

INTRODUCTION TO GST

PLACE OF SUPPLY AND TIME OF SUPPLY-PART 4

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Similarly, friends, in case of services, section 13 of IGST says, how place of supply shall be determined if one of the, either service provider or the service receiver, one of them is out of India.

IGST ACT, 2017	Sec-13(02)/27-43
<p>In case of Services, how place of supply shall be determine if :</p> <ul style="list-style-type: none">• supplier of service or• recipient of service <p>is out of India.?</p>	<p>General rule of GST is that location of recipient of service is POS. But if location of the recipient is not available on records, location of the supplier shall be the POS.</p> <p>But this rule has some exception which says that POS shall be the location where such services are actually performed. Such cases are discussed in following slides from Sr No 28 to Sr No 40</p>

So, if service provider is in India and recipient is out of India, we simply say it is export of service. And export of service is exempt from GST. There is no tax on export of service. But there are other cases where recipient is in India and service provider is outside India. So, general rules of GST say location of the recipient of the service is the place of supply. Where recipient is located, place of supply will be defined accordingly and tax will be paid accordingly. But if location of the recipient is not available, location of supplier shall be considered. Then location of supplier shall be considered and accordingly tax will be defined. But again, there are some exceptions to this rule and we will see these rules again one by one as we have done in case

when supplier and recipient both were in India and properties were located at different places and we distribute the tax. And here also general rule says as per the place of recipient otherwise as per the place of the supplier. But there are again some rules for GST purposes and what are these?

IGST ACT, 2017	Sec-13(3a)/28-43
In case of Goods physically made available to service provider for some job by the recipient of such service, how POS is determined ?	In such cases, rule is POS shall be the place where services are actually performed.
	For Example:
	<i>ABC Mumbai placed an order of repair of a machine in its plant at UAE to XYZ of UAE. XYZ instructed its dealer in Dubai to get the machine repaired. After repair, XYZ raised invoice to ABC Mumbai. It's not an import of services as machine is repaired at UAE.</i>

In case of goods physically made available to service provider for some job work by the recipient of such service. It is some service related with goods made available to service provider. So, where the service is actually performed is the place of supply and accordingly tax will be charged.

So, in given example ABC from Mumbai places an order of repair of a machine in its plant at UAE. ABC is a company in Mumbai having its plant in UAE and they have given a order to XYZ in UAE for some repair purpose. XYZ instructed its dealer in Dubai Their dealer is also in Dubai to get the machine repaired. After repair, XYZ raised invoice to ABC in Mumbai. It's not an import of service. Because machine is repaired in UAE by a person in UAE, though the recipient is in Mumbai. So, no GST shall be applicable.

In case of Goods physically made available to service provider for some job by the recipient of such service, in India and exported after repair, how POS is determined ?

As per 2nd proviso to section 13(3)(a) if goods temporarily imported into India for repair and exported after such repair or any other process without being put to use in India, shall be an export of service as recipient of such service is out side India and no IGST is charged.

Further, if such service is provided through **internet or electronic means**, POS shall be the location of such goods.

Second case, goods physically made available to service provider for some job work by recipient of such service in India and exported after repair. So, in previous case, goods were in Dubai only. There was no movement of goods to India. But in this case, goods have been made available to job worker for some repair purpose in India. i.e. Goods have been moved into India. So, as per second proviso of section 13 (3) (a), if goods temporarily imported into India for repair purpose and exported after such repair, shall be an export of service as recipient of such service is outside India. So, the goods which have been repaired in India by Indian service provider for a person who is sitting outside India. So, goods came to India got repaired and went out again, it is export of service, means it is a repair service which has been exported. So, it can be exempted export. If such services provided through internet or electronic means, place of supply shall be location of such goods.

So, if you have such type of goods which have been repaired through online system and goods are already there outside India then again it is export of service. So, in case of international transactions we are supposed to deal with these transactions very carefully because in general rule export of service and export of goods are exempted from GST. But at the same time, we have to understand, if it is really an export? So, we have to refer export of goods and export of services definition under section 2 of CGST Act or IGST Act. If export of services or export of goods really comes under the definition what is defined under law, only then we will say export of service or export of goods are exempted from GST. Because otherwise tomorrow department may ask me to pay GST along with interest and penalty also. So, we have to be very careful while deciding whether a particular transaction is export of service or not by referring relevant sections.

If services are provided to an Individual by a service provider, but one of them is out of India, how POS shall be determined

If services are provided to an individual or to his/her representative which require his/her physical presence as recipient of services, POS shall be the place where actually service is provided.

