



IMPACT OF GST ON REAL ESTATE SECTOR

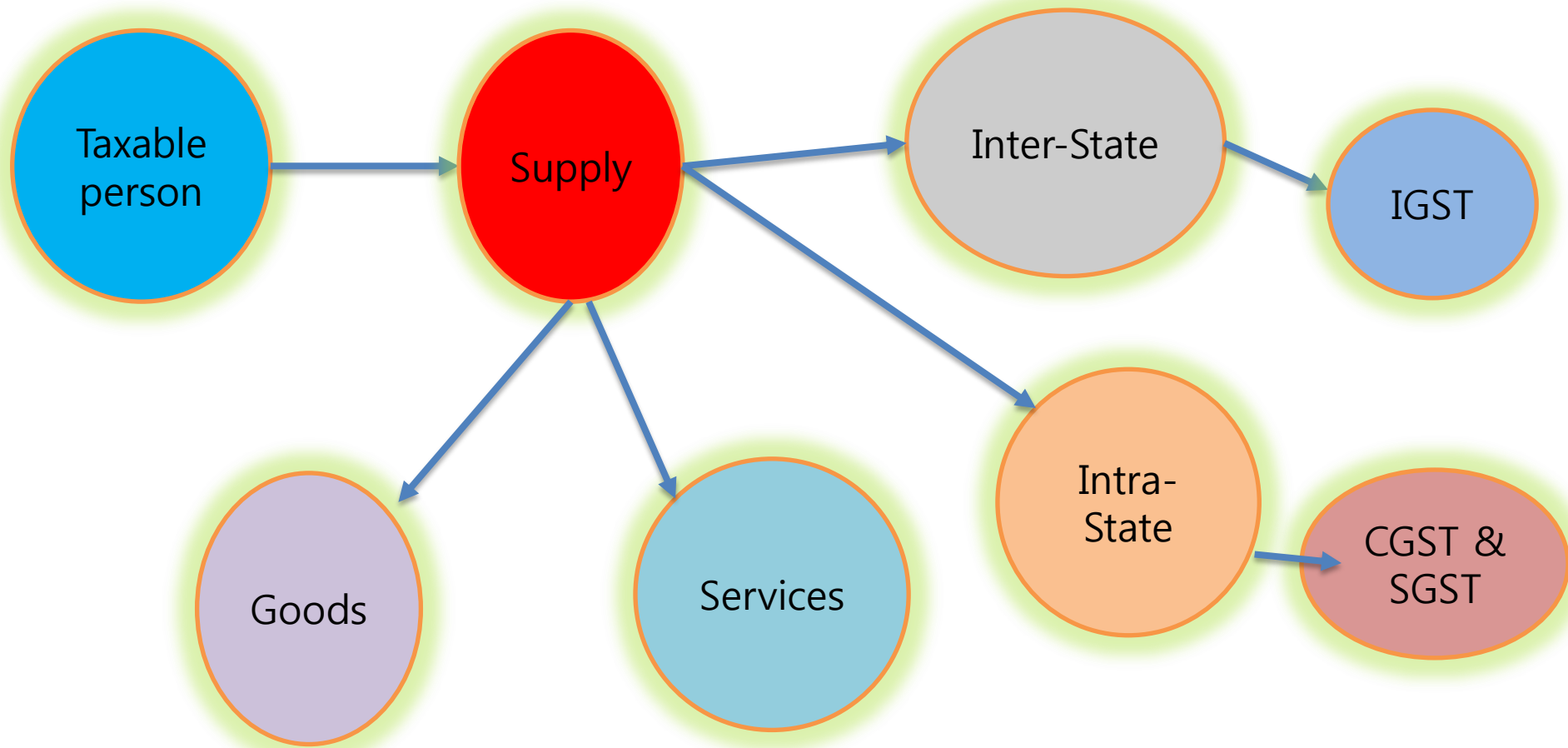
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AGENDA

- What is GST.
- Current Tax V/s GST.
- Builders and Developers –Business Process.
- Buyers Perspective of Tax.
- What will be impact on immovable property?
- What will be impact of Land Value?
- What may be the tax Rate?
- What is the Impact of ITC?
- What is the Place of Supply?
- What will be the overall impact...
- And many more FAQs...
- Lets study in Simple and Fun loving way...
- But why all this.....



