

Goods and Service Tax



Day 3



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Day 3 Session I Place of Supply



Place of Supply of Goods/ Services



Interplay between intra-state & inter-state GST

Tax under the GST laws are 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 Bill) 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, 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.



DETERMINATION OF NATURE OF SUPPLY

Section 7 to 9 of IGST Act

Section 7. (1) Subject to the provisions of section 10, **supply of goods**, where the location of the supplier and the place of supply are in—

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of goods in the course of inter-State trade or commerce.

(2) Supply of **goods imported** into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.



DETERMINATION OF NATURE OF SUPPLY

Section 7 to 9 of IGST Act

Section 7. (3) Subject to the provisions of section 12, **supply of services**, where the location of the supplier and the place of supply are in—

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of services in the course of inter-State trade or commerce.

(4) Supply of **services imported** into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

(5) Supply of goods or services or both,—

- (a) when the supplier is located in India and the place of supply is outside India;
- (b) to or by a SEZ developer or a SEZ unit; or
- (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.



DETERMINATION OF NATURE OF SUPPLY

Section 7 to 9 of IGST Act

8. (1) Subject to the provisions of section 10, **supply of goods** where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be treated as intra-State supply, namely:—

- (i) supply of goods to or by a SEZ developer or a SEZ unit;
- (ii) goods imported into the territory of India till they cross the customs frontiers of India; or
- (iii) supplies made to a tourist referred to in section 15.

(2) Subject to the provisions of section 12, **supply of services** where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as **intra-State supply**:

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.



DETERMINATION OF NATURE OF SUPPLY

Section 7 to 9 of IGST Act

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



DETERMINATION OF NATURE OF SUPPLY

Section 7 to 9 of IGST Act

Section 9. Notwithstanding anything contained in this Act,—

- (a) where the location of the supplier is in the territorial waters, the location of such supplier; or
 - (b) where the place of supply is in the territorial waters, the place of supply,
- shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.



Place of Supply of Goods – Sec 10 IGST (other than goods imported/ exported)

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Section 10(1)(a)

Supply involves movement of Goods by Supplier / Recipient or other

Location of goods at the time at which movement terminates for delivery to recipient

Section 10(1)(b)

Goods supplied on direction of the third person

Principal Place of Business of the third person (i.e., address in Registration Certificate)

Section 10(1)(c)

Supply does not involve movement of Goods

Location of goods at the time of delivery to the recipient

Section 10(1)(d)

Goods are assembled or installed at site

Place of installation or assembly

Section 10(1)(e)

Goods supplied on board a conveyance e.g. vessel, aircraft, train, vehicle etc.

Location at which such goods are taken on board

Where none of the above rules apply, place of supply would be determined in the manner to be prescribed



Place of Supply of Goods – Sec 11 IGST (goods imported into/ exported from India)

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- **Export of goods:** Means taking goods out of India to a place outside India;
- **Import of goods:** Means bringing goods into India from a place outside India;

| Section | Situation | Place of supply |
|---------|---------------------------|------------------------|
| 11(a) | Goods imported into India | Location of importer |
| 11(b) | Goods exported from India | Location outside India |

*Note: Section 5 provides that **IGST shall be levied** on goods imported into India as per Section 3 of Customs Tariff Act*

- *Point of taxation - When duties of customs are levied on the said goods*
- *Value - As determined as per Customs Act*

