TIME AND VALUE OF SUPPLY

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TIME OF SUPPLY

TIME OF SUPPLY – RELATED PROVISIONS

12(1) - What is time of supply of goods ?

12(2) - Liability to pay tax in case of Forward Charge

12(3) - Liability to pay tax in case of Reverse Charge

12(4) - Liability to pay tax in case of issue of Vouchers

12(5) - Residuary category

12(6) - Liability to pay tax in case of special charges due to delayed payment of consideration

13(1) - What is time of supply of services ?

13(2) - Liability to pay tax in case of Forward Charge

13(3) - Liability to pay tax in case of Reverse Charge

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13(5) - Residuary category

13(6) - Liability to pay tax in case of special charges due to delayed payment of consideration

12(1) & 13(1) – WHAT IS TIME OF SUPPLY?

12(1) "The liability to pay tax on goods shall arise at the time of supply as determined in accordance with the provisions of this section"

13(1) "The liability to pay tax on services shall arise at the time of supply as determined in accordance with the provisions of this section"

- Reference in Section 9 - Importance of Section 12 & Section 13
- Time of supply fixes the point when liability to pay tax arises
- Use of phrase 'shall be'
- Not a fact to be inquired by taxable person, but will of legislature

12(2) – LIABILITY TO PAY TAX IN CASE OF FCM (GOODS)

Time of supply – Forward charge (Earlier of)

- Invoice date
- Last date for issue of invoice u/s 31~~(1)~~
  - Supply of taxable goods
    - Supply involving movement – removal of goods
    - Others – delivery / making available of goods to recipient
  - Continuous supply of goods
    - Date of successive statement of account / successive payment
  - Goods sent / taken on approval for sale / return
    - Before / at time of supply or
    - 6 months from date of removal
  - Supply of art works by artists through galleries. (CBIC Circular No. 22/22/2017-GST)
- Date of receipt of payment (earlier of date of entry in books or date of credit in bank account)

EXCEPTIONS TO SECTION 12(2)

- (Amount received – Invoice amount) $\leq$ Rs 1000. Such excess - @ option of supplier, invoice date or receipt date

- Advance received in case of goods:

Period	Aggregate T/o $\leq$ Rs 1.5 crores and not covered under composition scheme	Aggregate T/o > Rs 1.5 crores	Applicable Notification
1.7.2017 to 12.10.2017	Taxable	Taxable	
13.10.2017 to 14.11.2017	Not taxable	Taxable	Central Tax Notification no. 40/2017 dated 13th October 2017
15.11.2017 and onwards	Not taxable	Not taxable	Central Tax Notification no. 66/2017 dated 15th November 2017

- Goods sent by Principal to Job worker

CONTINUOUS SUPPLY OF GOODS & SERVICES

Sec 2(32) - Characteristics of a continuous supply of goods:

1. Supply of goods should be on a continuous or recurrent basis
2. Invoice on a regular or periodic basis
3. Something contingent at the time of removal / movement that can be determined only upon arrival / even consumption.

Sec 2(33) - Characteristics of a continuous supply of Services:

1. Supply of goods should be on a continuous or recurrent basis
2. Contract period > 3 months
3. Payment obligations should be periodical

ILLUSTRATION – FCM (GOODS)

A (Chennai)
Supplier

B (Ernakulam)
Recipient

Order placed date: 18^{th} Mar 2020
Transportation initiated from Chennai by B : 20^{th} Mar 2020
Goods reached Ernakulam: 22^{nd} Mar 2020
Actual date of invoice: 21^{st} Mar 2020
Date of receipt of payment:
19^{th} Mar 2020 – Rs 5 Lakhs
25^{th} Mar 2020 – Rs 10 Lakhs
Time of supply?