GST levy- Chargeability



GST FUNDAMENTALS – BRIEF INTRODUCTION

- **Source to Destination based Taxation System**
- (Dismantling fiscal barriers between States)
- **Charge of taxation – Multiple to Single Supply** (even without Consideration and Inter branch Transfers)
- **Exemption less regime** (Limited Exemptions)
- **Upfront Exemption to Refund Mechanism** (Block funds in Taxes and then Claim)
- **Simple Indirect Tax Structure / Unified Tax Rates** (Increase / Decrease in Tax burden)
- **Full Credit of Input Taxes / Removal of Cascading Effect of Taxes** (No tax on Tax)
- **GSTN – Online Platform** (Credits as reported by Vendors)

GST overview

- ❖ GST could be a blessing in disguise for this sector which has been surviving the adversities of the current indirect tax complexities for a substantially long period of time the last big hit being demonetization
- Many have taken benefits.... Picture may be like this



Real Estate sector - overview

- ❖ One of the most complex areas of the indirect tax levied by the Centre and the States is Works contract and sale of property.
- ❖ Construction and Real Estate sector constitutes approximately 5% of the country total GDP.
- ❖ Growth of this sector has a direct nexus with the nations growth.
- ❖ GDP growth to increase 2% due to GST?



Type of Players in Real Estate Sectors.

- Builders. (Own Land)
- Developers.(Others Land).
- Works Contractors.(**URD**)
- Labour Contractors. (**URD**)
- Manufactures of Goods. (Cement Co, Tiles, etc.)
- Suppliers of Goods.(Traders)
- Suppliers of Goods from Outside Maharashtra.
- Service Providers like Engineers, Architect,
- Brokers, Advts, etc.
- Financers and Bankers.
- Leasing of Property.



Introduction of Taxes on real estate

Currently, such transactions are broken into three parts

- ❖ The value of goods and materials
- ❖ Value of services and
- ❖ Value of land



Introduction

Current Tax Structure

- ✓ The States apply VAT to the goods portion.
- ✓ And the Centre taxes the services portion.
- ✓ With no explicit tax on the transaction value of land.

The State also collects stamp duty and registration charges for the registration of property.

Each authority taxes on aspects and valuation independent of the others.



Existing Law

- ❖ Real estate transactions unfortunately are subject to manipulation and undervaluation in most parts of India.
- ❖ This area has seen extensive litigation and many borderline , illogical reasoning has been accepted by the tax authorities on the logic that some tax is being collected.

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Existing Law

Presently builders/developers are paying following indirect taxes:

- ❖ Service tax (ST) on services either to provider or on reverse/ joint charge (sub contractors, manpower supply etc);
- ❖ Value added tax (VAT)/Central sales tax (CST) on steel, cement, RMC, electrical sanitary, lifts, DG sets etc;
- ❖ Excise duty on all items paid earlier to those on which VAT paid.



Buyers perspective of Tax on real estate

- ❖ The Buyer do not avail credit of any taxes paid on property i.e VAT, Service Tax, Stamp duty, registration charges, as immovable property is not a subject matter of tax once it is complete
- ❖ On resale no tax is payable in current as well as proposed scenario also.
- ❖ Buyer generally buys under construction property for cheaper rate and funds it through bank loan for interest benefit.

