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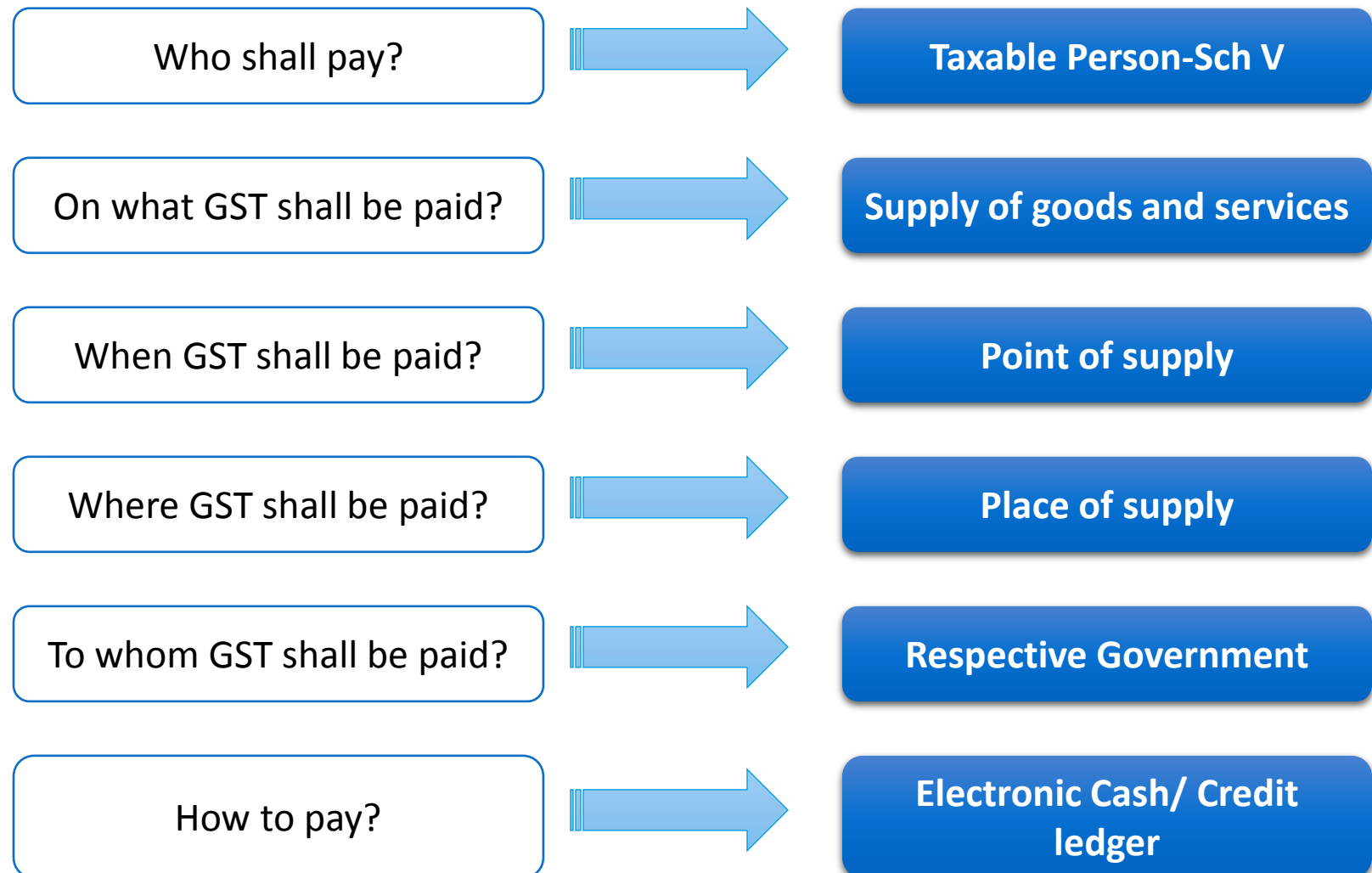
## ***GST: Levy of, and Exemption from, Tax***

*Edition 4*

- Levy and collection of Central/ State Goods and Services Tax [S. 8]
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**Levy and collection of Central/ State Goods and Services Tax [Section 8]**

**Liability to pay GST:**



### **I. General levy of tax**

Section 8(1) says that there shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST) on all intra-State supplies of goods and/or services on the value determined under section 15 and at such rates as may be notified by the Central/State Government in this behalf, but not exceeding 14%, on the recommendation of the Council and collected in such manner as may be prescribed.

