

Multiple Supplies provided together + Judicial precedents & Inter branch supply of service - Cross Charge / ISD

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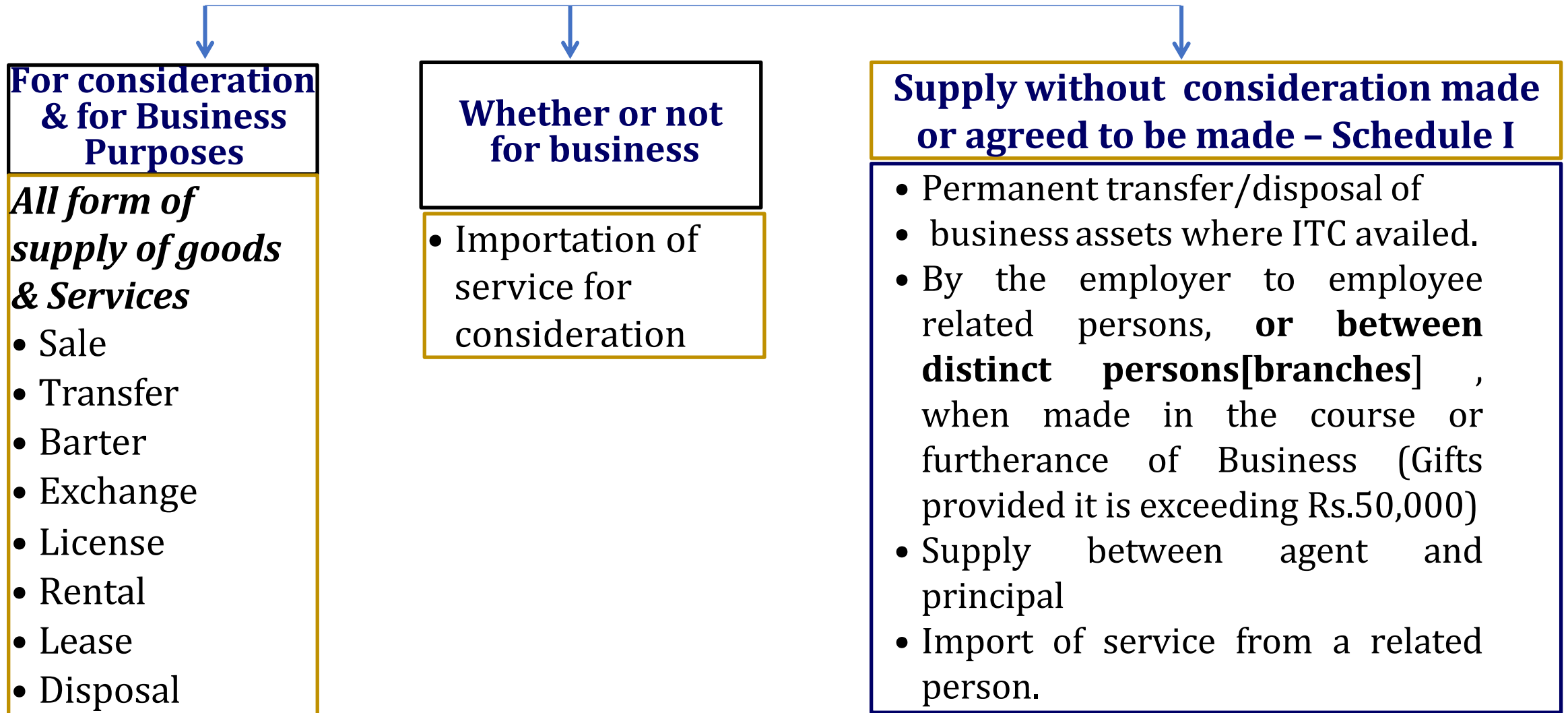
Please post your queries in the Q&A section

GST is tax on “Supply” of Goods & Services

Goods – Every kind of **movable** property other than money and securities.

