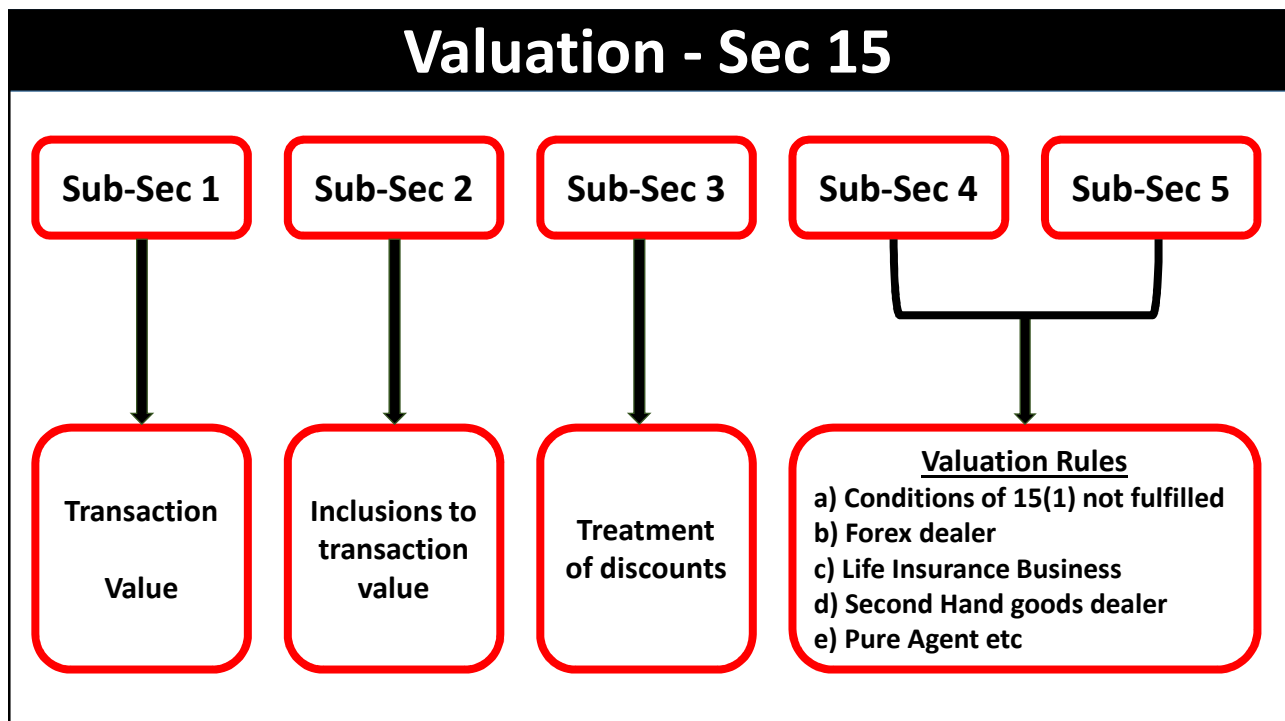




Disclaimer

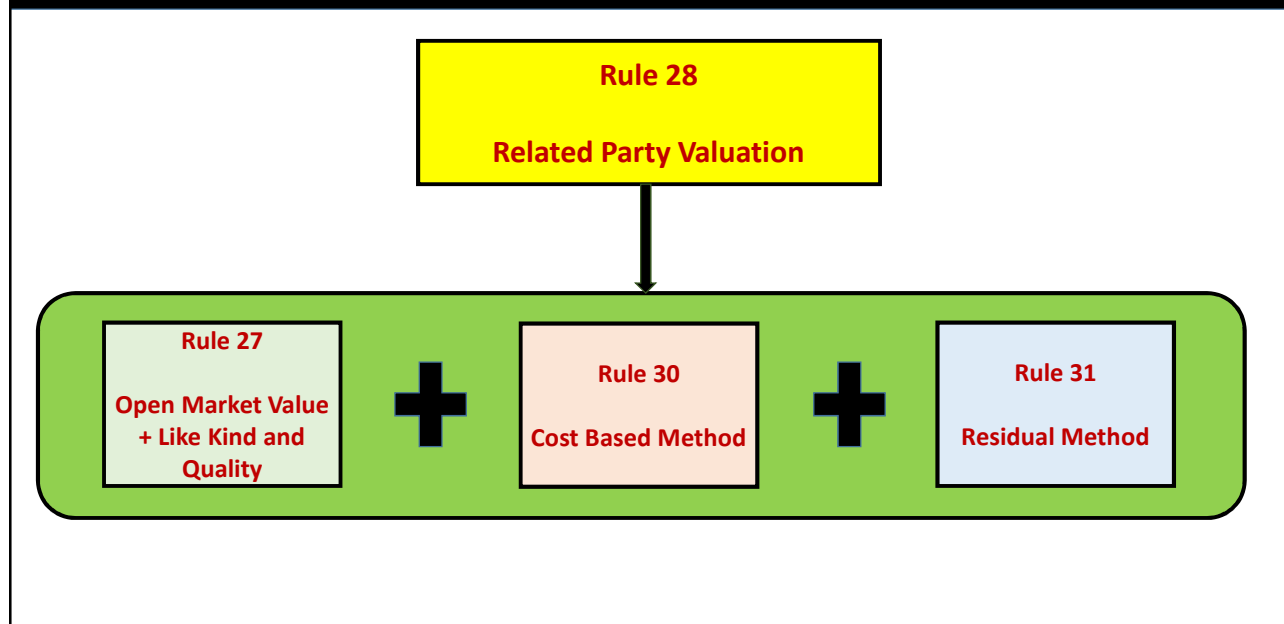
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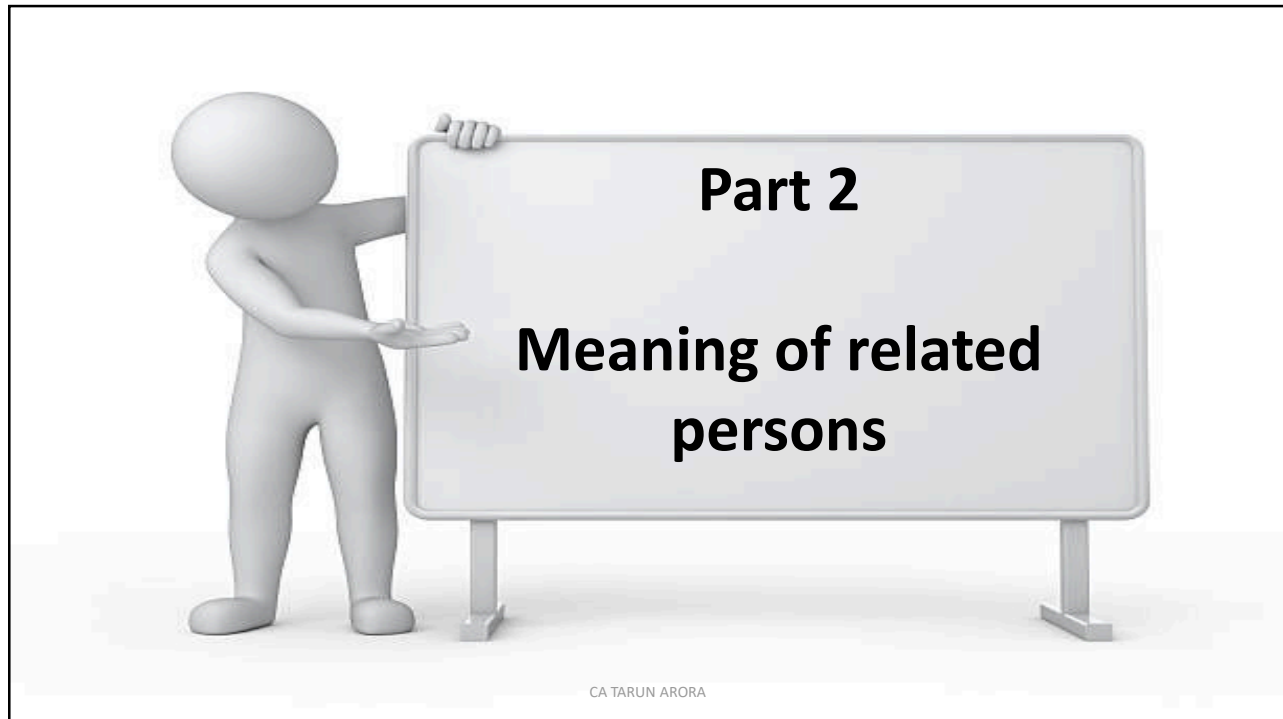


