POS shall be determined as per section 13(3)(1) i.e. India. However, in this case there were many services like logistic project management, storage services, distribution services etc. that were provided, and consideration for each service was specifically defined. It was not even argued that POS for these services was outside India and it was presumed that POS falls in India. • In our view this pre-supposition by the company was erroneous and for many cases the POS is outside India. If the supply is treated to be a composite supply, principle supply is to be ascertained and accordingly POS should be determined.

ASIATIC CLINICAL RESEARCH (P.) LTD. [2020] 113 TAXMANN.COM 297 (AAR - KARNATAKA)

Facts

- The applicant is a private limited company engaged in the activity relating to the management of clinical trials on behalf of AKPA, USA. • The clinical trials are conducted by principal investigators or institutions and as per applicant, their own role is limited to monitoring of the trial. • Consolidated payment is received by the applicant and it pays to the institutions conducting clinical trials after seeking approval from AKPA,USA.

Issues

- Whether the services provided by the applicant to the foreign client amounts to export of services and hence zero-rated under GST law?
- Whether the applicant acts as a 'pure agent' while receiving amounts from the foreign clients and passing it on to the local research institutions?

ASIATIC CLINICAL RESEARCH (P.) LTD. [2020] 113 TAXMANN.COM 297 (AAR - KARNATAKA)

Held

- The applicant is providing service to AKAP, USA in the instant case. The location of the recipient of the service is outside India. The applicant is supplying service in respect of the goods, i.e., new drugs, which are physically made available to the investigator/institution who conducts the clinical trial, on behalf of the applicant, in order to provide the service. **(Declined to decide the POS).**
- In the instant case, at clause 3.2 of the Master Service Agreement it is clearly mentioned that in no sense the applicant shall be considered as an employee or agent of AKPA, USA. Therefore, it seems that the first condition only is not fulfilled and hence the applicant is not liable to be considered as a pure agent of the recipient of the service i.e, AKPA,USA.
- A pure agent actually incurs the expenditure under the contractual agreement and then gets the reimbursement of the same. In the instant case the applicant is not incurring any expenditure but disbursing/paying the charges to the investigator/institution on the basis of the work progress assessed by the applicant and approved by the AKPA,USA.

BANYAN TREE ADVISORS (P.) LTD. [2019] 111 TAXMANN.COM 458 (AAR - KARNATAKA)]

Facts

- The applicant provides portfolio management services and portfolio advisory services to non-resident Indian clients against charges.
- The client pays fee in foreign currency from its overseas account to the account of the Portfolio Manager. Issues
- Whether it needs to charge GST on the portfolio management services provided to non-resident client, where the client pays fee in foreign currency from its overseas account to the account of the Portfolio Manager.

Held

- AAR declined to comment upon the present issue, as the same is not falling under section 97(2) of the CGST Act

Our Opinion

- The services provided by the applicant may qualify as export of service. POS will be location of recipient of service (Section 13(2) of the IGST Act).

ASAHI KASEI INDIA (P.) LTD. [2019] 101 TAXMANN.COM 269 (AAR - MAHARASHTRA)

Facts

- The applicant, a company incorporated and located in India, is a subsidiary of Asahi Kasei Corporation, Japan.
- The applicant provides sales promotion and marketing support services to Asahi Kasei group.
- It has entered into a services agreement and marketing service agreement with AK Japan.
- The scope of work under the agreements is as follows: a) Collecting and analyzing information, i.e., market analysis and supporting Asahi Kasei group in getting new business. b) Providing marketing and administration support and back office support (including accounting support). c) Networking, i.e., co-ordinate with the Government authorities and relevant universities to join relevant trade associations. d) Supporting sales activity of Asahi Kasei group.

ASAHI KASEI INDIA (P.) LTD. [2019] 101 TAXMANN.COM 269 (AAR - MAHARASHTRA)

Issue

- Whether the services rendered by AK, India constitute a supply of 'support services' falling under Heading No. 9985 or 'Intermediary service' classifiable under Heading No. 9961/9962.
- Whether the services supplied by the applicant under the marketing services agreement dated 1-12-2012 constitute a supply of 'support services' falling under Heading No. 9985 or 'Intermediary service' classifiable under Heading No. 9961/9962
- Whether the services provided by the applicant to holding company under the marketing services agreement dated 1-12-2012 is an export of services as defined under section 2(6) of the Integrated Goods and Services Tax Act, 2017.