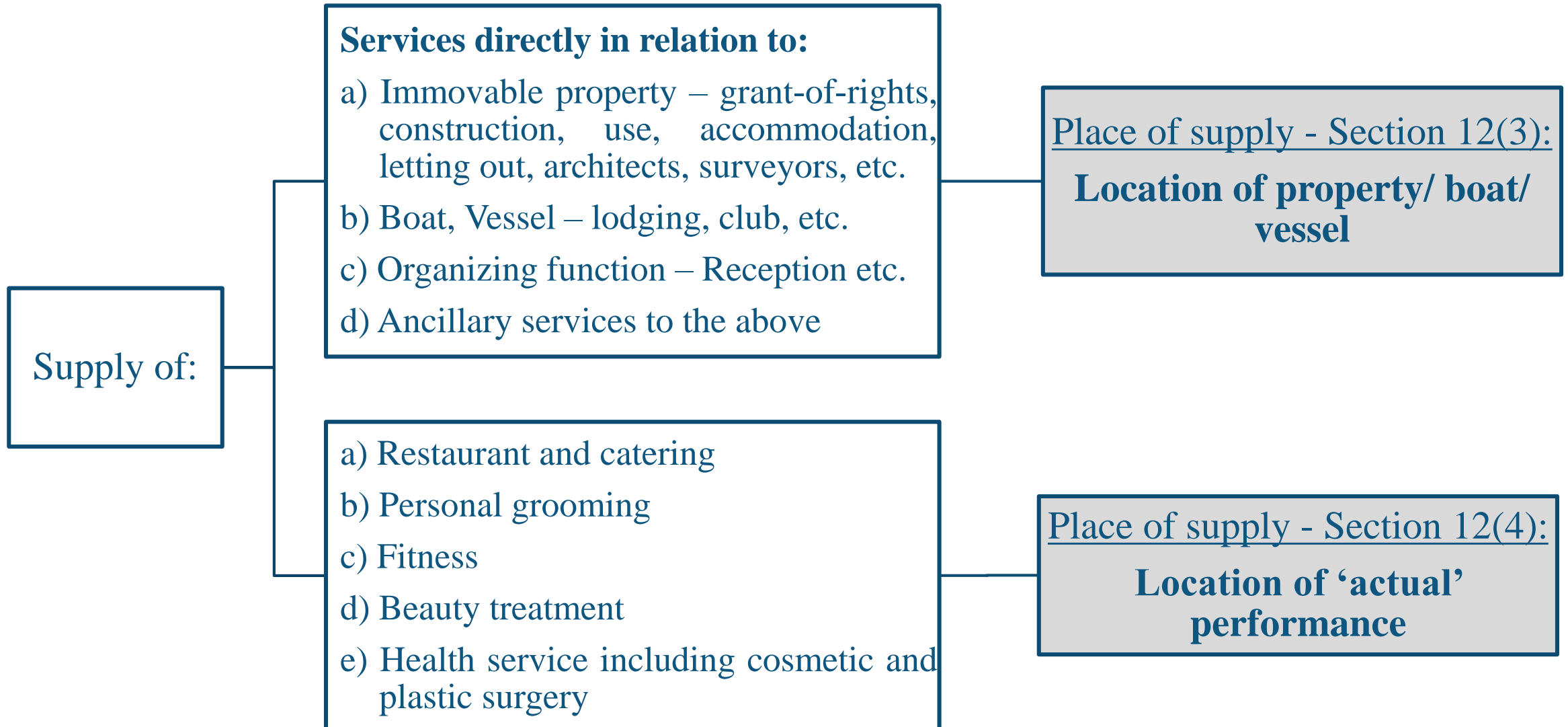


Determining “Place of Supply” of Services

- Section 12 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 (14) of Section 12; and
 - “*General Rule*” - for determining place of supply of all remaining services [contained in sub section (2) and (3) of section 12]
- 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 12 of IGST Act. Thus it is not clear that if any service falls in two or more categories then which rule would apply.



Place of Supply of Services – Sec 12 IGST (where location of supplier & recipient is in India)





Place of Supply of Services – Sec 12 IGST (where supplier & recipient are in India)

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S. 12(5): Supply of Services of Training and Performance Appraisal

Registered recipient:
Location of recipient

Unregistered recipient:
Place of 'actual' performance

S. 12(6): Supply of Services for admission to:
a) Cultural & artistic
b) Sporting
c) Scientific & educational
d) Entertainment event
e) Amusement Park
f) Services ancillary to above

**Venue of event/
park**

S. 12(7): Supply of:
a) Organising cultural, arts, sports, educational, scientific, entertainment, conference, fair exhibition or similar events
b) Services ancillary to above