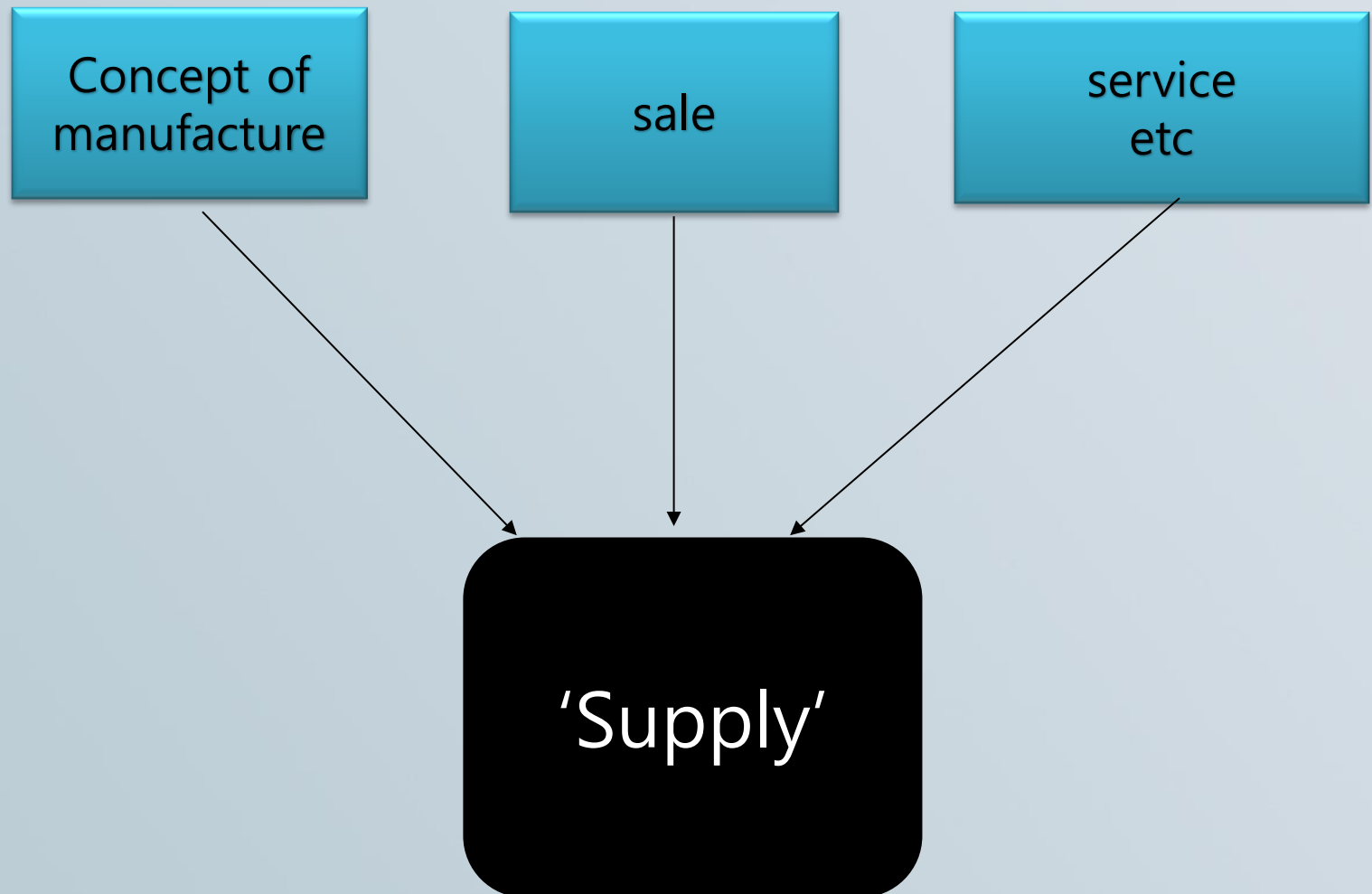


What will be impact on immovable property?

- ❖ The immovable property part is expected to be excluded from the GST in terms of the decision of the Supreme Court in case of L&T (2014(303) ELT (003) in para 115.



Impact of “supply” in GST on Real estate?



Impact of “supply” in GST on Real estate?

All the supplies will be categorized as Supply of goods or Supply of Services or composite supplies (multiple supplies).

Construction activities will be ‘works contract’ which is being categorized as ‘Services’.



Time of Supply in GST ?

- ❖ Currently, many builders pay taxes on receipt basis (without complying with the point of taxation) in case of service tax i.e. tax is paid only once the monies are received from the customers.
- In VAT also same routine is followed.
- ❖ However, in the GST regime, tax needs to be paid immediately on earliest of completion of service, raising of invoice or receipt of monies from customers.