### **II. Payment of tax**

Section 8(2) says that CGST/SGST shall be paid by every taxable person in accordance with the provisions of this Act.

### **III. Tax on Reverse charge**

Section 8(3) says that the Central or a State Government may, on the recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the recipient of such goods and/or services and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to the supply of such goods and/or services.

### **IV. Tax to be paid by the electronic commerce operator**

Section 8(4) says that the Central or a State Government may, on the recommendation of the Council, by notification, specify categories of services the tax on which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the person liable for paying the tax in relation to the supply of such services.

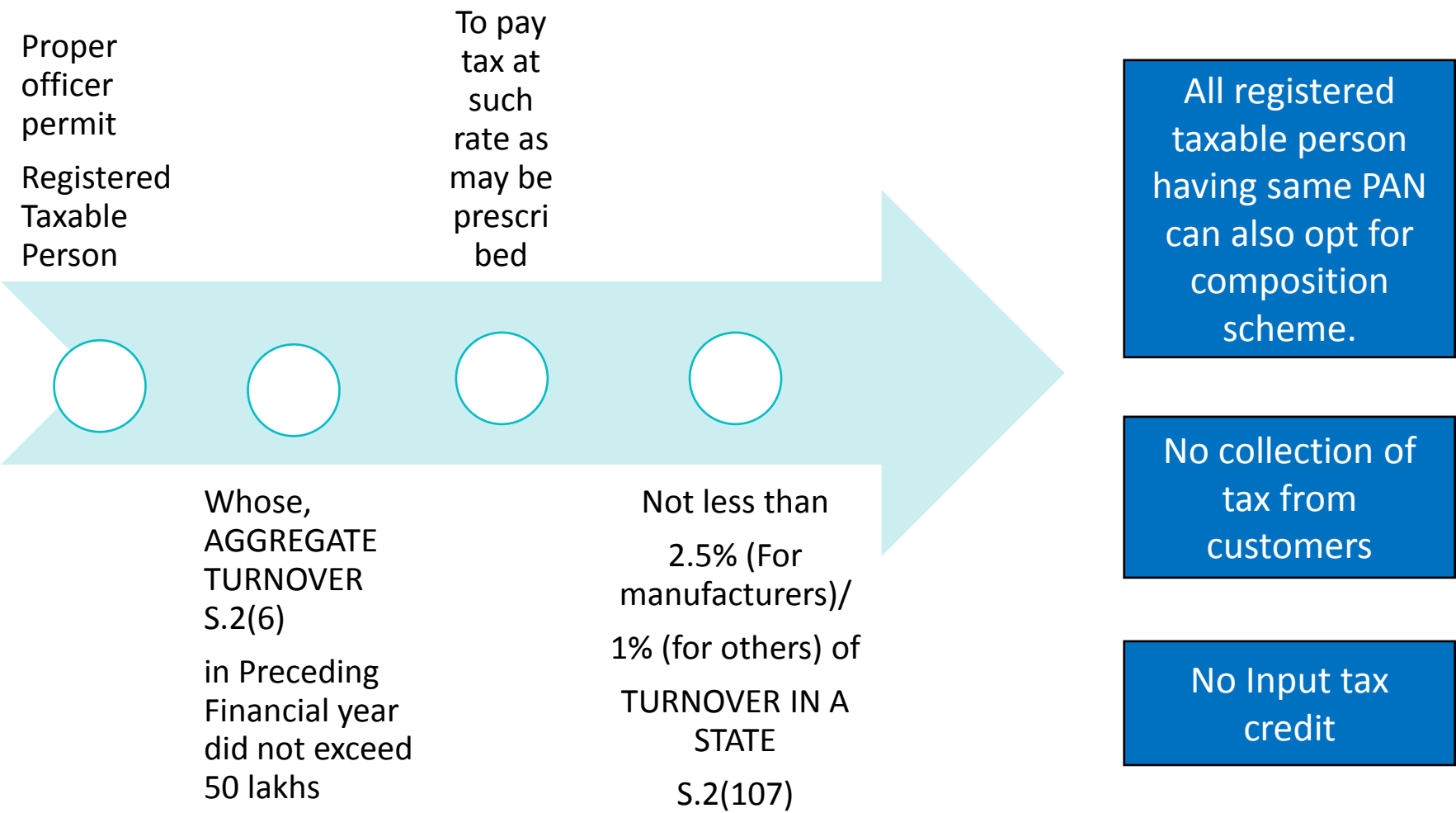
First proviso to section 8(4) says that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

