

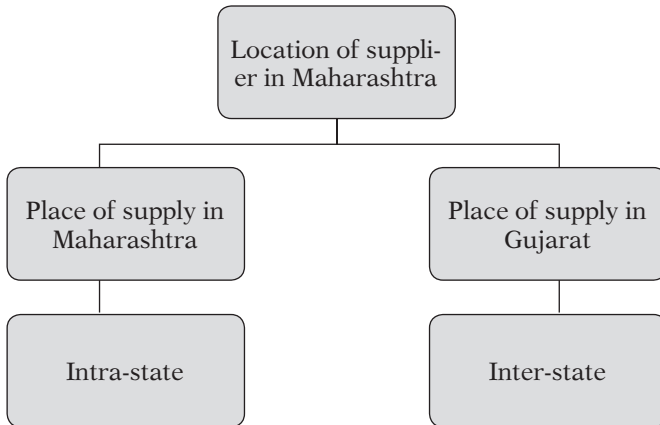
Intra-state and Inter-state supplies

4.1 PRINCIPLES

Sections 7 and 8 of the IGST Act deal with the criteria for determining whether a supply is inter-state or intra-state in nature. According to Section 7 of the IGST Act, if the location of supplier and the place of supply are in:

- ◆ Two different States,
- ◆ Two different Union territories,
- ◆ One State and One Union territory,

then the supply is an inter-state supply. Where the location of supplier and the place of supply are in the same State or in the same Union territory, the supply is an intra-state supply as per Section 8.



Now, the statute defines 'location of supplier of services', but does not define 'location of supplier of goods'. What meaning then is to be attributed to the term 'location of supplier of goods'?

The real principle which arises from the manner in which 'location of supplier of services' and the place of supply of services are defined, is that if a supply of services originates and is consumed in the same State or Union territory, it is an intra-state supply. On the other hand, if a supply of services originates and

is consumed in different States or Union territories, it is an inter-state supply. The statutory concept of place of supply of services is founded on the destination-based consumption tax principle and 'location of supplier of services' is the place of origination of the services.

The same principle must be applied to supply of goods, for it is the most reasonable method of determining whether a supply is inter-state or intra-state. If a supply of goods originates in one State or Union territory and ends in the same State or Union territory, the supply must be regarded as an intra-state supply of goods. Similarly, a supply of goods which originates and ends in different States or Union territories, must be treated as an inter-state supply of goods. The destination-based consumption tax principle forms the essence of the provisions relating to place of supply of goods. It therefore appeals to reason that the 'location of supplier of goods' should be taken as the place of origination of the supply of goods.

Illustration 1:

A provides services to B for ₹ 5 lakhs. The services are provided from the office of A in Lucknow (UP) and are received in the Noida (UP) office of B.

The place from where the supply is made is in Lucknow. The place where the supply is received is in Noida. The supply is an intra-state supply.

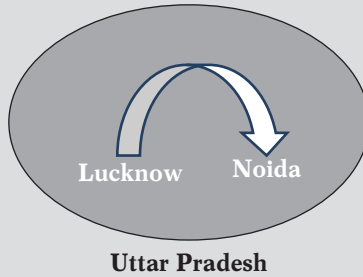
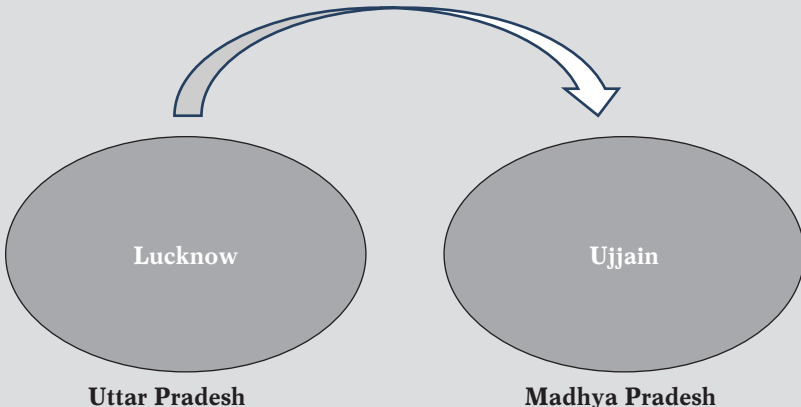


Illustration 2:

In Illustration 1, suppose that the services are received in B's office which is in Ujjain, Madhya Pradesh. The supply will be an inter-state supply.



