

GST on Banking Sector

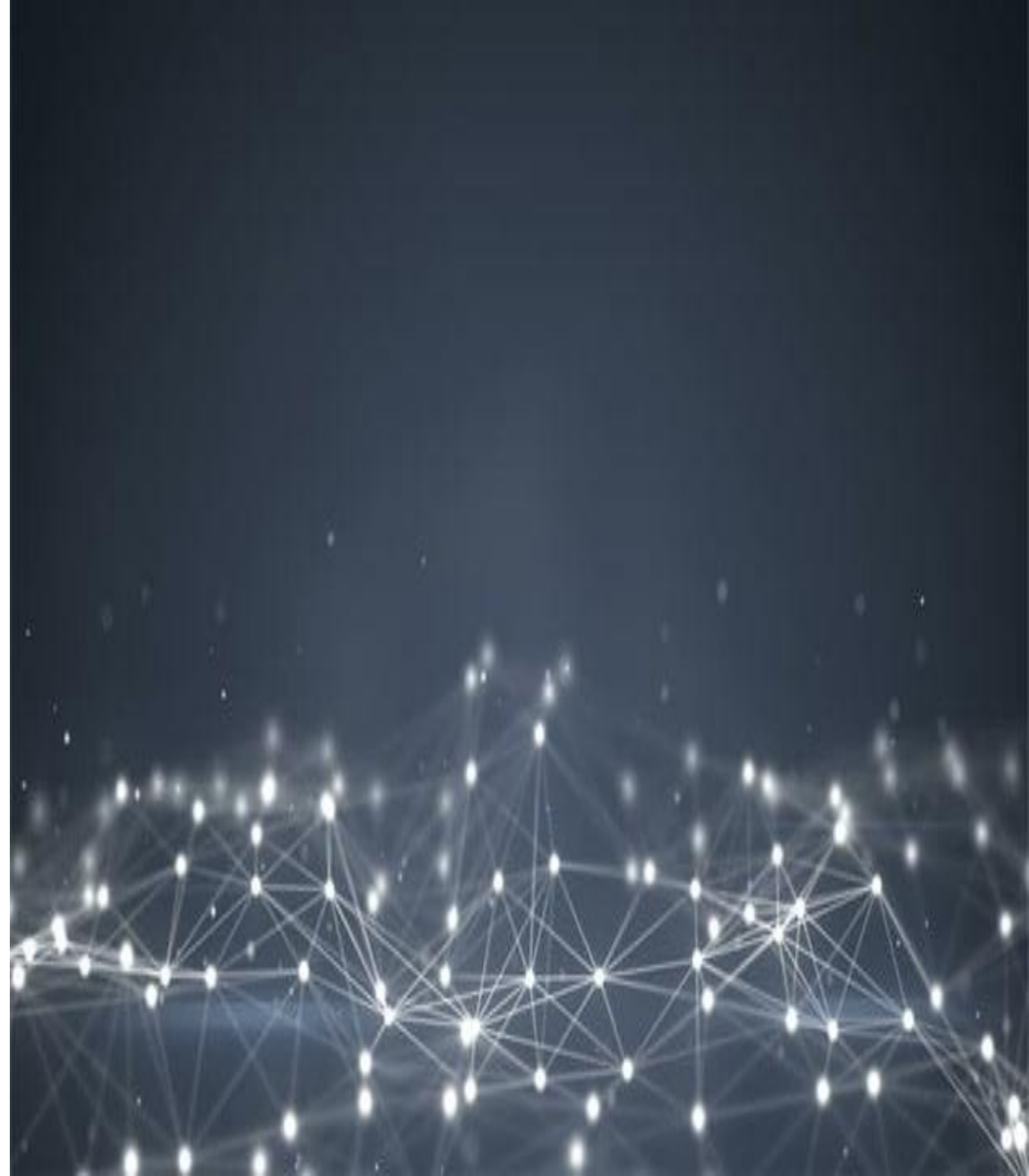
Concept and Analysis of Legal Provisions

GST Session –Day 1

[28.07.2021]

CA Vaishali Kharde

Founder of Vaishali B Kharde and Company



Overview

16.07.2001

- Banking and other Financial Services brought within the ambit of Service Tax

01.07.2003

- Banking companies, financial institutions including NBFCs and other body corporates