Earlier of Actual date of invoice or last date of issue of invoice u/s 31

Date of removal = last date of invoice = 20^{th} March 2020

ILLUSTRATION – CONTINUOUS SUPPLY OF GOODS

Successive payments received

Due date of payment as per contract – 7th of next month

Period	Date of issue of invoice	Date of receipt of payment
October	4th Nov'18	6th Nov'18
November	6th Dec'18	8th Dec'18
December	9th Jan'19	5th Jan'19

Last date of issue of invoice = Actual date of receipt of payment.
Time of supply:
October: 4th Nov 2018
November: 6th Dec 2018
December : 5th Jan 2019

Due date of payment is irrelevant

Successive Statement of Accounts

Due date of issuance of successive statement – 5th of the next month

Period	Date of issue of invoice	Date of issue of statement
October	4th Nov'18	6th Nov'18
November	6th Dec'18	3rd Dec'18
December	9th Jan'19	5th Jan'19

Last date of issue of invoice = Actual date of issue of statement
Time of supply:
October: 4th Nov 2018
November: 3rd Dec 2018
December : 5th Jan 2019

Due date of issue of statement is irrelevant

13(2) – LIABILITY TO PAY TAX IN CASE OF FCM (SERVICES)

Time of supply – Forward charge

Is invoice issued within time prescribed under Section 31 ?

Yes

Earlier of Date of invoice or date of receipt of payment

No

Earlier of date of provision of service or date of receipt of payment

TOS = Date as recorded by recipient of services as receipt of services if clause (a) and (b) does not apply