Services – **Anything** other than goods

Supply: the term supply includes



Composite & Mixed supply

Composite Supply

- supply comprising two or more taxable supplies
- Which are naturally bundled
- one of which is a principal supply
- shall be treated as a supply of such principal supply

Non Composite Supply

- no principal supply
- separate price- separate rate for each

Mixed Supply

- Two or more independent supplies – single price
- shall be treated as supply of that particular supply
- which attracts the highest rate of tax.

Tax-Composite & Mixed supply

Tax Liability

- **For Composite Supply:** Composite supply comprising 2 or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply
- **For Mixed Supply:** Mixed supply comprising 2 or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax
- **For non-composite Supply:** Rate of tax will be rates applicable for such specific supplies

Composite & Mixed supply

Examples

- Transportation charges along with goods[involving multiple tax rates]
- Supply & installation, erection etc - Composite supply vis-à-vis works contract - CCTV cameras, furniture & fixtures
- Mixed supply could be classified as composite supply and vice versa -plotted development/exempted sale of land
- Floor rise premium, car parking charges/maintenance etc. along with construction and sale of flat
- Accommodation + food+ transportation- composite supply
- Comprehensive maintenance contracts

Composite & Mixed supply

Examples

- Turnkey contracts involving supply of goods, services both moveable and immovable in nature
- Alcohol along with food and beverages - whether composite or mixed

Issues- Composite & Mixed supply

- ▶ **The implication when mixed supply could be wrongly classified as composite supply and vice versa**
 - Eg: GST on principal supply -12% & supply which attracts higher rate of tax in case of mixed supply is 18%.
 - Motor vehicle/Refrigerators supplied for single price- mixed supply GST at 28% as applicable to vehicle
 - Where Assessee had wrongly determined the nature of supply to be composite supply but it was a mixed supply taxed at higher rate - pay the difference of tax + interest.

Issues

➤ ***Whether transaction is a supply of goods or services?***

- If neither a supply of goods or services- Sch- III (employee, land, completed building..) – confirm. In 10% cases doubt- see Sch-II (Tr of immovable property, TDR) – confirm

➤ ***Use of Customs Tariff whether required?***

- Yes and old case laws in Cus + CE would be relevant.

Issues

- ***Changes in classification or rate – retrospective?***
 - No. Only prospective
- ***Reliance on Tweets, Faqs, Guidance note, Comm clarification, Circulars, Advance Ruling?***
 - Majority in line with law – Some contradictory - Some not valid- Courts will rule independently. Penalty can be avoided if followed. Tata melting wires- SC
- ***Burden of proof in case of reclassification?***
 - If revenue wants to change – then on them.; If exemption then on tax payer.

Issues

***Sale of scrapped goods/
compensation paid from
foreign customer– Goods /
Services?***

Supply of goods+Services?

***Classification in case of Composite supply- Whether
GST to be paid for each product?***

***Eg: AC & installation- separate items in single
invoice***

Composite Supply based on **principal supply**, ancillary supplies forming part of the composite supplies classified as that of the principal supply

In the above example Principal Supply- AC, the same HSN/Tariff rate applicable

Issues

**Incorrect classification of composite supply of goods / services
which could lead to an incorrect rate of tax being charged**

Result in incorrect input credit availed. Eg: restaurant service vs supply of food.

Classify the G/S under the correct head using international HSN, explanatory notes & rules of interpretation

Difficulty in classifying the G/S - take the expert's advice

Classification in case of individual supply

- *Whether GST can be paid at applicable rate for each element in the independent supplies which are separate line items in single invoice*
- *Eg: Sale in shops of different items?*
- No single rate charged for independent supplies
- Rate applicable for such goods to be applied

Classification in case of mixed supply

- *Whether GST to be paid for each product of mixed supply ?*
- *Example, fruits and chocolates charged as separate line items in single invoice*
- In Mixed supply- GST **based on** supply which is leviable to higher rate of tax
- In the above example chocolate attracts higher rate- the same would be applicable for whole supply

Issues

Whether sale of software is supply of goods or supply of service?

- Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of Information Technology software – Supply of Service
- Supply of software in physical form such as on CD/disk- Supply of Goods
- Software is given by a license- could be covered as service, Sch-II
- Case Law:
 - Tata Consultancy Services v. State of Andhra Pradesh (2004 (178) ELT 0022 (S.C.))

Legal precedents

- A specific heading should be preferred over general heading. There are many Supreme Court cases supporting the same, like ***CCE v Frito Lay India (2009) 242 ELT 3 (SC)***, and ***Hindustan Poles Corporation v CCE (2006) 196 ELT 400 (SC)***, etc.
- In the absence of statutory definition, determination of treatment/classification to be done based on common parlance, **primary function** and utility- ***CC Vs Fusebase P Ltd – 1994 (67) E.L.T 513 (SC)***

Composite & Mixed supply-others

- A stand-alone UPS and battery could be supplied separately in a retail setup. Thereby, the supply of UPS and battery would be considered as a mixed supply as they were supplied under a single contract at a combined single price- **M/s Switching Avo Electro Power Ltd [2018 (13) GSTL 84]**
- **Supply of medicines and allied items provided by the hospital through the pharmacy to the in-patients is part of composite supply of health care treatment and hence not separately taxable** - clarification given in letter F.No. 354/17/2018-TRU dated 12.02.2018 in the matter of supply of food to in-patient is applicable in the case of dispensing of medicines also - However, Supply of medicines and allied items by hospital through the pharmacy to the out-patients is taxable: AAR- **Ernakulam Medical Centre Pvt Ltd** [2018-TIOL-188-AAR-GST](#)

Composite & Mixed supply-other

- Supply of spare parts/accessories and repair service are distinct and separately identifiable supplies for which the rates are quoted differently and work orders are issued separately - such supply under the Repair Rate **Contract cannot be considered as composite supply**. The goods and services would be liable to tax at the rates as applicable to such goods and services separately- **Vista Marine And Hydraulics [2019-TIOL-431-AAR-GST]**

Intermediary vs EoS

- The back office support services to overseas companies are in the nature of intermediary services, wherein the place of supply of services would be the location of the supplier i.e., in India.
- One of the conditions to be satisfied as export of services under GST is that place of supply of services should be outside India.
- Therefore, in the case of back office support services which is in the nature of intermediary services would not be treated as export of services.
- Thus, the benefit of the zero-rated supply is not available in such cases. **V SERV GLOBAL PVT LTD [2018-TIOL-263-AAR-GST]**

Cross charge vs ISD



Cross Charge under GST

- **Schedule-I:** 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
- **Schedule III:** Activities or transactions specified in Schedule III is treated neither as supply of goods nor as supply of service. Schedule III includes **services by an employee to an employer in course of furtherance of business.**
- **AAR:** Columbia Asia Pvt Ltd [2018 – TIOL – 113 – AAR – GST and upheld by the appellate authority in [2018-TIOL-31-AAAR-GST] - *Regarding the second issue related to the activities performed by the employees at the corporate office in the course of or in relation to employment, the employees employed in the Corporate Office are providing services to the Corporate Office and hence there is an employee-employer relationship only in the IMO. **The other offices are distinct persons and therefore the employees in the IMO have no employer employee relationship with other offices.***

Cross Charge- Important Aspects

- The cross charge to distinct persons within the entity.
- The facility of acceptance of invoice value as open market value [where the recipient branch is fully eligible for ITC].
- It is a fact that till date very small number of entities have put in place a system to cross charge or used the Input Service Distributor option.
- This needs to be done in such a way that at least a monthly invoice from HO to branch and branch to HO is started.
- For the past period one invoice or one invoice per financial year both ways may suffice.

Cross Charge- Important Aspects

- The taxpayer may re-look at their understanding and policies with branches, to avoid any possible tax demand.
- Organisation must create cost centres to each of its units located across India and on periodical intervals may review the inward and outward supplies, i.e. both income and expenditures to tackle issues arising relating to cross-charge.

