

Pimpri Chinchwad Branch of WIRC of ICAI

Subject : GST Implications and issues in Real Estate Sector
covering builders, contractors & society
redevelopment

Date & Day : 15th November 2017, Wednesday

Venue : Pimpri-Chinchwad Branch of WIRC of ICAI
S.No. 17/8A, Transportnagar,
Near Bhakti-Shakti Chowk,
Behind Indian Oil Petrol Pump,
Nigdi, Pune - 44

Presented by : CA Naresh Sheth

Oct 15, 2017

CA Naresh Sheth

1


Preamble

- GST is effective from **01st July 2017**
- Purpose of this presentation is to apprise members of:
 - GST implications of real estate sector
 - Challenges for builders / developers / contractors

Oct 15, 2017

CA Naresh Sheth

2







Real Estate

Present Tax Incidences

Oct 15, 2017

CA Naresh Sheth

3





Builders - Pre and Post GST					
Particulars	Service Tax	VAT	Total	GST	Impact
Sale of under- construction flats / units	4.50%	1%	5.5% (including land value)	18% (with 33.33% reduction for land)	
Joint development – Owner's Area	4.50% or 6%	Nil	4.50% or 6%	If construction: 18% (with 33.33% reduction for land) If WCT – 18%	
Redevelopment of society – Rehab flats	6%	Nil	6%	18%	
Redevelopment under 33/7 scheme	4.50%	Nil	4.50%	18% (with 33.33% reduction for land)	

Oct 15, 2017

CA Naresh Sheth

4

Builders - Pre and Post GST

Particulars	Service Tax	VAT	Total	GST	Impact
Original works	6%	5%	11%	18%	
Other Works	10.5%	8%	18.50%	18%	
Services other than GTA	15%	Nil	15%	18%	
GTA service	4.50%	Nil	4.50%	5%	

Input Tax Credits – Implications

Procurement	Pre-GST position	Post-GST position
Materials	<ul style="list-style-type: none"> No Cenvat of excise duty, CVD, etc paid on materials No VAT credit on materials 	Full ITC available
Input Services	Cenvat credit of service tax was available	Full ITC available
Capital Goods	Cenvat credit of excise was available in two trenches	Full ITC available in the year of receipt

Oct 15, 2017

CA Naresh Sheth

5

Builders / Developers – Other Tax incidences

Transaction	Pre-GST position	Post-GST position
Purchase of land / building where conveyance is done	Stamp duty @ 5% on agreement/ market value of property in Maharashtra (cost to entity)	Same position
Development rights	<ul style="list-style-type: none"> Stamp duty @ 5% on agreement/ market value of property in Maharashtra (cost to entity) No VAT No service tax 	<ul style="list-style-type: none"> Stamp Duty – same position GST applicability @ 18% is likely [except long term lease (30 years or more) of industrial plot payable to government or local authority]
Lease hold rights		
Property tax	At applicable rates (cost to entity)	Same position

Oct 15, 2017

CA Naresh Sheth

6

Contractors – Pre GST Tax incidences

Works contract (new construction)	<ul style="list-style-type: none"> VAT @ 5% in composition scheme in Maharashtra Service tax @ 6% of contract value 	<ul style="list-style-type: none"> ITC allowed subject to retention of 4% of value to contractor Cenvat credit on input services and capital goods allowed. No cenvat on inputs
Works contract provided to government etc in respect of slum rehabilitation, low cost housing etc	<ul style="list-style-type: none"> VAT @ 5% in composition scheme in Maharashtra Service tax was exempted 	<ul style="list-style-type: none"> ITC allowed subject to retention of 4% of value to contractor Cenvat credit not available
Other works contract	<ul style="list-style-type: none"> VAT @ 8% in composition scheme in Maharashtra Service tax @ 10.5% of contract value 	<ul style="list-style-type: none"> ITC is restricted to 64% of ITC to contractor Cenvat credit on input services and capital goods allowed. No cenvat on inputs
Works contract - Normal scheme	VAT at applicable rates	ITC fully allowed
Labour Contract	Service Tax @ 15%	ITC fully allowed

