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# **VIRTUAL COACHING CLASSES ORGANISED BY BOS, ICAI**

## **INTERMEDIATE LEVEL PAPER 4B: INDIRECT TAXES**

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**Pre-GST Tax Structure  
(Indirect Taxes)**

**Excise Duty**

**Entry no. 84  
List I of  
VII Schedule**

**Taxable event is  
Manufacture of  
goods**

**Customs Duty**

**Entry no. 83  
List I of  
VII Schedule**

**Taxable event is  
Import & Export  
of Goods**

**Service Tax**

**Entry no. 97  
(Residuary Power)  
List I of VII  
Schedule**

**Taxable event is  
rendering of  
Service**

**Sales Tax/VAT**

**Entry no. 54  
List II (For VAT) &  
Entry no. 92A  
List I (For CST)**

**Taxable event is  
Transfer of  
ownership of  
goods**



# Meaning and Scope of Supply - Section 7

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(1) Supply includes

(a) 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;

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

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

**(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.



# Meaning and Scope of Supply - Section 7

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**(2)** Notwithstanding anything contained in sub-section (1), -

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

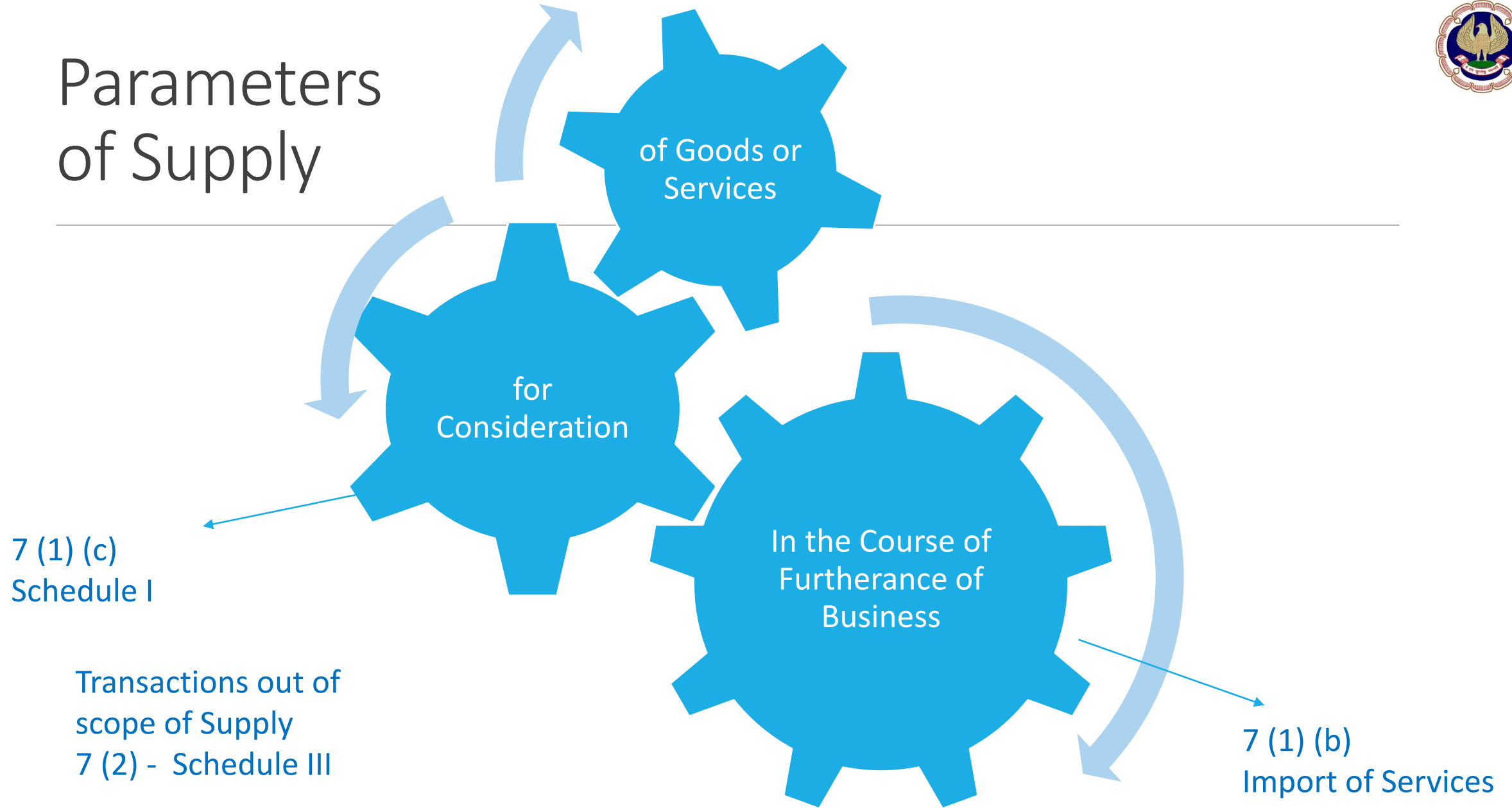
**(3)** Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as -