This could have an impact and could cause blockage of working capital



Time of supply of Service

Issue of Invoice by the supplier

Earliest of

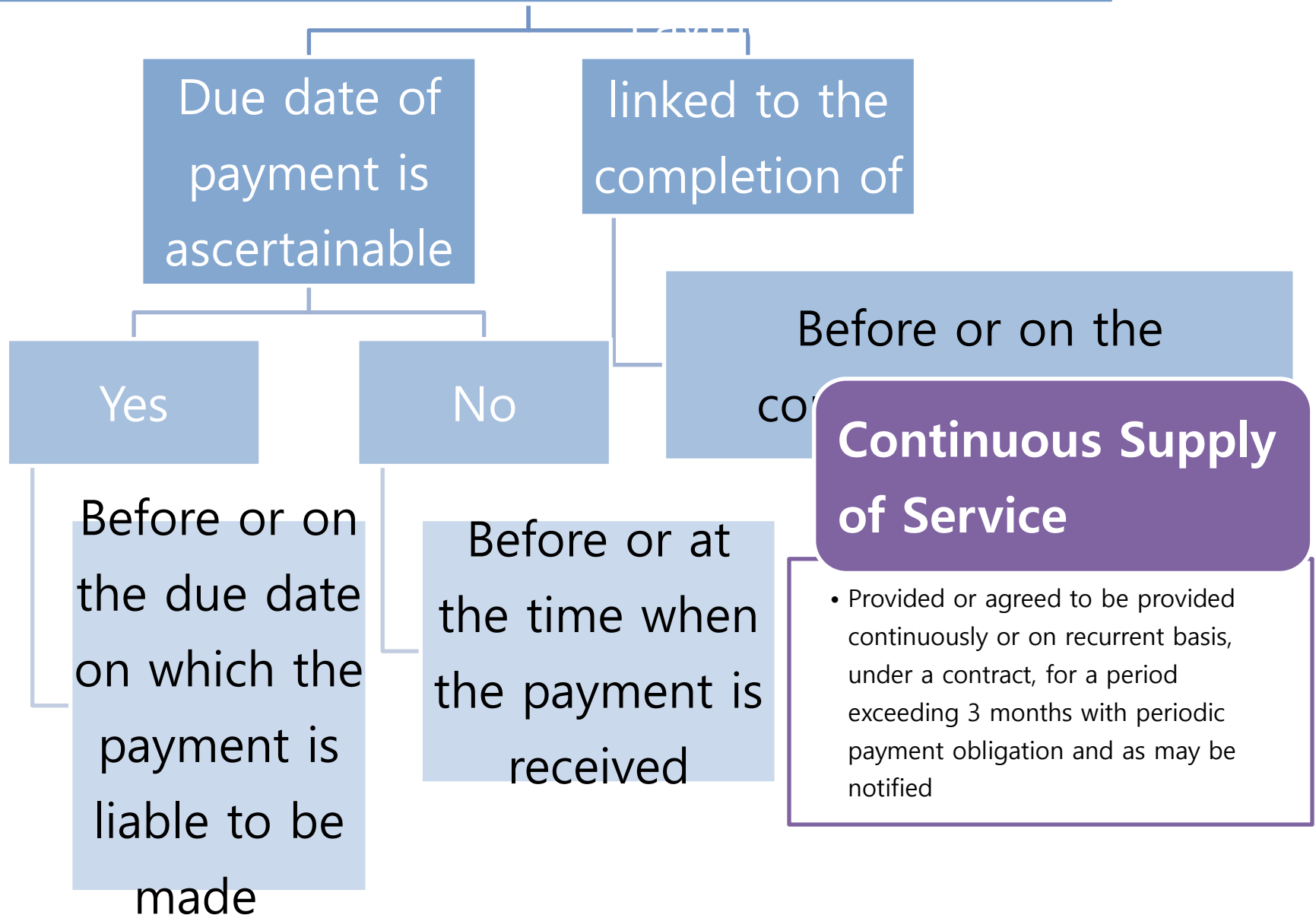
Last date on which require to issue invoice with respect of supply

Earliest of

Receipt of payment by supplier in respect of supply

Issue Receipt Voucher

Continuous Supply of service



What type of Taxes needs to be collected in GST?

All builders and developers in India

Will be collecting and paying

- ❖ CGST (in place of Service Tax.)
- ❖ SGST (in place of VAT.)

i.e. Central GST and State GST.

The place of supply of the service is the location of the *immovable property*.

If site is at Navi Mumbai and office is at South Mumbai. Immoveable property is build up Navi Mumbai, hence It will be the place of supply of services.

No IGST ?

IMPACT ON SERVICES PROVIDED BY ENGINEERS, ARTECHETC, WORKS CONTRACTORS, ETC.



Supply of services:

The following shall be treated as supply of services, namely:—

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly,

except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.



“competent authority”:

“competent authority” means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) ;

or

(ii) a chartered engineer registered with the Institution of Engineers (India);

or

(iii) a licensed surveyor of the respective local body of the city or town or

village or development or planning authority;



Composite supply and LEVY OF TAX

The following composite supplies shall be treated as a supply of services, namely:—

(a) works contract as defined in clause (119) of section 2;

LEVY of TAX ON COMPOSITE SUPPLY:

a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply;

DEFINATION OF PRINCIPAL SUPPLY:

“principal supply” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;



Renting of Land & Building:

2. Land and Building

(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.



What are the expected Rate of Tax?

The GST council has agreed upon the 5 rate structure for levying tax on various goods and services i.e.

- **1%**
- **5%**
- **12%**
- **18% and**
- **28%**

It is expected that the rate of GST that may be applicable on this sector would be mostly 12% or 18%.

