

TIME AND VALUE OF SUPPLY UNDER GST LAW

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Agenda for the Session

- **Time of Supply.**
- **Value of Supply.**

Time of supply

Relevant provisions of Time of Supply

| Section of CGST Act | TOS Provisions-Goods |
|---------------------|--|
| 12(1) | When liability to pay arises on supply of goods? |
| 12(2) | TOS for payment under FCM. |
| 12(3) | TOS for payment under RCM. |
| 12(4) | TOS for Voucher. |
| 12(5) | Residual provision. |
| 12(6) | TOS for late fee, interest and penalty. |
| 14 | Change in rate of tax |

The above Sections are also applicable for levy of IGST and UTGST vide section 20 under Chapter IX of the IGST Act and Section 21 of Chapter IX of the UTGST Act.

Relevant provisions of Time of Supply

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| 12(3) | TOS for payment under RCM. |
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What is time of supply?

A supply consists of various **elements** that can be separated in time like:

- Date of purchase order / agreement
- Date of dispatch of goods.
- Date of delivery of goods.
- Date of issue of invoice.
- Date of performance of service.
- Date of entry in records.
- Date of payment .
- Date of entry of payment in records.
- Date of entry of payment in bank account.

- Shipped over time? Change in rate??

What is time of supply?

- Time of supply is nothing but a different name for “Point of Taxation” which was used under service tax law and denotes the time when the **charging event** has occurred.
- The liability to pay tax on goods / services arises at the time of supply, as determined in accordance with the provisions of this section. (Section 12(1) / 13(1) of CGST Act).

What is time of supply?

Whether TOS required to be determined in following cases?:

- i) Services by an employee to the employer.
- ii) Loan of Rs 1 lakh given by Bank to Mr X.
- iii) Sale of land and completed building.
- iv) Sale of alcoholic liquor.
- v) Sale of Securities.

Importance of time of supply

- Determines the 'rate of tax' applicable on any supply.
- Determines the due date of filing of GST returns as well as due date of payment of tax.

Importance of time of supply

Determining the rate of exchange applicable for determination of value of supply

- For Goods: Applicable rate of exchange as notified by CBIC u/s 14 of the CA , 1962 for the date of time of supply of such goods u/s 12 of the CGST Act.(Rule 34(1) of the CGST Rules).
- For Services: Applicable rate of exchange determined as per GAAP for the date of time of supply of such services in terms of Sec 13 of the CGST Act. (Rule 34(2) of the CGST Rules)

Point of taxation – Pre GST regime

- **Manufacture of goods:** Incidence of Excise duty arised upon manufacture/ production of goods in India. However the liability to pay was at the time of removal.
- **Provision of Service:** Earliest of receipt of amount / issuance of invoice(if issued within stipulated time), otherwise completion of service.
- **Sale of goods:** VAT / CST arose on transfer of title / property in goods including deemed sale (Article 366(29A) of Constitution), paid on accrual basis.

Initial warm up questions...

- What will be the TOS in respect of services rendered upto 30th June,2017 where the invoices are raised and / or payments are received after 30th June,2017 ?
- Renting of motor vehicle Services from a person other than body corporate to a body corporate located in TT has been covered under RCM from 01-10-19. RMV services if provided in Sep,19 but invoice issued / payment recd in Oct,19. Whether will come under FCM or RCM?
- How TOS is determined in respect of composite supplies?
- Whether time of supply is also required to be determined in respect of exempt supplies?

Time of Supply of Goods – Sec 12(2)

As per Section 12(2) of CGST ACT, time of supply of goods shall be earlier of :-

Actual date of issue of invoice by the supplier

Due date for issue of invoice by the supplier [Section 31*]:

- **Non – continuous Supply involves movement:** Time of removal of goods for supply (31(1)(a))
- **Non- continuous Supply - Other cases:** Delivery of goods/ making available to the recipient (31(1)(b))
- **Continuous Supply:** Date of issue of each successive statement of account OR receipt of payment (Sec 31(4))
- **Sale on approval basis:** Earlier of time at which it becomes known that the supply has taken place OR 6 months from date of removal (Sec 31(7)).

Date of receipt of payment* (i.e. Earlier of date on which **payment is entered in the books of Accounts of supplier** OR Date on which **payment is credited** to the supplier's bank a/c- Expl 2 to Sec 12(2)(b)).*

**As per NN 66/2017-CT dtd 15-11-17 special procedure laid down as per Sec 148 and advances are not subject to tax for tax payers (other than composition dealers)*

Time of Supply of Goods – Sec 12(2)

- Relaxation in payment of tax on advance towards goods (only for non-composition suppliers*)- Notif issued u/s 148.

| Period | Taxability of Advances | |
|--------------------------|---|--|
| | Aggregate turnover upto Rs 1.50 crore <i>(NN 40/2017-CT dtd 13-10-17)</i> | Aggregate turnover more than Rs 1.50 crore <i>(NN 66/2017-CT dtd 15-11-17)</i> |
| 01.07.2017 to 12.10.2017 | Taxable | Taxable |
| 13.10.2017 to 15.11.2017 | Non- Taxable | Taxable |
| 15.11.2017 and onwards | Non- Taxable | Non- Taxable |

Time of Supply of Goods – Sec 12(2)

Composition suppliers also not required to pay tax on advance

- A composition supplier has to pay, an amount calculated at prescribed rate applied on his 'turnover in the State / Union Territory' for a quarter.
- The composition suppliers are also not required to pay any tax on advance received as the same does not form part of taxable supplies, and in turn , also does not form part of the turnover in a State / Union territory at the end of the quarter.

