



CONCEPT OF SUPPLY & VALUATION UNDER GST

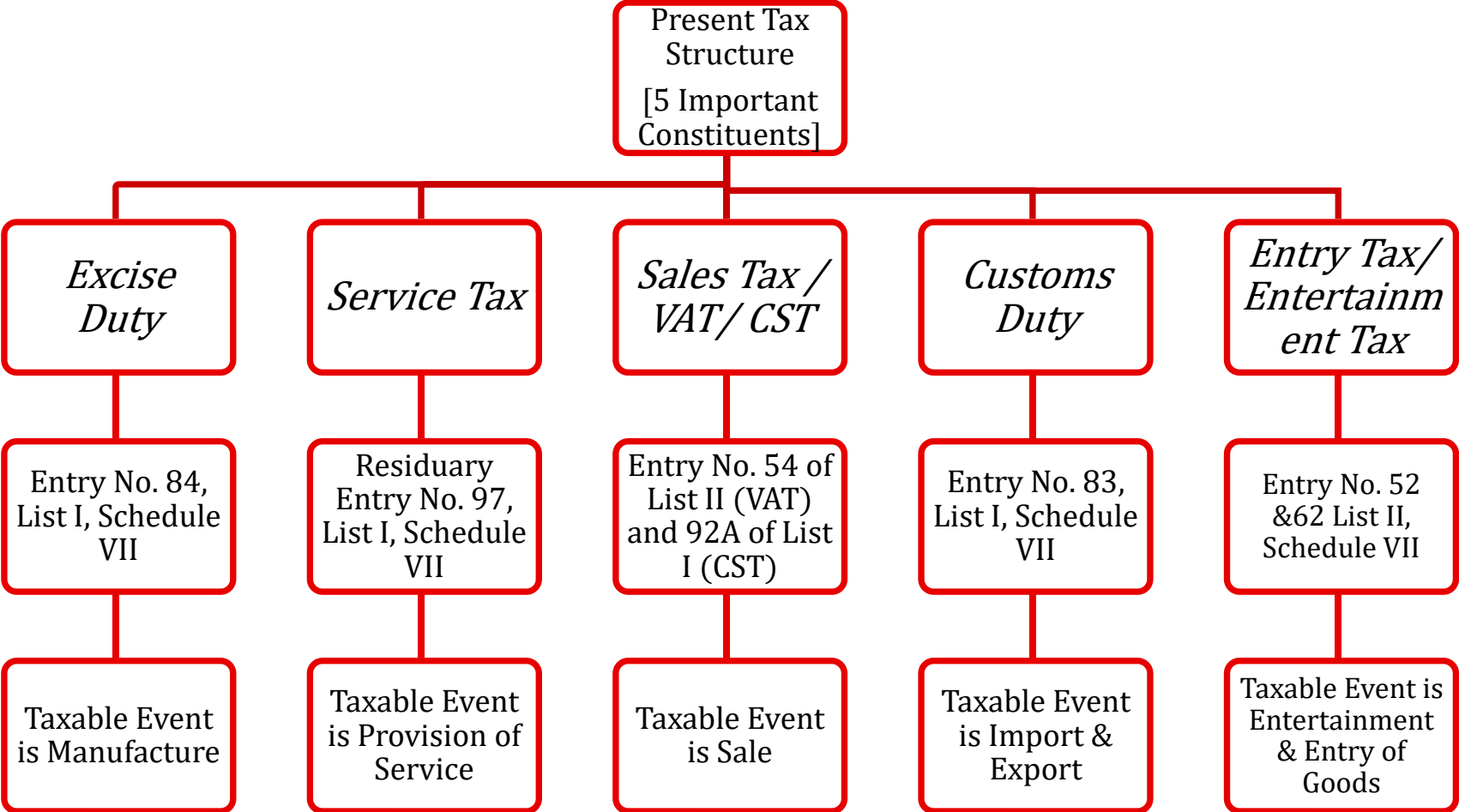
ABHAY DESAI

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SUPPLY



TAXABLE EVENT UNDER VARIOUS LAWS



DICTIONARY DEFINITION OF TERM SUPPLY

- “Make (something needed or wanted) available to someone; provide” – Oxford Dictionary
- “To provide materials, or goods and services – an act of providing something” – Cambridge Dictionary
- “To make (something) available to be used : to provide someone or something with : to make available” – Merriam-Webster Dictionary

LEGAL DEFINITION UNDER OTHER JURISDICTIONS

- Malaysia: Under the GST Act, 2014 (GST Act), supply means all forms of supply, including supply of imported services, done for a consideration and anything which is not a supply of goods but is done for a consideration is a supply of services. (Sec. 4 of Malaysia GST Act, 2014)
- Canada: supply means, subject to sections 133 and 134, the provision of property or a service in any manner, including sale, transfer, barter, exchange, license, rental, lease, gift or disposition

LEGAL DEFINITION UNDER OTHER JURISDICTIONS

- United Kingdom: Subject to any provision made by that Schedule and to Treasury orders under subsections (3) to (6) below—
- (a) “supply” in this Act includes all forms of supply, but not anything done otherwise than for a consideration;
- (b) anything which is not a supply of goods but is done for a consideration (including, if so done, the granting, assignment or surrender of any right) is a supply of services. (Sec. 5(2) of VAT Act, 1994)

DEFINITION UNDER CGST ACT – SEC. 7

- Inclusive definition. It 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.

