

SMART NOTES

GST

[Part -2]
2021 EXAMS



CA SACHIN GUPTA

CHAPTER - 5

TIME OF SUPPLY

Sec 12 : Time of supply of goods

Sec 12(1) : When GST liability arises on Goods : As per TOS u/s 12

Sec 12(2) : TOS Forward charge

Earlier of :

- (a) **Date of issue of invoice** by supplier or
- (b) **Last date to issue invoice** u/s 31 or
- (c) ~~Date on which the supplier receives the payment with respect to the supply:~~

NN. 66/2017: Date of receipt is not applicable excluding composition suppliers

Last date of issue of Invoice

Section	Case	Last date for issue of invoice
Sec 31(1)	Single supply	<u>Supply involves movement</u> Upto Date of removal of goods <u>Other case</u> Upto Date of delivery of goods or making available to recipient,
Sec 31(4)	Continuous supply	<u>Successive statements or successive payments are involved</u> Upto Date of Issue of each statement or each payment is received
Sec 31(7)	Goods sent on approval basis	Upto Time of supply or 6 months from date of removal, whichever is earlier.

Sec 12(3) : TOS Reverse charge

Earliest of:

- (a) Date of receipt of goods or**
- (b) Date of payment** debited in BOA or bank account of receiver, earlier or
- (c) Date of issue of invoice +30 days + 1 day**

Not possible to determine TOS under (a)(b)(c), TOS = Date of entry in BOA of recipient of supply.

Sec 12(4) : TOS Supply of vouchers

- (a) Date of issue of voucher :** Supply is identifiable at that point or
- (b) Date of redemption of voucher :** Other cases.

Sec 12(5) : TOS Residual case

Not possible to determine TOS under 12(2) or 12(3) 12(4),

TOS =

- (a) Periodical return has to be filed :** Due Date of such return
- (b) Other case :** Date of pymt of Tax

Sec 12(6) : TOS Late fees, interest/penalty for late pymt

- TOS = Date on receipt of such fees/interst.penalty

Sec 13 : Time of supply of services

Sec 13(1) : GST liability arises on Services : As per TOS u/s 13

Sec 13(2) : TOS Forward charge

(a) Invoice issued within period prescribed u/s 31

Date of issue of invoice or date of receipt of payment, earlier

(b) Invoice not issued within period prescribed u/s 31

Date of provision of service or Date of receipt of payment, earlier

(c) Provisions of clause (a) or clause (b) do not apply

Date on which recipient shows receipt of services in BOA

Special point :

If supplier receives upto ₹1,000 in excess of amount indicated in tax invoice,

TOS of such excess amount = at option of supplier = Date of issue of invoice of such excess amount.

For clauses (a) and (b) :

(i) Supply deemed to be made to extent covered by invoice or payment

(ii) Date of receipt of payment = Date of entry in BOA or date of credited to bank account, earlier.

Special point :

Last date of issue of Invoice

Section	Case	Last date for issue of invoice
Sec 31(2)	Single supply	Prescribed period : Rule 47 Within 30 days from date of supply of service 45 days for following services <ul style="list-style-type: none"> • Insurance • Banking company • financial institution • NBFC
Sec 31(5)	Continuous supply	(a) Due date of pymt ascertainable from contract, Upto due date of payment; (b) Due date of payment not ascertainable from contract, Upto Date of receipt of payment; (c) Payment is linked to completion of an event Upto date of completion of event.
Sec 31 (6)	Supply ceases before completion	If supply ceases before completion of supply, Upto time the supply ceases & invoice shall be issued to extent of supply before cessation.

Sec 13(3) : TOS Reverse charge

Earlier of

- (a) **Date of payment** as entered in BOA or debited from bank account of receiver, earlier or
- (b) Date of issue of invoice + 60 Days + 1 day

Not possible to determine TOS under clause (a)(b), TOS = Date of entry in BOA of recipient

Supply by associated enterprises, supplier of service is located outside India

TOS = Date of entry in BOA of recipient or date of payment, earlier.

Sec 13(4): TOS Vouchers

- (a) Date of issue of voucher : Supply is identifiable at that point
- (b) Date of redemption of voucher : Other cases.