Meaning of continuous supply of goods (Sec 2(32))

- 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 **supplier invoices the recipient on a regular or periodic basis** and includes notified supplies.
- While **continuous supply** shall mean a supply of goods incessantly for eg., supply of lubricating oil through pipeline, a **recurring supply** shall mean a supply which has a pattern of reoccurrence for eg., supply of thirty water jars every day in an office.
- **Due date of issue of invoice of CSG (Sec 31(4))**: Where successive statement of accounts or successive payments are involved the **invoice is required to be issued before or at the time of issue of each such statement or receipt of each such payment**, as the case may be.

Time of Supply of Goods – Sec 12(2)

- Where excess payment of upto Rs 1000/- is received in respect of any invoice, the TOS to the extent of such excess shall at the option of the supplier is the date of issue of invoice in respect of such excess amount. (*Proviso to Sec 12(2)*)
- 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 1 to Sec 12(2)*)

Time of Supply of Goods – Sec 12(2)

Sale on approval basis:

- In this regard, vide **CBIC Circular No. 22/22/2017-GST, dated 21-12-2017**, it has been clarified by CBIC that the **movement of artwork from artist to art galleries** shall not be constituted as supply as the same is sent on approval basis and the supply takes place when buyer selects a particular art work displayed at the gallery.
- Also, vide **CBIC Circular No. 10/10/2017-GST, dated 18-10-2017** it has been clarified that where **goods are moved** within the State or from the State of registration to another State for supply **on approval basis** i.e. such goods are to be considered as being carried on approval basis and a tax invoice can be issued when the buyer has approved the goods and taken the delivery.

Time of Supply of Goods – Sec 12(2)

Job work (Sec 143):

- It has been clarified vide **Circular No. 38/12/2018 dated 26.03.2018** that the principal should issue an invoice on expiry of three years (for capital goods) / one year (for inputs) and should declare such supplies in the return filed for the month in which the time period of three years / one year is expired.
- TOS here would be the time of removal of goods while sending to job worker and therefore interest would have to be paid.

Time of Supply of Goods – Illustration

- Chiku Traders is a registered supplier of plastic goods. **On 10 th April, 20XX, Chiku Traders received an order from Neelu Traders** for supply of a consignment of plastic goods. Chiku Traders **gets the consignment ready by 15th April, 20XX**. The **invoice** for the consignment was **issued the next day, 16th April, 20XX**. Neelu Traders **collects the consignment** from the godown of Chiku Traders on **25th April, 20XX** and **hands over the cheque** towards payment on the same date. The said **payment is entered** in the books of accounts of Chiku Traders on **26th April, 20XX** and amount is **credited in their** bank account on **27th April, 20XX**.
- Determine the time of supply of the plastic goods supplied by Chiku Traders to Neelu Traders as per the provisions of CGST Act, 2017.

Time of Supply of Services – Sec 13(2)

If invoice issued within prescribed time u/s 31 (30 days (45 days in case of Banking, Insurance, Financial Institution or NBFC- Sec 31(2) + Rule 47) (**Sec 13(2)(a)**)



Date of issue of Invoice
OR Payment, whichever is earlier

If invoice not issued within prescribed time (**Sec 13(2)(b)**) –Normal cases : Sec 31(2) , CSS: Sec 31(5) , Supply ceases before completion : Sec 31(6)



Date of provision
(completion) of service OR
payment, whichever is
earlier

If provisions of clause (a) & (b) do not apply i.e. the date of issue of invoice, provision of service and receipt of payment are not available. (**Sec 13(2)(c)**)



Date on which **recipient**
shows the receipt of
services in his books of
accounts

**Where advance is received, the Supplier shall issue a receipt voucher, and NOT a tax invoice*

**Where payment of Rs. 1000/- Is received in excess, then time of supply at option of the supplier is date of issue of invoice for such excess.- Proviso to Sec 13(2).*

Issue of invoice- CSS

- **Prescribed time for issue of invoice of CSS** (*Section 31(5) of the CGST Act*)
 - (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**.
- **Meaning of continuous supply of services** (*Section 2(31) of the CGST Act*)
- “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.

Issue of invoice- Supply ceases before completion

- **Due date of issue of invoice of where supply ceases before completion** (*Section 31(6) of the CGST Act*)
- In case where supply of services ceases under the contract before the completion of supply,
- the invoice shall be raised at the time **when the supply ceases** and such invoice shall be issued to the extent of the supply made before such cessation.