Cross Charge-Centralized Billing

- Core/centralized accounting expenses
- Top management expenses
- Advertisement expenses
- Sales and marketing expenses
- Finance charges, Treasury administration expenses
- Cash management expenses
- Legal expenses and Audit fee (Statutory Audit, Internal Audit etc.)
- Tax/Management consultant fee
- Royalty fee
- License Fee
-

Cross Charge under GST- Example

- XYZ Limited has Head office in Mumbai (MH), following centralized billing and payment mechanism.
- XYZ Limited has 2 registrations at Delhi and Karnataka.
- HO has availed certain support services-IT/software on payment of IGST.
- However, such support services would be used at both the locations i.e. Delhi and Karnataka.
- When HO charges for the said support services to respective locations, it shall be required to supply under an appropriate invoice &
- Cross charge the value of support services accordingly.
- **Valuation:** Transaction value, as per Rule 28 of CGST Rules – OMV, Kind & quantity, Cost+10%
- Both location – eligible to full ITC, the value declared in the invoice would be deemed to be the open market value of goods or services

Defn - ISD

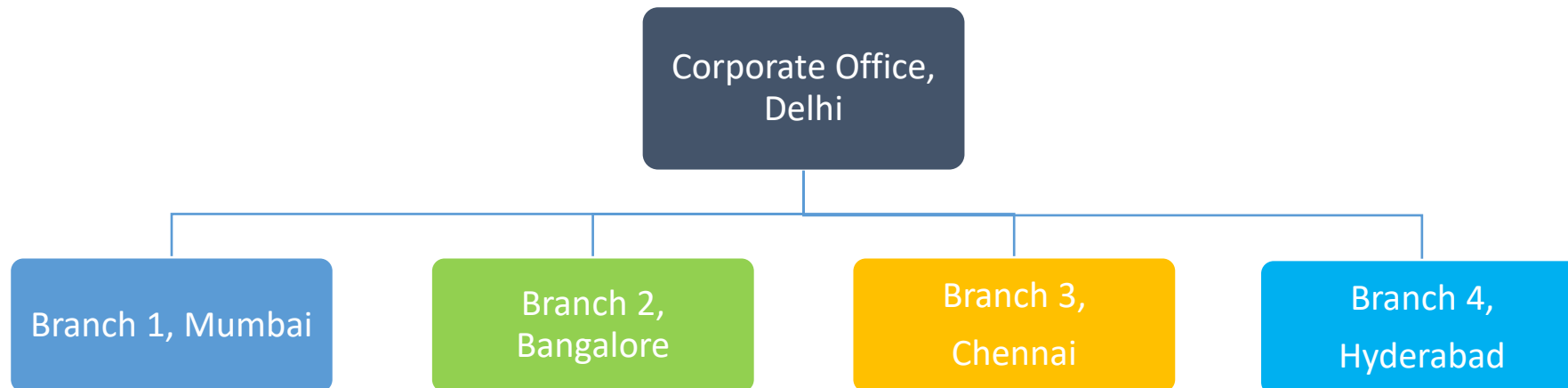
2 (61) “Input Service Distributor” means an

Office of the supplier of goods or services or both

which **receives tax invoices** issued under section 31 towards the receipt of input services and **issues** a prescribed document

for the purposes of **distributing the credit** of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both

having the same **Permanent Account Number** as that of the said office;



ISD Vs Deemed supply

- There is a concept of Input Service Distributor.
- Further, different registrations are treated as separate business entities.
- As per Sch. I, supply of goods or services even without consideration is liable for GST.
- What is the difference between two, which of these has to be applied when?
- Is it inter-changeable.
- Implication of Columbia Advance Ruling

ISD vs Cross Charge

Sl. No.	ISD	Cross-charge
1.	The concept of ISD is governed by the provisions of section 20 of the CGST Act.	Whereas the cross charge finds mandate from Para 2 of Schedule-I read with section 25 of the CGST Act, 2017.
2.	The ISD mechanism is limited to the extent of distribution of ITC on input services.	Applicable on input, input services as well as on capital goods.
3.	There is absence of services being rendered by one establishment to another of the same entity.	The presence of supply of goods or services is sine-quo-non.
4.	ISD do not create any outward supplies. As such, it can merely distribute ITC on inward services to its respective branches.	Cross charge create outward supplies for which necessary invoicing is required.