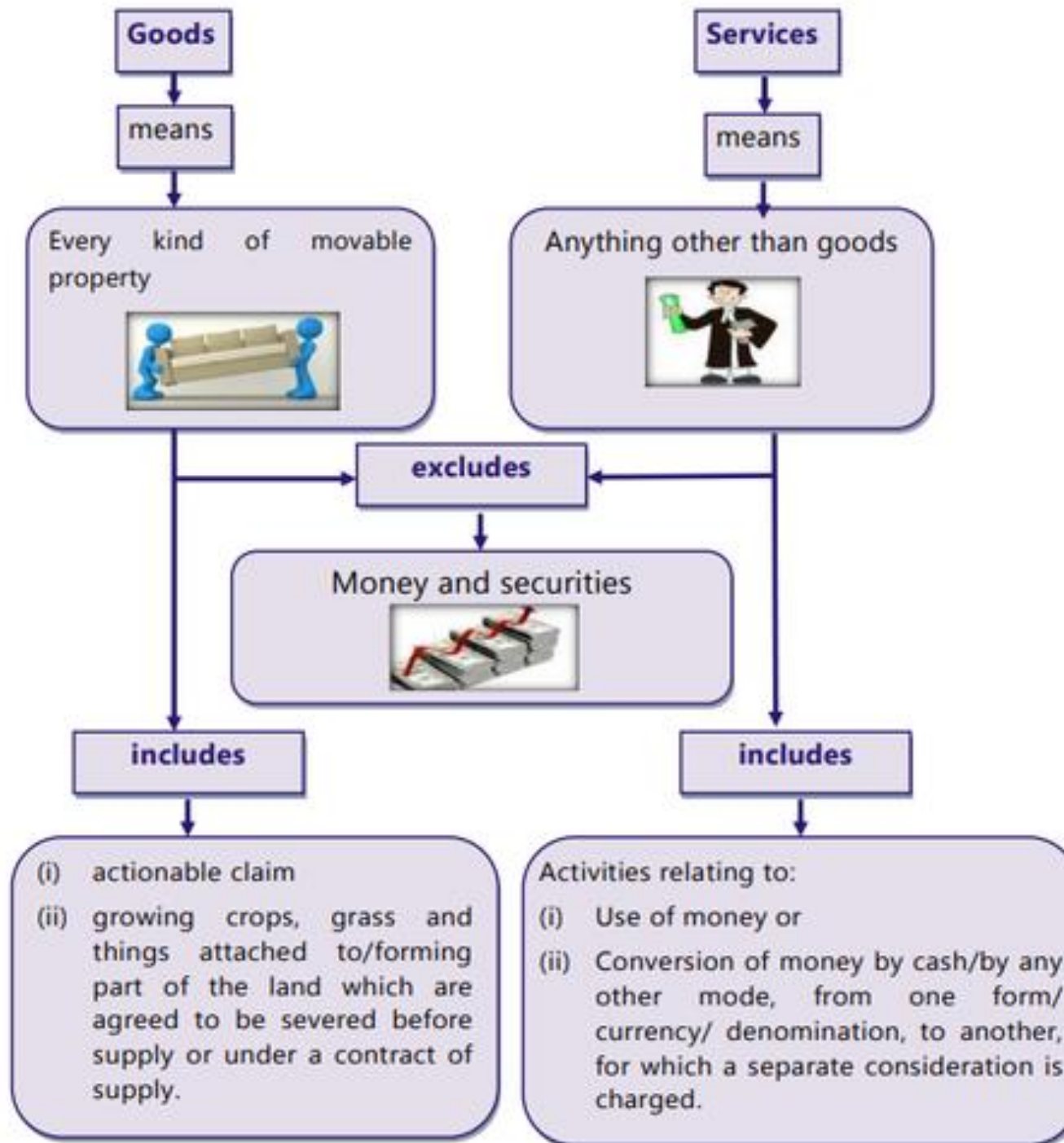
(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.



