



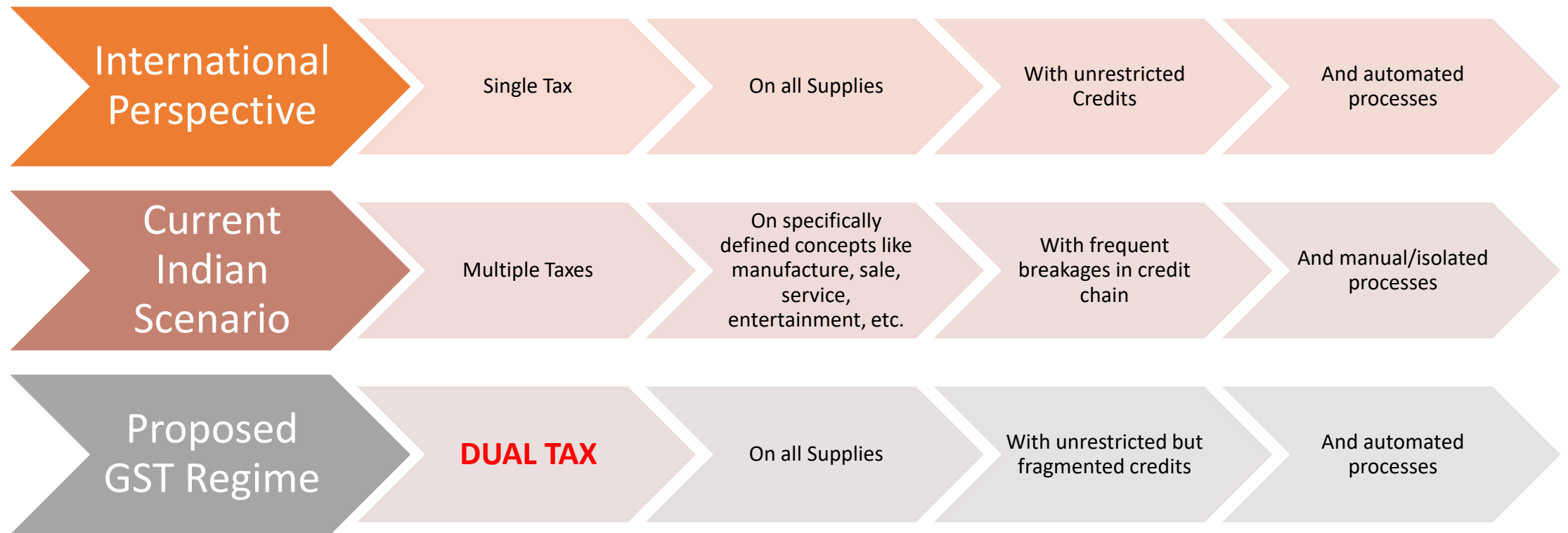
GST

GOODS AND SERVICES TAX

S. B. GABHAWALLA & CO.
CHARTERED ACCOUNTANTS

Place of Supply

Indirect Tax : Quick Comparison



Levy of Tax:

- Section 7(1) of the CGST/SGST Act
 - 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 at the rate specified in the Schedule . . . to this Act and collected in such manner as may be prescribed.
- Section 4(1) of the IGST Act
 - There shall be levied a tax called the Integrated Goods and Services Tax on all supplies of goods and/or services made in the course of inter-State trade or commerce at the rate specified in the Schedule to this Act and collected in such manner as may be prescribed.

Levy : Discussion

- Levy linked with the classification as intra-state or inter-state
- This classification is governed by IGST Act.
- Based on the combination of
 - Location of Supplier -- not defined for goods, defined for services.
 - Place of Supply – defined under IGST Act

Inter–State Supplies - Sec. 3 (IGST)

(1) Subject to the provisions of section 5, supply of goods in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in **different States**.

(2) Subject to the provisions of section 6, supply of services in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in **different States**.

Explanations to Section 2(c) of IGST Act deem import and export transactions as inter-state.

Intra-State Supplies - Sec. 3A (IGST)

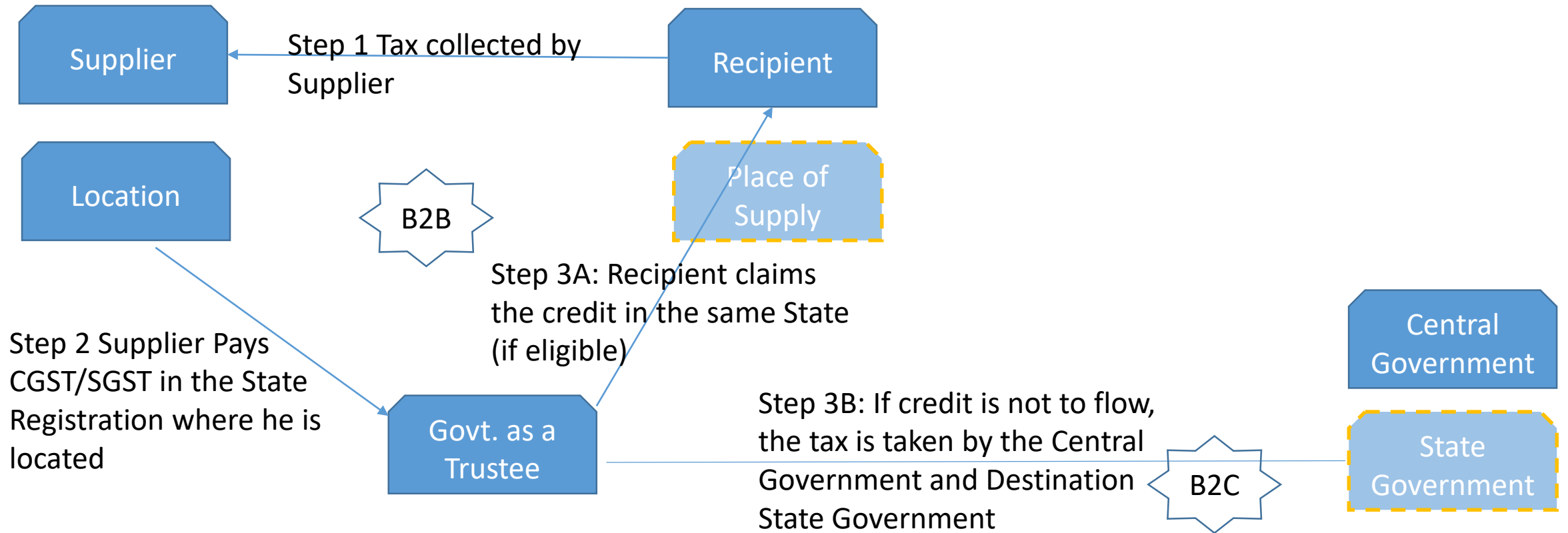
- (1) Subject to the provisions of section 5, intra-state supply of goods means any supply where the location of the supplier and the place of supply are in the **same State**.
- (2) Subject to the provisions of section 6, intra-state supply of services means any supply where the location of the supplier and the place of supply are in the **same State**.

