

## Chapter 4

# Time of Supply

Sections	Rules
12. Time of supply of goods	47. Time limit for issuing tax invoice
13. Time of supply of services	
14. Change in rate of tax in respect of supply of goods or services	

### Statutory Provisions

<p><b>12. Time of supply of goods</b></p> <p>(1) <i>The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.</i></p> <p>(2) <i>The time of supply of goods shall be the earlier of the following dates, namely: —</i></p> <p style="margin-left: 20px;">(a) <i>the date of issue of invoice by the supplier or the last date on which he is required, under <sup>1</sup><del>sub-section (1) of</del> section 31, to issue the invoice with respect to the supply; or</i></p> <p style="margin-left: 20px;">(b) <i>the date on which the supplier receives the payment with respect to the supply:</i>  <i>Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.</i></p> <p><i>Explanation 1.—For the purposes of clauses (a) and (b), “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.</i></p> <p><i>Explanation 2.—For the purposes of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.</i></p> <p>(3) <i>In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely:—</i></p> <p style="margin-left: 20px;">(a) <i>the date of the receipt of goods; or</i></p> <p style="margin-left: 20px;">(b) <i>the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier;</i>  <i>or</i></p>
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<sup>1</sup> Omitted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.

<p>(c) <i>the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:</i>  <i>Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.</i></p> <p>(4) <i>In case of supply of vouchers by a supplier, the time of supply shall be—</i>  <i>(a) the date of issue of voucher, if the supply is identifiable at that point; or</i>  <i>(b) the date of redemption of voucher, in all other cases.</i></p> <p>(5) <i>Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—</i>  <i>(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or</i>  <i>(b) in any other case, be the date on which the tax is paid.</i></p> <p>(6) <i>The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.</i></p>
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**Related provisions of the Statute**

Section or Rule (CGST / SGST)	Description
Section 2 (31)	Definition of Consideration
Section 2 (41)	Definition of Document
Section 2 (52)	Definition of Goods
Section 2 (66)	Definition of Invoice or tax Invoice
Section 2 (93)	Definition of Recipient
Section 2 (97)	Definition of Return
Section 2 (98)	Definition of Reverse Charge
Section 2 (105)	Definition of Supplier
Section 2 (118)	Definition of Voucher
Section 7	Scope of Supply
Section 9	Levy and Collection
Section 14	Change in rate of tax in respect of supply of goods or services
Section 15	Value of taxable supply
Section 31	Tax invoice
Section 39	Furnishing of Returns

## 12.1 Analysis

### (a) Introduction

Supply has been understood to hold the key to the incidence of GST, but it is the 'time of supply' that dictates the occasion when this incidence will come to rest. Taxable supply has been defined to mean a supply of goods and/or services which is chargeable to tax under this Act. It is interesting to note the use of the expression 'chargeable to tax' as opposed to 'leviable to tax'. It has been held that 'chargeable to tax' encompasses not only the incidence of tax but also its assessment.

The opening words in section 12(1) are very interesting and forceful as it is here that the liability to pay GST arises. The subject matter of levy – goods or services – becomes encumbered with the tax upon occurrence of the taxable event – supply. But the tax levied in terms of section 9, comes to reside only at the time determined by section 12 and 13. Accordingly, these sections play a stellar role in the imposition of GST.

The provisions state that the time of supply "shall be" and as such is a "must" to be examined closely. It signifies that "time of supply" is not a fact to be inquired by the taxable person but one that is to be admitted as the time of supply appointed by the will of legislature as declared in the section. In order to not allow any opportunity for a suggestion by the taxable person or even the tax administration as to any alternative to what could be the time of supply, the legislature retains for itself the exclusive authority to appoint the time of supply by employing the words "shall be". Therefore, the time of supply is what is stated in the law to be the time of supply and nothing else.

Invoice is commonly understood as 'proof of sale' but this common understanding is far from the truth. Invoice is a document recording the terms of an arrangement already entered. Lease agreement, as an analogy, is a document in present evidencing the agreement reached between two parties is for the lease of property for certain duration in exchange for a certain consideration. A lease arrangement verbally entered into previously when documented by an indenture or deed does not bring into existence the lease when the document is prepared. In fact, the document merely is a record of an arrangement of lease entered previously, *albeit* verbally. Verbal arrangements are no less agreements in the eyes of law. Similarly, an invoice does not bring into existence a sale agreement but merely records the terms of whatever arrangement that may have been entered into by the parties, involving the subject matter. Tax laws require the preparation of an invoice not as if the absence of an invoice defeats the levy but prescribes an unambiguous occasion when the tax may become recoverable with a proper record of the terms of the underlying arrangement. Therefore, an invoice can evidence not only a sale but every other form of supply such as transfer, barter, exchange, license, rental, lease or disposal. If issuance of an invoice is uncommon for barter or a rental arrangement, then it is to do with our own unfamiliarity and nothing to do with its impermissibility.

**(b) Time of Supply – Forward Charge**

Time of supply is prescribed (legislative will) to be the earlier of (a) date of issue of invoice or last date on which the invoice is required to be issued with respect to the supply and (b) date of receipt of payment. Date of issue of invoice requires us to examine section 31 which deals with the requirement to issue a “tax invoice”. Here, two kinds of situations are contemplated, namely:

- (i) A case where the supply involves movement of goods
- (ii) Any other case

Before proceeding, it is necessary to admit the concept of ‘person and taxable person’. Person is defined in the most familiar manner in section 2(84) but taxable person is explained in detail in section 25 (please refer to the relevant Chapter for a detailed discussion). A proper reading of section 25 helps us understand – a State is the smallest registrable unit in GST – except where multiple business units are registered separately under section 25. A taxable person is, therefore, the presence of the person in a State where taxable supplies are made from in the name of such person. When a person becomes liable to be registered in a State at any place from where taxable supplies are made therein, such person shall be a taxable person.

Now, we may return to our discussion regarding the two kinds of cases that are discussed on time of supply. It is noticeable that section 31 uses two expressions – ‘removal of goods’ and ‘movement of goods’ – which are not merely expressions of distinction without a difference. There is deliberate purpose for legislating in this manner. ‘Removal of goods’ is defined in section 2(96) and identifies the steps that may follow once the decision to supply is made. But, ‘movement of goods’ is not defined and is, therefore, an attribute of the goods at the time of supply.

Illustration 1: Machine tools on display at an exhibition in Mumbai agreed to be purchased by executives of an engineering company from Indore attending the exhibition, is a case of ‘supply involving movement’ even though the transportation is undertaken by representatives or the purchaser on their own.

Illustration 2: In illustration 1 above, if the executives from Indore were to place an order at the same exhibition with instructions for delivery to be ensured by the exhibitor (supplier) assured within six weeks, this would also be a case of ‘supply involving movement’ and the transportation being organised by the supplier through an independent transport agency from the factory or exhibitor’s site to the customer location.

It is for this reason that the language employed of seemingly similar or synonymous expressions – ‘removal of goods’ and ‘movement of goods’ – but demands to be supplied their separate and individual meanings and not be misled by their apparent similarity. To reiterate, ‘removal of goods’ is a question of fact to be examined from the steps that would ensue once the supply is decided whereas ‘involves movement’ is a question of the state-of-affairs of the goods being supplied.

Therefore, it is important even before the arrival of time of supply, that the goods to be supplied be classified into one of these two cases, that is, whether it is a case of supply that involves

movement or one that does not involve movement of the goods. Only when this classification of the goods has been clearly made, section 31 comes into operation.

**Date of invoice**

Any transaction where invoice is raised before the actual movement or removal of goods or where the goods are made available to the buyer, in such cases, the date of raising invoice shall be taken as time of supply. It is possible that in such cases the delivery is taken at a later date by the buyer or is removed by the supplier at the instructions of the buyer at a date which is later than the date of raising such invoice. In such cases, we need not consider the last date of raising such invoice but we shall consider the actual date of invoice for determining the time of supply. Such cases shall include the invoices raised on the last date of the month but goods not dispatched and which are dispatched in next month. It is also important to note that supply of goods should not be part of a composite supply which is classified as supply of services by schedule II [Activities or transactions to be treated as supply of goods or supply of services] like works contract. In such case, the time of supply shall not be determined by Section 12 but shall be determined by Section 13 of the CGST Act.

**Supply involves movement**

Where the supply involves movement of goods then an invoice must be issued at the exact time when the goods are about to be removed. So, it is pertinent to identify the moment when the goods are considered to be getting removed. Section 2(96) defines removal in relation to goods as:

- (a) Despatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier
- (b) Collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient

As already explained above, movement of goods may be caused by the supplier (or his agent or transporter) or by the recipient (or his agent or transporter). When the movement is caused by the supplier, the point of removal will arise when the goods are despatched from the place of business of the supplier. The word 'despatch' means 'to send off'. So, just before the goods are to be sent off, the invoice is required to be issued where the removal is by the supplier.

Illustration 3: Mr. X in Gujarat gets an order from Mr. Y in West Bengal on 18<sup>th</sup> March 2020 for supply of refrigerators. Mr. X dispatches the goods from his premises to his transporter's premises on 20<sup>th</sup> March 2020. The transporter initiates the transportation on 22<sup>nd</sup> March 2020 and the goods finally reach the premises of Mr. Y on 26<sup>th</sup> March 2020. The removal of goods will be said to be caused on 20<sup>th</sup> March 2020 i.e., the date when the goods leave the premises of Mr. X. The last date to issue of invoice will also be 20<sup>th</sup> March 2020 in the given case.

Where the movement is by the recipient, the point of removal will arise when the goods are collected by the recipient from the premises of the supplier. This collection may be by the recipient or a person acting on his behalf as the agent or transporter or any other person. So,

the invoice is to be issued by the supplier just before the point when the recipient (or his agent or transporter) collects the goods from supplier's premises.

Illustration 4: Mr. X in Gujarat gets an order from Mr. Y in West Bengal on 18<sup>th</sup> March 2020 for supply of refrigerators. Mr. Y's transporter takes delivery of the said goods from the premises of Mr. X on 21<sup>st</sup> March, 2020 and delivers them to Mr. Y on 26<sup>th</sup> March 2020. As Mr. Y's transporter collected the goods for transportation on 21<sup>st</sup> March 2020, the date of removal will be considered as 21<sup>st</sup> March 2020. The last date of issue of invoice will also be 21<sup>st</sup> March 2020 in the given case.

Illustration 5: Mr. X's manufacturing unit in Surat, Gujarat gets an order for supply of refrigerators from Mr. Y in West Bengal on 18<sup>th</sup> March 2020. It was agreed that Mr. Y's transporter will collect the goods from Mr. X's depot in Vadodara which is registered as an additional place of business under the same GSTIN as that of Surat. Mr. X removes the goods from his manufacturing unit to his depot on 20<sup>th</sup> March, 2020 which reaches the depot on 21<sup>st</sup> March 2020. Mr. Y's transporter collects these goods on 23<sup>rd</sup> March 2020 and the said goods reach Mr. Y on 28<sup>th</sup> March 2020. In this illustration, the movement of goods by the supplier between his premises cannot be called as a dispatch as it is not for delivery to the customer but internal movement from factory to depot. In fact, the first leg of the activity occurring between the units of Mr. X does not entail raising of invoice as it is not a supply. The removal of goods for supply to Mr. Y will arise only when the goods are collected by the transporter of Mr. Y from Vadodara i.e. 23<sup>rd</sup> March 2020 which will also be the last date of issue of invoice as per Section 31.