Valuation Rules

Rule 27	→	Where consideration is not wholly in money
Rule 28	→	Related party transactions
Rule 29	→	Principle and agent transactions
Rule 30	→	Cost based method
Rule 31	→	Residual method
Rule 31A/32	→	Specified goods/services
Rule 33	→	Pure Agent
Rule 34	→	Rate of exchange
Rule 35	→	Tax is included in Gross Value

Discussion Agenda





Meaning of related persons [Explanation to Sec 15]

“Person also includes legal person”

Persons shall be deemed to be related persons if -

- (i) such persons are **officers or directors of one another's businesses;**
- (ii) such persons are **legally recognised partners** in business;
- (iii) such persons are **employer and employee;**
- (iv) any person directly or indirectly owns, **controls** or holds twenty-five per cent or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly **controls** the other;
- (vi) both of them are directly or indirectly **controlled** by a third person;
- (vii) together they directly or indirectly **control** a third person; or they are **members of the same family;**

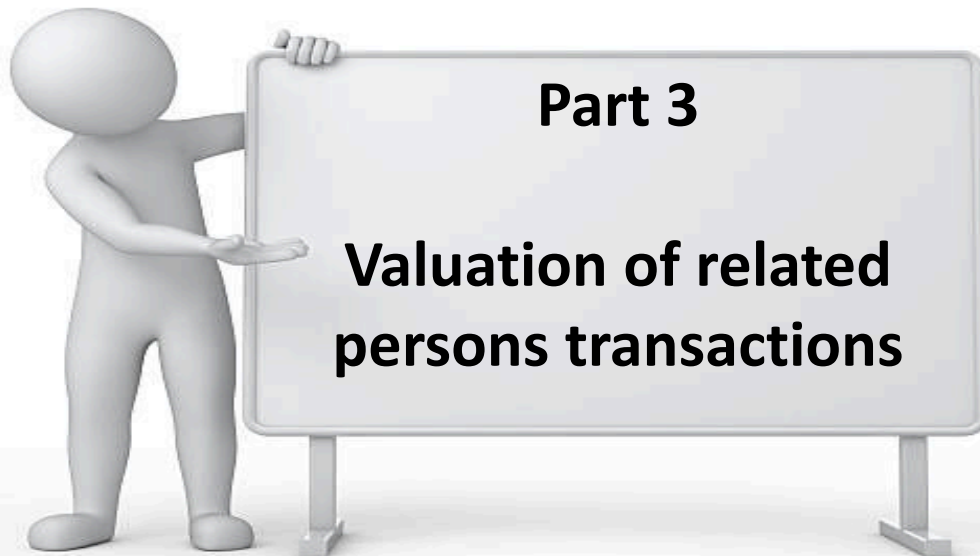
Also persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related