Dual GST : Basics

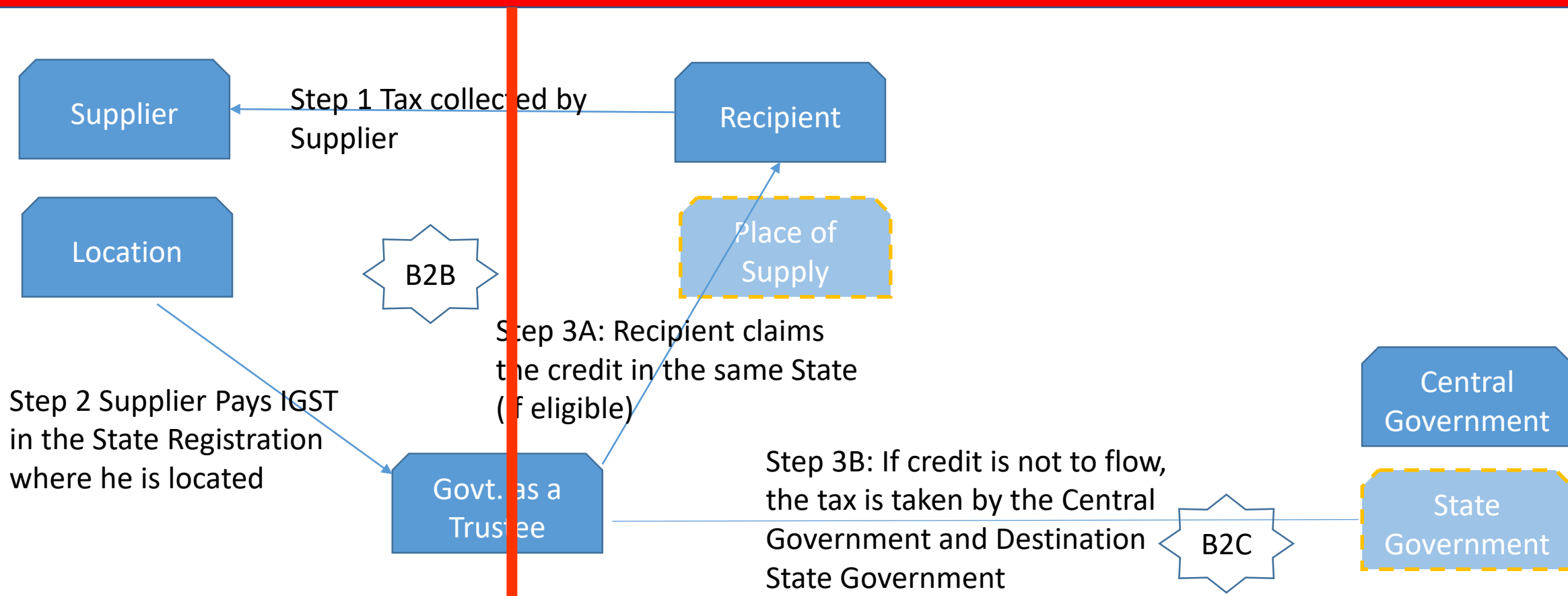
LOCATION OF SUPPLIER	PLACE OF SUPPLY	Supply	Tax
State "A"	State "A"	Intra State	CGST + SGST
State "A"	State "B"	Inter State	IGST (Destination)
Country "P"	INDIA	Imports	IGST (CVD/RCM)
INDIA	Country "Q"	Exports	Zero Rated



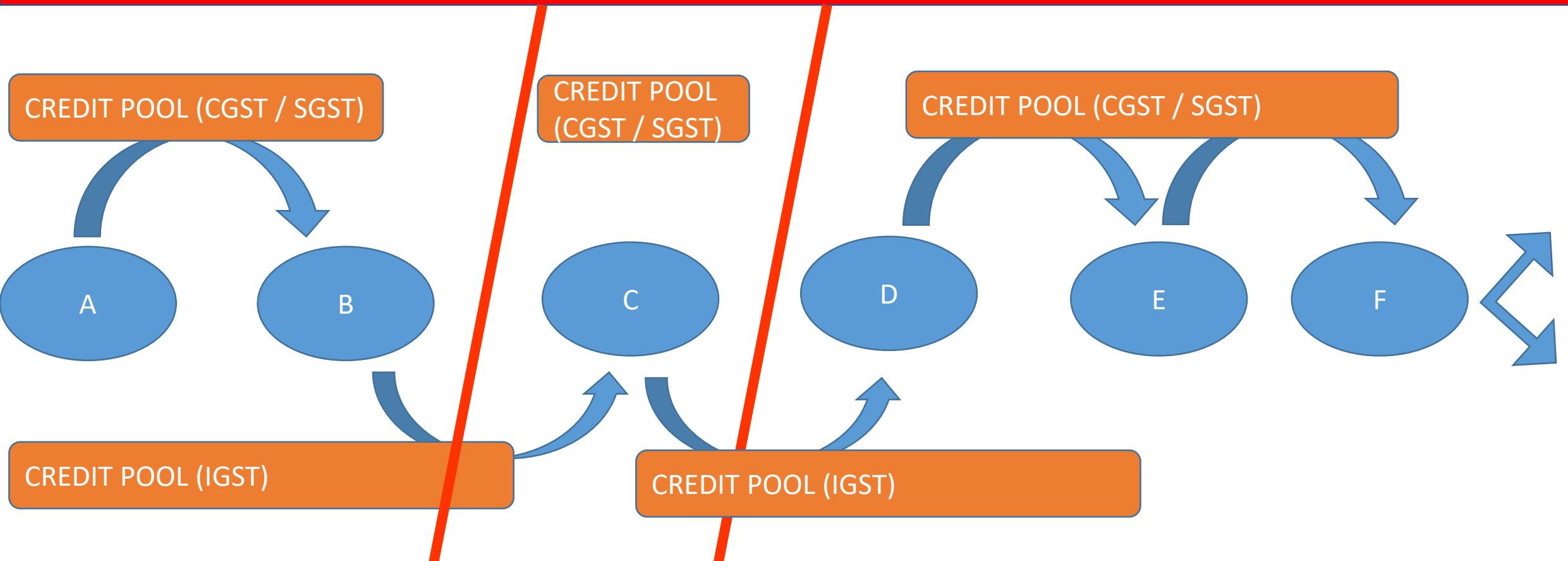
CGST/SGST as a “Wash Tax” – How it works?



