

A BRIEF INTRODUCTION TO CGST, SGST/UTGST, IGST & COMPENSATION CESS ACT(S)

PRESENTATION PLAN:

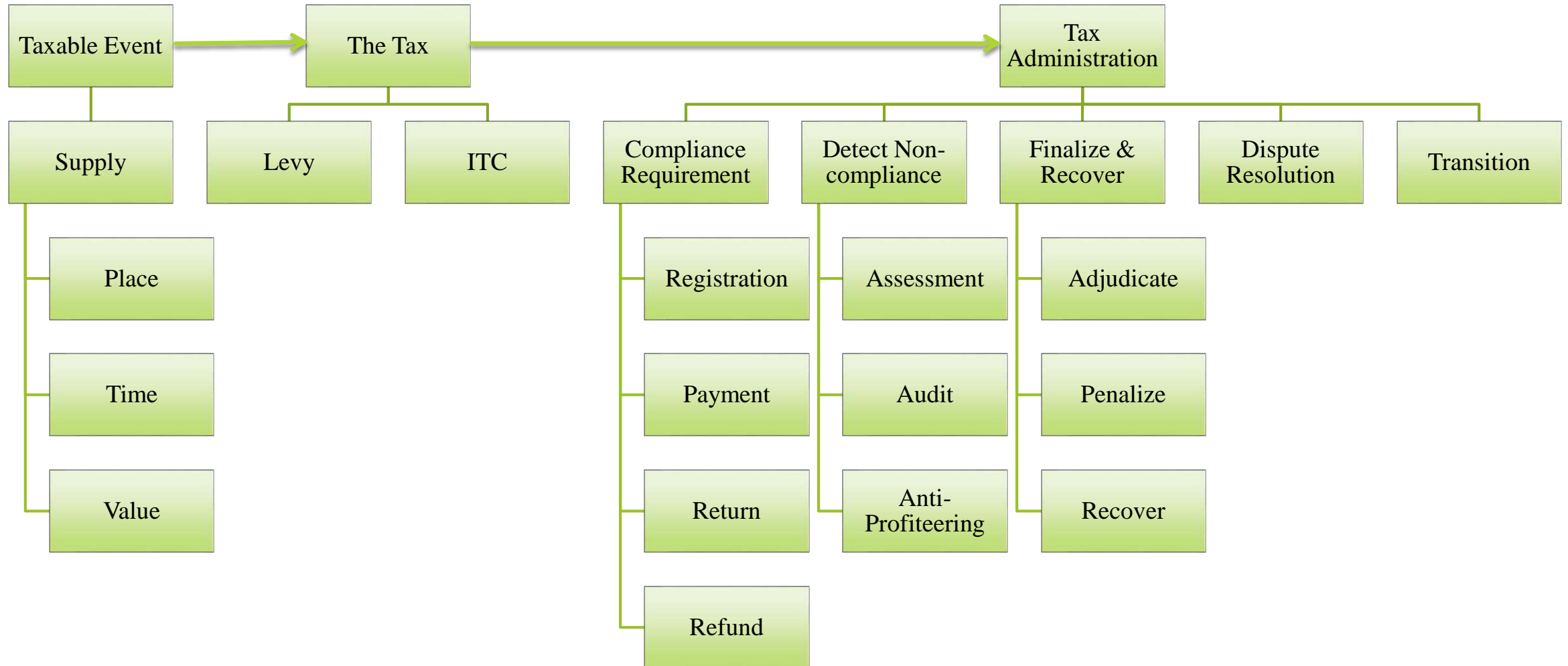
- **LEGAL PROVISIONS COMMON TO THE GST LAW(S)**
- **LEGAL PROVISIONS SPECIFIC TO IGST ACT & COMPENSATION CESS ACT**

*NEERAJ PRASAD IRS
COMMISSIONER (GST-Inv)*



Bird's-eye view of GST Law

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Key Pivots of GST Law Flowing From Constitution

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Definition of GST

Article 366(12A)

“Goods and services tax” means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption

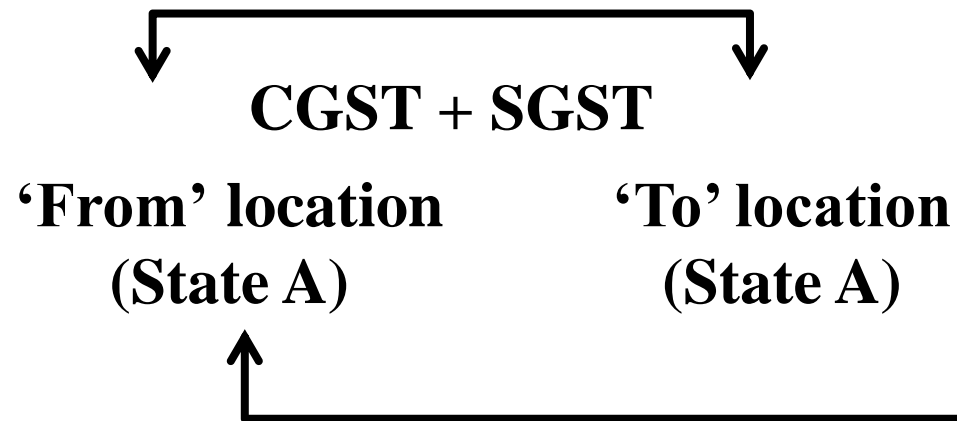
Sl No	Definition	Article	Definition
1.	Goods	366(12)	Includes all materials, commodities, and articles [Pre Existing Definition]
2.	Service	366 (26A)	Anything other than goods [Introduced vide 101 st Constitutional Amendment Act]
3.	State	366(26B)	With reference to articles 246A, 268, 269,269A and Article 279A includes a Union territory with Legislature. [Introduced vide 101 st Constitutional Amendment Act]