Second proviso to section 8(4) says that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.



I. Conditions for composition scheme

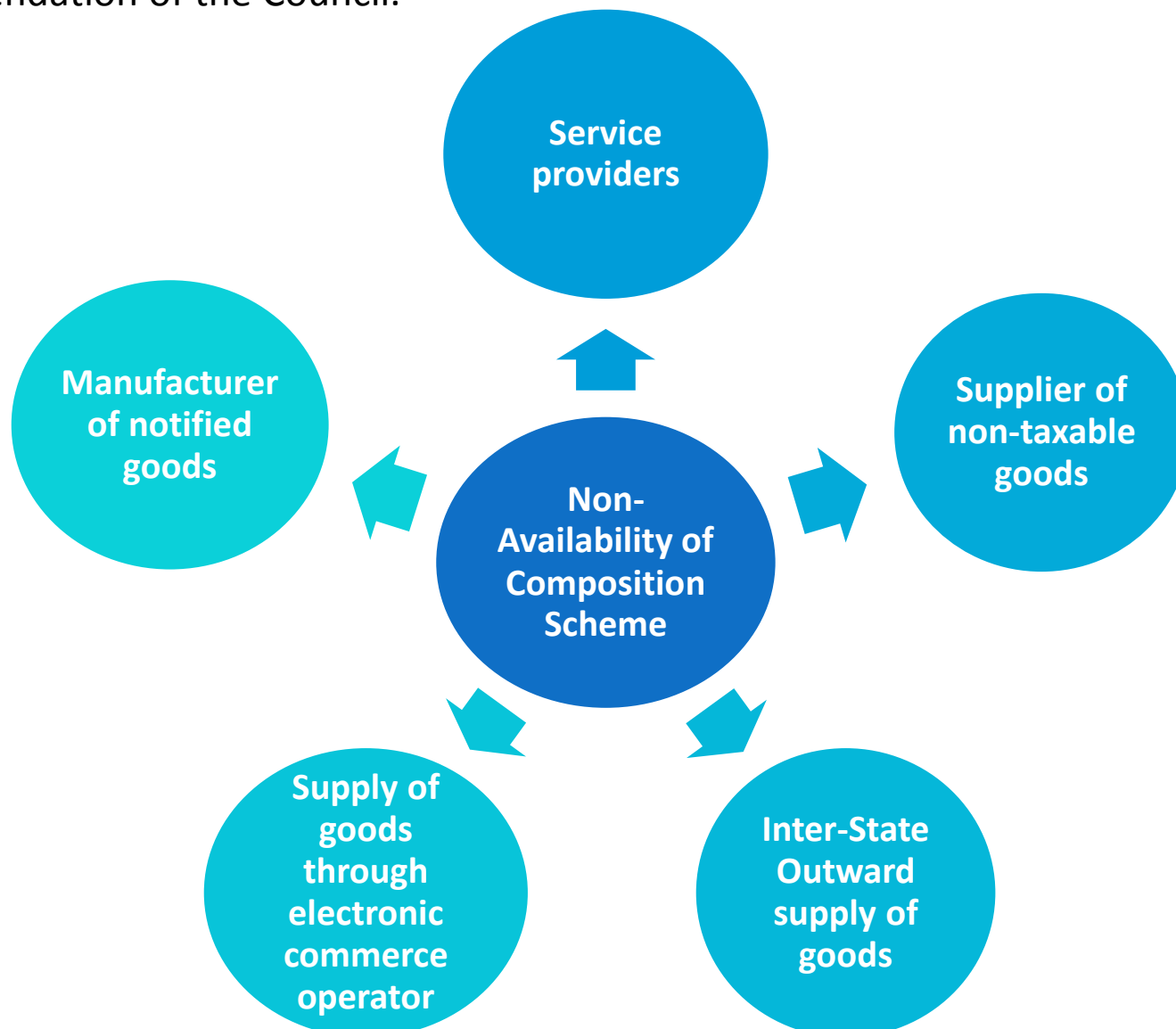
Section 9(1) says that in spite of anything to the contrary contained in the Act but subject to section 8(3), on the recommendation of the Council, the proper officer of the Central or a State Government may, subject to such conditions and restrictions as may be prescribed, permit a registered taxable person, whose aggregate turnover in the preceding financial year did not exceed Rs. 50 lakhs, to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not less than 2.5% in case of a manufacturer and 1% in any other case, of the turnover in a State during the year.