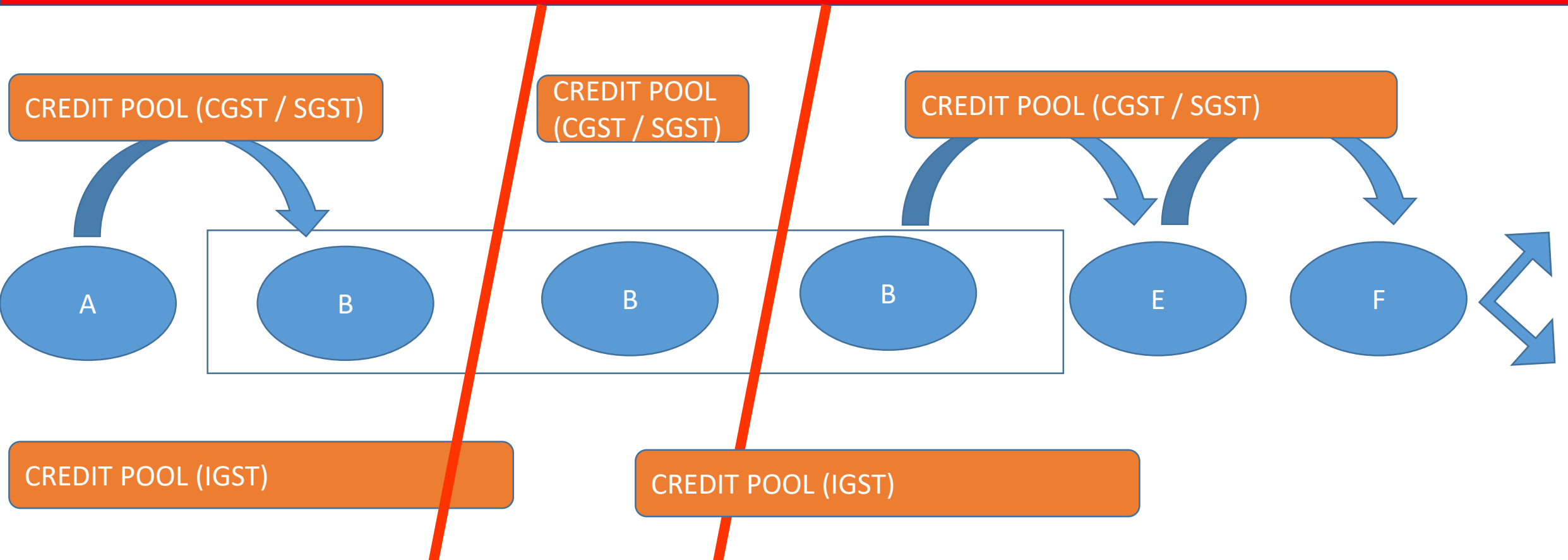
IGST -- "Wash Tax" concept continues



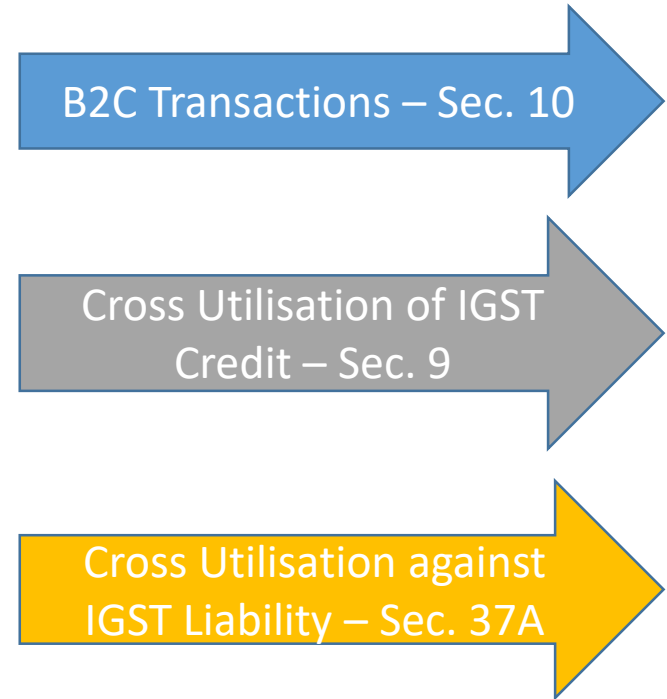
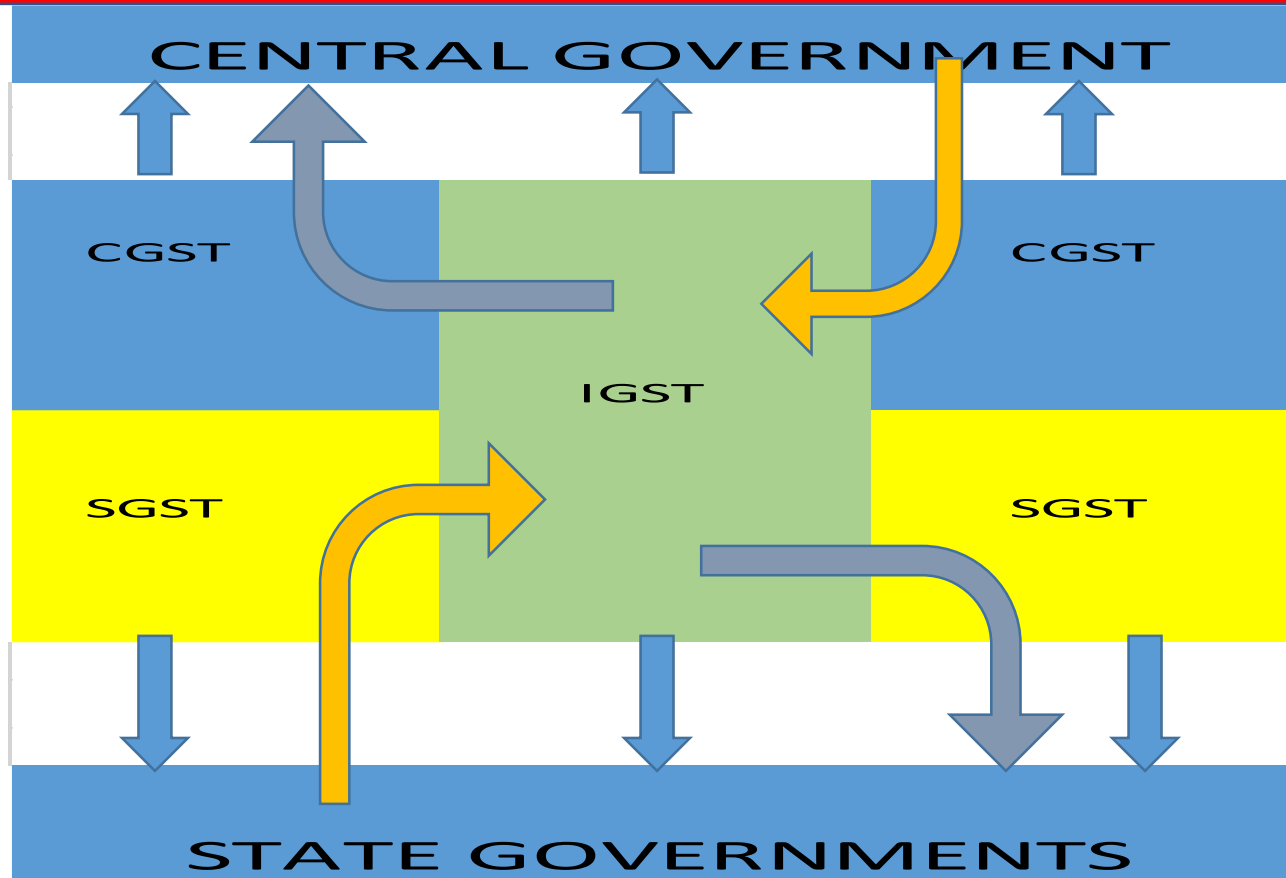
IGST – acts as a bridge to flow credits



IGST & Multi-locational Set-ups



Govt. GST Settlement Ecosystem



Summary

- GST for B2B transactions should result in wash nature i.e. the tax charged by one business should be available as immediate credit to another business
- Business does not effectively suffer tax on B2B transactions
- Governments do not effectively gain tax on B2B transactions
- Do Place of Supply Rules become redundant in such cases?

Place of Supply Rules -- Objectives

- Effectuate free flow of credit amongst Multiple States
- In case credit is not eligible (B2C Transactions) , State component to go to the consuming State
- Reverse Charge Imports
- Zero Rate Exports

Place of Supply for Services

General Rule

- Section 6(2) (IGST)