TIME PRESCRIBED UNDER SECTION 31

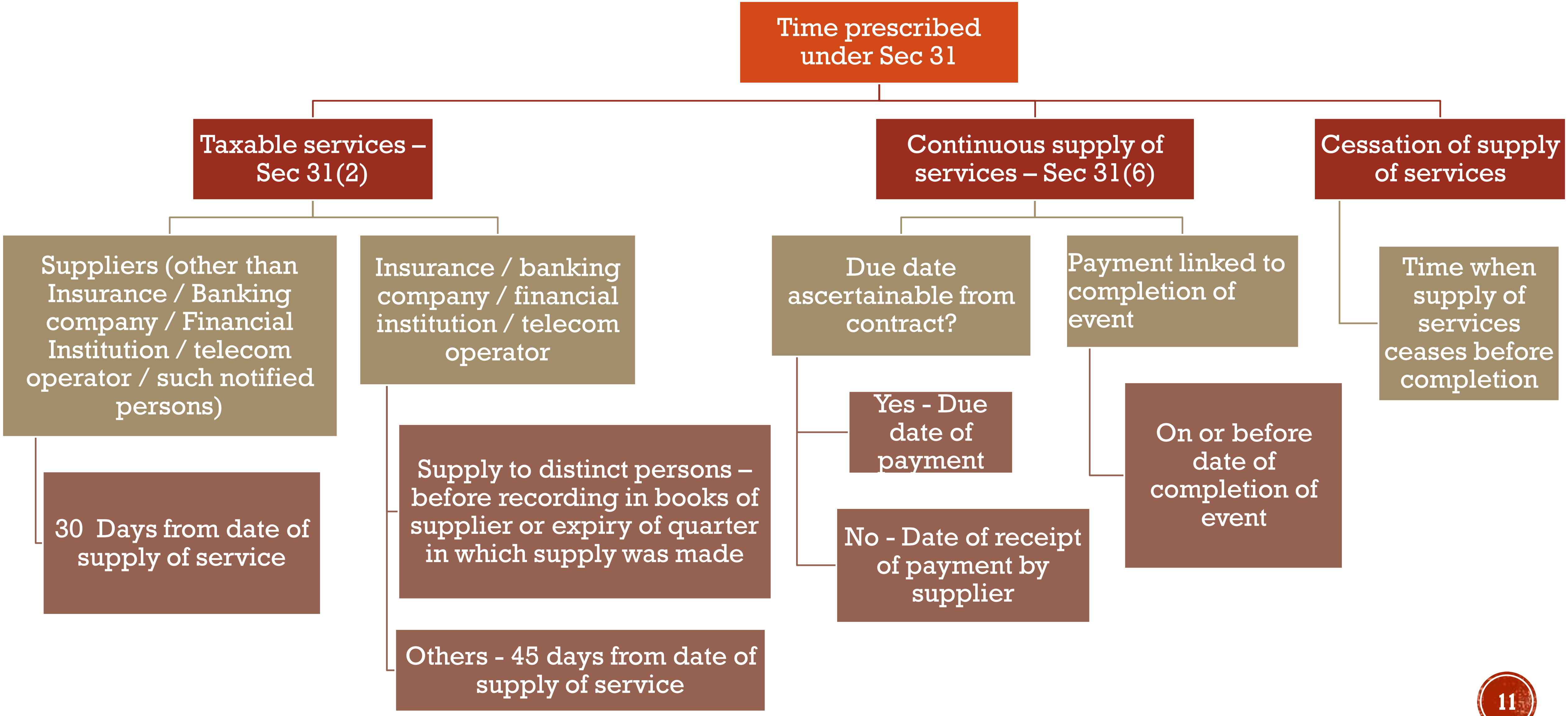

ILLUSTRATION – FCM (SERVICES)

8th April 2018 - Advance received Rs 10,000 against provision of consultancy services

10th April 2018 – Provision of consultancy services worth Rs 50,000

16th May 2018 – Balance Rs 40,000 received

Time of supply – if invoice is raised on:
Scenario 1: 15th April 2018
Scenario 2: 15th May 2018

Scenario 1:
Last date to raise invoice = 30 days from date of provision of service = 10th May 2018
But actual date of invoice = 15th April 2018
WITHIN TIME LIMIT

Time of supply:
Earlier of date of receipt of payment or date of invoice
TOS :
Rs 10,000 = 8th April 2018;
Rs 40,000 = 15th April 2018

Scenario 2:
Last date to raise invoice = 30 days from date of provision of service = 10th May 2018
But actual date of invoice = 15th May 2018
NOT WITHIN TIME LIMIT

Time of supply:
Earlier of date of receipt of payment or date of provision of service
TOS :
Rs 10,000 = 8th April 2018;
Rs 40,000 = 10th April 2018

ILLUSTRATION – CONTINUOUS SUPPLY OF SERVICES

Due date ascertainable

Equal instalments to be paid at the end of every quarter

Period of completion of service	Date of issue of invoice	Actual payment date
30-09-2017	3-10-2017	15-10-2017
31-12-2017	2-12-2017	3-2-2018
31-03-2018	10-04-2018	20-03-2018

Last date of issue of invoice = Due date of payment = end of every quarter

Due date for issue of invoice	Date of issue of invoice	Within time?	Time of supply
30-09-2017	3-10-2017	No	30-09-2017
31-12-2017	2-12-2017	Yes	2-12-2017
31-03-2018	10-04-2018	No	20-03-2018

Due date not ascertainable

Payment as per mutual understanding

Period of completion of service	Date of issue of invoice	Actual payment date
31-12-2017	4-01-2018	12-01-2018
31-03-2018	22-04-2018	02-04-2018

Last date of issue of invoice = Date of receipt of payment

Due date for issue of invoice	Date of issue of invoice	Within time?	Time of supply
12-01-2018	4-01-2018	Yes	4-01-2018
02-04-2018	22-04-2018	No	31-03-2018

12(3) – LIABILITY TO PAY TAX IN CASE OF RCM (GOODS)

Applicability:

Only Transactions covered u/s 9(3) and 9(4) of CGST Act, 2017 & 5(3) and 5(4) of IGST Act, 2017.

Time of supply – RCM
(Earlier of)

- Date of receipt of goods
- Date of payment (entry in books or date of debit in bank account)
- Date immediately following 30 days from issue of invoice / any other document by supplier

ILLUSTRATION – RCM (GOODS)

Order placed date: 1st April 2018
Goods received: 10th April 2018
Actual date of invoice: 15th April 2018
Date of Payment and recording in books by recipient: 20th April 2018
Date of debit in recipient's bank: 25th April 2018
Time of supply?