Input Service Distribution

ISD – similar like in the ST provisions

Input service distributor can distribute credit in the following manner if distributor and receiver is located in different states

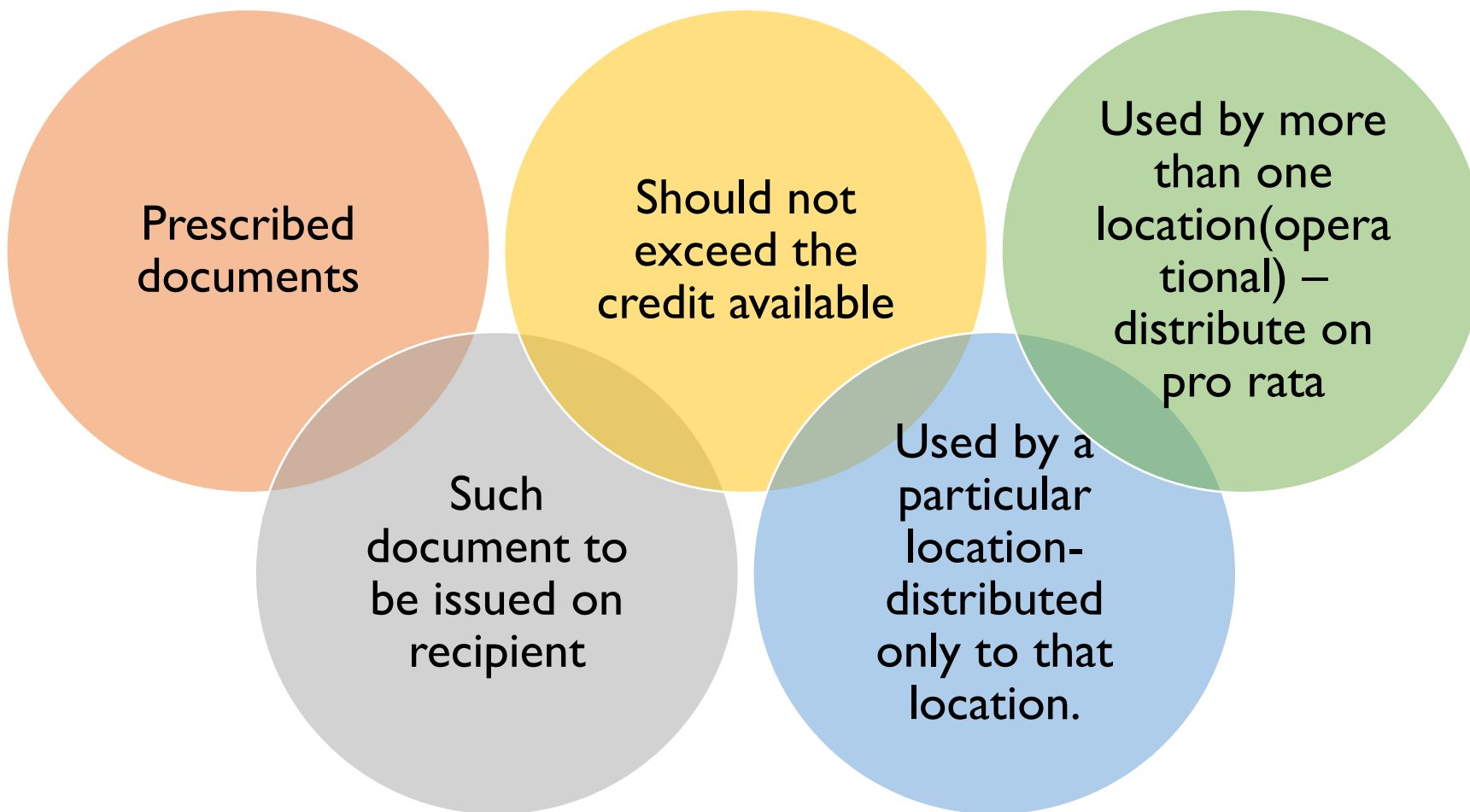
Credit of CGST as IGST and IGST as IGST, by way of issue of a prescribed document,