Oct 15, 2017

CA Naresh Sheth

7

Contractors – Post GST Tax incidences


Works contract (new construction)	• GST @ 18%	• ITC of all input tax fully allowed
Works contract provided to government etc in respect of slum rehabilitation, low cost housing etc	• GST @ 12%	• ITC of all input tax fully allowed
Other works contract	• GST @ 18%	• ITC of all input tax fully allowed
Labour Contract	• GST @ 18%	• ITC of all input tax fully allowed

Oct 15, 2017

CA Naresh Sheth

8

Rates of Specified Works Contract – Pre and Post GST


Composite Supply of Works Contract	Service Tax	VAT	Total	GST	Impact
Supplied to Government, a local authority or a Government Authority or Government Entity by way of construction, erection etc of:					
(a) A historical monument , archaeological site or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958)	Nil	5%	5%	12%	
(b) canal, dam or other irrigation works					
(c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.					

Oct 15, 2017

CA Naresh Sheth

9

Rates of Specified Works Contract – Pre and Post GST




Composite Supply of Works Contract	Service Tax	VAT	Total	GST	Impact
Supplied by way of construction , erection , commissioning , repair, maintenance, renovation, or alteration of :					
(a) a road or terminal for road transportation for use by general public	Nil	5%	5%	12%	
(b) A civil structure or any other original works pertaining to: <ul style="list-style-type: none"> Scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana "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 					

Oct 15, 2017

CA Naresh Sheth

10

Rates of Specified Works Contract – Pre and Post GST


Composite Supply of Works Contract	Service Tax	VAT	Total	GST	Impact
Supplied by way of construction , erection , commissioning, repair, maintenance, renovation, or alteration of :					
a civil structure or any other original works pertaining to the "Beneficiary led individual house construction" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana	Nil	5%	5%	12%	
A pollution control or Effluent treatment plant except located as part of factory	Nil	8%	8%	12%	
A structure meant for funeral, burial or cremation of deceased	Nil	8%	8%	12%	

Oct 15, 2017

CA Naresh Sheth

11

Rates of Specified Works Contract – Pre and Post GST




Composite Supply of Works Contract	ST	VAT	Total	GST	Impact
Supplied by way of construction , erection , commissioning or installation of original works pertaining to :					
a single residential unit otherwise than as a part of a residential complex	Nil	5%	11%	12%	
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'.					
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" (2) any housing scheme of a State Government;					

Oct 15, 2017

CA Naresh Sheth

12

Rates of Specified Works Contract – Pre and Post GST




Composite Supply of Works Contract	Service Tax	VAT	Total	GST	Impact
Supplied by way of construction , erection , commissioning or installation of original works pertaining to :					
railways, excluding monorail and metro	Nil	5%	5%	12%	
post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes	Nil	8%	8%	12%	
Mechanised food grain handling system or machinery processing agricultural produce as food stuff excluding alcoholic beverages	Nil	8%	8%	12%	

Oct 15, 2017

CA Naresh Sheth

13

Rates of Specified Works Contract – Pre and Post GST

Composite Supply of Works Contract	Service Tax	VAT	Total	GST	Impact
Supplied to Government, a local authority or a Government Authority or Government Entity by way of construction, erection etc of:					
A civil structure or any other original works meant predominantly for use other than commerce, industry or any other business or profession	4.5%	5%	9.5%	12%	
A structure meant predominantly for use as educational, clinical, an art or cultural establishment	4.5%	5%	9.5%	12%	
A residential complex predominantly meant for self use or the use of their employees or other persons specified in para 3 of Schedule III of CGST Act	4.5%	5%	9.5%	12%	

Oct 15, 2017

CA Naresh Sheth






14



Post GST- major impact areas for Real Estate Sector

Oct 15, 2017 CA Naresh Sheth 15







Tax incidence on input cost - Pre and Post GST

Material	Pre-GST				Post-GST	Impact
	Excise Duty	MVAT	Octroi	Effective rate*	Effective rate**	
Cement	12.5%	13.5%	3% or 5.5%	31.52% or 34.71%	28%	
Iron and Steel	12.5%	5%	3% or 5.5%	21.67% or 24.62%	18%	
Ready Mix Concrete	6%	13.5%	3% or 5.5%	23.92% or 26.93%	18%	
Cement Bricks	12.5%	6%	5.5%	25.81%	28%	
Sand lime Bricks / Fly ash bricks	12.5%	6%	5.5%	25.81%	12%	

*Cenvat credit of input tax not available. It is cost to entity.