 - The place of supply of services, except the services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15), made to a registered person shall be the location of such person.
- Section 6(3) (IGST)
 - The place of supply of services, except the services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15), made to any person other than a registered person shall be
 - (i) the location of the recipient where the address on record exists, and
 - (ii) the location of the supplier of services in other cases.

Recipient / Location of Recipient

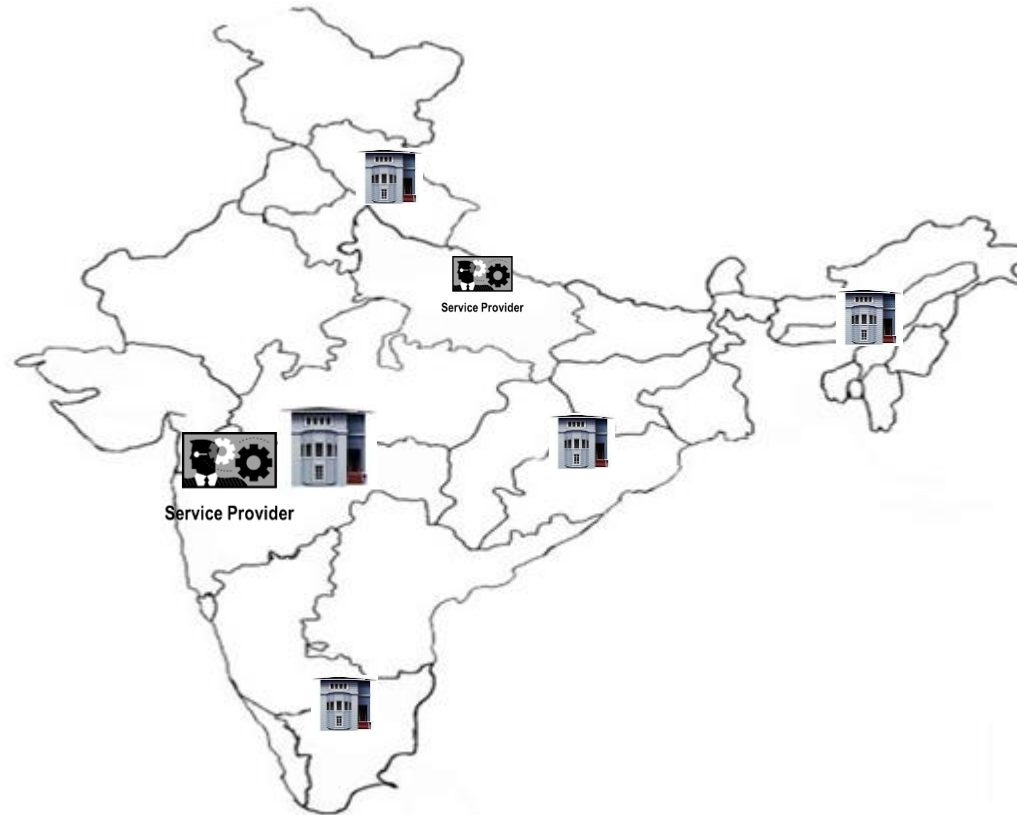
- Section 2(80) “**recipient**” of supply of goods and/or services means-
 - (a) where a consideration is payable for the supply of goods and/or services, the person who is liable to pay that consideration,
 - (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and
 - (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply;