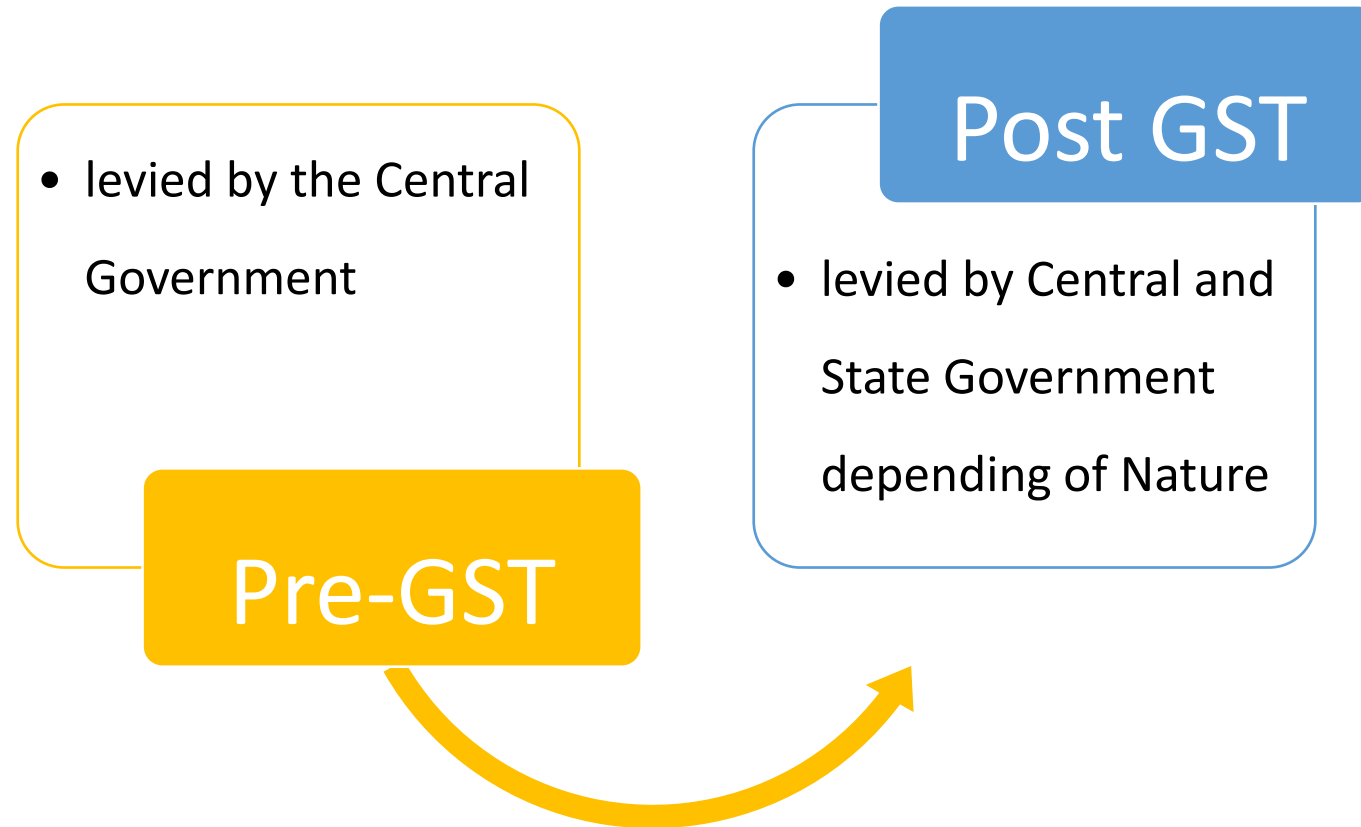
01.07.2012

- Negative List

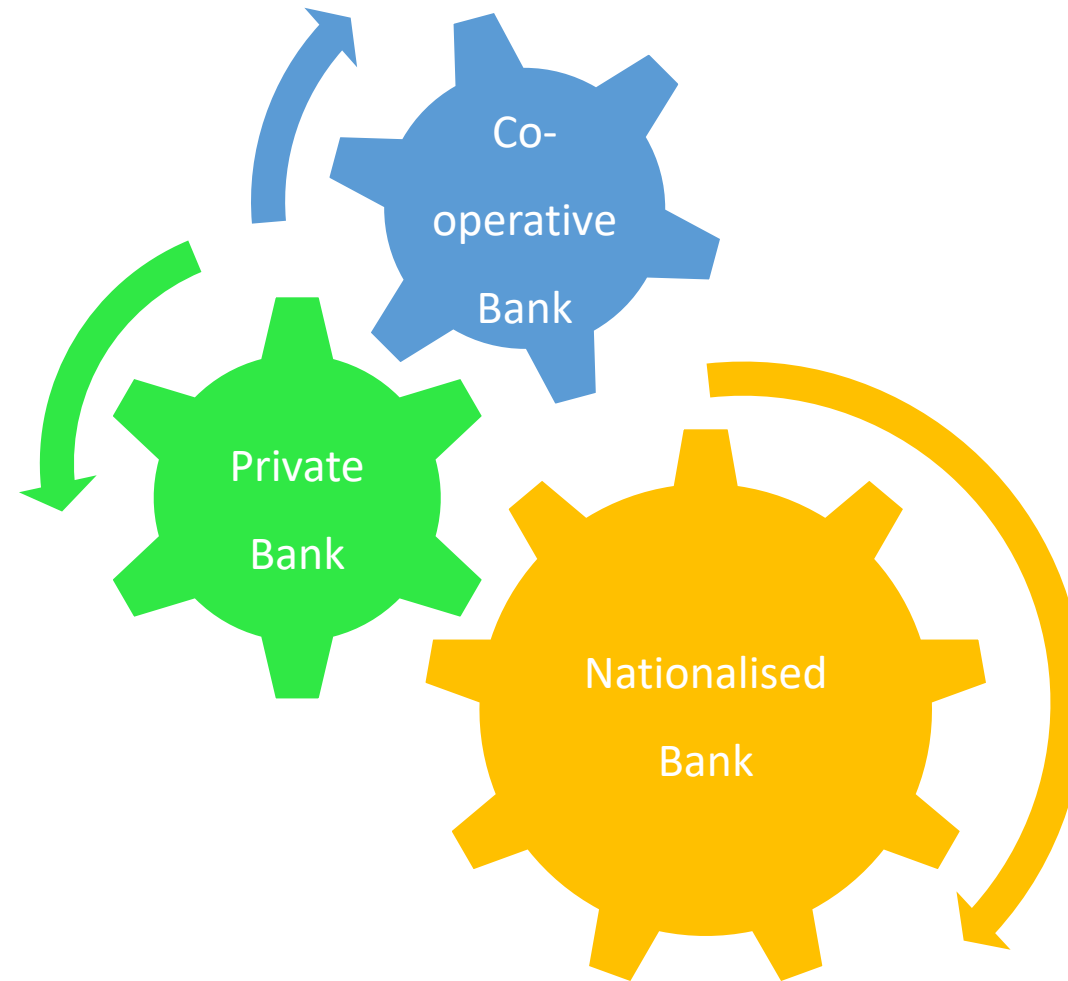
1.07.2017

- GST

Overview



Bank Overview



To Discuss

1.