There may not be any further abatement/ composition on this rate. Although this rate will be little on the higher side as compared to current tax rates which is between 6% to 10%.

Although such high rate could have an adverse impact on this sector, however this impact could largely get reduced due to ease in credits availability. Thus net impact may be around 6 to 9%.



What type of Input Tax Credits are available?

- ✓ In GST regime all the duties/taxes (except stamp duty) will get subsumed, therefore a builder should be able to avail the input tax credit of all its procurement of goods/services except for few restrictions placed in the law.
- ✓ Therefore, it would reduce the tax costs substantially in the construction industry.
- ✓ Under GST, it is expected that seamless credit of all taxes paid on procurement of goods/services will be allowed so that net outflow of GST liability would be minimized.



When is ITC available

Possession of a tax invoice, etc., issued by **a supplier registered** under GST

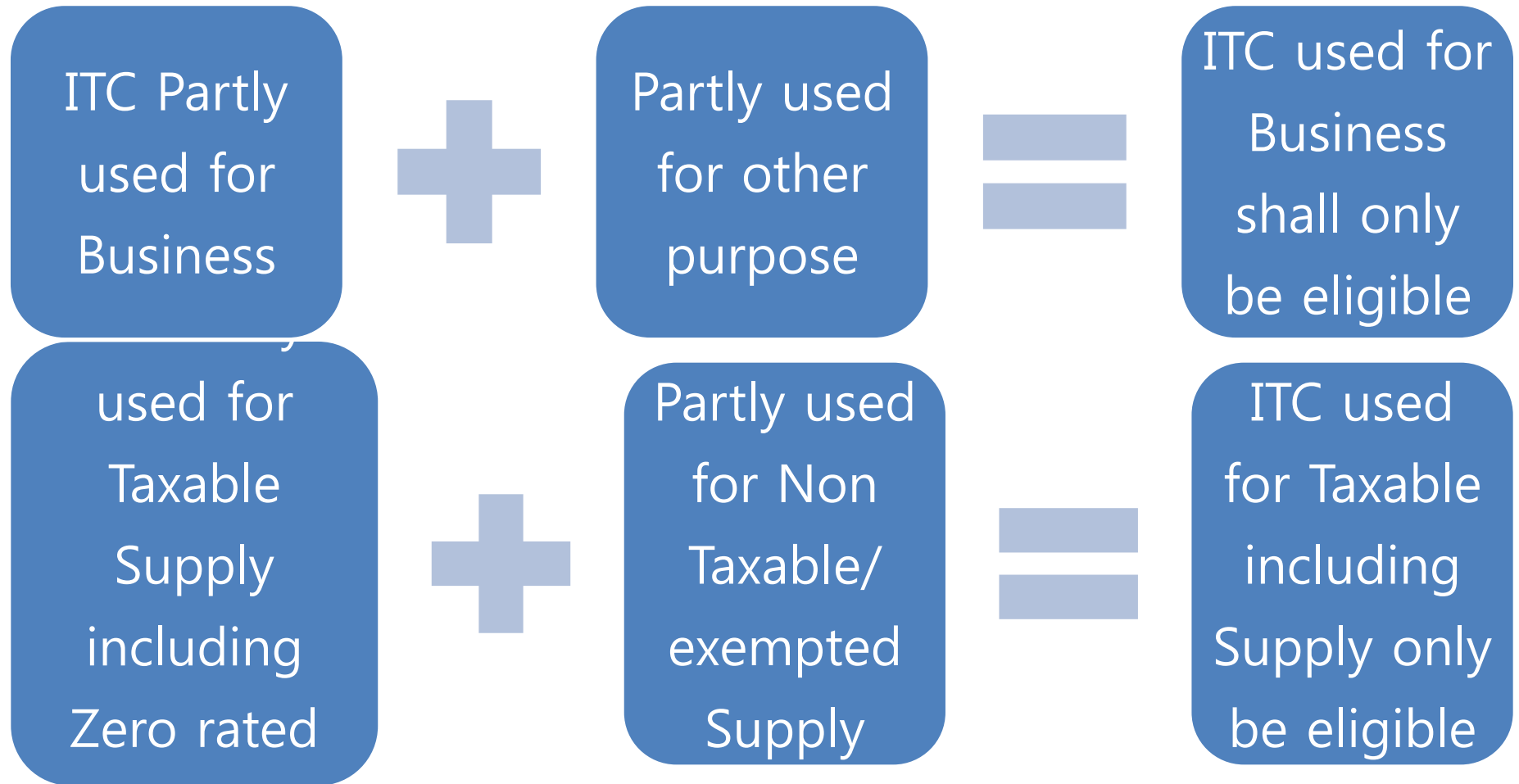


Received the goods and/or services

The tax charged in respect of such supply has been **actually paid** to the credit of the appropriate Government,