** It may be noted here that in such cases the grace period of 30 days / 45 days is not provided.*

Time of Supply of Service – Sec 13(2)

Clause (c) of Section 13(2) : Applicable in exceptional situations

Investigation shows that ABC & Co. carried out service of cleaning and repairs of tanks in an apartment complex , for which the RWA showed a payment of cash on 4th April to them against work of this description. The dates of work are not clear from records of ABC & Co who has also not issued any invoice or entered the payment in their books of accounts.

As in this case TOS cannot be determined by clause (a) / (b) of Sec 13 , clause (c) shall come into picture and the date on which the recipient of service shows receipt of service in his books of account.

Thus TOS will be 4th April, i.e the date on which the RWA records the receipt of service in its books.

Time of Supply of Service – Illustration

- Determine the time of supply from the following particulars:

| Date | Description |
|---------------------------|---|
| 8th September | Community hall booked for a marriage, sum agreed Rs. 1,20,000, advance Rs. 20,000 recorded in the books of account. |
| 10th September | Advance amount credited in bank account. |
| 2 nd November | Marriage held in the Community hall. |
| 18th December | Invoice issued for Rs. 1,20,000 indicating the balance of Rs. 1,00,000 payable. |
| 22 nd December | Balance Rs. 1,00,000 received recorded in the books of account. |
| 24 th December | Payment Rs. 1,00,000 credited to the bank account |

Time of Supply of Goods / Service – Reverse Charge Sec 12(3)/ 13(3)

Reverse charge in case of goods may arise either under Section 9(3) or Section 9(4) of the CGST Act.

RCM- Goods (8 Goods)

Section 9(3): Notification no. 4/2017-Central Tax (Rate) dated 28.06.2017 as amended from time to time provides the list of goods which will be subject to reverse charge mechanism subject to the category of supplier and recipient specified therein. These goods include cashew nuts (not shelled or peeled), bidi wrapper leaves (tendu), tobacco leaves, raw cotton, silk yarn, supply of lottery etc.

RCM- Services (22 Services)

Section 9(3) : Notification no. 10/2017-Integrated Tax (Rate) dated 28.06.2017 as amended from time to time, provides the list of services which will be subject to reverse charge mechanism subject to the category of supplier and recipient specified therein. These services include import of services, GTA, Legal Services from advocate, sponsorship , Director Services, renting of motor vehicle, TDR / FSI to promoter, Lease rent of land to promoter etc.

Time of Supply of Goods / Service – Reverse Charge Sec 12(3)/ 13(3)

RCM – Goods / Services

Section 9(4) : Notification No.7/2019 Central Tax (Rate) with effect from 01-04-2019.

Covers only the **promoter** i.e. Builder Real Estate Project (REP) or a Residential Real Estate Project (RREP) and he needs to pay tax under RCM on purchase of cement , capital goods etc from unregistered persons. Further if promoter (Builder/developer) fails to purchase at least 80% of the value of input and input services, from registered suppliers then also RCM applies to extent of the shortfall.

Time of Supply of Goods / Services - Reverse Charge – Sec 12(3) / 13(3)

1. Date of receipt of Goods
(applicable only for goods)

2. Date on which payment made is entered in the books of recipient or debited to the recipient's bank a/c (whichever is earlier).

Where tax liable to be paid on reverse charge basis, the time of supply of goods/services shall be **earliest** of -1,2 & 3 (for goods) or 2 & 3 (for services)

3. 31st day (in case of goods) / 61st day (in case of services) from the date of issue of invoice by supplier

*Note: This factor is **NOT relevant** in case of services from a supplier being an associated enterprise outside India*

4. Where it is not possible to determine time of supply in the **3 other cases**: Date of entry in the books of account of the recipient

Note: This factor is relevant in case of services from a supplier being an associated enterprise outside India

In case of **import of services from an associated enterprises** the TOS is the date of entry in the books of a/cs of recipient of supply or date of payment ,whichever is earlier. (2nd proviso to Sec 13(3) of the CGST Act).

Time of Supply of Goods- Reverse Charge – Illustration

Determine time of supply of goods from the given information:

| Date | Description |
|---------|---|
| May 4 | Supplier invoices goods taxable on RCM basis to X Ltd |
| June 12 | X Ltd receives the goods , which were held up in transit. |
| July 3 | Payment made for goods |

Here TOS will be June,4, i.e. 31st day from the date of invoice as same is Earliest of the three events.

Time of Supply of Services- Reverse Charge – Illustration

Determine time of supply from the given information:

| Date | Description |
|-----------|---|
| May 4 | Supplier of service issues invoices. |
| August 21 | Payment made to supplier. |
| June 30 | Entry of expense in books of the recipient. |

Normal case:

Here TOS will be July,4, i.e. 61st day from the date of invoice as same is earlier to payment to supplier. Date of entry in books not relevant here for TOS.

Import of Service from Associated Enterprise:

In case import of service is from associated enterprise, TOS will be date of entry in books i.e. June 30 or date of payment made i.e. August 21, which ever is earlier. Thus TOS will be June 30.