Key Provisions
of GST Law

2.

Outward Supply

3.

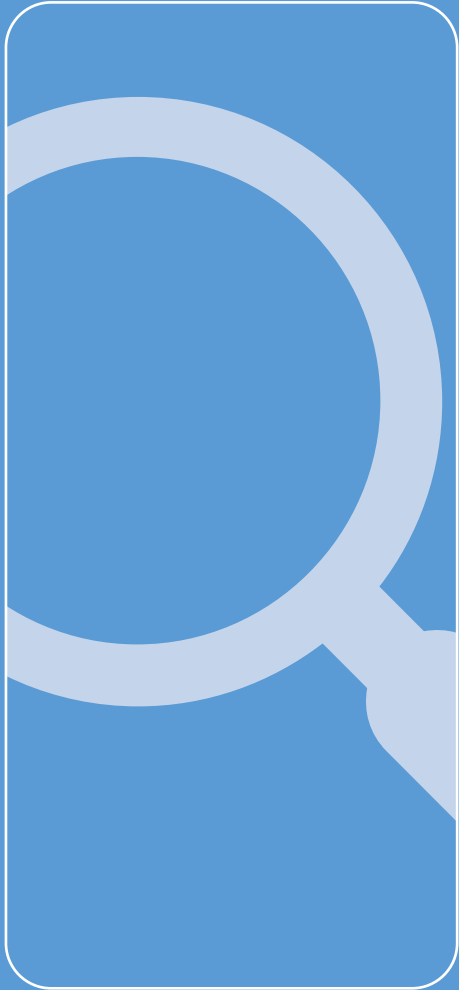
Inward Supply

4.

TDS

5.

Compliance



1. Key Provisions under GST

law -Bank Perspective

Levy – Section 9

- *Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State **supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.***

Supply – Section 7

(1) For the purposes of this Act, the expression “supply” includes—

(a) all forms of supply of **goods or services** or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration **by a person** in the course **or furtherance of business**;

(b) import of services for a consideration whether or not in the course or furtherance of business; and

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

~~(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.~~

“(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.”;

Person– Section 2(84)

- **“Person”** includes—
 - a. an individual;
 - b. a Hindu Undivided Family;
 - c. a company;
 - d. a firm;
 - e. a Limited Liability Partnership
 - f. **an association of persons or a body of individuals, whether incorporated or not, in India or outside India;**
 - g. any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;
 - h. any body corporate incorporated by or under the laws of a country outside India;
 - i. **a co-operative society registered under any law relating to co-operative societies;**
 - j. a local authority;
 - k. Central Government or a State Government;
 - l. society as defined under the Societies Registration Act, 1860;
 - m. trust; and
 - n. every artificial juridical person, not falling within any of the above; ;

Goods – Section 2(52)

- “Goods” means every kind of
 - movable property **other than money and securities**
 - **but includes actionable claim**, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

Money – Section 2(75)

- (75) “money” means
- *the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or **any other instrument recognised by the Reserve Bank of India***
- *when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;*

Securities – Section 2(101)

- *(101) “securities” shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956*
- **Clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 ;**
- *Securities” include—*
- *(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;⁸ [(i) “spot delivery contract” means a contract which provides for—*
 - (a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual periods taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;*
- *(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;]*

Service– Section 2(102)

“services” means anything **other than goods, money and securities** but **includes**

- **activities relating to the use of money or**
- **its conversion by cash or by any other mode,**
- **from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;**

Explanation.– For the removal of doubts, it is hereby clarified that the expression

“services” includes facilitating or arranging transactions in securities.



2. Transactions –Bank Perspective –

Outward Supply



Transactions – Outward Supply

Outward Supply Comprises of

- **Interest**
- **Cheque discounting/Bill discounting**
- Loan processing fees
- Penalty or charges Collected
- Auction of lien Property
- ATM charges
- Prepayment charges
- DD Commission
- Credit card interest
- Letter of credit charges
- Cheque bounce charges
- Cheque bounce charges

Currency to other Currency

- Foreign currency exchange charges

Other

- Locker rent
- Guarantee commission
- **Profit on sale of investments**
- Dividend

Exemption Vs Taxable

RBI- Notification No. 12/2017- Central Tax (Rate)

Sr. No.	Chapter, Section, Heading etc	Description of Services	Rate of Tax	Condition
26.	Heading 9971	<i>Services by the Reserve Bank of India.</i>	Nil	Nil

RBI- Notification No. 12/2017- Central Tax (Rate)

Services Provided to the Reserve Bank of India are not in the negative list and would be taxable unless otherwise covered in any other entry in the negative list.

Entry 27 - Notification No. 12/2017- Central Tax (Rate)

Sr. No.	Section, Heading etc	Description of Services	Rate of Tax	Condition
27.	Heading 9971	<i>Services by way of— (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.</i>	Nil	Nil

Interest- Notification No. 12/2017- Central Tax (Rate)

- Type of Receipt Covered under Schedule Entry 27 is interest on loan and Advances
- Sr. no. (zk) defines interest as

*'interest' means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) **but does not include any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised;***

Interest- Notification No. 12/2017- Central Tax (Rate)

Whether Interest on credit card services taxable
or Exempt?

