



INTENSIVE STUDY COURSE ON GST

Definition of Inter & Intra State Supply, Principle of Determining Supply, Place of Supply of goods and services

By A. R. Krishnan

2nd May 2017

Organized by

J.B. Nagar CPE Study Circle of WIRC

Areas Covered [In this Session]

- Definition of Inter and Intra State Supply
- Principles of Determining Supply in the Course of Inter-State Trade or Commerce
- Place of Supply of goods & services
 - Domestic
 - Cross Border etc. Export & Imports



Note: The presentation is based on the CGST Act, 2017 & IGST Act 2017 as enacted on 12-04-2017

PLACE OF SUPPLY ("POS")

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3

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Levy of GST

- CT / ST to be levied on all *intrastate* **supply of goods and / or services** at rate notified
- IT to be levied on all *inter-state* **supply of goods and / or services** at rate notified
- Tax to be paid by **taxable person**
- Specified categories of supply - tax to be paid under RCM by recipient of supply

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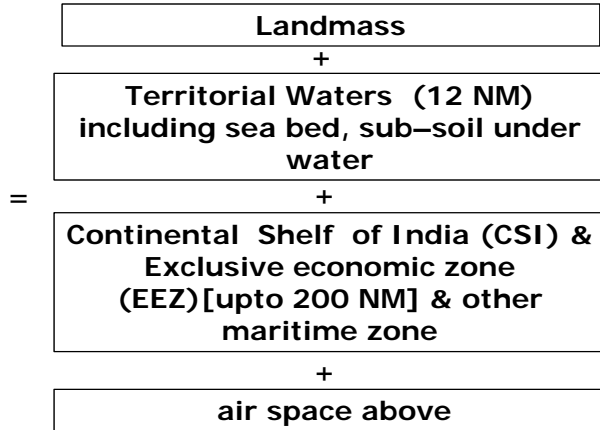
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➤ CT & IT applies to whole of India

➤ ST applies to States

INDIA



Relevant Statutes

A. THE CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) ACT, 2016 DATED 08.09.2016

Article 269A	Parliament to formulate law for place of supply of goods and / services – in the course of inter state trade or commerce
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B. INTEGRATED GOODS AND SERVICES TAX ACT, 2017

Sec 2(5)	export of goods	Refer slide 75
Sec 2(6)	export of services	
Sec 2(7)	fixed establishment	
Sec 2(10)	import of goods	Refer slide 76
Sec 2(11)	import of service	
Sec 2(14)	location of recipient of service	
Sec 2(15)	location of supplier of service	

Relevant Statute (contd..)

Section 5	IGST to be levied on the supply of goods/ or services in the course of inter- state trade or commerce
Section 7	Supplies of goods and/or services in the course of inter-State trade or commerce
Section 8	Supplies of goods and/or services in the course of intra-State trade or commerce
Section 10	Place of supply of goods other than supply of goods imported into, or exported from India
Section 11	Place of supply of goods imported into, or exported from India

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7

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Relevant Statute (contd..)

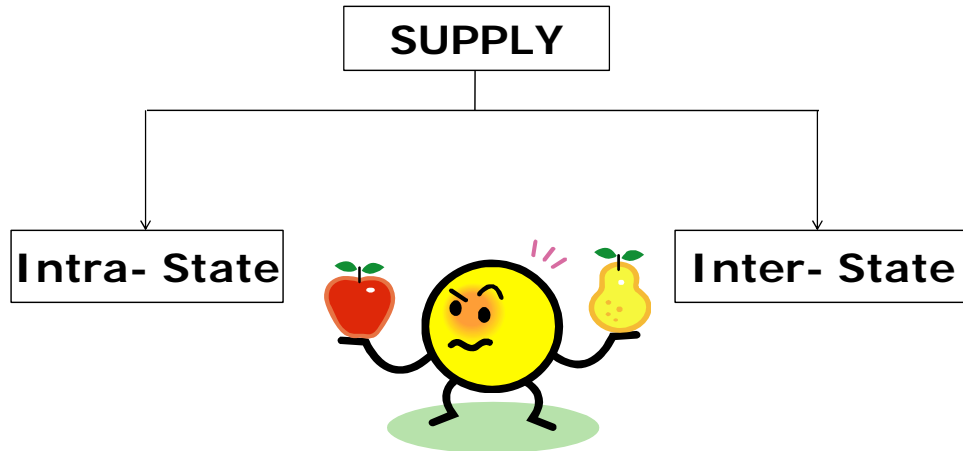
Section 12	Place of supply of services where the location of supplier of service and the location of the recipient of service is in India
Section 13	Place of supply of services where the location of the supplier or the location of the recipient is outside India
C. CENTRAL GOODS AND SERVICES TAX ACT, 2017	
Sec 2(85)	Place of business
Sec 2(89)	principal place of business
Sec 2(93)	recipient

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8

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TYPES OF SUPPLY



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9

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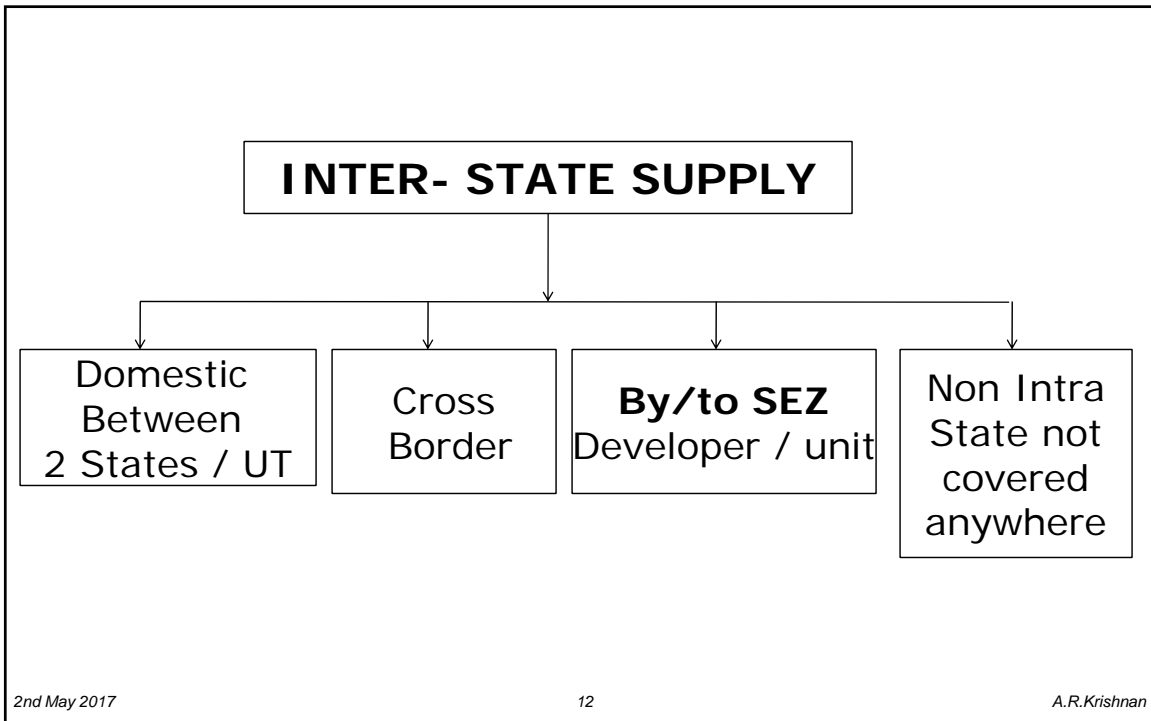
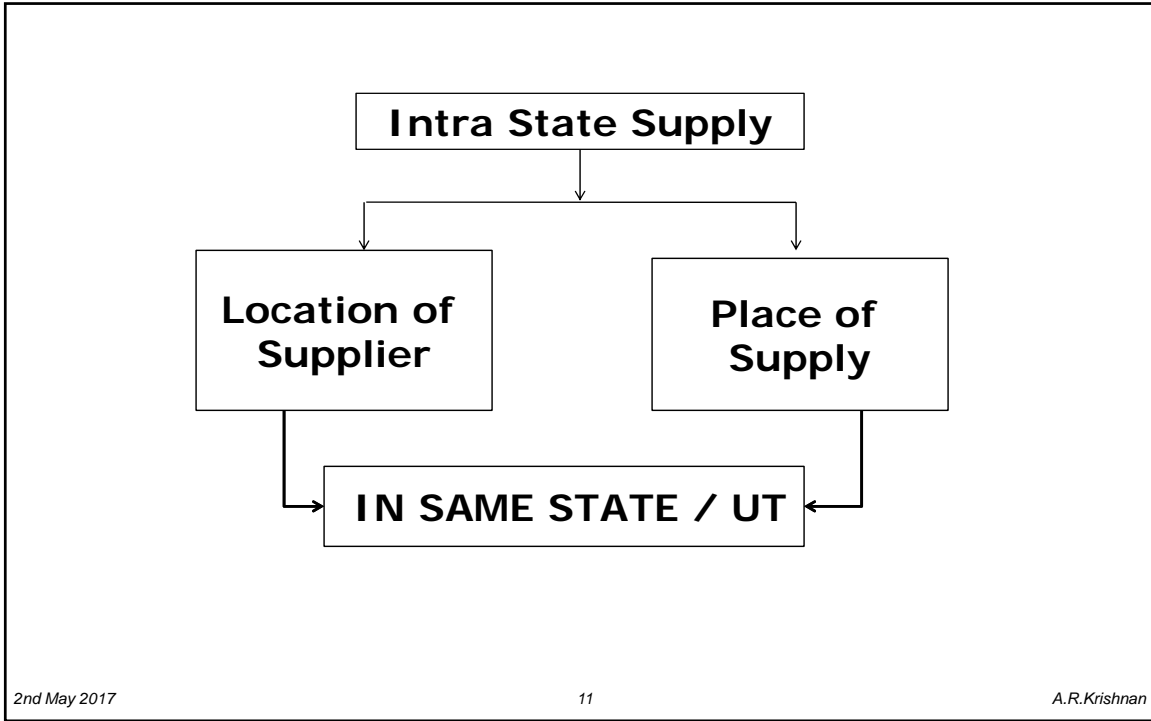
Inter-state/ Intra-state