### II. Composition scheme not available in certain situations

The first proviso to section 9(1) says that no such permission shall be granted to a taxable person

(i) who is engaged in the supply of services, or  
(ii) who makes any supply of goods which are not leviable to tax under this Act, or (iii) who makes any inter-State outward supplies of goods, or (iv) who makes any supply of goods through an electronic commerce operator who is required to collect tax at source under section 56, or (v) who is a manufacturer of such goods as may be notified on the recommendation of the Council.



### III. All persons having same PAN shall opt for composition

Further, the second proviso to section 9(1) says that no such permission shall be granted to a taxable person unless all the registered taxable persons, having the same PAN as held by the said taxable person, also opt to pay tax under the provisions of section 9(1).

### IV. Composition scheme stand withdrawn as aggregate turnover exceeds Rs. 50 lakhs

Section 9(2) says that the permission granted to a registered taxable person under section 9(1) shall stand withdrawn from the day on which his aggregate turnover during a financial year exceeds Rs. 50 lakhs.

### V. No collection of tax, no claim of input tax credit

Section 9(3) says that a taxable person to whom the provisions of section 9(1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

### VI. Consequences of violation of conditions

Section 9(4) says that if the proper officer has reasons to believe that a taxable person was not eligible to pay tax under section 9(1), such person shall, in addition to any tax that may be payable by him under other provisions of this Act, be liable to a penalty and the provisions of section 66 or 67, as the case may be, shall apply *mutatis mutandis* for determination of tax and penalty.

## PROCESS TO OPT COMPOSITION SCHEME

- ❑ Assessee has to opt the composition scheme from the 1<sup>st</sup> day of Financial year i.e. from 1<sup>st</sup> April onwards.
- ❑ Application for opting such composition scheme have to given to the Department by the assessee.
- ❑ Such application must be filled with the Department on or before 31<sup>st</sup> March of Previous year.
- ❑ The law allows the assessee to shift from the composition scheme to normal scheme voluntarily even during the year.
- ❑ If the turnover of assessee opting composition scheme exceeds Rs.50 Lakhs during the year, he will be shifted to normal Scheme automatically.

E.g.: If Mr. X has to opt for composition scheme from 1st April, 2018, he has to fill the application on or before 31<sup>st</sup> March, 2018.

If during the year, Mr. X's turnover exceeds 50 lakhs at any point of time, his opted composition scheme will lapse and he will be shifted to the Normal scheme automatically.

## I. Meaning of 'taxable person'

Section 10(1) says that taxable person means a person who is registered or liable to be registered under Schedule V of this Act.