Explanation.- The expression “recipient” shall also include an agent acting as such on behalf of the recipient in relation to the goods and/or services supplied
- Section 2(64) “**location of recipient of service**” means:
 - (i) where a supply is received at a place of business for which registration has been obtained, the location of such place of business;
 - (ii) where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
 - (iii) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
 - (iv) in absence of such places, the location of the usual place of residence of the recipient;

Supplier / Location of Supplier

- Section 2(91)
 - “**supplier**” in relation to any goods and/or services shall mean the person supplying the said goods and/or services and shall include an agent acting as such on behalf of such supplier in relation to the goods and/or services supplied
- Section 2(65)
 - “**location of supplier of service**” means:
 - (i) where a supply is made from a place of business for which registration has been obtained, the location of such place of business ;
 - (ii) where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;
 - (iii) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
 - (iv) in absence of such places, the location of the usual place of residence of the supplier;

Advertisements – Case Study



What is relevant?

- Release Order placed from Maharashtra & Received in Maharashtra
- Products manufactured in various States
- Advertisement beamed from Uttar Pradesh and telecast across the country
- Invoice raised from Maharashtra to Maharashtra
- Payment received from Maharashtra

Learnings from the past...

- Paul Merchants Ltd. [2013 (29) S.T.R. 257 (Tribunal)]
 - Microsoft Corporation (I) Pvt. Ltd. 2014 (36) [S.T.R.](#) 766 (Tribunal)
 - Vodafone India Limited [2015 (37) STR 286 (Tri – Mum)]
 - British Airways [2014 (36) S.T.R. 598 (Tri. - Del.)]
 - Jet Airways Ltd. [2014 (36) S.T.R. 290 (Tri. - Mumbai)]
 - Infosys Ltd. [2015 (37) S.T.R. 862 (Tri. - Bang.)]
 - Tech Mahindra Ltd. [2014 (36) S.T.R. 241 (Bom.)]
- Will the definition be more supportive of the interpretation now?

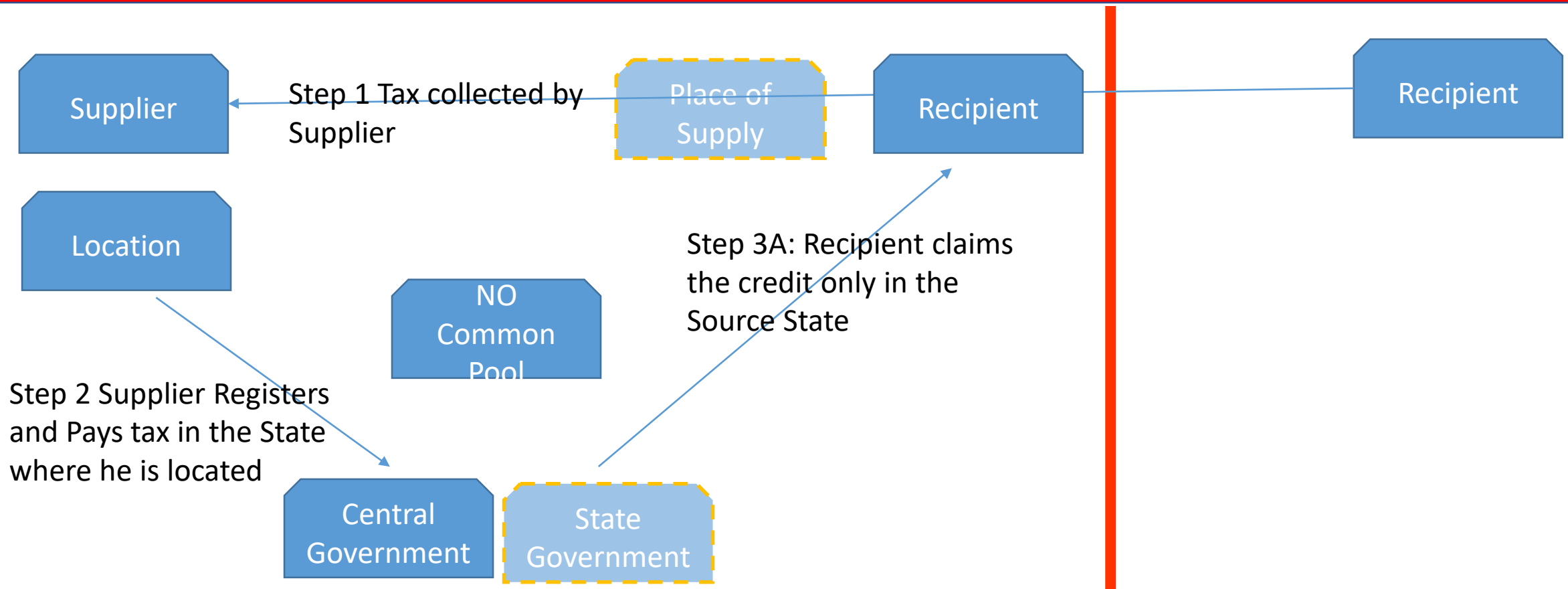
Supplier/Recipient - Issues

- Whether this will be interpreted as such
 - Supplier – supplying the goods/services and includes agent
 - Recipient – liable to pay consideration and includes agent
- Location of Supplier / Recipient of Service defined, Location of Supplier / Recipient of Goods not defined
- Multiple establishments - how to handle?
 - Will location be dependent on supplier/recipient?