SUPPLY IS A BROADER CONCEPT THAN SALE

- The concept of a supply as broader than a sale is illustrated by the British case of Customs and Excise Commissioners v. Oliver, [1980] 1 All ER 353. involving the taxpayer's sale of a known stolen car at auction. Although the sale may be void as a matter of local law, the Queen's Bench held that a supply “is the passing of possession in goods pursuant to an agreement whereunder the supplier agrees to part with and the recipient agrees to take possession” of the goods, even if, as in this case, the innocent purchaser at auction may have to give up the car.

SEC. 7(1)(a) – MADE FOR CONSIDERATION

- All forms of supply of goods or services or both such as:
 - sale, - voluntary transfer of ownership
 - transfer, - compulsory transfer of ownership
 - Barter/exchange, - one goods for another
 - Licence/rental/lease or - right to use
 - disposal – getting rid off
- made or agreed to be made for a consideration
- in the course or furtherance of business

PERSONAL SALES

- Business is defined u/s 2(17) to include any trade, commerce, manufacture, profession, vocation or any other similar activity, whether or not it is for a pecuniary benefit whether or not there is volume, frequency, continuity or regularity of such transaction and includes all incidental transactions.
- Thus it means that a person making a supply in a personal capacity is to be excluded as the same is distinct from making a supply in a capacity of a businessmen.
- Stirling v. Commissioner of Customs and Excise [1986] 2 CMLR 117 (Edinburgh VAT Tribunal) – Appellant was engaged in business of mixed farming, leasing of property, etc. He made sale of stamps out of his stamp collection and furniture as well as other valuables from house. Held that VAT is not applicable because supply by a person acting in a personal capacity is different from supply made in the course of business.
- Q10 of FAQ's is in line with above reasoning.

WHAT IS THE LINK BETWEEN SUPPLY AND CONSIDERATION ? - MUSICIAN

- The ECJ also relied on the “direct link” requirement in the case of Tolsma (1994) STC 509 to find that a street musician who solicited funds from pedestrians did not make sales for consideration under the Sixth Directive and therefore was not subject to VAT on his receipts. According to the court, the musician played his barrel organ voluntarily, and those who deposited money in his tin did not necessarily make payment in any relationship to the benefits that they may obtain.

WHAT IS THE LINK BETWEEN SUPPLY AND CONSIDERATION ? - TIPS

- In the United Kingdom, a VAT tribunal in the case of Potters Lodge Restaurant Ltd v. Commissioner of Customs and Excise, LON/79/286 held that if a restaurant automatically added a service charge to its bills (and notified the customers of this fact on the menus), the service charge was part of the consideration for the meal and therefore taxable. However, if customers were not informed on the menus or otherwise that a service charge would be added, a VAT tribunal held, in the NDP Co. case, that payments by customers for service were not part of the consideration for the meals (no direct link) and therefore not taxable

WHAT IS THE LINK BETWEEN SUPPLY AND CONSIDERATION ? – FEW CASES

- A football player is offered a branded car as an inducement for him to join the club. In this case, the car offered is the consideration that induces the player to join the club to provide his football skills. There is a direct link between the act of joining the club and the provision of the car.
- A restaurateur offered ‘free’ meals to drivers of buses carrying passengers as an inducement to bring potential customers to his business premises. Since the meals were not given to drivers of empty buses, there is a direct link between the act of bringing passengers to the food outlet and the provision of the free meals. The consideration here is the free meals provided.

WHAT IS THE LINK BETWEEN SUPPLY AND CONSIDERATION ? - DONATIONS

- A rich man donates a large sum of money to an orphanage without receiving any benefit in return. The donation (payment) is not a consideration because there is no supply of goods or services by the orphanage to the donor in return.
- Monetary donation which is freely given with no expectation of anything in return is not a consideration for any supply. On the other hand, if the donor's name is advertised in the newspaper in return for the monetary donation, the donor has received benefit from his donation. Therefore, his monetary donation is a consideration for the supply of the benefit to him in the form of the advertisement about him.

COMPENSATION TO REFRAIN FROM DOING AN ACT

- Not expressly covered in the definition of service. However included in Schedule – II and deemed as a supply of service.
- In the case of Jorgen Mohr v. Finanzamt Bad Segeberg (1996 ECR I – 959) question was whether a payment to a dairy farmer to discontinue milk production under a European Council Regulation designed to reduce guaranteed global quantities of milk is a supply of services for consideration ?

ISSUANCE OF SHARES

- In *Kretztechnik* ([2005] EUECJ C-465/03), the ECJ held that the issuance of shares by a company was not a supply to the shareholders. Rather, the activity was properly characterized as the company acquiring capital and acknowledging the new shareholders' rights from their investment

PENALTIES AND FINES

- If a payment is a fine or a penalty, then it is not a consideration. However, if the fine or penalty is actually an additional consideration for a supply in fulfilment of the terms and conditions of the agreement or arrangement, it is a consideration for the supply and is subject to GST.
- A traffic police issued a summons to a motorist who parked his car on a yellow box on the road. The motorist later paid the fine. Payment of a parking fine which is imposed to penalise illegal parking is not a consideration because there is no supply of goods or services in return for the payment.
- However, a fine or a penalty charge for late return of a DVD compact disc is a consideration for a supply of hire as the customer has extended the use of the DVD compact disc for a longer period.