Related persons where errors are noticed

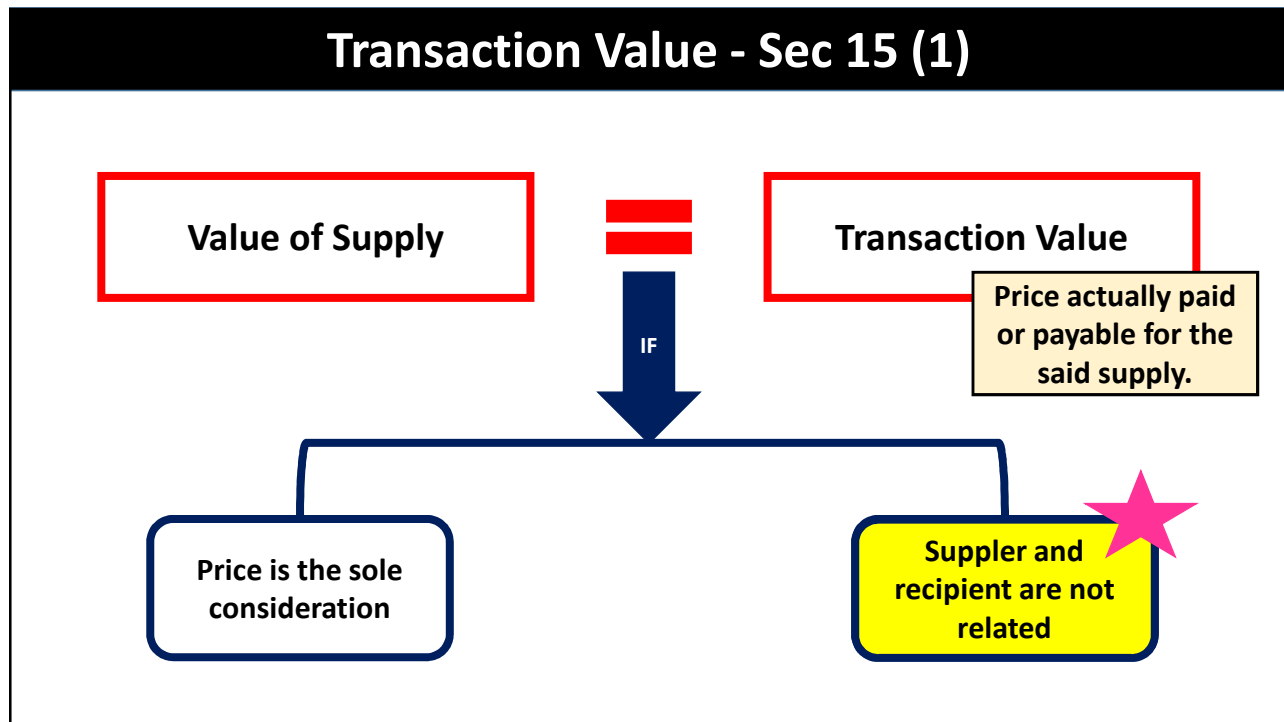
Transaction
between
distinct person
(within same
entity different
GSTINs)



Employer and
employee



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RULE 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

- (a) be the open market value of such supply;
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

RULE 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

- (a) be the open market value of such supply;
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Option 1

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Option 2

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

Option 3

Option 1

Value of supply shall be

Open market value

If open market value is not available then value of like kind and quality

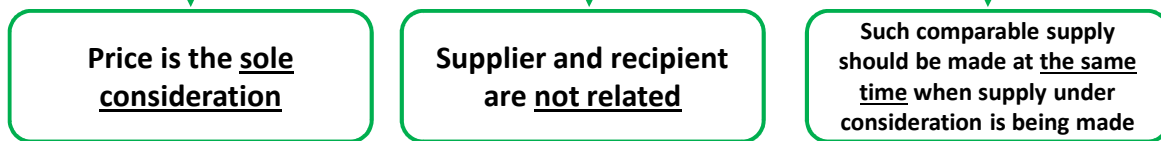
If above is not possible then Rule 30 [Cost method – 110% of cost]

If value cannot be arrived from Rule 30 then Rule 31 [Residual method]

Open market value [Explanation to Rule 35]

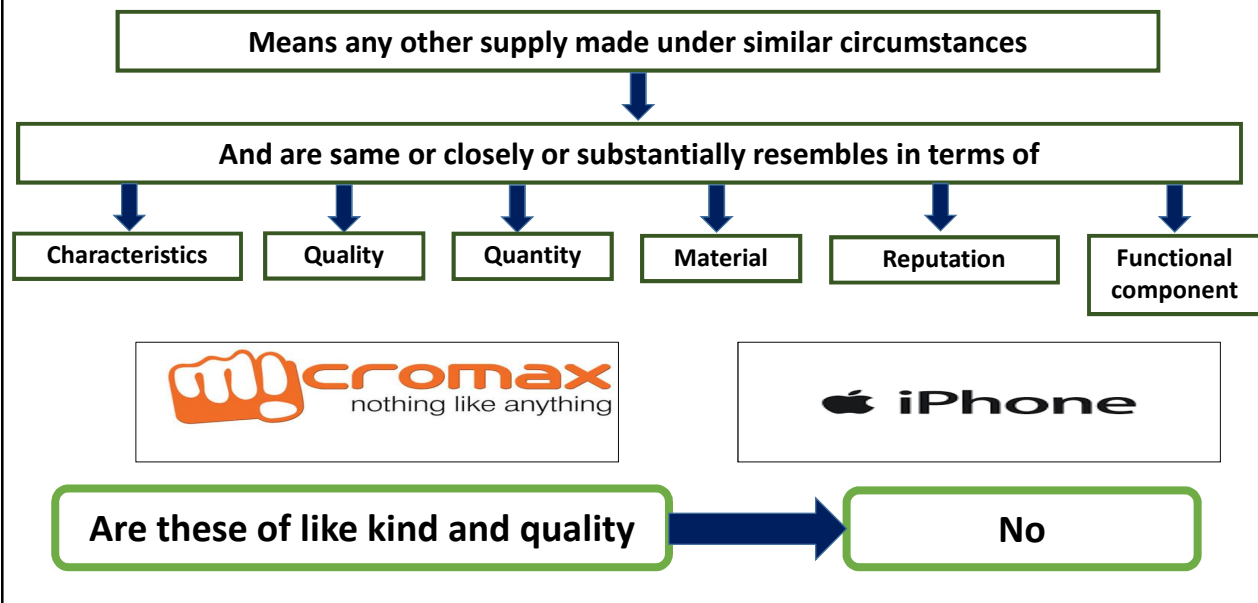
Means full value in money	XXXXX
Less GST (CGST/SGST/UTGST/CESS/IGST)	XXXXX
Open market value	XXXXX