“Goods and Services tax” law while having unique principles, has significant elements of prior Central and State laws; and is also inspired by VAT/GST legislation of EU, Australia, Malaysia etc. along with International VAT/GST guidelines of OECD

Basic Concept of CGST-SGST & IGST Levy

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➤ Intra-State Supply

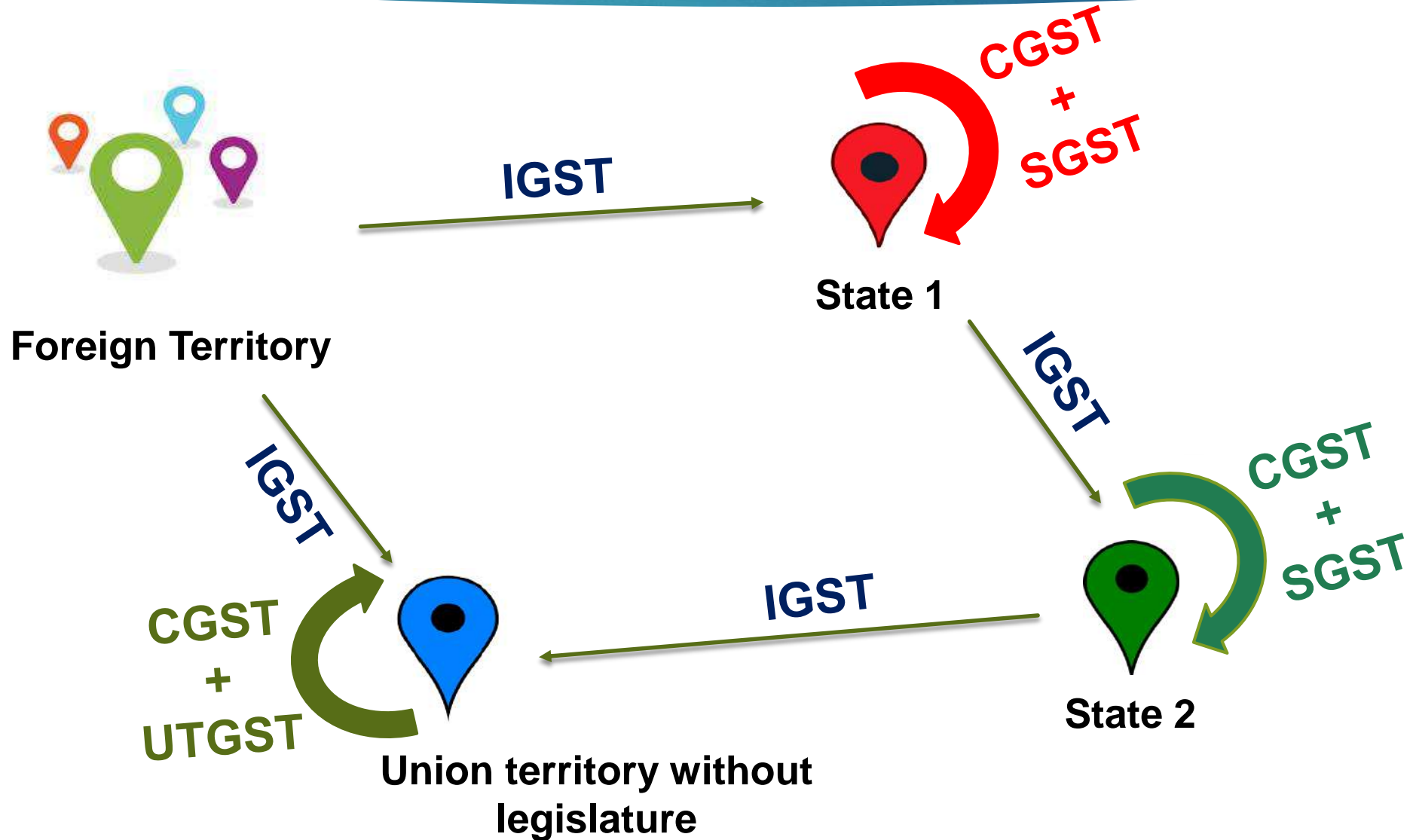


➤ Inter-State Supply

IGST
'To' location (State B)

- Imports – Basic customs (BCD) + IGST

Understanding CGST, SGST, UTGST & IGST



Common Legal Provisions

Key Definitions in the Mother Act- CGST

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1. **Aggregate Turnover** –means the aggregate value of all taxable supplies, **exempt supplies**, export of goods and/or services and inter-state supplies of a person having the **same PAN**, and **excludes taxes**, if any charged under the CGST Act, SGST Act, and the IGST Act, and Cess as the case may be. **[Section 2(6)]**