** Credit of input tax fully available

Tax incidence on input cost - Pre and Post GST

Material	Pre-GST				Post-GST	Impact
	E. Duty/ ST	MVAT	Octroi	Effective rate*	Effective rate**	
Building Bricks	6%	6%	5.5%	18.54%	5%	
Refractory bricks, blocks, tiles, ceramic goods	12.5%	6%	5.5%	25.81%	18%	
Façade tough glass	12.5%	13.5%	5.5%	34.71%	28%	
Paints , varnishes, putty , wall fillings, ceramic tiles	12.5%	13.5%	5.5%	34.71%	28%	
Marble , Granite etc	12.5%	13.5%	7%	36.63%	28%	
Works contract services	6%	8%	-	14%	18%	

*Cenvat credit of input tax not available (except works contract services)



** Credit of input tax fully available

Oct 15, 2017

CA Naresh Sheth

17

Major Distinction - Cenvat Credit Scheme and ITC under GST



Particulars	Pre-GST	Post-GST	Impact
Pre-registration period credit	<ul style="list-style-type: none"> Cenvat credit of pre-registration period was available Jurisprudence: <ul style="list-style-type: none"> I Knowledge Factory v. CCE (2011) 30 STT 177 (CESTAT SMB) Imagination Technologies v. CCE (2011) 32 STT 227 (Mag) Well Known Polyesters v. CCE (2011) 267 ELT 221 (CESTAT) 	<ul style="list-style-type: none"> Not available, if failure to take registration within 30 days Existing jurisprudence on availability of pre-registration period credit will no longer be valid in GST regime 	
Allowance of Input tax credit when supplier does not discharge his liability	<ul style="list-style-type: none"> Cenvat credit was allowed to buyer even when supplier did not discharge the liability Jurisprudence: Supreme Court in CCE v. Kay Kay Industries (2013) 42 GST 50 (SC) 	<ul style="list-style-type: none"> One of the conditions for availing ITC is that tax is to be paid by supplier SC decision will lose its validity in GST regime 	

Oct 15, 2017

CA Naresh Sheth

18

Major Distinction - Cenvat Credit Scheme and ITC under GST




Particulars	Pre-GST	Post-GST	Impact
Matching of Invoice	<ul style="list-style-type: none"> No such provision under Cenvat Credit Rules In CCE v Tata Motors [(2014) 43 GST 555 (Jr HC DB)] has held that it would be unreasonable / unrealistic to expect buyer to verify accounts of supplier to find out whether duty has been paid or not 	<ul style="list-style-type: none"> ITC will be allowed to buyer only when the outward return of supplier matches with inward return of buyer HC decision in Tata Motors no longer valid in GST regime 	
Cenvat credit is indefeasible right of assessee	<ul style="list-style-type: none"> Supreme Court in case of Dai Ichi Karkaria Ltd [112 ELT 353 (SC)] held that: <ul style="list-style-type: none"> Cenvat credit validly availed cannot be reversed by tax authorities Benefit of credit is available without any limitation and scheme is indefeasible 	<ul style="list-style-type: none"> SC decision will lose its validity in GST regime as there will be reversal of valid ITC if: <ul style="list-style-type: none"> supplier does not discharge his liability Mismatch in invoice 	