Time of Supply of Vouchers – Sec 12(4)/13(4)

Time of supply in case of **supply of voucher**–

Date of issue – If supply is identifiable at the point of issue of voucher

Date of redemption of voucher – *Other cases*

Note: *Voucher – can be in respect of goods or services*

Time of Supply of Vouchers – Sec 12(4)/13(4)

- **Definition of Voucher (Sec 2(118) of the CGST Act,2017)**
- Voucher means an **INSTRUMENT** where there is an **OBLIGATION** to accept it as consideration or part consideration for the supply of goods or services or both AND where the **goods or services or both to be supplied** or **identities of their potential suppliers** are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;
- Voucher **does not contain any stored value** like digital wallets, shopping gift card but **has a ‘VALUE TO USE’**.
- Voucher are **not goods or services in themselves**, but are singled out for limited purposes of prescribing TOS.
- Vouchers are **not merely amounts of pre-payment** received because TOS provisions already exists for same.

Time of Supply of Vouchers – Sec 12(4)/13(4)

- **Voucher Directive- EU- VAT**
- The Voucher Directive recognises two types of vouchers – ‘single-purpose voucher’ (“**SPV**”), where the place of supply of goods or services to which the voucher relates and the applicable VAT are known at the time of issue of voucher, and ‘multi-purpose voucher’ (“**MPV**”), which are defined as vouchers other than a single-purpose voucher.
- The underlying principle **is to treat the supply of SPV as the supply of goods or services represented by such SPV itself**, even though a registered person may be merely supplying a piece of paper or its electronic equivalent. On the other hand, in case of MPV, supply takes place with the actual handing over of goods or provision of services.
- Indian Businesses issuing SPVs may need to re-visit their practices so as to appropriately structure their voucher schemes as MPVs which may entail certain advantages.

Residual Provision – Sec 12(5) / 13(5)

Where it is not possible to determine the time of supply under any of the circumstances discussed, it shall be determined as:

Due date for filing of such return – *If periodical return has to be filed*

Date on which the Tax is paid – *Other cases*

Time of Supply of Goods / Services - Value Addition – Sec 12(6) / 13(6)

Time of supply for value addition by way of

Interest,
Late Fees,
Penalty

For Delayed
payment of
Consideration shall be

Date on which the supplier receives such addition in value

As per Section 15(2)(d) of CGST Act the value of supply **shall include** interest or late fee or penalty for delayed payment of any consideration for any supply.

Time of Supply of Goods / Services - Value Addition – Sec 12(6) / 13(6) - Illustration

| Particulars | Date of Invoice / Debit Note | Amount | Date of receipt of payment | Time of supply | Sub-section applicable |
|--|------------------------------|------------|----------------------------|----------------|------------------------|
| Consideration for Service | 25-7-2019 | 1,00,000/- | 15-02-2020 | 25-7-2019 | (2) |
| Intt, late fee or penalty for delayed payment of Consideration | 15-11-2019 | 10,000/- | 15-02-2020 | 15-02-2020 | (6) |

Change in rate of tax in respect of supply of goods or services – Sec 14

| Date of supply of goods or services | Date of invoice | Date of receipt of payment | Time of supply | Rate of tax |
|-------------------------------------|-----------------|----------------------------|------------------------|-------------|
| (1) | (2) | (3) | (4) | (5) |
| Before | After | After | Earlier of (2) and (3) | New |
| Before | Before | After | (2) | Old |
| Before | After | Before | (3) | Old |
| After | Before | After | (3) | New |
| After | Before | Before | Earlier of (2) and (3) | Old |
| After | After | Before | (2) | New |

Note: Date of receipt of advance not to be considered for goods.

Change in rate of tax in respect of supply of goods or services – Sec 14

- **Date of receipt of advance not to be considered for goods**
- The notifications No 40/2017-CT dtd 13-10-17 and No. 66/2017-CT dtd 15-11-17 also refer to situations attracting the provisions of Sec 14 and therefore the date of receipt of advances would not be relevant for the purpose of ascertaining the appropriate rate of tax in case of change.
- Thus the applicable rate of tax in case of change in rate of tax of goods would be ascertained based on **issuance of invoice and date of supply of goods only.**

Change in rate of tax in respect of supply of goods or services – Sec 14

- **Date of receipt of payment (relevant for services only).**

Case – I: Where the credit in Bank Account is within four working days from date of change in the rate of tax

Date of entry in the books of accounts of supplier **OR**

Date of which payment is credited in bank account of supplier

Case – II: Where the credit in Bank Account is after four working days from date of change in the rate of tax

The date of receipt of payment shall be date of credit in the bank account. Thus in such cases the date of entry in books will be disregarded.

Change in rate of tax in respect of supply of services- Illustration

Mr. Mahendra, an interior decorator registered at Ahmedabad, provided service to one of his clients XYZ Company Ltd., registered at Pune. The provision of service was completed on 10-08-20XX and payment received was entered in the books of Mr. Mahendra on 11-08-20XX.

W.e.f. 16/08/20XX, applicable GST rate was increased from 5% to 12%. However, payment for the service received was credited in his bank account on 17/08/20XX and invoice for the same was raised on 23-08-20XX. Mr. Mahendra claimed that he is liable to pay IGST @ 5%. But the department took the view that he is liable to pay IGST @12%.