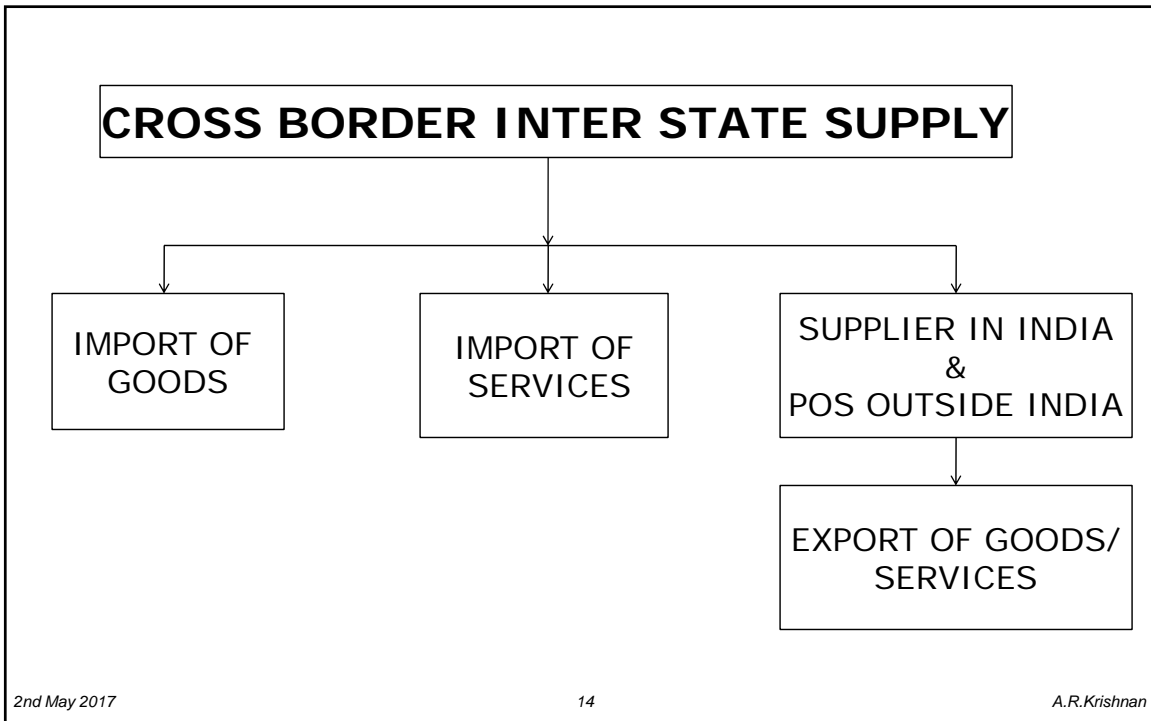
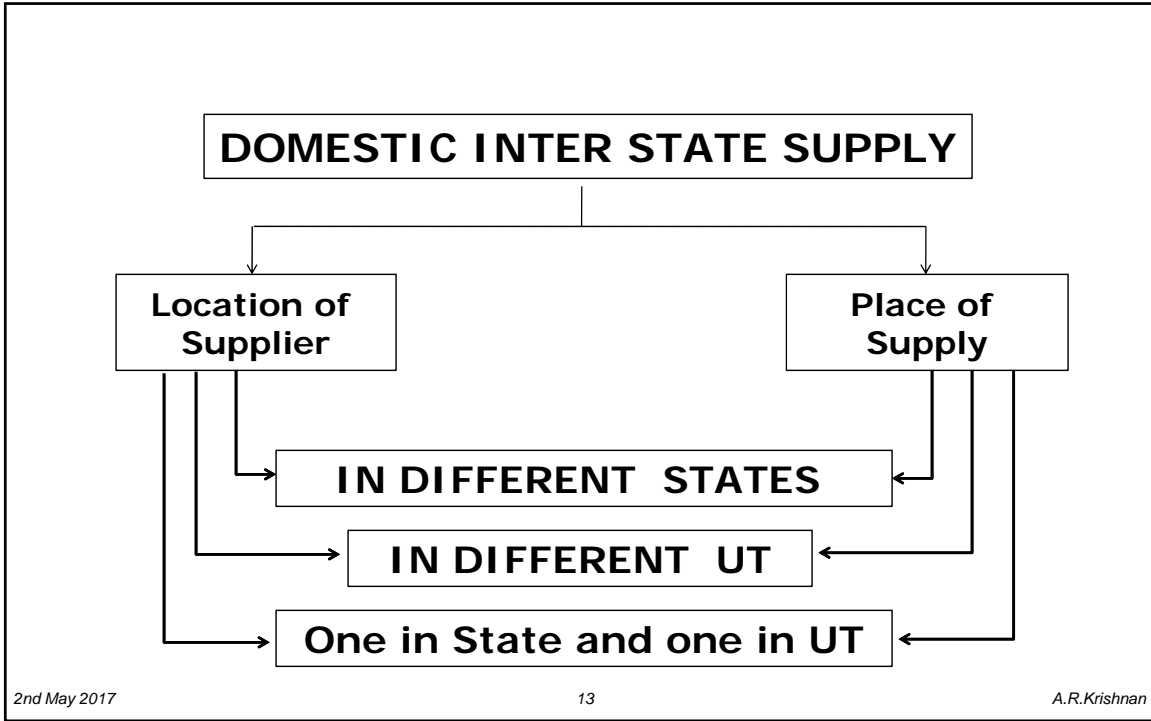
Type of supply	Levy attracted
Intra state	CT+ST
Inter-State	IT

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10

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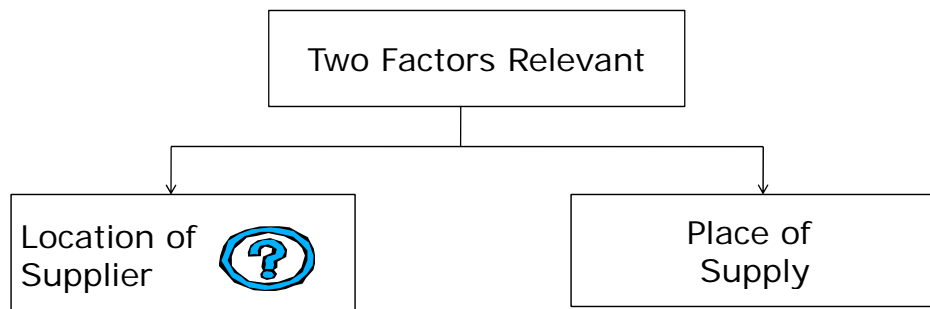
Place Of Supply of Goods ("POSoG")

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Domestic Place Of Supply of Goods ("POSoG")

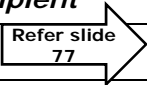
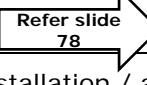


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Domestic Place of Supply of Goods [S.10 of IGST Act,2017]

<i>Nature of supply</i>	<i>Place of supply</i>
<ul style="list-style-type: none"> Supply involving movement of goods 	Location of goods at time of termination of movement for delivery to recipient
<ul style="list-style-type: none"> Supply on direction of 3rd person 	Principal POB of 3 rd person 
<ul style="list-style-type: none"> Supply not involving movement of goods 	Location of goods at time of delivery to recipient 
<ul style="list-style-type: none"> Supply by assembly / installation at site 	Place of installation / assembly
<ul style="list-style-type: none"> Supply on board a conveyance (vessel, aircraft, train etc.) 	Location where goods are taken on board
<ul style="list-style-type: none"> None of the above 	Determined in a manner prescribed