For example:

If Mr. A come from UK for his well ness treatment or training of vocational course or beauty treatment or such other service avails such services in INDIA and service providers provide such services in Delhi, it will not be an export of service and CGST/SGST shall be applicable for Delhi state.

Friends, another case is, if service is provided to an individual by a service provider but one of them is out of India. Either service provider is out of India or service recipient is out of India. If services are provided to an individual or to his representative, which require his physical presence as recipient of the service, place of supply shall be the place where actual service is provided.

Let us understand it with this example. Mr. A came from UK for his wellness treatment or maybe training purposes, maybe some beauty treatment or such other services, whatever it is. And avail such services in India and service provider provides such services in Delhi. It will not be an export of service. CGST or SGST shall be charged. Because services are provided to a person who was physically present in Delhi from UK for treatment by a service provider who was also present in Delhi and registered in Delhi. So, revenue will go to Delhi's government.

In case of Immovable property, how POS for following services shall be determined if either supplier or the recipient is out of INDIA :

Estate agents, Accommodation by hotels, inn, guest house, clubs, Rent, lease, Construction, Architect, interior decorator

In all such services POS shall be the location where such immoveable property is situated.

For example:

If Mr. Singh from Toronto hired an XYZ Designers, an architect from Mumbai to have drawings for ancestor house in Hoshiarpur (Punjab). XYZ Designers would raise invoice to Mr. Singh by charging IGST as property is in India and it will not be export of services.

Friends, again, immovable property. So, services related to estate agent, accommodation, guest house, clubs as we read in previous section also. So, here it says in all such services place of supply shall be location where such property is situated. Because in case of export of services as we know that export of services is exempted from GST, so, if we made any service as export, we will not pay GST. But tomorrow if it is fixed or it is proved by department that it is not export, they will ask you for a GST. And at that point of time, we will be in trouble. So, without going in vague or without having any rough idea, we should not follow law, we have to be careful while deciding, whether it is an actual export of service or not.

So here Mr. Singh from Toronto hired XYZ designers and architects from Mumbai. Mr. Singh is living in Toronto, Canada. They hired one interior decorator/ architect from Mumbai, to have drawings for their ancestral property in Hoshiarpur (Punjab). So XYZ designer would raise invoice to Mr. Singh by charging IGST as property is located in Punjab. Service provider is in Mumbai, property is in Punjab. It is inter-state transaction though Mr. Singh is from Canada but IGST shall be charged and will be paid. And we cannot say it is export of service because it is related with immovable property and the immovable property is located in India. Consumption of services is in India, Punjab. So, revenue will go to Punjab government.

IGST ACT, 2017	Section- 13(5)/32-43
<p>How place of supply shall be determined in case of supply of services for admission or organization of :</p> <ul style="list-style-type: none">• Cultural, artistic, sporting, scientific, educational or entertainment events or• A celebration, conference, fair, exhibition or similar events and of services ancillary to such events	<p>In such services the place of supply shall be the location where such event is organized or admission is granted.</p> <p>For Example:</p> <p>If ABC Entertainers, Mumbai are engaged by Chamber of Commerce & Industry Punjab to have industrial fair in Dubai for providing logistic there. After fair ABC Entertainer would raise an invoice for export of services without IGST as place of supply is a location where such event is organized.</p>

Moving further. How place of supply shall be determined in case supply of services for organization of culture, artistic, sporting, scientific, educational institution programs in international market. Earlier we studied for cases where both organizer and the consumer both were in India. Here the scene is different now where either supplier or the consumer is outside India. Section 13 IGST Act says, in such services, place of supply shall be the location where such event is organized. Same was there with some exceptions. Here also it says where the

program was organized. ABC entertainers Mumbai is engaged by Chamber of Commerce of Industry Punjab to have industrial fair in Dubai for providing logistics there. After fair ABC entertainer would raise invoice for export of services without IGST as place of supply is location of the event. So, it is export of service.

IGST ACT, 2017	Sec-13(6)/33-43
How place of supply shall be determined in case services as mentioned u/s 13(3), 13(4) & 13(5) are supplied in taxable as well as non-taxable territories/locations.	In all such cases POS shall be the taxable territory. For Example: If event organizers from India are hired for an event in India , UK and Canada. In that case POS shall be India for all the locations and CGST/SGST/IGST as the case may be, shall be charged.

How place of supply shall be determined in case of services mentioned in section 13 (3), 13 (4), 13 (5), when the services are supplied in taxable as well as non-taxable territories. So, we have to correlate with these previous slides when reading with section 13, sub-section 6.