Examine the correctness of Mr. Mahendra's contention and determine the time of supply and applicable rate of tax as per the statutory provisions.

Would your answer undergo any change in the above case if the payment was credited to the bank account on 14-08-20XX instead of 17-08-20XX?

- Note: You may assume that all days are working days.

Value of supply

Relevant provisions of Valuation

| Section of CGST Act | Valuation Provisions |
|---------------------|--|
| 15(1) | Value to be transaction value. |
| 15(2) | Inclusions in Value. |
| 15(3) | Exclusions from Value. |
| 15(4) | Value cannot determined- Recourse to Rules. |
| 15(5) | Separate valuation rule for notified supplies. |
| Explanation: | Meaning of related persons |

The above Section are also applicable for levy of IGST and UTGST vide section 20 under Chapter IX of the IGST Act and Section 21 of Chapter IX of the UTGST Act.

Relevant provisions of Valuation

| Rule of CGST Rules | Valuation Provisions |
|--------------------|--|
| 27 | Value of supply of goods / services where the consideration is not wholly in money |
| 28 | Value of supply of goods / services between distinct or related persons (other than agent) |
| 29 | Value of supply of goods made or recd through an agent |
| 30 | Value of supply of goods / services based on cost |
| 31 | Residual method |
| 31A | Value of supply in case of lottery, betting, gambling and horse racing |
| 32(2) | Value of supply of services of purchase / sale of foreign currency. |

Relevant provisions of Valuation

| Rule of CGST Rules | Valuation Provisions |
|--------------------|---|
| 32(3) | Value of supply of services by air travel agent |
| 32(4) | Life Insurance business. |
| 32(5) | Second hand goods dealer. |
| 32(6) | Value of token / voucher / stamp redeemable against goods / services. |
| 32(7) | Supplies provided by notified suppliers between distinct persons. |
| 33 | Value of supply of services in case of pure agent |
| 34 | Rate of exchange of currency |
| 35 | Value of supply inclusive of GST. |

Value of Taxable Supply – Sec 15

Value of Taxable Supply

Value of supply of goods or services or both shall be the 'Transaction Value', where

- Supplier and recipient of supply are unrelated
- Price is actually paid / payable– AND price is the sole consideration for the supply

Illustration:

Whole sale price for 1 MT of cement sold by X Ltd in the ordinary course of business: Rs 7000/-

Price of 1 MT of cement sold by X Ltd to an unrelated customer Y Rs 6700/-

Value of Supply??

Value of Taxable Supply – Sec 15

Explanation to Section 15 of the CGST Act deems the persons below to be “related persons”:

- Officers / Directors of one another’s business
- Partners in business
- Employer – employee
- A person directly / indirectly owns / controls / holds 25% of shares of both the persons
- One directly / indirectly controls the other
- Both are directly / indirectly controlled by a third person
- Together, they directly / indirectly control a third person
- Members of the same family
- Sole agent / distributor / concessionaire of the other

As per Sec 2(49) of CGST Act **“family”** means,—

- (i) the spouse and children of the person, and
- (ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;

Transaction value: Inclusions and exclusions

Transaction Value INCLUDES:

- Amounts charged separately by supplier to recipient in respect of any **taxes, duties, cesses, fees and charges levied** under any law, other than taxes paid under GST regime; *(Sec 15(2)(a))*
- **Amount incurred by Recipient** which is liable to be paid by the Supplier and not included in the price; *(Sec 15(2)(b))*
- Charges by Supplier to Recipient being:
 - **Incidental expenses** (e.g.: packing, commission) *(Sec 15(2)(c))*
 - **Charges for anything done by the Supplier** in r/o the supply of G/S at the time or before delivery / supply of G/S. *(Sec 15(2)(c))*
 - **Interest/ late fee/ penalty** for delayed payment of consideration *(Sec 15(2)(d))*
 - **Subsidies directly linked to price** recd by supplier excluding Central and State Govt subsidies *(Sec 15(2)(e))*

Transaction Value EXCLUDES discount:

- **Before / at the time of supply**
 - **Single condition:** Such discount is duly recorded in invoice *(Sec 15(3)(a))*
- **After the supply: Cumulative conditions:**
 - Agreement establishing discount entered into before / at the time of supply
 - Discount specifically linked to relevant invoices
 - ITC reversed by the recipient to the extent of discount *(Sec 15(3)(b))*

Value of Taxable Supply – Sec 15- Inclusions

Sec 15(2)(a): Taxes other than GST to be included in value

TCS under Income Tax Act, 1961 not includible in the taxable value for purpose of GST (*Circular No. 76/50/2018 GST dated 31-12-2018 (amended vide corrigendum dated 07-03-2019)*).

Sec 15(2)(b): Amount incurred by recipient to be included in value

Amount paid by the recipient to third parties will be added to value only when the supplier is under contractual liability to make payment to such third parties and said payment is in relation to such supply.