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Cross Border - Place of Supply of Goods [S. 11 of IGST Act,2017]

Nature of supply	Place of Supply
<ul style="list-style-type: none"> Goods imported into India 	Location of Importer
<ul style="list-style-type: none"> Goods exported from India 	Location outside India

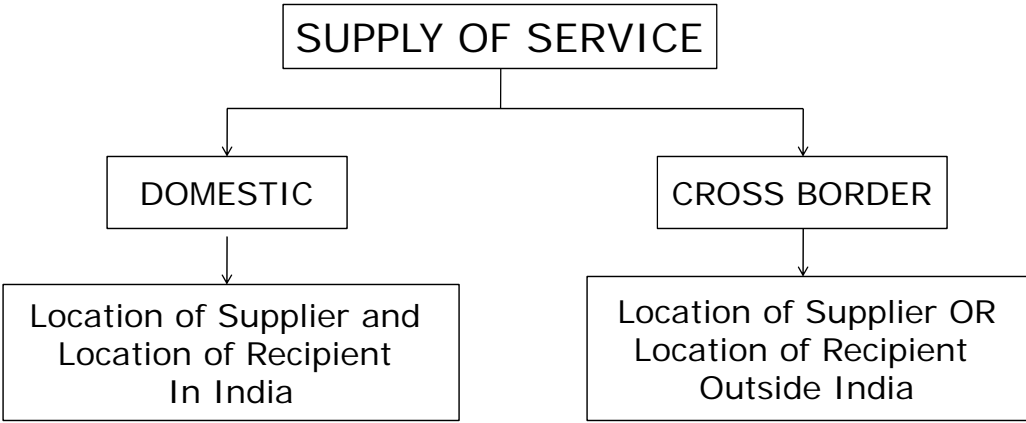
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18



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Place Of Supply of Services ("POSoS")

Place Of Supply of Services ("POSoS")



INTER - STATE SUPPLY

Scenario	I	II	III	IV	V (B 2 C)
Outside India	S	S R		R	S
Inside India	R		S R	S	R
Type of Inter State	CROSS BORDER		DOMESTIC ↓ Only issue which State	CROSS BORDER	ONLINE 


S = Supplier R = Recipient

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Place Of Supply of Service ("POSoS")

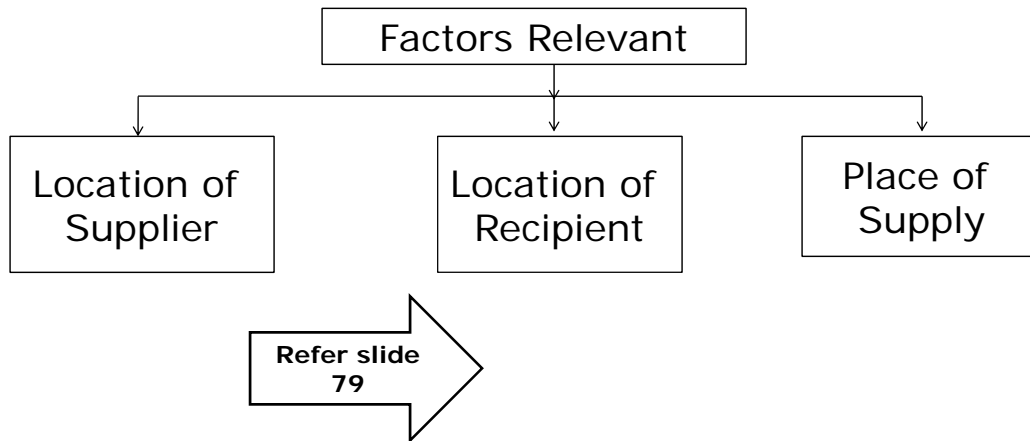
- Important key – identify taxing jurisdiction for a service 
- These rules will identify the place where a service shall be deemed to have been supplied
- Basic Philosophy - Consumption based tax
- Consumption criterion – nearest 'proxies' adopted to reduce controversies e.g. location of SP/ SR, place of performance, place of consumption, place where or person to whom benefit flows.

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Place Of Supply of Service (“POSoS”)



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Domestic Place of Supply of Service

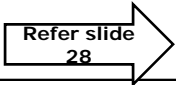
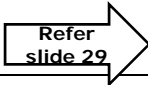
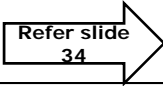
[where Location of SP and SR in India]

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24

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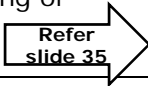
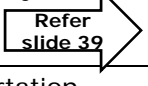
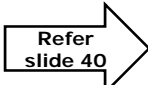
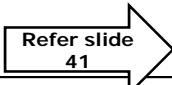
Place of Supply of Service for different situations

Sr. No.	Description of Service	Place of Supply of services
1.	Basic Rule (All services except if specifically covered below) <div style="text-align: right;"></div>	Location of Recipient, if he is registered If not registered, his address on record And if no address -location of supplier
2.	Service relating to Immovable Property/ boat/ vessel <div style="text-align: right;"></div>	Location of such Immovable Property/ boat/ vessel & Location of recipient where property located outside India
3.	Specified Performance based Service <div style="text-align: right;"></div>	Location where services actually performed <i>Except</i> where service of training /performance appraisal to registered person where POS is location of such registered person

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25

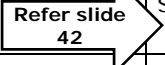
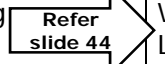
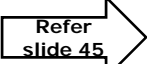
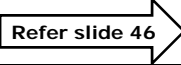
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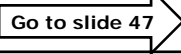
Sr. No	Situation	Place of Supply of services
4.	Services relating to admission to amusement park/ place or any event including organizing of events <div style="text-align: right;"></div>	Location of such park/ place/ event <i>Except</i> (i) service provided by way of organizing an event to Registered person where POS is location of such person (ii) Location of recipient where event held outside India
5.	Goods Transportation services (including by mail or courier) <div style="text-align: right;"></div>	Location of Recipient, if he is registered If not registered, place where goods handed over for transportation
6.	Passenger transportation service <div style="text-align: right;"></div>	Location of Recipient registered/ place of embarkation/ address as available/ location of supplier Based on facts
7.	Service on board a conveyance, aircraft, train or motor vehicle <div style="text-align: right;"></div>	First scheduled point of departure of that conveyance

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26

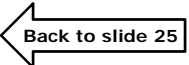
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Sl.	Situation	Place of Supply of services
8.	Supply of telecommunication service including data transfer/ broadcasting/ cable/ DTH 	Fixed telecommunication lines etc- Location of installation for receipt of service Mobile telecommunication and internet connection etc – Location of recipient/ location of supplier etc
9.	Banking & Financial services (including Stock broking services) 	Where location of recipient available in records of the supplier – Location of recipient Where location of recipient not available – Location of supplier
10.	Insurance Services 	Location of recipient, if he is registered If not registered, Location of recipient as per record of supplier
11.	Advertisement service to CG/ SG/ LA/UT for identifiable states 	Location in each state

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Place of Supply (other than specified services)
Basic Rule – Section 12(2) of IGST Act, 2017

SUPPLY MADE TO	PLACE OF SUPPLY
1. Registered Person (B2B)	Location of such registered Person
2. Other than registered person (B2C)	Location of supplier  Such address
(i) where recipient's address available in records of supplier	
(ii) Other cases	

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Immovable Property based services **[S.12(3) of IGST Act, 2017]**



Place of supply - Location of immovable property

- Services provided in relation to immovable property e.g. Construction. Services remotely connected not covered e.g. real estate feasibility studies, advice on capital gains.
- Services provided by experts e.g. Architects, Interior Decorators, Surveyor, Legal, Civil engineering, Valuation
- Estate agents
- Grant of rights to use immovable property

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29

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Immovable Property based services **[S.12(3) of IGST Act 2017] (contd...)**

- Co-ordination of construction work
- Provision of accommodation in immovable property for organizing marriage, official, social, cultural, religious or business function including services in relation to such function
- Ancillary services to above services



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30

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Immovable Property based services

[S.12(3) of IGST Act 2017] (contd...)