GRANTS

- If grants are given freely in which the grantor does not receive any benefit in return, then they are not consideration for any supply and are therefore outside the scope of GST. However, if the grantor receives a benefit in return, then the grant is treated as a consideration for the supply. For example, if a grant is given to a researcher and in return, the grantor receives a research finding exclusively for his own benefit, then the person receiving the grant must account for GST on the research services on a tax inclusive basis.

SPONSORSHIP

- Sponsorship payment which involves the sponsor receiving clearly identifiable benefits in return, either in terms of advertising and publicity is a consideration for any supply. On the other hand, if the sponsorship does not involve any identifiable benefits in return, then the sponsorship payment is not a consideration for the supply.

FOREFEITURE

- Generally, forfeit deposit is not consideration for any supply because it constitutes a compensation payment for damages due to non performance of the contract or for breach of contract.
- However, in some circumstances, the deposit may still be a consideration for a supply. An example would be where a contract involving accommodation of hotel room provides for the letting of a room whether it was occupied or not.

FOREFEITURE

- In 2007, the ECJ, in the *Société* case (Case C-277/07), decided that a hotel's retention of a deposit on the client's cancellation of a hotel reservation was compensation to the hotel for the loss resulting from the client's default (a fixed cancellation charge). The ECJ decided that the forfeited deposit was not directly connected with (no direct link to) the supply of a service for consideration by the hotel and therefore not subject to tax under the Sixth Directive, Articles 2(1) and 6(1). The Australian courts reached different conclusions as under.
- In the *Qantas* case [2012] HCA 41 (High Court 2012), the Australian High Court held that the forfeited payments for flights that were not taken in which the customers were not able to obtain refunds for the unused tickets was a supply.

SEC. 7(1)(b) – IMPORTATION OF SERVICE

- Importation of Service
 - For a **consideration**
 - **Whether or not** in course or furtherance of business – import for personal use
 - Location of supplier :- Outside India
 - Location of recipient :- In India
 - Place of supply of service :- In India

SEC. 7(1)(c) – SUPPLY WITHOUT CONSIDERATION

- Permanent transfer/disposal of business assets where **input tax credit** has been availed on such assets.
 - Asset given as Gift – impact of Sec. 17(5)(h)
 - Donation
 - Destruction of business asset
 - Free supply of physician sample

SEC. 7(1)(c) – SUPPLY WITHOUT CONSIDERATION

- Supply of goods or services between **related persons**, or between **distinct persons** as specified in **Section 25** (unit having separate registration number)
- **When made in the course or furtherance of business.**
- Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
- Difference between gift v. remuneration

RELATED PERSONS – EXPLANATION TO SEC. 15(5)

- (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
- (viii) they are members of the same family
- the term “person” also includes legal persons
- 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 UNDER CURRENT LAW

- Section 4(3)(b) of Central Excise Act, persons shall be deemed to be 'related' if
 - (i) They are interconnected undertakings (to be included only if they are holding or subsidiary or covered under other clause
 - (ii) They are relatives
 - (iii) Amongst them, buyer is a relative and a distributor of assessee, or a sub-distributor of such distributor or
 - (iv) They are so associated that they have interest, directly or indirectly, in the business of each other.
- Mutual interest necessary – mutual shareholding or common director is not enough
Alembic Glass Industries v. CCE 2002(143) ELT 244 (SC)

SEC. 7(1)(c) – SUPPLY WITHOUT CONSIDERATION

- Supply of Goods —
 - Principal to Agent
 - Agent supply such goods on behalf of the principal,
or
 - Agent to Principal
 - Agent receive such goods on behalf of the principal.

SEC. 7(1)(c) – SUPPLY WITHOUT CONSIDERATION

- Importation of services by a taxable person
 - From related person or from any of his other establishments outside India,
 - In the **course or furtherance of business.**
- Services received by Indian holding or subsidiary company from it's foreign holding or subsidiary company free of cost.

SEC. 7(1)(d) – ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SERVICES – SCHEDULE II

■ Transfer of :

- Title in goods then it is supply of goods
- Transfer of right without transfer of title of goods, is a supply of services
- Where title passes on a future date is a supply of goods

■ Land and Building

- Lease, tenancy, easement, license to occupy land - Supply of services.
- Lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly - Supply of services.