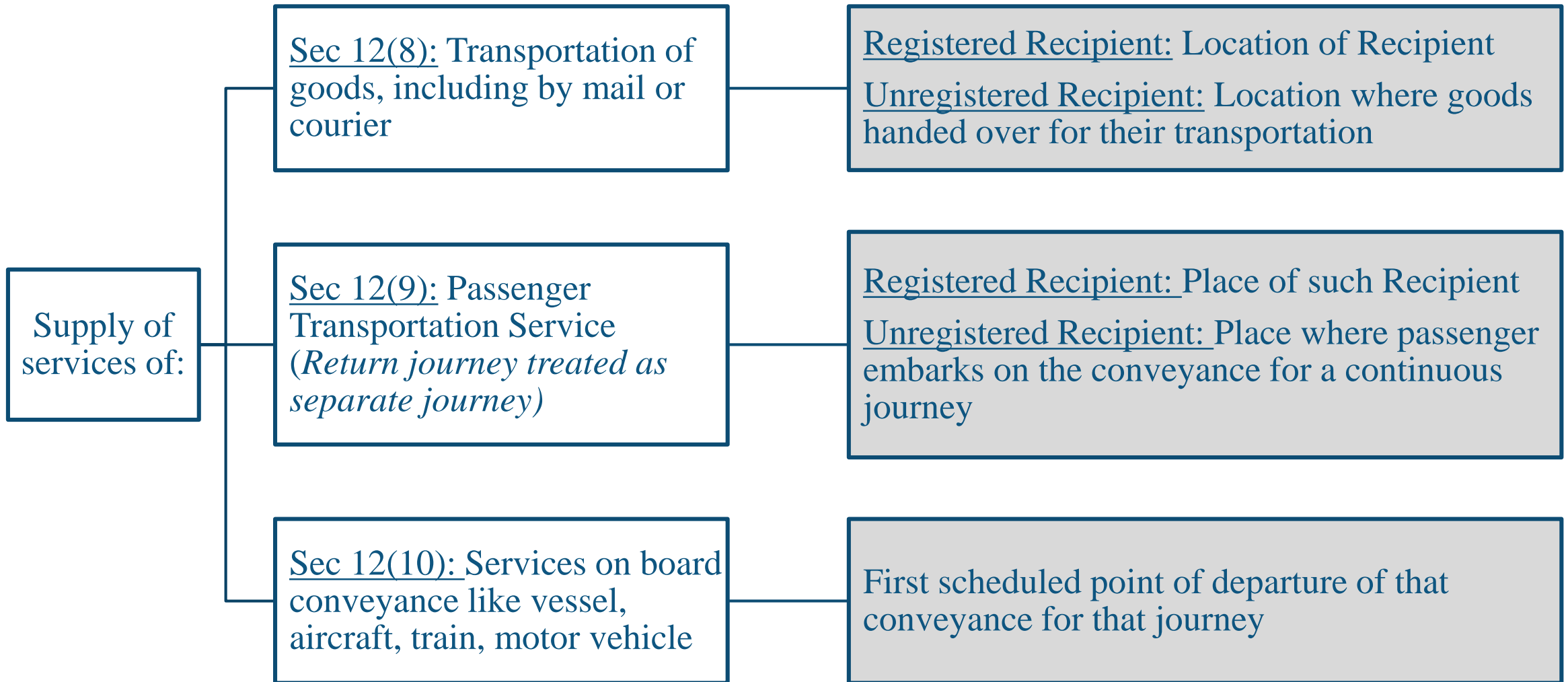
Registered recipient:
Location of recipient

Unregistered recipient:
Venue of event



Place of Supply of Services – Sec 12 IGST (where supplier & recipient are in India)