Time Value of Money VS Consideration

Foreign Currency - Notification No. 12/2017- Central Tax (Rate)



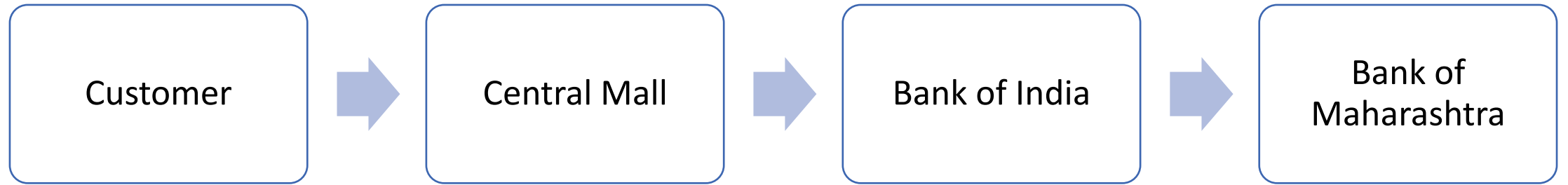
Other- Notification No. 12/2017- Central Tax (Rate)

Sr. No.	Section, Heading etc	Description of Services	Rate of Tax	Condition
27 A	Heading 9971	<i>Services provided by a banking company to Basic Saving Bank Deposit (BSBD) account holders under Pradhan Mantri Jan Dhan Yojana (PMJDY).</i>	Nil	Nil

Other- Notification No. 12/2017- Central Tax (Rate)

Sr. No.	Section, Heading etc	Description of Services	Rate of Tax	Condition
34	Heading 9971	<p><i>Services by an acquiring bank, to any person in relation to settlement of an amount upto two thousand rupees in a single transaction transacted through credit card, debit card, charge card or other payment card service.</i></p> <p><i>Explanation.— For the purposes of this entry,</i></p> <p><i>—acquiring bank means any banking company, financial institution including nonbanking financial company or any other person, who makes the payment to any person who accepts such card.</i></p>	Nil	Nil

Foreign Currency - Notification No. 12/2017- Central Tax (Rate)



Other- Notification No. 12/2017- Central Tax (Rate)

Sr. No.	Section, Heading etc	Description of Services	Rate of Tax	Condition
37	Heading 9971 or Heading 9991	<i>Services by way of collection of contribution under the Atal Pension Yojana.</i>	Nil	Nil
38	Heading 9971 or Heading 9991	<i>Services by way of collection of contribution under any pension scheme of the State Governments.</i>	Nil	Nil

Other- Notification No. 12/2017- Central Tax (Rate)

Sr. No.	Section, Heading etc	Description of Services	Rate of Tax	Condition
	Heading 9971 or Heading 9985	<p><i>Services by the following persons in respective capacities</i></p> <p>—</p> <p>(a) business facilitator or a business correspondent to a banking company with respect to accounts in its rural area branch;</p> <p><i>(b) any person as an intermediary to a business facilitator or a business correspondent with respect to services mentioned in entry (a); or</i></p> <p><i>(c) business facilitator or a business correspondent to an insurance company in a rural area.</i></p>	Nil	Nil

Other- Notification No. 12/2017- Central Tax (Rate)

- *(o) —business facilitator or business correspondent|| means an intermediary appointed under the business facilitator model or the business correspondent model by a banking company or an insurance company under the guidelines issued by the Reserve Bank of India;*

Clarification-Circular No. 86/05/2019-GST – 1st January 2018

What is the value to be adopted for the purpose of computing GST on services provided by BF/BC to a banking company?

- *Banking company is the service provider in the business facilitator model or the business correspondent model operated by a banking company as per RBI guidelines. The banking company is liable to pay GST on the entire value of service charge or fee charged to customers whether or not received via business facilitator or the business correspondent*

Clarification on the scope of services by BF/BC to a banking company with respect to accounts in rural areas

- *The procedure for classification of branch of a bank as located in rural area and the services which can be provided by BF/BC, is governed by the RBI guidelines. Therefore, classification adopted by the bank in terms of RBI guidelines in this regard should be accepted.*

Other Relevant Services

Cheque Issue
Charges

Pass Book Charges

ATM Card Issue

Loan Processing
Charges

Account Renewal
Charges

Cash handling
charges

Commitment
Charges

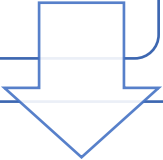
RTGS/NEFT
Charges

Minimum Balance
Charges

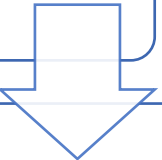
Locker Rent

Way forward –Income

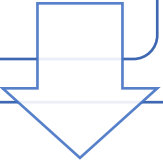
Income other than Interest should be reviewed properly. Exemption is to applied only if specifically covered



Some banking Companies may also engaged in insurance business then provisions as applicable to Insurance Company should also be applicable.



If banking Company is an insurance agent then insurance Company will pay GST under RCM on Commission paid.



All other income will be liable to GST

Place of supply

Place of Supply –Section 12(12) of IGST Act

Section 12

- Place of supply of services where location of supplier and recipient is in India

Subsection 12

- Place of supply of banking and other financial services, including stock broking services to any person

Recipient –Any Person

- Location/address of recipient as per the records of the Service Provider
- (Address is not available –location of the service Provider)

Place of Supply –Section 13(8) of IGST Act

Section 13

- Place of supply of services where the Location of supplier of service or the Location of the recipient of services is outside India.

