

Session 6

Concept of “Supply” – International Perspective and Learnings for India

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Agenda

Constitutional Provisions and Journey

GST- An introduction

Supply

Supply – International Perspective

Examples



Scheme of Taxation Constitutional Provisions

Constitutional Provisions

Article 246 - Subject-matter of laws made by Parliament and by the Legislatures of States

(1) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 in the Seventh Schedule to the Constitution (referred to as the "Union List").

(2) Parliament and the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule to the Constitution (referred to as the "Concurrent List").

(3) The Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule to the Constitution (referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State, notwithstanding that such matter is a matter enumerated in the State List.

Seventh Schedule - entries relating to indirect taxes, prior to amendment

List	Entries	Subject
List I- Union list	83	Duties of customs including export duties.
	84	Duties of excise on tobacco and other goods manufactured or produced in india.(Except alcohol for human consumption and opium, hemp, narcotic drugs and narcotics.)
	92 a	Tax on interstate sales
	92b	Taxes on consignment of goods where such consignment takes place during interstate trade or commerce.
	92c	Service tax
	97	Any other matter not included in list II, list III and any tax not mentioned in list II or list III. (These are called 'residual powers'.)

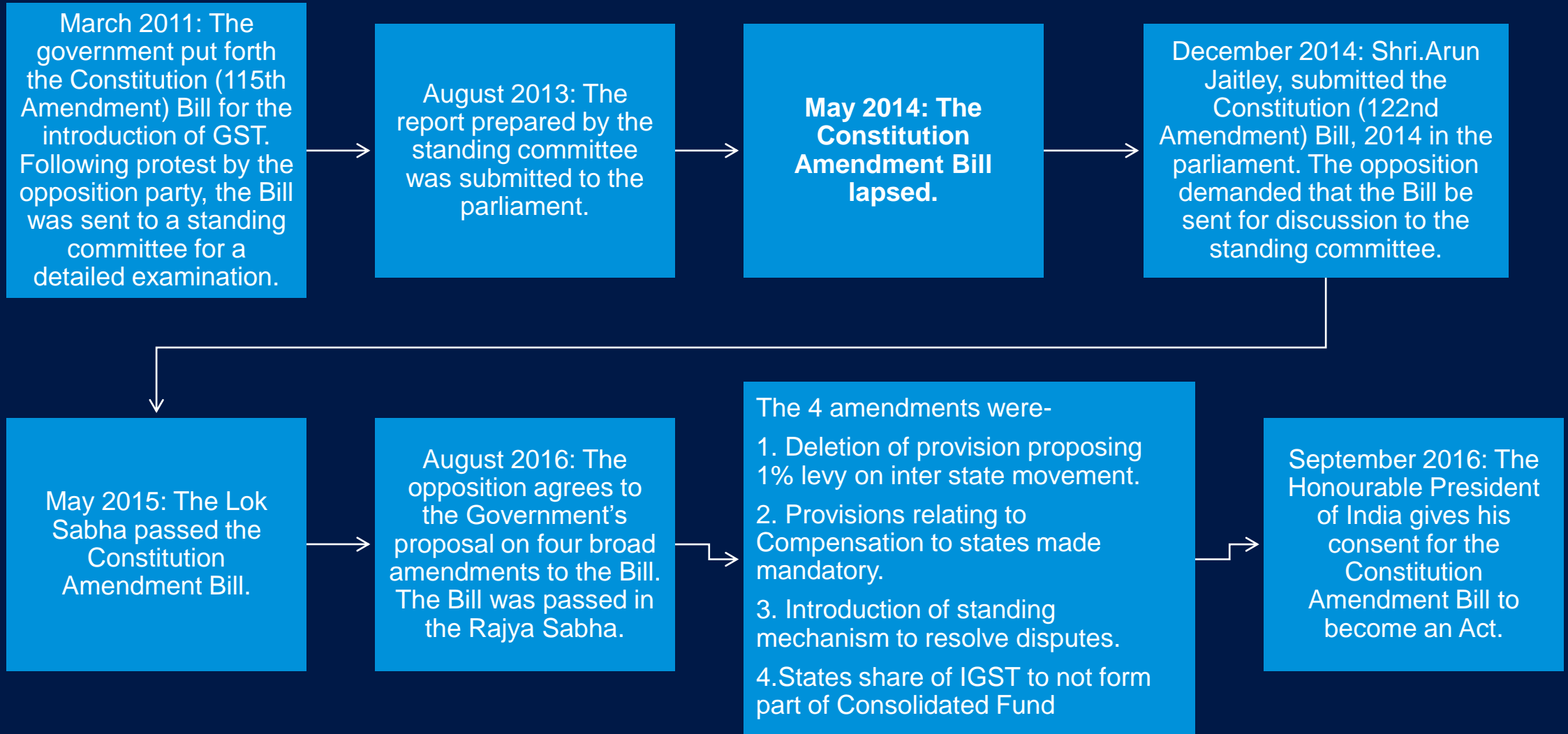
Seventh Schedule - entries relating to indirect taxes, prior to amendment