#### **Supply does not involve movement**

Where the supply involves movement of goods then an invoice must be issued on or before the time when the goods are about to be removed. Where the supply does not involve movement of goods then an invoice must be issued on or before the time when:

- the goods are delivered or
- made available to the recipient.

It is in this case – where supply does not involve movement – that the complexity remains even after making a proper classification. That is, determining the time when the goods are delivered or made available to the recipient. Delivery – the mode and the time – is the unilateral choice of the recipient and the supplier has no authority to decide 'how' and 'when' he will deliver the goods to the recipient. It only becomes easy in a contract for supply if it clearly records this 'choice' of the recipient regarding the mode and time of delivery. The supplier is always duty-bound to deliver in exactly the same way – manner and timing – which the recipient dictates. In fact, the supplier continues to be obligated until delivery is completed in the way it is stated by the recipient. In other words, delivery is not complete if there is any deviation in either the manner or the timing compared to that dictated by the recipient. When the delivery is to the satisfaction of the recipient, then the supplier is released from his obligation. Therefore, in all those cases (where supply does not involve movement) the additional

question of fact to be determined is the mode and time of delivery dictated by the recipient and whether the same has been complied with, to the satisfaction of the recipient. It is now that section 31 comes into operation. It is also to be noted that the phrase “supply does not involve movement” does not include transactions where goods are delivered at ex-works or at shop of the supplier. It would simply mean that risk in property has been passed but the supply of goods would still include movement, though such movement would be undertaken by the buyer or any other person.

Illustration 6: Mr. X agrees to sell his godown in Gujarat to Mr. Y on 18<sup>th</sup> March 2018. There is a separate agreement entered by Mr. X and Mr. Y for the selling of furniture within the godown on 19<sup>th</sup> March 2018. Mr. X hands over the possession of the godown and the furniture on 25<sup>th</sup> March 2018. In this case, the furniture will be considered to be delivered on 25<sup>th</sup> March 2018 which will also be the last date of issue of invoice as per Section 31.

Illustration 6A: Mr. X proposes to sell 100 Tonnes of branded rice which are packaged and stored in godown in Chennai to Mr. Y on 20<sup>th</sup> March 2023. Mr. Y agrees to purchase such goods from Mr. X on 23<sup>rd</sup> March 2023. Mr. X endorses the warehouse receipt in favour of Mr. Y on 1<sup>st</sup> April, 2023. In this case, the rice bags will be considered to be made available on 1<sup>st</sup> April 2023 which will also be the last date of issue of invoice as per Section 31.

### **Continuous supply of goods**

As per Section 2(32) of the CGST Act 2017, continuous supply of goods means a supply of goods which is provided or agreed to be provided continuously or on recurrent basis, under a contract whether or not by means of wire, cable, pipeline or other conduit and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may subject to such conditions as it may by notification specify.

From the above definition, it may be inferred that there are two important conditions to be satisfied for a supply to be called as continuous supply of goods:

- (a) The supply of goods should be provided on a continuous or recurrent basis
- (b) The supplier should be invoicing the recipient on a regular or periodic basis

Once, these two conditions are satisfied, any supply will be considered as continuous supply of goods. While continuous supply shall mean a supply of goods incessantly for eg., supply of lubricating oil through pipeline, a recurring supply shall mean a supply which has a pattern of re-occurrence. Also for eg., supply of thirty water jars every day in an office. For the purpose of continuous supply, it is necessary that successive statement of accounts or successive payments or both are involved for the purpose of determining the consideration for such supply. As per section 31, in respect of continuous supply of goods, it has been stated that invoice should be issued before or at the time each such statement is issued, or each such payment is received. Please note that the payment referred to in the Section relates to the payment as per the contract and will not relate to any *ad hoc* advance or any other payment received out of the terms of the agreement for continuous supply. Please also note that regularity of supply does

not always imply continuous supply. Maybe each supply is complete but there is a delay in billing. That cannot become continuous supply. There must be something contingent at the time of removal / movement that can only be determined after arrival or even consumption. Deliberate delay in invoice for regular supplies does not automatically result in continuous supply. If the billing cycle coincides with tax period, there may not be much consequence of regarding such transactions to be supply as tax does get paid timely. But, if the billing cycle is contractually longer than tax period, then care must be taken to correctly categorize as continuous supply.

Please note that 'payment' as a criterion used in the context of continuous supply CANNOT be applied where consideration is in 'non-monetary form' such as barter or exchange transactions. In such cases, where consideration is in non-monetary form and involve continuous supply, experts hold the view that the payment criterion falls apart and time of supply would need to be determined based on 'actual supply or invoice'.

#### **Goods sent or taken on approval for sale or return basis**

As per this system, certain goods are sent to the recipient without supplying/selling the same at its outset. These goods can be examined or tested by the recipient as to whether his requirements are fulfilled. The recipient can at his behest, approve the said supply or return the said goods. If the goods are returned, no supply will be deemed to have taken place. In such case, invoice is not required to be issued at the time of dispatch. The time for issuance of invoice is deferred till the goods are accepted by the buyer within a reasonable time. If the goods are approved by the recipient, then it will amount to a supply. The last date of issuance of invoice in such cases as per Section 31(7) of the CGST Act 2017 has been given as earlier of:

- (a) Before or at the time of supply
- (b) Six months from the date of removal

Here, time of supply refers to the time when the confirmation is given by the recipient that he is willing to accept the goods. The last date of issuance of invoice in such cases will be the confirmation of acceptance subject to the fact that this acceptance should not take place after six months from the date of removal. If the approval does not come within the time frame of six months/comes after the period of six months from the date of removal, then the last date of invoice arises on the date when this period of six months from the date of removal expires.

In this regard, vide CBIC *Circular No. 22/22/2017-GST, dated 21-12-2017*, it has been clarified by CBIC that the movement of artwork from artist to art galleries shall not be constituted as supply as the same is sent on approval basis and the supply takes place when buyer selects a particular art work displayed at the gallery. This Circular needs further clarification because in case the goods are not sold within six months from the date of removal, the invoice is required to be issued after such time to Gallery for supply of such artwork. Accordingly, there is a presumption of supply from the artist to the gallery inherent in this example. On the contrary, if the gallery is not accepting the goods on approval but for display, the above clarification shall not hold true and as gallery is acting as an agent for display and supply of goods on behalf of the artist. In such cases, experts feel that an invoice be issued by the artist to the gallery while

moving the goods to the gallery and gallery shall issue an invoice at the time of sale to the buyer. Further, valuation benefits as available under Rule 28 of the CGST Rules may be availed by the artist while supplying such paintings to the gallery.

Also, vide *CBIC Circular No. 10/10/2017-GST, dated 18-10-2017* it has been clarified that where goods are moved within the State or from the State of registration to another State for supply on approval basis i.e. such goods are to be considered as being carried on approval basis and a tax invoice can be issued when the buyer has approved the goods and taken the delivery.

Unlike the case of VAT law where an invoice is required to be issued when 'transfer of property' takes place and invoice does not have to be kept pending until they are physically removed, GST requires issuance of an invoice at the time of their 'removal' or 'delivery', as the case may be, notwithstanding any delay in transfer of property. As explained earlier, an invoice does not by itself prove anything except that it is a record of the terms of understanding of the underlying transaction. Accordingly, referring back to our brief mention about 'person and taxable person', the tests requiring examination under section 31 must be administered not only in a transaction between two persons but even on all the transactions between two taxable persons even if they belong to the same person.

It is only upon undertaking a detailed enquiry into the questions of fact determined under section 31 in the respective cases, we will be able to determine one of the two elements prescribed to be the 'time of supply' under section 12. Time of supply therefore, is earlier of date of invoice as per section 31 or date of receipt of payment with respect to the supply.

*Exceptions:*

- (i) When an amount is received in excess of tax invoice up to `1,000/-, the time of supply in respect of such excess at the option of the supplier shall be the date of such invoice.
- (ii) Supply shall be deemed to have been made to the extent of the value of supply indicated in the invoice or the value of payment received by the supplier.
- (iii) Date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier.
- (iv) **No Tax on receipt of payment in advance:** The registered person who did not opt for the composition levy under section 10 shall pay the central tax on the outward supply of goods at the time of supply as specified in section 12(2)(a) i.e. the date of issue of invoice by the supplier or the last date on which he is required, under section 31(1), to issue the invoice with respect to the supply. Therefore, no GST is payable on advances received against supply of goods. (*NN-66/2017-Central Tax dated 15-Nov-17*). Earlier by Notification No.40/2017- Central Tax dtd.13-Oct-17, this benefit was granted to only small assesses whose turnover in the preceding financial year or in the year in which he obtained registration does not exceed or is not likely to exceed `150 Lakhs. However subsequently the scope was enhanced to include all registered persons making supply of goods except the persons who have opted for composition under section 10. Please

note that the relaxation has been brought only for advance received for supply of goods and is not available for advance received for supply of services. In summary, the taxability of the consideration received in advance would be as follows:

Period	Taxability of consideration received in advance for supply of goods	
	Aggregate turnover less than ` 1.5 crores	Aggregate turnover more than ` 1.5 crores
01.07.2017 to 12.10.2017	Taxable	Taxable
13.10.2017 to 15.11.2017	Not taxable	Taxable
15.11.2017 and onwards	Not taxable	Not taxable

The above notifications also refer to the situations attracting the provisions of Section 14 (change in rate of tax in respect of supply of goods or services). Accordingly, the date of receipt of advances would not be relevant for the purpose of ascertaining appropriate rate of tax in case of change. In other words, the applicable rate of tax in case of change in rate of tax would be ascertained based on the date of issuance of invoice and date of supply of goods only.

- (v) The provisions relating to job-work provides for supply of capital goods / inputs to the job-worker without payment of tax (section 143). The intention of the law is not to tax capital goods / inputs sent to job-worker as supply since in such an arrangement the goods are received back by the principal. However, if such goods are not received back within three years and one year respectively, it would qualify as supply by way of operation of deeming fiction provided under section 143(2) and section 143(3). In such a scenario, the date of sending the goods to the job-worker would be deemed to be the date when the goods were sent to the job-worker originally. It is important to understand here that the incidence of tax falls back on the date when the goods were sent to the and the operation of deeming fiction dictates the date of supply of goods as the time of supply. This would be in deviation to the general principles of ascertaining the time of supply viz., date of removal of goods on which the principal ought to have issued the invoice. In this regard, the Central Government has issued a *Circular No. 38/12/2018 dated 26.03.2018* wherein it is clarified that the principal should issue an invoice on expiry of three years / one year and should declare such supplies in the return filed for the month in which the time period of three years / one year is expired.

Illustration 7: Assuming the circumstances given under illustrations 3, 4, 5 and 6, please find the time of supply after considering the following additional information:

Actual date of issue of invoice	Date of receipt of payment	Amount received
21 <sup>st</sup> March 2018	19 <sup>th</sup> March 2018	5,00,000
	25 <sup>th</sup> March 2018	10,00,000

Answer: Since, the date of receipt of payment will be immaterial in considering the time of supply of goods, the earlier of the two dates i.e., the last date of issue of invoice and actual date of issue of invoice will be considered as the time of supply. So, the time of supply will be as follows:

Illustrations	Last date of issue of invoice	Actual date of issue of invoice	Time of Supply
Illustration 3	20th March 2018	21st March 2018	20th March 2018
Illustration 4	21st March 2018	21st March 2018	21st March 2018
Illustration 5	23rd March 2018	21st March 2018	21st March 2018
Illustration 6	25th March 2018	21st March 2018	21st March 2018

Illustration 8: A cement manufacturing company generates certain waste materials which are supplied to a recycling factory through a pipeline on a continuous basis.