# Parameters of Supply







# Supply – 8 Terms

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**Sale and Transfer**: Transfer of ownership of and title to property from one person to another for a price.

It is a contract where the seller transfers or agrees to transfer the property in goods to the buyer for a price - Sale of Goods Act, 1930.

E.g. - Sale of laptops by a dealer to customer

**Transfer** - To convey or remove from one place to another (no mention of consideration)

E.g. - Transfer from warehouse to showroom.

**Barter and Exchange**: Barter is to exchange goods or services for other goods or services instead of using money. E.g. - CA consultancy Services for Medical Services by Doctor.

**Exchange** is an act of giving or taking one thing for another. New vehicle sold for Old + 20,000



# Supply

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**License**: Permission granted by Competent Authority to engage in a business or occupation or in an activity which is otherwise unlawful. Permission to enter & use the property is allowed.

**Disposal**: Sale, pledge, giving away, use, consumption or any disposition of a thing. Disposal is sale or transfer but property does not possess merchantable warranty.

**Rental**: Arrangement to rent something.

**Lease**: To make a legal agreement by which money is paid in order to use land, a building, a vehicle, or a piece of equipment for an agreed period of time.

Lease is where possession is transferred along with right to use property.

License is similar to lease except that possession is not transferred.

As per classification in Schedule – II, license, lease and rental of goods with or without transfer of right to use are covered under supply of service.





# Supply – Examples

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- Mr. A buys a table for Rs.10,000 for his personal use and sells it off after 10 months of use to a dealer. This is not considered as supply under CGST as this is not done by Mr A for the furtherance of business
- Mrs. B provides free coaching to neighboring students as a hobby. This is not considered as supply as this act is not performed for a consideration.
- When a new Mobile worth Rs 10,000 is purchased in exchange of an old Mobile along with the monetary consideration of Rs 2,000 paid for the said purchase. This is an example of exchange.
- Where a laptop is supplied for Rs 30,000 along with a barter of printer that is manufactured by the recipient is an example of Barter.
- Katrina kaif used a services of make-up artist from USA, RCM is payable on such service.



# Consideration

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- I. Consideration means payment, now this payment does not mean money only.
- II. Consideration can also be non - monetary, i.e. either money or in kind. i.e monetary value of any act or forbearance.
- III. Consideration need not always flow from recipient, it can be made by a third party.
- IV. However, subsidy given by Central Government or State Government is not considered as Supply.
- V. Subsidy given by Melinda gates foundation?
- VI. A deposit given in respect of supply of goods or services shall not be considered as payment, unless the supplier applies such deposit as consideration for the said supply.
- VII. Consideration has to be quid pro quo i.e. something in return or something for something.