List	Entries	Subject
List II State List	51	Excise duty on alcohol for human consumption and opium, hemp, narcotic drugs and narcotics
	52	Tax on entry of goods into a local area for consumption, use or sale therein. (Entry tax)
	54	Tax on sale or purchase of goods other than newspaper (VAT)
	55	Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.
	60	Taxes on professions, trades, callings and employment.
	62	Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.



Constitutional Journey

Important Dates



Constitution 122nd Amendment Bill

Highlights of the Bill

- The Bill proposed amendment to the Constitution to introduce the goods and services tax (GST).
- Parliament and state legislatures to have concurrent powers to make laws on GST. Only the centre may levy an integrated GST (IGST) on the interstate supply of goods and services, and imports.
- Alcohol for human consumption was exempted from the purview of GST. GST to apply to five petroleum products at a later date.

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- It proposed formation of GST Council to recommend rates of tax, period of levy of additional tax, principles of supply, special provisions to certain states etc. The GST Council would consist of the Union Finance Minister, Union Minister of State for Revenue, and state Finance Ministers.
 - The Bill empowered the centre to impose an additional tax of up to 1%, on the inter-state supply of goods for two years or more. This tax would accrue to states from where the supply originates.

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- It proposed that the Parliament may, by law, provide compensation to states for any loss of revenue from the introduction of GST, up to a five year period.

The amendment bill was approved by the Central and State legislations and gained Presidential assent, post which it was passed as “101st Constitutional Amendment Act”

Constitution- Article inserted vide Amendment

Article 246A. Special provision with respect to goods and services tax.

- The Parliament and Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.
- Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.
 - Explanation.--The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.

279A(5). The GST Council shall recommend the date on which the GST shall be levied on Petroleum crude, high speed diesel, motor spirit(commonly known as petrol), natural gas and aviation fuel.

Constitution- Article inserted vide Amendment


269A. Levy and collection of goods and services tax in course of inter-State trade or commerce.

- Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.
 - Explanation.--For the purposes of this Section, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

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- The amount apportioned to a State under Section (1) shall not form part of the Consolidated Fund of India.
 - Where an amount collected as tax levied under Section (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.
 - Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under Section (1), such amount shall not form part of the Consolidated Fund of the State.

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- Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Seventh Schedule- entries relating to indirect taxes, post amendment

List	Entries	Subject
Union List	83	Duties of customs including export duties.
	84	Duties of excise on the following goods manufactured or produced in India, namely:-- (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel; and (f) tobacco and tobacco products.
	92 A	Tax on Interstate sales 
	93B	Taxes on consignment of goods where such consignment takes place during interstate trade or commerce.
	97	Any other matter not included in List II, List III and any tax not mentioned in list II or list III.

Seventh Schedule- entries relating to indirect taxes, post amendment

List	Entries	Subject
List II State List	51	Excise duty on alcohol for human consumption and opium, hemp, narcotic drugs and narcotics
	54	Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.
	62	Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.
	60	Taxes on professions, trades, callings and employment.