■ Treatment or process applied to other persons good

- Such treatment or process is a supply of services

SEC. 7(1)(d) – ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SERVICES – SCHEDULE II

■ Transfer of business asset

- Goods transferred or disposed of whether or not for consideration so as no longer part of assets – Supply of goods
- Goods put to any private use whether or not for a consideration – Supply of service
- Goods forming part of assets on ceasing of being a taxable person – Supply of goods unless business is transferred as going concern or is carried by personal representative who is deemed as taxable person

SEC. 7(1)(d) – ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SERVICES – SCHEDULE II

- The following shall be treated as “supply of service”:
 - Renting of immovable property
 - Construction of complex, building, civil structure or part thereof intended for sale to a buyer, wholly or partly, except entire consideration has been received after issuance of completion certificate, or after its first occupation, whichever is earlier.
 - "construction" includes additions, alterations, replacements or remodeling of any existing civil structure
 - Temporary transfer or permitting the use or enjoyment of any intellectual property right;
 - Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software;
 - Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
 - Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration

SEC. 7(1)(d) – ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SERVICES – SCHEDULE II

- **Composite supply treated as supply of service**
 - Works contract – defined u/s 2(119)
 - Supply of food or article of human consumption (not being alcohol)
- **The following shall be treated as “supply of goods”**
 - supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

SEC. 7(2)(a) – NEITHER SUPPLY OF GOODS NOR SUPPLY OF SERVICES – SCHEDULE III

- Services by an employee to the employer
- Services by any Court or Tribunal
- Functions performed by the Members of Parliament/ State Legislature, Panchayats/ Municipalities/ Local authorities;
- Duties performed by any person who holds any constitution post
- Duties of Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority
- Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
- Sale of land and, **building subject to paragraph 5(b) of Schedule II, sale of building**
- Actionable claims other than lottery, gambling and betting.

SEC. 7(2)(b) – GOVERNMENT TRANSACTIONS

- Such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities
- As may be notified by the Government on the recommendations of the Council

SEC. 7(3)

- Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—
 - (a) a supply of goods and not as a supply of services; or
 - (b) a supply of services and not as a supply of goods.

SEC. 8 – COMPOSITE & MIXED SUPPLY

| Supply | Tax liability |
|------------------|---|
| Composite Supply | Rate at which the principal supply is taxable |
| Mixed Supply | Rate at which the supply which attracts highest rate of duty. |

- Sec. 2(30) “composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply
- Sec. 2(74) “mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.
- Valuation in case of warranty charges where tax paid as supply of service and parts used thereafter ??

MAJOR ELEMENTS – CREDIT CARD & INSURANCE

- In *Card Protection Plan Ltd v Customs and Excise Commissioners* (1999) STC 270 applying the principles of the VAT Directive, the court held the following:
- Every supply of a service must normally be regarded as distinct and independent and... a supply which comprises a single service from an economic point of view should not be artificially split. So as not to distort the functioning of the VAT system, the essential features of the transaction must be ascertained in order to determine whether the taxable person is supplying the customer, being a typical consumer, with several distinct principal services or with a single service. There is a single supply in particular in cases where one or more elements are to be regarded as constituting the principal service, whilst one or more elements are to be regarded, by contrast, as ancillary services which share the tax treatment of the principal service. A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied.

MULTIPLE MAJOR ELEMENTS

- The British Court of Appeal held in the case of *Inspector of Taxes v. Cablelink Limited*, [SC No 155 of 2003], that a cable television fee could be separated from a zero-rated supply of a magazine to the cable subscribers, in part because there were two separate suppliers, even though the subscribers paid a single fee to the cable company for both and all subscribers received the magazine. The connection of a cable in a customer's premises was held to be a supply independent of the supply of cable television services.

LOST, STOLEN, DAMAGED OR DESTROYED GOODS – BASED ON UK VAT GUIDANCE

- Whether supply ??
- Goods that have been lost:
 - ✓ Customer is responsible for losses before delivery – Pay GST as supply has happened
 - ✓ Supplier is responsible for losses – Pay GST only after adjusting the credit
- Goods stolen:
 - ✓ Before raising an invoice: No GST to be paid as no supply has taken place
 - ✓ Goods sold to customer that have been stolen due to supplier – Pay GST as supply has happened
- Goods lost because of fraud : No payment required if reported to police and appropriate disclosure given
- Goods that have been damaged or destroyed:
 - ✓ If sold subsequently: Pay GST as normal
 - ✓ If handed to insurer against claim: GST not payable on money received from insurance company

SEC. 9 LEVY AND COLLECTION

| Levy on | Person who is required to pay tax |
|--|-----------------------------------|
| Intra-State supply | Supplier |
| Notified goods on which tax payable under RCM | Recipient |
| Purchases from unregistered supplier | Recipient under RCM |
| Notified supplies done via E-commerce platform | E-commerce operator |

VALUATION

ANTI-PROFITEERING MEASURE (SEC. 171)

- Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.
- The Central Government may by law constitute an Authority or empower an existing Authority to examine whether input tax credits availed by any registered taxable person or the reduction in the price on account of any reduction in the tax rate have actually resulted in a commensurate reduction in the price of the said goods and/or services supplied by him.
- Powers to be prescribed. Authority may impose penalty for violation.

