

Place of Supply of Goods or Services

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This presentation covers-

Relevance of place of supply

Rules for determining place of supply of goods

Rules for determining place of supply of services

Need to determine “place of supply”

Interplay between intra-state GST and inter-state GST

- 101st Constitutional Amendment Act gave way for the introduction of GST. As per Article 286 (of Amendment Act), no law of a state shall impose a tax on supply of goods or of services or both where such supply takes place:
 - *outside the state, or*
 - *in the course of import of the goods or services or both into, or export of the goods or services or both out of, the territory of India.*
- It has also been specified in Article 246A (of Amendment Act) that Parliament has exclusive power to make laws with respect to GST where the supply of goods, or of services, or both takes place in the course of interstate trade or commerce.

Contd...

- Accordingly, tax under the GST laws would be imposed in the following manner :
 - *Intra-state supplies: Centre shall impose CGST and the respective state shall impose SGST; and*
 - *Inter-state supplies: Centre shall impose IGST.*

Contd...

- It thus becomes imperative to define “*intra-state supply*”; and “*inter-state supply*”.
- Article 269A(2) and Article 286 (of Amendment Act) provides that Parliament may, by law, formulate the principles for determining when a supply of goods, or of services, or both takes place:
 - *in the course of interstate trade or commerce; or*
 - *outside the state; or*
 - *in the course of import of the goods or services or both into, or export of the goods or services or both out of, the territory of India*
- Accordingly, the Integrated Goods and Services Tax Act, 2016 (“IGST Act”) defines the principles for determining supply of goods and/or services in the course of inter-state trade or commerce, and also in the course of intra-state trade or commerce. The said provisions are contained in Section 3 and 3A of the IGST Act.

Section 3 & 3A of IGST Act

- Supply of goods and services in the course of ***inter-State trade*** or commerce means any supply where the
 - *location of the supplier and the place of supply*
 - *are in different States*
- Supply of goods and services in the course of ***intra-State trade*** or commerce means any supply where the
 - *location of the supplier and the place of supply*
 - *are in same State*
- Thus, for determining whether a supply is inter-state or intra-state, it is important to determine its “***place of supply***”.
- “Place of supply” is also required for determining whether any supply is “export of service” or not.
 - Article 269A provides that Parliament may, by law, formulate the principles for determining the place of supply of any goods or services.

Article 269A of the Constitution Amendment Act

- Article 269A (2) provides that Parliament may, by law, formulate the principles for determining the place of supply of any goods or services.

Article 269A

(1)....

(2) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.’’

- Accordingly Section 5 and Section 6 are formulated in IGST Act

Rules for determining “place of supply” of services

Determining “Place of Supply” of Services

- Section 6 of IGST Act provides the rules for determining “Place of Supply” of services. There are two kinds of rules
 - *“Special Rules” - for determining place of supply of services specified in sub-sections (4) till (15) of Section 6; and*
 - *“General Rule” - for determining place of supply of all remaining services [contained in sub section (2) and (3) of section 6]*
- In contrast to rule (14) of existing rules (The Place of Provision of Services Rules, 2012), an order of applicability is **NOT** defined in Section 6 of IGST Act. Thus it is not clear that if any service falls in two or more categories then which rule would apply.

Determining “Place of Supply” of Services

Example

- If a spa service is provided is provided on board aircraft, whether the place of supply of such service would be determined as per
 - *section 6(11) - place of supply of services on board a conveyance; or*
 - *section 6(5) – place of supply of beauty treatment services*
- In our view, in such cases where a service falls under two sub sections, principles like:
 - Which one is more specific
 - Which one is more beneficial to the assessee
 - Would apply
 - However CONFUSION and inter state / centre fights

Determining “Place of Supply” of Services

- Determining the place of supply of service is difficult in comparison to the place of supply of goods, as services are intangible.
- Rules for determining place of supply of service are very important to bring uniformity.
- The principle of “***destination based consumption tax***” is a guiding factor for determining the place of supply of services under various circumstance. Thus the place of supply would be in most cases fixed at the place where the services are destined (not easy to do so).
- In the following slides we shall discuss each sub section of Section 6 in reverse order.