Furnished the return under section

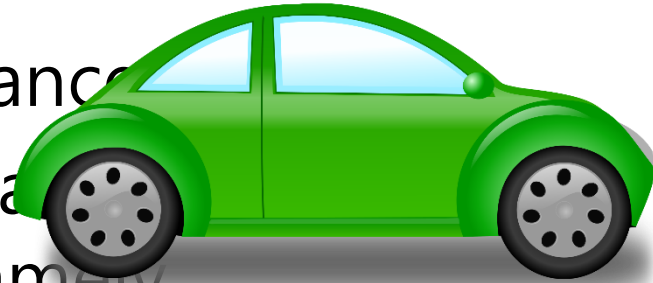
Reversal of ITC



- Exempted supplies include recipient liable pay under RCM

Credit not allowed

- motor vehicles and other conveyances
- except when they are used for making the following taxable supplies, namely
 - further supply of such vehicles or conveyances
 - transportation of passengers/goods
 - imparting training on driving, flying, navigating such vehicles or conveyances



Credit not allowed

Allowed only for outward supply of same category

- food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery

Membership of

- club, health and fitness centre

Allowed only if mandatory as per law

- rent-a-cab, life insurance, health insurance

Travel benefits

- travel benefits extended to employees on vacation such as leave or home travel concession

Credit not allowed

- Works contract services when supplied for construction of immovable property,
 - other than plant and machinery,
 - except where it is an input service for further supply of works contract service;
- **goods or services received by a taxable person for construction of an immovable property on his own account, other than plant and machinery,**
- **Construction** includes to the extent of capitalization
- **'Plant and Machinery'** means apparatus, equipment, machinery, pipelines, telecommunication tower fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and structural supports but excludes land, building or any other civil structures

Effect of RCM on URD?

Real estate sector utilises supplies from Un-organised sector.
Many of Contractors, Small Suppliers are Un-registered.

For e.g : Sand, Metal, Bricks, Labour, other services of Fittings,
etc.

Under GST:

Builders/developers shall have to pay GST on such
URD Suppliers.

This will be a major impact on procurement planning.

ITC will be available on such RCM payments.



Impact of GST on Joint Development Agreements:

- ❖ GST will also be levied on the Joint development agreements as Barter also amounts to 'Supply'. Comparative flat value may have to be taken for calculating GST on such transactions.
- ❖ There clear mechanism as to time of supply and valuation has not been explicitly provided.
- ❖ However, if it is not clarified then the current disputes surrounding this area would continue in the GST regime.
- ❖ The need for treating JDA differently from construction contracts may not be there.



Impact of GST on TDR Agreements:

- TDR are two types;
- One is compensatory nature by GOVT and used by owner.
- Second is trading nature.
- Taxation is under dispute in VAT and Service Tax both currently. As both are leaving tax on it.
- Under GST it may be treated as Service and dispute may settle down.



What will be impact on value of land ?

- ❖ Herein the value of land and completed construction as on the date buyer comes to developer and gets into an agreement would be out of the purview of GST.
- ❖ Hopefully, the basis of deduction of the land value from the transaction liable to GST must be unambiguous and clear.

Any ambiguity would only open the Pandora box of disputes



What will be impact on value of land?

- ❖ Since stamp duty is being paid, it is expected that the land component would be allowed as deduction in the valuation of real estate transactions in the GST.
- ❖ However, the issues w.r.t the valuation of land to be adopted and claimed as deduction could continue to be a cause of dispute. Currently, even in the law, no clarity has been brought in as to the valuation of the land.
- ❖ However, it is expected that the same must be clarified by way of issuing a notification during the GST regime. Unclear provisions in this context could lead to large scale disputes.



Impact on Requirement of completion certificate ?

Similar to provisions in service tax, GST is said to be levied if amount is received prior to completion certificate and there would be no GST if the entire amount is received after the completion certificate.

Further, it is also stated that even if completion certificate is not received, GST may not be levied after the first occupancy of the premises.

This would provide relief to builders who for various reasons were unable to obtain the completion certificate from the authorities and as a consequence were denied the exemption from service tax.