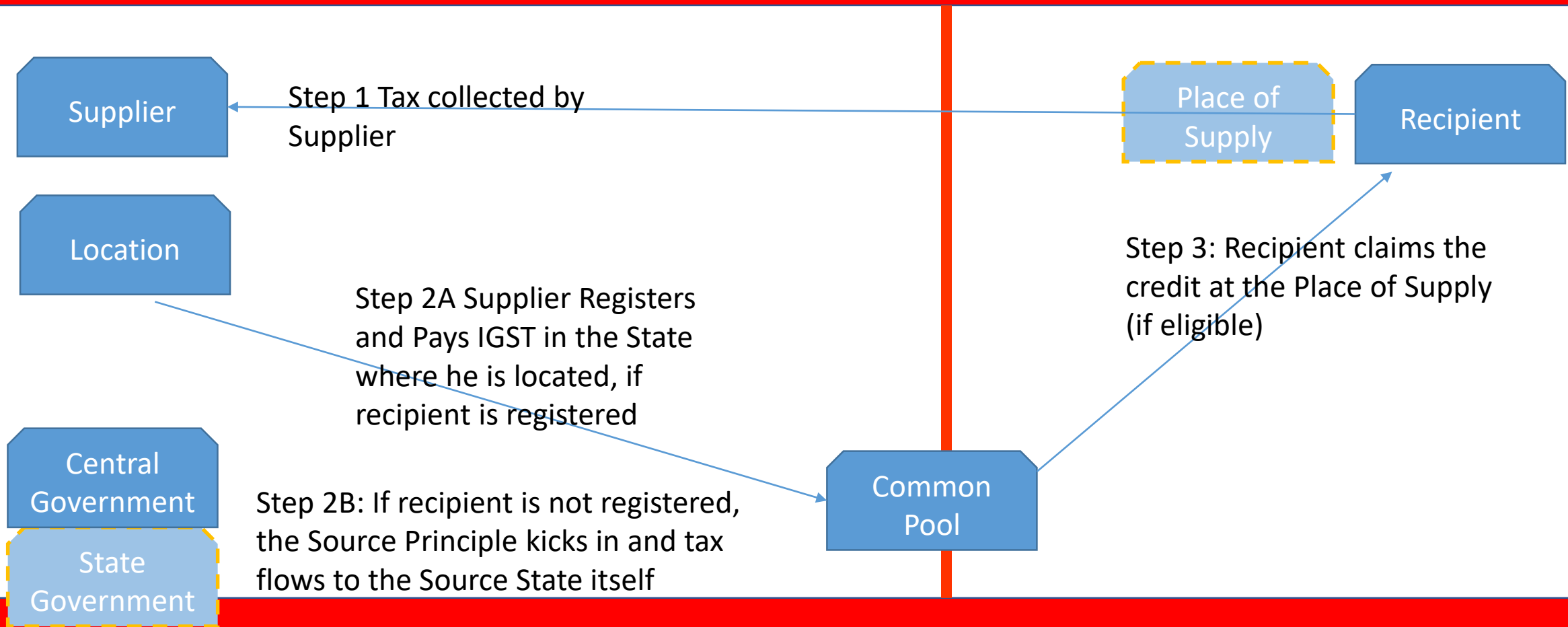
Circular Reference:

- Section 2(64)(i) of SGST Act
 - “**location of recipient of service**” means where a **supply is received at a place of business** for which registration has been obtained, the location of such place of business;
- Section 6(2) of the IGST Act
 - The **place of supply of services**,....., made to a registered person shall be the **location of such person**
- What is the benchmark?
 - Registration (Will it be the choice of the assessee?)
 - Person liable to pay the consideration (whether deeming fiction to be extended?)

Place of Supply – Exception - Source Principle



Exception – Hybrid Principle



Services : Exceptions to Destination Rule

Hybrid	Source Principle
Training and Performance Appraisal	Services in relation to Immovable property
Organisation of events and ancillary services including sponsorship	Hotels , Mandap-keeper services
Transportation of Goods including mail and courier	Restaurant, catering, personal grooming, fitness, beauty treatment, health services, cosmetic and plastic surgery
Passenger Transportation Services	Services in relation to admission to an event
	Services supplied on board of a conveyance
	Banking, Financial & Stock Broking Services (not linked to an account)

Immoveable Properties – Sec. 6(4) (IGST)

- The place of supply of services, -
 - (a) **in relation to an immovable property**, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work, or
 - (b) **by way of lodging** accommodation by a hotel, inn, guest house, homestay, club or campsite, by whatever name called and including a house boat or any other vessel, or
 - (c) **by way of accommodation** in any immovable property for organizing any marriage or reception or matters related therewith, official, social, cultural, religious or business function including services provided in relation to such function at such property, or
 - (d) **any services ancillary** to the services referred to in clause (a), (b) and (c), shall be the location at which the immovable property or boat or vessel is located or intended to be located.

Explanation.- Where the immovable property or boat or vessel is located in more than one State, the supply of service shall be treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

Immoveable Property - Issues

- What is the scope of “in relation to” ?
- What is the scope of “ancillary services”?
- How to determine Place of Supply for timeshares?
- Whether credit available to the recipient of service?
 - If registered in the Destination State
 - And transacted by the destination State
 - But transacted from Head Office
 - Should it be connected with outward supplies of that State?

Performance Related Services – Sec. 6(5) (IGST)

- The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.
- On Board Catering – Whether covered here or under Rule 6(11) as services on board a conveyance?

Training Services – Sec. 6(6) (IGST)

- The place of supply of services in relation to training and performance appraisal to
 - (a) a registered person, shall be the location of such person;
 - (b) a person other than a registered person, shall be the location where the services are actually performed.

Event Admission Services – Sec. 6(7) (IGST)

- The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

Event Related Services – Sec. 6(8) (IGST)

- The place of supply of services provided by way of—
 - (a) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events, or
 - (b) services ancillary to organization of any of the above events or services, or assigning of sponsorship of any of the above events, to
 - (i) a registered person, shall be the location of such person;
 - (ii) a person other than a registered person, shall be the place where the event is actually held.
- Explanation.- Where the event is held in more than one State and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in the each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

Goods Transportation Services – Sec. 6(9) (IGST)

- The place of supply of services by way of transportation of goods, including by mail or courier to,
 - (a) a registered person, shall be the location of such person;
 - (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

Transportation – A “U” Turn ??

	Current Provisions	Proposed Provisions
Export Pre-Paid	Not Taxable	Taxable (Exporter registered in India)
Export Collect	Not Taxable	Taxable (Goods handed over in India)
Import Pre-Paid	Exempt	Not Taxable (Goods handed over outside India)
Import Collect to Regd. Person	Taxable	Taxable (Importer Registered in India)
Import Collect to unregd. Person	Taxable	Not Taxable (Goods handed over outside India)
Trans-shipment to unregd. person	Not Taxable	Not Taxable (---do---)
International Movement to unregd. person	Not Taxable	Not Taxable (---do---)

Passenger Transportation Services – Sec. 6(10) (IGST)

- The place of supply of passenger transportation service to
 - (a) a registered person, shall be the location of such person;
 - (b) a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:
- Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in the manner specified in sub-sections (2) or (3), as the case may be.