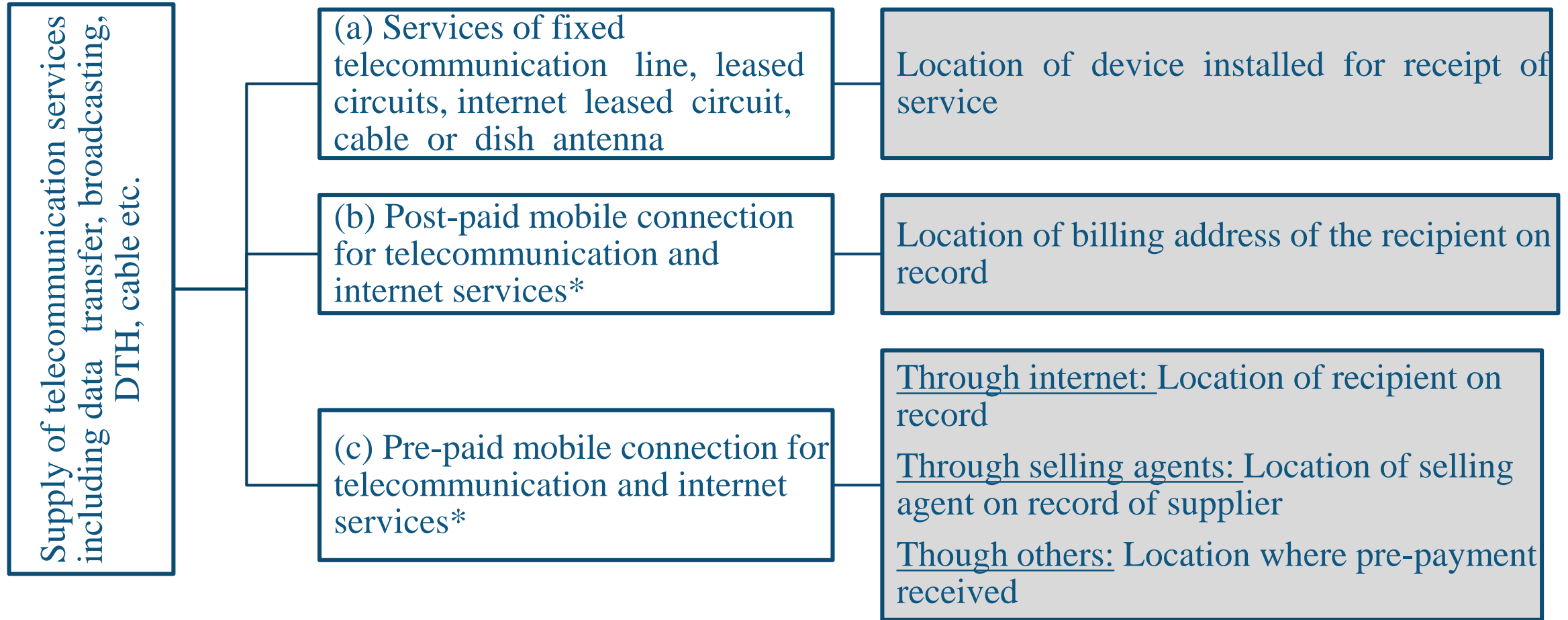
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Place of Supply of Services – Sec 12(11) IGST (where supplier & recipient are in India)