Subsection 12

- Place of supply of services supplied by a banking company, or a financial institution, or a nonbanking financial company, to account holders

Place of Supply –Section 13(8) of IGST Act

- *(8) The place of supply of the **following services shall be the location of the supplier of services, namely:—***
- *(a) **services supplied by a banking company, or a financial institution, or a nonbanking financial company, to account holders;***
- *(b) **intermediary services;***
- *(c) **services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month. Explanation.— For the purposes of this sub-section, the expression,***

Place of Supply –Section 13(8) of IGST Act

Account

- *(a) 'account' means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;*

Banking Company

- *(b) —banking company shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934;*

Financial institution

- *Financial institution shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934;*

Key Highlights

Customer having
more than one
location

Account Linked
Services with respect
to Borrowing
- Recipient

Non Account linked
Financial Services
- Provider

Transactions –Bank Perspective – Cross Charge

Registration

Sec. 25

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, **be treated as distinct persons** for the purposes of this Act.

SECTION 8. Intra-State supply

Explanation 1. - For the purposes of this Act, where a person has, -

- (i) an establishment **in India** and any other establishment **outside India**;
- (ii) an establishment **in a State** or Union territory and any other establishment **outside that State** or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment [~~being a business vertical~~] registered **within that State** or Union territory,

then such establishments shall be treated as **establishments of distinct persons**.

Explanation 2. - A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

Schedule I- activities to be treated as supply even if made without consideration

2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

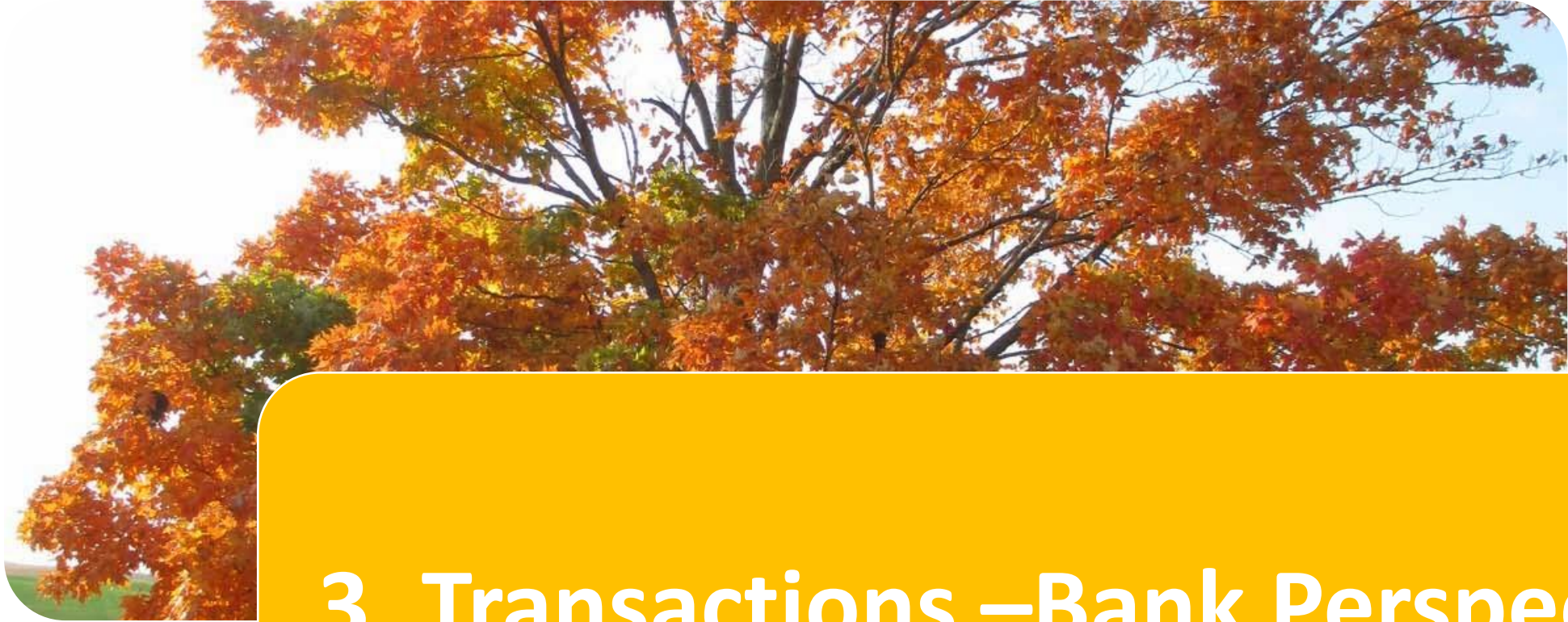
Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

SCHEDULE I – Key Highlights

Supply between distinct person is liable to GST even without consideration.

Valuation of the supply without consideration is critical aspect

ITC is not available to the other entity if same is paid during departmental Audit and assessment



3. Transactions –Bank Perspective

– Inward Supply

RCM (Reverse Charge Mechanism)

RCM

RCM

9 (3)

9 (4)

Notified supplies

Reverse Charge Mechanism (in case of supplies made by unregistered persons to registered persons) will apply, starting from 1st Feb 2019, only on specified goods/services and specified persons.