Section 6(15) – Advertisement services to Government

Place of supply of Advertisement services to:

- CG/ SG/ Statutory body/ local authority
- **meant for** identifiable states
- shall be taken as located in each of such States.

Value attributable to each state

This sub-section also discusses the value of advertisement services attributable to each state. The value specific to each State shall be in proportion to amount attributable to service provided by way of dissemination in the respective States as may be determined in terms of

- *the contract or agreement entered into in this regard or,*
- *in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.*

Athena Comments

- This rule will apply only when the advertisement service is for identifiable states.
- This sub-section can lead to parts of a single service being classified as intra-state and remaining parts as inter-state supply.

For example, CG takes an advertisement service for North-eastern (NE) states from an advertising agency based in:

- 1) *Delhi – such service shall be classified as inter-state only*
- 2) *Assam – such service shall be classified as intra-state (for service attributable to Assam, one of the NE state) and inter-state for remaining services attributable to other NE states*

Athena Comments

- Advertisement service has not been defined in the Act. Whether following can be covered within the advertisement services
 - Conceptualising and designing of advertisement;
 - Broadcasting of advertisement
 - Installation of advertisement on bill boards
 - Renting of bill boards for advertisement
 - Modelling agency providing models for advertisement
 - Actors charging for acting in advertisement

Section 6 (14) – Insurance Services

- Place of supply of *Insurance services*:
 - To a registered person – shall be the location of such person
 - To a person other than registered person – be the location of the recipient of services on the records of the supplier of services

Athena Comments

- This would mean that if insurance services is provided to a registered person then place of supply would be “location of recipient of service”. Location of recipient of service is defined in Section 2(64) of the GST Act.
- Alternatively if service is provided to a person who is not registered under GST then place of supply would be the “location of recipient of service as contained in the records of the service provider”.
- Insurance services are not defined in the Act. It is not clear whether this sub-section would cover the services provided by insurance agents. Ideally insurance agency services should not be included herein.
- There is no evident significance of this sub-section (14) since this is same as “General Rule” for determining place of supply of a service

Meaning of location of recipient of service

★ “location of recipient of service” means:

1. where a supply is received at a place of business for which registration has been obtained, the location of such place of business;
2. where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a **fixed establishment elsewhere**, the location of such fixed establishment;
3. 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
4. in absence of such places, the location of the usual place of residence of the recipient;

Meaning of location of recipient of service

- As per the definition “location of recipient of service” is:
 1. The location, where the **service is received**, be it a place of business (for which registration has been obtained) or a fixed establishment
 2. where a supply is received at more than one establishment, the location of the **establishment most directly concerned** with the receipt of the supply; and
 3. in absence of such places, the location of the **usual place of residence** of the recipient

Meaning of location of recipient of service

- **Place of business** is defined in Section 2(75) of GST Act as:

“place of business” includes

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, provides or receives goods and/or services; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called

- **Fixed establishment** is defined in Section 2(46) of the GST Act as

“fixed establishment” means a place (other than the 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 6 (14) – Insurance Services

Example:

Particulars	Location of supplier	Location of recipient	Place of supply
LIC office of Delhi is providing health insurance service for employees of “ABC Ltd” registered in Haryana	Delhi	Haryana	Haryana
Tata AIG, Mumbai providing life insurance service to “X” of Ahmedabad	Mumbai, Maharashtra	Ahmedabad, Gujarat	Ahmedabad, Gujarat

Section 6 (13) – Banking and other financial services

- Place of supply for banking and other financial services including stock broking services to any person shall be
 - the location of the recipient of services on records of the supplier of services.
- If the service is not linked to the account of the recipient of services, the place of supply shall be the location of the supplier of services.
 - Some examples of such service can be 1) Currency Exchanges; 2) preparation of demand draft by banks on cash deposit; 3) discounting of bills of exchange etc.
- It is not clear if this sub-section is applicable to services provided by commodity exchanges or commodity traders.