Explanation.- For the purposes of this sub-section, the return journey shall be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

Passenger Transport – Further Obligations

	Current Provisions	Proposed Provisions
Services to other than registered person		
• Journey initiated in India	Taxable	Taxable
• Journey initiated outside India	Non Taxable	Non Taxable
Services <u>to registered person</u>		
• Journey initiated in India	Taxable	Taxable
• Journey initiated outside India	Non Taxable	Taxable

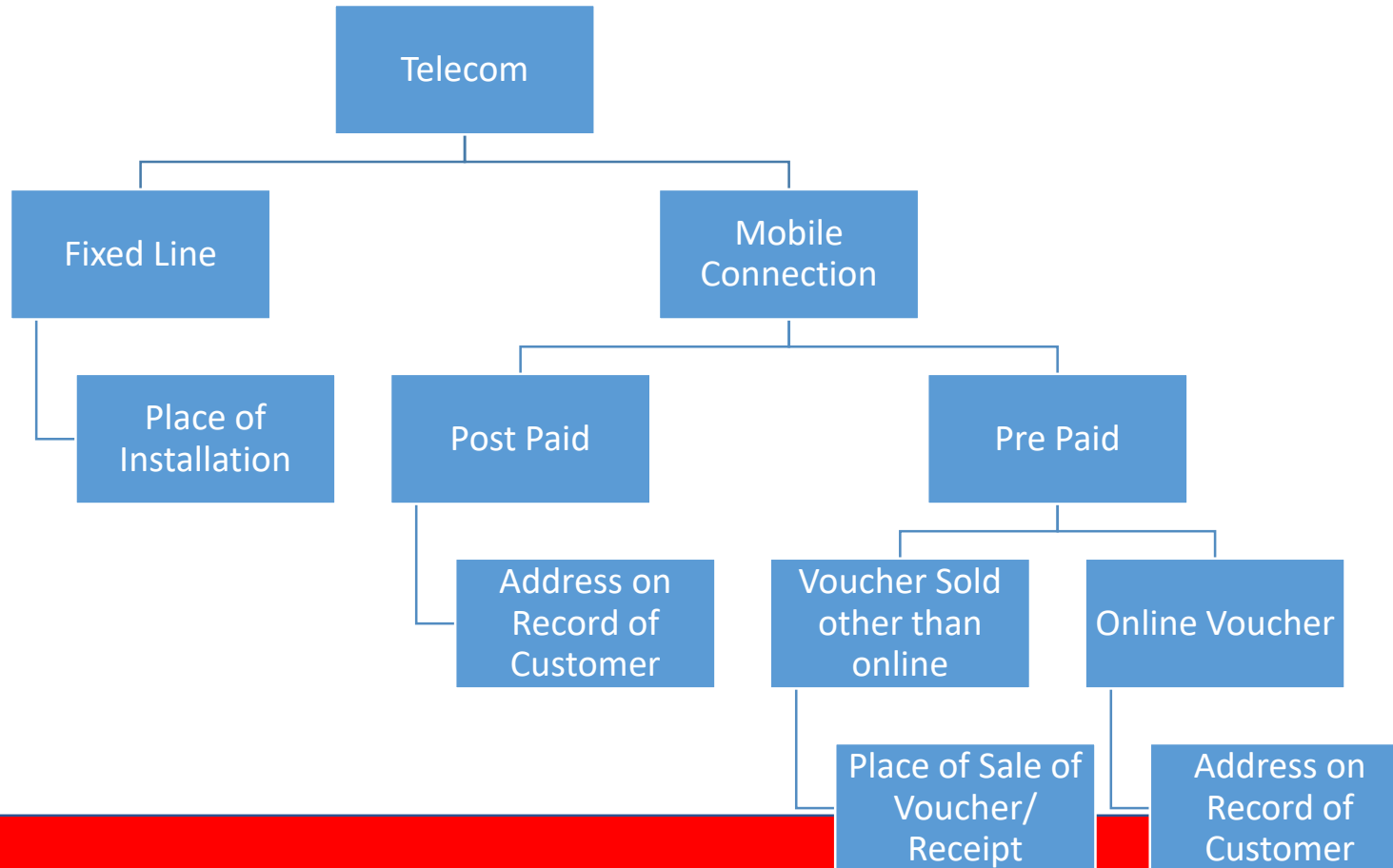
Services on a conveyance – Sec. 6(11) (IGST)

- The place of supply of services on board a conveyance such as vessel, aircraft, train or motor vehicle, shall be the location of the **first scheduled point of departure** of that conveyance for the journey.

Telecommunication Services – Sec. 6(12) (IGST)

- The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall—
 - (a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;
 - (b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on record of the supplier of services;
 - (c) in cases where mobile connection for telecommunication and internet service are provided on pre-payment through a voucher or any other means, be the location where such pre-payment is received or such vouchers are sold:
 - Provided that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on record of the supplier of services shall be the place of supply of such service.

Telecom – Snapshot..



Banking and Financial Services – Sec. 6(13) (IGST)

- The place of supply of banking and other financial services including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:
- Provided that if the service is not linked to the account of the recipient of services, the place of supply shall be location of the supplier of services.

Insurance Services – Sec. 6(14) (IGST)

- The place of supply of insurance services shall:
 - (a) to a registered person, be the location of such person;
 - (b) to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.

Advertisement Services – Sec. 6(15) (IGST)

- The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for identifiable States, shall be taken as located in each of such States and the value of such supplies specific to each State shall be in proportion to amount attributable to service provided by way of dissemination in the respective States as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

Place of Supply for Goods

Place of Supply of Goods – Sec. 5(2) (IGST)

- Current Model Law
 - Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.
- Informally Circulated Draft :
 - Where the supply, including a distance supply, involves movement of goods, the place of supply of such goods shall be the location at which the goods are delivered to the receiver
- The language used will need to be tested specifically for Ex-Works transactions.

Place of Supply of Goods – Sec. 5(2A) (IGST)

- Where the goods are delivered by the supplier to a recipient or any other person, on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the **principal place of business** of such person.