2. **Business**- includes any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, **whether or not it is for a pecuniary benefit; and whether or not there is volume, frequency, continuity or regularity of such transactions;** supply of acquisition of Capital Assets and services in connection with commencement or closure of business..... **[Section 2(17)]**

Common Legal Provisions

Key Definitions in the Mother Act- CGST

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3. Composite Supply – means a supply made by a taxable person to a recipient comprising two or more supplies of goods or services, or any combination thereof, which are **naturally bundled** and supplied in conjunction with each other in the ordinary course of business, one of which is a principal activity. **[Section 2(30)]**

- E.g. Goods packed and **transported** with insurance

4. Mixed Supply - means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person **for a single price** where such supply does not constitute a composite supply. **[Section 2(74)]**

- E.g. Supply of food packet containing cakes, chocolates and aerated water together

Common Legal Provisions

Key Definitions in the Mother Act- CGST

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5. Consideration - in relation to the supply of goods or services **includes:**

Any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for inducement of, the supply of goods and/or services, **whether by recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.**

PROVIDED that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies the deposit as consideration for the said supply. **[Section 2(31)]**

Common Legal Provisions

Key Definitions in the Mother Act- CGST

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- 6. Electronic Commerce** – means the supply of goods or services or both, including digital products over digital or electronic network. **[Section 2(44)]**

- 7. Electronic Commerce Operator** – means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. **[Section 2(45)]**
Eg: OLA, UBER, SWIGGY, FLIPKART etc.

Government may, on the recommendations of the Council, by **notification**, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services. **[Sec 9(5)]**

Common Legal Provisions

Key Definitions in the Mother Act- CGST

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8. Exempt Supply – comprise the following 3 types of supplies:

- Supplies taxable at a '**NIL**' rate of tax;
- Supplies that are **wholly exempted** from CGST or IGST, by way of a notification;
- **Non-taxable** supplies as defined under Section 2(78) – supplies that are not taxable under the Act (viz. alcoholic liquor for human consumption) [**Section 2(47)**]

9. Fixed Establishment – means a place (other than the registered place of business) which is characterised by a **sufficient degree of permanence** and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs [**Section 2(50)**]

Common Legal Provisions

Key Definitions in the Mother Act- CGST

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10. Location of Recipient of Services – means

- where a supply is received at a place of business for which the registration has been obtained, **the location of such place of business;**
- where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), **the location of such fixed establishment;**
- where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of **the establishment most directly concerned** with the receipt of the supply; and
- in absence of such places, the location of the **usual place of residence** of the recipient **[Section 2(70)]**

Common Legal Provisions

Key Definitions in the Mother Act- CGST

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11. Location of Supplier of Services – means

- where a supply is made from a place of business for which the registration has been obtained, **the location of such place of business;**
- 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;**
- 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 provisions of the supply; and
- in absence of such places, the location of the **usual place of residence** of the supplier **[Section 2(71)]**

Common Legal Provisions

Key Definitions in the Mother Act - CGST

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- 12. Goods** means every kind of **movable property** other than money and securities **but includes actionable claim**, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. **[Section 2(52)]**
- 13. Services** means **anything other than goods**, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged. **[Section 2(102)]**
- 14. Reverse Charge** means the liability to **pay tax by the recipient of supply** of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9 **[Section 2(98)]**
- Section 9(3) - reverse charge on goods and/or services as notified by Government
 - Section 9(4) - **reverse charge on goods and/or services for purchase from unregistered supplier.**

- **Essentially Section 6 addresses the issue of multiplicity of action**
- Section 6 lays down provisions which are aimed at avoiding multiple actions on a common proceeding under the CGST and SGST Act. The section states that if an officer is a proper officer under either of the Acts, shall be deemed to be the proper officer under the other Act;
- In case an officer has taken action under any one or more section of either Acts, he shall issue an order for the corresponding section of the other Act. The officer shall intimate the jurisdictional officer of the other Act about the action initiated by him;
- Further, when a proper officer has initiated a proceeding under one Act, no action shall be initiated under the other Act on the same subject matter.

LEVY & COLLECTION (SEC 7-9)

Concept of Supply – Sec 7 of CGST Act

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Section 7 – For the purpose of this Act, the expression Supply includes

Section 7(1)(a)	Section 7(1)(b)	Section 7(1)(c)	Section 7(1)(d)
<p>All forms of supply of goods and / or services, made or agreed to be made,</p> <ul style="list-style-type: none"> - for a consideration - in the course or furtherance of business <p>such as:</p> <ul style="list-style-type: none"> - sale, - transfer, - barter, - exchange, - license, - rental, - lease or - disposal 	<p>Importation of service,</p> <ul style="list-style-type: none"> - for a consideration <p>whether or not in the course or furtherance of business</p>	<p>Supplies specified</p> <ul style="list-style-type: none"> - To be treated as supplies even when <i>made without a consideration</i> <p>Schedule I(e.g.):</p> <ol style="list-style-type: none"> 1. Permanent transfer / disposal of business assets for which ITC is availed 2. Supplies between related persons/ distinct persons in the course or furtherance of business (gifts of less than Rs. 50,000 in value in a FY by employer to employee not to be treated as supply) 3. Importation of service from a related person or from any of his other establishments outside India, in the course or furtherance of business. 	<ul style="list-style-type: none"> • Activities to be treated as supply of goods or supply of services – Sch II <p>Section 7(2)</p> <ul style="list-style-type: none"> • Activities not be considered as supply (Sch-III) • Essentially covers Constitutional and Statutory Functions • Actionable claims, other than lottery, betting and gambling