Place of supply - Location of immoveable property/ houseboat / vessel

- Services of provision of accommodation in hotels, inns, guest house, home stay, clubs, campsites, **houseboats, vessels, etc.**
- Ancillary services to above services

N.B: 1) POS- Location of recipient where IP/ Boat/ Vessel located or intended to be located outside India

2) Immovable Property/ house boat/vessel in more than 1 State/UT – supply in each state in proportion to value of service collected / determined as per contract / agreement and if no contract / agreement - on other basis in manner prescribed



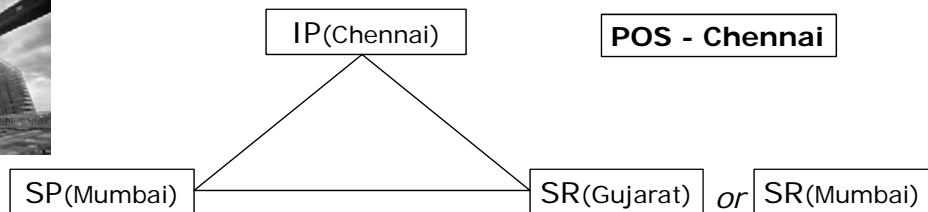
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31

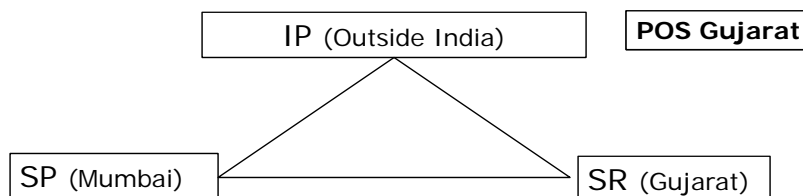
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ISSUES

Construction services – DOMESTIC INTER STATE



Construction Services – CROSS BORDER INTER STATE



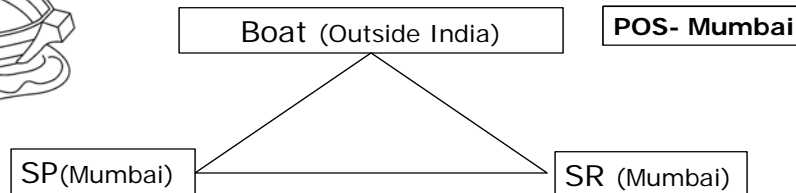
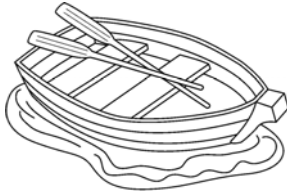
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32

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ISSUES

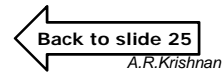
Accommodation Services – CROSS BORDER INTER STATE



- consumption in Taxable territory
- Proxy rule – taxed where SR - not where service utilised
- Both SP & SR outside India ?



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33



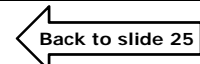
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Performance based services [S.12(4) & S.12(5) of IGST Act, 2017]

Supply of	POS
<ul style="list-style-type: none"> • Restaurant & catering services • Personal grooming, fitness, beauty, treatment & health services • Cosmetic / plastic surgery 	<ul style="list-style-type: none"> • Location where services actually performed <div style="display: flex; justify-content: space-around; align-items: center;">   </div>
<ul style="list-style-type: none"> • Training / performance appraisal services to - <ul style="list-style-type: none"> ✓ Registered person (B2B) ✓ Unregistered person (B2C) 	<ul style="list-style-type: none"> • Location of registered person • Location where services actually performed


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34



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Event Based services [sec.12(6) &12(7)]

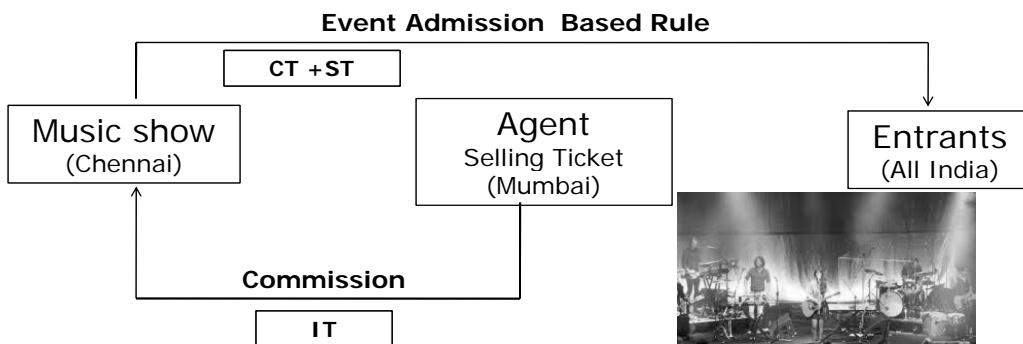
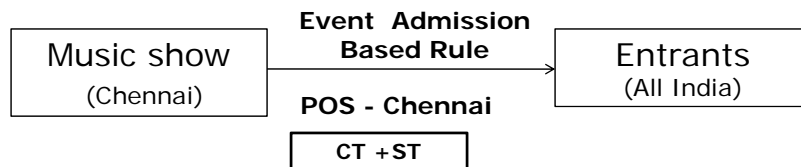
Supply of services by way of	POS
1. Admission & services ancillary to admission of cultural, entertainment event, etc	location of event
2. Admission to amusement park or any other place	location of such park / place
3. Organization of event & services ancillary to organization of events & assigning of sponsorship of above events - such services provided : <ul style="list-style-type: none"> ✓ To registered person (B2B) ✓ To unregistered person (B2C) 	
<p>N.B.: 1) <i>In case of event held outside India</i> Location of recipient</p> <p>2) Events held in more than 1 state for a consolidated amount Supply in each state/UT in proportion to value of service separately collected or determined from terms of contract / agreement or on other basis prescribed</p>	

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35

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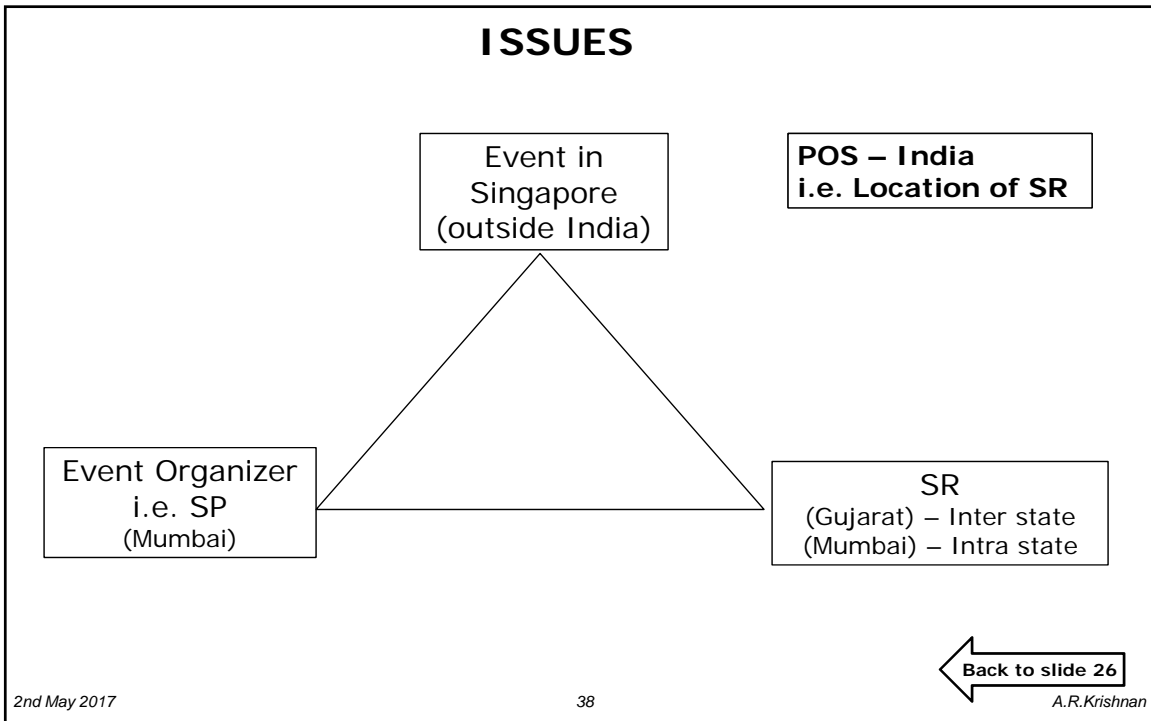
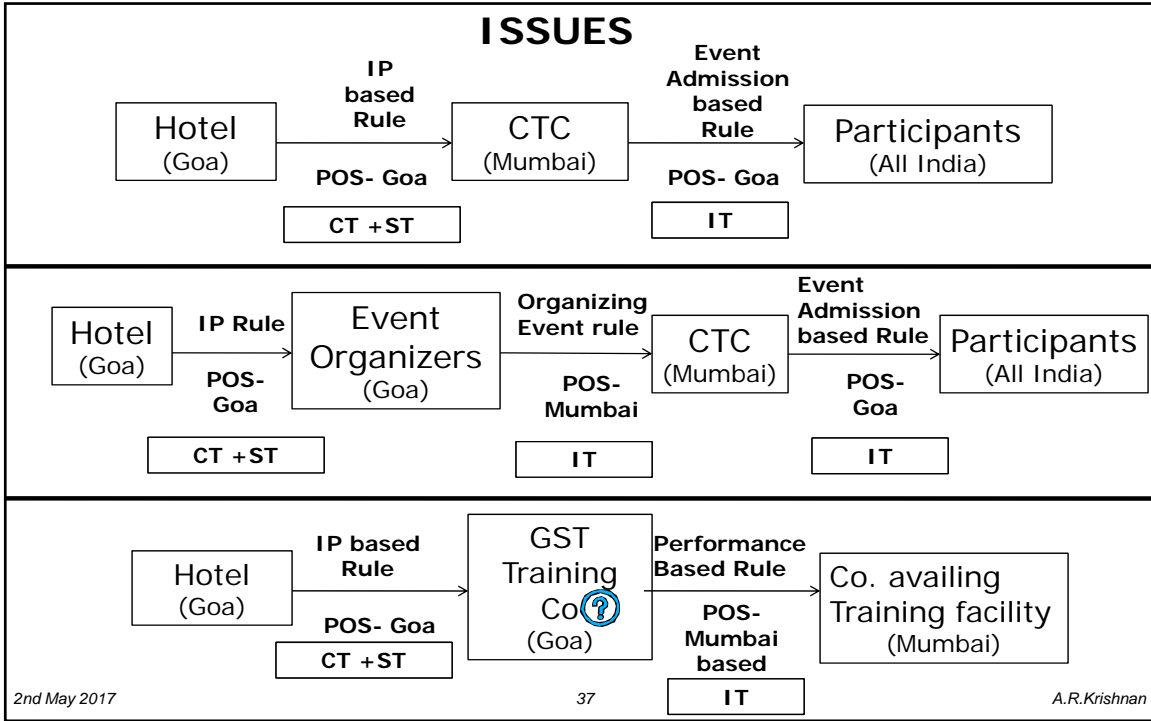
ISSUES