VALUATION UNDER CENTRAL EXCISE

| Legal reference | Title |
|-----------------|---|
| Section 4 | Transactional Value |
| Section 4A | MRP Based valuation |
| Rule 4 | Goods are not sold at the time of removal |
| Rule 5 | Goods maybe sold at the place other than the place of removal |
| Rule 6 | Price is not the sole consideration |
| Rule 7 | Stock transfer to depots |
| Rule 8 | Captive consumption |
| Rule 9 | Related party transaction |
| Rule 10 | Inter connected units |
| Rule 10A | Job worker |
| Rule 11 | Residuary |

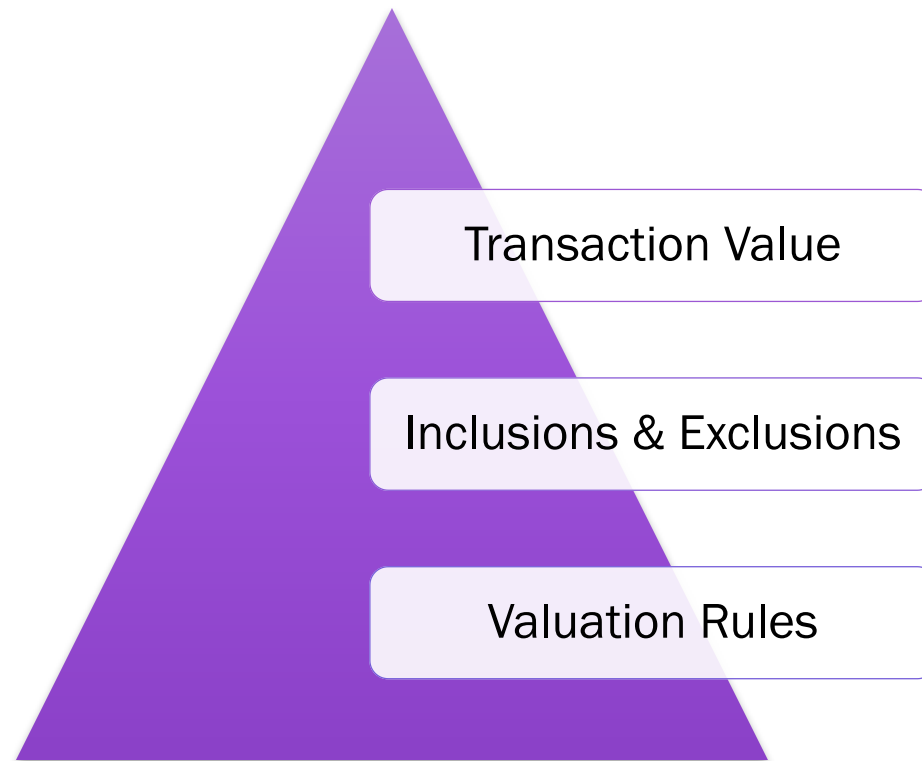
VALUATION UNDER SERVICE TAX

| Legal reference | Title |
|-----------------|---|
| Section 67 | Basic provision for Valuation of Services |
| Rule 2A | Valuation of Works contract services |
| Rule 2B | Valuation of money changing service |
| Rule 2C | Valuation of restaurant services |
| Rule 3 | Valuation as per similar services |
| Rule 4 | Rejection of value |
| Rule 5 | Inclusion / Exclusion from value |
| Rule 6 | Treatment of Commission, costs, etc. |

VALUATION UNDER GUJARAT VAT

| Legal reference | Title |
|-----------------|--|
| Section 2(24) | <p>“sale price” means the amount of valuable consideration paid or payable to a dealer or received or receivable by a dealer for any sale of goods made including the amount of duties lived or leviabale under the Central Excise Tariff Act, 1985 or the Customs Act, 1962 and <u>any sum charged for anything done by the dealer in respect of the goods at the time of or before delivery thereof</u> and includes,-</p> <p>(a) -----</p> <p>(b) in relation to the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, such amount as is arrived at by deducting from the amount of valuable consideration paid or payable to a person for the execution of such works contract, the amount representing labour charges for such execution;</p> <p>(c) in relation to the delivery of goods on hire purchase or any system of payment by installments, the amount of valuable consideration payable to a person for such delivery</p> |

ELEMENTS



TRANSACTION VALUE

CONSIDERATION INCLUDES– SEC. 2(31)

- any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government
- the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government
- Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply

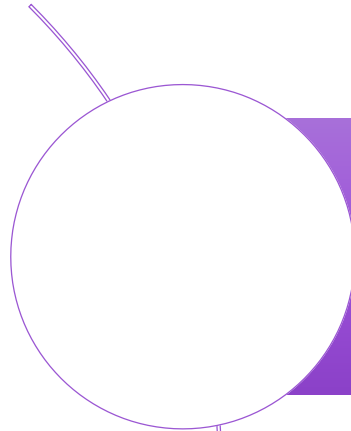
INDUCEMENT

- A motive or consideration that leads one to action or to additional or more effective actions – (Webster Dictionary)
- Potters Lodge Restaurant Ltd v. Commissioner of Customs and Excise, LON/79/286 (UK VAT Tribunal)
 - Service charge taxable in a restaurant if printed on menu
 - Tips not taxable if voluntary
 - Definition of consideration under UK VAT does not include inducement
- Donations & grants