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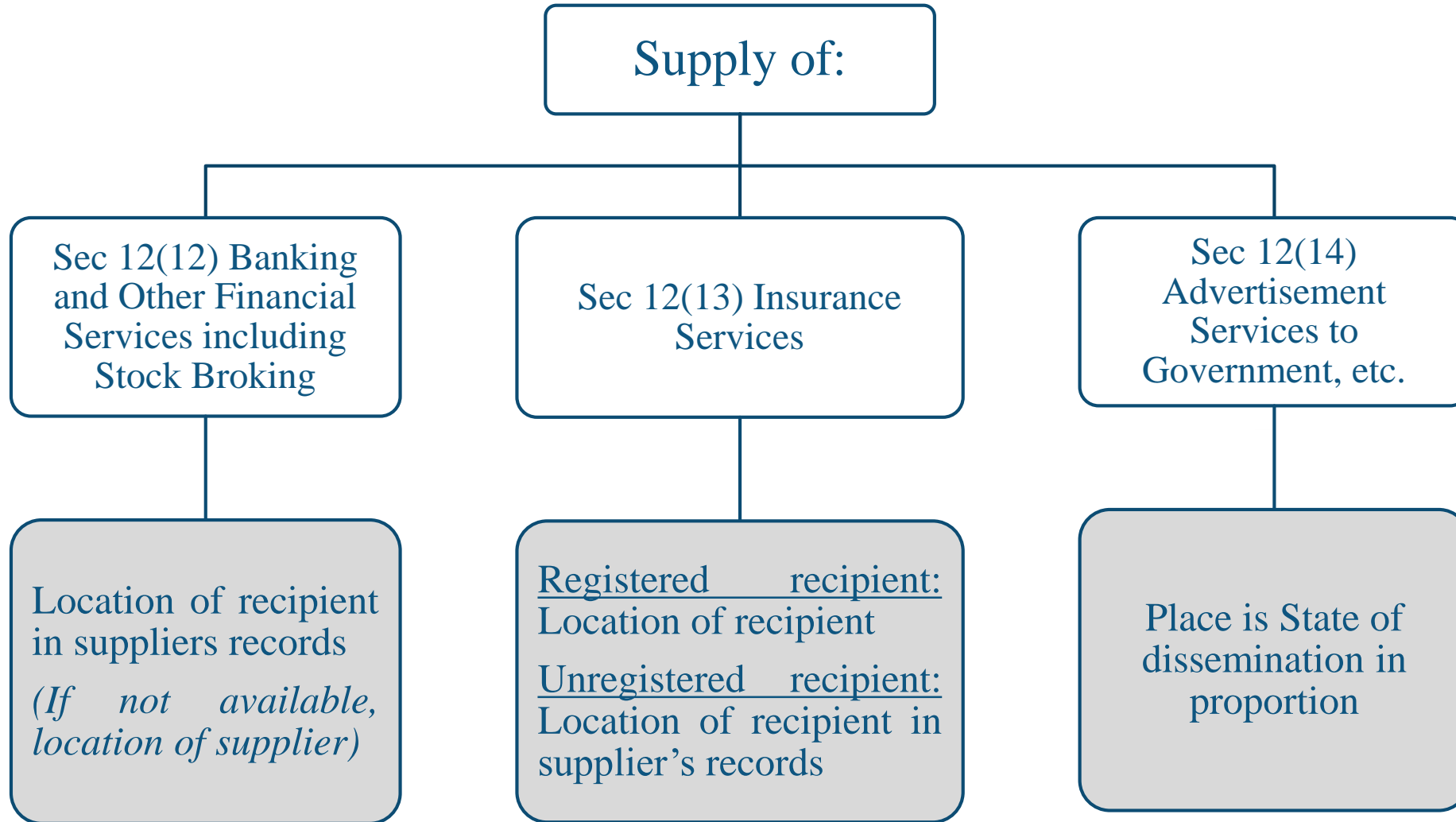


❖ Where no address of the recipient available in records, **location of the supplier** shall be the place of supply



Place of Supply of Services – Sec 12 IGST (where supplier & recipient are in India)

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Place of Supply of Services – Sec 12 IGST (where supplier & recipient are in India)

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For Supply of any
other Service,
Place of supply is:

**Section 12(2)(a): Registered recipient:
Location of recipient**

**Section 12(2)(b): Unregistered recipient:
Address in supplier's records**

**Section 12(3)(b): Unregistered recipient:
Location of supplier if address not available**



Example

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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 12(10) - place of supply of services on board a conveyance; or*
 - *section 12(4) – 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



Place of Supply of Services – Sec 13 IGST (where supplier or recipient is outside India)

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Services i.r.o goods required to be made physically available by recipient

&

Services requiring physical presence of receiver/ person acting on his behalf

Location where services actually performed

Services supplied directly in relation to immovable property

Location of such immovable property (or where it is intended to be located)

Service by way of admission to/ organising an event, etc. and ancillary services

Place where the event is actually held

Banking services to account holders, intermediary services, hiring of means of transport (other than aircraft & vessels) upto 1 month

Location of supplier

Transportation of goods (other than by way of mail/courier)