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36

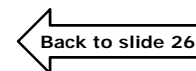
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Goods Transportation services [S.12(8) of IGST Act, 2017]



<i>Supply of</i>	<i>Place of supply</i>
I. Goods transportation service (including by mail / courier) provided to - ✓ Registered person (B2B) ✓ Unregistered person (B2C)	Location of such person Location where goods are handed over for transportation




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39

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Passenger transportation service provided [S.12(9) of IGST Act 2017]

<i>Supply to</i>	<i>Place of supply</i>
✓ Registered person (B2B)	Location of such person
✓ Unregistered person (point of embarkation known) (B2C)	Place where passenger embarks on conveyance for continuous journey*
✓ Point of embarkation unknown <ul style="list-style-type: none"> • Registered person • If address of recipient available in records of supplier • If address not available in records of supplier 	Location of such person Such address Location of Supplier 

***Return journey to be treated as separate journey**



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40

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Supply of services on board a conveyance aircraft, train, motor vehicle

[S.12(10) of IGST Act, 2017]

POS - First schedule point of departure of the conveyance on that journey




Catering

← Back to slide 26

Telecommunication/data transfer/broadcasting/cable/DTH [S.12(11) of IGST Act, 2017]

Supply of service by way of	POS
➤ Telecom line, leased circuits, internet circuit, cable / dish antenna	Location of installation for receipt of such services
➤ Lease circuit installed in more than 1 state / UT and consolidated amount charged	Supply in each state/UT in proportion to value of service collected or determined from contract and in absence, on other basis as may be prescribed
➤ Post paid mobile connection for telecommunication / internet services	Location of billing address of service receiver in supplier's records and if such address not available location of supplier

**Telecommunication/data transfer/broadcasting/cable/DTH
[S.12(11) of IGST Act, 2017]**

➤ Prepaid mobile connection for telecommunication / internet services / DTH services on pre-payment -		
✓ Through sale of SIM card or voucher by selling agent, Distributor, reseller	Address of selling agent, distributor, reseller as per supplier's record at time of supply	
✓ Provided to final subscriber	Location where prepayment received / voucher sold	
✓ Through internet banking/ electronic mode	Location of service receiver as available in record of supplier	
✓ Where address of recipient not available in record of supplier	Location of supplier	
➤ Mobile connection for telecommunication / internet services other than postpaid / pre-payment basis	Address of recipient as per supplier's record & if such address not available location of supplier	

← Back to slide 27

**Banking & Financial services
(including stock broking services)
[S.12(12) of IGST Act, 2017]**



<i>Type of Supply</i>	<i>POS</i>
✓ Where Location of receiver available in supplier's record	Location of service receiver
✓ Where Location of receiver not available in supplier's record	Location of supplier



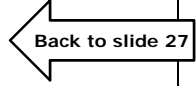
← Back to slide 27



Insurance services

[S.12(13) of IGST Act, 2017]

<i>Supply to</i>	<i>Place of supply</i>
✓ registered person (B2B)	Location of such person
✓ Unregistered person (B2C)	Location of recipient as per records of supplier



Advertisement services to CG/SG/SB/LA/UT for identifiable states

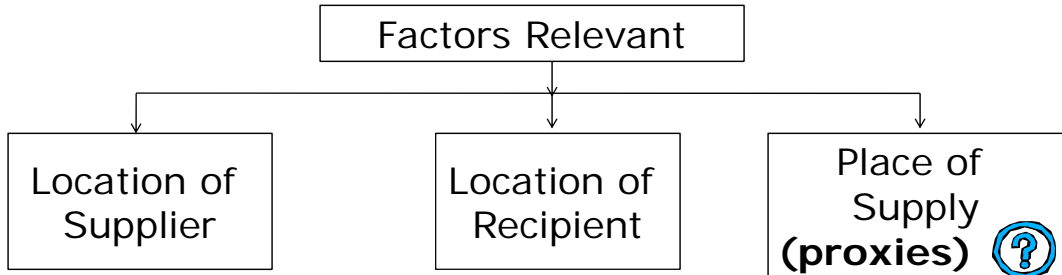
[S.12(14) of IGST Act, 2017]



POS in each state and value of supply proportionate to amount attributable for dissemination in each State/UT determined as per contract or in absence of contract on any other basis as maybe prescribed



Place Of Supply of Service (“POSoS”)



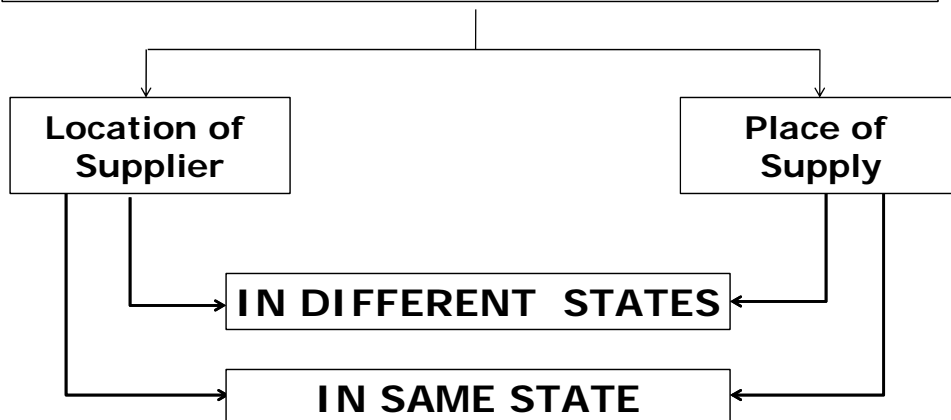
- Location of recipient
- Location of Immovable property
- Location of supplier
- Place of performance
- Others

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47

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DOMESTIC INTER/INTRA STATE SUPPLY



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48

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Supplies in territorial water

Location of Supplier
In territorial water → Location in costal state
/ UT nearest to baseline


Place of Supply
In territorial water → POS in costal state /
UT nearest to baseline

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49

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ISSUES IN SUPPLY

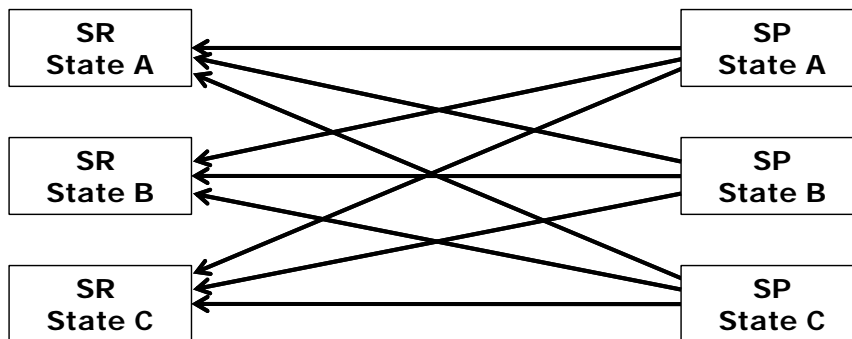
- Determination of origin of supply – which unit 
- Multiple supply i.e. supply from various units
- Inter unit supply
- Registration/ Billing/ Credit