Concept of Supply – Sec 7 of CGST Act

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Section 7(1)(d) – Activities to be treated as supply of goods or supply of services – Schedule II	
	Following to be treated as Supply of Services
(a)	Construction of a complex, building, civil structure or a part thereof, except where the entire consideration has been received after issuance of completion certificate, or before its first occupation, whichever is earlier
(b)	Temporary transfer or permitting the use or enjoyment of any intellectual property right
(c)	Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software
	Following Composite Supplies to be treated as Supply of Services
(a)	Works Contract as per Sec. 2(119) of CGST Act “ works contract ” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract
(b)	supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption)

Time of Supply of Goods – Sec 12(2)

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As per Section 12(2) of CGST Act, time of supply of goods shall be earlier of invoice/payment, i.e., –

Actual date of issue of invoice by the supplier

Due date for issue of invoice by the supplier [Section 31(1)]:

- **Supply involves movement:** Time of removal of goods for supply
- **Continuous Supply:** Date of issue of statement
- **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

Date on which payment is entered in the books of Accounts of supplier

Date on which payment is credited to the supplier's bank a/c

Time of Supply of Services – Sec 13(2)

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TIME OF SUPPLY OF SERVICES – SEC 13(2)

If invoice issued within prescribed time u/s 31(2)
- 30 days (45 days in case of Banking, Insurance,
Financial Institution or NBFC company)

If invoice not issued within 30 days
(45 days in case of Banking, Insurance, Financial
Institution or NBFC company)

If both cases do not apply



Date of issue of Invoice or Payment,
whichever is earlier



Date of completion of service or
payment, whichever is earlier



Date on which recipient shows in his
books of accounts

Value of Taxable Supply

Value of supply of goods and / or services on which CGST/SGST is to be discharged 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

Transaction Value INCLUDES:

- Amounts charged by supplier to recipient in respect of any **taxes, duties, cesses, fees and charges levied** under any statute, other than taxes paid under GST regime
- **Amount incurred by Recipient** which is liable to be paid by the Supplier

Transaction Value EXCLUDES:

- **Discount** at the time of supply, agreement made before or at the time of supply etc.

Principles of Input Tax Credit

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- System for a seamless flow of credit
- Extends to inter-State supplies
- Credit utilization would be as follows [Sec 49(5)]:

Credit of:	Allowed for Payment of		
	IGST	CGST	SGST
IGST	✓ (1)	✓ (2)	✓ (3)
CGST	✓ (2)	✓ (1)	
SGST	✓ (2)		✓ (1)

Conditions for Availment of ITC by a Registered Taxable Person – Sec 16

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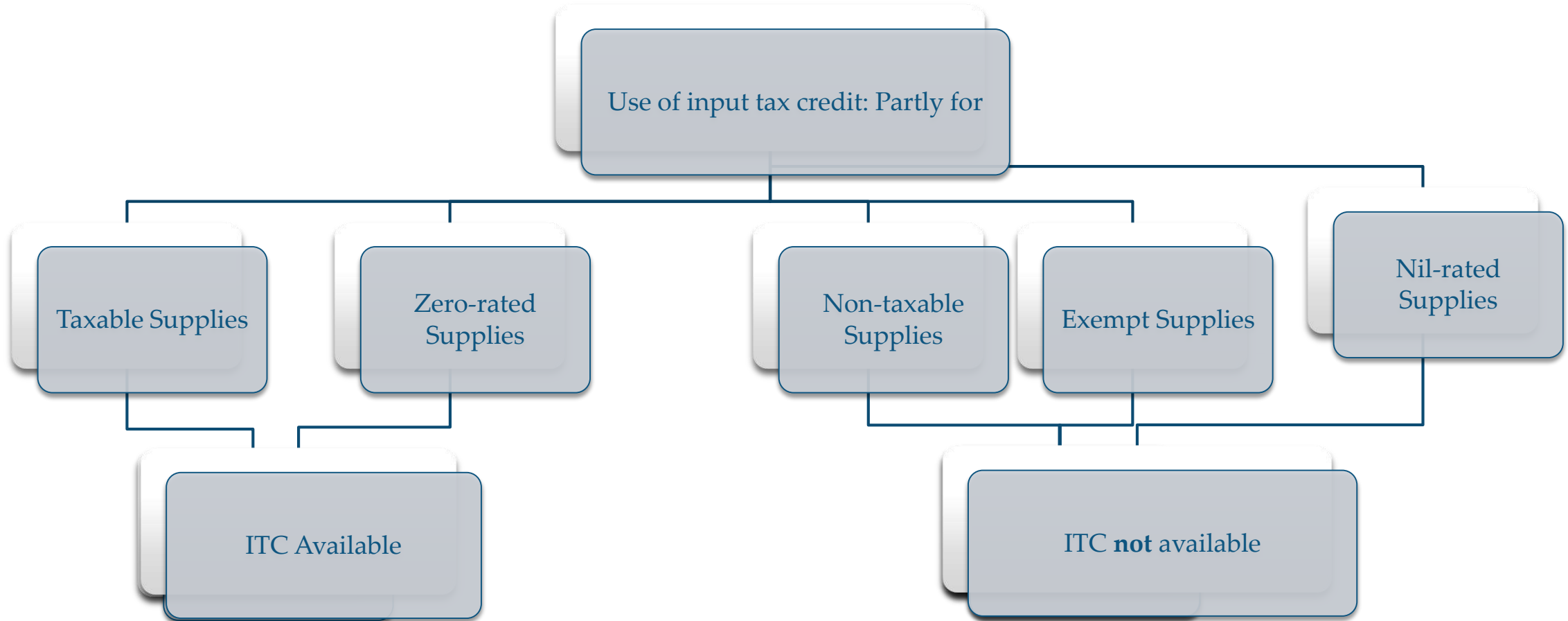
Basis - tax invoice / debit note issued by a registered supplier, or other prescribed taxpaying document