The event organizers from India are hired for an event in India, UK and Canada. Means one party who is organizing programs is hired by some person to organize events in India, in UK and in Canada. In that case, place of supply shall be India. Place of territory, i.e. taxable territory, is India. So, if service receiver or service provider is in taxable territory, that is India, then place of supply shall be decided accordingly and tax will be charged accordingly. So, this transaction is subject to CGST/SGST. And if supposedly India was not there, i.e the event was only supposed to be organized in UK and Canada, then no GST was applicable.

IGST ACT, 2017	Sec-13(7)/34-43
How place of supply shall be determined in case services as mentioned u/s 13(3), 13(4) & 13(5) are supplied in different states/Union Territories	As per rule 03 of IGST Rules 2017 .

Similarly, friends, place of supply, when services are given in different states/union territories, as in the example of railway advertisement and radio advertisements, same rules will be applicable over here. You have to go through these rules whenever you have such type of cases in your hand.

IGST ACT, 2017	Sec-13(8)/35-43
How place of supply shall be determined in case of services provided by Banking, FIs, NBFIs to their account holders?	POS for services provided by Banking, FIs and NBFIs shall be the location of suppliers

In case of banking, financial institutions in international market. Earlier we studied about local market when recipient and provider both are in India. But here if bankers are in India, the customer is outside India, then what? Place of supply for service provided by banks shall be the location of the supplier. So, if banker is in India, then place of supply shall be accordingly decided and tax will be charged.

IGST ACT, 2017	Sec-13(8)/36-43
How place of supply shall be determined in case of supply of services by Intermediary service provider?	<p>In case of Intermediary service provider, the POS shall be the location of supplier. He is basically an agent and not part of main supply.</p> <p>For Example: If ABC from Pune provide services to get orders from Indian Market to a manufacturer in China and gets its commission @1% of orders executed. So he will charge CGST/SGST to China party as URD.</p>

Further, place of supply shall be determined in case of supply of service by intermediary service provider. This is very interesting point given under Section 13(8). Intermediary service provider means agent. A person is an agent who is providing services to one supplier or manufacturer in China and getting procured order from India for that particular person. Based upon the order, the China manufacturer supplies goods to Indian buyers. So, this is the intermediary services by agent sitting in India procuring goods, procuring orders for China

manufacturer. So, law says in case of intermediary services, place of supply shall be the location of supplier. So means the person sitting in India procuring orders for China's manufacturer supplying goods, giving services in India, his place will be the place of supply. So, ABC from Pune provides services to get orders from Indian market to a manufacturer in China and gets commission of 1% on the sale order executed. So, he will charge CGST/SGST to the party because place of supply is where he is located. So, since he is located in Maharashtra revenue will go to Maharashtra government.

IGST ACT, 2017

Sec-13(8)/37-43

How place of supply shall be determined in case of supply of hiring of vehicles, yacht other than aircraft and vessel for a period not more than one month

POS for such services shall be location of supplier.

Place of supply in case of hiring of vehicle, yacht, specific transactions are there. Very specific transaction, that is why GST becomes some complicated. Place of supply shall be location of the supplier for where these items will be supplied to the recipient and accordingly tax will be charged. The recipient may be in foreign company, foreign country, but because service is provided in India by an Indian supplier for these items, vehicle, means foreign party hired vehicle or yacht or aircraft for more than one month. Very specific transaction, tax will be paid accordingly. It is another case, interesting case. After so many debates, it has been amended also.

IGST ACT, 2017

Sec-13(9)/37(i)-43

How place of supply (POS) in case of supply of service of transportation of goods, under IGST Act, 2017 shall be determined where recipient or the supplier is out of India?

Up to 30.09.2023: Place of supply in case of supply of service of transportation of goods, other than through mail and courier where recipient or the supplier is out of India, shall be the **destination of goods**. –Section 13(9)*

• Section 13(9) has been deleted wef 01.10.2023 vide notification no 28/2023 dt 31.07.2023

***Please also refer next slide no 37(ii).**

How place of supply in case of supply of services of transportation of goods shall be determined where recipient or the supplier is out of India means it is an international transaction. So, friends it got amended. This section, section 13(9) got amended with effect from 30th September 2023 recently.

Place of supply in case of supply of services of transportation of goods other than through mail and courier: Where recipient or the supplier is outside India, place of supply shall be destination of the goods. So, where the goods will be received, dispatched, that place will be the place of supply and accordingly it will be decided whether it is an export of service or not.