Subject to the following conditions



Supply of goods or services or both of like kind and quality [Explanation to Rule 35]

[Explanation to Rule 35]



Rule 30 Value of supply of goods or services or both based on cost

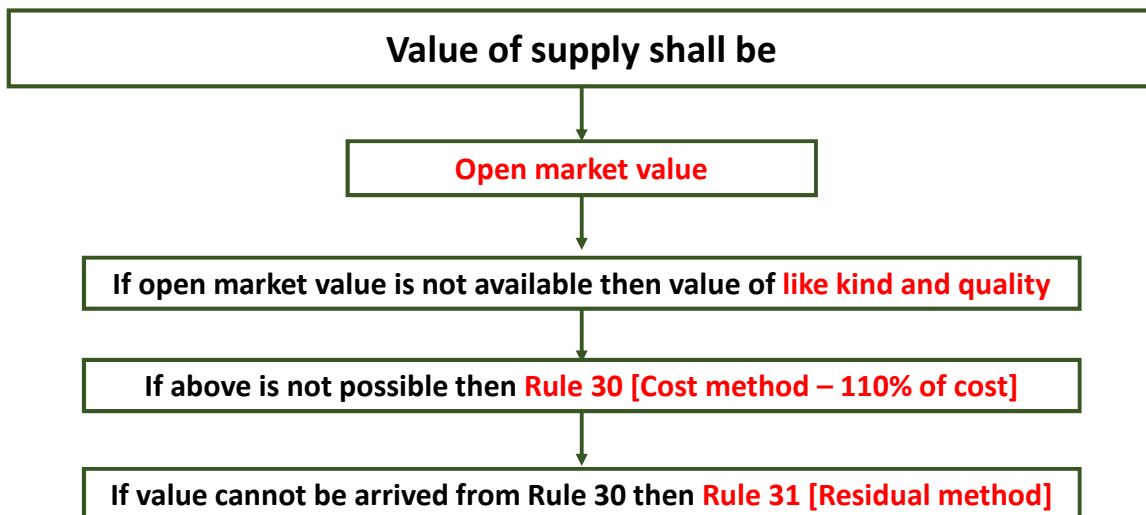
Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, **the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.**

Rule 31 Residual method for determination of value of

Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using **reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:**

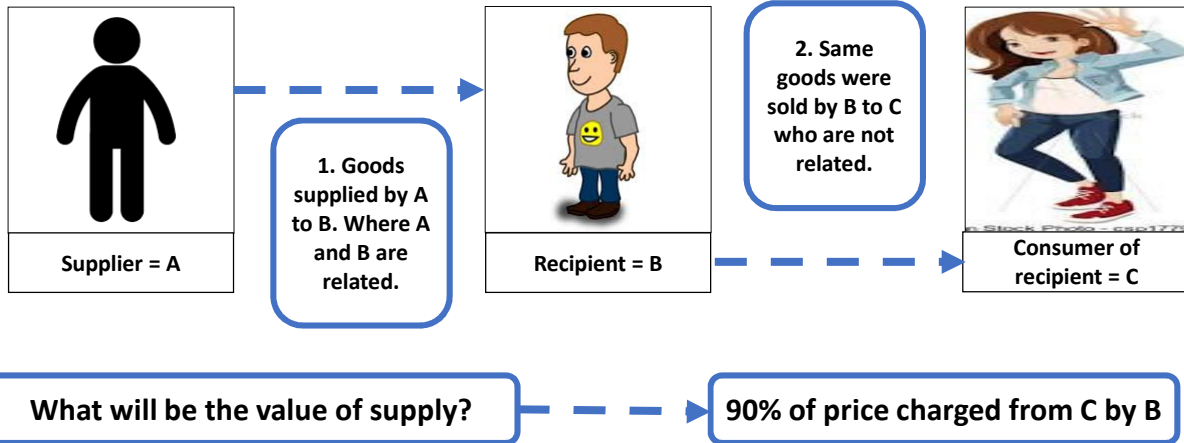
Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

Option 1



Option 2

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to **ninety percent of the price charged for the supply of goods of like kind and quality** by the recipient to his customer not being a related person:



Option 2

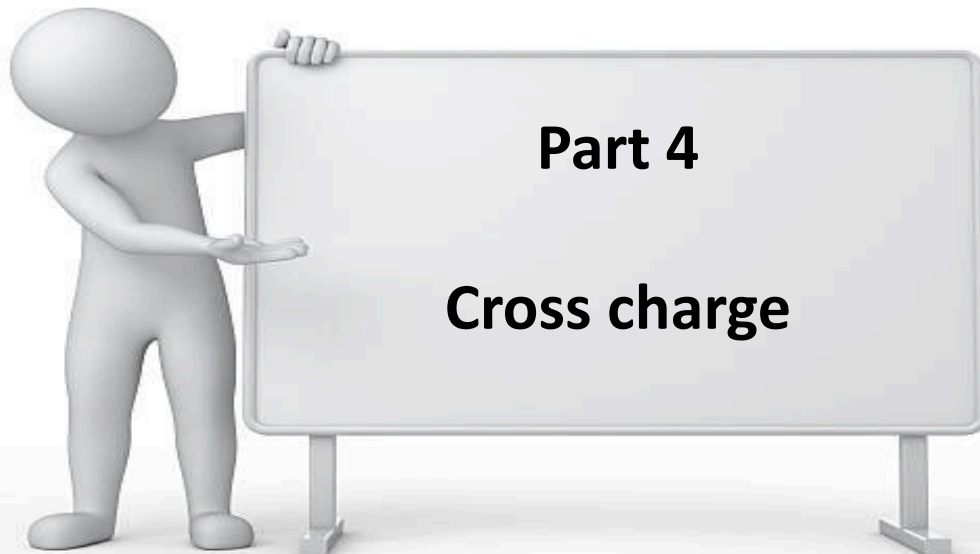
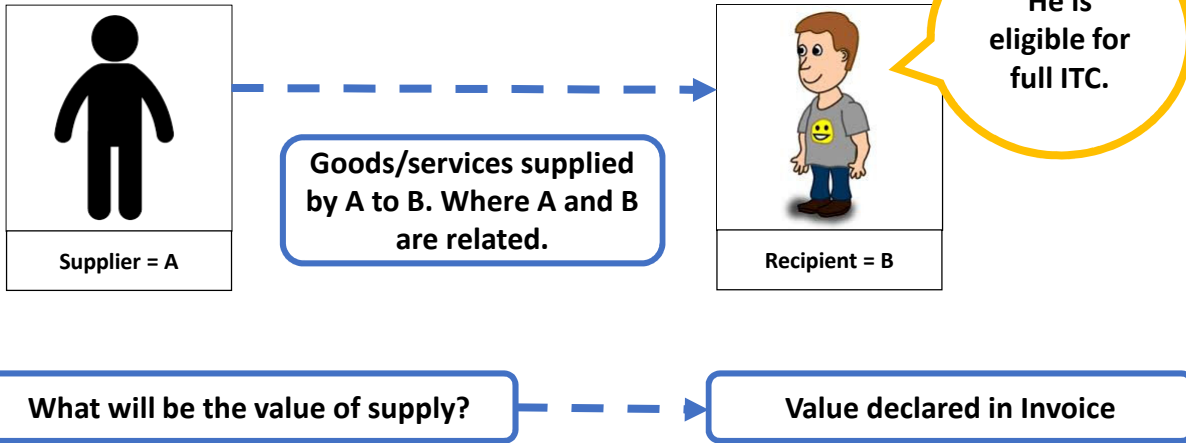
Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to **ninety percent of the price charged for the supply of goods of like kind and quality** by the recipient to his customer not being a related person:

Important points to be noted for option 2-

1. Applicable only for supply of goods and not services.
2. Goods sold by the related recipient to unrelated party shall be of like kind and quality i.e. in case raw material is being transferred from one unit to another in different state for further manufacturing then this option will not be applicable.

Option 3

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.



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Cross charge

Cross Charge, is a term which is

- neither used or defined in the GST Law,
- however, in common parlance, it is referred to as
- a **transaction between two distinct persons as defined in Sec 25(4) (within same PAN entities)**
- which is deemed to be supply by virtue of Section 7 read with Schedule 1 of the CGST Act, 2017.

Types of cross charge

COST CROSS CHARGE

It is referred to a situation wherein one branch incurs expenditures, the benefit, of which is availed/utilized by more than one branch.

For Example: Audit Fees is incurred by head office, however audit services are utilized by all the branches.

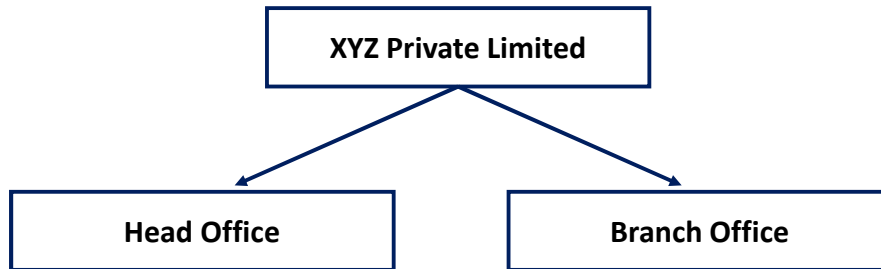
REVENUE CROSS CHARGE

It is referred to a situation wherein Invoice is booked by one branch, however more than one branch was involved in supply of goods/services.

For Example: The company has a marketing office in Delhi, however, it has warehouse in Haryana. In this case if Haryana GSTIN is used for invoicing the end customer. Delhi GSTIN should also issue an Invoice to Haryana GSTIN for services(marketing) provided by it.

Note: The above division of cross charge in two types is the thought process of the presenter to easily identify cross charge transactions and names etc are given for reference purposes only.

Most common Cross charge

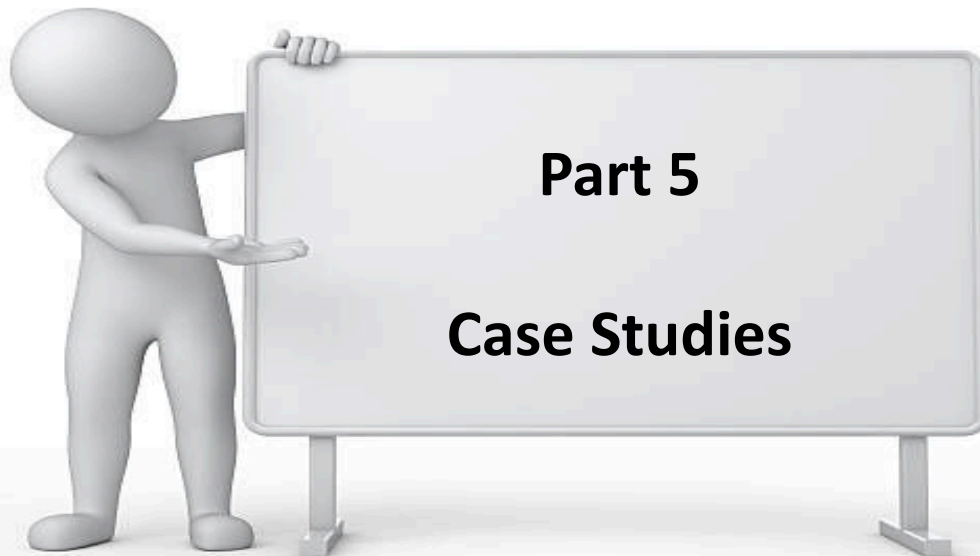


In the above case if Head Office

- Files GST returns Branch office, or
- Provides HR, Admin, IT and other related services