***Supply after first occupancy No GST, but No ITC of GST ?
Reversal of earlier ITC and its impact.***



Impact of GST on Stock Transfers?

- ❖ Since, transfer of inputs/ capital equipment's from one site to another is quite common in this sector.
- ❖ Therefore, builders operating from multiple locations in different states, then it would require to pay GST on Stock/ Assets transferred from its premises in one state to its premises in another state.
- ❖ Further, in case builders are having multiple business verticals within the state and if a builder opts to take separate registration for each such business vertical, then GST needs to be paid for stock transfers even when made within the same state.



Would Multiple Registrations be required?

- ❖ Concept of centralized registration for all the projects will end and builders having a site in multiple States would require to obtain registration in each State from where the construction activity/supplies are being undertaken even though the project is for a very small period or for a small value.
- ❖ Although, this scenario is in existent in the current law for the state taxes but the same will now be done even for the central taxes.



What is impact on Returns?

- ✓ Compliance burden will be very high in the GST regime as one has to file 37 Returns in one financial year for each registration.
- ✓ Further, returns filed will be matched online with the support of the IT infrastructure with the returns of the vendors/ customers.
- ✓ In case taxes are not paid by the vendors or if the returns are not filed by the vendors, then the credit of such taxes is denied to the customers.
- ✓ Therefore, timely payment of taxes, filing of returns needs to be ensured in the GST regime.



Status of Current Exemptions ?

- ❖ Many construction contracts which are exempted in the current regime (especially the government contracts) could be brought under the tax net in the GST regime.
- ❖ Therefore, if any long term contract is entered in the current tax regime now but if GST is implemented, then the same would be taxable under the structures of the GST law.



Status of Current Exemptions ?

- ❖ It is important to factor the GST impact while arriving at the price of the contract and the burden of the taxes must be clearly reflected in the contract to avoid any complications at a later date.
- ❖ PMGAY, affordable housing ,etc. are exempt under current law of service tax may or may be continued in GST regime.
- ❖ But not under MVAT, hence
- ❖ Let's see



Impact on ongoing contracts

To analyse tax liability for all ongoing projects in line with transition provision

- ❖ Transaction structuring may be undertaken depending on impact of GST.
- ❖ If GST has negative impact, consideration may be made earlier even for supplies to be undertaken post GST
- ❖ Transition planning for timing of supplies, advances and payment of tax
- ❖ Representation to be filed to provide more clarity on transition provision for ongoing contracts



Transitional Credit issues ?

- ✓ To transfer the existing credits in the GST regime, condition has been kept that such credit must have been admissible in the GST regime.



Transitional Credit issues?

ITC on Inputs held in closing stock as on 30-6-2017

1. Like Work in progress, Cement, Tiles, Steel, Hardware's, Capital Goods, etc.
2. Excise Duty Paid documents- 100% ITC.
3. No Documents- 40% of ITC on payment of Output tax on supply.
4. Exempted Items- No ITC in GST.
5. VAT Paid Items- ITC in GST.
6. Service Tax paid – ITC in GST.
7. Further used in Immovable property no ITC.
8. Conditions;
9. As per Returns only.
10. Stock Statement and Invoices.



Transitional Credit issues ?

Therefore, builders should be able to transfer the following credits to the GST regime:

- ❖ **Credit of Service Tax:** The same must be properly reflected in the last service tax returns and documentation must be in place to establish the same. Further, service tax credit pertaining to inputs in stock can also be availed.
- ❖ **Excise Duty/ CVD:** Since, currently builders are not availing the credit of excise duty & CVD. Therefore, builders need to ascertain the value of stock as on the appointed day and based on the availability of the invoice, credit can be availed.



Transitional Credit issues ?

Therefore, builders should be able to transfer the following credits to the GST regime:

- ❖ **VAT/ SAD:** Similarly, if a builder is not availing the credit of VAT/SAD currently due to restriction in the state VAT law or due to being in the composition scheme, then the credit can be availed based on the ascertainment of stock as on appointed day.
However, if the credit of VAT is being currently availed then the same needs to be properly reflected in the last VAT return to transfer such credits to the GST regime.
- ❖ Transitional credit on stocks also provides for deemed credit at rates to be prescribed in the absence of duty/ tax paying documents.



Transitional Credit issues ?