Valuation of supply made by component manufacturer using moulds and dies owned by OEM sent FOC to him (*Circular No. 47/21/2018-GST dated 08-06-2018*)

Value of Taxable Supply – Sec 15- Inclusions

Sec 15(2)(c): Incidental expenses

- Commission : If paid to agent and recovered from recipient.
- Packing
- Installation and testing charges
- Weighment charges, loading & designing charges incurred before supply
- Outward freight / transit insurance
 - If on **FOR basis** : It is composite supply and included in value.
 - If on **ex-factory basis**: Not to be included.

Value of Taxable Supply – Sec 15- Inclusions

Sec 15(2)(d): Interest, late fee, or penalty (IPL)for delayed payment

- The value of supply will include not only the base price but also the charges for delay in payment. If base supply is exempt any IPL thereon will also not be taxable.
- **Circular No. 102/21/2019-GST dated 28-06-2019**
- **Case – 1:** X sells a mobile phone to Y. The cost of mobile phone is Rs 40,000/-. However, X gives Y an option to pay in installments, Rs 11,000/- p.m, over next four months (Rs 11,000/- *4 = Rs. 44,000/). Further, as per the contract, if there is any delay in payment, Y would be liable to pay additional / penal interest amounting to Rs. 500/- per month for the delay.
- As per the provisions of section 15(2)(d) of the CGST Act, the amount of penal interest is to be included in the value of supply. The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in the value of the mobile, irrespective of the manner of invoicing.

Value of Taxable Supply – Sec 15- Inclusions

Sec 15(2)(d): Interest, late fee, or penalty (IPL) for delayed payment

Circular No. 102/21/2019-GST dated 28-06-2019

Case – 2: X sells a mobile phone to Y. The cost of mobile phone is Rs 40,000/-. Y has the option to avail a loan at interest of 2.5% p.m for purchasing the mobile from M/s ABC Ltd. The terms of the loan from M/s ABC Ltd. allows Y a period of 4 months to repay the loan and an addl / penal intt @ 1.25% p.m for any delay in payment.

The addl. / penal interest charged for a transaction between Y and M/s ABC Ltd., is covered under Sl. No. 27 of notification No. 12/2017-CT (Rate) dated 28.06.2017. Accordingly, the '**penal interest**' charged thereon on a transaction between Y and M/s ABC Ltd. **would not be subject to GST**, as the same would be covered under said notification. The value of supply of mobile by X to Y would be Rs. 40,000/- for the purpose of levy of GST.

Penal interest wont fall under within the ambit of entry 5(e) of Schedule II of the CGST Act i.e. “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”,

However charges , if any charged by ABC Ltd for **processing / giving loan shall be subject to GST.**

Value of Taxable Supply – Sec 15- Inclusions

Sec 15(2)(e): Subsidies

- Subsidies directly linked to price of goods / services are includible in the price. If subsidy is given by Central / State Govt. , the lower price after adjusting the subsidy is the value. However subsidies given by other persons does not lower the value and such subsidy is added to the value of supply by supplier receiving the subsidy.
- Blanket subsidy/ donation received are not includible in the price.
- **Illustration:**
- The value of note book is Rs 50. For note books sold to students of Govt schools, a Company uses its CSR funds to pay seller Rs 30, so that students can pay only Rs 20/- per note book. In this case the value will remain at Rs 50/-. However if Govt had given subsidy the value would have been Rs 20/- per note book.

Value of Taxable Supply – Sec 15- Exclusions

Sec 15(3): Discount

Circular No. 92/11/2019-GST dated 07-03-2019

Buy one get one free offer:

It is **not an individual supply of free goods** but a **case of two or more individual supplies where a single price is being charged for the entire supply**. It can at best be treated as supplying two goods for the price of one. Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act.

Discounts including ‘Buy more, save more’ offers:

Discounts offered by the suppliers to customers (including staggered discount under “Buy more, save more” scheme and post supply / volume discounts established before or at the time of supply shall be excluded to determine the value of supply provided they satisfy the parameters laid down in section 15(3) , including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier.

Value of Taxable Supply – Sec 15- Exclusions

Sec 15(3): Discount

Circular No. 92/11/2019-GST dated 07-03-2019

Secondary Discounts:

These are the discounts which are not known at the time of supply or are offered after the supply is already over.

For example, M/s A supplies 10000 packets of biscuits to M/s B at Rs. 10/- per packet. Afterwards M/s A re-values it at Rs. 9/- per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/- per packet.

Such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in section 15(3)(b) are not satisfied. In such cases financial / commercial credit note(s) can be issued by the supplier (without GST).

Valuation: Recourse to Rules

Section 15(4) of the CGST Act: Where value cannot be determined u/s 15(1) the same shall be determined in such manner as may be prescribed.

Recourse to Rules in following situations:

1. Price is not the sole consideration i.e. Presence of non monetary consideration.
2. Supplier-recipient are related persons: Recourse to Rules even if the Supplier-Recipient relationship:
 - Did not influence the price;
 - Precedes agreement to the supply;
 - Has no bearing on pricing;
 - Has no bearing on Agreement to the Supply;
 - Has no relevance to the Supply;
 - Was to meet with different criteria or purpose;

(Rules will apply both ways – supplier to recipient and recipient to supplier)

Valuation: Recourse to Rules

Section 15(5) of the CGST Act:

Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Govt on the recommendations of the Council shall be determined in such manner as may be prescribed.

