

LEVY, COLLECTION AND SCOPE OF SUPPLY

2.1 SCOPE OF SUPPLY

Taxable event is the event on the happening of which the charge is fixed and accordingly attracts the liability to pay tax. In GST, the taxable event is supply. The scope of supply has been contained in Section 7(1) of the GST Act, 2017 which *includes* -

- (a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) Import of services for a consideration whether or not in the course or furtherance of business;
- (c) The activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) The activities to be treated as supply of goods or supply of services as referred to in Schedule II.

From the aforesaid reading of Section 7(1) along-with Schedule II, it has been observed that the clause (d) being part of the sub-section defining the term 'supply' leads to a situation where an activity listed in Schedule II would be deemed to be a supply even if it does not constitute a supply as per clauses (a), (b) and (c) of section 7(1). Hence, it has been proposed vide Sl. No. 6 of Draft Proposal for amendment in the GST Act to insert a **new sub-section (1A)** in section 7 and **omit clause (d) of section 7(1)**. Accordingly, the amendment has been done vide The Central Goods and Services Tax (Amendment) Act, 2018 which shall be applicable with **retrospective effect from 1st day of July, 2017**. The amendment section 7(1A) reads as *"where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II"*.

2.2 MEANING OF SERVICES

Banks and financial institutions provide a bouquet of financial services relating to lending or borrowing of money or investments in money as mentioned above. For such services invariably a variety of instruments, often complex in nature, are used in the financial markets. Transactions in such instruments have to be examined on the touchstone of definition of 'service' given in clause (102) of section 2 of the GST Act, 2017.

"Services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged. The definition has two limbs **means** and **includes**. On perusal of the definition of services, it can be noted that three items has been specifically excluded namely (i) goods, (ii) money and (iii) security. At this juncture, it gets worthwhile to note that (i) money and (ii) security are specifically excluded from the definition of goods as specified under Section 2(52) of the GST Act, 2017. Since, the chapter deals with the GST on banking sector, the relevance of the term money becomes inevitable.

For the removal of doubts, an *Explanation* has been inserted in section 2(102) vide The Goods and Services Tax (Amendment) Act, 2018 which clarifies that the expression 'services' includes facilitating or arranging transactions in securities.

2.3 SCOPE OF TRANSACTION IN MONEY

Section 2(75) of the GST Act, 2017 defines "money" which means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value. From the reading of both the definition of goods and services, it is pertinent to note that money is neither classified as goods nor as service. Therefore, activities that are **only transactions in such instruments** would be outside the definition of service. However, inclusive part of the service definition clearly express that transaction in money does not include any activity in relation to money by way of its use or conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination for which a separate consideration is charged. The implications of this phrase is that while mere transactions in money is outside the ambit of service, any activity related to a transaction in money by way of its use or conversion by cash or by any other mode, from one form, currency or denomination to another form, currency or denomination would not be treated as a transaction in money if a separate consideration is charged for such an activity. While the transaction in money, *per se*, would be outside

the ambit of service the related activity, for which a separate consideration is charged, would not be treated as a transaction of money and would be chargeable to GST if other elements of taxability are present therefore GST would be levied on service charges normally charged for various transactions in money including charges for making drafts, letter of credit issuance charges, service charges relating to issuance of CDs/CPs etc.

2.4 SCOPE OF TRANSACTION IN SECURITIES

Section 2(101) of the GST Act, 2017 defines “securities” which shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

“Securities” include—

- (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;*
- (ia) derivative;*
- (ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;*
- (ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- (id) units or any other such instrument issued to the investors under any mutual fund scheme.*

Explanation.—For the removal of doubts, it is hereby declared that “securities” shall not include any unit linked insurance policy or scrips or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to in clause (9) of section 2 of the Insurance Act, 1938 (4 of 1938);

- (ie) any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;*
- (ii) Government securities;*
- (iia) such other instruments as may be declared by the Central Government to be securities; and*
- (iii) rights or interest in securities;*

From the reading of both the definition of goods and services, it is pertinent to note that securities is neither classified as goods nor as service. Therefore, activities that are **only transactions in such instruments** would be outside the definition of service.

2.5 DERIVATIVE IS INCLUDED WITHIN THE MEANING OF ‘SECURITIES’ IN SECTION 2(101) OF CGST ACT, 2017 AND WHETHER DERIVATIVES ARE LIABLE TO GST

Section 2(101) of the CGST Act, 2017 provides that ‘securities’ shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (SCRA). ‘Derivatives’ are included in the definition of ‘securities’ under section 2(h)(ia) of the SCRA. In terms of section 2(ac) of SCRA, “derivative” includes—

- (A) A security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;
- (B) A contract which derives its value from the prices, or index of prices, of underlying securities.

The definition of ‘derivatives’ in SCRA is an inclusive definition. As ‘derivatives’ fall in the definition of securities, they are **not liable to GST**.

However, it is pertinent to note that if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged, the same would be a consideration for provision of service and chargeable to GST.- FAQ on Banking Sector dated 4th June, 2018.

2.6 RATE OF GST

Since banking is purely a finance related activity (except investment banking, insurance services and pension services), therefore, it is classifiable under Heading 99711. The rate of GST on these services are 18% under IGST while 9% CGST & 9% SGST/UTGST, as the case may be. Example, locker services, charges on ATM facilities, charges on Internet banking facilities, charges for agency services, charges for bank guarantee, charges for acting as executor, attorneys, trustees, administrators, etc. However, there are many banking financial services which are *Nil* rated or exempted under Section 11 of the GST Act, 2017.

HEADING 9971 : FINANCIAL AND RELATED SERVICES : CLASSIFICATION OF SERVICES	
Section, Heading or Group	Service Description
SECTION 7	FINANCIAL AND RELATED SERVICES; REAL ESTATE SERVICES; AND RENTAL AND LEASING SERVICES
HEADING 9971	FINANCIAL AND RELATED SERVICES
Group 99711	Financial services (except investment banking, insurance services and pension services)
997111	Central banking services
997112	Deposit services