IGST ACT, 2017	Sec-13(9)/37(ii)-43
How place of supply (POS) in case of supply of service of transportation of goods, under IGST Act, 2017 shall be determined where recipient or the supplier is out of India?	<p>WEF 01.10.2023: It is hereby clarified that after the said amendment comes into effect, the place of supply of services of transportation of goods, other than through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined by the default rule under section 13(2) of IGST Act and not as performance based services under sub-section (3) of section 13 of IGST Act.</p> <p>Accordingly, in cases where location of recipient of services is available, <u>the place of supply of such services shall be the location of recipient of services</u> and in cases where <u>location of recipient of services is not available</u> in the ordinary course of business, <u>the place of supply shall be the location of supplier of services</u>. Similarly, in case of transportation through mail and courier.</p>

There was ambiguity in this provision, which was corrected later on. It says, with effect from 1st October 2023 it is hereby clarified, that after the said amendment comes into effect, the place of supply of services of transportation of goods, other than through mail and courier. In case where location of supplier or the location of the recipient of the service, is outside India, the place of supply shall be determined by the default rule, under section 13(2) i.e. in case of B2B transaction, place of supply shall be the place of recipient.

Earlier, it said the destination of the goods. But now it is saying, place where recipient is placed. So, accordingly, in cases where location of recipient of service is available, the place of supply of such services shall be the location of recipient of the service. Which is a general rule of GST. If it is a B2B transaction, the recipients place is the place of supply, means consumption is done at that particular place, so accordingly tax will be charged and IGST or CGST/SGST will be paid. Where location of the recipient of service is not available; location of the recipient is not available in ordinary course of business the place of location of the supplier shall be the place

of supply. Similarly in case of passenger transportation international transactions shall be location where passenger embarks the conveyance for continuous journey that place will be the place of supply.

IGST ACT, 2017	Sec-13(10)/38-43
How place of supply shall be determined in case of passengers transportation services	POS shall be the location where passengers embarks on the conveyance for continuous journey

A person boarding at Delhi for UK, though aeroplane is coming from New Zealand; from where the passenger embark his journey. Services provided to passenger on board a conveyance... In international market on aeroplane, food is served.

IGST ACT, 2017	Sec-13(11)/39-43
How place of supply shall be determined in case of services provided on board a conveyance	POS for such services shall be the location where first scheduled point of departure of that conveyance.

Place of supply shall be location of the first scheduled point of departure of that conveyance. The same type of rule which was in section 12 of IGST Act.

IGST ACT, 2017	Sec-13(12)/40-43
How place of supply shall be determined in case of Online information and data access or retrieval services -OIDAR	The POS shall be the location of the recipient of service

Online information and data access retrieval services because internet has no boundaries. So, location of the recipient and the service provider has to make sure that tax is paid, because it will be import of services.

IGST ACT, 2017	Sec-14(1)/41-43
Is On line money gaming liable to IGST?	Yes, any supplier of Online money gaming, not having any establishment in taxable territory shall pay IGST on such supplies.

Online gaming, these are all already on online gaming, so no boundary of the countries are there in internet. So, any supplier of online gaming not having any establishment in taxable territory i.e. India, shall pay IGST on such services, because it will be import of services.

IGST ACT, 2017	Sec-14(2)/42-43
How Online money gaming supplier obtain registration under IGST Act, if does not any establishment in India?	In such cases Online money gaming supplier shall obtain single registration under Simplified Registration Scheme . Under the said scheme, he or his representative shall apply to The Principal Commissioner of Central Tax, Bengaluru West.

These are new provisions inserted in GST later on regarding online gaming and on online gaming 28 percent GST is applicable. So, it is a big source of revenue for the government. So, it says in such cases, the online gaming provider shall take single registration under GST with Bengaluru commissionerate if they want to provide services in India. So, this is a special provision for these people, those are providing online gaming in India that they have to get themselves registered with commissionerate of the central tax, Bengaluru West. And then accordingly transaction will be taxed and will be paid to the government of India. Mean to the respective states.

Non-taxable online recipient means who?

New definition wef 01.10.2023 is inserted for **Non-taxable online recipient** vide Ntf No 28/2023-Central tax DT 31.07.2023

Non-taxable online recipient means any unregistered person receiving online information and data base access or retrieval services located in taxable territory.

It also includes a person registered only for TDS purpose under GST act,

Non-taxable online recipient is another new concept. New definition with effect from 1st October 2023 inserted under GST says that non-taxable online recipient means any unregistered person receiving online information and data base. So, any person getting information online, not registered under GST i.e. normal consumer, are non-taxable online recipient. So, these are recent provisions inserted in the GST.

So, it is very difficult to map each and every transaction with provisions of the law. So, there are some specific provisions for specific industry or a transaction. We have to act accordingly. So, whenever we are studying GST, we have to be very careful and we must understand each and every business transaction. Only the theoretical part will not give you the idea. The more you will go into the business transactions, the more you will understand business transaction, it will be easy for you to understand the GST law, it will be easy for you to appropriately implement GST in the business activities.