Destination of the goods

Where none of the above rules apply, place of supply would be determined in the manner prescribed



Place of Supply of Services – Sec 13 IGST (where supplier or recipient is outside India)

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Passenger
transportation
service

Place where
passenger
embarks on the
conveyance for
a continuous
journey

Service provided
on board a
conveyance

First
scheduled
point of
departure of
that
conveyance
for that
journey

Online information
and database
access or retrieval
services

Location of
recipient

Residuary

**Location of
the recipient;**

*If not
available in
the ordinary
course of
business,
location of
supplier*

**To prevent double
taxation/ non-
taxation,** or for the
uniform
application of
rules, CG has
power to notify
services/
circumstances

Place of
effective use
and
enjoyment of
a service



Online information and database access or retrieval services

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2(17) “online information and database access or retrieval services” means

services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,—

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming;



Online information and database access or retrieval services

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| | |
|----------------------|---|
| 2 Step definition | Service (and not Goods) supplied |
| | Delivered over continuous internet connectivity |
| 2-Step clarification | Involve minimal human intervention |
| | Impossible to ensure in absence of information technology |

Illustrations

| Illustration | Includes | Excludes |
|--|--|--|
| Online Advertising e.g. Google | Banner ads, pop up ads, sponsored ads etc | Preparation of content for online display, Adv in News Paper |
| Cloud Services e.g. Amazon Web, Azure | Webhosting Data Warehousing | Software License issued by delivery of key number |
| Online gaming e.g. Zapak | Live Gaming Collaborating Gaming | Mobile / Computer Games (to be used after downloading to user-end device) |
| Online Data or information e.g. Taxindiaonline.com; | Paid websites that provide information | Net Banking, C2C Portal, eCommerce |



Online information and database access or retrieval services Section 13(12)

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The Place of supply of online information and database access or retrieval services shall be **the location of the recipient of services.**

Explanation.—For the purposes of section 13(12), person receiving such services shall be deemed to be located in the taxable territory, *if any two of the following non contradictory conditions are satisfied*, namely:—

- (a) the location of address presented by the recipient of services through internet is in taxable territory;
- (b) the credit/debit or any other card by which the recipient settles payment is issued in taxable territory;
- (c) the billing address of the recipient of services is in the taxable territory;
- (d) the internet protocol address of the device used by the recipient of services is in the taxable territory;
- (e) the bank of recipient in which the account used for payment is maintained is in the taxable territory;
- (f) the country code of the subscriber identity module card used by the recipient is of taxable territory;
- (g) location of fixed land line through which service is received by recipient is in the taxable territory.



Special Provisions for payment of tax by a Supplier of OIDAR - Section 14 IGST

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- (1) On supply of OIDAR services by any person located in a non-taxable territory and received by a non-taxable online recipient, **the supplier of services located in a non-taxable territory** shall be the person **liable for paying IGST** on such supply of services:

Provided that in case of supply of such services by any person located in a non-taxable territory and received by non-taxable online recipient, **an intermediary located in the non-taxable territory**, who arranges or facilitates the supply of such services, **shall be deemed to be the recipient** of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:—

- (a) the invoice / bill / receipt issued by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;
- (b) the intermediary does not authorise the charge to the customer or neither collects/processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and supplier.
- (c) the intermediary involved in the supply does not authorise delivery; and
- (d) the general terms and conditions of the supply are not set by the intermediary.



Special Provisions for payment of tax by a Supplier of OIDAR - Section 14 IGST

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(2) The supplier of online information and database access or retrieval services referred to in sub-sec. (1) shall, for payment of integrated tax,

take a *single registration under the Simplified Registration Scheme* to be notified by the Government:

Provided that **any person located in the taxable territory representing** such supplier for any purpose in the taxable territory **shall get registered and pay integrated tax** on behalf of the supplier:

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he **may appoint a person in the taxable territory for the purpose** of paying integrated tax and such person shall be liable for payment of such tax.



GST

**Goods and Services
Tax**

Question *n* Answer Session





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Thank You

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