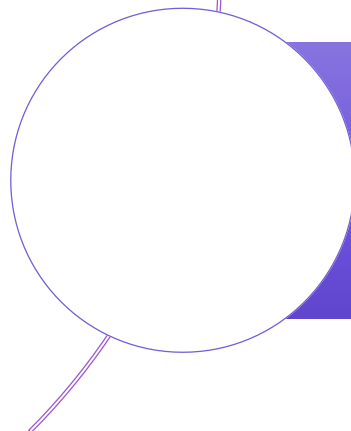
TRANSACTION VALUE - SEC. 15(1)

- This shall apply –
 - Where the supplier and the recipient of supply is not a related party, and
 - Price is the sole consideration for the supply
- Transaction value is the **price** (word “consideration” is not stated explicitly) actually paid or payable for the supply

INCLUSIONS IN VALUE – SEC. 15(2)



(a) any taxes, duties, cesses, fees and charges levied under any statute, other than the {SGST Act/the CGST Act} and the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016, if charged separately by the supplier to the recipient;

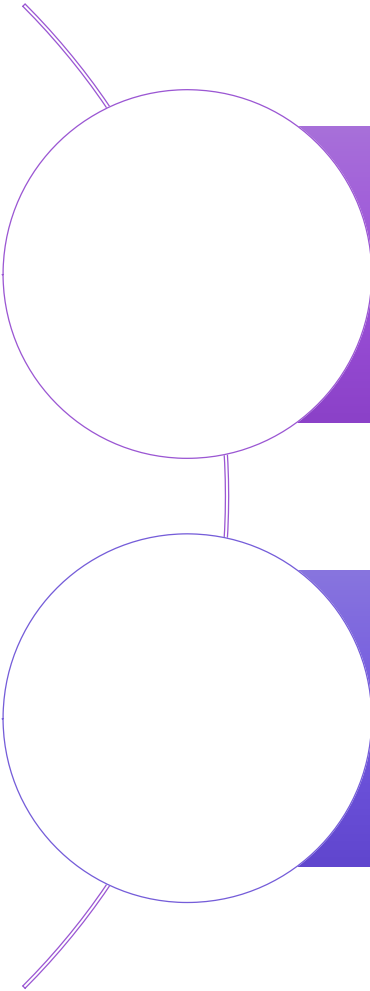


(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods and/or services

ISSUES

- Identical to Section 4(3) (d) of the Central Excise Act
- McDowell and Co. Ltd. vs. Commercial Tax Officer [1985] 59 STC 277 (SC)
 - Excise paid by buyer to be included in the price
- Free supplies
 - To be included only if supplier is liable to pay but incurred by recipient
 - Position under GST similar to VAT and not Excise
 - N.M. Goel & Co. [1989] 72 STC 368 (SC) – included – cost of cement & steel
 - Ts Tech Sun (India) Ltd. [2008] 15 VST 559 (SC)– excluded – cost of tools
- Amortized cost of tools & dies not included if not part of contract – June draft covered the same u/s 15 (2) (b)

INCLUSIONS IN VALUE – SEC. 15(2)



(c) incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, supply of the services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply

INCIDENTAL EXPENSES

- List is illustrative
- Only includes expenses incurred at the time of, or before delivery of the goods or, as the case may be, supply of the services – delivery is performance of contract
- Sec. 10(1)(a) of IGST Act provides that 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**.
- Location of recipient of service is defined u/s 2(17) of IGST Act. It includes a place of business – Location of recipient of goods is not defined
- Interpretation corresponding to intention to be adopted rather than one which creates anomaly – Indo-China Steam Navigation Co. (13 ELT 1392)(SC)
- Place of removal – Whether place where sale takes place ? – Ispat Industries 324 ELT 670 (SC)

INCIDENTAL EXPENSES

- Sec. 2(2) of Sale of Goods Act 1930 (SGA) defines delivery to mean transfer of possession
- Sec. 33 of SGA provides that delivery may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in the possession of buyer or any person authorized on his behalf
- Sec. 31 of SGA – Duty of seller to deliver and duty of buyer to accept delivery and pay as per contract - Can sale takes place after delivery ?
- ‘Incidental expenses’ is included in the transaction value in cases where price is not the sole consideration; in terms of Rule 6 of Central Excise (Valuation) Rules, 2000.

INTEREST

- Raj Lubricants (M) Private Ltd vs The State Of Tamil Nadu (2016) 90 VST 49
 - Interest to be included as it was charged in the invoice – is a condition of sale
- To be treated as a separate supply of service if charged under a separate contract
 - Rate applicable to services will apply if there is no exemption

INCLUSIONS IN VALUE – SEC. 15(2)

- (e) subsidies directly linked to the price excluding subsidies provided by the Central and State governments;
- *Explanation.-* The amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

DISCOUNTS - BEFORE OR AT THE TIME OF SUPPLY- SEC. 15(3)

- Not included if recorded in the invoice
- Issues:
 - What if discount is given after receipt of advance but before supply of goods and preparation of invoice ?

DISCOUNTS - AFTER THE TIME OF SUPPLY – SEC. 15(3)

- Not included if:
 - such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; **and**
 - input tax credit has been reversed by the recipient of the supply as is attributable to the discount on the basis of document issued by the supplier
- Issues:
 - Whether oral agreement shall be acceptable ?
 - In B2C supplies the recipient cannot reverse the credit
 - In case of composition scheme, no credit is allowed to the recipient

REFER VALUATION RULES – SEC. 15(4)

- When supplier and recipient are related or
- When price is not the sole consideration of supply or
- Business transaction undertaken by a pure agent, money changer or
- When value cannot be determined as per prescribed manner (doubted by officer)
- Sec. 15(5) provides that value of notified supplier shall be determined in the manner prescribed – Composition or MRP or tariff value ?