- (a) Situation 1: Monthly payments of ₹ 5,00,000 are to be made by 7<sup>th</sup> of the next month as per the contract. For the period October – December, following were the date of issuance of invoices and payments:

Period	Date of issuance of invoice	Date of receipt of payment
October	4 <sup>th</sup> November 2018	6 <sup>th</sup> November 2018
November	6 <sup>th</sup> December 2018	8 <sup>th</sup> December 2018
December	9 <sup>th</sup> January 2019	5 <sup>th</sup> January 2019

- (b) Situation 2: Monthly statement of accounts are to be prepared by 5<sup>th</sup> of the next month as per the contract. For the period October, following were the dates of issuance of the successive statement of account and the date of issuance of invoices:

Period	Date of issuance of invoice	Date of issuance of the statement of account
October	4 <sup>th</sup> November 2018	6 <sup>th</sup> November 2018
November	6 <sup>th</sup> December 2018	3 <sup>rd</sup> December 2018
December	9 <sup>th</sup> January 2019	5 <sup>th</sup> January 2019

**Answer:**

Situation 1: Where there are successive payments involved, the last date of issuance of invoice is the date of receipt of such payment. As per Section 12(2), the time of supply should be the earlier of the date of issuance of invoice or the last date of issuance of the invoice. It may be noted that as per Notification no. 66/2017-CT dated 15<sup>th</sup> November 2017, only these two events are to be considered and the date of receipt of payment as mentioned under Section 12(2)(b) may be ignored. The due date when the payment should be received is also immaterial as it has not been specified in either the time of supply provisions or the provisions of the last date of issuance of invoice. Thereby, the time of supply in the given case will be the earlier of the date of receipt of successive payment (last date of issuance of invoice) or the actual date of issuance of invoice.

Period	Date of issuance of invoice	Date of receipt of payment	Time of supply
October	4 <sup>th</sup> November 2018	6 <sup>th</sup> November 2018	4 <sup>th</sup> November 2018
November	6 <sup>th</sup> December 2018	8 <sup>th</sup> December 2018	6 <sup>th</sup> December 2018
December	9 <sup>th</sup> January 2019	5 <sup>th</sup> January 2019	5 <sup>th</sup> January 2019

Situation 2: Where there are successive statements of accounts that are to be prepared, the last date of issuance of invoice will be the date of issuance of such successive statement. As per Section 12(2), the time of supply should be the earlier of the date of issuance of invoice or the last date of issuance of the invoice. It may be noted that as per *Notification no. 66/2017-CT dated 15<sup>th</sup> November 2017*, only these two events are to be considered and the date of receipt of payment as mentioned under Section 12(2)(b) may be ignored. The due date when the successive statement should be prepared is immaterial as it has not been specified in either the time of supply provisions or the provisions of the last date of issuance of invoice. Only the actual date of the preparation of the statement needs to be considered. Thereby, the time of supply will be the earlier of the date of issuance of successive statement of account (last date of issuance of invoice) and the date of invoice.

Period	Date of issuance of invoice	Date of issuance of the statement of account	Time of supply
October	4 <sup>th</sup> November 2018	6 <sup>th</sup> November 2018	4 <sup>th</sup> November 2018
November	6 <sup>th</sup> December 2018	3 <sup>rd</sup> December 2018	3 <sup>rd</sup> December 2018
December	9 <sup>th</sup> January 2019	5 <sup>th</sup> January 2019	5 <sup>th</sup> January 2019

Illustration 9: Certain goods are sent by Mr. X on sale on approval or return basis to Mr. Y on 22<sup>nd</sup> April 2019. The supply gets confirmed and invoice is issued on:

Case 1: 20<sup>th</sup> August 2019

Case 2: 22<sup>nd</sup> November 2019

Payment in each of the cases is made on 23<sup>rd</sup> November 2019.

Answer: Date of receipt of payment is immaterial for the purpose of calculating time of supply u/s 12(2) of the CGST Act 2017. So, 23<sup>rd</sup> November 2019 should be ignored altogether. The time of supply should be earlier of the date of issuance of invoice or the last date of issuance of invoice. The last date of issuance of invoice will be the earlier of the confirmation of supply or six months from the date of removal.

In case 1, the confirmation of supply occurred before 6 months from the date of removal. So, the last date of issuance of invoice was 20<sup>th</sup> August 2019. On this date, the invoice was issued. So, the time of supply will be 20<sup>th</sup> August 2019.

In case 2, the confirmation of supply happened after 6 months from the date of removal. Six months expired on 21<sup>st</sup> October 2019. So, the invoice was required to be issued by this date. Since the invoice was issued on 22<sup>nd</sup> November 2019, the actual date of issue of invoice will be considered as falling after the last date of issuance of invoice. So, the time of supply will be the last date of issuance of invoice i.e., 21<sup>st</sup> October 2019.

### (c) Time of Supply – Reverse Charge

Where tax is payable on reverse charge basis, the time of supply is appointed to be the earliest of (a) date of receipt of goods, (b) date of payment or (c) 30 days from the date of issue of invoice by the supplier. If for any reason, one of these three dates cannot be determined then the time of supply will be the date of recording the supply in the books of the recipient.

Keeping in mind the definition of reverse charge in section 2(98), the above provision does not apply to payment of tax by an electronic commerce operator but only to those cases of supply which fall under sub-section (3) or (4) of section 9 of the Act.

Reverse charge in case of goods may arise either under Section 9(3) or Section 9(4) of the CGST Act. Section 9(3) empowers the issuance of notification by the Government under which the tax will be paid by the recipient of goods as per reverse charge mechanism. Notification No. 4/2017-Central Tax (Rate) dated 28.06.2017 as amended from time to time provides the list of goods which will be subject to reverse charge mechanism subject to the category of supplier and recipient specified therein. These goods include cashew nuts (not shelled or peeled), bidi wrapper leaves (tendu), tobacco leaves, <sup>2</sup>[essential oils other than those of citrus fruits namely Of peppermint (*Mentha piperita*), Of other mints : Spearmint oil (*ex-mentha spicata*), Water mint-oil (*exmentha aquatic*), Horsemint oil (*exmentha sylvestries*), Bergament oil (*ex-mentha citrate*), *Mentha arvensis*], raw cotton, silk yarn, supply of lottery, <sup>3</sup>[Used vehicles, seized and confiscated goods, old and used goods, waste and scrap], <sup>4</sup>[Priority Sector Lending Certificate] when supplied by specified persons.

Prior to enactment of CGST Amendment Act, section 9(4) required the recipient of taxable goods/services to pay tax if it is registered and receives inward supplies from unregistered suppliers. The applicability of which was exempted from 13<sup>th</sup> October 2017 till 31<sup>st</sup> January, 2019. However, it was applicable for intra state supplies subject to the aggregate amount of such supplies exceeding ` 5000 in a day from any or all unregistered suppliers and all interstate supplies without any limit till 12<sup>th</sup> October 2017. Section 9(4) has been substituted by the *Central Goods and Services Tax (Amendment) Act, 2018*, w.e.f. 1-2-2019. According to the new provision, Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both. In line, there are certain services

<sup>2</sup> Substituted by Notification No. 14/2022-Central Tax (Rate), dated 30-12-2022, w.e.f. 1-1-2023. Prior to its substitution, Sl. No. 3A as inserted by Notification No. 10/2021-Central Tax (Rate), dated 30-9-2021, w.e.f. 1-10-2021.

<sup>3</sup> Inserted by Notification No. 36/2017-Central Tax (Rate), dated 13-10-2017, w.e.f. 13-10-2017.

<sup>4</sup> Inserted by Notification No. 11/2018-Central Tax (Rate), dated 28-5-2018, w.e.f. 28-5-2018.

which are notified but no goods have been notified till 30.04.2020 under the newly substituted section.

It is also pertinent to mention that in view of bringing into effect the amendments (regarding RCM on supplies by unregistered persons) in the GST law vide *Notification No. 01/2019-Central Tax (Rate), dt. 29-01-2019*, reverse charge exemption notification has been rescinded.

Illustration 10: Mr.X, an agriculturist supplies raw cotton (under reverse charge) to Mr. Y who manufactures cotton shirts. The date wise turnout of events is given below:

01.04.2019- Mr.Y approaches Mr.X and places an order for 2 tonnes of cotton

10.04.2019- Mr.Y receives the goods

15.04.2019- Mr.X issues an invoice

20.04.2019- Mr.Y makes a payment by cheque and accordingly records it in his books of accounts.

25.04.2019- The payment gets debited from Mr.Y' s bank account

What will be the time of supply in the given case?

Answer: The time of supply shall be the earlier of the following dates:

- a. the date of receipt of goods i.e. 10.04.2019
- b. the date of payment as recorded in the books of Mr.Y i.e. 20.04.2019 or the date when the payment gets debited in the books of the recipient i.e. 25.04.2019 whichever is earlier
- c. the date immediately following thirty days from the date of issue of invoice, i.e.  $15.04.2019+30\text{days}+1\text{day}=16.05.2019$

Therefore, the time of supply will be 10.04.2019.

#### (d) Time of Supply – Vouchers

The Act introduces time of supply in respect of 'vouchers' as a separate category such that the provisions relating to time of supply of goods is made inapplicable when the supply is of such vouchers. Referring to Chapter III where in the context of supply, definition of goods has been discussed at length, we find specific inclusion of 'actionable claims'.

In relation to actionable claims, Courts have held as follows:

- (i) Actionable claims come within the definition of goods as generally understood.
- (ii) VAT laws have deliberately excluded actionable claims from the definition of goods.
- (iii) Actionable claims represent debt and accordingly carry a demand that can lawfully be made by one person against another.
- (iv) Actionable claims represent property in non-physical (incorporeal) form.

But in GST, unlike VAT laws, we find that by including actionable claims within the definition of goods, they are made liable to tax. In relation to actionable claims under GST, please note the following key aspects:

- (i) Actionable claims are included specifically in the definition of goods, but this inclusion is by creating “an exception from an exclusion”. In other words, while excluding money and securities from the definition of goods, actionable claims have been singled out. This means such forms of actionable claims that represent property in the form of money or securities are also excluded from the definition of goods. Therefore, from a large population of actionable claims, tax is applicable only on the subset of actionable claims which do not represent property in the form of money or securities and all other forms of actionable claims representing any other property is includable in the definition of goods. A receipt for having made payment is not actionable claim because that receipt represents money and not the result of a transaction resulting in debt or demand. Similarly, promissory notes, IOU slips and all other derivatives of such instruments are also not actionable claims for the purposes of GST because of the exclusion of money from the definition.
- (ii) Actionable claims which are included within the definition of goods do not become includable in the definition of services due to the accommodative and expansive language used to define services. For this reason, the property that actionable claims represent even if they are in non-physical form will continue to remain goods and not become services. Actionable claims so understood may or may not be itself in any physical form. In other words, actionable claim is not the piece of paper carrying the detailed description of the actionable claim in question but the real property, though in non-physical form, that is referred to in that piece of paper. In this digital age, piece of paper carrying the description of the actionable claim can even be present in electronic form and still retain the character of actionable claim within the definition of goods. So, actionable claims can be in physical or electronic form as long as they represent real property.

