

Pimpri- Chinchwad Branch of ICAI

Implications of GST on Real Estate Sector

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Concept of Supply

Section 7: (1) Supply includes

- a) **all forms of supply** of goods and/or services such as sale, **transfer, barter**, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.
- Barter – Joint Development Agreements – Two Supplies, Valuation of Consideration
 - TDR Sales in Exchange of Flats.
- c) the activities specified in **Schedule I**, made or agreed to be made without a consideration

Schedule- I : Activities to be treated as Supply even if made without consideration

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets. – Assets transferred to Society after project completion.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:
 - Transfer Goods/ Capital Goods between projects in different states.
 - Sharing common services between two companies having similar holdings.

Concept of Supply

Schedule –II : Para 5 – Following activity treated as supply of service :

Clause (a)

renting of immovable property;

Clause (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.”

➤ Big Relief for projects in cities where CC not issued.

➤ “First Occupation” – How to substantiate. Whether it is really beneficial ??

Clause (e)

Agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act

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Concept of Supply

- *Explanation.*—For the purposes of this clause—
- (1) the expression "competent authority" means the Government or any authority authorized 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; 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;
- (2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

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Concept of Supply

Schedule –II : Para 6 – Clause (a)

Following activity treated as supply of service :

- “works contract as defined in clause (119) of section 2.”

Works Contract : 2(119)

"works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract

Schedule III - Activities Neither Supply of Goods nor Services

5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

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Concept of ‘Composite Supply and Mixed Supply’

Composite Supply :

It means two or more supplies of goods / services, 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 (Ex. Laptop & Laptop Bag) – Tax rate applicable will be that of **Principal** supply.

Mixed Supply :

It means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other for a single price where such supply does not constitute a composite supply (Ex. Laptop & Printer) – Tax rate applicable will be supply which **attracts the highest rate** of tax

- Taxation of various Offers given to Flat Owners- Free AC with Flat ??

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Exemption - Notification No. 12/2017

- **Clause 3**

- Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution

- **Clause 10**

Services provided by way of **pure labour contracts** of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.

- **Clause 11**

Services by way of **pure labour contracts** of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex.

- **Clause 12**

Services by way of renting of residential dwelling for use as residence.

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Exemption - Notification No. 12/2017

- **Clause 13**

- Services by a person by way of-
 - (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act) or a trust or an institution registered under sub clause (v) of clause (23C) of section 10 of the Income-tax Act or a body or an authority covered under clause (23BBA) of section 10 of the said Income-tax Act:
- Provided that nothing contained in entry (b) of this exemption shall apply to,-
 - (i) renting of rooms where charges are one thousand rupees or more per day;
 - (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ten thousand rupees or more per day;
 - (iii) renting of shops or other spaces for business or commerce where charges are ten thousand rupees or more per month.

- **Clause 41**

One time upfront amount (called as premium, salami, cost, price, development charges or by any other name) leviable in respect of the service, by way of granting long term (thirty years, or more) lease of industrial plots, provided by the State Government Industrial Development Corporations or Undertakings to industrial units.

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Construction and Works Contract Service

S. No.	Nature of Service	Effective Rate	Conditions
(i)	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.	18%	Nil
(ii)	Composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	18%	Nil

Note: Where supply involve transfer of land/undivided share of land value of supply of service shall be total amount charged less value of land (deemed value 1/3rd of amount charged)

(This note is applicable for each case involving transfer of land covered in upcoming slides)

S. No.	Nature of Service	Effective Rate	Conditions
(iii)	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the *[Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity] by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,—</p> <p>(a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);</p> <p>(b) canal, dam or other irrigation works;</p> <p>(c) pipeline, conduit or plant for (i) water supply, (ii) water treatment, or (iii) sewerage treatment or disposal</p> <p>* Substituted for “Government, a local authority or a Governmental authority” by Notification No. 31/2017-Central Tax (Rate), dated 13-10-2017, w.e.f. 13-10-2017.</p> <p>Note: Introduced w.e.f. 22.08.2017</p>	12%	Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.

S. No.	Nature of Service	Effective Rate	Conditions
(iv)	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,—</p> <p>(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;</p> <p>(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awas Yojana;</p> <p>(c) a civil structure or any other original works pertaining to the “In-situ rehabilitation of existing slum dwellers using land as a resource through private participation” under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana, only for existing slum dwellers;</p> <p>(d) a civil structure or any other original works pertaining to the “Beneficiary led individual house construction/enhancement” under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana;</p> <p>(e) a pollution control or effluent treatment plant, except located as a part of a factory; or</p> <p>(f) a structure meant for funeral, burial or cremation of deceased.</p> <p>Note: Introduced w.e.f. 22.08.2017</p>	12%	