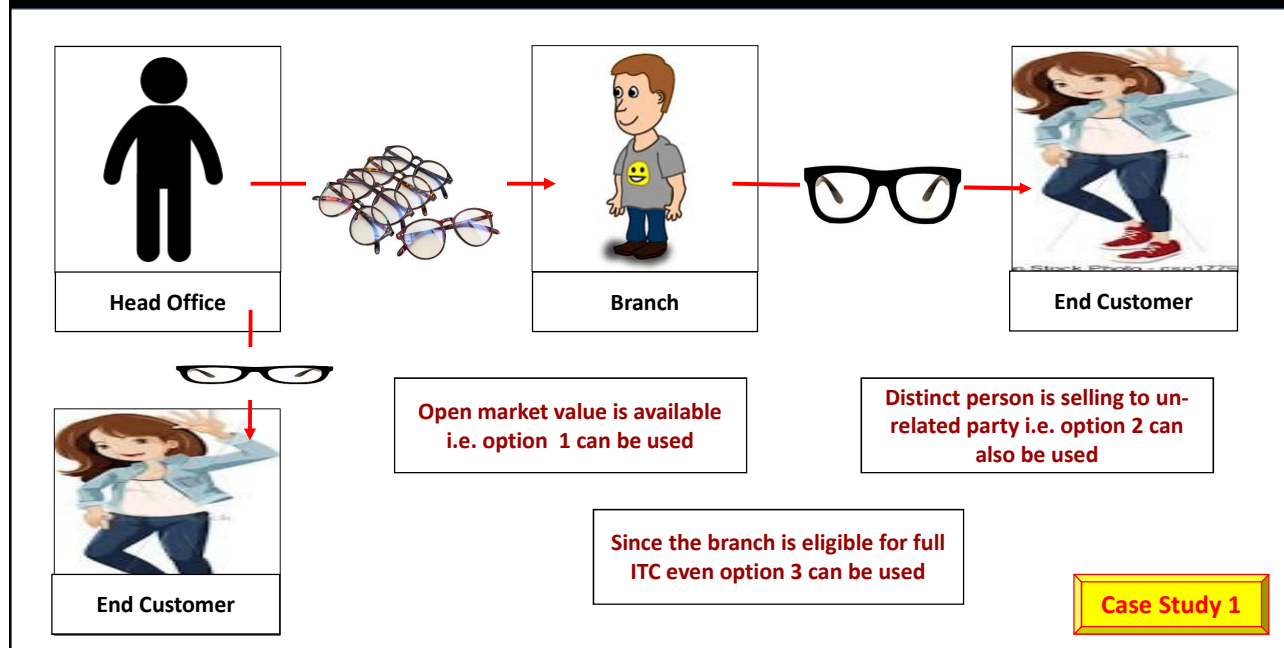
Similar view has been taken by Appellate Authority and Authority for Advance Ruling in the case of Columbia Asia.

This by virtue of Sec 7 read with Schedule 1 is deemed supply and accordingly the Head Office shall issue cross charge Invoice to its branches.



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Can Option 3 be used even when option 1 and/or option 2 are applicable



Can Option 3 be used even when option 1 and/or option 2 are applicable

Authority for Advance Ruling Tamil Nadu in the case of M/s Specs-makers Opticians (P.) Ltd

Observation

Option 3 provides flexibility to the supplier which can be used to-

- transfer the credit from one state to another by overvaluing the supply or
- retain the credit in home state by under-valuing the supply

which cannot be the intention of taxation based on value addition.

Ruling

Option 3 has to be read in conjunction with Option 1 and Option 2 and these options cannot be skipped all together.

Case Study 1

Can Option 3 be used even when option 1 and/or option 2 are applicable

- ❑ Appellate Authority for Advance Ruling of Tamil Nadu in the case of M/s Specs-makers Opticians (P.) Ltd. [Branch case]
- ❑ Appellate Authority for Advance Ruling of West Bengal in the case of M/s GKB Lens (P.) Ltd including the Authority for Advance Ruling in the same case. [Branch case]
- ❑ Authority for Advance Ruling Maharashtra in the case of M/s Sanghvi Movers Ltd [Branch case]
- ❑ Authority for Advance Ruling Maharashtra in the case of M/s Kansai Nerolac paints Ltd. [Branch case]
- ❑ Authority for Advance Ruling Rajasthan in the case M/s Sanjog Steels (P.) Ltd [Third party case]

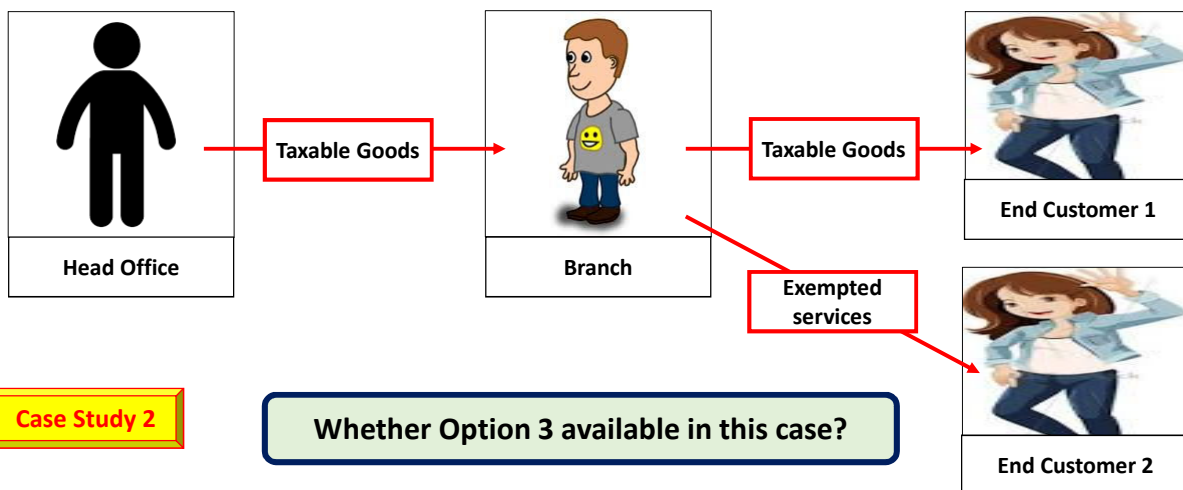
HAVE RULED THAT OPTION 3 CAN BE USED DIRECTLY

Case Study 1

Meaning of the term “recipient is eligible for full input tax credit” in case of option 3


Legal extract Rule 28

Provided further that where the **recipient is eligible for full input tax credit**, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

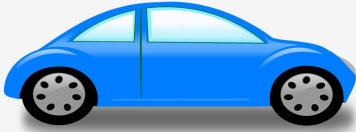



Case Study 2

Whether Option 3 available in this case?



