

## Latest provisions of GST for Import and export of Goods/Services

There are major changes in the revised draft of Model GST law meaning of import and export of Goods

Meaning of import and export of Goods:

Section 2(5) of IGST Act defines the export of Goods as

***"Export of goods"*** with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

Section 2(10) of IGST Act defines the term import of Goods as:

***"Import of goods"*** with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India

1) Meaning of import and export of Services:

***Export of services:*** Section 2(6) defines the term as "export of services" means the supply of any service when

- (a) the supplier of service is located in India,
- (b) the recipient of service is located outside India,
- (c) the place of supply of service is outside India,
- (d) the payment for such service has been received by the supplier of service in convertible foreign exchange, and
- (e) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 5;

**Import of services:** Section 2(11) of IGST Act defines the term import of services as "import of service" means the supply of any service, where

- the supplier of service is located outside India,
- the recipient of service is located in India, and
- the place of supply of service is in India;

Analysis: Import and export in case of goods is simply bringing goods into India or taking goods out of India. But in case of services we are required to take care of three things:

- First is the location of supplier
- Second is location of recipient
- And third is place of supply

In simple equation we can say that

Transaction	Location of supplier	of	Location of recipient	of	Place of supply
Import services	of Outside India		In India		In India
Export services	of In India		Outside India		Outside India

Here we need to determine the place of supply to determine the nature of supply of services.

## **2) Section 3 of IGST Act: Import is added to Supplies of goods and/or services in the course of inter-State trade or commerce**

Section three and four of Chapter II of IGST Act has been modified. Provisions for nature of supply of goods and/or services in course of import are also covered in section 3. Relevant portion of section 3 of IGST Act is reproduced here.

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

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

*(5) Supply of goods and/or services, when the supplier is located in India and the place of supply is outside India, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.*



(6) Supply of goods and/ or services to or by a SEZ developer or an SEZ unit, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

(7) Any supply of goods and/or services in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

### **Analysis:**

- Supplies in course of import into the territory of India till they cross the customs frontiers of India shall be treated a supply in course of inter-state trade or commerce.
- Likewise the supply in course of exports shall also be trated as inter state supply of goods and /or services.
- Supplies made to the SEZ developer or SEZ units are also included in the definition. Supply made to an SEZ developer or unit will be treated as inter-state supply even if it is within a state.
- Supplies made by the SEZ developer or SEZ units will also be treated in course of inter-state trade or commerce.
- It is also important to note that proviso in section 4 is inserted. It that intra state supplies will never include the supply to/by SEZ and supply of goods in course of imports.

### **Place of supply in case of Goods imported into India or exported out of India.**

Section 8 of IGST Act provide for the place of supply for goods imported into India or exported out of India.

- a) The place of supply for Goods **imported** shall be the **Location of Importer.**
- b) The place of supply for goods **exported** out of India shall be the **location outside India.**

### **Place of supply in case of services imported into India or exported out of India.**

Section 10 of IGST Act provide for place of supply in case of import or export of services. Clause 1 of the section provide that in case the

location of supplier or recipient is out of India then place of supply will be determined as per the provisions of this section.

Clause 2 covers general cases which are not covered by the specific cases provided in clause 3 to clause 13. In these cases the place of supply will be location of recipient of services.

**For cases not covered by specific cases given in clause 3 to clause 13**

Condition	Place of supply
Location of recipient is available	Location of recipient
Location of recipient is not available	Location of supplier

Services covered by clause 3-13 of section 10 of IGST are summarised here in the following table.

Services in relation to	Nature of Services	Place of supply
Goods physically available	services supplied in respect of goods that are required to be made physically available by the recipient of service to the supplier of service, or to a person acting on behalf of the supplier of service in order to provide the service (Clause 3a)	Where the services are actually performed
Remote location	When services are provided by any electronic means from a remote location (Clause 3a)	Location of goods at the time of supply
Goods imported for repairs	The provisions mentioned above will not be applicable on Goods imported for repairs (Proviso)	
Individual	Services provided to an individual or his representative which requires the physical presence of receiver or his representative (Clause 3b)	Where the services are actually performed
Immovable property	The place of supply of services supplied directly in relation to an immovable property including: <ul style="list-style-type: none"> <li>• services supplied in this regard by experts and estate agents</li> <li>• supply of hotel accommodation by a hotel, inn, guest house, club or campsite</li> </ul>	Place where the immovable property is located or intended to be located



	<ul style="list-style-type: none"> <li>grant of rights to use immovable property</li> <li>services for carrying out or co-ordination of construction work including architects or interior decorators</li> </ul> <p>(Clause 4)</p>	
Admission to or organisation of an event	<p>Services in relation to</p> <ol style="list-style-type: none"> <li>Admission to an event</li> <li>Organisation of an event</li> <li>Services ancillary to such admission into an event</li> </ol> <p>(Clause 5)</p>	Place where the event is actually held
Supply at multiple location including taxable territory	<p>Where any service referred to in sub-sections (3), (4), or (5) is supplied at more than one location, including a location in the taxable territory. This will be the case of import of services at various locations including some locations in India also.</p> <p>(Clause 6)</p>	location in the taxable territory where the greatest proportion of the service is provided
Supply in different states	<p>Where the supply in any of above cases (sub clause (3),(4),(5) or (6) are supplied in more than one state</p> <p>(Clause 7)</p>	If proportion is available in contract then it will be applicable. If the contract is not available or don't provide the proportion of services than any other reasonable basis.
Banking and financial services	<p>Following services will be covered under this part of section:</p> <ol style="list-style-type: none"> <li>services supplied by a banking company, or a financial institution, or non-banking financial company, to account holders;</li> <li>intermediary services</li> <li>services consisting of hiring of means of transport other than aircrafts and vessels except yachts, up to a period of one month</li> </ol> <p>Explanation.- For the purpose of this section, the expression "goods" shall include 'securities' as defined in sub-section (90) of section 2 of the CGST Act, 2016</p> <p>(Clause 8)</p>	Location of supplier of services

Transportation of Goods	services of transportation of goods, other than by way of mail or courier (Clause 9)	place of destination of the goods
Transportation of passenger	passenger transportation service (Clause 10)	place where the passenger embarks on the conveyance for a continuous journey
Services on board a conveyance	services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board  (Clause 11)	first scheduled point of departure of that conveyance for the journey
online information and database access or retrieval services	online information and database access or retrieval services" services.  For the purposes of this sub-section, 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:- (i) the location of address presented by the recipient of service via internet is in taxable territory; (ii) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of service settles payment has been issued in the taxable territory; (iii) the billing address of recipient of service is in the taxable territory; (iv) the internet protocol address of the device used by the recipient of service is in the taxable territory; (v) the bank of recipient of service in which the account used for payment is maintained is in the taxable territory; (vi) the country code of the subscriber identity module (SIM) card used by the recipient of service is of taxable territory; (vii) the location of the fixed land line through which the service is received by the recipient is in taxable territory.	location of recipient of service
These are the new provisions inserted into		

the IGST law to cover the transaction via internet from outside India. There were so many transactions which were hard to trace due to use of internet. But now the criteria is mentioned to trace the location of recipient and the place of supply. Also in CGST/SGST Act the companies providing these services will have to take registration without any threshold limit.(if supply to unregistered user)	
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These were the basic provisions covering the determination of place of supply in case of import or export of services. This will provide more clarity over the nature of international transactions. Covering the online transactions will also ease the trace of so many services provided online.