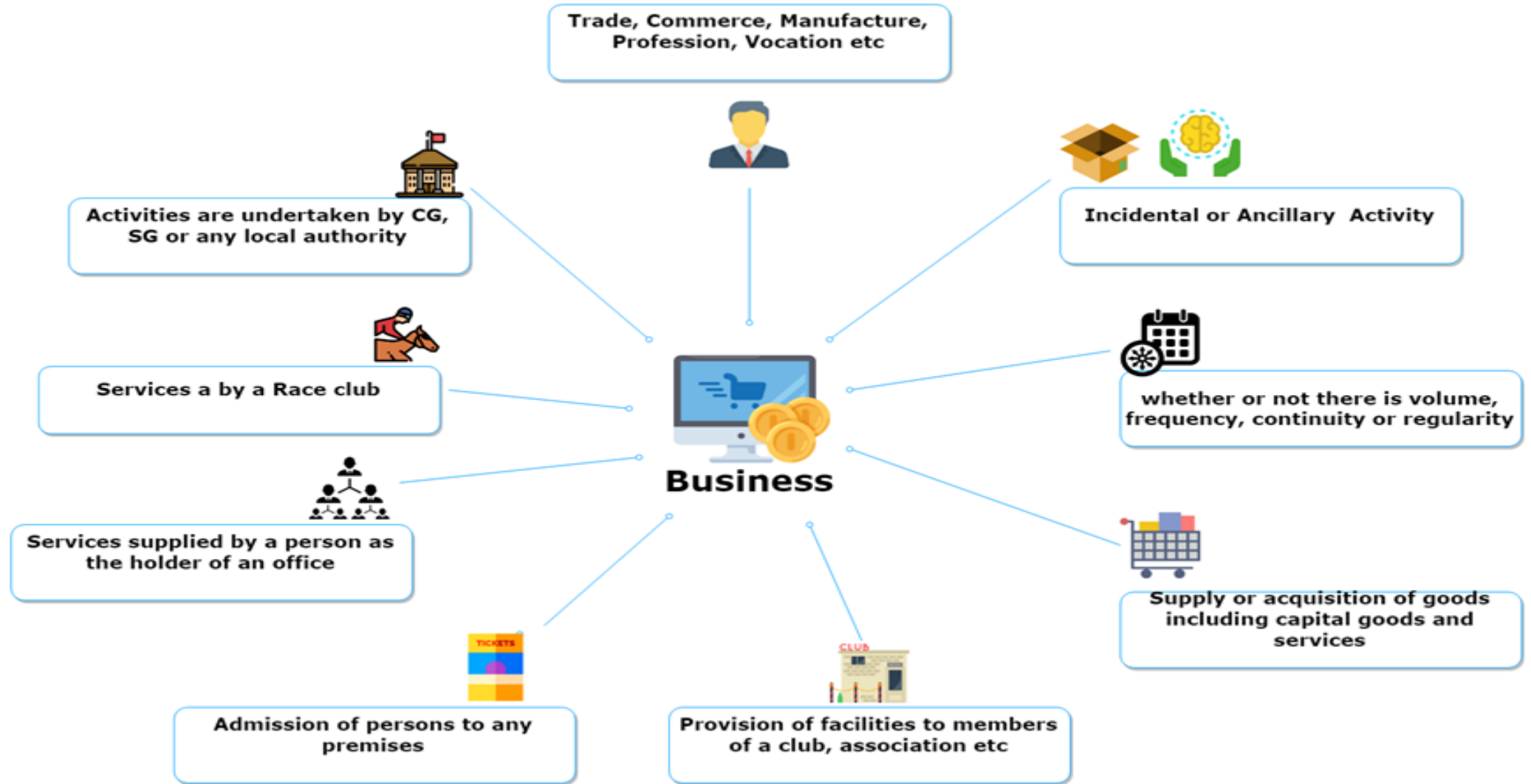


# Consideration... clarifications...

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- I. Donations ?? Generally they are one sided, the receiving entity does not give back any thing.
- II. However if there exists a quid pro quo, i.e. an obligation on the part of the recipient of donation to do something., then it is a supply.
- III. However, if name of the donor is displayed as an expression of gratitude and public recognition of donors philanthropy and is not aimed at giving publicity to the donor, then there is no supply of service for a consideration.
- IV. Art Works exhibited at Galleries or exhibition, nothing is received by the artist for display, so there is no supply.
- V. Only when someone buys then the actual supply takes place and applicable GST is payable.

# Definition of Business under GST- Overview





# Business – some clarifications

Ramesh sold a Car which he was using for his personal purpose



Not a Supply, since it is not made in the course or furtherance of Business

Mahima sold her old gold ornaments to Tanishq Jewellers



Not a Supply, since it is not made in the course or furtherance of Business

SRK, paints some paintings and sells them however the consideration is donated to a charity



Sale of painting qualifies as supply. Since Business includes vocation.

Recovery of food expenses from Employees



Supply, In the course or furtherance of Business



# 7(1)(c) - Schedule I

## Activities without consideration

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- I. Permanent transfer or Disposal of Assets
  - A. Disposal or Transfer of Business Assets
  - B. Transfer / Disposal must be permanent
  - C. ITC must have been availed on such business assets (Blocked or not availed)
- II. Supply between related person or distinct person
  - A. It should be made in the course or furtherance of business
- III. Principal – Agent
  - A. Only Supply of Goods and not supply of Services
- IV. Importation of Services
  - A. Importation from related person or establishments located outside India

# Related Persons





## II. Supply b/w related or distinct persons

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### Distinct persons:

Registration basic understanding

Distinct persons: The establishments of a person with separate registration whether within the same State/UT or in different State/UT are considered as **distinct person**.