Held

- AAR held that the services rendered are export of services

TIME OF SUPPLY



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CA Ashok Batra FCA, LL.B
Partner: M/S A. K. Batra & Associates

Time Of Supply of Goods – Section 12

- **12 (1)** - The liability to pay tax on goods **shall arise** at the time of supply, **as determined** in accordance with the **provisions of this section**.
- **12 (2)** - The time of supply of goods shall be the earlier of the following dates, namely:-
 - **(a)** the **date of issue of invoice** by the supplier or the last date on which **he is required, under section 31**, to issue the invoice with respect to the supply; or

Time Of Supply of Goods – Section 12

- **(b)** the **date** on which the supplier **receives the payment** with respect to the supply:
- **Provided** that where the supplier of taxable goods **receives an amount up to one thousand rupees in excess** of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, **at the option of the said supplier, be the date of issue of invoice** in respect of such excess amount.
- **Explanation 1** - For the purposes of clauses (a) and (b), “supply” shall be deemed to have been made **to the extent it is covered by the invoice** or, as the case may be, **the payment**.
- **Explanation 2** – For the purposes of clause (b), “the date on which the supplier receives the payment” shall be the date on which the **payment is entered in his books of account** or the date on which the **payment is credited to his bank account, whichever is earlier**.

Time Of Supply of Goods – Section 12

- **Notification No. 40/2017** – CT dated 13.10.2017 – Supplier of goods, other than composite dealers, whose aggregate turnover in the preceding financial year did not exceed Rs. 1.50 Crore or the registered person whose aggregate turnover in the year in which he has obtained registration is likely to be less than Rs. 1.50 Crore shall pay tax at the time as mentioned in Section 12(2)(a) of the Act.
- **Notification No. 66/2017** – CT dated 15.11.2017 superseded the above notification and removed the turnover limit – Accordingly supplier of goods other than composite dealers shall require to pay tax at the time as mentioned in Section 12(2)(a) of the Act.

Issuance of Tax Invoice – Section 31

- **31(1)** A registered person supplying taxable goods shall, before or at the time of:
- **(a) removal of goods for supply to the recipient**, where the supply involves movement of goods; or
 - **(b) delivery of goods or making available thereof to the recipient**, in any other case,

issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed.

Issuance of Tax Invoice – Section 31

- **31(4)** In case of **continuous supply of goods**, where successive statements of accounts or successive payments are involved, the **invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.**
- **Section 2 (32)** - “**continuous supply of goods**” means a supply of goods which is provided, or agreed to be provided, **continuously or on recurrent basis**, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the **supplier invoices the recipient on a regular or periodic basis** and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;

Issuance of Tax Invoice – Section 31

- **31 (7)** Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Time Of Supply of Goods – Section 12

- **12 (3)** - In case of **supplies in respect of which** tax is paid or liable to be paid **on reverse charge basis**, the time of supply shall be the earliest of the following dates, namely:-
 - **(a)** the date of the **receipt of goods**; or
 - **(b)** the **date of payment** as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
 - **(c)** the **date immediately following thirty days from the date of issue of invoice** or any other document, by whatever name called, in lieu thereof by the supplier:
- **Provided** that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the **date of entry in the books of account** of the recipient of supply.

Time Of Supply of Goods – Section 12

- **12 (4)** - In case of **supply of vouchers by a supplier**, the time of supply shall be-
- **(a) the date of issue of voucher**, if the **supply is identifiable** at that point; or
- **(b) the date of redemption of voucher, in all other cases.**

Time Of Supply of Goods – Section 12

- **12 (5)** - Where it is **not possible to determine the time of supply** under the provisions of subsection (2) or sub-section (3) or sub-section (4), the time of supply shall—
 - **(a)** in a case where a periodical return has to be filed, be the **date on which such return is to be filed**; or
 - **(b)** in any other case, be **the date on which the tax is paid**.

Time Of Supply of Goods – Section 12

- 12 (6) - The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

Section 13 - Time of Supply of Services

- **13 (1)** - The liability to pay **tax on services** shall arise at the time of supply, as **determined in accordance with the provisions of this section.**
- **13 (2)** - The time of supply of services shall be **the earliest of the following** dates, namely:-
 - **(a)** the date of **issuance of invoice by the supplier**, if the invoice is **issued within the period prescribed under section 31** or the **date of receipt of payment, whichever is earlier; or**
 - **(b)** the date of **provision of service**, if the invoice is not issued within the period prescribed under section 31 or the **date of receipt of payment, whichever is earlier; or**

Section 13 - Time of Supply of Services

- **(c)** the date on which the recipient **shows the receipt of services** in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:
- Provided that where the supplier of taxable service **receives an amount up to one thousand rupees in excess of the amount** indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, **be the date of issue of invoice** relating to such excess amount.