A person [i.e. covered in the definition of person as provided in section 2(73)]



who is registered (has obtained registration under section 23) or  
required to be registered under Schedule V (Persons liable to be registered) of this Act

### SCHEDULE V

#### PERSONS LIABLE TO BE REGISTERED

1. Every supplier shall be liable to be registered under this Act in the State from where he makes a taxable supply of goods and/or services if his aggregate turnover in a financial year exceeds twenty lakh rupees:

PROVIDED that where such person makes taxable supplies of goods and/or services from any of the States specified in sub-clause (g) of clause (4) of Article 279A of the Constitution, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

(Other than Special Category States)

2. Every supplier shall be liable to be registered under this Act in the State from where he makes a taxable supply of goods and/or services if his aggregate turnover in a financial year exceeds ten lakh rupees:

(Special Category States)

Explanation 1.- The aggregate turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals.

Explanation 2.- The supply of goods, after completion of job-work, by a registered job- worker shall be treated as the supply of goods by the "principal" referred to in section 55, and the value of such goods shall not be included in the aggregate turnover of the registered job worker.

2. The following persons shall not be liable to registration –

- (a) any person engaged exclusively in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax under this Act;
- (b) an agriculturist, for the purpose of agriculture.



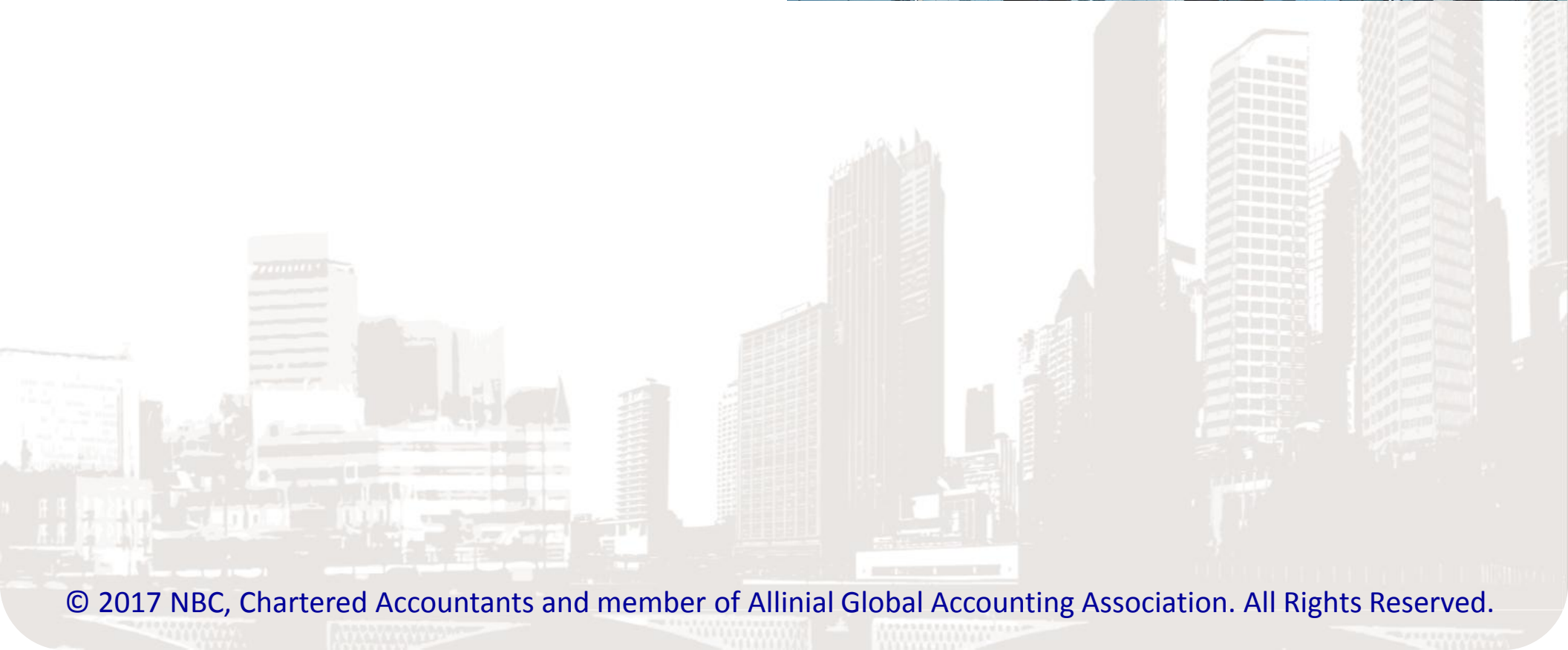
3. Subject to the provisions of paragraph 1, every person who, on the day immediately preceding the appointed day, is registered or holds a license under an earlier law, shall be liable to be registered under this Act with effect from the appointed day.
4. Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee, or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.
5. Notwithstanding anything contained in paragraph 1 and 3 above, in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies by an order of a High Court, the transferee shall be liable to be registered, where required, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court.
6. Notwithstanding anything contained in paragraph 1 and 3 above, the following categories of persons shall be required to be registered under this Act:
  - (i) persons making any inter-State taxable supply, irrespective of the threshold specified under paragraph 1;
  - (ii) casual taxable persons, irrespective of the threshold specified under paragraph 1;
  - (iii) persons who are required to pay tax under reverse charge, irrespective of the threshold specified under paragraph 1;
  - (iv) persons who are required to pay tax under sub-section (4) of section 8, irrespective of the threshold specified under paragraph 1;
  - (v) non-resident taxable persons, irrespective of the threshold specified under paragraph 1;
  - (vi) persons who are required to deduct tax under section 46, whether or not separately registered under this Act;
  - (vii) persons who are required to collect tax under 56, whether or not separately registered under the Act;
  - (viii) persons who supply goods and/or services on behalf of other taxable persons whether as an agent or otherwise, irrespective of the threshold specified under paragraph 1;
  - (ix) input service distributor, whether or not separately registered under the Act;
  - (x) persons who supply goods and/or services, other than supplies specified under sub-section (4) of section 8 , through such electronic commerce operator who is required to collect tax at source under section 56, irrespective of the threshold specified in paragraph 1;
  - (xi) every electronic commerce operator, irrespective of the threshold specified in paragraph 1;
  - (xii) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered taxable person; and
  - (xiii) such other person or class of persons as may be notified by the Central Government or a State Government on the recommendation of the Council.