Earliest of:

1. Date of receipt of goods – 10th April 2018
2. 30 days following the date of issue of invoice by supplier: 16th May 2018
3. Date of payment (Earlier of recording in books or debit in bank) – 20th April 2018

Time of supply = 10th April 2018

13(3) – LIABILITY TO PAY TAX IN CASE OF RCM (SERVICES)

- Time of supply – Reverse charge
  - Transaction between associated enterprises and supplier is located outside India
    - Date of entry in books of account of recipient
    - Date of payment
  - Others
    - 60 days from date following issue of invoice / any other document by supplier
    - Date of payment

ILLUSTRATION – RCM (SERVICES)

X provides legal services to Y

Date of provision of service – 10.4.2018
Date of issue of invoice by X to Y – 12.4.2018
Payment made by Y through cheque and date on which it is recorded in books – 10.7.2018
Date of debit in Y's bank account – 15.7.2018

Earliest of:

1. Date of entry in books – 10.7.2018
2. Date of debit in recipient's bank – 15.7.2018
3. 60 days following the date of issue of invoice by supplier = 60+1+ 10.4.2018 = 12.6.2018

Time of supply = 12th June 2018

12(4) – LIABILITY TO PAY TAX IN CASE OF VOUCHERS

<u>Voucher</u> – Section 2(118)

1. Instrument where there is an obligation to accept it as consideration / part consideration for supply of goods or services or both
2. Indicated in instrument itself or related documentation is:
    1. Goods / services / both to be supplied or identities of their potential suppliers **<u>AND</u>**
    2. Terms and conditions of use of such instrument

- Date of redemption of voucher

Not identifiable at time of issue

- Date of issue of voucher

Identifiable at time of issue

13(4) – LIABILITY TO PAY TAX IN CASE OF VOUCHERS

- Definition of goods – Actionable claims are included specifically by creating an 'exception from exclusion'
- Schedule II – certain transactions involving goods are treated as supply of services

- Date of redemption of voucher

Not identifiable at time of issue

- Date of issue of voucher

Identifiable at time of issue

12(5) & 13(5) – RESIDUARY CATEGORY

Time of supply is :

1. Where periodical return has to be filed – due date of such return

2. Other cases – date of payment of tax.

Applicability: None of the other provisions capable of being applied
e.g. clandestine removal of goods where invoice date / removal of goods date is not traceable

12(6) & 13(6) – ADDITIONAL CONSIDERATION

Interest	Late fee	Penalty

DELAYED PAYMENT OF CONSIDERATION

Time of supply = Date of receipt of such additional value

CHANGE IN RATE OF TAX

Scenario	Date of Supply	Date of issue of Invoice	Date of receipt of Payment	Time of supply
1	Before rate change	After rate change	After rate change	Earlier of date of invoice or date of receipt of payment
2	Before rate change	Before rate change	After rate change	Date of invoice
3	Before rate change	After rate change	Before rate change	Date of receipt of payment
4	After rate change	Before rate change	After rate change	Date of receipt of payment
5	After rate change	Before rate change	Before rate change	Earlier of date of invoice or date of receipt of payment
6	After rate change	After rate change	Before rate change	Date of invoice

VALUE OF SUPPLY

VALUATION UNDER GST

Valuation to be adopted is Transaction value – if:

1. Supplier and Recipient of Supply are not related AND
2. Price is sole consideration for the supply

Valuation to be adopted is according to the Rules – if:

1. Consideration not wholly in money – Rule 27
2. Supply made is between related persons (other than Principal Agent transactions) or distinct persons u/s 25(4) & 25(5) of CGST Act, 2017 – Rule 28
3. Supply made or received through an agent – Rule 29
4. Value not determinable under Rule 27, 28, 29 – Rule 30
5. Value not determinable under Rule 30 / Provider of services unable to determine value of services under Rule 27, 28, 29 – Rule 31

VALUATION AS PER RULES EVEN IF PRICE IS SOLE CONSIDERATION AND THE PARTIES ARE NOT RELATED?