Goods and/or services have been received

Tax actually paid by the supplier to the credit of the appropriate Government, either in cash or by utilization of ITC

He has furnished the monthly return in FORM GSTR-3 under Section 39

ITC on the Basis of use of Inputs – Sec 17

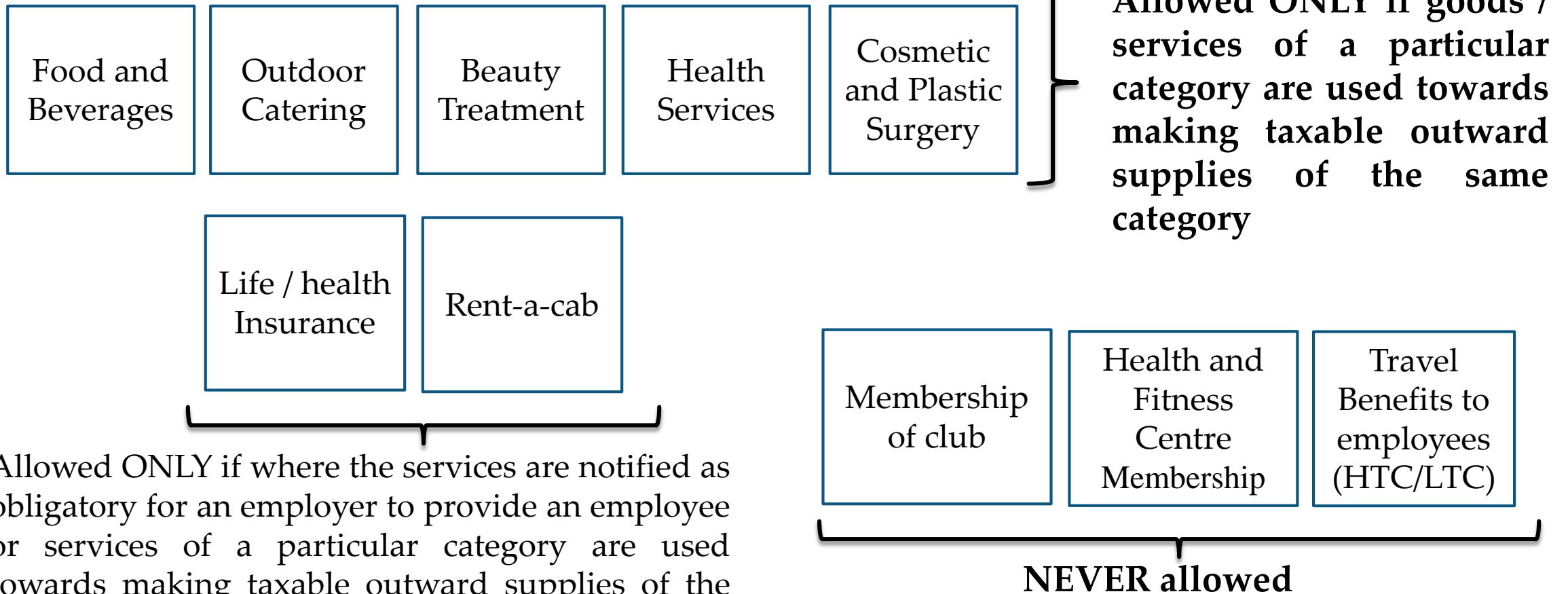


Restrictions on ITC – Sec 17(5)

Blocked credits (Illustrations)

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b) Supply of goods and services being:



Allowed ONLY if where the services are notified as obligatory for an employer to provide an employee or services of a particular category are used towards making taxable outward supplies of the same category