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50

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**Scenario based on service
Only provision / receipt of service considered & contract ignored**



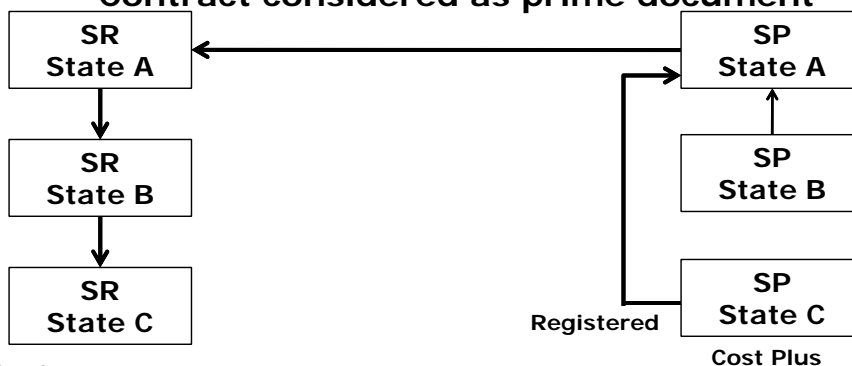
- 1) Multiple billings
- 2) Value of billing in case of single Contract
- 3) Collection / Payments → POT / credit

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51

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**Scenario based on contract
Contract considered as prime document**



Justification

- 1) Simple – billing / collection / payments → centralised
- 2) Cenvat credit claim easier → Also Fungible

Downsides

- Contract / work orders structuring very relevant → SP's / SR's name, address, Registration No., relevant – in contract itself
- State specific expenditure made by HO? i.e. VAT software Charges
- Internal Branch Transfer – especially to HO

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52

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CROSS BORDER INTER – STATE SUPPLY OF SERVICES

[where Location of either 'SP' OR 'SR' is
outside India]

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53

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CROSS BORDER INTER STATE SUPPLY OF SERVICES

<i>Particulars</i>	<i>IMPORT</i>	<i>EXPORT</i>
Location of Supplier	Outside	India
Location of Recipient	India	Outside
POS	India	Outside

INTER STATE

INTER STATE



Receipt in Fx



Tax at '0' rate

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54

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Place of Supply of Service for different situations

Sl.	Description of Service	Place of Supply of services
1.	Basic Rule (All services except if specifically covered below)	<ul style="list-style-type: none"> • Location of service recipient • If address not available, then location of supplier
2.	Performance based Service Refer slide 58	Location of performance of service
3.	Service relating to Immovable Property	Location of the immovable property Refer slide 62
4.	Service relating to Events	Location of the event Refer slide 63
5.	Services (2,3,4 above) supplied at more than one location [including location in Taxable Territory ('TT')]	Location in TT
6.	Services (2,3,4 above) supplied in more than one state or union territory.	<ul style="list-style-type: none"> ▪ Respective State/ Union Territory ▪ Value - Proportion to value of service separately or collected or based on contract/ agreement; and in case No contract – on prescribed basis

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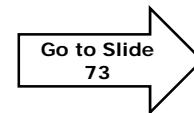
Sr. No	Situation	Place of Supply of services
6.	Specified Services Refer slide 64	Location of service provider
7.	Goods Transportation services (other than mail or courier)	Place of destination of goods
8.	Passenger transportation service	Place of embarkation for continuous journey
9.	Service on board a conveyance	First scheduled point of departure of conveyance
10.	Online Information Database Access or Retrieval services Refer slide 70	Location of recipient of service

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56

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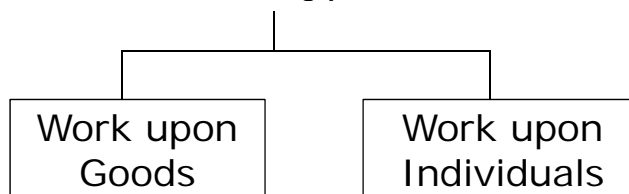
- The Central Government to notify any description of service or circumstances in which the place of supply shall be the place of effective use and enjoyment of service in order to avoid double taxation / non-taxation.



Performance based services

- POS - Location of performance of service

2 types



Performance based services

Type 1 – Work upon Goods

- SP supplies services in respect of goods made *physically available* by SR in order to provide the service e.g. Repairs, Storage and cargo handling

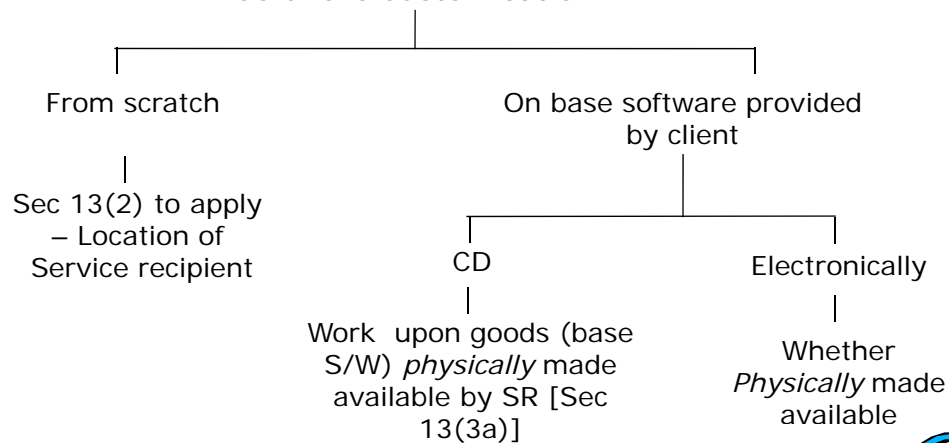
- *Exceptions:*
 - ◆ Remote access - Location of goods at the time of supply of service
 - ◆ Goods temporarily imported into India for repair and re-exported subject to the condition that goods not put to use in India (except for such repair)

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59

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Software Customisation



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60

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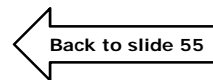
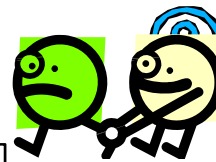
Performance based services

Type 2 – Work upon Individuals

Services supplied to individuals physically present in their personal capacity or on service recipient's behalf.

E.g. Beauty treatment, Plastic Surgery, Health & Fitness Center, classroom teaching

Online Teaching through video conferencing
- Distance learning not classroom teaching
UK VAT Manual



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61

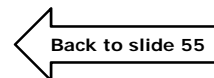
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Immovable Property based services



Place of supply - Location of immovable property

- Services directly in relation to immovable property e.g. Construction. Services remotely connected not covered e.g. real estate feasibility studies, advice on capital gains.
- Services supplied by experts e.g. Legal, Civil engineering, Valuation
- Estate agents
- Provision of accommodation in hotels, inns, guest house, etc.
- Grant of rights to use immovable property
- Services for carrying out or co-ordination of construction work e.g. architects and interior decorators.



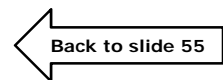
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62

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Event Based services

- Place of supply – location of event
- Services supplied by way of
 - Admission to event & services ancillary to admission
 - Organization of event & services ancillary to organization
- Examples
 - Convention services
 - Event Management services
 - Business exhibition services



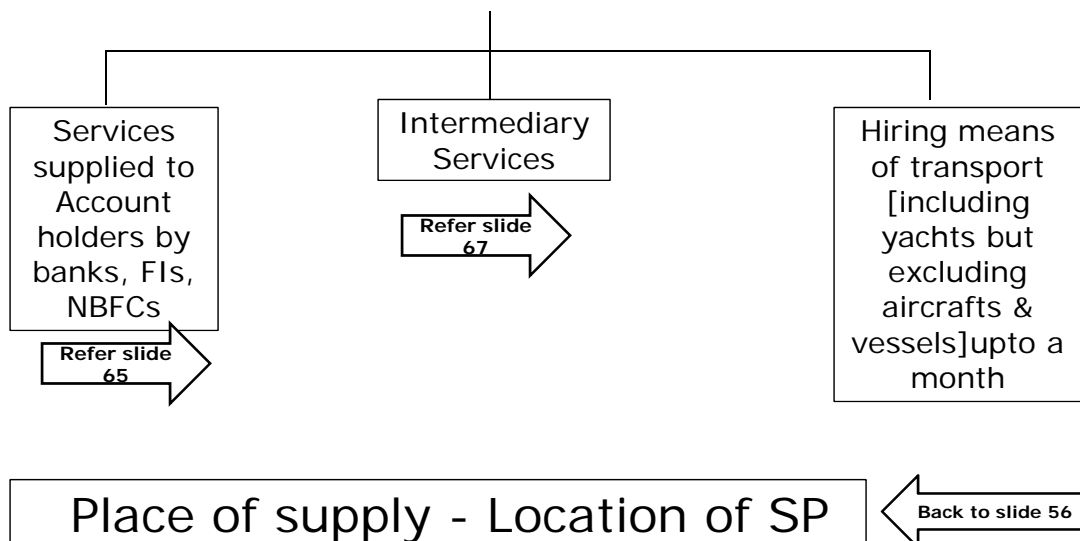
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63

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Specified Services

3 types



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64

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Specified services

- **Services to account holders – POS - Location of SP**

“Account” means an account bearing interest to the depositor and includes a NRE & NRO A/c.