Oct 15, 2017

CA Naresh Sheth

19

Major Distinction - Cenvat Credit Scheme and ITC under GST


Particulars	Pre-GST	Post-GST	Impact
Reversal of common credit pertaining to capital goods	<ul style="list-style-type: none"> Common cenvat credit in respect of capital goods need not be reversed 	<ul style="list-style-type: none"> Proportionate reversal of common ITC in respect of capital goods (Q 8 of Chp 10 of FAQs dtd 21.09.2016) 	
Availment of credit in respect of capital goods	<ul style="list-style-type: none"> Cenvat credit up to 50% was available in first year and balance in subsequent year 	<ul style="list-style-type: none"> Entire ITC in respect of capital goods can be availed in first year itself 	
Refund of accumulated Cenvat credit	<ul style="list-style-type: none"> Generally not allowed except for export of goods / services 	<ul style="list-style-type: none"> Allowed only in cases for exporters and where there is inverted duty structure 	

Oct 15, 2017

CA Naresh Sheth

20

Major Distinction - Cenvat Credit Scheme and ITC under GST

Particulars	Pre-GST	Post-GST	Impact
Allowability of Input and input services used in course or furtherance of business	<ul style="list-style-type: none"> Narrow meaning given to term 'inputs' and 'input services' by deleting the word 'in relation to business' from relevant definitions 	<ul style="list-style-type: none"> Wider meaning is given to terms 'inputs' and 'input services' by using the words 'in course or furtherance of business' Decision of Bombay HC in case of Coca Cola India Pvt Ltd [2009-TIOL-449-HC-MUM-ST] 	

Oct 15, 2017

CA Naresh Sheth

21

Ministry of Finance Press Note dated 15 June 2017

- CBEC says it is against GST law to ask buyers of the flats (who have booked flats and paid part consideration) to make full payment before GST comes into effect as higher rates will be applicable on money received post GST
- It is further stated:
 - At present, builders are not eligible for credit of excise duty, VAT, entry tax, etc paid on materials and thus form part of cost of construction.
 - Under GST full ITC will be available against payment of GST liability at 12% and hence it will no longer form part of cost
 - Builders are expected to pass on the benefits lower tax burden under GST regime to buyers by way of reduced prices / instalments
 - Despite this clarity on law position, if any builder resorts to such practice, the same can be deemed to be profiteering u/s 171 of CGST Act

Oct 15, 2017

CA Naresh Sheth

22

Definition of under-construction flats / units

- As on today, date of Occupation / completion certificate relevant for deciding whether flat is sold during construction or otherwise
- Schedule II(5)(b) deems sale of under construction property as "Supply of services":
 - 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 the issuance of the **completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier**
- Term "first occupancy" is not defined/ explained
- Does this mean occupancy certificate is conclusive evidence of completion?
- Whether it covers possession given by Builder/ Developer before getting completion certificate/ occupancy certificate from any authority?

Oct 15, 2017

CA Naresh Sheth

23

Sale of under construction flats – Rates and Valuation

- Schedule II(5)(b) deems sale of under construction property as "Supply of services"
- Rate of construction services where value of land is included:

Chapter	Section	Heading	Description of service	Rate
99	5	9954	(i) Sale of under construction flats involving transfer of property in land or undivided share in land	18% after deduction of 1/3 rd of total amount charged as the value of land or undivided share in land

- Refund of unitized input tax credit is not allowed to builders/ developers as per notification no. 15/2017- central tax (rate) dated 28.06.2017
- Deduction for land is allowed to overcome impact of Delhi High court decision in case of Suresh Kumar Bansal

Oct 15, 2017

CA Naresh Sheth

24

Sale of under construction flats – Rates and Valuation

➤ Relevant extract of notification for deduction of land :

- In case of supply of service involving transfer of property in **land or undivided share of land**;
- the value of supply of service and goods portion in such supply shall be equivalent to

Total amount charged for such supply

Less the value of land or undivided share of land

- which shall be deemed to be one third of the total amount charged for such supply

Explanation .-“total amount” means the sum total of,-

(a) consideration charged for aforesaid service; **and**

(b) amount charged for transfer of land or undivided share of land, as the case may be.