About ‘actionable claims’ discussion in Chapter III would have highlighted that the incidence is limited to ‘lottery, betting and gambling’. Further, it is important to note that vouchers are not always referring only to actionable claims. Vouchers being treated as a separate category for the purposes of determining time of supply will need to be first identified in relation to supply before applying the relevant provision regarding its time of supply. Vouchers are defined in the Act as “an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument” and examples of voucher are coupon, token, ticket, license, permit, pass.

Now, the time of supply in the case of vouchers is stated to be:

- (i) the date of issue of voucher if the supply is identifiable at that point; or
- (ii) in all other instances, the date of redemption of the voucher.

From the above provision, it can be seen that at the time of issue of voucher, it is possible that the supply is not identifiable. So, the following key statements can be considered in this regard:

- (i) Vouchers may be issued with specific or non-specific end-use;

- (ii) Vouchers that are issued on payment of money will not be treated as 'vouchers' since definition of money in section 2(75) includes "instruments approved by RBI" and where such approval is obtained from RBI (under Payments and Settlement Systems Act, 2007), the treatment will be as 'money' and not as 'vouchers';
- (iii) Vouchers themselves are not legal tender;
- (iv) Vouchers represent some carried value or redeemable value in money terms;
- (v) Vouchers are accepted as substitute for payment for a supply due to their carry value;
- (vi) Vouchers are not merely receipts for pre-payment received (those would be 'money');
- (vii) Vouchers must be non-cancellable such that they cannot be reconverted back into money;
- (viii) Vouchers may be in physical or digital form but comprise the above characteristics.

Some key aspects of the definition are discussed here as are relevant from the perspective of section 12(4) and section 13(4).

**Money** [section 2(75)] may be represented as follows:

Object		Purpose
Indian legal tender *	Foreign currency **	Used as consideration to:
Cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognized by RBI #		<ul style="list-style-type: none"> <li>➤ settle an obligation or</li> <li>➤ exchange with Indian legal tender of different denomination (not held for numismatic value)</li> </ul>
* <i>currency recognized by law – RBI Act, 1934 and includes currency notes and coins. Legal tender issued records liability of the Central Government and a guarantee to its holder to secure value-in-exchange</i>		
** <i>legal tender of other countries recognized by India. Does not include securities denominated in foreign currency</i>		
# <i>stored value instrument known as Pre-Paid Instrument (PPI) issued by a licensee under Payment and Settlement Systems Act, 2007</i>		

Money is therefore that which is 'used as' consideration between parties to a transaction. Money does not represent a liability of the parties to the transaction. Money represents liability of the Central Government. A person who has money has an asset which represents a certain amount of value. There is requirement to specially prescribe 'terms of use' of money. It is known and is declared by the law that recognizes money to be legal tender. Money includes all 'stored value' instruments approved by RBI or PPIs. Value is stored in PPIs by transfer of Indian legal tender in cash or from bank account and any balance of stored value in PPIs can be withdrawn in ATM

or retransferred back into bank account. PPIs are of three types – closed, semi-closed and open PPIs. There are two other kinds of hybrids where existing banking license-holders along with a technology partner can issue PPI-like stored-value products which operate as a specie of savings bank account of the PPI-holder or beneficiary. PPIs can be physical bearer instruments as paper certificate or plastic card. PPIs can also be non-physical in the form of a digital wallet. Both represent stored value which is linked to a bank account of the beneficiary. PPIs are not to be misunderstood with Payments Bank. PPIs have more restrictions than a Payments Bank which is a scaled-down version of a regular savings bank account.

Please also note that the Government has passed the Payment and Settlement Systems Act, 2007 ('PSS Act') and accordingly, not everyone is permitted to issue instruments that may be used as a Payment System. RBI was expected to make major changes to the circulars issued in terms of the PSS Act by June 2017 but the framework or principles borrowed from the current circulars for the purposes of GST is expected to remain unaltered although changes may come in areas of governance, ease of doing business and inclusive growth in e-payment offerings through these Pre-Paid Instruments or PPIs. (refer RBI Circular No.RBI/DPSS/2017-18/58 dated 11 Oct, 2017)

Description	Prepaid Payment Instruments (PSS Act, 2007)			Co-branded hybrid PPIs (7.4)	
	Closed	Semi-closed	Open	Semi-closed	Limited Open
<b>Parties involved</b>					
Issuer	Merchant	NBFC/Company	Bank	NBFC/Company	Bank
Brand	Issuer	Issuer	Issuer	Co-branded	Co-branded
Holder of PPI	Consumer	Consumer	Consumer	Consumer	Consumer
PPI usage	Issuer outlet only	Pre-defined outlets	Any or ATM	Any (or ATM)	Any (or ATM)
<b>Description of PPI</b>					
Card type	Physical only	e-Card only	Any	e-Card only	Any
Payment type (2.1)	Acceptance	Settlement	Settlement	Settlement	Settlement
Reload allowed	No	Yes	Yes	Yes	Yes
Is as 'payment system'	No (2.4)	Yes	Yes	Yes	Yes
<b>Regulatory prescriptions</b>					
RBI approval	Required	Required	Authorization	Required	Gen. permission
Stored value < Rs.100,000/-	Not allowed (7.1)	Full KYC (7.2-iii)	Full KYC (7.2-iii)	Full KYC (7.2-iii)	Full KYC (7.2-iii)
Stored value < Rs.50,000/-	OVD (7.2-ii) *	OVD (7.2-ii) *	Full KYC (7.2-iii)	OVD (7.2-ii) *	Full KYC (7.2-iii)
Stored value < Rs.10,000/-	ID only (7.2-i)	ID only (7.2-i)	Full KYC (7.2-iii)	ID only (7.2-i)	Full KYC (7.2-iii)
<small>* Officially valid document as per rule 2(d) of PML Rules, 2005</small>					
<b>Cashflow / custody-flow steps</b>					
Stored value paid by	Consumer	Consumer	Consumer	Consumer	Consumer
Stored value paid to	Issuer-merchant	Issuer	Issuer-bank	Issuer	Issuer-bank
Held as	Trade advance	Trade advance	Deposit	Trade advance	Deposit
Held with (8.2 & 8.3)	Any bank (escrow)	Any bank (escrow)	Issuer-bank	Any bank (escrow)	Issuer-bank
Held for (8.3-vii)	Issuer-merchant	Issuer	Consumer	Issuer	Consumer
Interest bearing account	No (8.3-xii)	No (8.3-xii)	Yes	No (8.3-xii)	Yes
'Lien or charge' of unspent value	Consumer	Consumer	No (8.2)	Consumer	No (8.2)
'Lien or charge' of spent value	Merchant	Merchant	Merchant	Merchant	Merchant
Unspent value stored (10.2 & .3)	Lapse & forfeit	Exhausts	Withdraw	Exhausts	Withdraw
<b>Additional restrictions</b>					
Resident of India	Yes	Yes	Any	Yes	Any
Non-commercial user	Yes	Yes	Any	Any	Any
Currency	INR only (6.3)	INR only (6.3)	Any (4.1)	INR only (6.3)	Any (4.1)
User verification	Nil (bearer use)	PIN-based	PIN-OTP	PIN-OTP-Others	PIN-OTP-Others

Source: Circular RBI/2014-2015/105 DPSS.CO.PD.PPI.No.3/02.14.006/2014-15 dated July 1, 2014 (updated as on Dec 3, 2014); relevant para references in brackets.

Voucher 2(118) may be represented as follows:

Object	Description
Instrument with obligation	Created by contract between private Parties
Value represented	As per terms of use
Stored value	Nil; only value of obligation admitted
Obligor (person liable to discharge admitted obligation)	Issuer or other name obligor
Parties involved	3 or more parties – supplier, receiver and obligor

Voucher is therefore 'instrument with obligation' that is accepted as consideration. Voucher does not contain any 'stored value' but 'value-to-use'. This 'value-to-use' is credited into a voucher by a contractual arrangement between the issuer-redeemer of the voucher. A customer who redeems the voucher is not a party to the arrangement for creation of the voucher. A voucher that is created changes hands through steps with a sliding-scale of discounts until it is redeemed at the face value. This 'value-to-use' at the time of its creating necessarily involves flow of payment from the issuer to the redeemer as such voucher represent cash/cash equivalent received in advance entailing an obligation. But this value-to-use, cannot be converted to cash but only expended or redeemed as per terms of use of voucher. There is no regulation governing issue, transfer and redemption of vouchers except terms of a lawful contract. Vouchers are not PPIs and hence not governed by Payments and Settlement Systems Act, 2007. It is not uncommon for the available balance of 'value-to-use' to be credited into the digital wallet of a PPIs issued by the same issuer. But the difference is that the part of the wallet balance representing stored value can be withdrawn but not the part of the wallet balance representing value-to-use or voucher. Gift voucher issued by a merchant that is a bearer certificate with a unique identification number or code is not a voucher that agrees with this definition because this gift voucher is a close-ended PPI.

Another similar product is 'loyalty points' which also contains 'value-to-use' but the difference is that in loyalty points, issuer-redeemer is the same person. Loyalty points issued represents liability of the issuer towards the beneficiary without any underlying flow of payment and is best described as 'future discount'. That is, these points accrue in one transaction and based on some conversion ratio, that can be redeemed as a discount in a subsequent transaction. As the loyalty points are non-transferable where the issuer-redeemer is the same person, it is not an instrument with obligation. Discount allowed in the subsequent transaction is towards cancellation of points accrued from the earlier transaction. Similar to vouchers, loyalty points also do not have any regulation governing its allotment and redemption except the terms of a lawful contract. Nowadays, it is seen that the liability that accumulated loyalty points represents, are being converted into voucher by transfer of liability by issuer to an intermediary at a discounted value. From here onwards, due to intermediary's involvement, an instrument comes into existence with an obligation which is voucher.

Yet another product coupon or token in the form of a 'code', where a customer becomes entitled to discount at the very first purchase by citing this 'code'. It is interesting to note that entitlement to this code though not flowing from a transaction in the past, it is an entitlement by accepting to enter into a transaction in the future. This acceptance is recorded by registering on a website, downloading an app or any other positive act on the part of the customer. Such codes also do not satisfy the requirements of a voucher for the same reasons as applicable to loyalty points.

Among all these lies another transaction that may appear to overlap with definition of voucher, due to the words of common understanding being used interchangeably with words having specific statutory meaning and that is 'Pass'. Pass is one which could be an entry pass or customer's pass or a free ticket. For example, a ticket to a cricket match is available for ₹1,000/- but a company buys these tickets and distributes it to key customers as 'free pass'. It allows the customer to enjoy the cricket match without paying anything for the same. But the company has already paid the ticket price to the organizers of the cricket match. Another example could be free pass to view screening of a film and so on. There is a normal taxable supply between the supplier of goods or services and the person who pays and buys the 'pass'. There is another supply to be examined, between the person who pays and the person who actually enjoys the goods or services. Whatever may be the conclusions reached regarding the two transactions here, there is no voucher that comes into existence even if such entry tickets are even designated as 'free pass – not for sale' and so on. However, if such 'passes' are printed and distributed out of the ordinary course of ticket sales without reference to a specific event but permitting access to a basket of events and valid for a duration of time, then it partakes the character of voucher – instrument with obligation. When the 'Pass' loses its character as an 'advance paid' for a supply in future – whether to the Payer or any other bearer – and becomes an 'instrument with obligation', then the 'Pass' becomes a voucher.