RCM - Sec. 9 (3) – Relevant From Bank Perspective

Category of Supply of Services	Supplier of service	Recipient of Service
<p>[Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly. Explanation.- “legal service” means any service provided in relation to advice, consultancy or assistance in any branch of law, in any manner and includes representational services before any court, tribunal or authority.]*</p>	<p>An individual advocate including a senior advocate or firm of advocates</p>	<p>Any business entity located in the taxable territory.</p>
<p>* Substituted vide corrigendum to notification 13/2017-Central Tax(Rate), dated 25.09.2017. Prior to substitution it read: “Services supplied by an individual advocate including a senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity.”</p>		

RCM - Sec. 9 (3) – Relevant From Bank Perspective

Category of Supply of Services	Supplier of service	Recipient of Service
Services supplied by an arbitral tribunal to a business entity	An arbitral tribunal.	Any business entity located in the taxable territory.
Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory
Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs).	Individual DSAs other than a body corporate, partnership or limited liability partnership firm.	A banking company or a nonbanking financial company, located in the taxable territory.]

RCM - Sec. 9 (3) – Relevant From Bank Perspective

Category of Supply of Services	Supplier of service	Recipient of Service
Services provided by business facilitator (BF) to a banking company	Business facilitator (BF)	A banking company, located in the taxable territory.]*

RCM - Sec. 9 (3) -Other

Provider	Recipient
GTA (GTA who has not paid 12%)	Factory, society, PF etc
Sponsorship	BE (Body corporate or PF)
Services supplied by the Central Government , State Government, Union territory or local authority to a business entity (except specified such as renting, speed post, transport of goods and passengers etc)	BE
Supply of services by an author, music composer , photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright	Publisher, music company, producer or the like
Services supplied by a director of a company or a body corporate to the said company or the body corporate	Company or a body corporate
Services by Member of Overseeing Committee	RBI

RCM - Sec. 9 (3)- IGST

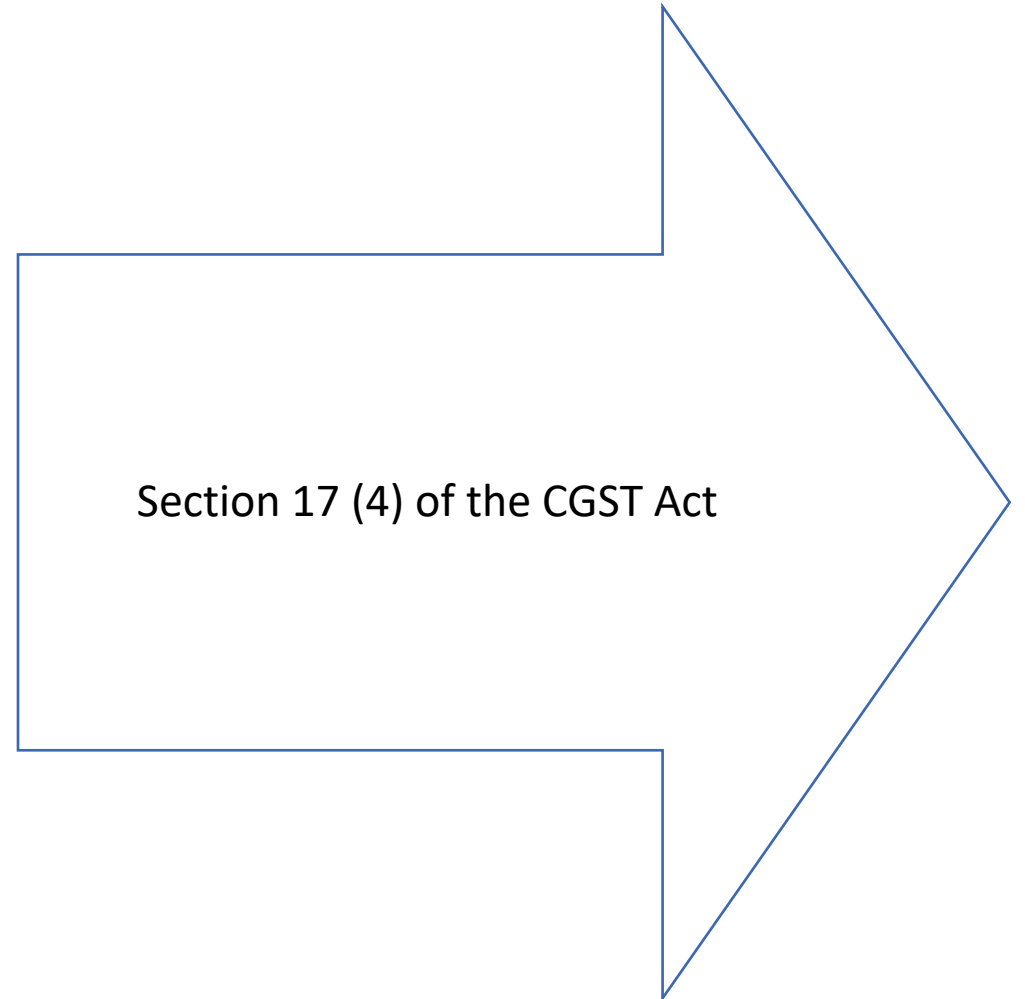
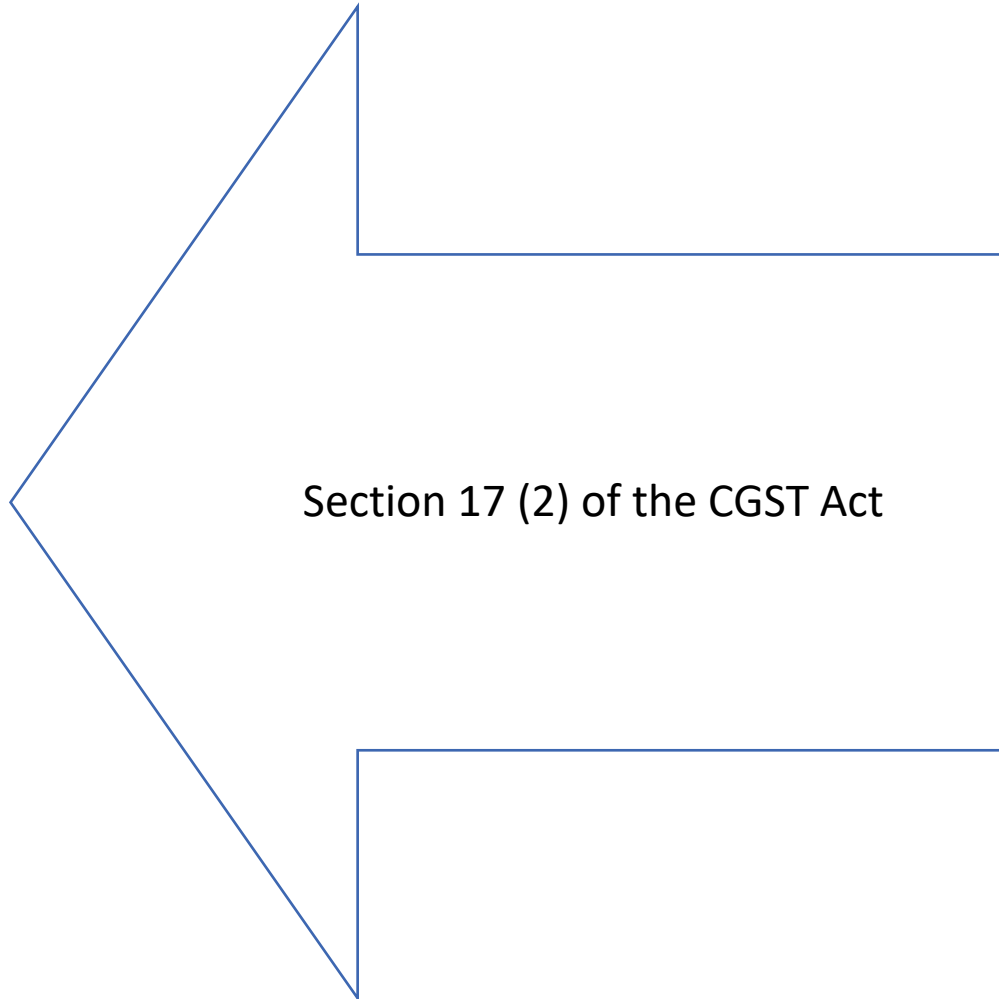
Provider	Recipient
Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient	Any person located in the taxable territory other than non-taxable online recipient
Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.