Oct 15, 2017

CA Naresh Sheth

25

Sale of under construction flats – Rates and Valuation

➤ **Valuation:**

	Particulars	Amount (Rs)
	Total amount charged (including land value and all incidental charges such as floor rise, preferential location, parking space, etc)	1,50,00,000
Less	Value of land or undivided share in land (deemed to be 1/3 rd of total amount charged)	50,00,000
	Taxable value	1,00,00,000
	Tax payable @ 18%*	18,00,000

*** Effective rate will come to 12% of total amount charged for the flat**

Oct 15, 2017

CA Naresh Sheth

26

Sale of under construction flats – Rates and Valuation

Points for consideration:

- Whether presumptive scheme of valuation can be thrust upon assessee without allowing option to deduct actual value of the land for discharging GST liability?
- Whether builder can bifurcate consideration into 2 parts i.e. for land and for construction?
- Whether two separate agreements can be executed on the pattern of southern states? i.e. One for sale of undivided rights in the land and other for construction contract?
- Whether government can treat above as composite supply and levy the tax accordingly on composite value?
- Whether inclusion of value of land in contract value for levy of GST is constitutionally valid?
- Where the developer purchases development rights or the leasehold rights of land from the landowner for development of property, will the deduction of 1/3rd for value of land be available to the developer as such rights are not land per se?

Oct 15, 2017

CA Naresh Sheth

27

Sale of under construction flats – Rates and Valuation

➤ **Whether stamp duty payable on sale agreement is includible in value of service?**

- Section 15(2)(a) – any taxes, duties, cess, charges etc other than those levied under CGST / SGST / IGST Act to be included in value of supply **only if separately charged** by supplier
- Section 15(2)(b) – value of supply shall include any amount that the supplier is liable to pay but which is incurred by recipient

➤ **Whether registration charges includible in value of service?**

- Is it expenditure incidental to sale of under construction flats?
- Is it charged by builder or developer?
- Is it the obligation of builder or developer to pay it?

Oct 15, 2017

CA Naresh Sheth

28

Works contract service – Rate and Valuation

- Schedule II (6) deems works contract as “Supply of service”
- Works contract as defined u/s 2(119) of CGST Act covers building or construction of an immovable property
- Rate of works contract service:

Chapter	Section	Heading	Description of service	Rate	Remark
99	5	9954	(ii) Composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	18%	Full ITC available
			(iii) Specified composite supply of works contract	12%	
			(iv) construction services other than (i) and (ii) above	18%	

Oct 15, 2017

CA Naresh Sheth

29

ITC Credit – Confusion

- Section 17(5)(c) provides that ITC of works contract service is available only when output supply is works contract
 - Whether builder provides works contract services or construction services?
 - Works contract as defined u/s 2(119) of CGST Act covers building or construction of an immovable property
 - Honourable Supreme Court in the case of **L&T Ltd vs State of Karnataka [2013-TIOL-46-SC-CT-LB]** held that sale of under construction flats/ units is a “works contract”
- Section 17(5)(d) provides that ITC of goods or services used for construction of immovable property **on own account** not available
 - Whether builder constructs on his own account?

Oct 15, 2017

CA Naresh Sheth

30

Immovable Property – Status under GST

- GST is leviable on supply of **Goods and/or Services**
- Immovable property is not 'goods' as defined u/s 2(52) of CGST Act
- 'Service' is defined u/s 2(102) of CGST Act to mean 'anything other than goods, money and securities'
- Immovable property, therefore, will be a 'service' as defined u/s 2(102) of CGST Act
- As per Clause 5 of Schedule III to CGST Act following are **neither supply of goods nor supply of service**:
 - Sale of land
 - Sale of building (other than under construction sale of flats/unit)
- Sale of completed flats will not be taxable under GST

Oct 15, 2017

CA Naresh Sheth

31

Taxability of FSI, development right, etc

- Under General Clauses Act 'immovable property' is defined to include land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth
- Term 'land' and 'building' is not defined under GST law
- Whether under GST regime rights in land and/or building can be regarded as land and/or building?
 - If yes, sale of development rights, FSI, etc will not be treated as supply liable to GST
 - If not, then development potential, FSI, etc will be exposed to GST liability
- Constitutional challenge in taxing land related rights [entry 18 of State List in Seventh Schedule to the Constitution]
- GST implications of second sale of flats / units sold during construction
- GST implications of surrender / barter / exchange of tenancy rights

Oct 15, 2017

CA Naresh Sheth

32

Taxability of lease, tenancy and other such rights

➤ Clause 2(a) of Schedule II provides that following are **supply of services**:

- **Lease**
- **Tenancy**
- Easement
- **License**

to occupy land

➤ Whether long term lease of land will be a "service" liable to GST even when stamp duty is paid thereon?