Section 15(5):

Notwithstanding anything contained in Section 15(1) or 15(4):

Value of supplies Notified by Govt. on council recommendations shall be determined in such manner as may be prescribed

Central Tax Notification no. 10/2017 dated 28th June 2017 notified the Valuation rules for Distinct persons

SOLE CONSIDERATION vs. CONSIDERATION

CASE 1 - CCE DAMAN VS. SUN PHARMACEUTICALS LTD (CESTAT AHMEDABAD) [2009 Taxmann.Com 7 (Ahmedabad - Cestat)]

Sale of Physicians sample (PS) by a Pharmaceutical company to an unrelated third party

Unrelated Third party distributes the PS to Identified medical representatives of Pharmaceutical company for distribution to doctors

Influenced by Expenses incurred for marketing and distribution expenses by Pharmaceutical Company

CASE 2 - CCE Nagpur vs. Indorama Synthetics India Ltd (Supreme Court)- [(2015) 60 taxmann.com 472 (SC)]

Government

Supplier Eligible for Duty drawback due to transaction with Buyer A

Manufacturer of polyester chips, polyester staple Fibre, polyester filament yarn and other goods

Rs 37.50 per Kg

Rs 50 per Kg

Buyer A - Holder of Advance Authorization Licence (surrendered AAL for making domestic procurement)

Unrelated third party Buyer B not holding AAL

CASE 3 -Jindal Photo Films Ltd vs. Comm. of Customs, Bombay (CEGAT, Delhi)- 2002 taxmann.com 1571 (CEGAT- NEW DELHI)

Fuji Photo Company Ltd.

Bhimtal

Import of Photographic film processing machine

+

Condition: Semi-processed raw material to be procured exclusively from Fuji, otherwise Annual Licence fee of JY 1 Lakh is payable by Bhimtal to Fuji

Related Persons under GST

Explanation to Section 15 of CGST Act, 2017 provides that Persons shall be deemed to be 'related persons' if-

1. Such persons are officers or directors of one another's businesses
2. Such persons are legally recognized partners in business
3. Such persons are employer and employee
4. Any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them
5. One of them directly or indirectly controls the other
6. Both of them are directly or indirectly controlled by a third person
7. Together they directly or indirectly control a third person
8. They are members of the same family
9. A Person who is a Sole agent / sole distributor / sole concessionaire in the business of another.

Transaction Value – Inclusions and Exclusions

Transaction value = Price actually paid / payable for the said Supply + Inclusions - Exclusions

INCLUSIONS

- Taxes, duties, cesses, fees and charges **if charged separately by the Supplier** and levied under any law in force except CGST Act, SGST Act, UTGST Act, GST (Compensation to States) Act
- Supplier liable to pay but incurred by recipient & not already included in Price paid / payable
- Incidental expenses till final delivery of goods / services (like commission, packing) charged by Supplier
- Interest / late fee / Penalty for delayed payment
- Price linked subsidies provided by Private Enterprises
- Discounts forming part of Invoice
- Discounts forming part of agreement and capable of being linked to relevant invoices

EXCLUSIONS

- All Subsidies provided by Central Government and state Governments
- Non-price linked subsidies provided by Private enterprises
- Discounts not forming part of invoice / agreement

Various types of discounts

In-bill discounts	Off-bill discounts	Cash discounts
Quantity discounts	Special discounts	Discounts in kind
Free stocks	Buy one take two	Nominal value supplies

Is Bad debts includible in the value of supply?

1. Bad debts - Generally a post supply transaction

2. Reasons for Bad debts:
    1. Disputes regarding Price, quality, etc.
    2. Debtor's poor financial management
    3. Debtor's inability / unwillingness
    4. Creditors' unable to connect

3. Possibility of converting bad debts as purchase returns under GST?
    1. If there is a Defect in the goods & Reduction in taxable value / tax charged is more than what is payable
    2. Remember time limit mentioned under Section 16(4) of CGST Act, 2017
    3. DLF Cyber city developers Limited (Civil Writ Petition no. 34660/2019)- P&H HC

What is Consideration by third party?