Section 6 (12) – Telecommunication services

- Place of supply of Telecommunication services including data transfer, broadcasting, cable and direct to home television to any person shall:-
 - In case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna – location where the telecommunication line, leased circuit, cable connection or dish antenna is installed for receipt of services.
 - In case of mobile connection for telecommunication and internet services provided on-
 - ***post-paid basis*** –be the location of billing address of service recipient on record of service provider.
 - ***pre-paid basis*** –be the location of where such pre-payment is received or such vouchers are sold.
 - Provided that if such service is availed through internet banking or other electronic mode of payment, place of supply shall be the location of the service receiver on record of service provider.

Athena Comments

- This sub-section would not cover the services provided by paytm or freecharge or other similar sites on which mobile can recharged.

Section 6 (11) – Services on board a conveyance

- Place of supply for services on board a conveyance such as vessel, aircraft, train or motor vehicle shall be
 - the location of the first scheduled point of departure of that conveyance for the journey

Athena Comments

- Manner of determining the place of provision of services under this sub-section is same as that in the current place of provision of service rules.
- Examples of services covered under this sub-sections include
 - 1) paid internet services onboard aircrafts;
 - 2) paid movies or spa treatments onboard conveyance etc.

Athena Comments

- In our view there may be a dispute as to whether supply of food and other article of human consumption, sold on board a conveyance, would be treated as supply of goods or supply of service. Accordingly whether place of supply of food articles on board a conveyance would be determined on the basis of this sub section or sub-section (11) of Section 6 (relating to place of supply of services on board a conveyance)
- First scheduled point of first departure is not defined in the IGST Act or the GST Act. In our view first schedule point of departure is the first location from where the vessel is starting its journey.

Athena Comments

Particulars	Place of supply
Anil has received internet services on board a flight from Delhi to London	Delhi (first departure point of the journey)
Flight from Delhi to US has a scheduled stopover at Dubai and Ajay has received the spa services after the Dubai stopover	Delhi (in our view even in case of stop over journey the first scheduled point would be Delhi location from where the journey is started)

Section 6(10) – Passenger transportation service

- Place of supply for passenger transportation service:
 - To a **registered person** - shall be the location of such person
 - To a person other than a registered person - shall be the place where the passenger embarks on the conveyance for a continuous journey
- Provided that where the right to passage is given
 - for future use and
 - the point of embarkation is unknown at the time of issue of right to passage,
 - the place of supply of shall be determined as per general rule i.e. as contained in sub section (2) or (3).
- For the purpose of this sub-section:
 - the return journey is to be treated as a separate journey
 - even if the right to passage for onward and return journey is issued at the same time.

Section 6(10) – Passenger transportation service

- “continuous journey” means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stop over between any of the legs of the journey for which one or more separate tickets or invoices are issued;
 - For the purposes of this clause, ‘stopover’ means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time.

Athena Comments

- Whether flight with a stopover would be considered as continuous journey?
- It is not clear whether this sub-section would cover the services of travel agents? - ideally should not cover these services.

Section 6 (9) – Transportation of goods service

- Place of supply of services by way of transportation of goods including mail or courier:
 - To a registered person - shall be the location of such person
 - To a person other than registered person – shall be the location of at which such goods are handed over for their transportation.

Athena Analysis

- Contradictory with the current Rule. As per the current rule place of supply of such services is the location where the goods are destined for.
- As per this sub-section, if a person exports some goods out of India, the place of provision service for transporting such goods would be in India and thus it the said service would not qualify as export of service: all recipients outside India would be unregistered persons only.
- Likewise, if a person situated outside India sends some goods to India the place of provision would be outside India.