Employer





Employee


1. Employer has given this car to his employee for use during the course of employment.
2. The value of car was 10lakhs including all taxes.
3. Employer gave an option that after 5 years he can buy this car for Rs 3 lakhs. [Open market value is 4.5 lakhs]
4. Income Tax WDV is Rs 4 lakhs (assumed for the sake of easy calculation).

What is the GST implications after five years when car is transferred to employee?


1. Option 2 and 3 are not applicable so value has to be arrived as per Option 1 which is Rs 4.5 lakhs.


2. However by virtue of Notification 8/2018 Central Tax Rate tax is paid only if Amount received is more than WDV as per income tax act.

Case Study 3



Employer





Employee

1. Employee was using a Laptop during his employment
2. Purchased for Rs 30000 + GST Rs 5400/- (Total 35400)/-
3. Employer has taken ITC of 5400/-
4. After two years employer gave an option to employee to purchase laptop for Rs 5000/- [Open market value 7500]

What is the GST implication when Laptop is transferred to employee?


1. Option 2 and 3 are not applicable so value has to be arrived as per Option 1 which is 7,500/-.

2. However as per Sec 18(6) credit relating to unexpired life [60-24=36 months] or tax on transaction value whichever is higher is payable.

3. Tax on transaction value is Rs 1350/--(7500X18%) and Credit pertaining to unexpired life is Rs 3240/- ((5400/60)*36). Accordingly Rs 3240/- is payable.

Case Study 4

Branch Office Delhi
[Only taxable supplies]



Branch Office Haryana
[Only taxable supplies]

1. Employee located in Delhi branch is shifted to Haryana Branch.
2. While moving to Haryana even his laptop is transferred from Delhi to Haryana.
3. Laptop Purchased for Rs 30000 + GST Rs 5400/- (Total 35400)/- wherein ITC of Rs 5400/- has been taken.
4. This transaction took place after two years [Open market value 7500].

What is the GST implication when Laptop is transferred ?

Rule 28

Option 1

Option 2

Option 3

- OPV
- Like kind
- Cost + 10%

Not applicable

Any value if ITC available to branches


?

Sec 18(6)

Credit pertaining to unexpired life is Rs 3240/- $((5400/60)*36)$.

Case Study 5

Branch Office Delhi
[Only exempt supplies]



Branch Office Haryana
[Only taxable supplies]

1. Employee located in Delhi branch is shifted to Haryana Branch.
2. While moving to Haryana even his laptop is transferred from Delhi to Haryana.
3. Laptop Purchased for Rs 30000 + GST Rs 5400/- (Total 35400)/- wherein ITC of Rs 5400/- **would not have been taken.**
4. This transaction took place after two years [Open market value 7500].

What is the GST implication when Laptop is transferred ?

Rule 28

Option 1

Option 2

Option 3

- OPV
- Like kind
- Cost + 10%

Not applicable


Any value if ITC available to branches

Sec 18(6)

Not Applicable

Case Study 6

Branch Office Delhi
[Only taxable supplies]



Branch Office Haryana
[taxable+exempt supplies]

1. Employee located in Delhi branch is shifted to Haryana Branch.
2. While moving to Haryana even his laptop is transferred from Delhi to Haryana.
3. Laptop Purchased for Rs 30000 + GST Rs 5400/- (Total 35400)/- wherein ITC of Rs 5400/- **would have been taken.**
4. This transaction took place after two years [Open market value 7500].

What is the GST implication when Laptop is transferred ?

Rule 28		Sec 18(6)
Option 1	Option 2	Option 3
<ul style="list-style-type: none"> OPV Like kind Cost + 10% 	Not applicable	Not applicable

Credit pertaining to unexpired life is Rs 3240/- $((5400/60)*36)$.

