



## GOODS AND SERVICES TAX

# Frequently Asked Questions (FAQs) on IT/ITES

### Q 1. Whether software is regarded as goods or services in GST?

**Ans:** In terms of Schedule II of the CGST Act 2017, development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software and temporary transfer or permitting the use or enjoyment of any intellectual property right are treated as services.

But, if a pre-developed or pre-designed software is supplied in any medium/storage (commonly bought off-the-shelf) or made available through the use of encryption keys, the same is treated as a supply of goods classifiable under heading 8523.

### Q 2. What are the implications of recognising the development, design, programming, customisation, adaptation, upgradation, enhancement and implementation of information technology softwares a service?

**Ans:** The primary implication is that the place of supply rules applicable to services would apply in determining taxability of the supply of software services. The same would be applicable in situations of supply of services involving a temporary transfer or permitting the use or enjoyment of any intellectual property right. The other implication is that the supplier of software services would not be eligible for the composition scheme.

### Q 3. 'A' is a dealer in computers and computer parts having turnover of Rs. 8 lakh in a year; does 'A' have to register under GST?

**Ans:** Every supplier located in a State or Union Territory, whose 'aggregate turnover' in a financial year exceeds twenty lakh rupees, is liable to be registered under GST. This limit of turnover for a special category State is ten lakh rupees. 'A', whose aggregate turnover is only Rs. 8 lakh in a year, is therefore not liable to registration.

### Q 4. The registered person 'B' receives small portions of software code from individuals which he then integrates and supply as a package to clients. These individuals are having small turnover of Rs. 5 to 10 lakh, and therefore are not registered in GST. Whether there is any liability on 'B' in respect of services provided by such individuals?

**Ans:** If the supplies are made by unregistered suppliers, GST is liable to be paid by the recipient, who is a registered person, under Section 9(4) of the CGST Act, 2017. Therefore, in this case 'B' is liable to pay GST on services provided by these individuals. 'B' can claim credit of this tax paid by him on reverse charge.

### Q 5. What is the rate of tax on IT services?

**Ans:** The rate of GST on IT services is 18%.

### Q 6. Whether exports of software services attract GST?

**Ans:** Exports and supplies to SEZ units and SEZ developers are zero-rated in GST. Zero-rating effectively means that no tax is payable on exports but the exporter/supplier is entitled to the input tax credit on inputs/input services used in relation to exports. The exporter have two options for zero rating, which are as follows:-

- 1) To pay integrated tax on supplies meant to be exported and get refund of tax so paid after the supply is exported.
- 2) To make export supplies under a bond or letter of undertaking and claim refund of taxes suffered on inputs and input services in relation to such exports.

### Q 7. How do I determine whether IT services provided by me constitute export of service?

**Ans:** The supply of any service is considered an export of service, where the following conditions are met:

- 1) The supplier of service is located in India;
- 2) The recipient of service is located outside India;
- 3) The place of supply of service is outside India;
- 4) The payment for such service has been received by the supplier of service in convertible foreign exchange; and
- 5) The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of Section 8 of the IGST Act, 2017.

### Q 8. How do I determine the place of supply of IT/ITES services?

**Ans:** Place of supply of IT/ITES services is the location of the recipient in terms of Section 12 and 13 of the IGST Act, 2017. However, if the recipient is not registered and his address is not available on the records of the supplier, the place of supply would be the location of the supplier.

### Q 9. How to determine the location of the recipient?

**Ans:** Location of the recipient of service is defined in Section 2(14) of the IGST Act. A recipient of services is treated as located outside India if his place of business where he receives services is outside India or, if he does not have a place of business, his usual place of residence is outside India.

### Q 10. Would I be liable to pay GST on reverse charge even if the foreign supplier of software from whom I buy for use in my firm registered under GST was to accept the payment in Indian Rupees?

**Ans:** Yes, you would be liable to pay GST. A supply is treated as an import of service if the following conditions are satisfied:

- 1) The supplier of service is located outside India;
- 2) The recipient of service is located in India; and
- 3) The place of supply of service is in India.

The place of such supply would be taken to be the location where the firm is registered (in GST) and the supplies would attract integrated tax (IGST). The factum of which currency was used to pay the consideration is immaterial.

### Q 11. I am an Indian Company who makes software and sells it outside the country. I have hired a firm (not a related party) 'C' located abroad to facilitate the supply of software in Europe and the USA; would I be liable to pay GST on the payments that I make to this entity abroad?

**Ans:** No. In this case, 'C' is covered by the definition of 'intermediary' [Section 2(13) of the IGST Act, 2017]. The place of supply of such intermediary service is location of the supplier in terms of Section 13(8) of the IGST Act, 2017. As 'C' is located outside India, GST is not payable in this case.

### Q 12. What factors determine the location of 'C' (in question 11) as being outside India?

**Ans:** In terms of Section 2(15) of the IGST Act, 2017, the location of a service provider is to be determined by applying the following steps sequentially:

- 1) Where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- 2) Where a supply is made from a place other than the place of business for which registration has been obtained (to find

### Q 14. I have more than one SEZ unit in different States; do I need to register in each State. Can I take a single registration?

**Ans:** 1) Yes. Under GST, every entity shall take GST registration in each State. A single registration can be taken for all your SEZ units within a State.  
2) A person having unit(s) in a Special Economic Zone as well as outside the SEZ for registration for SEZ unit(s) as a business vertical distinct from other units in that State [Refer Rule 8(1) of CGST Rules, 2017].