Where a person having a registered establishment in a state/UT has another establishment in another state /UT (whether registered or not) are treated as **establishment of distinct persons**.

Stock transfers between distinct persons qualify as supply. But Stock transfers within the same state will not be considered as supply.

### Supply of Goods or Services between employer and employee – Schedule III exception

Proviso: Gifts by Employer to Employee upto Rs 50,000 in a financial year.





# III. Principal - Agent

Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply & vice versa

- A. Only Supply of Goods and not supply of Services
- B. Deciding factor – Whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not - **Circular No 57/31/2018 GST**

<b>Invoice for the further supply is being issued by the agent in his name</b>	<b>Fall under Para 3 - Supply</b>
<b>Invoice is issued by the agent to the customer in the name of the principal</b>	<b>Does not fall under Para 3 - Not a Supply</b>
<b>Goods procured by the Agent on behalf of the principal are invoiced in the name of the agent</b>	<b>Fall under Para 3 - Supply</b>



# III. Principal – Agent – Del-credere agent DCA

DCA guarantees payment to the supplier.

DCA will pay the principal if the buyer defaults on due date. **Circular No 73/47/2018 GST**

<b>Whether DCA will fall under Para 3 of Schedule I ?</b>	<b>Decide based on discussion in Circular No 57/31/2018 GST</b>
<b>Whether interest charged by DCA for short term loan is to be included in the value of supply by the Principal, when DCA is not an agent under Para 3?</b>	<b>No.</b> <b>1. Supply of Goods by Principal to Recipient</b> <b>2. Agency Service by DCA to Seller or Buyer</b> <b>3. Loan Service by DCA to buyer (recipient)</b>
<b>When DCA is an agent under Para 3 and makes payment on behalf of buyer and charges interest to buyer, will supply value has to be increased?</b>	<b>Yes.</b> <b>1. Supply of Goods by Principal to DCA</b> <b>2. Supply of Goods by DCA to buyer</b> <b>3. Agency Service by DCA to Seller or Buyer</b> <b>4. Loan Service by DCA to buyer (recipient)</b>



# IV. Importation of Services

Import of Services without consideration by a person from a **related person or from his establishment located outside India** in the course of furtherance of Business

However in Section 7(1)(b) we have seen that import of services whether or not in the course of Business is covered under supply, BUT, there has to be a consideration in such situation.

Importation of Services	Consideration present	In the course or furtherance of Business	Taxable
Importation of Services	Consideration present	<u>NOT</u> In the course or furtherance of Business	Taxable - 7(1)(b)
Importation of Services	Consideration Not present	In the course or furtherance of Business	Taxable - Sch I - If from related or his establishment located outside India
Importation of Services	Consideration Not present	<u>NOT</u> In the course or furtherance of Business	Not Taxable



# Supplies without Consideration

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Schedule I - where even if no consideration, it would be considered as Supply.

Sales Promotion Schemes – are all not liable to GST?

Free Samples – Do not qualify as ‘Supply’, however Input needs to be reversed.

Buy One get one schemes – would be treated as Composite Supply or Mixed Supply.



# Section 7(1A) Classification – Schedule II

GST is one tax for all but the rate for Goods and Services is different, hence it becomes important to categorize the supply as Goods or Service.

Eg: Rate on Job work of a product if Service, rate is 18%, but rate on Steel as goods is 12%.