RCM - Sec. 9 (3)

Provider	Recipient
Security services (services provided by way of supply of security personnel) provided to a registered person by any person other than a body corporate	Registered person
Services by way of renting of motor vehicle provided to a body corporate (any person other than body corporate, paying central tax @ 2.50%/ IGST 5% on renting of motor vehicles with input tax credit only of input service in the same line of business	Body corporate

ITC

Reversal of ITC with Option – Section 17



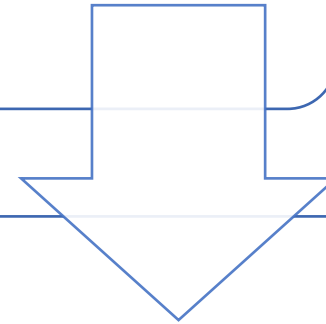
Reversal of ITC with Option – Section 17

Section 17 (2) of the CGST Act	Section 17 (4) of the CGST Act
<p><i>(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies</i></p>	<p><i>(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:</i></p> <p><i>Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:</i></p> <p><i>Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number</i></p>

Rule -38 – Procedure for Reversal of ITC with Option -

Not to avail credit of

- The tax paid on inputs and input services that are used for non-business purposes; and
- The credit attributable to the supplies specified in sub-section (5) of section 17, in FORM GSTR-2;



Credit to be availed

- Full credit can be availed on supplies made by one registered person to another registered person having the same PAN.
- 50% of the remaining amount of input tax shall be the ITC admissible and shall be furnished in FORM GSTR-2;

Rule -38 Reversal of ITC with Option

Option to avail 50% monthly

50% should be of eligible ITC on inputs, capital goods and input services

Option exercised shall not be withdrawn in a FY

50% restriction not applicable to supply to distinct person having same PAN

Rule -38 Procedure for Reversal

ITC not available for

- inputs and input services used for non-business
- Section 17(5) of the CGST Act

Full ITC is available for

- Supplies made to distinct person

50% of remaining eligible ITC

Normal vs Deemed 50%

No	Particulars	50%	Sec.17(2)
1.	17(5) ITC	Nil	Nil
2.	Non-Business use	Nil	Nil
3.	Supplies in distinct person	100%	100%
4.	Inward supplies directly relating to taxable outward supplies (e.g. - ATM operation charges, ATM audit fees, Credit Card services charges)	50%	100%
5.	Inward supplies directly relating to exempt outward supplies (e.g. - Asset management services; GST on commission/charges on purchase or sale of securities)	50%	Nil
6.	Inward supplies used commonly (e.g. – Rent, Professional Fees)	50%	Rule 42 and 43

4. TDS

Section 51 – Person liable to Deduct TDS

(1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,—

(a) a department or establishment of the Central Government or State Government; or

(b) local authority; or

(c) Governmental agencies; or

(d) such persons or category of persons as may be notified by the Government on the recommendations of the Council,

- (hereafter in this section referred to as “the deductor”), to deduct tax at the rate of one per cent. from the payment made or credited to the supplier (hereafter in this section referred to as “the deductee”) of **taxable goods or services** or both, **where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:***