Till date no supplies have been notified under above sub-section.



CGST Rules, 2017 (Rule 27 to 35)

Rule 27 of CGST Rules

Value of supply of goods or services where consideration is not wholly in money

- The value of supply shall be-
 - a) The open market value of such supply
 - b) If open market value not available, be the sum total of consideration in money and such further amount in money as is equivalent to consideration not in money if such amount is not known at the time of supply

Rule 27 of CGST Rules

- c) If value is not determinable under (a) or (b), the value of supply of goods/ services of like kind and quality

- d) If value not determinable under (a), (b) or (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by application of rule 30 or 31 in that order.

Rule 27 of CGST Rules

- **Illustrations:**

(1) Where a new phone is supplied for Rs. 20,000/- along with the exchange of an old phone and if the price of the new phone without exchange is Rs. 24,000/- , the open market value of the new phone is Rs. 24,000/-.

(2) Where a laptop is supplied for Rs. 40,000/- along with the barter of a printer that is manufactured by the recipient and the value of the printer known at the time of supply is Rs. 4,000/- but the open market value of the laptop is not known, the value of the supply of the laptop is Rs. 44,000/-.

Meaning of Open Market Value

- As per Explanation (a) given at end of Chapter V of the CGST Rules, -
- *“open market value” of a supply of goods or services or both means the **full value in money**, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are **not related** and the **price is the sole consideration**, to obtain such supply at the same time when the supply being valued is made;*

Meaning of supply of goods / services of like kind and quality

- As per Explanation (b) given at end of Chapter V of the CGST Rules,-
- *“supply of goods or services or both of like kind and quality” means any other supply of goods or services or both made under **similar circumstances** that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or **closely or substantially resembles**, that supply of goods or services or both.*

Rule 28: Value of supply of goods or services between distinct or related persons (other than through an agent).

(a) The open market value of such supply

(b) If open market value is not available

Value of supply of goods or services of like kind and quality

(c) If value of supply is not determinable under clause (a) or (b)

Value as determined by application of Rule 30 or Rule 31, in that order

Provided that where goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person

Where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services

Rule 29: Value of supply of goods made or received through an agent

- a) open market value, or
 - at the option of the supplier, be 90% of the price charged for the supply of goods of like kind and quality by the recipient (agent) to his customer not being a related person,
 - where the goods are intended for further supply by the said recipient (agent)

- b) where the value of a supply is not determinable under clause (a), the same shall be determined by application of rule 30 or rule 31 in that order.

Rule 29: Value of supply of goods made or received through an agent

Illustration:

A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of Rs 5000/- per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of Rs 4550/- per quintal. The value of the supply made by the principal shall be four thousand five hundred and fifty rupees per quintal or where he exercises the option, the value shall be 90 per cent. of Rs 5000/- i.e., Rs 4500/-per quintal.

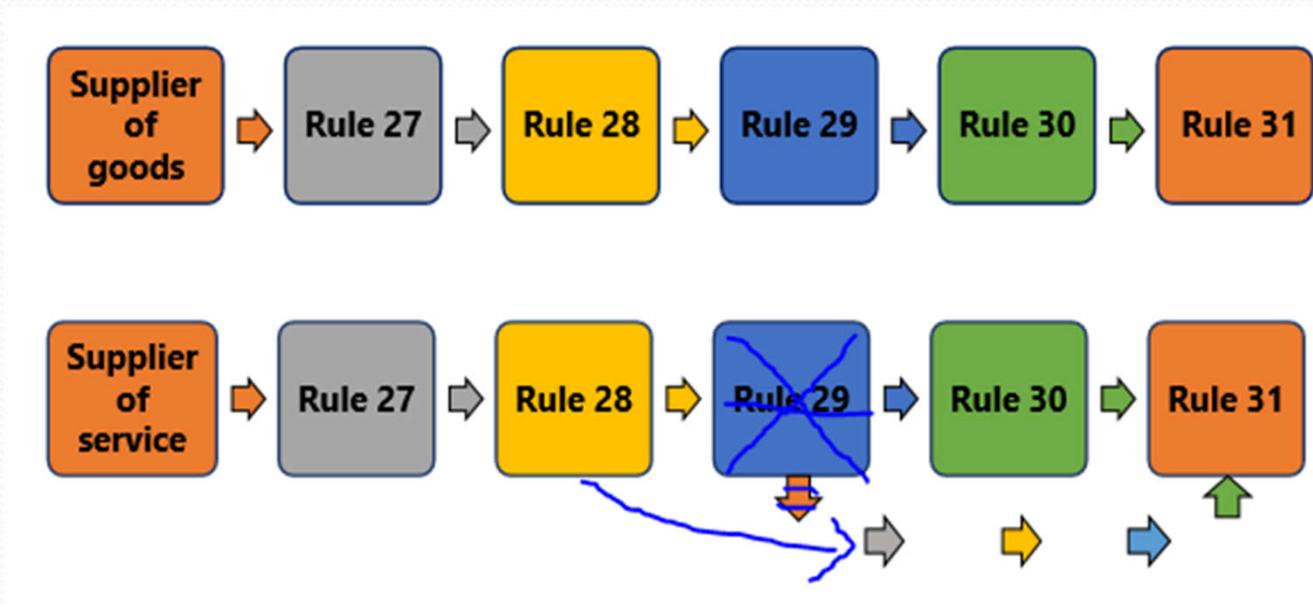
Rule 30: Value of supply of goods or services or both based on cost

- Where value is not determinable by any of the preceding rules,
- the value shall be 110% of the:
 - cost of production or manufacture or
 - cost of acquisition of such goods or
 - cost of provision of such services.