NEVER allowed

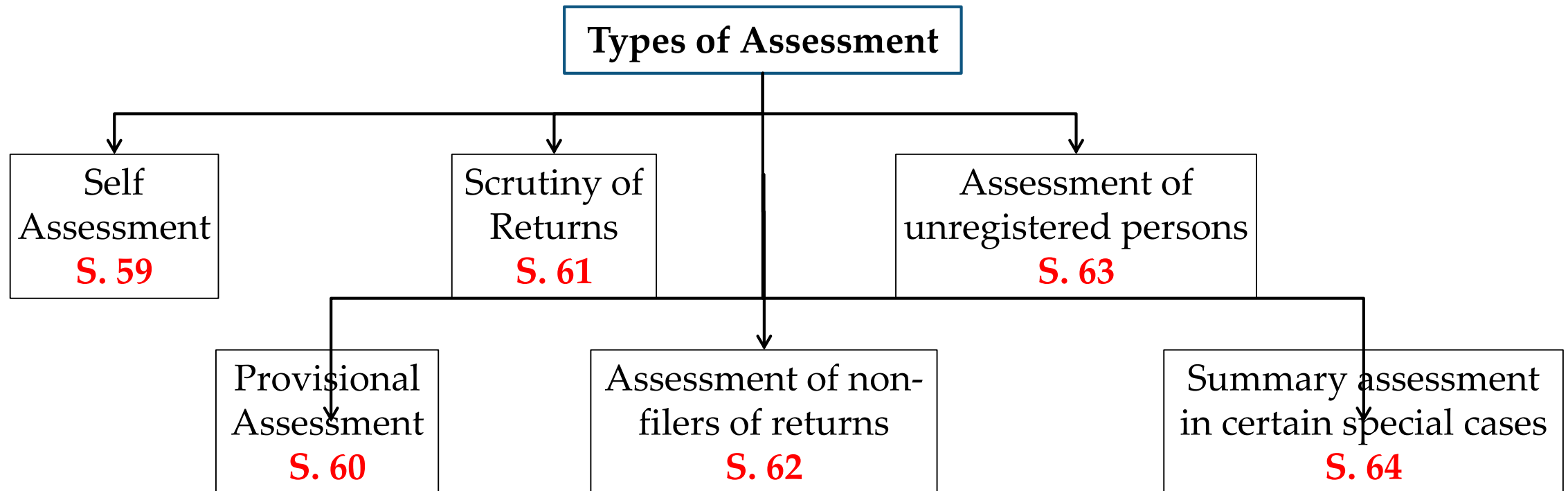
Withholding of Refund by Department

- If Taxpayer has defaulted in furnishing his return(s);
- If any dues are pending to be paid by the Taxpayer or if cases are pending with the Appellate Authority / Tribunal / Court for Tax, Interest or Penalty and which have not been stayed by any Court / Tribunal / Appellate Authority
- **If Commissioner is of the opinion that grant of refund will adversely affect revenue, in case appeal is filed by either party, however opportunity of hearing will be granted;**
- Further refund will be adjusted against any dues of taxes, interest , penalties, fees of existing regime and GST tax regime. **[Section 54 (10) & (11)]**

Assessment : Meaning and Types

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- Means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment [Section 2 (11)]



➤ **What is Audit?**

➤ **Section 2(14):** “Audit” means:

- the examination of records, returns and other documents maintained or furnished by the registered person under this Act or rules made thereunder or under any other law for the time being in force to verify;
- the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed; and
- to assess his compliance with the provisions of this Act or the rules made thereunder.

KINDS OF AUDITS UNDER GST

Audit by tax
authorities **S.65**

Special Audit
S.66

Annual Audit
by CA / CWA
S.35(5)

Determination of tax not paid or short paid or erroneously refunded

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Section 73: Applicable in case of non-payment or short payment of tax without fraud or willful - misstatement.

Time limit for the proper officer to issue notice – at least 3 months prior to issuance of order

Time limit for the proper officer to issue an order is within **three years from the due date / actual date of filing of annual return.**

Section 74: Applicable in case of non-payment or short payment of tax with fraud or willful-misstatement.

Time limit for the proper officer to issue notice – at least 6 months prior to issuance of order

Time limit for the proper officer to issue an order is **within five years from the due date / actual date of filing of annual return**

Recovery/Liability Provisions under GST Law 28

- Subject to the **Insolvency and Bankruptcy Code, 2016**, any amount payable by a taxable person or any other person on account of tax, interest or penalty - **Government has the first charge** on his property. **[Section 82]**
- **Provisional Attachment** - For the purpose of protecting the interest of the Government revenue, provisional attachment of any property, including bank account, belonging to the taxable person for a period of 1 year can be done. **[Section 83]**
- **Liability in case of Directors of Private Company** - provision every person who is the director at any time during the period, for which tax is due, would be liable jointly and severally to clear the dues unless he proves to the commissioner that such non-recovery is not due to his neglect, misfeasance or breach of duty. **[Section 89]**

Section 140 – Transitional Arrangement for Input Tax Credit

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Carry forward of CENVAT Credit – **Sec 140(1)**

Registered taxable person other than composition dealer

Allowed carry forward of Input tax/ CENVAT credit – through a return

Such credit must be eligible under GST law

He should have furnished all the returns required under the existing law for the period of six months immediately preceding the appointed day