A decorative graphic consisting of several blue squares and rectangles of varying sizes and shades of blue, arranged in a modern, abstract layout.

GST- Introduction

Erstwhile Indirect Tax regime

Particulars	Customs duty	Central excise	Value added tax	Service tax
Governed by	Customs Act , Customs Tariff Act, related Rules and Notifications	Central Excise Act , Excise Tariff Act & related Rules, Notifications	Local VAT Acts (intra-State) and Central Sales Tax Act, 1956 (inter-state)	Finance Act, 1994 and related Rules and Notifications
Taxable event	Import into India	Manufacture of Goods	Sale	Provision of Service
Tax payable	On clearance for home consumption	On removal of goods	On sale, invoice or payment	Provision of service, invoice or payment, whichever is earlier
Credit	Cenvat credit of CVD and SAD	Cenvat credit of duty paid on inputs, capital goods and service tax on input services	ITC allowed for discharging output tax liability under specific VAT laws-CENVAT pool not available for utilization	Cenvat credit of duty paid on inputs, capital goods and service tax on input services

Taxes subsumed under GST

Central Levies

- Central excise duty
- Additional excise duties
- ED under the Medicinal & Toiletries Preparation Act
- Service tax
- Additional Customs Duties (CVD)
- Special additional duty (SAD)
- Surcharges and cesses relating to supply of goods and services.