Sec. 5(2A) : Implications

- Takes care of situations of endorsement of documents, “Bill to”, “Ship To”, etc.
- Treats the intermediary supply as made to the principal place of business.
- Principal Place of Business: Section 2(78)
 - “**principal place of business**” means the place of business specified as the principal place of business in the certificate of registration where the taxable person keeps and maintains the accounts and records as specified under section 42
- Again, very open ended. Does it leave a choice to the assessee?

Place of Supply of Goods – Sec. 5(3) (IGST)

- Where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient.

Place of Supply of Goods – Sec. 5(4) (IGST)

- Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.
- Reduces controversies of situs of works contracts.

Place of Supply of Goods – Sec. 5(5) (IGST)

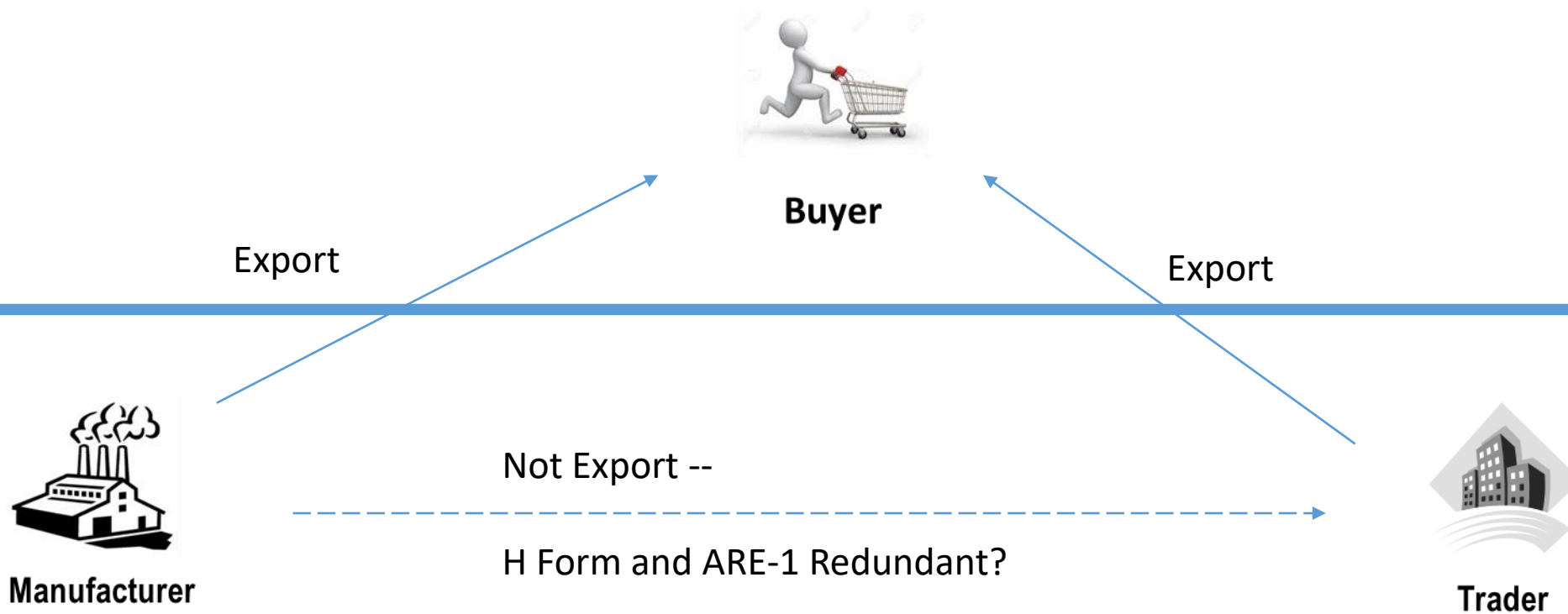
- Where the goods are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.
- What would be meant by supply on board a conveyance?
 - Supply to the owner of conveyance or to the buyer
- Whether food supplies covered here?
- What would happen to unsold stock?

Exports/Imports..

Export of Goods – Sec. 2(43)

- “**export of goods**” with its grammatical variations and cognate expressions, means taking out of India to a place outside India

Example....



Export of Service – Sec. 2(44)

- the supply of any service shall be treated as “**export of service**” when
 - (a) the supplier of service is located in India,
 - (b) the recipient of service is located outside India,
 - (c) the place of supply of service is outside India,
 - (d) the payment for such service has been received by the supplier of service in convertible foreign exchange, and
 - (e) the supplier of service and recipient of service are not merely establishments of a distinct person;

Explanation.- For the purposes of clause (e), an establishment of a person in India and any of his other establishment outside India shall be treated as establishments of distinct persons.

Export of Services – Multiple Conditions

- If all tests satisfied, then eligible for zero rating
- If test other than place of supply is not satisfied, what happens?
 - Is it inter-state
 - Is it intra-state
- Examples
 - Services realised in Indian currency
 - Remittances from branches
 - Services not realised at all

Export of Goods / Services - Issues

- Exports
 - No specific provision for Zero Rating in IGST Act
- Deemed Exports
 - Penultimate Sale Exemption – no longer available.
 - No specific provision in IGST Act
 - Not included in zero rating though defined under the SGST Act
- Supplies to Special Economic Zones
 - No clarity on whether to be treated as exports/deemed exports or zero rated
- Supplies to EOUs
 - No clarity on exemption

Import of Goods – Sec. 2(51)

- **“import of goods”** with its grammatical variations and cognate expressions, means bringing into India from a place outside India

Import of Service – Sec. 2(52)

- the supply of any service shall be treated as an **“import of service”** if,
 - (a) the supplier of service is located outside India,
 - (b) the recipient of service is located in India,
 - (c) the place of supply of service is in India, and
 - (d) the supplier of service and the recipient of service are not merely establishments of a distinct person;

Explanation 1.- An establishment of a person in India and any of his other establishment outside India shall be treated as establishments of distinct persons.

Explanation 2.- A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory.

Import of Goods and Services

- Import of Goods
 - Part of the CVD Chain
 - Whether supply not liable in general under the GST Law?
- Sale in the course of Import and High Seas
 - Possible overlap between Customs Duty and IGST
- Import of Services
 - Remittances to overseas branches no longer a concern
 - Transactions with J&K no longer import of services

SICOI/ High Seas (Possible Overlap)