### Q 15. I have a unit in the DTA and another in the SEZ; can I take a single registration?

**Ans:** No. A person having unit(s) in a Special Economic Zone as well as outside the SEZ for registration for SEZ unit(s) as a business vertical distinct from other units in that State [Refer Rule 8(1) of CGST Rules, 2017].

### Q 16. If I supply a laptop bag along with the laptop to my customer, is it a composite supply?

**Ans:** If the laptop bag is supplied along with the laptop in the ordinary course of business, the bag is an ancillary. Therefore, it is a composite supply and the rate of tax will be the rate of the principal supply.

### Q 17. I am obtaining online database access services from a computer service provider. Is it a composite supply and the rate of tax will be the rate of the principal supply?

**Ans:** The recipient, if registered, has to pay the applicable IGST on reverse charge. The recipient is treated as an online information and database access or retrieval service. The recipient has to take registration and pay tax.

### Q 18. When would it be construed that I have made a supply of service or use or enjoyment of any intellectual property right?

**Ans:** Generally, the End User Licence Agreement (EULA) is the legal contract between the provider of the application and the user of that application governing the usage. The agreement governing the usage. To find out as to whether there is an element of supply involved with the use or enjoyment of any intellectual property right, the conditions of EULA are material.

The contract for supply therefore assumes significance in this test to determine whether there is an element of supply involved with the use or enjoyment of any intellectual property right.

### Q 19. What special provisions are attracted in GST with regard to associated enterprises?

**Ans:** An enterprise which participates, either directly or indirectly, through control or capital of the other enterprise is an associated enterprise. If an enterprise is an associated enterprise, the supplier is located in the case of supply of services, where the supplier is located in the earlier date of entry in the books of account of the recipient of services, the levy under GST is attracted once such book entries are made and invoice is issued.

### Q 20. What would be the tax liability on replacement of parts (no warranty) and whether the supplier is required to reverse the tax liability?

**Ans:** As parts are provided to the customer without a consideration under GST, the value of supply made earlier includes the charges to be incurred during the warranty period. If the supplier undertakes the warranty replacement, the tax liability on the value of the parts supplied is not required to be reversed.

### Q 21. An Original Equipment Manufacturer (OEM) has an obligation to provide warranty services. This activity is outsourced by OEM to 'D' the customer. What is the tax liability of 'D'?

**Ans:** 'D' is providing service to the OEM. GST is payable on the value of the service provided by 'D' to the OEM.

### Q 22. How will the defective parts be sent to the mother ware house or repairing centres? What is the tax liability?

**Ans:** The defective parts shall be sent for repair on a delivery challan and the value of the parts shall be chargeable on the repair amount, including the cost of parts, and the tax liability on the value of the parts shall be reversed.

### Q 23. What is the tax liability in a scenario where supplies are made to the supplier to the recipient under a single contract?

**Ans:** Delivering services from various locations and integrated pricing for such services is treated as a single supply. Normally the contract or agreement with the recipient is entered into with the main branch. Therefore, in such cases of service delivery from multiple locations, the supply is visualized as consisting of two distinct supplies. First supply- the delivery of services to the main branch which entered into a contract for such service. Second supply- main branch is making a supply to the recipient under a scenario, the main branch would get input tax credit of GST paid by the main branch.

### Q 24. In the scenario envisaged in previous question, the main branch is making a supply to the other branches. Thus, it is a revenue neutral situation. What is the tax liability?

**Ans:** The second proviso to Rule 28 of the CGST Rules, 2017 provides that the value declared in the invoice shall be deemed to be the open market value of the goods.

### Q 25. Can payment of IGST on reverse charge basis on import of goods be made?

**Ans:** No. GST payable on reverse charge basis is to be discharged through the normal mechanism of tax payment.

### Q 26. Is the requirement of transferring of credit through ISD mechanism applicable to IT services?

**Ans:** The ISD provision under the CGST Act, 2017 is not mandatory. It only provides a mechanism for the business entity to distribute the ITC as an Input Service Distributor (ISD).

### Q 27. What is the format for invoices to be issued in the case of reverse charge?

**Ans:** No separate format for any type of invoicing including self-invoicing is prescribed.



2) Where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

3) Where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and

4) In absence of such places, the location of the usual place of residence of the supplier.

The location of 'C' is to be determined by applying the criterion from (2), or (3), or as the case may be, (4).

**Q 13. I am an agent in India of a foreign IT/ITES provider (principal located outside India). For agency services, I bill the principal in convertible foreign exchange. Whether GST liability arises in this case?**

**Ans:** You are an intermediary and the place of supply of the service provided by you to the principal is in India irrespective of the mode of payment. Hence, GST is payable on the services provided by you as an intermediary to the principal.

been prescribed in Rule 46 of the CGST Rules, 2017.

**Q 28. I am a software provider, registered at Mumbai. I supply required to take a registration in Karnataka?**

**Ans:** No. The supplies would be treated as inter-State supplies and IGST is

**Q 29. I am an exporter of services. Would I be entitled to refund after**

**Ans:** For exports upto 30th June, 2017 refund may be claimed under the provisions of Section 17(1)(b). Exports made on and after 1st July would be eligible for refund under

**Note: Reference to CGST Act, 2017 includes reference to the CGST Act, 2017. Similarly reference to CGST Rules, 2017 includes reference to the CGST Rules, 2017.**

**Disclaimer: The replies given above are only for educational and guidance purposes and do not hold any legal validity.**

**GST- A Good & Simple Tax**



Tweet us at @askGST\_Gol for any GST related query  
Helpdesk : 1800-1200-232, 0120-4888999



Central Board of Secondary Education  
Commercial Taxes Department  
www.cbse.gov.in