➤ Whether granting of development rights will amount to license to occupy land and whether it will be supply of service liable to GST?

Oct 15, 2017

CA Naresh Sheth

33

Sale of under-construction flats- Time of Supply

Example:

Agreement registration date: 01.10.2017 - Rs. 5 crore

Amount payable on execution of agreement - Rs. 20 lakhs

Amount payable on plinth (15.11.2017) - Rs. 50 lakhs

Demand letter raised for plinth (12.12.2017)

Present regime

Date	VAT (in lakhs)	Service tax (in lakhs)	Total (in lakhs)
01.10.2017	5	0.90	5.90
15.11.2017	NIL	NIL	NIL
12.12.2017	NIL	2.25	2.25

GST Regime

Date	GST (in lakhs)
01.10.2017	2.40 (on 20L)
15.11.2017	6.00 (on 50L)
12.12.2017	NIL

Oct 15, 2017

CA Naresh Sheth

34

Refund to customer on cancellation

Present regime:

- Rule 6(3) of Service tax Rules, 1994 permits Builder to adjust service tax refunded to customer on cancellation of flats/ units against his tax liability of the month in which refund is made
- No time limit for such adjustment

GST regime:

- Whether builder is entitled to issue credit note u/s 34 and claim the tax adjustment? Provision speaks of deficiency of service and **not "non-provision of service"**
- Does this mean that adjustment of GST refunded on advance against GST liability is not permissible?
- Section 54(8)(c) permits refund of tax paid on supply which is not provided either wholly or partially
- Refer transition slide for flat booked in present regime and cancelled in GST regime

Oct 15, 2017

CA Naresh Sheth

35

Sale of Completed flats – Reversal of ITC

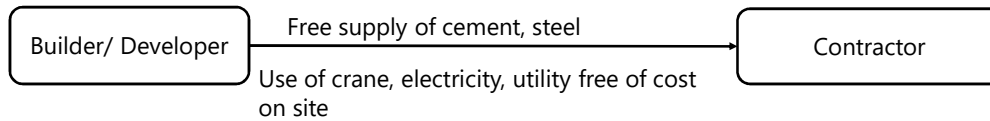
- Section 17(2) provides that where goods or services are used partly for effecting taxable supplies and partly for exempt supplies, ITC credit attributable to taxable supplies can only be taken
- Exempt Supply is defined u/s 2(47)] to **include non-taxable supply**
- **Non-taxable supply** is defined u/s 2(78) of the Act to mean:
 - Supply of goods or services or both
 - Which is not liable to tax under CGST or IGST Act
- **Section 17(3) specifically includes sale of building and sale of land as exempt supply**
- Sale of completed flat will be exempt supply for the purpose of reversal of ITC u/s 17(2) of the Act
- Tax in respect of unsold completed flats is to be reversed at the stage of completion of project or at the point when such completed flats/units are sold?

Oct 15, 2017

CA Naresh Sheth

36

Free Supplies by the Builder to the contractor – Current regime



- Free supply of cement, steel or use of crane is not included in the value of taxable services in the absence of monetary/ non-monetary consideration accruing to the service provider:
 - M/s. Bhayana Builders (P) Ltd. & Ors. vs. CST, Delhi & Ors [2013(23) S.T.R 49 (Tri-LB)]
 - M/s Inox Air Products Ltd Vs Commissioner Of Central Excise, Nagpur [2015-TIOL-515-CESTAT-MUM]
- In absence of any consideration, no VAT on such free supplies

Oct 15, 2017

CA Naresh Sheth

37

Free Supplies by the Builder to the contractor – GST Regime

- A supply without consideration to non-related persons is **not "supply"** as defined u/s 7 of CGST Act
- As such activity is not a supply, same will **not** be liable to GST
- It is not an exempted supply as defined u/s 2(47) of CGST Act
 - It is not wholly exempt u/s 11 of CGST Act
 - It is not a Nil rated supply
 - It is not a non-taxable supply as defined u/s 2(78) of CGST Act
- ITC reversal may not be required