S. No.	Nature of Service	Effective Rate	Conditions
(v)	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,—</p> <p>(a) railways, excluding monorail and metro;</p> <p>(b) a single residential unit otherwise than as a part of a residential complex;</p> <p>(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the ‘Scheme of Affordable Housing in Partnership’ framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;</p> <p>(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under— (1) the “Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana; (2) any housing scheme of a State Government;</p> <p>(e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or (f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.</p> <p>Note: Introduced w.e.f. 22.08.2017.</p>	12%	Nil

S. No.	Nature of Service	Effective Rate	Conditions
(vi)	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, provided] to the Central Government, State Government, Union Territory, *[a local authority, a Governmental Authority or a Government Entity] by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—</p> <p>(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;</p> <p>(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or</p> <p>(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.</p> <p>*Substituted for “a local authority or a Governmental authority” by Notification No. 31/2017- Central Tax (Rate), dated 13-10-2017, w.e.f. 13-10-2017.</p> <p>Note: Introduced w.e.f. 22.08.2017</p>	12%	<p>Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be.</p>

S. No.	Nature of Service	Effective Rate	Conditions
(vii)	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, involving predominantly earth work (that is, constituting more than 75 per cent of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.</p> <p>Note: Inserted w.e.f. 13.10.2017</p>	5%	<p>Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be</p>
(viii)	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 and associated services, in respect of offshore works contract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles from the nearest point of the appropriate base line.</p> <p>Note: Inserted w.e.f. 13.10.2017</p>	12%	
(ix)	<p>Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) above.</p>	18%	

Input Tax Credit (ITC)

- Construction Industry is eligible to avail the ITC of taxes paid for procurement of goods, Capital Goods and services.
 - Substantial reduction in Cost.
 - Such seamless credit along with provision of reverse charge on unregistered supplier, will lead to reduction of CASH transactions in industry.
- For availing ITC, following conditions have to be fulfilled –
 - (i) possession of a tax invoice, debit note, supplementary invoice or such other tax paying document;
 - (ii) received the goods and / or services. It is deemed to be received if such goods are received on the direction of such taxable person.
 - (iii) Tax charged in respect of such supply has been actually paid to the credit of the appropriate Government,;
 - (iv) Taxable person must have furnished return u/s. 34;
 - Many vendors are from unorganised sector, then compliance level might be very low. This will adversely affect timely availability of 'Input Tax Credit'.
 - Record keeping in project offices will have to improve.

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Input Tax Credit - Apportionment and blocked of Credit

- 1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.
 - 2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.
 - 3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
- 5) Blocked Credit :-
 - c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;
 - d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or bare used in the course or furtherance of business.

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Certain items to be included in Transaction Value- Section 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;
 - No deduction of stamp duty
- 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;
 - Free Supplies to be included by builders to Contractors.
- 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;
- e. **subsidies directly linked to the price** excluding subsidies provided by the Central and State government

Time of Supply

- (a) the date of issue of invoice by the supplier (if invoice issued in stipulated time) or the date of receipt of payment, whichever is earlier;
- (b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier;
- (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply

Time of Supply

Due date is ascertained from Contract



- (i) Date on which the payment is liable to be made by the recipient; or
- (ii) Within 30 days of provision of service.

Due date is not ascertained from Contract



- (i) each such time when the supplier of service receives the payment; or
- (i) Within 30 days of provision of service.

Payment is linked to completion of an event



- (i) time of completion of that event; or
- (ii) Within 30 days of provision of service.

Practice of 'Demand Letter' will still prevail.

Place of Supply

a. Location of the supplier as well as location of recipient is in India:

Location of Supplier – Contractor or Builder	Location of Recipient of Services	Location of immovable property	Intra-State / Inter-State	SGST + CGST / IGST
Maharashtra	Maharashtra	Gujarat	Inter-State	IGST
Maharashtra	Maharashtra	Maharashtra	Intra-State	SGST +CGST
Maharashtra	Gujarat	Maharashtra	Intra-State	SGST + CGST
Maharashtra	Maharashtra	Dubai	Intra-State	SGST + CGST
Maharashtra	Gujarat	Dubai	Inter-State	IGST – Zero Rated

b. Location of the supplier or location of recipient is outside India:

Location of Supplier – Contractor or Builder	Location of Recipient of Services	Location of immovable property	Intra-State / Inter-State	SGST + CGST / IGST
Maharashtra	Dubai	Maharashtra	Intra-State	SGST + CGST
Maharashtra	Dubai	Gujarat	Inter-State	IGST
Maharashtra	Dubai	Dubai	Inter-State	IGST – Zero Rated

NOTIFICATION NO.4/2018-CENTRAL TAX DATED 25-1-2018

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely :—

- (a) registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and
- (b) registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights,

as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) above and in the form of development rights referred to in clause (b) above, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).

THANK YOU...