CGST
SGST
IGST

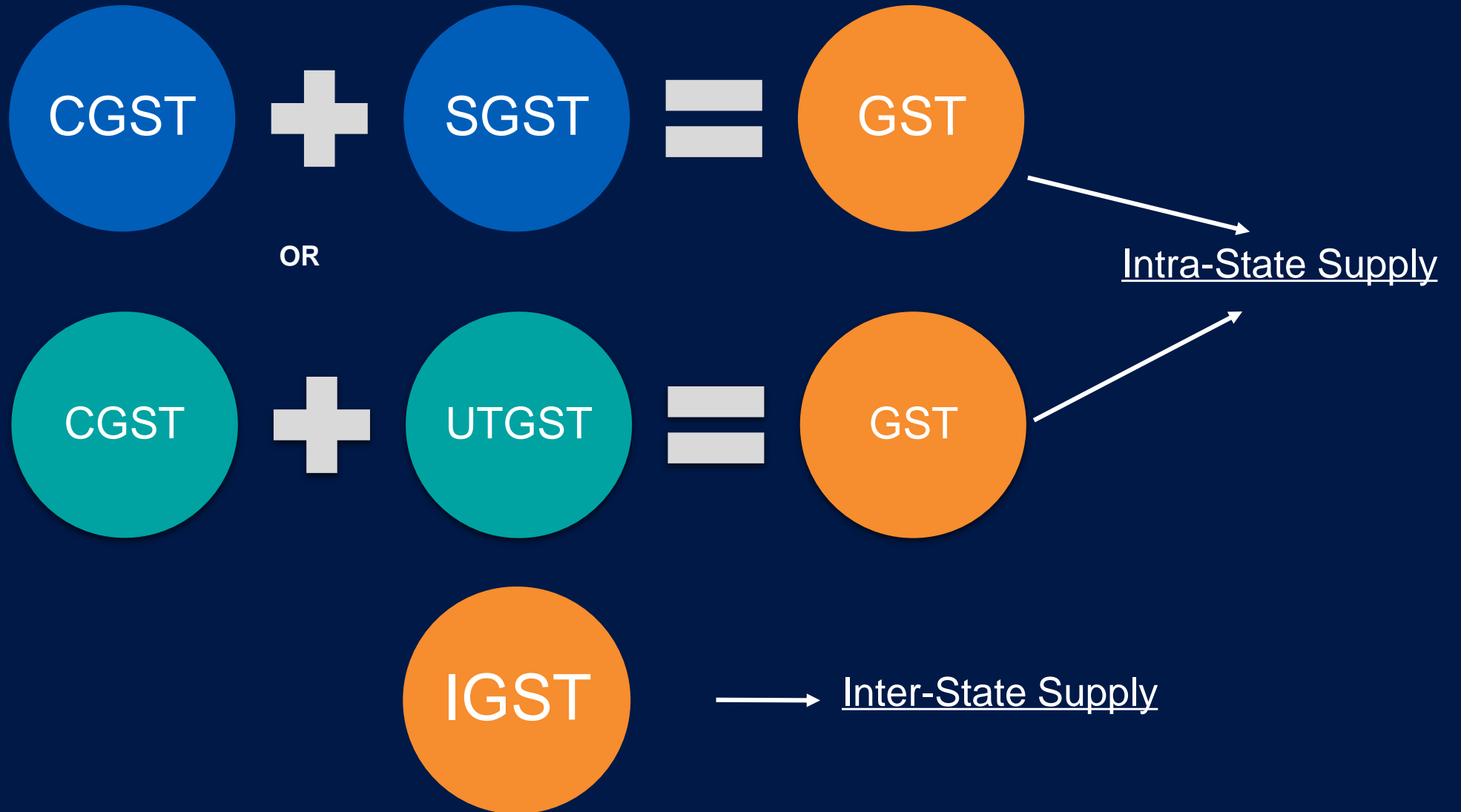
State Levies

- VAT/Sales tax
- Central Sales Tax (CST)
- Entertainment tax (other than levied by local bodies)
- Octroi and Entry tax
- Purchase tax
- Luxury tax
- Taxes on lottery, betting, gambling
- State surcharges, cesses relating to supply of goods and services