E.g. operation of bank a/c., lending, deposits, safe lockers, money transfer, etc.

Bank Charges paid for operation of NOSTRO Bank a/c. –

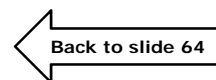
- If NOSTRO account is an account bearing interest. POS – Location of the service provider – Since SP is abroad – Not liable.
- If NOSTRO account is not an account bearing interest – POS– location of the service recipient – RCM liable

Specified services

- Services to non-account holders – place of supply – location of service recipient

E.g. financial leasing, merchant banking services, Securities and FX broking, FX purchase or sale, asset management, depository services, advisory and other auxiliary financial services, banker to an issue service

In above cases basic rule i.e. location of service recipient to apply



Intermediary services

- Place of supply – location of SP
 - ✓ Definition of “Intermediary”
 - Person(broker/agent) who arranges or facilitates
 - Supply of services; or supply of goods or securities
 - Between 2 or more persons
 - ✓ Commission agent located in India liable

Import of service - tax free
Export of services – taxable

Justification



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67

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Intermediary services

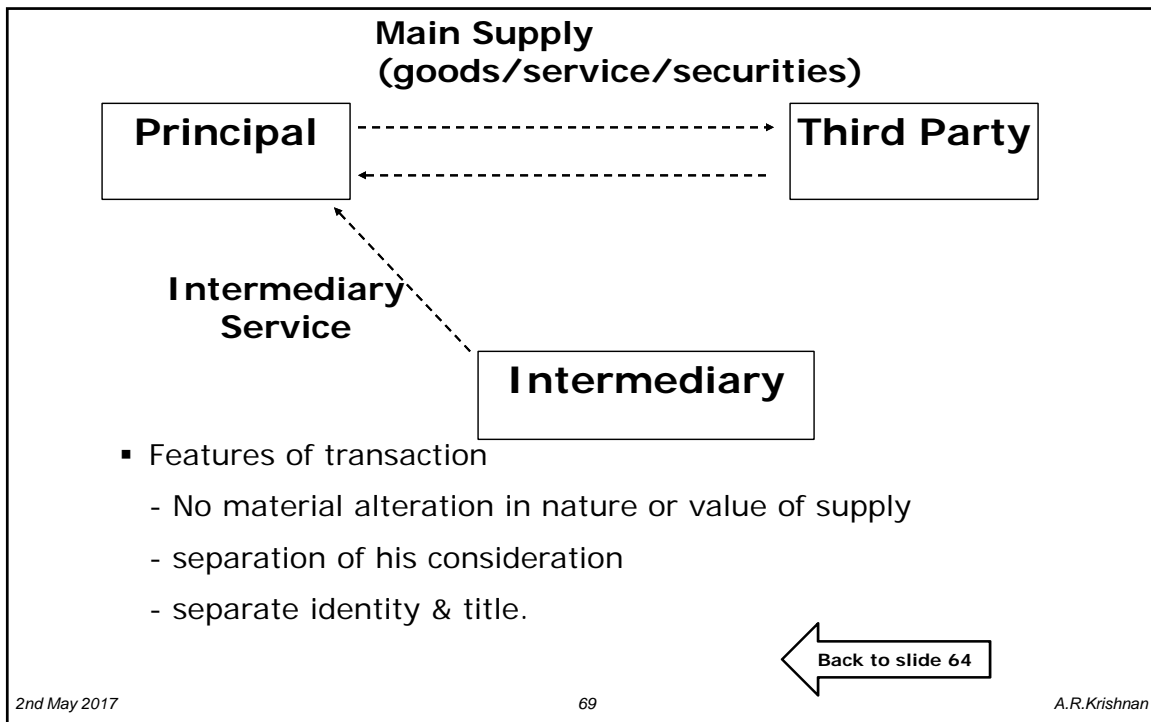


- Two supplies involved –
 - main supply (service or goods or securities) – between principal and 3rd party (main service)
 - Intermediary services – for which he receives commission
- Where main services or goods or securities supplied on own account not intermediary

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68

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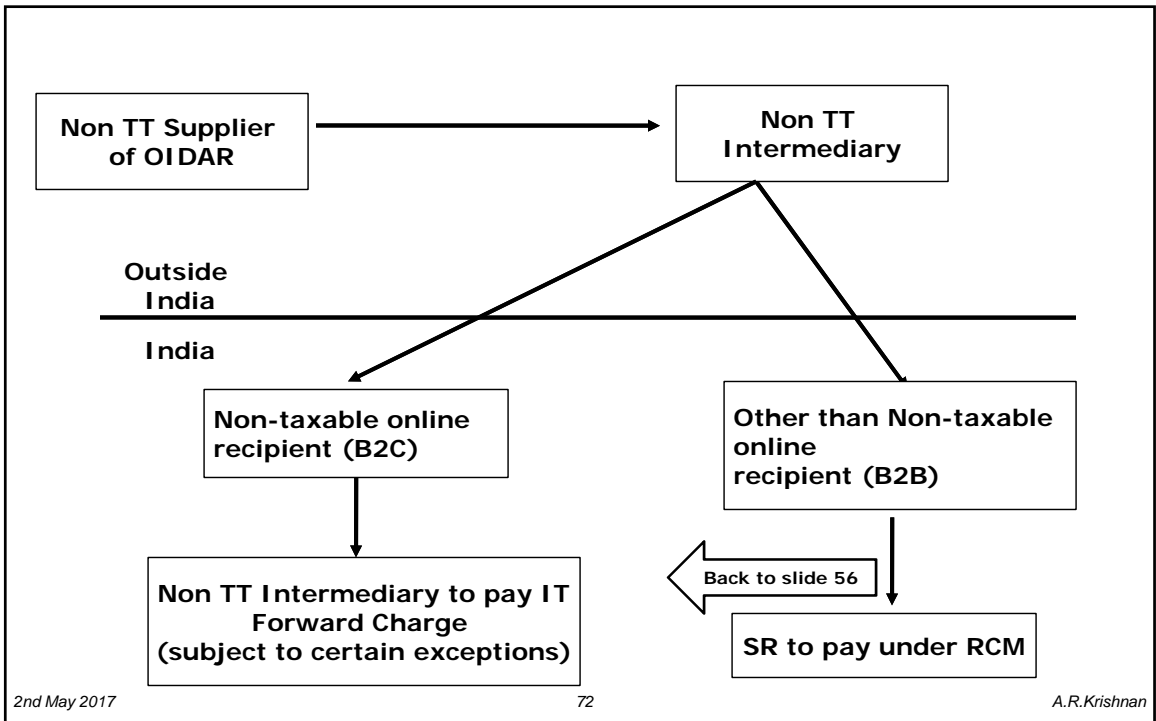
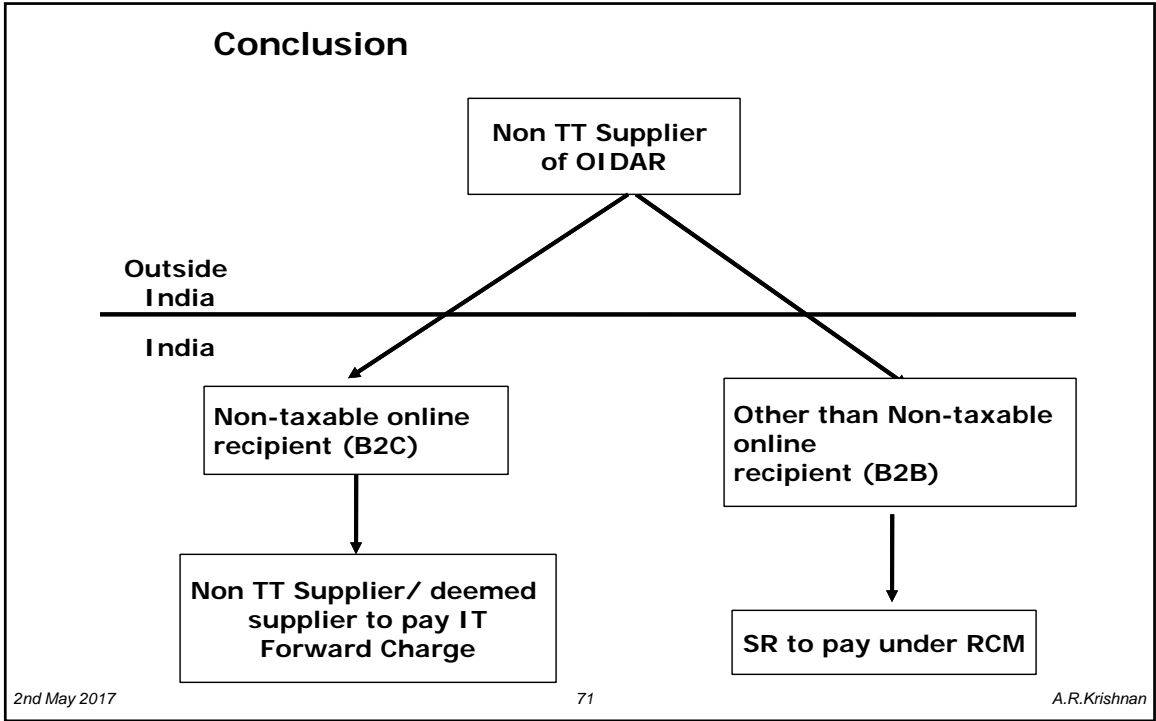