Criteria	Money	Voucher	Loyalty Points
Instrument type	Indian legal tender, foreign currency or stored value PPI of cash paid	Physical card / non-physical account of cash received	Points-statement of accrued discount from past transactions
Beneficiary	Bearer of cash or account-holder of PPI	Bearer or account-holder	Account-holder
Represents cash deposited	Yes, paid by Beneficiary *	Yes, paid by third party Issuer *	No, notional credit of loyalty points
Paid value = Face value on redemption	Yes, no discount and no premium	No, discounted value is paid by redemption of face value	NA
Paid value refundable	Yes, stored-value	No, only value-to-use	NA, discount-to-claim
Transferrable	No	Yes	Yes **

Issuer is redeemer	Yes	No	Yes
Redemption by	Bearer	Bearer	Account-holder
Unredeemed value	Continues	Loss to issuer	Lapse
Governing law	PSS Act	Contract Act	Contract Act

\* includes nominee of bearer-instruments

\*\* becomes voucher on transfer of accumulated points before redemption

#### Illustrations:

Illustration	Voucher or Not	Nature of Instrument
Shopping gift card purchased for ₹5,000/-	Not voucher	It's money, by way of 'stored value' even if not encashable
Coupons or token given to customer by pizza outlet on making purchase of ₹1,000/- which allows 10% discount on next purchase	Not voucher	It is future discount by way of 'value-to-use' not encashable
Money deposited into digital wallet	Not voucher	It's money, by way of 'stored value' though encashable
Points credited into digital wallet	Not voucher	It is future discount by way of 'value-to-use' not encashable
Transfer of liability towards accumulated loyalty points credited to customers	Voucher	Now it's become an 'instrument with obligation'
Pre-paid instruments: ➤ Telephone calling card / recharge card ➤ Multi-currency traveller's card ➤ DTH recharge card	Not voucher	It's money received in advance to be settled by making supplies in future
Non-instrument based advances: ➤ Receipt issued to customer for acknowledging advance payment received towards PO issued ➤ Advance booking of film ticket ➤ Train ticket purchased in advance ➤ Contribution of instalments into 'gold savings scheme' ➤ Time-share in resort	Not voucher	It's money received in advance to be settled by making supplies in future

The reason why it is important to differentiate whether it is a voucher or not, is that if the instrument is money then tax is payable on the actual 'paid-in value' and not the 'value-to-use' (or redeemable face value). For example, customer pays advance of ₹1,00,000 to distributor

and the distributor transfers `80,000 to manufacture. GST payable by the distributor will be on `1,00,000 and the GST payable by the manufacturer will be on `80,000. Ignoring the fact that credit is not allowable, this would be the treatment in respect of any instrument that fits the definition of money. However, if a voucher was supplied by the manufacturer to the distributor of face value (or value-to-use) `1,00,000 but paid-in value `80,000, GST would be payable by the manufacturer on `1,00,000 and not `80,000. Further, anomalies arise on account of distributors liability to pay GST on `1,00,000 but with serious concerns on availability of credit of tax charged by manufacturer. Without satisfying conditions under section 16(2) read with rule 28, credit would not be available and tax would be collected on face value or value-to-use and not the actual paid-in value. Payment of tax in the case of vouchers on face value or value-to-use is found in rule 32(6).

It is important to understand that a similar provision as specified in relation to time of supply of goods also exists in time of supply of services. It is reasonable to, therefore, infer that the Government in its wisdom, in all probability, will treat 'vouchers relating to goods' and 'vouchers relating to services' as distinct and separate class of transactions. What does one understand by 'vouchers relatable to goods' and 'vouchers relatable to services'? A layman would comprehend that vouchers relatable to goods would be those class of transactions which can be exchanged for goods whereas vouchers relating to services being distinct and separate can be exchanged only for services. There can be a third class of transactions relating to vouchers, namely, a gift voucher issued by a bank which can be exchanged only for cash. But a plain reading of definition of goods and services indicates that they both exclude money. Therefore, such vouchers relatable to cash / money can be safely assumed to be outside the ambit of GST laws.

It is possible for one to construe that a voucher relating to goods can be embedded for the provision of services also. Such class of transactions must be read with Schedule II to understand whether they are to be treated as goods or as services and thereafter apply the principles laid down to the transaction as if they were goods or services. And in such situations, await until time of redemption to determine the rate of tax and class of supply.

Interesting situations arise in respect of such transactions. For instance, the points accumulated in a credit card could be used to exchange for goods or issue of an air ticket. Difficulty arises in taxing such transactions in the hands of the person issuing such points. However, the taxability or otherwise of such accumulated points would need detailed deliberations based on facts and surrounding circumstances of each case.

As discussed above, the time of supply of goods in case of supply of vouchers by a supplier will be:

- (a) date of issue of voucher if the supply is identifiable at that point
- (b) date of redemption of voucher in all other cases

This basically means that if the exact nature of goods to be supplied along with its quantity value of such goods are available when the voucher is issued, the time of supply will be the date of issue of voucher. On the other hand, if the nature of supply of goods is not available at the time

of issue of voucher, then the time of supply will be considered as the date of redemption of voucher. This is not to say that the time of supply will determine the value also. This is because as per rule 32(6), the value will always be the redemption or face value of the voucher irrespective of the time of supply. There remains some important issues which are yet to be resolved in context of vouchers especially when Vouchers have been given a separate place in the provisions of Time of Supply, for eg., what shall be the time of supply in case there is no redemption of such voucher made by the consumer in case of vouchers where supply is not identifiable at the time of issue of such vouchers, does time of supply would not be material at the time of redemption of vouchers against supply of goods or services, time of supply in respect of Vouchers not issued by redeeming branch etc. In this regard, it may be noted that vouchers DO NOT have a separate HSN code. As such, the tariff rate is dependent on the 'redemption article' (i.e., the good or service).

**(e) Time of Supply – Residuary**

Where none of the above provisions are able to satisfactorily answer the time of supply, it is to be determined based on the residuary provision which states that the time of supply is:

- (i) where a periodical return has to be filed, the due date prescribed for such return; or
- (ii) in any other case, the date of payment of the tax.

Time of supply under this residuary provision is applicable only when the other provisions are found to be inapplicable and not merely when there is some difficulty in determining the facts that are sought for by the relevant provision.

**(f) Time of Supply – Special Charges**

Special charges imposed for delay in payment of consideration viz., interest, late fees or penalty for delayed payment will enjoy the facility of time of supply being date of receipt of the charges imposed, that is, cash-basis of payment of GST. The various issues involved in these special charges are discussed in detail under time of supply of services which may kindly be referred. It is however, important to note that since the time of supply has been deferred to the time of receipt, even though there is an increase in the value of supply made in past date, interest is not required to be paid on such amount from the date of supply (originally).

Illustration 11: Mr. X enters into a contract for supply of goods worth ` 5, 00,000 with Mr. Y on 10<sup>th</sup> April 2018. Such goods are removed with an invoice dated 12<sup>th</sup> April 2018 on 13<sup>th</sup> April 2018 for delivery to Mr. Y. The terms of the contract demanded the payment against such supply to be made within 60 days beyond which a late payment charge of ` 10,000 will have to be paid by Mr. Y. Mr. Y makes the payment of Rs, 5,00,000 along with the late payment charges on 15<sup>th</sup> July 2018. What will be the time of supply in respect of the entire amount?

Answer: In Section 12(2), the time of supply in respect of ` 5, 00,000 will be the date of issuance of invoice or last date of issuance of invoice. Last date of issuance of invoice will be the date of removal where supply involves movement of goods.

Date of issuance of invoice: 12<sup>th</sup> April 2018

Last date of issuance of invoice: 13<sup>th</sup> April 2018 (date of removal)

The date of payment is immaterial as per Notification no. 66/2017-Central Tax dated 15<sup>th</sup> November 2017 as already discussed above. So, the time of supply will be 12<sup>th</sup> April, 2018 in respect of ` 5, 00,000.

However, in respect of the time of supply for the amount of Rs, 10,000 paid as late payment charges, time of supply as per section 12(6) has been stated to be the date on which the supplier receives the addition in value. Here, the additional amount of ` 10,000 is received on 15<sup>th</sup> July 2018. So, the time of supply for this amount will also arise on 15<sup>th</sup> July 2018.

Some illustrations for better understanding of the provisions of time of supply of goods :

	Concept illustrations Section 12(2)	Invoice date	Invoice due date	Payment entry in supplier's books	Credit in bank account	Time of supply
1	Invoice raised before removal	10-Oct-17	20-Oct-17	26-Oct-17	30-Oct-17	10-Oct-17
2	Advance received (See Note 1)	30-Oct-17	20-Oct-17	10-Oct-17	30-Oct-17	10-Oct-17
3	Advance received	30-Nov-17	20-Nov-17	16-Nov-17	30-Nov-17	20-Nov-17

**Notes:**

1. *Notification 40/2017 dated 13.10.2017* exempts a taxable person not registered under the composition scheme and having aggregate turnover less than ` 1.50 crores, for payment of tax on receipt of advance. This Notification will be effective from 13.10.2017 and as such a taxable person is liable to remit tax on any advances received prior to 13.10.2017.
2. *Notification No. 66/2017 dated 15.11.2017* exempts all taxable persons from payment of tax on the advances received in relation to supply of goods. This Notification will be effective from 15.11.2017 and as such, the date of receipt of advance will not be relevant to determine the time of supply of goods thereafter.

	Supply involves movement of goods Section 12(2) r/w Section 31(1)(a)	Invoice/ document date	Removal of goods	Delivery of goods	Receipt of payment	Time of supply
4	Delayed issue of invoice	26-Oct-17	20-Oct-17	26-Oct-17	26-Oct-17	20-Oct-17
5	Inter-State stock transfer	10-Oct-17	20-Oct-17	26-Oct-17	10-Nov-17	10-Oct-17

6	Advance received, invoice for full amount issued on same day (40% advance, 60% post supply payment)	30-Oct-17	10-Nov-17	14-Nov-17	30-Oct-17	30-Oct-17
					20-Nov-17	30-Oct-17

	<b>Supply otherwise than by involving movement of goods Section 12(2) r/w Section 31(1)(b)</b>	<b>Invoice date</b>	<b>Receipt of invoice by recipient</b>	<b>Delivery of goods</b>	<b>Receipt of payment</b>	<b>Time of supply</b>
7	Delayed issue of invoice	30-Oct-17	05-Nov-17	26-Oct-17	10-Nov-17	26-Oct-17
8	Invoice issued prior to delivery	20-Oct-17	10-Nov-17	26-Oct-17	10-Nov-17	20-Oct-17

	<b>Continuous supply of goods Section 12(2) r/w Section 31(4)</b>	<b>Invoice date</b>	<b>Removal of goods</b>	<b>Due date of payment as per agreement</b>	<b>Receipt of payment</b>	<b>Time of supply</b>
9	Contract provides for successive statements of account/ successive payments	01-Nov-17	15-Oct-17	05-Nov-17	01-Nov-17	01-Nov-17
10			25-Oct-17			
11		08-Jan-18	08-Nov-17	05-Dec-17	11-Dec-17	05-Dec-17
			30-Nov-17			
		14-Dec-17	05-Jan-18	01-Jan-18	01-Jan-18	
		23-Dec-17				

	<b>Reverse charge Section 12(3)</b>	<b>Date of invoice issued by supplier</b>	<b>Removal of goods</b>	<b>Receipt of goods</b>	<b>Payment by recipient</b>	<b>Time of supply</b>
12	Receipt of goods	31-Oct-17	31-Oct-17	20-Nov-17	30-Nov-17	20-Nov-17
13	Advance paid	31-Oct-17	31-Oct-17	20-Nov-17	05-Nov-17	05-Nov-17
14	No payment made for the supply	31-Oct-17	30-Dec-17	05-Jan-18	-	01-Dec-17

	Sale on approval basis Section 12(2) r/w Section 31(7)	Removal of goods	Issue of invoice	Accepted by recipient	Receipt of payment	Time of supply
15	Acceptance communicated within 6 months of removal	01-Nov-17	25-Nov-17	15-Nov-17	25-Nov-17	15-Nov-17
16	Amount paid to supplier before informing acceptance	01-Nov-17	25-Nov-17	15-Nov-17	12-Nov-17	15-Nov-17
17	Acceptance not communicated within 6 months of removal	01-Oct-17	15-May-18	15-May-18	02-May-18	01-Apr-18

### Statutory Provisions

#### 13. Time of supply of services

(1) *The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.*

(2) *The time of supply of services shall be the earliest of the following dates, namely:—*

- (a) *the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under <sup>5</sup>[sub-section (2) of] section 31 or the date of receipt of payment, whichever is earlier; or*
- (b) *the date of provision of service, if the invoice is not issued within the period prescribed under <sup>6</sup>[sub-section (2) of] section 31 or the date of receipt of payment, whichever is earlier; or*
- (c) *the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:*

*Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.*

*Explanation. —For the purposes of clauses (a) and (b)—*

- (i) *the supply shall be deemed to have been made to the extent it is covered by the*

<sup>5</sup> Omitted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.