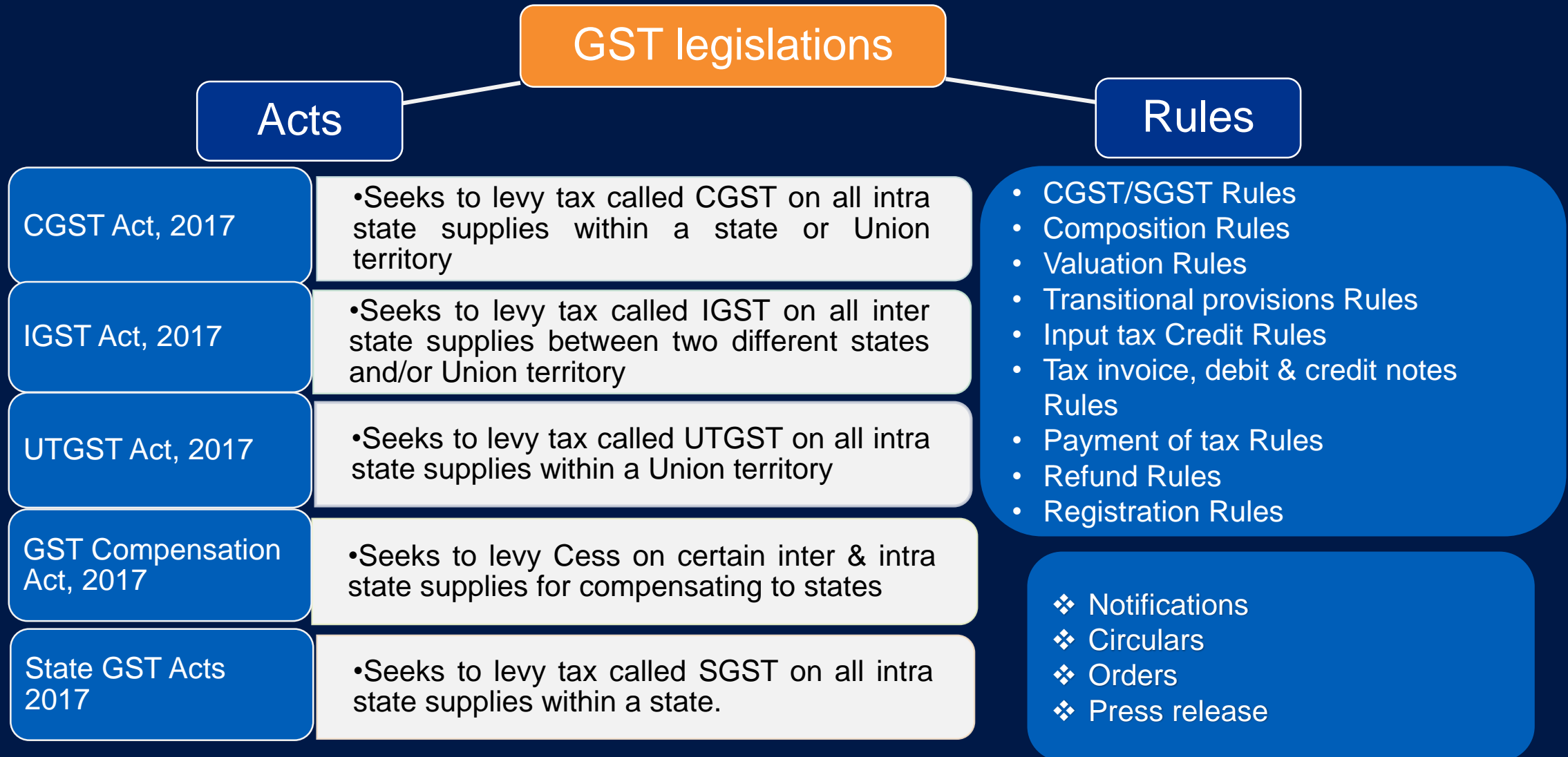
Taxes **NOT** subsumed under GST

- Basic Customs Duty
- Excise Duty / VAT on Petroleum Products
- Excise Duty on Tobacco Products
- Electricity Duty by State
- Entertainment Tax levied by Local Bodies
- State Excise on Alcoholic Beverages
- Tolls , Passenger & Goods Tax on Carriage by Road / Railway
- Property Tax, Stamp Duty and taxes on Immovable Properties
- Royalty on Minerals, Environmental / Regulatory taxes - e.g. Vehicles Tax

Structure of GST



GST legislations





Supply

“Supply”

Supply includes

- all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,
- import of service, for a consideration and whether or not in the course or furtherance of business, and
- The activities specified in Schedule I, made or agreed to be made without a consideration;
- The activities to be treated as supply of goods or supply of services as referred in Schedule II.

Supply - Schedules

Schedule I

What amounts to “use”
with respect to
trademarks in India

Schedule II

Activities to be treated
as supply of goods or
supply of services

Schedule III

Activities or
transactions which
shall be treated neither
as a supply of goods
nor a supply of service

Supply – Schedule I

Supply – Schedule I

- Permanent transfer/disposal of business assets where input tax credit has been availed on such assets.
- Supply of goods and/services between related persons, or between distinct persons as specified in Clause 25, when made in the course 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.

Supply of goods—

- by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or
- by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
- Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Schedule II – Activities to be treated as supply of goods/services (1/4)

Activity	Supply of goods	Supply of services
Transfer	Transfer of title in goods	Any transfer of right in goods or undivided share in goods without the transfer of title thereof
	Any transfer of title in goods under agreement stating that property in goods will pass at a future date upon payment of full consideration	
Land & building		Lease, tenancy, easement, license to occupy land
		Lease or letting out of building including a commercial, industrial or residential complex for business or commerce, either wholly or partly

Schedule II – Activities to be treated as supply of goods/services (2/4)

Activity	Supply of goods	Supply of services
Transfer of business assets	Where goods, being the assets of a business are transferred or disposed of, whether or not for a consideration	Goods held/used for the purposes of the business, if used/ put to any private use or purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods
Construction activity		Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation.
Composite supply		<ul style="list-style-type: none">• Works contract; and• Supply of any service or goods being, food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption).

Schedule II – Activities to be treated as supply of goods/services (3/4)

Activity	Supply of goods	Supply of services
Renting		Renting of immovable property
Declared service		Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.
Supply of goods	Supply of goods by any unincorporated association or body of person to a member thereof, for cash, deferred payment or other valuable consideration.	

Schedule II – Activities to be treated as supply of goods/services (4/4)

Activity	Supply of goods	Supply of services
IPR		Temporary transfer or permitting the use or enjoyment of any intellectual property right
Software		Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software.