Credit of SGST as IGST

Credit of CGST and IGST as CGST

Credit of SGST and IGST as SGST

Input Service Distribution



Base for distribution:

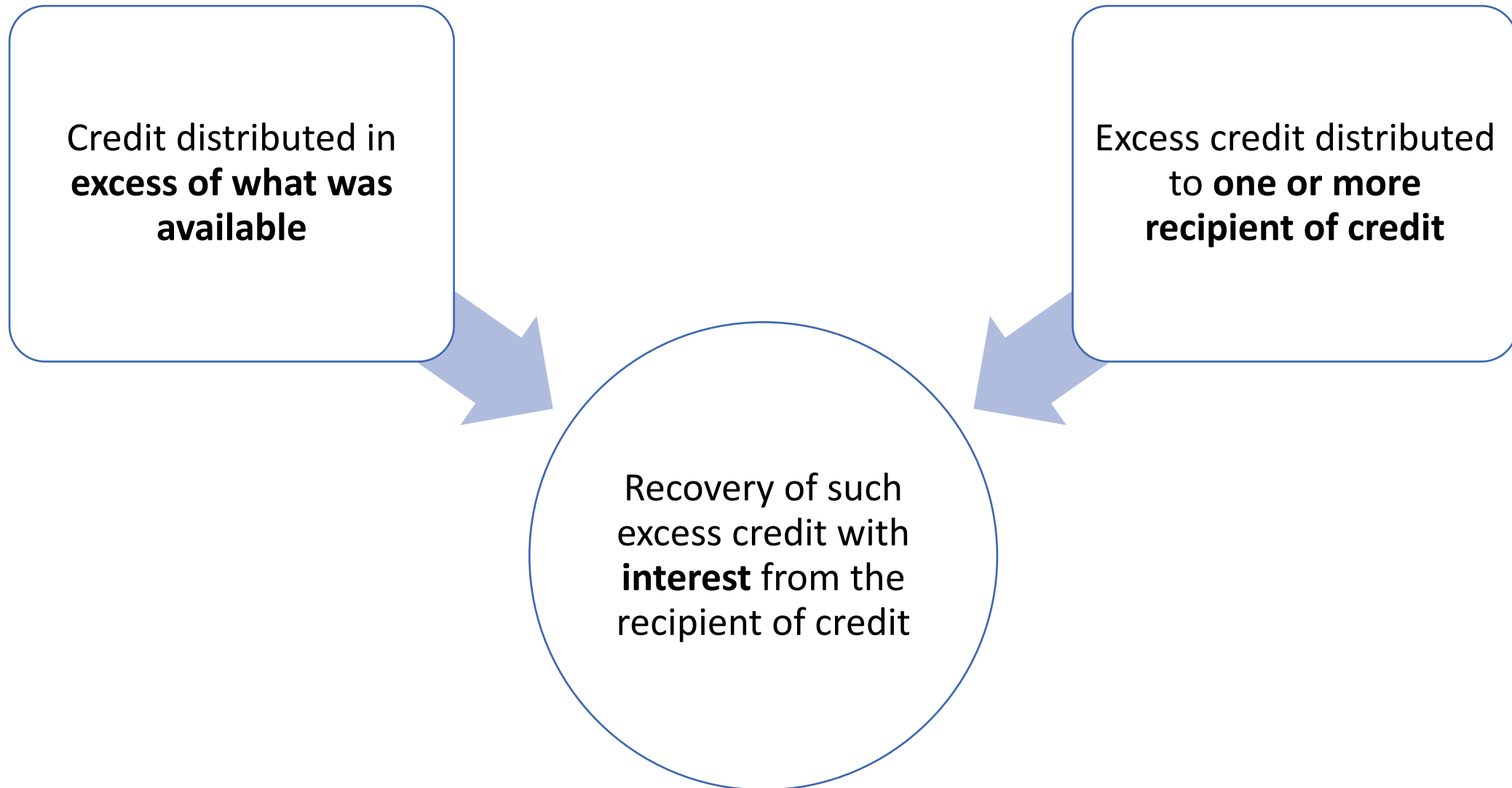
Turnover of each location in a State to aggregate turnover of all such locations who have used such services.