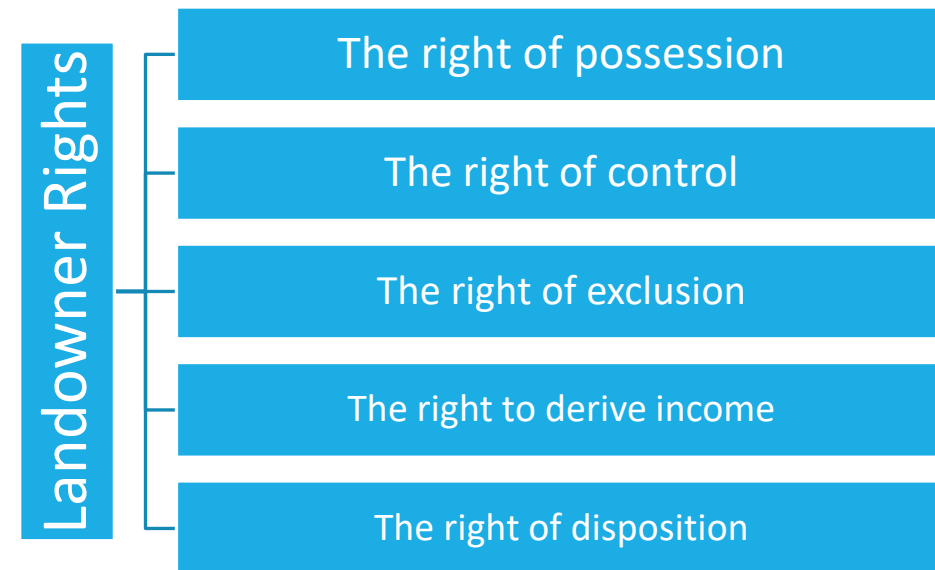
Restaurant used to charge VAT & Service tax under earlier regime.

## Schedule II

### Taxability of Tenancy Rights under GST (Pagadi)

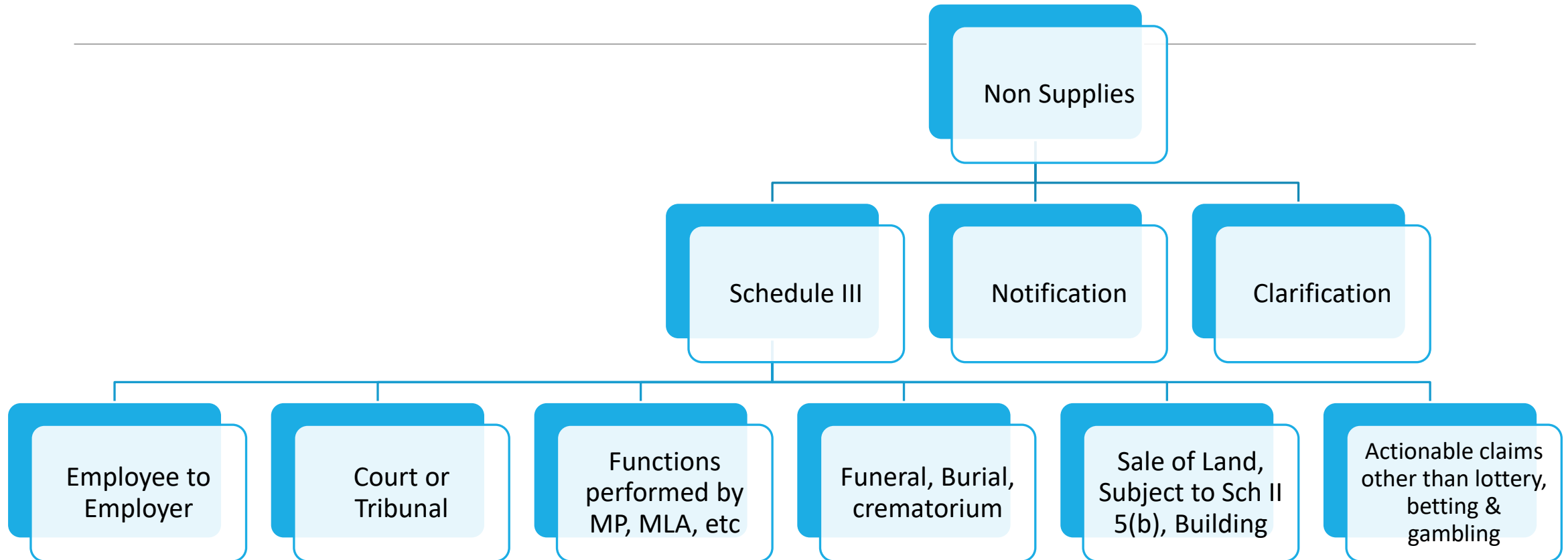
Activity of transfer of tenancy right against consideration is supply of service in GST.

However Grant of tenancy right in residential dwelling is exempt, but surrendering the Tenancy right for consideration is liable to GST.