Schedule III- Activities which shall be treated neither as supply of goods nor a supply of services.

Services by an employee to the employer in course of his employment

Services by any Court or Tribunal

Functions performed by MPs, MLAs etc.

Services of funeral, burial, including transportation for the same

Sale of land, except construction of complex service, sale of building.

Actionable claims, other than lottery, betting and gambling.

High Sea Sales – Taxable Supply?

CBEC Circular dated 01.08.2017

GST council has deliberated the levy of Integrated Goods and Services Tax on high sea sales in the case of imported goods. The council has decided that IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance



In Bond Sales – Taxable Supply?

(11) "customs area" means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities;

Circular No. 46/2017-Customs, dated 24.11.2017

The transaction of sale / transfer etc. of the warehoused goods between the importer and any other person may be at a price higher than the assessable value of such goods. Such a transaction squarely falls within the definition of “supply” and shall be taxable as an inter-State supply under the IGST Act. The value of such supply shall be determined under the provisions of the CGST Act read with IGST Act.



Merchant Trading – Taxable Supply?

Section 2(5) : "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

Section 2(10) : "import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India



Merchant Trading – Taxable Supply?

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Taxable Supply – In the course of or furtherance of business - Meaning

Right of user – laying of pipelines – whether in the course or furtherance of business? Farmers to Govt.?

Press Release dated 13.07.2017 : Section 9(4) of the said Act mandates that tax on supply of taxable goods (gold) by an unregistered supplier (an individual) to a registered person (the jeweller) will be paid by the registered person (the jeweller in this case) under reverse charge mechanism. This provision, however, has to be read in conjunction with Section 2(105) read with Section 7 of the said Act. Section 2 (105) defines supplier as a person supplying the goods or services. Section 7 provides that a supply is a transaction, for a consideration by a person in the course or furtherance of business. 4. Even though the sale of old gold by an individual is for a consideration, it cannot be said to be in the course or furtherance of his business (as selling old gold jewellery is not the business of the said individual), and hence does not qualify to be a supply per se. Accordingly the sale of old jewellery by an individual to a jeweller will not attract the provisions of section 9(4) and jeweller will not be liable to pay tax under reverse charge mechanism on such purchases. However, if an unregistered supplier of gold ornaments sells it to registered supplier, the tax under RCM will apply

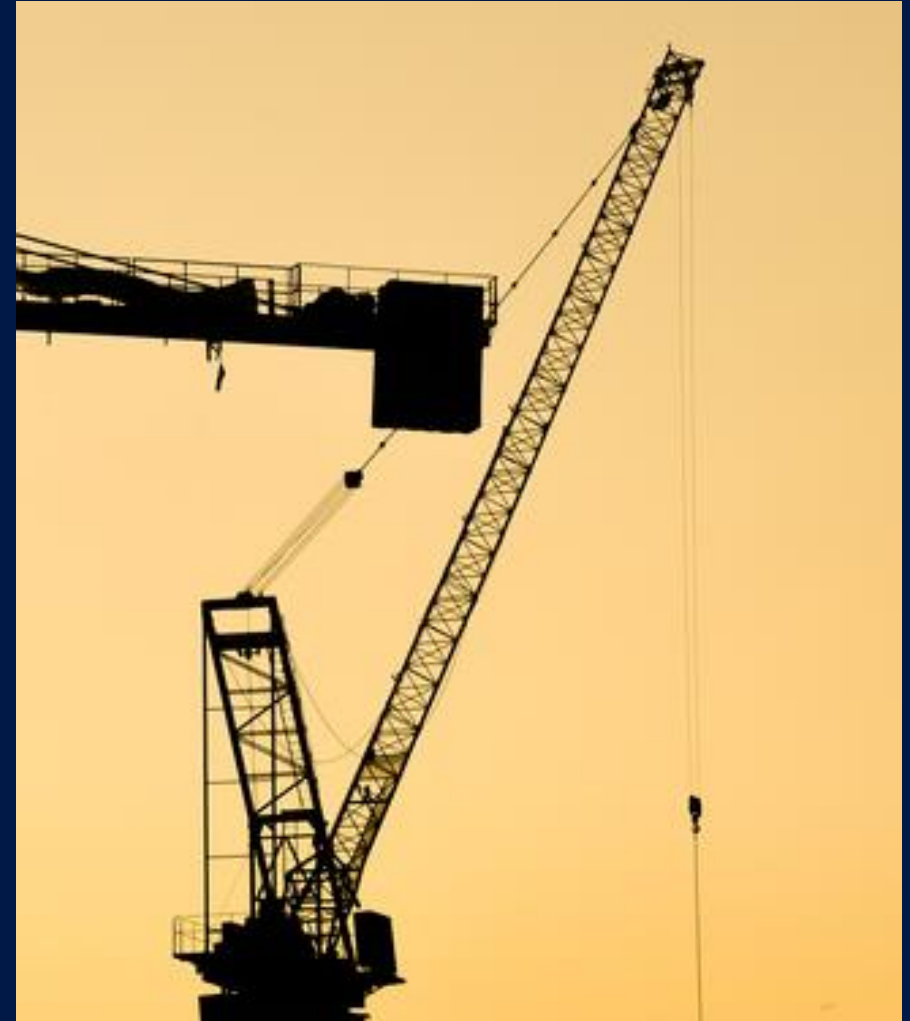
Taxable Supply – Economic benefit relevant?