Rs 120 per plate from employees + Rs 70 subsidy per plate from X Ltd = Lunch to employees at cafeteria

Consideration:

1. Payment made / to be made (+) Monetary value of any act / forbearance (-) Deposit unless it is applied towards supply.
2. By Recipient or any other person
3. In respect of / in response to / for inducement of supply

Exclusions:

1. Subsidy not linked to value of product directly e.g Subsidy against capital asset
2. Subsidies provided by Government

Valuation under Rule 27– When consideration not wholly in money

Consideration not wholly in money would mean Presence of Non- Monetary consideration

Value of Supply =

a. Open Market Value (OPV) of such supply

b. If OPV not available, (Consideration in money + Amount equivalent to non-monetary consideration)

c. If value not determinable under a and b, (Value of supply of like kind and quality)

d. If value not determinable under a /b /c, then (Consideration in money + Amount equivalent to non-monetary consideration by application of Rule 30 / Rule 31 in that order)

Valuation under Rule 28– Supply between distinct persons / related persons (except supply through agent)

a. Open Market Value (OPV) of such supply

b. If OPV is not available, (Value of supply of like kind and quality)

c. If value not determinable under a /b, then Value as determined by application of Rule 30 / Rule 31 in that order

Goods are intended for further supply by the Recipient, then at the Option of the supplier Value of Supply equivalent to : - 90% of price charged to an - unrelated recipient of - Supply of goods of like kind and quality	Where Recipient is eligible for full Input tax credit: Value declared in Invoice is deemed as OPV of goods or services

Valuation under Rule 29– Supply of goods made / received through agent

Value of Supply between Principal and his Agent:

a. Open Market Value (OPV) of such supply or
   At the option of supplier, 90% of Price charged to an unrelated recipient for supply of goods of like kind & quality

b. If OPV is not available, Value determined by application of Rule 30 or 31, in that order.

Supply made by an Independent Supplier to the Agent = Rs 5000
Supply made by the Agent of goods of like kind and quality to an unrelated recipient = Rs 4500
Valuation shall be Rs 5000 i.e. OPV, if supplier opts it can be (90% of Rs 4500) i.e. Rs 4050

Valuation under Rule 30 – Based on cost

Value not determinable under Rule 27/28/29, Value of supply is

110% of Cost of (Production / manufacture / acquisition of such goods / Provision of such services)

Valuation under Rule 31 –Residual method

Value not determinable under Rule 30, Value of supply is :
determined using reasonable means consistent with Principles and general provisions of Section 15 & Chapter IV of CGST Act, 2017

In case of supply of services – Supplier can opt to ignore Rule 30 and consider Rule 31.
i.e. 10% Margin is not pre-fixed, it can be more or less.

Rule 31A – Value of Supply for lottery/ betting/ gambling & Horse racing

S.No	Type of Supply	Value of Supply
1	Lottery run by State Governments (i.e. those lotteries which are not allowed to be sold in any State other than the organizing State)	Higher of: 1. (100/112 *Face value of ticket) 2. Price as notified in the Official Gazette by the Organizing state
2	Lottery authorized by State Governments (i.e. those lotteries which are not authorized to be sold in a State other than the organizing State also)	Higher of: 1. (100/128*Face value of ticket) 2. Price as notified in the Official Gazette by the Organizing state
3	Actionable claim in the form of chance to win in betting, gambling or horse racing in a race club	100% of face value of the bet or the amount paid into the totalizator.

Rule 32 – Determination of Value in respect of certain supplies

AT THE OPTION OF THE SUPPLIER

S.No	Scenarios discussed	Relevant Sub-Rule
1	Value of Supply in respect of money changing from / to INR	32(2)
2	Value of Supply in respect of money changing when neither of the currencies is INR	32(2)
3	Value of Supply of services in case of booking of ticket by air travel agents	32(3)
4	Value of Supply of services in relation to life insurance business	32(4)
5	Value of Supply for a person dealing in buying and selling second hand goods	32(5)
6	Value of token / voucher / coupon / stamp redeemable against goods / services	32(6)
7	Notified taxable services provided between distinct persons without a consideration , where ITC is available	32(7)

Value of Supply in respect of money changing from / to INR

1. In case of services in relation to purchase / sale of foreign currency including money changing from or to INR, following two options are available for determining the value of supply :

   Option to be exercised once during a Financial year – it cannot be changed for the rest of the year.

Option 1:

Value = (Total units of Currency) * (Buying rate / selling rate – RBI Reference Rate)

If RBI reference rate is not available, Value = 1% of gross amount of INR provided / received by person changing the money.