'State' is defined in Section 2(103) of the CGST Act as including a Union territory with Legislature. 'Union territory' is defined in Section 2(114) of the CGST Act to mean the territories of:

- ◆ The Andaman and Nicobar Islands;
- ◆ Lakshadweep;
- ◆ Dadra and Nagar Haveli;
- ◆ Daman and Diu;
- ◆ Chandigarh; and
- ◆ Other territory.

4.1-1 LOCATION OF SUPPLIER OF GOODS

See notes under "Principles" in **para 4.1** for meaning to be attributed to 'location of supplier of goods'.

4.1-2 LOCATION OF SUPPLIER OF SERVICES

The definition of 'location of supplier of services' in Section 2(15) of the IGST Act sets out the following criteria:

Situation	If supply is made from	Location of supplier
A	Place of business for which registration has been obtained	that place of business
B	Fixed establishment	that fixed establishment
C	More than one establishment, whether the place of business or fixed establishment	the establishment most directly concerned with the provision of the supply
D	Other cases	usual place of residence of the supplier

Except for Situation D, the location of supplier in each of the other situations is the place of origin of the supply. Situation D deviates from this principle on grounds of administrative convenience, but Situation D is also a relatively rare occurrence.

A taxpayer has to first determine the place or establishment from which services are provided. The next step is to determine whether that place or establishment is a registered place of business or a fixed establishment. One cannot start with the presumption that the location of supplier has to be a registered place of business or a fixed establishment only because it is nearest to the place of supply or is easily available.

4.1-2a Registered place of business

If services are provided from a registered place of business, that registered place of business becomes the 'location of supplier of services'. If a supply of

services is made from a place which is not a registered place of business, a further enquiry has to be undertaken as to whether the said place is a fixed establishment or not.

4.1-2b Fixed establishment

The definition of 'fixed establishment' in Section 2(50) of the CGST Act confines that concept to the realm of services. A 'fixed establishment' is a place (other than a registered place of business) which has the following characteristics:

- ◆ Sufficient degree of permanence to supply or to receive and use services for its own needs;
- ◆ Suitable structure in terms of human and technical resources to supply or to receive and use services for its own needs.

The question as to whether a particular place from where a supply of services has been made is a fixed establishment or not is vastly important. If a supply of services is made from a place which is not a registered place of business, then the very nature of the supply may change if that place also does not qualify as a fixed establishment. This is because, the rules for determining inter-state and intra-state supplies are not similar for an unregistered place⁹⁹ which is a fixed establishment and an unregistered place which is not a fixed establishment.

If a supply of services originates from an unregistered place which is a fixed establishment, then that fixed establishment becomes the location of supplier. However, if a supply of services originates from an unregistered place which is not a fixed establishment, the location of supplier shifts from the place of origin to the usual place of residence, which is an arbitrary location fixed by the statute. When that happens, it is possible that a supply which has originated and has been consumed within the same State may become an inter-state supply only because the usual place of residence is located outside the State.

Illustration 3:

A, a doctor resident in Maharashtra for the past 10 years and having a flourishing practise there, goes to Delhi for 10 days as a visiting faculty for a summer course at a reputed medical college. While in Delhi, A earns ₹ 1 Lakh as remuneration for the services rendered. The supply is made from a place which is in Delhi and is consumed within Delhi. Logically, the supply should be an intra-state supply.

However, A does not have a registered place of business in Delhi, or a fixed establishment in Delhi. The location of supplier will thus have to be taken as the usual place of residence of A, which is in Maharashtra. Since the location of supplier is in Maharashtra and the place of supply is in Delhi, the supply is an inter-State supply, though no supply has actually taken place from Maharashtra.