Credit should not relate to goods manufactured and cleared under such exemption notifications as are notified by the Government

Credit can be taken in the electronic credit ledger (CGST)

Excess credit taken will be recovered as arrears of tax under GST law

Anti-Profiteering measure- Sec 171

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- Specified in **Section 171** of CGST Act
- Any reduction in rate of tax on any supply of goods or services or the **benefit of input tax credit shall be passed on to the recipient** by way of commensurate reduction in prices
- Constitution of a *National Anti -Profiteering Authority* to examine whether input tax credits availed by any registered person or the reduction in the tax rate have **actually resulted in a commensurate reduction in price**
- **Authority decides** on the matter and issues an appropriate order in terms of reduction in prices, return to the recipient, impose penalty and order for cancellation of registration
- **Sunset clause of two years** has been inbuilt for the Anti-Profiteering Authority

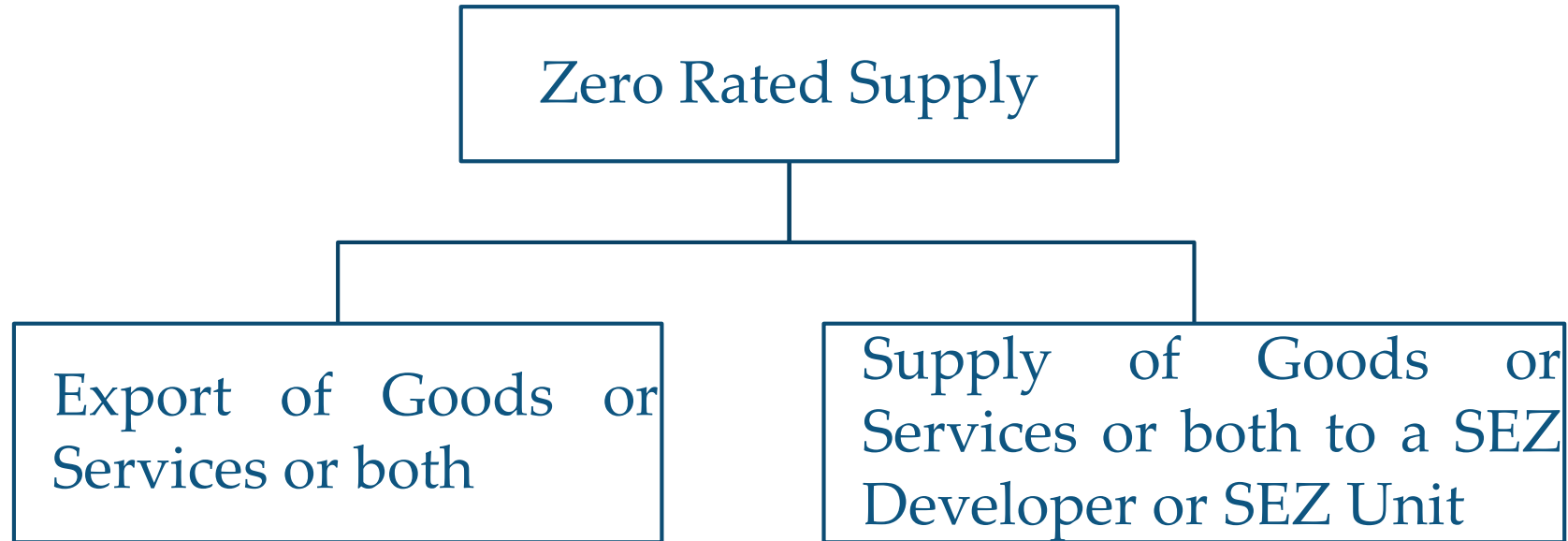
Determination of supply of goods and/ or services as Inter-State supply

- Where the conditions mentioned below are in DIFFERENT STATES / UT
 - a) **Location of the supplier** and
 - b) **Place of supply** determined **u/s 10,11,12 or 13 of IGST Act**

- IGST will be levied under following circumstances –
 - Supply of goods in the course of import, till they cross the customs frontiers of India;
 - Supply of **services in the course of import**;
 - Supply to or by a **SEZ** developer or an SEZ unit;
 - **Residuary supply**: Any supply in the taxable territory and which is **not an intra-State supply**;

Zero Rated Supply - Sec 16

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- Credit of input tax may be availed for making zero-rated supplies
- Refund available under either of the following options:
 - Supply of goods of services or both under bond or LUT; or
 - Supply of good or services or both on payment of IGST.