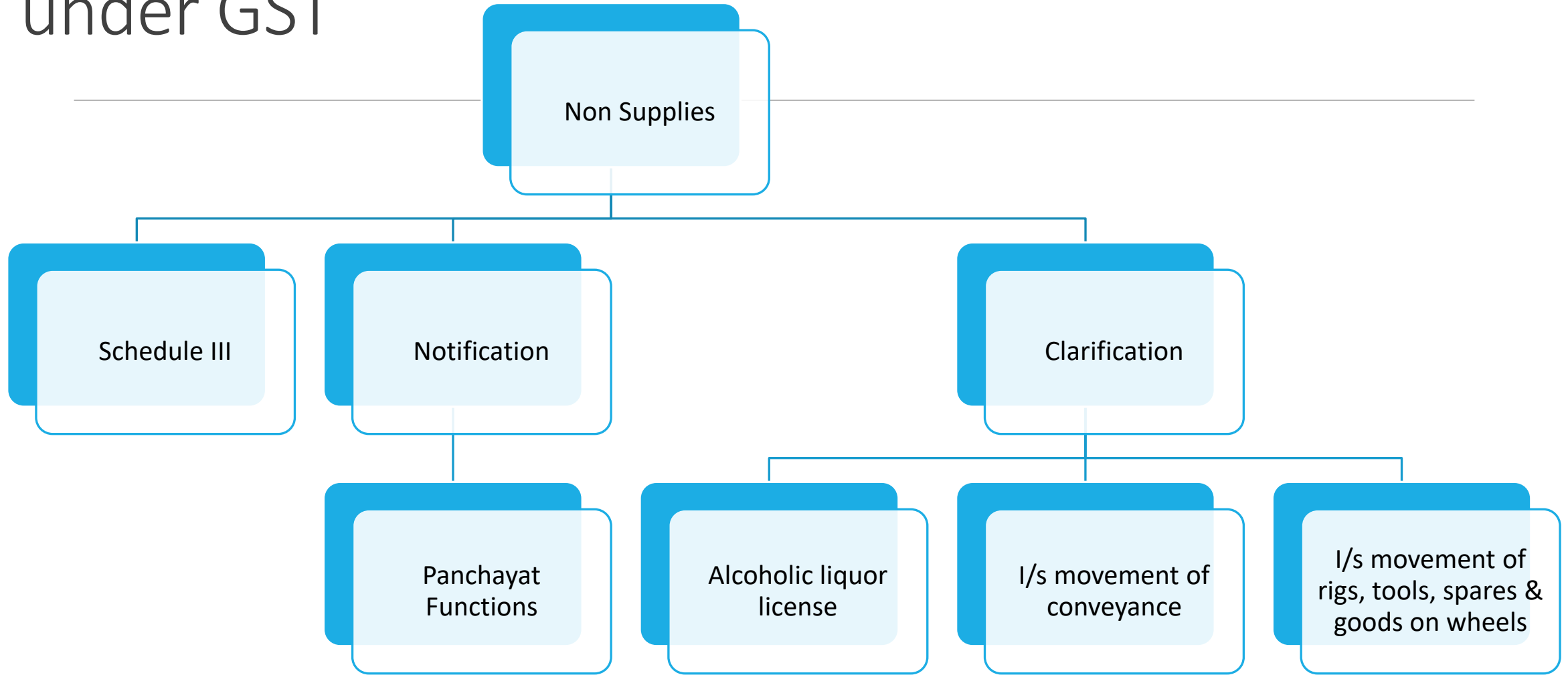


# Non Supplies under GST





# Non Supplies under GST





# Composite & Mixed Supply (Section 8)

2(30) - Composite Supply means a supply made by a taxable person to a recipient and

comprises two or more taxable supplies of goods or services or both, or any combination thereof