Sec 13(5) : TOS Residual case

Not possible to determine TOS u/s 13(2) or 13(3) or 13(4), TOS =

- (a) **Periodical return has to be filed** : Due date of such return
- (b) **Other case** : Date of pymt of Tax

Sec 13(6) : TOS Late fees, interest/penalty for late pymt

- TOS = Date on receipt of such fees/interest .penalty

Sec 14 : TOS in case of Change in rate of tax

Date of receipt is not applicable for registered suppliers of goods (excluding composition suppliers) Notification No. 66/2017

Therefore, for Change in rate of tax for supply of goods, Sec 14 will not apply and TOS/Rate of GST will be determined as per sec 12 only

Overriding Sec 12 or Sec 13, TOS of goods or services, shall be determined in following manner

(a) Goods/services supplied before change in rate**(i) Both Invoice issued & payment after change in rate**

TOS = Date of receipt of payment or date of issue of invoice, earlier

(ii) Invoice prior to change but payment received after change

TOS = Date of issue of invoice

(iii) Payment received before change but invoice issued after change

TOS = Date of receipt of payment

(b) Goods/Services supplied after change in rate**(i) Payment received after change but invoice issued prior to change**

TOS = Date of receipt of payment

(ii) Both Invoice issued & payment received before change

TOS = Date of receipt of payment or date of issue of invoice, earlier

(iii) Invoice issued after change but payment received before change

TOS = Date of issue of invoice

Date of receipt of payment =

Date of entry in BOA or date of credited to bank account, earlier

If credit in bank account is after 4 working days from date of change in rate

Date of receipt of payment = Date of credit in bank account

CHAPTER - 6 **VALUE OF SUPPLY**

Sec 15 : Value of Taxable supply (VOS)

(1) **Transaction value** = Price actually paid or payable

- If supplier & recipient are not related
and
- Price is sole consideration

(2) INCLUSIONS

(a) Any tax/duty/cess/fee/charge levied under non GST Law . if charged separately by supplier;

*TCS u/d Income Tax Act not includible bcas its interim levy not having character of tax.
Circular No. 76/50/2018 GST*

(b) Amount supplier is liable to pay + incurred by recipient + not included in price

(c) Amount charged by supplier =

Incidental expenses + commission + packing + other amount for anything done by supplier upto delivery of good/supply of services;

(d) Interest or late fee or penalty for delayed payment of consideration

(e) Subsidies directly linked to price excluding CG & SG subsidies

(3) EXCLUSION OF DISCOUNT

(a) **PRE SUPPLY DISCOUNT** : If discount recorded in invoice

(b) **POST SUPPLY DISCOUNT** : If

- (i) Discount as per agreement entered before/during supply & specifically linked to relevant invoices
- (ii) ITC attributable to discount reversed by recipient

(4) **TV NOT POSSIBLE** : VOS cannot be determined u/s 14(I), then determined in prescribed manner.

(5) **VOS IN CERTAIN CASES** : Overriding 15 (1) or 15(4),

VOS in certain cases = Determined in prescribed manner + notified by Government + recommendations of Council

Explanation : For purposes of this Act,

(a) persons deemed to be “related persons” if—

- (i) such persons are officers or directors of one another’s businesses;
- (ii) such persons are legally recognised partners in business;
- (iii) such persons are employer & employee;
- (iv) any person having minimum 25% of outstanding voting stock or shares of both of them;
- (v) one of them controls the other;
- (vi) both of them controlled by third person;
- (vii) together they control a third person; or
- (viii) members of same family;

(b) the term “person” also includes legal persons;

(c) **Persons who are associated in business of one another** in that one is sole agent of other, shall be deemed to be related.

Circular No. 92/11/2019

Tax treatment of sales promotion schemes under GST

A. Free samples and gifts:

- Samples which are supplied FOC, without any consideration, do not qualify as supply under GST,. (except activities mentioned in Schedule I).
- ITC NA for goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.
- If activity of distribution of gifts /free samples falls under Schedule I, supplier would be eligible to ITC.

B. Buy one get one free offer(BOGO) :

- Supplying two goods for the price of one.
- Taxability as composite supply or mixed supply u/s 8
- ITC available to supplier for inputs, input services & capital goods used to supply of goods/services as part of offers.