Therefore, builders should be able to transfer the following credits to the GST regime:

- ❖ **Credit of CST:** The same cannot be availed based on the stock availability as on the appointed day.
- ❖ **Entry Tax:** Credit of same can be availed subject to possession of appropriate documents for the same in states where such set off is permissible



Possible requirement of contract restructuring

- ❖ Possible requirement of contract restructuring Place of provision for services in relation to immovable property would be location of the immovable property.
- ❖ There may be possible issues where a single contract is entered into for provision of services related to immovable properties across two or more States..



Possible requirement of contract restructuring

- For example, in case of facility management services outsourced to vendors, typically, a single contract may be entered into with the vendor, for which consolidated invoices may be raised at one location.
- Under GST, since immovable property may be located in more than one State, the place of supply would be each such State where the immovable property is located, and hence, there may be a requirement for the vendor to raise separate invoices (for which separate contracts may also be required)



What are the Anti Profiteering Measures ?

- ❖ Since a builder will be able to take the credit of goods lying in stock, the tax cost would decrease.
- ❖ This additional benefit accruing to the builders is expected to be passed on to the end consumer by way of reduction in prices etc.

A separate authority will be formed in the GST regime to monitor the Non-compliance of the anti-profiteering matters which could have an adverse impact on the entire construction industry whose pricing is more market dependent than other factors.

Therefore, it is imperative for the builders to establish passing of the GST benefit to its consumers.

In these times of falling prices this may not be challenge though.



Classification issues in GST ?

- ❖ It seems that certain disputes in classification may arise in the GST regime if a separate rate of tax is maintained for the construction and other additional services provided by the builders such as floor rise premium, car parking etc.
- ❖ Based on the terms of the contract and the nature of the supply, it needs to be determined whether it is a 'composite supply' or a 'mixed supply' and accordingly rate of tax for the additional services needs to be determined.
- ❖ Therefore, if the construction agreements is not in line with the naturally bundled understanding then any differential rate if applicable could be a cause of concern.



Valuation complexities in GST ?

- ❖ Valuation of the services would be at the transaction value.
- ❖ However, valuation with the related parties/ between the group companies needs to be properly dealt with and must be kept at the arms length price to avoid unnecessary departmental intrusion.



Are you ready for GST ?

- ❖ In GST regime, businesses have to move from the manual environment to computerized environment.

Only an efficient IT infrastructure and its best usage can help businesses meet the high compliance needs of the GST.

If IT infrastructure is not optimally utilized, then it would be challenging for any business including real estate sector to function efficiently in the GST regime.

- ❖ Further, in the computerized environment, physical interaction with the department officials would reduce substantially. ERP must be customized to make it capable to meet needs of the business as well as comply with GST.



Conclusion

VAT, SERVICE TAX and GST- Issues.

VAT, SERVICE TAX and GST

- Under VAT 4 methods of Tax – now may be two in GST
- Principal Contractor and Sub-Contractor- joint and several liability under VAT. May not be there in GST.
- TDS on WCT above Rs. 10 Lakhs. May be there in GST.
- NO ITC to builders- now it will be there.
- NO VAT on Completed property- Status quo maintained in GST.
- Free supplies not taxed in VAT- In GST it is.
- Renting of movable property like JCB, is Vat able. In GST its service.



Conclusion

VAT, SERVICE TAX and GST- Issues.

- Service tax –RCM- IN GST it will be there even on ALL URD Supplies,
- Exemptions in Service tax- May be continued or Not IN GST.
- Completion Certificate- first Occupancy Certificate in GST.
- Match and mis-match in GST it was not in Service Tax.
- Reversal of ITC on closing stock.
- Rental of Residential house exempt, commercial is taxable. In GST.
- Interest on Instalments or EMI Charged by Builders- GST Impact.



Conclusion

- ❖ The implementation of GST is possible from July 2017 . Migrating to the new tax regime could have substantial impact on the business houses.
- ❖ There would be a positive impact for those who are vigilant. The negative impact of the GST can largely be averted if counter measures/ preparedness is in place.



Conclusion

Businesses need to relook and action must be taken on the following areas to reduce the adverse impact of GST:

- Contracts/ Agreements realignment to suit the needs of GST of breaking up into the immovable part which is complete and construction to be completed;
- Business restructuring/Transaction restructuring;
- Understanding the impact on various business departments including procurement, sales & Marketing, finance & Accounts, IT, Admin & HR etc. and restructuring the same to suit the needs of the GST;



Conclusion

- Optimizing the transitional credits, future credits
- Ensure original entries are verified, keep evidences of tax payments, etc.
- Representing through various bodies/ associations on various adverse provisions of the GST law;
- Conducting in house training programs for learning & development of staff to ensure smooth implementation into the new regime

