

**What is the need for the Place of Supply of Goods and Services under GST?**

**215.** The basic principle of GST is that it should effectively tax the consumption of such supplies at the destination thereof or as the case may be at the point of consumption. So place of supply provision determines the place *i.e.* taxable jurisdiction where the tax should reach. The place of supply determines whether a transaction is intra-State or inter-state. In other words, the place of supply of goods or services is required to determine whether a supply is subject to SGST plus CGST in case of intra-State supply or IGST if it is an inter-State supply. It further determines the taxability of a transaction as any supply where the place of supply is outside India *viz.* exports are regarded as zero rated supply in case the supplier is located in India.

**Whether place of supply principles always relevant for identifying the State where registration is to be obtained?**

**216.** No, as in most of the cases the place of supply is derived from the location of the recipient of supply. In case the place of supply would have been same as place where registration is to be obtained then every supply would have been intra-State and there would have been no need of IGST.

**What is the significance of “Location” of a Service Provider or Receiver for determining taxing jurisdiction?**

**217.** The location of supplier of goods or services is important as it is one of the parameter for determining whether the supply is inter-State or intra-State and accordingly which type of tax is to be paid. Further the place of supply which is the other determinant of nature of supply is usually the location of the recipient of supply specifically in respect of services.

Further the jurisdiction of the field formation, which is relevant for compliance with registration formalities, filing of returns, refund claims etc. by the person liable to pay tax (provider or receiver as the case may be), will be the “location” as determined in terms of these rules.

### **How will the “location of supplier or recipient of goods” be determined?**

**218.** The location of supplier of goods has not been defined under GST law, the reason thereof may be that the goods being tangible in nature it is easy to identify the location of supplier and recipient. Generally the location of supplier would be the place from where the goods are supplied and location of recipient being place where the goods are received and consumed.

### **How will such “location of supplier or recipient of services” be determined?**

**219.** As per section 2(14) and (15) of IGST Act, the location of a service provider or receiver (as the case may be) is to be determined by applying the following steps sequentially:

- A. where the supply is made from/received at a place of business for which registration has been obtained, the location of supplier/recipient of services would be the location of such place of business.
- B. where the supplier/recipient of is not covered by A above:
  - (i) where supply is made from/received at a place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such establishment;
  - (ii) where supply is made from/received at more than one establishment whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision or receipt of the service; and
  - (iii) in the absence of such places, the usual place of residence of the supplier or the recipient.

It is important to note that in the case of a service receiver, the place relevant for determining location is the place where the service is “used” or “consumed”.

## What is the meaning of “place of business”?

**220.** As per section 2(85) of CGST Act “place of business” includes—

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called;

The above definition starts with phrase “includes” and thus the places or locations listed in the definition are illustrative and not exhaustive. Further each of the three clauses makes a reference to ‘taxable person’ which means that place of business is relevant only in regard to a taxable person i.e. a person who is already registered or is liable to take registration.

## What is the meaning of a “fixed establishment”?

**221.** Section 2(50) of CGST Act describes that “fixed establishment” means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs.

The following three elements are critical to determine whether a place is a ‘fixed establishment’:

- (a) Having a sufficient degree of permanence;
- (b) Having a structure of human and technical resources; and
- (c) Other than a registered place of business.

The following points need to be noted:

- ◆ A fixed establishment refers to a place of business which is not registered;
- ◆ The person should undertake supply of services or should receive and use services for own needs in such place;
- ◆ Not every temporary or interim location of a project site or transit-warehouse will become a fixed establishment of the taxable person.

## How will the establishment “most directly concerned with the supply” be determined?

**222.** This will depend on the facts and supporting documentation, specific to each case. The documentation will generally include the following:—

- ◆ the contract(s) between the service provider and receiver;
- ◆ where there are no written contracts, any written account (documents, correspondence/e-mail etc.) between parties which sets out in detail their understanding of the oral contract;
- ◆ in particular, for suppliers, from which establishment the services are actually provided;
- ◆ in particular, for receivers, at which establishment the services are actually consumed, effectively used or enjoyed;
- ◆ details of how the business fits into any larger corporate structure;
- ◆ the establishment whose staff is actually involved in the execution of the job;
- ◆ performance agreements (which may be indicative both of the substance and actual nature of work performed at a particular establishment).

Thus, normally in the case of multiple establishments of a person, it will be the establishment that actually supplies, or receives (*i.e.* uses or consumes), a service that would be treated as ‘directly concerned’ with the provision of service, notwithstanding the contractual position, or invoicing or payment. For example an overseas business house sets up offices with staff in India to provide services to Indian customers. Its fixed establishment will be regarded as in India.

## What does “usual place of residence” mean?

**223.** Section 2(113) of CGST Act describes that usual place of residence means—

- (a) in case of an individual, the place where he ordinarily resides *i.e.* residential address;
- (b) in other cases, the place where the person is incorporated or otherwise legally constituted;

Accordingly the usual place of residence, in case of a body corporate, has been specified as the place where it is incorporated or otherwise legally constituted. The usual place of residence of an individual is

the place (country, state etc.) where the individual spends most of his time for the period in question. It is likely to be the place where the individual has set up his home, or where he lives with his family or is in full time employment. Individuals are not treated as belonging in a country if they are short term, transitory visitors (for example if they are visiting as tourists, or to receive medical treatment or for a short term educational course). An individual cannot have more than one usual place of residence.

**What is the need to have separate rules for place of supply in respect of B2B (supplies to registered persons) and B2C (supplies to unregistered persons) transactions?**

**224.** In respect of B2B transactions, the taxes paid are taken as credit by the recipient so such transactions are just pass through. GST collected on B2B supplies effectively create a liability for the government and an asset for the recipient of such supplies in as much as the recipient is entitled to use the input tax credit for payment of future taxes. For B2B transactions the location of recipient takes care in almost all situations as further credit is to be taken by recipient. The recipient usually further supplies to another customer. The supply is consumed only when a B2B transaction is further converted into B2C transaction. In respect of B2C transactions, the supply is finally consumed and taxes paid actually come to the Government as no credit to takes by such customer.

**X Ltd. a dealer of goods based in Delhi sent goods to Y Ltd. located in Mumbai through GTA. What would be the place of supply in this case?**

**225.** As per section 10(1)(a) of IGST Act, the place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient. Accordingly in this case the place of supply would be State of Maharashtra and the supplier would be charging IGST.

**A Ltd. a dealer in goods based in Kolkata purchased certain goods from B Ltd. based in Delhi. But meanwhile A Ltd. sold such goods to C Ltd. of Jaipur. Accordingly he ordered B**