GST VALUATION RULES

RULE 1: CONSIDERATION NOT WHOLLY IN MONEY

- Open market value (OMV) of such supply; if OMV not available, then
 - Consideration in money + Equivalent amount in money of consideration received, if known at the time of supply
 - If value not determined as per (a) and (b), then value of supply of like kind and quality.
 - If not as per (a), (b) or (c), then consideration in money + Valuation of consideration as per Rule 4 or 5.
- “open market value” of a supply means the full value in money, excluding the GST and the cess payable by a person in a transaction, where the supplier and the recipient are not related and price is the sole consideration, at the time when the supply being valued is made.

RULE 2: SUPPLY BETWEEN DISTINCT OR RELATED PERSON, OTHER THAN AGENT.

- Open market value ('OMV'). If OMV not available,
 - then value of like kind and quality
 - If not as per clause (a) or (b); then as per Rule 4 or Rule 5
- Provided that if SR is eligible for full ITC, then invoice value is OMV.

RULE 3: SUPPLY MADE OR RECEIVED THROUGH AGENT

- Open market value
- At the option of the supplier, 90% of the value charged for supply of like kind and quality by the **recipient** to unrelated person.
- If not as per clause (a); then as per Rule 4 or Rule 5

RULE 4: VALUE OF GOODS OR SERVICES BASED AT COST

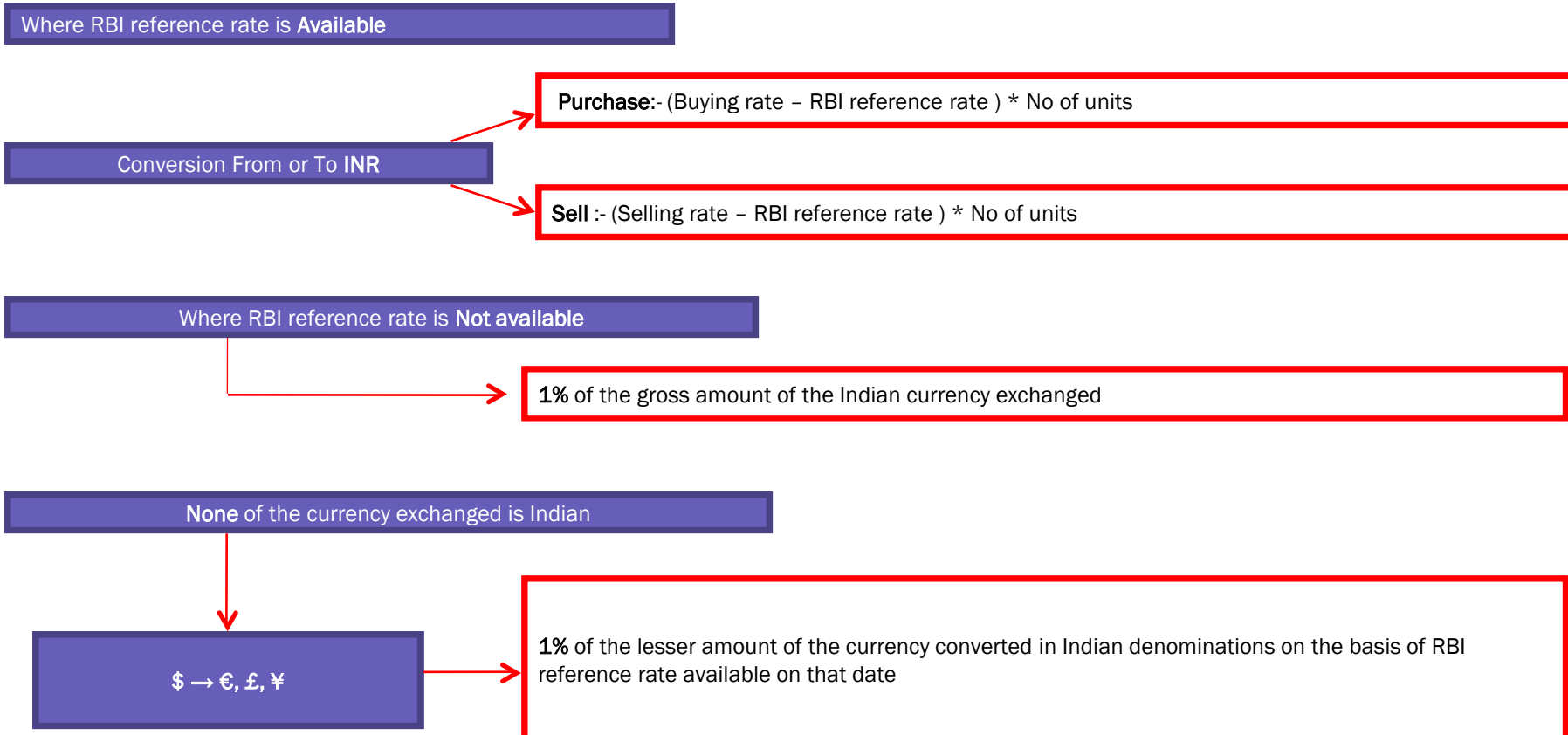
- 110% of Cost of production or acquisition or cost of provision of such service.