Transfer of goods for repair

Press Release dated 10.11.2017

(IV) Other changes for simplification and harmonisation or clarification of issues

i. To clarify that inter-state movement of goods like rigs, tools, spares and goods on wheel like cranes, not being in the course of furtherance of supply of such goods, does not constitute a supply. This clarification gives major compliance relief to industry as there are frequent inter-state movement of such kind in the course of providing services to customers or for the purposes of getting such goods repaired or refurbished or for any self-use. Service provided using such goods would in any case attract applicable tax.



Taxable Supply – Economic benefit relevant?

- Temporary import of goods without consideration
- Stock Transfer –
 - ✓ for further sale?
 - ✓ for further use?
- Job Work

Schedule I, Entry 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



Whether the transaction is supply of goods or services?

- **Annual Maintenance Contract of Goods**

- ✓ *Pure labour*

- ✓ *Involves materials*

- **Import of goods on leasing**

- Proviso to Section 5 of IGST Act : Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.*

- ✓ *Customs Duty as goods?*

- ✓ *GST as service?*

Whether the transaction is supply of goods or services?

- IPR eg. Software

Press Release dated 10.11.2017 : In order to obviate dispute and litigation, it is proposed that irrespective of whether permanent transfer of Intellectual Property is a supply of goods or service.- (i) permanent transfer of Intellectual Property other than Information Technology software attracts GST at the rate of 12%; and (ii) permanent transfer of Intellectual Property in respect of Information Technology software attracts GST at the rate of 18%.



Composite & Mixed Supply

Composite Supply

Any supply comprising of two or more taxable supplies which are naturally bundled and are supplied in conjunction with each other, one of which is a principal supply, shall be treated as a supply of such principal supply



Mixed Supply

Any supply comprising of two or more individual supplies made in conjunction with each other for a single price, not being a composite supply. It shall be treated as supply of that particular supply which attracts the highest rate of tax



Composite or Mixed Supply - Scenarios

Case 1

Taxable
Supply



Taxable
Supply



Supply of taxable goods along
with transportation

Principal Supply is that of goods



Tax rate applicable on goods
applicable to whole transaction

Case 2

Exempt
Supply



Taxable
Supply



Supply of exempted goods such as
Food grains along with transportation

Principal Supply is that of exempt
goods



No tax on the whole transaction

Case 3

Taxable
Supply



Taxable
Supply



Supply of car along with refrigerator for
a single price

Composite or Mixed Supply?

Principal Supply?