## **II. Person to be treated as distinct persons**

Section 10(2) says that a person who has obtained or is required to obtain more than one registration, whether in one State or more than one State, shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

## **III. Establishments of a person to be treated as establishments of distinct persons**

Section 10(3) says that an establishment of a person who has obtained or is required to obtain registration in a State, and any of his other establishments in another State shall be treated as establishments of distinct persons for the purposes of this Act.



### **I. General Exemption**

Section 11(1) says that if the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods and/or services of any specified description from the whole or any part of the tax leviable thereon with effect from the date of issue of notification or any date subsequent thereto as may be specified in the said notification.

### **II. Absolute exemption**

An explanation to section 11(1) says that where an exemption in respect of any goods and/or services from the whole of the tax leviable thereon has been granted absolutely, the taxable person providing such goods and/or services shall not pay the tax on such goods and/or services.

### **III. Exemption by special order**

Section 11(2) says that if the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by special order in each case, exempt from payment of tax, under circumstances of an exceptional nature to be stated in such order, any goods and/or services on which tax is leviable.

### **IV. Retrospective explanation**

Section 11(3) says that the Central or a State Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under section 11(1) or order issued under section 11(2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under section 11(1) or order under section 11(2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

### **V. Effective date of notification**

Section 11(4) says that every notification issued under section 11(1) or section 11(3) and every order issued under section 11(2) shall-

- (a) unless otherwise provided, come into force on the date of its issue by the Central or a State Government for publication in the Official Gazette or from any date subsequent to the date of its issue as may be specified therein, and
- (b) be made available on the official website of the department of the Central or a State Government



**Q1. What is the taxable event under GST?**

**Ans.** Supply of goods and/or services. CGST & SGST will be levied on intra-state supplies while IGST will be levied on inter-state supplies. The charging section is section 8 (1) of CGST/SGST Act and Section 4(1) of the IGST Act.