Case Study 7



Employer





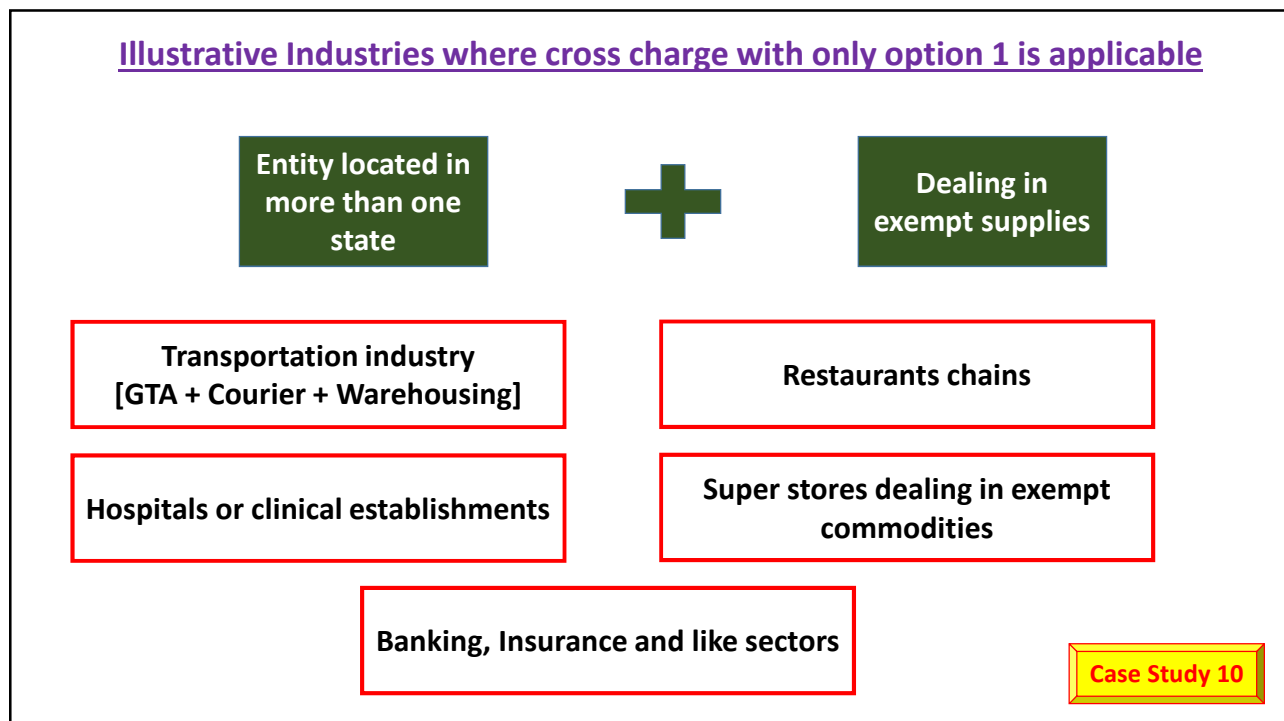
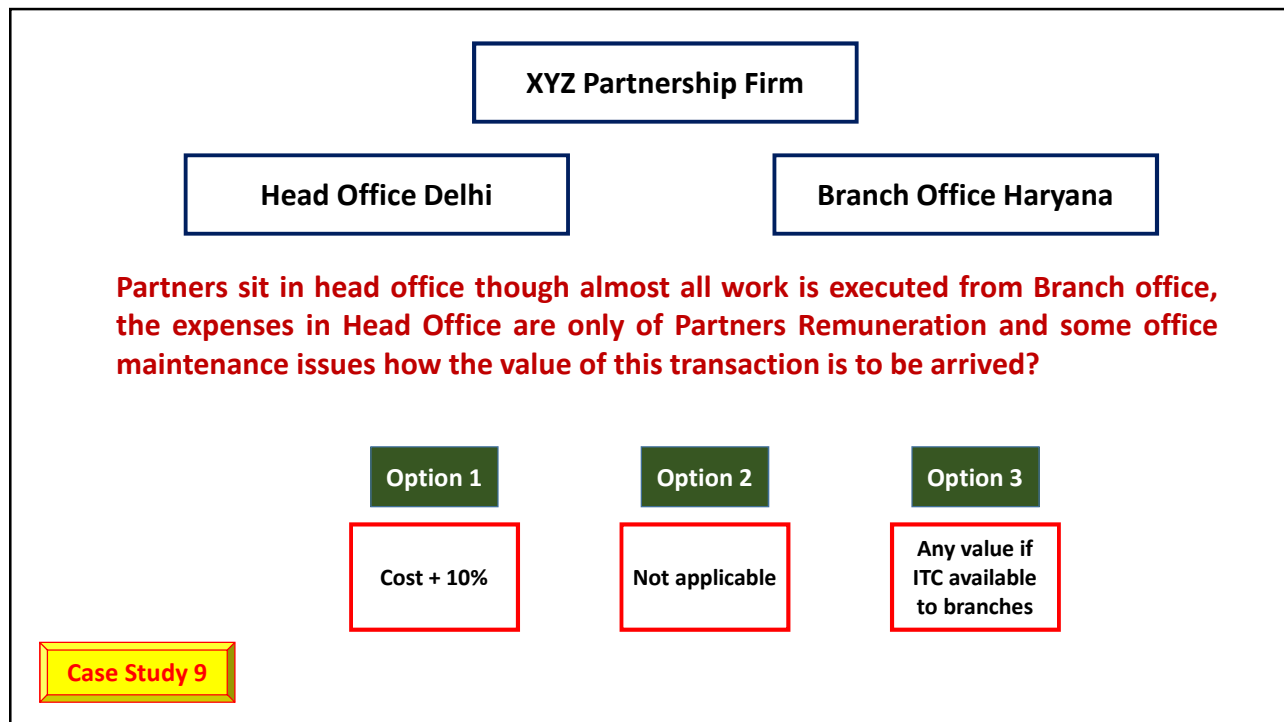
Employee

Employer sells slow moving or out of fashion stock of garments to employee. How to derive valuation?

Querist said open market value not available

1. Option 2 and 3 are not applicable so value has to be arrived as per Option 1 available.	2. Open market value and like kind and quality not available.	3. Derive value through Rule 30 i.e. 110% of the Cost Value.
--	---	--

Case Study 8



TENTAIVE STEPS FOR COST CROSS CHARGE

Step 1: Identify GSTIN(s) which incurs expenditures, the benefit of which are used by more than one branch.

Step 2: After identifying the GSTIN(s) incurring common expenses, the next step should be to obtain monthly expenditure details of the relevant GSTIN(s).

Step 3: After obtaining the monthly expenditure details, the next step should be to segregate expenses in two broad categories (a) exclusively for self GSTIN and (b) for all/some branches.

Step 4: The next step shall be to obtain "Third Party Turnover" of all the GSTINS. "Third Party Turnover" shall mean Total Turnover on which GST is payable as reduced by supplies made to distinct persons.

TENTAIVE STEPS FOR COST CROSS CHARGE

Step 5: The next step shall be to arrive at percentage of Third Party Turnover of each GSTIN against the Total Third Party Turnover of all the GSTINS taken together.

Step 6: The total of common expenditure as arrived in Step 3(b) shall then be proportionately divided amongst various GSTINS on the basis of percentages arrived in Step 5.

Step 7: Finally the proportionate common expenditure for each GSTIN will be arrived which will be the basis for arriving at the value of supply i.e. the value on which head office will issue Invoice to its branches.

Step 8: The company can use the proportionate common expenditure as transaction value for all branches which are not dealing in exempt supplies. However, for GSTINS dealing in exempt supplies the company shall markup 10% on total cost to arrive at the value of supply.



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