99. All fixed establishments are unregistered places, but all unregistered places may not be fixed establishments.

Some examples of a fixed establishment:

- ◆ Gaming machines installed on board a ship on high seas which is maintained once in six months by the staff of the owner of the machines, is not a fixed establishment (*Gunter Berkholz v. Finanzamt*).¹⁰⁰
- ◆ Subsidiary company appointed as an agent of parent company is a fixed establishment of parent company, even though a subsidiary is a distinct legal entity from the parent company (*DFDS Case*).¹⁰¹

There is no standard established formula for determining whether a place of economic activity constitutes a fixed establishment of an entity. The analysis in every case must depend on the facts and circumstances of that case.

4.1-2c Usual place of residence

Where a supply of services originates from a place which is neither a registered place of business, nor a fixed establishment, the place of origination of the supply must be completely ignored. In such cases, the usual place of residence is taken as the location of supplier of services.

Section 2(113) of the IGST Act contains the definition of 'usual place of residence'. The place where an individual ordinarily resides is his usual place of residence. This will include rented accommodation, as long as it is not a transient accommodation and has indicia of residence. On the other hand, for non-individuals, the place of incorporation or the place of legal constitution is the usual place of residence. For a company, the usual place of residence will be the place where the company was incorporated. For persons who are not incorporated, the place of constitution will have to be determined on the basis of the facts of each case.

4.1-2d Establishment most directly concerned with the supply

A supply is frequently made with the involvement of two or more establishments of the same supplier. In such cases, the statute selects one establishment as the 'location of supplier', for there cannot be more than one location of supplier for a single supply. To allow multiple locations of supplier, would be to risk the same supply being categorised as inter-state as well as intra-state simultaneously - an unworkable and fallacious proposition. The law therefore says that the establishment most directly concerned with the provision of the supply has to be taken as the location of supplier of services.

Illustration 4:

XYZ has a registered place of business in Delhi and a fixed establishment in Chandigarh. A client from Delhi approaches the Delhi office for some consultancy services. Due to specialised skills involved which are only available with the Chandigarh office, the Delhi office asks the Chandigarh office to collaborate on the project. Both offices work together on the project and prepare the report. Clearly, both the Delhi and the Chandigarh offices are concerned with the supply.

100. [1985] 3 CMLR 667.

101. [1997] 1 WLR 1037.

But both Delhi and Chandigarh offices cannot be simultaneously treated as the 'location of supplier'. If this is done, the same supply will become inter-state as well as intra-state at the same time. The statute selects the location of supplier in such cases by treating the establishment 'most directly concerned with the supply' as the 'location of supplier'. The other establishment is completely ignored afterwards.

The next question is, how does one determine which establishment is most directly concerned with the supply?

Some indicators are given in the paragraphs below, but this is a question which will frequently require difficult analysis. When two establishments are involved in the provision of one supply, a taxpayer must weigh the connections between that supply and each of the establishments and then select the establishment which has the closest connection to the supply.

This is not an easy exercise. The IGST Act does not prescribe any criteria for deciding which establishment has the closest connection with a supply and what weightage is to be given to various factors which will enter this analysis. Every case will have to be objectively evaluated in the light of the facts presented by that case. A formulaic approach may not always be suitable in such a determination.

The phrase "establishment most directly concerned with the supply" also occurs in the UK VAT law in its place of supply provisions. UK VAT authorities have come out with the following criteria for determining whether a particular establishment is most directly concerned with a supply:¹⁰²

- ◆ How are the particular services provided?
- ◆ What is the significance of the activities carried out at each establishment in contributing to the services provided?
- ◆ Where are the necessary human and technical resources (for example database, technical equipment, office equipment, telephones, and so on) for actually providing the services permanently based?
- ◆ Which establishment appears on the relevant contracts, correspondence and invoices?
- ◆ Where are the directors or other personnel who entered into the contract permanently based?
- ◆ Where are decisions taken and controls exercised over the performance of the contracts?
- ◆ Does reference to the preferred establishment lead to a more appropriate or rational result for tax purposes?

102. The actual circular could not be traced. However, the contents are reproduced in an excellent article appearing in the VAT Digest: "Supply: difference between goods and services" VAT Dig. 2012, 90 (Mar/Apr),4-23.