**Q2. Does the model GST Law empower the competent government to exempt supplies from the levy of GST?**

**Ans.** Yes. Under Section 11 of the Model GST Law, the Central or the State Government, on the recommendation of the GST council can exempt the supplies from the levy of GST either generally or subject to conditions.

**Q3. What will be the implications in case of purchase of goods from unregistered dealers?**

**Ans.** The receiver of goods will not be able to get ITC. Further, the recipients who are registered under composition schemes would be liable to pay tax under reverse charge.

**Q4. Will a taxable person be eligible to opt or composition scheme only for one out of 3 business verticals?**

**Ans.** No, composition scheme would become applicable for all the business verticals/registrations which are separately held by the person with same PAN.

**Q5. Can composition scheme be availed if the taxable person effects inter-State supplies?**

**Ans.** No, composition scheme is applicable subject to the condition that the taxable person does not affect interstate supplies.

**Q6. Can the taxable person under composition scheme claim input tax credit?**

**Ans.** No, taxable person under composition scheme is not eligible to claim input tax credit.

**Q7. Can the customer who buys from a taxable person who is under the composition scheme claim composition tax as input tax credit?**

**Ans.** No, customer who buys goods from taxable person who is under composition scheme is not eligible for composition input tax credit because a composition scheme supplier cannot issue a tax invoice.

**Q8. Can composition tax be collected from customers?**

**Ans.** No, the taxable person under composition scheme is restricted from collecting tax. It means that a composition scheme supplier cannot issue a tax invoice.

**Q9. What is the threshold for opting to pay tax under the composition scheme?**

**Ans.** The threshold for composition scheme is Rs. 50 Lakhs of aggregate turnover in financial year.

**Q10. How to compute 'aggregate turnover' to determine eligibility for composition scheme?**

**Ans.** The methodology to compute aggregate turnover is given in Section 2(6). Accordingly, 'aggregate turnover' means 'Value of all supplies (taxable and non-taxable supplies + Exempt supplies + Exports) and it excludes taxes levied under CGST Act, SGST Act and IGST Act, Value of inward supplies + Value of supplies taxable under reverse charge of a person having the same PAN.



## About Us

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To provide high quality services to our clients and believe in upholding high standards of honesty and integrity in what we do.

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### New Delhi:

S-13, St. Soldier Tower, G-Block  
Commercial Complex, Vikas Puri, New  
Delhi - 110018

Phone : +91 11 28543739  
: +91 11 28544939  
: +91 11 45527239  
Fax : +91 11 43850030

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### Gurgaon:

1156, Tower B2, 11th Floor, Spaze I Tech  
Park, Sohna Road, Sector 49, Gurgaon-  
122001

Phone : +91 124 4371317  
: +91 124 4371318  
Fax : +91 11 43850030

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### Mumbai:

Unit No.3, 1st Floor, New Laxmi Shopping  
Centre, A-Wing, H.D.Road, Ghatkopar  
(W), Mumbai - 400086 (India)

Phone : +91 98202-63544  
: +91 22-25110016

E-mail : [info@neerajbhagat.com](mailto:info@neerajbhagat.com)  
Website : [www.neerajbhagat.com](http://www.neerajbhagat.com)

Neeraj Bhagat is a member of the Institute of Chartered Accountants of India (ICAI) since 1997. He is also an Associate member of Association of International Accountants, United Kingdom. He is founder of Neeraj Bhagat & Co, an Indian Chartered Accountancy firm serving various MNC'S from across the globe. Neeraj Bhagat & Co. has its offices at New Delhi, Gurgaon and Mumbai. They are part of Allinial Global Accounting Association which is one of the World's Top 10 in accounting associations.

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