<sup>6</sup> Omitted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.

	<i>invoice or, as the case may be, the payment;</i>
	(ii) <i>“the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.</i>
(3)	<i>In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:—</i>
	(a) <i>the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or</i>
	(b) <i>the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:</i>
	<i>Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:</i>
	<i>Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.</i>
(4)	<i>In case of supply of vouchers by a supplier, the time of supply shall be—</i>
	(a) <i>the date of issue of voucher, if the supply is identifiable at that point; or</i>
	(b) <i>the date of redemption of voucher, in all other cases.</i>
(5)	<i>Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—</i>
	(a) <i>in a case where a periodical return has to be filed, be the date on which such return is to be filed; or</i>
	(b) <i>in any other case, be the date on which the tax is paid.</i>
(6)	<i>The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.</i>

**Related provisions of the Statute:**

<b>Section or Rule (CGST / SGST)</b>	<b>Description</b>
Section 2(12)	Definition of Associated Enterprises
Section 2(31)	Definition of Consideration
Section 2(41)	Definition of Document
Section 2(56)	Definition of India
Section 2(66)	Definition of Invoice or tax Invoice

Section 2(87)	Definition of Prescribed
Section 2(93)	Definition of Recipient
Section 2(97)	Definition of Return
Section 2(98)	Definition of Reverse Charge
Section 2(102)	Definition of Services
Section 2(105)	Definition of Supplier
Section 2(118)	Definition of Voucher
Section 7	Scope of Supply
Section 9	Levy and Collection
Section 14	Change in rate of tax in respect of supply of goods or services
Section 15	Value of taxable supply
Section 31	Tax invoice
Section 39	Furnishing of returns

### 13.1 Analysis

#### (a) Time of Supply – Forward Charge

Similar to goods, time of supply of services is prescribed to be the earlier of date of issue of invoice and date of receipt of payment. Date of issue of invoice requires us to examine section 31 which deals with the requirement to issue a “tax invoice”. In relation to services, section 31 requires that a tax invoice be issued whether before or after provision of service. Further, there is a time limit beyond which tax invoice to be issued in arrears cannot be delayed after completion of the provision of service.

Rule 47 of the CGST Rules prescribes the time period within which such invoice should be issued. It states that in case of the taxable supply of services, invoice should be issued within 30 days from the date of supply of services. In case of banking company/financial institution/non-banking financial company, the time period becomes 45 days from the date of supply of services. When these banking/financial institution/non-banking financial institution/telecom operator companies make taxable supplies of services between distinct persons, invoice may be issued before or at the time such supplier records the same in his books of account or before expiry of the quarter during which the supply was made.

If the invoice is issued within the prescribed time period, the time of supply will be the earlier of the date of issue of invoice or the date of payment. If the invoice is issued after the prescribed time period, the time of supply will be the earlier of the date of completion of service or the date of payment. If none of these two cases are applicable, then the time of supply will be the date when the recipient shows the receipt of services in his books of accounts.

Please recollect the discussion in Chapter III where it has been explained that in accordance with Schedule II, supplies involving goods may be treated as supply of services. In all such cases, as in the case of services ordinarily understood, this provision alone applies for determination of time of supply. One may also refer to Chapter VII regarding issuance of tax invoice in all other circumstances and determine from there the fact of issuance of tax invoice.

Therefore, where the tax invoice has been issued accordingly, the time of supply can be determined to be earlier of date of issuance of such tax invoice or date of receipt of payment.

Illustration 1: Mr. X provides consultancy services to Mr. Y worth ` 50,000.

08.04.2018 – An advance of ` 10,000 is received from Mr. Y

10.04.2018 – The consultancy services are provided

16.05.2018 – Mr X receives balance payment of ` 40,000 and records it in his books.

What will be the time of supply assuming Mr. X issues the invoice on:

Situation 1 - 15.04.2018

Situation 2 – 15.05.2018

Answer:

Situation 1: If invoice is issued within the prescribed time period, time of supply will be the date of receipt of payment or date of issue of invoice whichever is earlier. In the given case, the invoice is issued on 15.04.2018 which is within 30 days of the supply of services which is within the prescribed period. So, for ` 10,000, the time of supply will be 08.04.2018 which is the date of receipt of advance payment. For the balance amount, time of supply will be 15.04.2018 which is earlier of 15.04.2018 (date of invoice) and 16.05.2018 (date of receipt of payment).

Situation 2: If invoice is not issued within the prescribed time period, time of supply will be the earlier of the date of completion of service and the date of receipt of payment. Here, invoice is issued on 15.05.2018 which is after the prescribed time period. So, for ` 10,000, the time of supply will be 08.04.2018 which is the date of receipt of advance payment. For the balance amount, time of supply will be 10.04.2018 which is earlier of 10.04.2018 (date of completion of service) and 16.05.2018 (date of receipt of payment).

Illustration 2: During investigation, it was found that Mr. X had provided catering services of ` 1,00,000 to Mr. Y during his business convention. The payment for these services was made in cash. Mr. X had neither issued any invoice nor recognised the payment in his books of accounts. Mr. Y recorded the payment of ` 1,00,000 in cash in his books on 28<sup>th</sup> April 2018. What will be the time of supply in this case?

Answer: Since, the date of receipt of payment or the date of invoice is not available in case of Mr. X, the date when the payment is recorded in the books of the recipient becomes relevant. Since, Mr. Y recorded this on 28<sup>th</sup> April, the time of supply for such supply will also be considered as 28<sup>th</sup> April 2018.

*Exceptions:*

- (i) When an amount in excess of tax invoice is received up to ₹ 1,000/-, the time of supply in respect of such excess at the option of the supplier shall be the date of such invoice.

Illustration 3: A telephone company receives ₹ 4,000 on 27<sup>th</sup> July 2018 against an invoice of ₹ 3,700 on 23<sup>rd</sup> July 2018 in respect of the services provided. The excess amount of ₹ 300 can be adjusted against the invoice to be issued in the next month. Time of supply will arise only for ₹ 3700 on 23<sup>rd</sup> July 2018. For the balance amount of ₹ 300, the time of supply may not arise on 27<sup>th</sup> July 2018 at the option of the supplier and may be adjusted against the next month's invoice.

- (ii) Supply shall be deemed to have been made to the extent the value of supply indicated in the invoice or the value of payment received by the supplier.

Illustration 4: In Illustration 3, assume that the payment received was ₹ 5000 instead of ₹ 4000. Since, the amount exceeds ₹ 1000 in terms of the excess payment received, there is no option with the supplier. Here, the supply will be deemed to have been made to the extent of the invoice of ₹ 3700 on 23<sup>rd</sup> July 2018 and the balance amount of ₹ 1300 will be liable to tax on 27<sup>th</sup> July 2018.

- (iii) Date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier.

Illustration 5: Assume that payment is recorded in the books of the supplier on 25<sup>th</sup> July 2018 and the date as per the bank statement is 27<sup>th</sup> July 2018. In this situation, the date of receipt of payment will be taken as 25<sup>th</sup> July 2018 as it will be earlier of the two events.

**Continuous supply of services**

As per Section 2(33) of the CGST Act 2017, continuous supply of services means a supply of services which is provided or agreed to be provided continuously or on recurrent basis under a contract for a period exceeding three months with periodic payment obligations and includes supply of services as the Government may subject to such conditions as it may by notification specify.

This means that there are three important conditions to be satisfied in order to be a continuous supply of services:

- (a) The services should be provided continuously or on recurrent basis
- (b) The contract period should be exceeding three months
- (c) The payment obligations should be periodical

For instance, an annual maintenance contract, construction contract etc. may be considered as continuous supply of services if the aforesaid conditions are satisfied. As stated in the context of goods, continuity of supply does not imply continuous supply. If each transaction is concluded satisfactorily, there cannot be a continuous supply. There must be something that cause the

mere performance and insufficient to conclude the contractual performance of supplies. Merely delaying the invoicing cannot imply continuous supply.

The date of issuance of invoice in respect of continuous supply of services has been given under section 31(5) of the CGST Act 2017 as follows:

- (I) Where the due date of payment is ascertainable from the contract, the invoice will be issued on or before the due date of payment.
- (II) Where the due date of payment is not ascertainable from the contract, the invoice will be issued before or at the time when the supplier of services receives the payment
- (III) When the payment is linked to the completion of an event, the invoice will be issued on or before the date of completion of that event.

Illustration 6: Mr. X is getting construction services from a developer against buying of an under-construction flat for the period 01/07/2017 to 31/03/2018 for ₹ 150,00,000. The transactions are structured as follows:

Situation 1: Equal instalments to be paid at the end of every quarter

Periodic completion of service	Date of Invoice	Actual payment dates	Value
30-09-2019	03-10-2019	15-10-2019	50,00,000
31-12-2019	02-12-2019	03-02-2020	50,00,000
31-03-2020	10-04-2020	20-03-2020	50,00,000

Situation 2: Payment to be made as per mutual understanding

Periodic Completion of service	Date of Invoice	Actual payment dates	Value
31-12-2017	14-01-2020	12-01-2020	90,00,000
31-03-2020	22-04-2020	02-04-2020	60,00,000

Situation 3: 40% payment on 40% completion and balance payment on 100% completion

Periodic Completion of service	Date of Invoice	Actual payment dates	Value
01-10-2019	29-09-2019	05-10-2019	60,00,000
31-03-2020	24-04-2020	28-04-2020	90,00,000

Answer: This is a case of continuous supply of services. The first question that should be determined in these cases is whether the invoice is issued within the prescribed time period. If issued within the prescribed time period, the time of supply will be the date of issue of invoice or the date of receipt of payment whichever is earlier. If the invoice is issued after the prescribed period, then the time of supply will be the date of completion of service or the date of receipt of payment whichever is earlier.