C. Discounts including 'Buy more, save more' offers (BMSM) :

- Discounts offered by suppliers to customers (including staggered discount and post supply/volume discounts established before or at time of supply) excluded from VOS if they satisfy parameters u/s 15(3)
- Supplier entitled to avail ITC for such inputs, input services & capital goods used in relation to supply of goods or services or both on such discounts.

D. Secondary Discounts:

- M/s A supplies 10000 packets of biscuits to M/s B at Rs. 10/- per packet. Afterwards M/s A re-values it at Rs. 9/- per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/- per packet.
- Such secondary discounts shall not be excluded from VOS as such discounts are not known at the time of supply and the conditions laid down u/s 15(3)(b) of the said Act are not satisfied.
- There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

Clarification on value for computing GST on services of Business Facilitator (BF) or Business Correspondent (BC) to Banking Company (Circular No. 86/05/2019)

Issue 1: Banks pay reasonable commission/fee to BC/BF, rate & quantum of which may be reviewed periodically. The agreement of banks with BC/BF specifically prohibits them from directly charging any fee to the customers for services rendered by them on behalf of the bank.

On the other hand, banks (and not BC/BFs) are permitted to collect reasonable service charges from the customers for such service in a transparent manner.

CLARIFICATION: Banking company is service provider in BF/BC model operated by banking company as per RBI guidelines. The banking company is liable to pay GST on entire value of service charge or fee charged to customers whether or not received via BF/BC.

Issue 2: Clarification on the scope of services by BF/BC to banking company wrt accounts in rural areas:

NN No. 12/2017- Exempts from tax on services provided by BF/BC wrt account in rural area

CLARIFICATION : Classification adopted by bank as per RBI guidelines in this regard should be accepted as to what is rural branch

GST on delayed payment charges for late payment of EMI (Circular No. 102/21/2019)

Issue: is GST applicable on additional / penal interest on overdue loan?

Clarification:

As per section 15, VOS shall include interest/late fee/penalty for delayed payment of consideration

Entry 27 of exemption notification, exempts services of extending deposits, loans or advances for consideration of interest or discount (other than interest under credit card services).

Here, interest means interest payable for money borrowed/debt incurred, but does not include any service fee or other charge for moneys borrowed or debt incurred or of any credit facility which has not been utilised.

There are two transaction options involving EMI that are prevalent in the trade.

Illustration – 1: X sells a mobile phone to Y. The cost of mobile phone is Rs. 40,000/-. However, X gives Y an option to pay in installments, Rs. 11,000/- every month before 10th day of the following month, over next four months (Rs. 11,000/- \times 4 = Rs. 44,000/-). As per the contract, if there is any delay in payment by Y beyond the scheduled date, Y would be liable to pay additional/ penal interest amounting to Rs. 500/- per month for the delay.

In some instances, X is charging Y Rs. 40,000/- for the mobile and is separately issuing another invoice for providing the services of extending loans to Y, the consideration for which is the interest of 2.5% per month and an additional/ penal interest amounting to Rs. 500/- per month for each delay in payment.

CLARIFICATION : As per provisions of sec 15(2)(d), the amount of penal interest is to be included in VOS. The transaction between X and Y is for supply of taxable goods i.e. mobile phone. Accordingly, the penal interest would be taxable as it would be included in value of mobile, irrespective of the manner of invoicing.

Illustration – 2: X sells a mobile phone to Y. The cost of mobile phone is Rs. 40,000/-. Y has the option to avail loan @ 2.5% pm for purchasing mobile from M/s. ABC Ltd. The terms of loan from M/s. ABC Ltd. allows Y a period of 4 months to repay loan and additional/ penal interest @ 1.25% pm for any delay in payment.

CLARIFICATION : Here, additional/ penal interest is charged for transaction between Y and M/s. ABC Ltd., and same is getting covered under exemption Entry 27. Consequently, in this case the 'penal interest' charged thereon on transaction between Y & M/s. ABC Ltd. would not be subject to GST as the same would be covered under said exemption entry.