Section 6(8) – Services relating to events

- Place of supply of services provided by way of:
 - **Organization** of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events, or
 - **Services ancillary to organization** of any of the above events or services, or assigning of sponsorship of any of the above events:
 - To a **registered person** – shall be the location of such person
 - To a person other than a registered person –shall be the place where the event is actually held

Where the event is held in more than one State and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in the each of the states in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf

Section 6(7) – Services relating to admission to event/ park

- Place of supply services provided by way of:
 1. Admission to a
 - cultural event,
 - Artistic event,
 - Sporting event,
 - Scientific event,
 - Educational event,
 - entertainment event,
 - Amusement park, or
 - Any other place
 - AND
 2. Services ancillary to admission
 - shall be the place where the event is actually held or such place is located.

Athena Comments

- All the services covered under sub section (7) and (8), in the present scenario are governed by one rule i.e. Rule 6 of place of Supply Rules. As per present Rule 6 place of provision of services relation to admission or organization of an event is the place where such event is actually held.

Section 6(6) – Services relating to training and performance appraisal

- Place of supply of services in relation to training and performance appraisal:
 - To a registered person – shall be the location of such person
 - To a person other than registered person – shall be location where the services are actually performed.

Athena Comments

- What would the place of supply if training event is happening over internet (such as webinar) and the recipient is not registered under GST

Section 6(5) – Restaurant and other services

- Place of supply of:
 - Restaurant services,
 - catering services,
 - Personal grooming services,
 - Fitness services,
 - beauty treatment services, and
 - Health service including cosmetic and plastic surgery
- shall be the location where the services are **actually performed**.
- Some of the above services may relate to businesses and business events - it would have been better to tax esp. Catering at the place where the recipient is located (in case of businesses)

Athena Comments

- What would be the place of supply in case where the home delivery of food by restaurant. Whether it would be the
 - location of restaurant i.e. where the food is actually prepared or
 - it will be the location where the food is delivered
- Whether place of supply for delivery charges would also be governed as per the said subsection
- If personal grooming services provided over internet such as english speaking classes then how to determine place of supply

Section 6(4) – Services in relation to immovable property etc.

- Place of supply of services
 1. in relation to:
 - immovable property, including services provided by:
 - architects,
 - interior decorators,
 - surveyors,
 - engineers
 - and other related experts or estate agents,
 - any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work, or
 2. By way of lodging accommodation by a:
 - hotel,
 - Inn,
 - Guest house,
 - Homestay,
 - Club,
 - Campsite, by whatever name called,
 - **houseboat**, or
 - **Any other vessel**

Section 6(4) – Services in relation to immovable property

3. By way of accommodation in any immovable property for organizing any marriage or reception or matters related therewith, official , social, cultural, religious, or business function including services provided in relation to such function at such property
 4. Any service ancillary to the services above
- shall be the location at which the immovable property or boat or vessel is located or intended to be located.
 - When the property/boat/vessel is located in more than one State, the supply of service shall be treated as made in each of these states in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard

Section 6(2) and (3) – General Rule

- Place of supply of services other than mentioned in Sub-sections (4) to (15) of Section 6:
 - Made to a **registered person** –
 - shall be the location of such person.
 - Made to a person other than a registered person.
 - shall be the location of the recipient where the address on record exists, and
 - Shall be the *location of the supplier of services* in other cases.

Location of supplier of service

- Location of supplier of service is defined in Section 2(65) as:
location of supplier of service” means:
 - (i) *where a supply is made from a place of business for which registration has been obtained, the location of such place of business ;*
 - (ii) *where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;*
 - (iii) *where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and*
 - (iv) *in absence of such places, the location of the usual place of residence of the supplier;*

Rules for determining “place of supply” of goods

Rules for determining “place of supply” of goods

- Section 5 of the IGST Act provides for the rules for determining “place of supply” of goods in different circumstances
- Since goods are tangible, determining “place of supply” of goods is comparatively easy as against services
- There is no mention regarding the order of application of these rules. If any situation is covered under two subsections then how to determine the place of supply is not provided for.