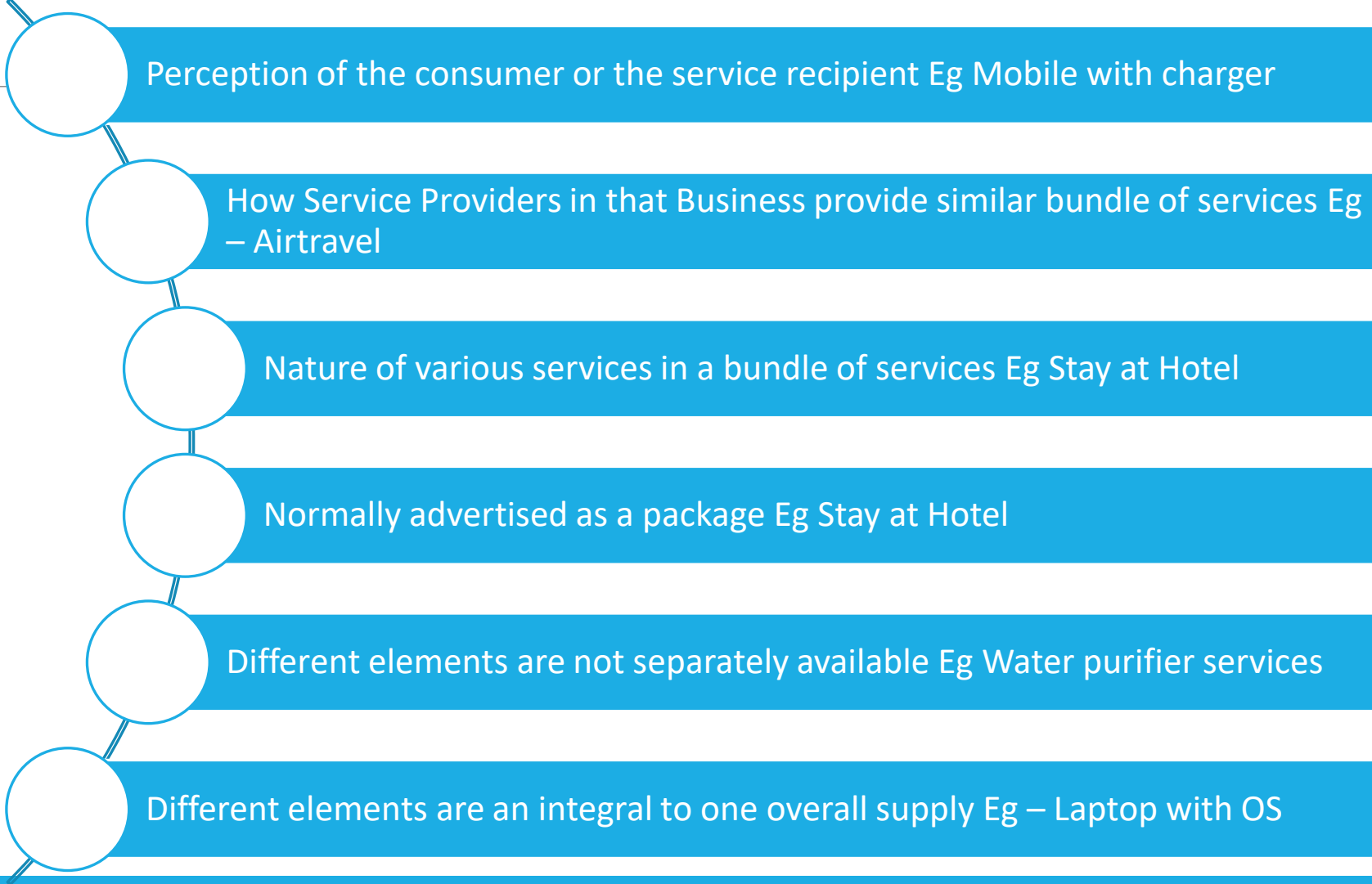
are naturally bundled and supplied in conjunction with each other, in the ordinary course of business

One of which is a principal supply





# Basis for determining if services are bundled in the ordinary course of business





- Printing of Books, pamphlets, etc where only content is supplied by the publisher or owner of the publishing rights – Supply of Printing is the principal supply

## Supply of Service



- Printed envelopes, letter cars, napkins etc using logo, design of the recipient – Predominant supply of goods, printing is ancillary

## Supply of Goods



- Bus Body Building

## Goods or Service



- Retreading of tyres
- However if old tyres are provided by the retreating Company or supplier of retreated tyres – Supply of Goods

## Supply of Service





# Composite & Mixed Supply (Section 8)

2(74) – Two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person

For a single price where such supply does not constitute a composite supply

Transactions consists of supplies not naturally bundled in the ordinary course of business

Taxed at the highest rate in the various supplies



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**THANK YOU**