Situation 1: In this situation, the due date of payment can be ascertainable from the contract. So, the last date of issuance of invoice will be the due date of payment. The due date of payment will be end of each quarter. So, the time of supply will be determinable as follows:

Periodic Completion of service	Date of Invoice	Actual payment dates	Value	Invoice issued within time limit	Time of supply
30-09-2019	03-10-2019	15-10-2019	50,00,000	No	30-09-2019
31-12-2019	02-12-2019	03-02-2020	50,00,000	Yes	02-12-2019
31-03-2020	10-04-2020	20-03-2020	50,00,000	No	20-03-2020

Situation 2: In this situation, due date of payment is not ascertainable from the contract. So, the invoice is to be issued before or at the time when the supplier of services receives the payment. So, the time of supply will be determinable as follows:

Periodic Completion of service	Date of Invoice	Actual payment dates	Value	Invoice issued within time limit	Time of supply
31-12-2019	04-01-2020	12-01-2020	90,00,000	Yes	04-01-2020
31-03-2020	22-04-2020	02-04-2020	60,00,000	No	31-03-2020

Situation 3: In this situation, the payment is linked to the completion of event. The invoice should be raised on or before the completion of that event (i.e., 40% or 100% completion as the case may be). So, the time of supply will be as follows:

Periodic Completion of service	Date of Invoice	Actual payment dates	Value	Invoice issued within time limit	Time of supply
01-10-2019	29-09-2019	05-10-2019	60,00,000	Yes	29-09-2019
31-03-2020	24-04-2020	28-04-2020	90,00,000	No	31-03-2020

**Cessation of supply of services before the completion of the supply**

As per Section 31(6) of the CGST Act 2017 where the supply of services ceases before the completion of the supply, the invoice is to be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

Illustration 7: A contract for supply of professional services was entered for ₹ 5,00,000 for the period of two months on 20<sup>th</sup> July 2017. However, on 16<sup>th</sup> August 2017, the recipient informed the supplier that he is not willing to receive any more services under the contract. Both of them mutually agree that the services provided till date can be valued at ₹ 3,50,000. The invoice for this was issued on 20<sup>th</sup> August 2018 and the payment was made by the recipient on 25<sup>th</sup> August 2018.

Answer: Here the cessation of supply of services occurs on 16<sup>th</sup> August 2017. The date by which the invoice should have been raised was also 16<sup>th</sup> August 2017. However, the invoice was issued on 20<sup>th</sup> August 2017 which is after the prescribed time period. So, the time of supply will be the earlier of the date of completion of service (16<sup>th</sup> August 2017) and the date of payment (25<sup>th</sup> August 2017) which will be 16<sup>th</sup> August 2017.

**(b) Time of Supply – Reverse Charge**

Where tax is payable on reverse charge basis, the time of supply is appointed to be the earlier of date of payment or 61<sup>st</sup> day from the date of issue of invoice by the supplier. If for any reason, one or all of these two dates cannot be determined then the time of supply will be the date of recording the supply in the books of the recipient.

In case of transactions between 'associated enterprises' where the supplier of service is located outside India, the date of recording the supply in the books of the recipient or the date of payment whichever is earlier, will be the time of supply. 'Associated Enterprises' has been defined in section 2(12) of CGST Act, 2017. The section defines the term as "associated enterprises" shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961 (43 of 1961).

Again, please note that in view of the definition of reverse charge in section 2(98), the above provision does not apply to payment of tax by an electronic commerce operator but only to those cases of supply which fall under sub-section 5 of section 9 of the Act.

Illustration 8: Mr. X provides legal services as an advocate to Mr. Y which fall under reverse charge basis.

10.04.2018 – The services are provided to Mr. Y

12.04.2018 – Mr. X issues an invoice to Mr. Y

10.07.2018 – The payment is made by Mr. Y through a cheque and recorded in his books of accounts

15.07.2018 – The payment gets debited from Mr. Y's bank account

What will be the time of supply?

Answer: The time of supply shall be earlier of the following dates:

The date of payment i.e., 10.07.2018 (earlier of 10.07.2018 and 15.07.2018)

The date immediately following sixty days from the date of issue of invoice i.e. 12.06.2018 (12.04.2018+60days+1day).

Therefore, the time of supply shall be 12.06.2018.

**(c) Time of Supply – Vouchers**

Please refer to discussion regarding time of supply of goods for some background discussion about actionable claims. For purposes of this discussion on time of supply of services, please note the following comments:

- (i) the discussion on actionable claims being includible as vouchers is relevant vis-à-vis services for the only reason that certain transactions involving goods are deliberately treated as supply of services by Schedule II and to this extent actionable claims which are a sub-set of goods need to be referred in this Chapter;
- (ii) vouchers are not entirely comprised only of actionable claims and services can also be included

Now, the time of supply in the case of vouchers is stated to be:

- (i) the date of issue of voucher if the supply is identifiable at that point; or
- (ii) in all other instances, the date of redemption of the voucher.

For detailed discussion on understanding of Vouchers in context of actionable claim and money, please refer Para 12.1(d) above.

When vouchers are issued for specific end-use, then they are taxable as supply provided they otherwise satisfy the requirements of section 7 of the Act. Since, a specific provision exists in respect of time of supply of vouchers, they are not goods or services in themselves, but are singled out for the limited purposes of prescribing the time of their supply. And the rate of tax will be that applicable to goods or services they are issued in respect of or that applicable at the time of redemption. Vouchers are not merely receipts for pre-payment received because prescribing a specific time of supply would be redundant when time of supply already considers advance payments.

**(d) Time of Supply – Residuary**

Where none of the above provisions are able to satisfactorily answer the time of supply, it is to be determined based on the residuary provision which states that the time of supply is:

- (i) where a periodical return has to be filed, the due date prescribed for such return; or
- (ii) in any other case, the date of payment of the tax.

**(e) Time of Supply – Special Charges**

Sometimes there may be charges imposed by the supplier on account of some deviation or special circumstance from the expected terms of contract on the part of the recipient. These special charges may be enabled by the contract though not necessarily attracted at the time of supply of the underlying goods or service (other than these special charges) or may be agreed later – when the special circumstance occurs. These special charges are listed as interest, late fee or penalty on account of delay in payment of consideration. In these cases, the time of

supply is appointed to be the date of receipt by the supplier. It is this express provision that bring to light that (i) these special charges are not a separate supply but merely additional consideration for original supply and (ii) time of supply of these special charges would have been the time of supply of the original supply (attracting interest liability too) but for the express mention that it will be on the date of realization, notwithstanding that a supplementary invoice or debit note is issued towards these special charges.

Further, this express provision also makes it clear that in all other cases, where a supplementary invoice or debit note is issued towards 'any other charges' (not coming within this provision) would not enjoy 'realization date' as its time of supply but continue to operate with reference to time of original supply (and hence be exposed to interest). *Bona fide* cases where additional consideration (other than such special charges) comes to light after an interval of time, perhaps even after arbitral proceedings, there does not appear to be any relief from consequential interest, although it would be much deserved and logical. As deserving merits of the case or logic do not appeal to tax legislation, present express provision only in once case (of special charges) would amount to absence of express provision in all other cases. And hence, all consequences in law would attach to any additional consideration charged after time of original supply except these special charges. Remedy in such cases would be to include 'interest cost' in the claim for additional consideration as it is not a new supply and the same reason that recipient (or arbitral panel) accepts payment of additional consideration (for original supply) must take responsibility for the belated acceptance of dues. Law cannot forego interest because of *bona fides* of the claim. Law merely follows the facts presented by parties and in case of claim of additional consideration, except these special charges, there is a delay in payment of tax on original supply and that attracts interest from a strict interpretation of law. Beneficial interpretation of law is scarcely favoured approach in interpretation of tax law. Refer also to a corresponding discussion about 'shifting' of time of supply in the context of debit note in the chapter on tax invoice under section 34.

Please note that even though a debit note may be issued after reaching agreement with the recipient about the special charges imposed, the time of supply continues to remain 'date of receipt' of payment towards such special charges. This is a departure from the provisions on accrual principle in section 31. As this is a special provision, the same will prevail over all other general provisions.

It is important to understand that due to time of supply being prescribed, whether the imposition of these special charges is itself a supply or not? Please see the following comparative discussion:

Special Charges 'are' Supply	Special Charges 'are not' Supply
Special charges are also supply being agreeing to an act or forbear an act or to tolerate an act (Entry 5(e) of Schedule II) read with section 2(31)	There is no 'supply' in the case of interest, late fee or penalty as these special charges are a consequence of a departure from the agreed terms of contract and not in fulfilment thereof

Interest, late fee or penalty are illustrations only and such special charges by any other name would also be liable to GST but on receipt-basis	By accepting such an expansive interpretation, damages awarded by a Court, LD imposed in a contract, forfeiture of a EMD, etc. can become liable to GST as these are all in some way 'in the course or furtherance of business'
Special charges paid is liable to GST whether agreed before or agreed subsequently as satisfaction of the limited non-performance	Other than the three special charges listed, any other charges arising from a transaction is not liable to GST as it is not contemplated in the arrangement of supply although not imposed in all cases
Delay in payment is a primary deviation that gives rise to special charges but even deviation in time or quantity of supply can entail some other form of special charges, GST on those cannot be avoided as the these listed are only illustrative	Only 'delay in payment' gives rise to GST incidence on the special charges. Any other deviation would be a variation of contract to be independently examined if it satisfies definition of 'supply'
Special charges are 'linked' to an underlying supply (original supply) and therefore all forms of special charges would also be liable to GST	Special charges are 'linked' to an original supply as such GST cannot be imposed on special charges without an original supply

From the above discussion, several necessary conclusions need to be reached, namely:

- (i) whether the three listed charges are exhaustive or only illustrative?
- (ii) whether delay in payment is the only occasion when this provision is attracted or special charges imposed for any other default linked to the original supply will also attract this provision?
- (iii) whether special charges imposed for any other default (not delay in payment) is liable to GST but not on receipt basis but accrual basis or are special charges for these cases not at all liable to GST?

It appears that the three listed cases are exhaustive not by the three cases listed but the circumstance for their imposition – delay in payment of consideration. So, any form of special charges imposed is liable to GST on receipt basis but only if it is due to delay in payment of consideration. Special charges imposed due to any other default by the recipient is then to be examined if it is linked to an 'original supply' or is it by itself a supply? If linked to an original supply, it is also liable to tax but not during enjoying flexibility to pay tax on receipt basis and tax being payable based on the date of debit note. If not linked to an original supply, GST would not be applicable if it does not satisfy the requirements of levy.

The issues raised in respect of special charges may be considered as matter of discussion and does not carry a procurement of an opinion on view. Readers are free to connect on these discussions and evaluate each such situation after giving it adequate consideration or thought.