Notification No. 33/2017-CT – Notified Person

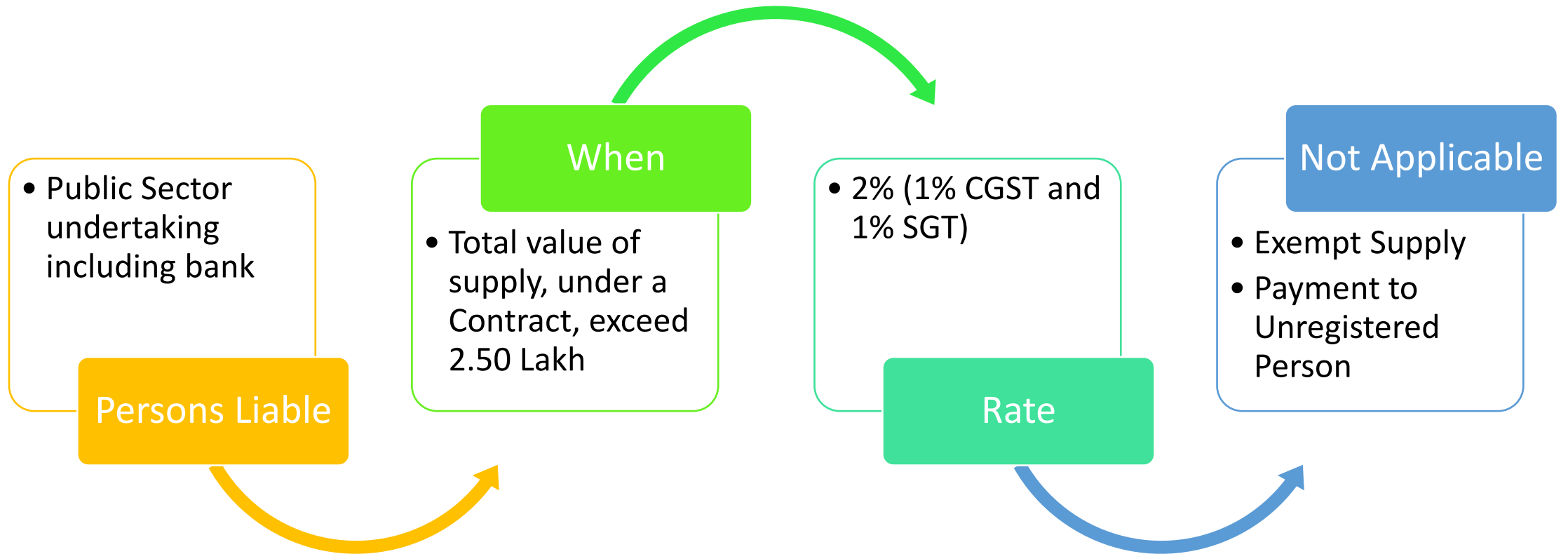
An authority or a board or any other body,

- (i) set up by an Act of Parliament or a State Legislature; or
- **(ii) established by any Government, with fifty one percent or more participation by way of equity or control, to carry out any function**

Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860)

Public Sector Undertakings

Notification No. 33/2017-CT – Notified Person



Relevant Notifications

Notification 73/2018-CT

- TDS Not Applicable in certain cases
 - Provided also that nothing in this notifications shall apply to the supply of goods or services or both which takes place in between one person to another person



5. Bank Perspective – GST Compliances

Tax Invoice

Supply of Service

Banking Company or financial and nonfinancial institution

Within 45 days

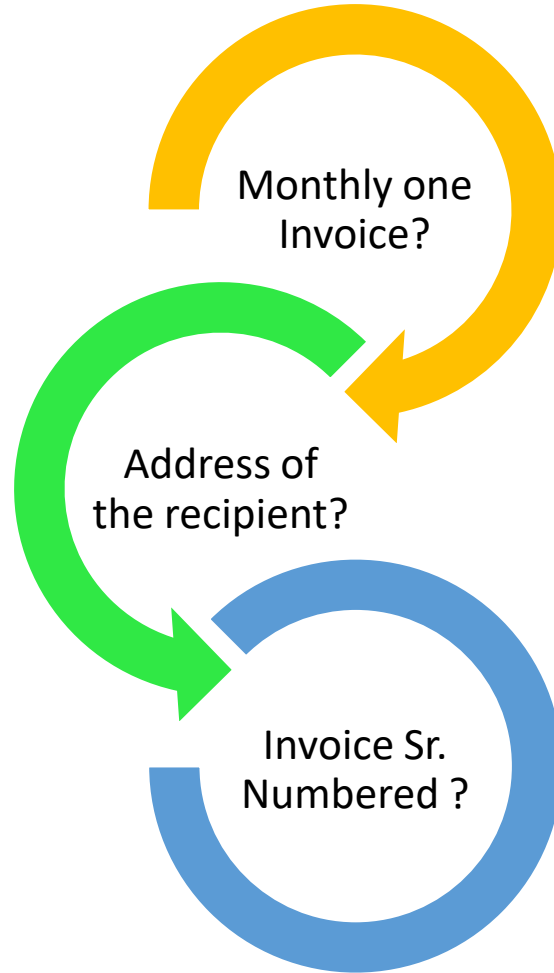
Other Cases

Within 30 days

Supplies to distinct person

When supplies recorded in books

Tax Invoice – Rule 46



GST Return

Monthly Outward Supply

- GSTR-1

Monthly Supply Return

- GSTR-3B

TDS

- GSTR-7

Thank You



Firm

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