However, any service fee/ charge or any other charges, if any, are levied by M/s. ABC Ltd. in respect of the transaction related to extending deposits, loans or advances does not qualify to be interest as defined in exemption notification, and accordingly will not be exempt.

Moreover, VOS of mobile by X to Y would be Rs. 40,000/- for purpose of levy of GST.

DETERMINATION OF VALUE OF SUPPLY **RULE 27 to 35 of CGST Rules ,2017**

Explanation : For the purposes of the below provisions,

(a) —Open market value of supply(OMV) means full value in money, excluding GST, if supplier & recipient are not related & price is sole consideration, to obtain such supply at same time when supply being valued is made;

(b) —Supply of goods or services or both of like kind and quality (LKQ) means any other supply of goods or services made under similar circumstances that, in respect of characteristics, quality, quantity, functional components, materials & reputation goods or services first mentioned, is same as, or closely or substantially resembles, that supply of goods or services .

Rule 27: VOS where consideration is not wholly in money

(a) OMV of such supply;

(b) if OMV is not available under clause (a) then

sum total of consideration in money + such further amount in money as is equivalent to consideration not in money, if such amount is known at time of supply;

(c) not determinable under clause (a) or clause (b), VOS = VOS of LKQ

(d) not determinable under clause (a)/(b)/(c),

VOS = Rule 30 and then Rule 31

Illustration:

(1) Where a new phone is supplied for 20,000/- along with exchange of an old phone and if the price of the new phone without exchange is 24,000/-, OMV of new phone is 24,000/-

(2) Where laptop is supplied for 40,000/- along with barter of printer that is manufactured by recipient and value of printer known at time of supply is 4,000/- but the OMV of laptop is not known, the VOS of the laptop is 44,000/-

Rule 28 : VOS between distinct or related persons, other than through agent

VOS =

(a) OMV of such supply;

(b) If OMV is not available, VOS = VOS of LKQ

(c) not determinable under clause (a) or (b), VOS = Rule 30 & then Rule 31

If goods are intended for further supply as such by recipient,

option of the supplier, VOS = amount equivalent to 90% of price charged for supply of goods of LKQ by recipient to his customer not being a related person:

If recipient is eligible for full ITC, the value declared in invoice shall be deemed to OMV of the goods or services.

Rule 29 : VOS of goods through Agent

The VOS between principal and his agent shall-

(a) OMV of goods being supplied,

where the goods are intended for further supply by the said recipient.

At option of supplier, VOS = 90% of price charged for supply of goods of LKQ by recipient to his customer not being a related person,

Illustration: A principal supplies groundnut to his agent and agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of 5,000/- per quintal on day of the supply.

Another independent supplier is supplying groundnuts of LKQ to said agent at the price of 4,550/- per quintal. The VOS made by principal shall be 4,550 per quintal or where he exercises option, the value shall be 90 % of 5,000/- i.e 4,500 per quintal.

(b) Not determinable under clause (a), VOS = Rule 30 & then Rule 31

Rule 30 : VOS based on cost

VOS is not determinable by any of the preceding rules of this Chapter,

VOS = 110% of cost of production/manufacture or cost of acquisition of such goods or cost of provision of services.

Rule 31 : Residual method for determination of value of supply of goods or services or both

VOS cannot be determined under rules 27 to 30,

VOS shall be determined using reasonable means consistent with principles and general provisions of section 15 and provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

Rule 31A : VOS of lottery, betting, gambling and horse racing

(1) Notwithstanding anything contained in the provisions of this Chapter, VOS in respect of supplies specified below shall be determined in the manner provided

(2) VOS of lottery = $100/128 \times (\text{FV of ticket or price notified in Official Gazette by Organising State, higher.})$

(3) VOS of betting, gambling or horse racing = 100% of FV of bet or amount paid into totalisator.

Rule 32 : Determination of value in respect of certain supplies

(1) VOS of below supplies shall, at option of supplier, be determined in the manner below.

(2) Purchase or Sale of foreign currency, including money changing

(a) INR to Foreign exchange or vice versa

VOS = (Dealer Rate - RBI reference rate) X total units of foreign currency:

If RBI reference rate for a currency is not available,

VOS = 1% of gross amount of INR provided or received by dealer

If neither of currencies exchanged is Indian Rupees,

VOS = 1% of the lesser of two amounts person changing the money would have received by converting any of two currencies into INR on that day at reference rate provided by RBI.