Period

The period to be considered for computation is the **previous financial year** of that location.

If it does not have any turnover in the previous financial year, then **previous quarter of the month** to which the credit is being distributed.

Input Service Distribution



ISD- Illustration

- The corporate office of GK Exports is situated at New Delhi, with its different units registered in various States across India at, Bangalore, Mumbai, Kolkata and New Delhi. The software license and upgrading of software service is received and used at all the locations, however, the invoice is received at corporate office only.
- For that reason, the Delhi corporate office has to act as ISD to distribute the credit.
- In Illustration above, if the value of service received is Rs. 20,00,000/- (intra-State supply), then how the credit will be distributed to all such recipients?
- Turnover during the relevant period-

Registration	Turnover
Delhi	Rs.75,00,000/-
Bangalore	Rs.50,00,000/-
Mumbai	Rs. 85,00,000/-
Kolkata	Rs. 40,00,000/-
Total	Rs. 2,50,00,000/-

Note:

1. All values are exclusive of taxes
2. GST applicable @ 18% (CGST + SGST)

ISD- Illustration

Manner of Distribution of Credit-

Total amount of credit to be distributed (C) [20,00,000 × 18%]

Rs.3,60,000/-

Calculation of ITC attributable-

$$CI = \frac{\text{Turnover of the recipient (t1)}}{\text{Aggregate turnover of all recipients (T)}} \times C$$

$$\text{Delhi} = \frac{75,00,000}{2,50,00,000} \times 3,60,000 = \text{Rs.1,08,000/-}$$

$$\text{Bangalore} = \frac{50,00,000}{2,50,00,000} \times 3,60,000 = \text{Rs.72,000/-}$$

$$\text{Mumbai} = \frac{85,00,000}{2,50,00,000} \times 3,60,000 = \text{Rs.1,22,400/-}$$

$$\text{Kolkata} = \frac{40,00,000}{2,50,00,000} \times 3,60,000 = \text{Rs. 57,600/-}$$

ISD- Illustration

Query: In Illustration above, how the credit will be available to all such recipients i.e. as **CGST/SGST or IGST?**

Solution-

In respect of Delhi recipient (i.e. located in the same State in which ISD is located), attributable ITC of Rs. 1,08,000/- will be distributed as ITC of CGST/SGST i.e. Rs. 54,000/- as CGST and Rs. 54,000/- as SGST

In respect of other recipients (i.e. located in a State other than that of ISD), attributable ITC will be distributed as IGST equal to CGST + SGST i.e. ITC on account of IGST will be available as follows:

- Bangalore Rs. 72,000/-
- Mumbai Rs. 1,22,400/-
- Kolkata Rs. 57,600/-

ISD- Illustration

Query: If in earlier Illustration, the software service is used only for Bangalore and Kolkata. Then how the credits will be distributed?

ISD- Illustration

If the software service is used only for Bangalore and Kolkata, then the total amount of ITC of Rs. 3,60,000/- will be attributed as IGST among Bangalore and Kolkata only as follows:

C1	<u>Turnover of the recipient (t1)</u>	
	Aggregate turnover of all recipients (T)	
Bangalore	$\frac{50,00,000}{90,00,000} \times 3,60,000$	Rs. 2,00,000/-
Kolkata	$\frac{40,00,000}{90,00,000} \times 3,60,000$	Rs. 1,60,000/-
Total		Rs. 3,60,000/-

Any Queries??? – please add in Q&A

THANK YOU



For any clarification
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