Section 13 - Time of Supply of Services

- **Explanation** – For the purposes of **clauses (a) and (b)**–
 - **(i)** the supply shall be deemed to have been made **to the extent it is covered by the invoice** or, as the case may be, the payment;
 - **(ii)** “the date of receipt of payment” **shall be the date on which the payment is entered in the books of account** of the supplier or the date on which the **payment is credited to his bank account, whichever is earlier.**
- **Before 01.02.2019** – the said provisions read as - (a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (2) of 31, to issue the invoice with respect to the supply - This amendment is made to remove the drafting error as the provisions for issuance of invoice are also contained in other sub-section of Section 31.

Issuance of Tax Invoice – Section 31 / Rule 47

- **31(2)** A registered person **supplying taxable services** shall, before or after the provision of service but **within a prescribed period, issue a tax invoice**, showing the description, value, tax charged thereon and such other particulars as may be prescribed.
- The invoice referred to in rule 46, in the case of the taxable supply of services, shall be issued within a **period of thirty days from the date of the supply of service:**
- Provided that where the supplier of services is **an insurer** or a **banking company** or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued **shall be forty five days** from the date of the supply of service:

Issuance of Tax Invoice – Section 31/Rule 47

- Provided further that an **insurer or a banking company** or a financial institution, including a nonbanking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between **distinct persons** as specified in section 25, may issue the invoice before or at the time such **supplier records the same in his books of account or before the expiry of the quarter** during which the supply was made.

Issuance of Tax Invoice – Section 31

- **31(5)** Subject to the provisions of clause (d) of sub-section (3), in case of **continuous supply of services**,–
 - (a) where the **due date of payment is ascertainable** from the contract, the invoice shall be issued on or **before the due date of payment**;
 - (b) where the **due date of payment is not ascertainable** from the contract, the invoice shall be issued before or at the time **when the supplier of service receives the payment**;
 - (c) where the payment is linked to **the completion of an event**, the **invoice shall be issued on or before the date of completion** of that event.

Issuance of Tax Invoice – Section 31

- **2 (33)** - “**continuous supply of services**” means a supply of services which is provided, or agreed to be provided, **continuously or on recurrent basis**, under a contract, for a **period exceeding three months** with periodic payment obligations and includes **supply of such services as the Government may**, subject to such conditions, as it may, by notification, **specify**;
- **31 (6)** In a case where the **supply of services ceases** under a contract before the completion of the supply, the invoice shall be issued **at the time when the supply ceases** and such invoice shall be issued **to the extent of the supply made before such cessation**.

Section 13 - Time of Supply of Services

- 13 (3) - In case of supplies in respect of which tax is paid or liable to be paid **on reverse charge basis**, the time of supply shall be the **earlier of the following dates**, namely:—
 - (a) the **date of payment** as entered in the **books of account of the recipient** or the date on which the **payment is debited in his bank account**, whichever is **earlier**; or
 - (b) the date **immediately following sixty days** from the **date of issue of invoice** or any other document, by whatever name called, in lieu thereof by the supplier

Section 13 - Time of Supply of Services

- Provided that where it is **not possible to determine** the time of supply under **clause (a) or clause (b)**, the time of supply shall be the **date of entry in the books of account of the recipient of supply**:
- Provided further that in case of **supply by associated enterprises**, where the **supplier of service is located outside India**, the time of supply shall be the **date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier**.

Section 13 - Time of Supply of Services

- **13(4)** In case of **supply of vouchers by a supplier**, the time of supply shall be—
- **(a)** the **date of issue of voucher**, if the **supply is identifiable** at that point; or
- **(b)** the **date of redemption** of voucher, **in all other cases**.

Section 13 - Time of Supply of Services

- **13(5)** Where it is **not possible to determine** the time of supply under the provisions of sub-section (2) or subsection (3) or sub-section (4), the time of supply shall—
 - (a) in a case where a **periodical return has to be filed**, be the date on which **such return is to be filed**; or
 - (b) in any other case, be **the date on which the tax is paid**.
- **13(6)** The time of supply to the extent it relates to an **addition in the value of supply by way of interest, late fee or penalty for delayed payment** of any consideration shall be the date on which the **supplier receives such addition in value**.

Section 14 - Change in rate of tax in respect of supply of goods or services

- Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a **change in the rate of tax** in respect of goods or services or both, shall be determined in the following manner, namely:—

Section 14 - Change in rate of tax in respect of supply of goods or services

SUPPLY	INVOICE	PAYMENT	TIME OF SUPPLY	RATE
Before	Before	After	Date of issue of invoice	Old
Before	After	After	Earlier of Date of issue of invoice or date of receipt of payment	New
Before	After	Before	Date of receipt of payment	Old
After	After	Before	Date of issue of invoice	New
After	Before	After	Date of receipt of payment	New
After	Before	Before	Earlier of Date of issue of invoice or date of receipt of payment	Old

THANKS