Some illustrations for better understanding of the provisions of time of supply of services :

S. No.	Concept illustrations Section 13(2)	Invoice date	Invoice due date	Payment entry in supplier's books	Credit in bank account	Time of supply
1	Invoice raised before completion of service	10-Oct-19	20-Oct-19	26-Oct-19	30-Oct-19	10-Oct-19
2	Advance received	30-Oct-19	20-Oct-19	10-Oct-19	30-Oct-19	10-Oct-19

	Based on due date for invoicing Section 13(2) r/w Section 31(2) r/w Rule – 47 related to invoice	Invoice date	Commencement of service	Completion of service	Receipt of payment	Time of supply
3	Delayed issue of invoice	26-Dec-19	20-Oct-19	16-Nov-19	28-Jan-20	16-Nov-19
4	Advance received, invoice for full amount issued on same day (40% advance, 60% post supply payment)	30-Oct-19	30-Oct-19	30-Dec-19	30-Oct-19	30-Oct-19
					04-Dec-19	30-Oct-19

	Continuous supply of services Section 13(2) r/w Section 31(5)	Invoice date	Date as per contract	Receipt of payment	Entry of provision of services in books	Time of supply
5	Section 31(5)(a) Contract provides for payments monthly on the 10 <sup>th</sup>	02-Nov-19	10-Nov-19	15-Nov-19	31-Oct-19	02-Nov-19
		17-Dec-19	10-Dec-19	15-Dec-19	30-Nov-19	10-Dec-19
		10-Jan-20	10-Jan-20	06-Jan-20	31-Dec-19	06-Jan-20

	of succeeding month					
6	Section 31(5)(c)	12-Nov-19	10-Nov-19	25-Nov-19	12-Nov-19	10-Nov-19
	Contract provides for payments on completion of event. Recipient to pay within 1 month from date of completion	24-Apr-20	24-Apr-20	20-Apr-20	24-Apr-20	20-Apr-20

	<b>Reverse charge Section 13(3)</b>	<b>Date of invoice issued by supplier</b>	<b>Date of completion of service</b>	<b>Payment by recipient</b>	<b>Entry of receipt of services in recipient's books</b>	<b>Time of supply</b>
7	Advance paid	31-Oct-19	31-Oct-19	05-Nov-19	31-Oct-19	05-Nov-19
8	Delay in payment to vendor	31-Oct-19	31-Oct-19	10-Jan-20	31-Oct-19	31-Dec-19
9	Service received from associated enterprise located outside India (No time extension allowed)	31-Oct-19	30-Nov-19	05-Apr-20	31-Mar-20	31-Mar-20

	<b>Issue of vouchers Section 13(4) [or Section 12(4)]</b>	<b>First service/delivery of goods</b>	<b>Issue of voucher</b>	<b>Redemption of voucher</b>	<b>Last date for acceptance of voucher</b>	<b>Time of supply</b>
11	Voucher issued to a recipient after supply of a service [or specific goods], for the same service - valid for 1 year	01-Nov-19	01-Nov-19	14-Dec-19	30-Oct-20	01-Nov-19

12	Voucher issued to a recipient of machinery along at the time of delivery, for availing repair services [or specific goods] worth ` 5,000 - valid for 1 year	01-Nov-19	01-Nov-19	14-Dec-19	30-Oct-20	01-Nov-19
13	Voucher issued to a recipient after supply of a service, for any other services or goods across India, - valid for 1 year	01-Nov-19	01-Nov-19	14-Dec-19	30-Oct-20	14-Dec-19
14	Gift voucher for ` 1,500 for services [or goods]- valid for 6 months	-	01-Nov-19	25-Dec-19	31-Mar-20	01-Nov-19

**(f) Time of Supply – Consideration involving Development Rights or Construction Service**

In case of Consideration involving Development Rights or Construction Service, the time of supply is specially notified vide *Notification 4/2018 – Central Tax (R) dated 25.01.2018*, under the powers conferred by Section 148 of the CGST Act. Accordingly, the liability to pay tax in certain situations would be as below:

Situation	Event requiring payment of taxes
Registered persons supplying development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure	On transfer of possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).
Registered persons supplying construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights.	

If a registered builder supplies construction service in consideration of receiving development rights from the owner, then the liability would arise for as a continuous supply of construction service through the construction duration and completed on the date of handing over.

If a registered landowner supplies development rights in consideration of construction service received from builder, then the liability would arise for immediately upon entering into an irrevocable agreement for supply of development rights although consideration in the form of constructed area is handed over much later.

Now, where *Notification No. 4/2018-CT* is applicable, the time of supply is deferred until handing over. But, please note that where non-refundable deposit (NRD) is paid by builder to landowner or where landowner starts to sell apartment units (that are under construction), then the time of supply will not be deferred but get advanced to these earlier events of collection of NRD or booking agreement to end customers.

Further, where joint-development agreements are not on 'area sharing' basis but on 'revenue sharing' basis, then firstly, *Notification No. 4/2018-CT* will not apply as this notification only provides deferment of time of supply when there is an exchange. And when builder is liable to pay cash (for development rights supply), time of supply will be the time when builder is put in possession of the land. Please note that the landowner does not put the builder in possession of the land again-and-again but at one-go, when the irrevocable agreement is executed and registered. As such, the supply of development rights is at the start of the project. But the credit to the builder will be subject to rule 37, that is, only to the extent payment is made by the builder for the inward supply (of development rights) by the landowner. There is one view that supply of development rights (in case of revenue sharing development) can be treated as continuous supply so that builder is entitled to credit to the extent of each payment instalment that is made. On this, no clear view is available from the tax administration but review of the concept of continuous supply and the irrevocable development agreement may throw some light.

With effect from April 1, 2019, treatment to TDR/FSI and Long term lease has been amended for projects commencing after April 1, 2019. *Vide Notification No. 4/2019 – CT(R)*, Exemption has been granted to the supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.

Further, *vide Notification No. 5/2019 – CT(R) dated 29<sup>th</sup> March, 2019* read with *Notification No. 7/2019 – CT(R) dated 29<sup>th</sup> March, 2019*, in terms of liability to pay, the liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under the reverse charge mechanism (RCM). *Inline, vide Notification No. 6/2019 – CT(R)*, the provisions relating to Time of Supply have also been amended to provide that the date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate shall be the date of issue of completion certificate. Also,

the liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion. This shall be applicable for development rights or Floor Space Index (FSI) (including additional FSI) given on or after 1<sup>st</sup> April, 2019.

*Notification No. 6/2019-CT(R) dated 29<sup>th</sup> March 2019* extends the deferment of 'date for payment of tax in the case of construction service' to 'date of completion', similar to deferment extended by *Notification No. 4/2018-CT(R) dated 25<sup>th</sup> January 2018*. However, with the tax on development rights being shifted to RCM basis under *NN 4/2019-CT(R) dated 28<sup>th</sup> March 2019*, deferment under *Notification No. 6/2019-CT(R)* is applicable only in respect of construction services supplied. It must be noted that since landowner-promoter is permitted input tax credit (selling unfinished / under-construction apartments even prior to date of their completion) of the tax charged by developer-promoter on construction services (fourth proviso to 3/2019-CT(R)), developer-promoter is obliged to discharge tax on construction services (to the extent of apartments falling to landowner-promoter's share and offered for sale prior to date of completion) on the basis of work in progress / percentage of completion method, and deviate from the deferment (to the extent of these apartment units) in 6/2019-CT(R) and apply the deferment only on apartment units (falling to landowner-developer's share) that are unsold on the date of completion.

#### Statutory Provisions

#### 14. Change in rate of tax in respect of supply of goods or services

*Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely: —*

- (a) *in case the goods or services or both have been supplied before the change in rate of tax, —*
  - (i) *where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or*
  - (ii) *where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or*
  - (iii) *where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;*
- (b) *in case the goods or services or both have been supplied after the change in rate of tax, —*
  - (i) *where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or*

- (ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or
- (iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:

*Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.*

*Explanation. —For the purposes of this section, “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.*

#### Related provisions of the Statute

Section or Rule (CGST / SGST)	Description
Section 2(66)	Definition of Tax Invoice or Invoice
Section 2(52)	Definition of Goods
Section 2(102)	Definition of Services
Section 2(105)	Definition of Supplier
Section 7	Scope of Supply
Section 31	Tax invoice

#### 14.1 Analysis

Payment of tax requires the presence of all the following events:

- (i) supply of goods or services
- (ii) issue of invoice
- (iii) payment for the supply

When there is a change in the rate of tax during the occurrence of these 3 events, there may be some concern about the applicability of the correct rate of tax. Section 14 addresses this aspect clearly.

Where the supply takes place after the change in the rate of tax, the time of supply may be as follows:

**(a) Supply before the cut-off date-say 01-Sep-19**

Supply	Invoice	Payment	Time of Supply
25.08.2019	01.09.2019	05.09.2019	01.09.2019 (Invoice or payment, whichever is earlier)
25.08.2019	26.08.2019	05.09.2019	26.08.2019 (Date of Invoice)
25.08.2019	01.09.2019	27.08.2019	27.08.2019 (Date of payment)

**(b) Supply after the cut-off date-say 01-Sep-19**

Supply	Invoice	Payment	Time of Supply
01.09.2019	25.08.2019	05.09.2019	05.09.2019 (Date of payment)
01.09.2019	25.08.2019	26.08.2019	25.08.2019 (Date of invoice or date of payment, whichever is earlier)
01.09.2019	02.09.2019	26.08.2019	02.09.2019 (Date of Invoice)

It is relevant to note here that the *Notification No. 66/2017-CT dated 15.11.2017* exempting a taxable person from payment of tax on advances received refers to the scenarios enumerated in section 14. This may not mean that the receipt of payment in advance should not be considered for determining the change in tax rate; since, the said notification will have limited application for ascertaining the time of supply of goods. In other words, section 12 specifies the scenarios for ascertaining time of supply whereas section 14 specifies the point of determination of appropriate rate of tax in cases where the events impacting time of supply fall in time zones having different rate of tax on such supply. This means that on application of the said notification, if the date of receipt of advance is relevant, the payment of tax may be deferred till the date of supply of goods at the rate applicable as on the date of receipt of advance (point of taxation).

Although supply has not yet taken place, the time of supply determined as above is valid and not in violation of the levy of GST for the following reasons:

- (i) Supply is defined in section 7(1)(a) as '.....made or agreed to be made.....'
- (ii) Levy of GST in section 9 is on such supply, that is, 'made or agreed to be made'

Prescribing the time of supply anterior to the time of actual supply is well accommodated in the language of the Act.

Determination of time of supply under Section 14 has been provided as under:

Supply	Invoice	Payment	Time of Supply
Before Rate Change	Before Rate Change	Before Rate Change	Not governed by Section 14
Before Rate Change	Before Rate Change	After Rate Change	Date of issue of invoice
Before Rate Change	After Rate Change	Before Rate Change	Date of receipt of payment
After Rate Change	After Rate Change	After Rate Change	Not governed by Section 14
After Rate Change	After Rate Change	Before Rate Change	Date of issue of invoice
After Rate Change	Before Rate Change	After Rate Change	Date of receipt of payment
After Rate Change	Before Rate Change	Before Rate Change	Date of receipt of payment or date of issue of invoice, whichever is earlier

Please note that in above chart, "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

Considering that it is more common to come across of supply of services prior to issuance of tax invoice, section 14 may operate predominantly in the context of services. Although not as common, supply of goods being permitted without invoice being issued simultaneously, section 14 does not cease to operate with respect of goods in instances dealt with in rule 55 of CGST Rules.

Further, section 14 cannot be pressed into service where issuance of invoice is deliberately (and perhaps with mala fide intentions) delayed. Section 14 is a provision that operates where contractually invoice is issued with some interval of time where there is an intervening 'change of rate' event. Where there is a deliberate omission to issue tax invoice, the date when the invoice ought to have been issued will operate to fasten tax liability. It is not acceptable that supply itself becomes uncertain due to non-issuance of tax invoice. Therefore, it is accepted that section 14 operates in normal circumstances and not in extraneous and artificial circumstances of belated invoicing as time of supply cannot be shifted 'at will' but by normal course of business.