Person receiving OIDAR services deemed to be located in TT –

if any 2 of the non-contradictory conditions satisfied viz., -

- location of address presented by SR via internet is in TT;
- credit card /debit card/ store value card/ charge card/ smart card/ any other card by which SR settles payment has been issued in TT;
- SR's billing address is in TT;
- Internet Protocol [IP] address of device used by SR is in TT;
- SR's bank account used for payment maintained in TT;
- country code of SIM card used by SR is of TT;
- location of SR's fixed land line through which service is received by person, is in TT:

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2nd May 2017

73

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INTENSIVE STUDY COURSE ON GST

Definition of Inter & Intra State Supply, Principle of Determining Supply, Place of Supply of goods and services

By A. R. Krishnan



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Organized by

J.B. Nagar Branch of WIRC



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74

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The INTEGRATED GOODS AND SERVICES TAX ACT, 2017

Section 2:

- (5) **“export of goods”** with its grammatical variations and cognate expressions, means taking out of India to a place outside India;
- (6) **“export of service”** means the supply of any service when
- (a) the supplier of service is located in India,
 - (b) the recipient of service is located outside India,
 - (c) *the place of supply of service is outside India,*
 - (d) the payment for such service has been received by the supplier of service in convertible foreign exchange, and
 - (e) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8;

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75

← Back to slide 6

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The INTEGRATED GOODS AND SERVICES TAX ACT, 2017

Section 2:

- (10) **“import of goods”** with its grammatical variations and cognate expressions, means bringing into India from a place outside India;
- (11) **“import of service”** means the supply of any service, where
- (a) the supplier of service is located outside India,
 - (b) the recipient of service is located in India, and
 - (c) *the place of supply of service is in India,*

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76

← Back to slide 6

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RELEVANT DEFINITIONS

Place of business ('POB') [S.2(85) of CGST Act 2017] includes

- Place from where business ordinarily carried on and includes warehouse, godown, any other place where goods are stored or goods / services are provided / received
- Place where Account books are maintained
- Place where taxable person engaged in business through agent

Back to slide 79

Principal POB [S.2(89) of CGST Act 2017] –

- Place specified in Registration Certificate as principal POB

Back to slide 17

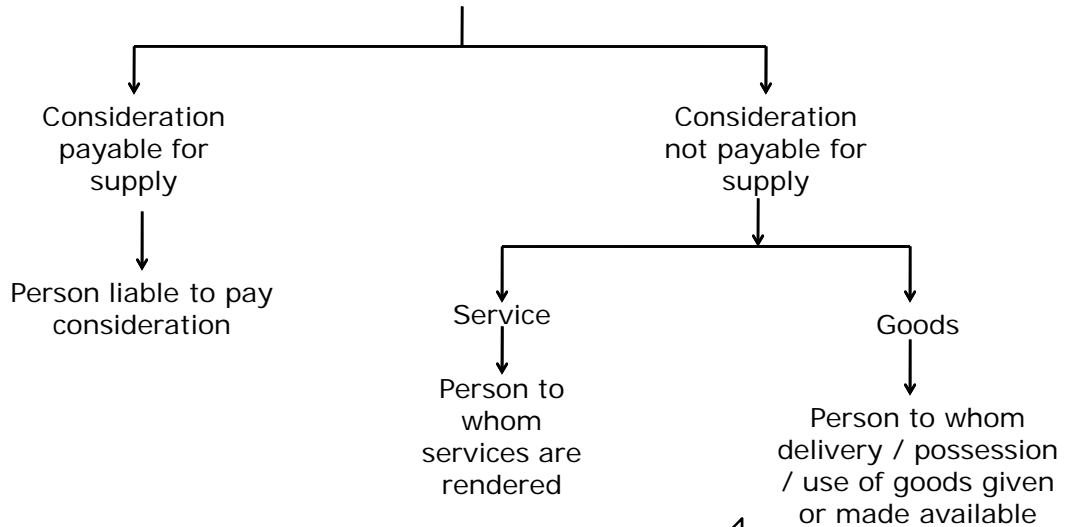
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77

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Recipient of supply of goods / Services

2(93) of CGST Act 2017



Recipient includes agent

Back to slide 17

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78

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Location of Supplier of Service [S.2(15) of IGST Act 2017]

Clause(i): Supply from Registered POB – Registered POB

Refer slide
77

Clause(ii): Supply from FE (other than Reg. POB) – Location of Fixed Establishment

Refer slide
85

Clause(iii): If supply from > 1 POB/FE – POB/FE directly concerned in providing supply

Clause(iv): If no POB/FE - usual place of residence

Refer slide
86

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79

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Location of Service Receiver [S.2(14) of IGST Act 2017]

Clause(i): Supply received at Registered POB – Registered POB

Clause(ii): Supply received at FE (other than Reg. POB) – Location of Fixed Establishment

Clause(iii): If supply received at > 1 POB/FE – POB/FE directly concerned in receiving supply

Refer
slide 81

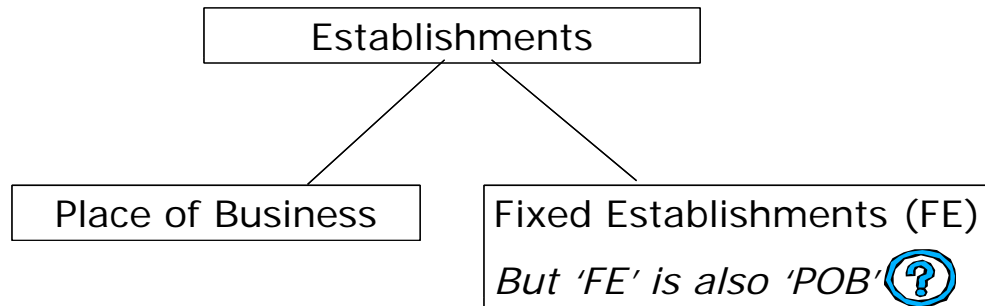
Clause(iv): If no POB/FE – usual place of residence

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80

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Location of Supplier/ Recipient



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81

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FOR LEVY OF IGST

- Establishment outside India and Establishment in India treated as separate persons
- Establishment in a state and Establishment outside state treated as separate persons
- Branch, *agency*, representational office in a territory treated as establishment in the territory
- Where location of supplier / PoS in territorial water-Location / PoS - the coastal state / UT where nearest point of appropriate baseline located.

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82

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Location of Service Provider / Recipient

- If *service provided* / received from or at more than one establishment - Establishment most *directly concerned* to the service relevant
- The establishment directly concerned would be determined by the significance of the activities performed by them and the part they play in their contribution to the service supplied. [*Chinese Channel Hongkong Ltd. v. Commrs. of E & C* (1998) STC 347 (QBD)]

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83

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Location of Service Provider / Recipient

Education Guide [issued in 2012 when POP Rules were issued] provides following Indicators –

- Contracts between Service Provider & Service recipient
- If no contract – e-mail, documents, setting and oral understanding
- Details of how of business fits in larger corporate **structure**
- **Staff of which FE involved is actually providing services**
- Establishment from where services are actually provided or actually consumed/effectively used / enjoyed
- **Performance agreements**



2nd May 2017

84

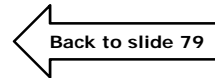
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Fixed establishment [S.2(50) of CGST Act 2017]

Place (other than POB) having sufficient degree of permanence and structure in terms of human and technical resources to supply services or to receive and use services for own needs.

3 P's –

- *Place*
- *People*
- *Permanence*



Usual Place of Residence[s.2(113)CGST Act 2017]-

- In case of individuals, place where he ordinarily resides
- For other persons - where incorporated / legally constituted