Provided the dealer may exercise the option to ascertain value in terms of clause (b) for F/Y and such option shall not be withdrawn during the remaining part of that F/Y.

(b) at the option of the supplier of services, VOS shall be deemed to be-

(i) 1% of gross amount of currency exchanged upto ₹1 lakh, subject to a min of ₹250;

(ii) ₹1000 + ½ % of gross amount of currency exchanged exceeding ₹1 lakh and up to ₹10 lakh; and

(iii) ₹5500 + 1/10 % of gross amount of currency exchanged exceeding ₹10 lakh, subject to max ₹60,000.

(3) Booking of tickets for travel by air provided by air travel agent

VOS = @5% of basic fare for domestic bookings,

VOS = @10% of basic fare for international bookings

Basic fare = that part of air fare on which commission is normally paid to air travel agent by airlines.

(4) Life insurance business

Composite policy (Risk+Investment)

(a) If invt amount is intimated to policy holder at time of supply of service

VOS = Gross premium charged - Amount allocated for investment/savings

If invt amount is not intimated to policy holder at time of supply of service

(b) Single premium annuity policies

VOS = 10% of single premium charged

(c) Other cases

VOS = 5% of premium charged in 1st year and 12.5% of premium charged in subsequent years:

Provided that nothing contained in this sub-rule shall apply where entire premium paid by policy holder is only towards risk cover in life insurance.

(5) Person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change nature of goods & where no ITC has been availed on the purchase of such goods,

VOS = Selling price - Purchase price (if positive)

Purchase price of goods repossessed from defaulting borrower, who is not registered, for purpose of recovery of a loan or debt

= purchase price of such goods by defaulting borrower reduced by 5% points for every quarter or part thereof, between date of purchase & date of disposal by person making such repossession.

(6) Token/voucher/coupon, or stamp (other than postage stamp) which is redeemable against supply of goods or services

VOS = money value of goods or services redeemable against such token, voucher, coupon, or stamp.

(7) The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the said Act between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.

Rule 32A : Value of supply in cases where Kerala Flood Cess is applicable

Goods or services on which Kerala Flood Cess is levied under clause 14 of Kerala Finance Bill, 2019

VOS = value determined u/s 15 of the Act, but shall not include the said cess.

Rule 33 : VOS of services in case of pure agent

VOS to exclude Expenditure/costs incurred by supplier as pure agent of recipient if all following conditions are satisfied,

(i) Supplier acts as pure agent of recipient, when he makes payment to 3rd party on authorisation by recipient;

(ii) payment made by pure agent is separately indicated in the invoice issued

(iii) Supplies procured by pure agent from 3rd party as pure agent of the recipient are in addition to the services he supplies on his own account.

Pure agent means a person who-

(a) enters into contractual agreement with recipient to act as his pure agent to incur expenditure or costs in course of supply of goods or services;

(b) neither intends to hold nor holds any title to goods or services or both so procured or supplied as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only actual amount incurred to procure such goods or services in addition to amount received for supply he provides on his own account.

Illustration.- Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to ROC.

The fees charged by the ROC for the registration and approval of the name are compulsorily levied on B.

A is merely acting as a pure agent in the payment of those fees.

Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

Rule 34 : Rate of exchange of foreign currency for determination of value

(1) GOODS : The rate of exchange for determination of value of taxable goods shall be applicable rate of exchange as notified by Board u/s 14 of Customs Act, 1962 for date of time of supply of such goods u/s 12 of Act.

(2) SERVICES : The rate of exchange for determination of value of taxable services shall be applicable rate of exchange determined as per generally accepted accounting principles for date of time of supply of such services in terms of section 13 of the Act.

Rule 35 : VOS inclusive of GST

Where the value of supply is inclusive of GST,
GST shall be determined in following manner,

$$\text{Tax amount} = \frac{(\text{Value inclusive of taxes} \times \text{GST Tax rate in \%})}{(100 + \text{GST Tax rate in \%})}$$