Section 5(2) – supply involves movement

- Place of supply of goods, where the supply involves movement of goods, whether by the,
 - supplier, or
 - recipient, or
 - any other personshall be the location of the goods at the time at which the *movement of goods terminates* for delivery to the recipient.

Athena Comments

- This subsection will only cover those cases where supply involve movement of goods.
- The phrase “Supply involves movement” in our view means that movement of goods is a covenant or incident of contract of supply.
- It is immaterial as to who is moving the goods, it can be made by supplier or recipient or any other person. What is necessary is movement is pursuant to the contract of supply.

Athena Comments

Example:

- “A” of UP places an order of books on “B” of Delhi with an instruction to deliver the books at the location of “A” in UP
- In this case movement of goods from Delhi to UP is an essential part of supply of goods by “B” to “A”. Thus Sub-section (2) would apply for determining place of supply.

Section 5(2A) – supply involves movement

- Place of supply where the goods are delivered by the supplier
 - to a recipient or
 - any other person, on the direction of a third person,
- whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said **third person** has received the goods and the place of supply of such goods shall be the **principal place of business of such person**.

Athena comments

- This sub section has been drafted poorly.
- It seems that this subsection would apply where the supply involves movement of goods and supply is affected by transfer of document of title to the goods.

Section 5(2A) – supply involves movement

Example – to be discussed

Particulars	Location of supplier	Location of recipient	Delivery	Place of supply
“A” of Delhi sells pens to “B” of Haryana and pursuant to such sale, sends the pens to “B”.	Delhi	Haryana	??	??
While pens are in movement, “B” sells the pens to “C” (by transfer of document of title) having principal place of business in MP.	Haryana	MP	MP	??

Section 5(3) – supply does not involve movement

- Place of supply of goods, where the supply does not involve movement of goods, whether by the,
 - supplier, or
 - recipientshall be the location of such goods at the time of delivery to the recipient.

Athena comments

- This sub section would mainly cover Over The Counter (OTC) supplies of goods.
- Where a person purchases a T-shirt from a shop, supply is complete at the shop itself when the T- shirt is delivered to the buyer and the price is paid. In this case place of supply would be determined under sub-section 3 and not under sub section 2.
- Other cases where no movement - job worker making capital goods for the principal but himself uses for making goods for the principal.

Section 5(4) – Goods installed or assembled at site

- Place of supply where the goods are installed or assembled at site:
 - shall be the place of such installation or assembly.

Particulars	Location of supplier	Location of recipient	Site of installation / assembly	Place of supply
“A” of Delhi supplied TV to “B” of Haryana which is to be installed in UP by “A”	Delhi	Haryana	UP	UP (site of installation)

Athena comments

- Installation is deemed as supply of services - rule for determining has to be in rules regarding services
- This seems to be a mistake

Section 5(5) – Goods supplied on board a conveyance

- Place of supply where the goods are supplied on board a conveyance, such as
 - a vessel,
 - aircraft,
 - train or
 - a motor vehicle:shall be the location where the goods are taken on board.

Athena Comments

- This Sub-section would cover supply of goods on board a conveyance such as sale of merchandise in vessels, sale of goods on aircraft, etc
- Whether this rule would cover a case where goods are ordered for purchase on aircraft but actual delivery takes place after landing at the destination airport.

Section 5(5) – Goods supplied on board a conveyance

- In our view there may be a dispute as to whether supply of food and other article of human consumption, sold on board a conveyance, would be treated as supply of goods or supply of service. Accordingly whether place of supply of food articles on board a conveyance would be determined on the basis of this sub section or sub-section (11) of Section 6 (relating to place of supply of services on board a conveyance)

Section 5(6) – residuary rule

- Where the supply of goods cannot be determined in terms of the other rules:
 - law shall be made by the Parliament in accordance with the recommendation of the GST Council.

Questions??

THANK YOU

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