Rule 31: Residual Method

- Where value cannot be determined under Rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and general provisions of Sec 15 and these Rules.
- Further, in case of supply of services, the supplier may opt for this rule, disregarding rule 30.

Valuation Rules



Rule 31A : Value of supply in case of lottery, betting, gambling and horse racing

- Value of supply of lottery shall be deemed to be higher of:-
 - 100/128 of the face value of ticket*
 - Price as notified in the Official Gazette by the organising State.
- Explanation:-“*Organising State*” has the same meaning as assigned to it in clause (f) of sub-rule (1) of rule 2 of the Lotteries (Regulation) Rules, 2010.
- Value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing in a race club shall be:
 - 100% of the face value of the bet or
 - the amount paid into the totalisator
- * Amended wef 01-03-2020 vide Notf no.08/2020 – CT dt. 02.03.2020

Rule 32(2): Purchase or sale of forex including money changing

Normal Rule

- **When exchanged from or/ to INR:**
 - difference of buying rate/ selling rate and RBI reference rate X total units of currency
(If RBI reference rate is not available, value shall be 1% of gross amount of INR received or provided)
- **If neither of two currencies exchanged in INR, the value shall be equal to:**
 - 1% of the lesser of the two amounts
 - received by converting any of the two currencies into INR
 - on that day at the reference rate provided by RBI.

Rule 32: Determination of value in respect of certain supplies

Optional Rule*

Amount of currency exchanged up to Rs.1 lakh

1% of the gross amount of currency exchanged or Rs. 250/-, whichever is higher

Amount of currency exchanged exceeding Rs.1 lakh and up to Rs.10 lakhs

Rs. 1,000/- + 0.5% of the gross amount of currency exchanged above Rs. 100,000/-

Amount of currency exchanged exceeding Rs.10 lakhs

Rs. 5,500/- + 0.10% of the gross amount of currency exchanged above Rs.10 lakhs or Rs. 60,000/-, whichever is lower

* Option to be exercised for a FY & cannot be withdrawn during a FY.

Rule 32(3) - Air Travel Agents:

Optional Rule provided for determining the value of services in relation to booking of tickets for air travel by an air travel agent.

- Domestic bookings: 5% of Basic Fare
- International bookings: 10% of Basic Fare
- *“Basic fare” means that part of the air fare on which commission is normally paid to the air travel agent by the airline.*

Rule 32(4)-Life Insurance

a) gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such amount is *intimated to the policy holder* at the time of supply of service;

b) In case of single premium annuity policies other than (a), 10% of single premium charged from the policy holder; or

c) in all other cases, 25% of the premium charged from the policy holder in the first year and 12.5% of the premium charged from policy holder in subsequent years;

Rule does not apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

Rule 32(5)- Second Hand Goods

- Supply of used goods as such or after such minor processing which does not change the nature of the goods and where no ITC has been availed on purchase of such goods,
- the value of supply shall be:
 - the difference between the selling price and purchase price and
 - where the value of such supply is negative, it shall be ignored.

Rule 32(5)- Second Hand Goods

- Provided that the purchase value of **goods repossessed** from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be **deemed to be the:**
- purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

Rule 32(6)- Token / Coupon / Voucher / Stamp

- The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply shall be equal to:-
 - money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

Rule 32(7)- Distinct Persons

The value of taxable services provided by such class of service providers; as may be notified by the Government between distinct persons, (Entry-2 of Schedule I); other than those where ITC is not available under S.17(5); shall be deemed to be NIL.

No Notification issued till date.

Rule 33: Value of supply of services in case of Pure Agent

- Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-
- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Rule 33: Value of supply of services in case of Pure Agent

Explanation.- For the purposes of this rule, the expression “pure agent” means a person who-

- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustration

Corporate service firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies.

The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees.

Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

Rule 34: Rate of exchange of currency, other than INR, for determination of value

(1) The rate of exchange for determination of value of **taxable goods** shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.

(2) The rate of exchange for determination of value of **taxable services** shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.

Rule 35: Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax

- Where Value of Supply is inclusive of IGST/ CGST/ SGST/ UTGST then:

$$\text{Tax Amount} = \frac{\text{Value inclusive of taxes X tax rate in \% of IGST or as the case may be CGST, SGST or UTGST}}{(100 + \text{sum of tax rates, as applicable, in \%})}$$



Thank You

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You can also ask GST queries on www.clearmytax.in