RULE 5: RESIDUAL RULE

- Where the value of supply of goods or services or both cannot be determined under rules 1 to 4, the same shall be determined using reasonable means consistent with the principles and general provisions of section 15 and these rules
- Supplier of service may opt for this rule, disregarding rule 4

RULE 6: MONEY CHANGER

- Value of taxable service provided for the services in so far as it pertains to **purchase or sale of foreign currency**, including **money changing**, shall be determined by the service provider in the following manner:-



RULE 6: MONEY CHANGER - OPTION

| At the option of supplier, in relation to following Supplies, value of such supply may be computed at rate as specified | Value of Supply |
|--|---|
| <p>Money changing or supply of foreign currency</p> <ol style="list-style-type: none">1) Currency exchange up to 1 lac2) Currency exchange from 1 lac to 10 lacs3) Currency exchange above 10 lacs | <ol style="list-style-type: none">1) 1% of currency exchange (minimum 250)2) Rs. 1000 + 0.50% of currency exchange above 1 lac up to 10 lacs3) Rs. 5000 + 0.10 % of currency exchange above 10 lacs (max. 60,000) |

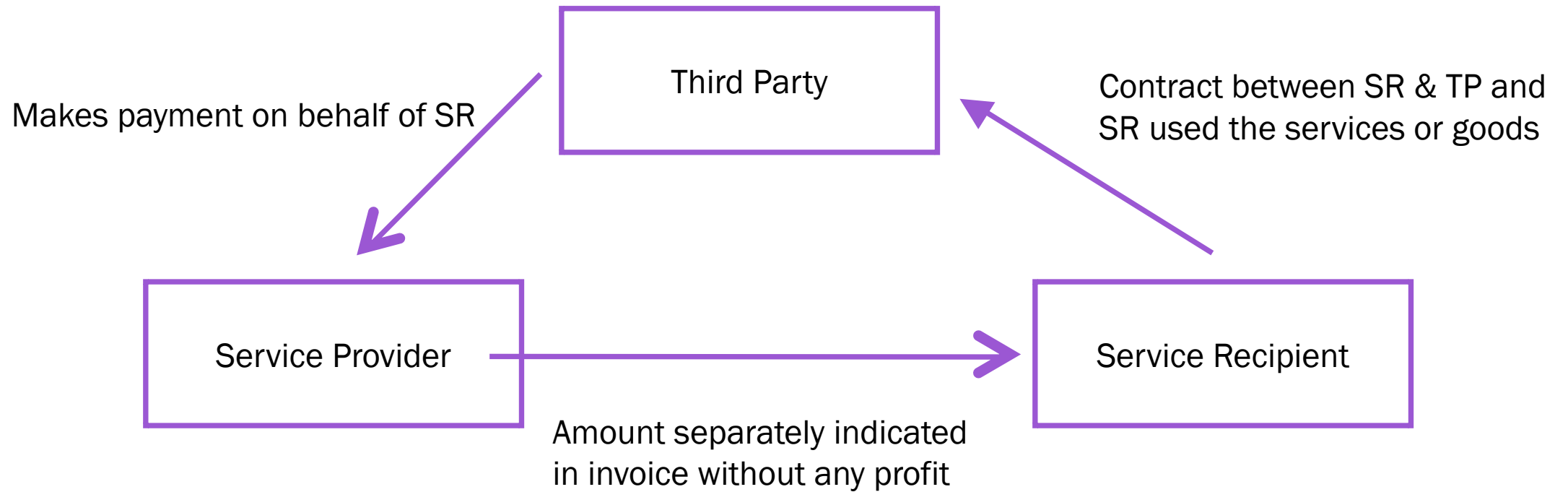
RULE 6: DEEMED VALUE

| SERVICE | VALUE |
|--|---|
| Booking of air tickets by travel agent | Domestic flights - 5% of the basic fare International flight - 10% of basic fare |
| Token, coupon, stamp or a voucher | Equal to the money value of the goods or services redeemable against such items - (i.e. discount to be ignored) |
| Dealer in second hand goods (Scrap dealer) NO ITC on purchase taken by the supplier | Sale price - Purchase price (If negative value then ignored) |

RULE 6: DEEMED VALUE

| SERVICE | VALUE |
|--|---|
| Service in relation to Life insurance business (Nothing in clause will apply where entire premium is only towards the risk cover in life insurance) | a) (Gross premium – amount allocated for invst (if such amt. is intimated to policy holder at the time of supply of service) b) Single premium policy other than (A) above-10% of single premium c) In all other case, 25% of 1 st year premium 12.5% of subsequent years premium. |
| Services provided by the such class of service provider as notified by the Govt. between distinct person other than those where ITC is not available u/s 17(5) | Nil. |

RULE 7: PURE AGENT





QUESTIONS ??



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