Option 2:

Gross amount of currency exchanged	Value of Supply
≤ Rs 1 Lakh	1% of gross amount, subject to minimum Rs 250
Rs 1 Lakh <Gross amount >Rs 10 Lakhs	Rs 1000 + (1/2 % of gross amount exchanged)
>Rs 10 Lakhs	Rs 5500 + (1/10 % of gross amount exchanged), subject to maximum Rs 6000

Value of Supply in respect of money changing when neither of the currencies is INR

When neither of the currency exchanged is INR,

Value = 1% of Lowest of the (money received by the person converting any of the 2 currencies into INR)

Value of Supply of services in case of booking of ticket by air travel agents

Type of bookings for travel passage by air	**Mandatory Deemed value**
In case of domestic bookings	5% of base fare
In case of International bookings	10% of base fare

Note : Basic fare means the part of the air fare on which commission is normally paid to the air travel agent by the airlines

Value of Supply of services in relation to life insurance business

S.No	Type of Insurance Policies	Value of supply
1	Entire premium is towards risk cover in life insurance	100% of amount paid
2	**Premium paid is towards Investment and Risk**	
2.1	If out of the gross premium, amount towards investment and risk is intimated	Gross Premium – Amount of premium towards investment
2.2	Single Premium annuity policies where breakup of allocation for investment and risk is not intimated	10% of single premium charged from policy holder
2.3	In all other cases	25% of premium charged in first year + 12.5% of Premium charged in subsequent years

Value of Supply- in buying & selling second hand goods

Conditions:

1. What is a second hand good?
2. Supply of second hand goods by Unregistered persons to Registered persons covered?
3. Applicable for goods only?
4. Dealer of the goods is buying and selling as such the goods or after minor processing
5. No Input tax credit has been availed on purchase of such goods

Value of supply:

1. Difference between Selling Price and Purchase Price adjusted for depreciation
2. If the difference is zero?

Goods repossessed from a defaulting borrower:

1. Defaulting borrower is not registered
2. Value deemed as (Purchase price by defaulting borrower) – (5% for every quarter or part thereof between date of purchase and date of disposal by person making such repossession)

Value of Redeemable Token /voucher/coupon/stamp

Token / voucher / coupon / stamp redeemable against	**Value of supply**
supply of goods	Money value of goods redeemable against such token / voucher / coupon / stamp
supply of services	Money value of services redeemable against such token / voucher / coupon / stamp

Notified taxable services - between distinct persons without a consideration , where ITC is available

1. Any Notification issued as yet?

2. Any special treatment?

Rule 33 – Value of Supply of services (Pure Agent)

<u>CONDITIONS :</u>

Payment to the third party upon recipient's authorization	Payment made by Pure agent on behalf of recipient – separately indicated in invoice of pure agent to recipient	Supplies so procured from third party are in addition to services on own account

<u>Examples :</u>

1. A Corporate services firm is engaged for handling legal work. Apart from its service fees , Recovery of payment made as Registration fee, name approval fee paid to ROC

2. In Ex-works contract, transportation charges paid by supplier and recovered from recipient

Rule 34 – Rate of exchange of currency, other than Indian rupees, for determination of value

Supply	Rate of exchange to be used for conversion
Value of taxable goods	Rate notified by the Board under Section 14 of Customs Act, 1962
Value of taxable services	Rate applicable as per Generally accepted accounting principles (GAAP)

Rule 35 – Value of Supply inclusive of IGST / CGST & SGST or UTGST

$$\text{Tax amount} = \frac{\text{(Value inclusive of taxes)* Tax rate in \% of IGST or CGST \& SGST or UTGST}}{\text{(100 + sum of tax rates) as applicable in \%}}$$

Issues faced in valuation

1. Actionable claim – goods / services?

2. Supply of services for services would amount to barter, would appear as no consideration transaction e.g. Employee Canteen recovery

3. Allocation of Common expenses incurred by a taxable person used by branches in other states. Time of supply?

4. Section 34(2) vs. Section 15(3) – Allowability of post supply discounts

5. Mostly all transactions covered by Consideration – Reference to be made to :
   a. Section 25 of Contract Act, 1872 - "Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law".

   b. Section 70 of Contract Act, 1872 – "Obligation of person enjoying benefit of non-gratuitous act".

THANKYOU

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