Place of Supply of Goods – Sec 10 IGST (other than goods imported / exported)

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Section 10(1)(a)

Supply involves movement of Goods

Location of goods at the time at which movement terminates for delivery to recipient

Section 10(1)(b)

Goods supplied on direction of the third person

Principal Place of Business of the third person (i.e., address in Registration Certificate)

Section 10(1)(c)

Supply does not involve movement of goods

Location of goods at the time of delivery to the recipient

Section 10(1)(d)

Goods are assembled or installed at site

Place of installation or assembly

Section 10(1)(e)

Goods supplied on board a conveyance

Location at which such goods are taken on board

Place of Supply of Services – Sec 12 IGST (where supplier and recipient are in India)

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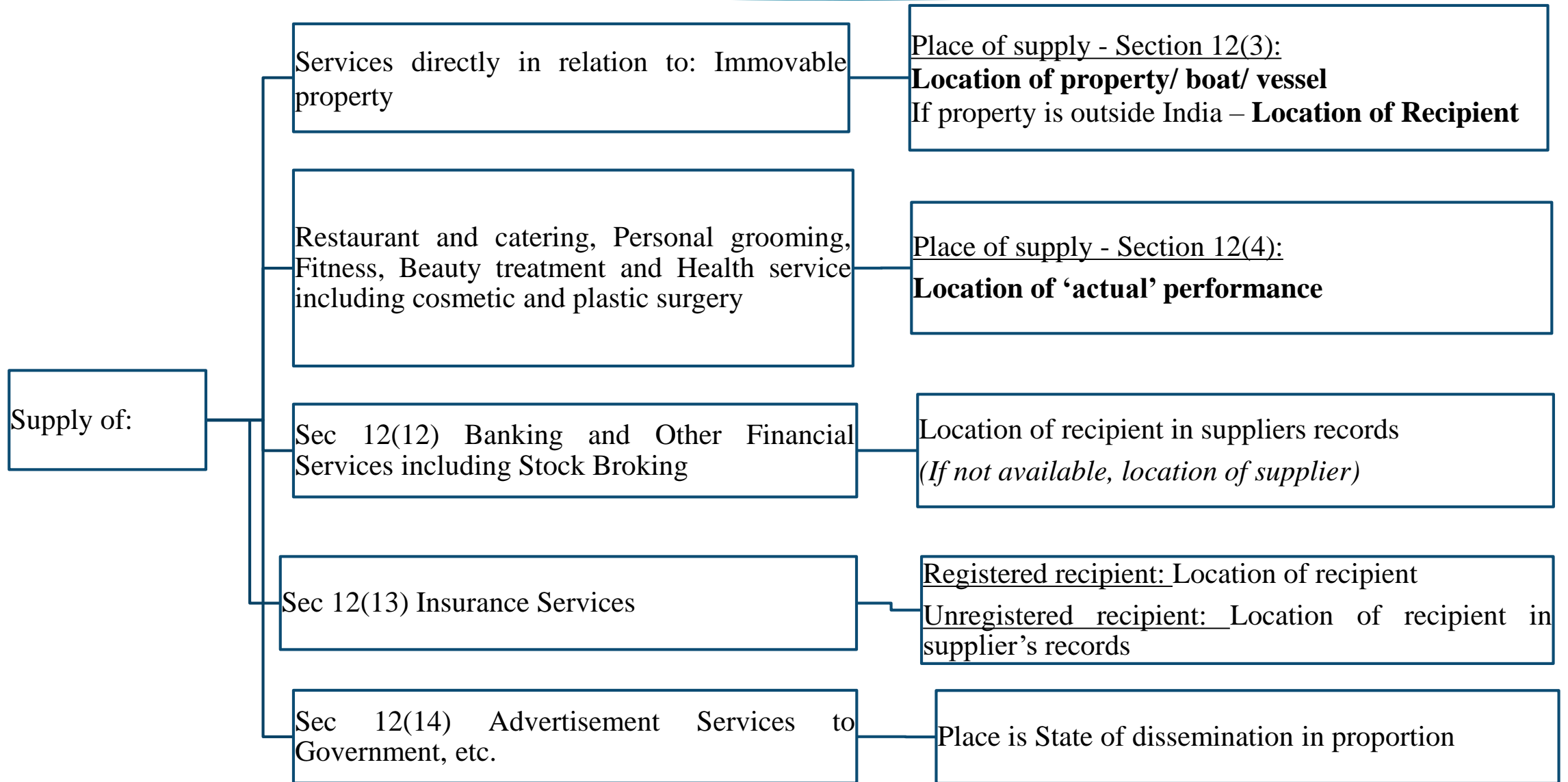
For Supply of any other
Service,
Place of supply is:
(General Rule)

**Section 12(2)(a): Registered recipient:
Location of recipient**

❖ **Section 12(2)(b): Unregistered recipient:**
❖ Location of **recipient** if address in supplier's
records
Location of **supplier** if address not available

Place of Supply of Services – Sec 12 IGST (where supplier and recipient are in India)

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Supply in Territorial Waters (Sec 9)



Where the location of the supplier is in the territorial waters, the location of such supplier

OR

Where the place of supply is in the territorial waters, the place of supply

Will be the coastal State or Union territory where the nearest point of the appropriate baseline is located.

GST (Compensation to States) Act :

Important provisions

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- A **cess is levied** on such intra-State and inter- State supplies of goods and/or services for the purposes of **providing compensation to the States for loss of revenue** arising on account of implementation of the goods and services tax **for a period of five years**
- Compensation to be paid to the States **at the rate of 14%** over Gross Revenue for the year 2015-16.
- Cess is applicable on **LUXURY & SIN** items. E.g.
 - Pan Masala
 - Tobacco
 - Cigar
 - Hookah
 - Chewing Tobacco
 - Gutkha
 - Coal
 - Luxury Cars & SUVs

THANK YOU