Supply – International Perspective

Supply- India

- The term 'supply' is wide in its import and includes all forms of supply of goods and / or services such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.
- Includes import of service.
- Includes certain transactions made without consideration also

Supply- UK

- “Supply” includes all forms of supply, but not anything done otherwise than for a consideration; or
- anything which is not a supply of goods but is done for a consideration (including, if so done, the granting, assignment or surrender of any right) is a supply of services.

Taxable Supply - Australia

You make a taxable supply if:

- you make the supply for consideration; and
- the supply is made in the course or furtherance of an enterprise that you carry on; and
- the supply is connected with the indirect tax zone; and
- you are registered, or required to be registered.

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

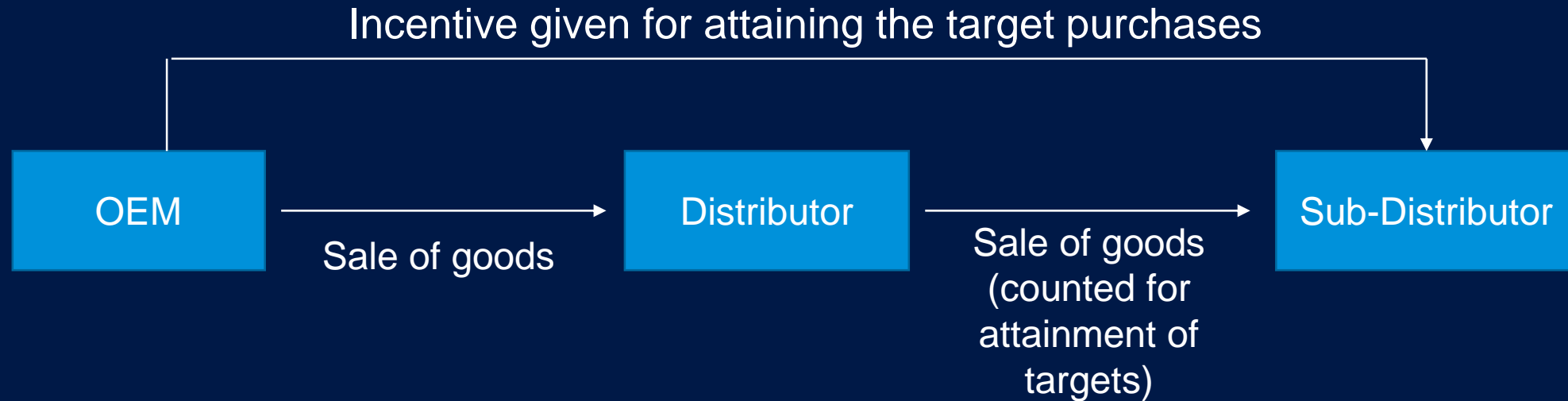
Consideration – A must.

Few Examples – Terms of Settlement

- ABC Co. agrees not to sue its director Mr. X provided the claims filed by other companies (in which Mr. X has controlling power) withdraw the claim against ABC Co.
- Whether “agreeing to forbearance”??
- Australian GSTR 2001/4

107. In most instances, a 'discontinuance' supply will not have a separately ascribed value and will merely be an inherent part of the legal machinery to add finality to a dispute which does not give rise to additional payment in its own right. They are in the nature of a term or condition of the settlement, rather than being the subject of the settlement.

Few Examples – Incentive Scheme



Whether any supply made by Sub-distributor to OEM?

Australian Ruling GSTR 2014/01

the payments by the manufacturer were not consideration for the supply of anything to the manufacturer. The mere acceptance of an obligation or making of the promises cannot be seen to have a nexus with the payment of the incentives. In case the incentive payment was not available then there was no basis to infer that the appellant would not have behaved in the same way for free

Group Registration-UK

- VAT grouping is a facilitation measure by which 2 or more bodies corporate can be treated as a single taxable person for VAT purposes. 'Bodies corporate' includes companies of all types and limited liability partnerships.
- Bodies corporate can form a VAT group if:
 - each has an establishment in the UK
 - they are under common control
 - they satisfy the conditions set out in section 3



**NOT PRESENT
IN THE INDIAN
LAW**

Interactive Session...

Thank You