Oct 15, 2017

CA Naresh Sheth

38

Tax implications of other transactions

Particulars	Service tax	GST
Society membership fees	<ul style="list-style-type: none"> Statutory obligation of Builder to form the society under MOFA Collected on behalf of society as a pass through entity Passed to society on its formation Not liable to service tax 	<ul style="list-style-type: none"> It is "transaction in money" and hence excluded from definition of "supply"
One time maintenance charges	<ul style="list-style-type: none"> Statutory collection by builder collected as pass-through entity and Balance handed over to society on its formation Legal view: Not liable to service tax (Kumar Behray Rathi vs. CCEX, Pune) 	<ul style="list-style-type: none"> Liable Issue will remain whether it is includible in value of the flat and taxed accordingly?
Society formation and legal charges	It is independent supply and advisable to charge at full rate	It is independent supply and advisable to charge at full rate

Oct 15, 2017

CA Naresh Sheth

39

Tax implications of other transactions

Particulars	Service tax	GST
Municipal taxes collected with advance maintenance	<ul style="list-style-type: none"> Taxes and cesses is not a service Not liable to service tax 	<ul style="list-style-type: none"> Municipal taxes to be included in the Transaction value of advance maintenance u/s 15(2)(a) Liable to GST
Preferential location charges / floor rise premium	<u>2 views:</u> <ul style="list-style-type: none"> Liable to service tax at full rate as separate supply Liable to tax at abated rate as naturally bundled service 	<ul style="list-style-type: none"> It is composite supply as defined u/s 2(30) of CGST Act Hence to be taxed at the rate applicable to sale of under construction flat
Infrastructure development charges such as power, sewerage, water connection, etc	<ul style="list-style-type: none"> Bundled services to be taxed at rate applicable to sale of flat 	<ul style="list-style-type: none"> It is composite supply as defined u/s 2(30) of CGST Act Hence to be taxed at the rate applicable to sale of under construction flat

Oct 15, 2017

CA Naresh Sheth

40

Tax implications of other transactions

Particulars	Service tax	GST
Flat cancellation charges	<ul style="list-style-type: none"> • "Agreeing to an obligation to tolerate an act" • Liable to service tax 	<ul style="list-style-type: none"> • "Agreeing to an obligation to tolerate an act" • Liable to GST as Supply of services
Parking space	<ul style="list-style-type: none"> • Liable • Naturally bundled with construction services • Taxable at abated rate 	<ul style="list-style-type: none"> • Includible in transaction value of sale of flat and liable to GST
Interest on delayed payment	<ul style="list-style-type: none"> • Not taxable 	<ul style="list-style-type: none"> • Taxable at full rate • Payable on realisation

Oct 15, 2017

CA Naresh Sheth

41

ITC on mobilization advance paid

- **Receipt of goods/ services** is a pre-condition for availing the ITC [Section 16(2)(b)]
- At the time of payment of mobilization advance, Builder is not receiving goods/ services
- Hence, ITC cannot be taken as the services are not received even if :
 - GST payment is made by the Contractor
 - Outward return is uploaded by the contractor
 - Such advance is reflected in the electronic credit ledger of the Builder

Oct 15, 2017

CA Naresh Sheth

42

Renting of immovable property

- Renting of residential property for use as residence to be exempted under GST
- Lease or letting out of building including commercial, industrial or residential complex for **business or commerce** is taxable at 18%
- Reimbursement of expenses incidental to renting such as:

Municipal taxes	Water charges	Electricity charges	Other charges
-----------------	---------------	---------------------	---------------

will be included in the value of renting services

- Repairs to Building / Immovable property:
 - Input tax credit of GST paid on repairs to building / immovable property to the extent of capitalisation will not be allowed
 - Repairs to building / immovable property expensed out in financial statements will be eligible
- Registration issue – whether to be registered in state in which immovable property is located?

Oct 15, 2017

CA Naresh Sheth

43

Case Studies

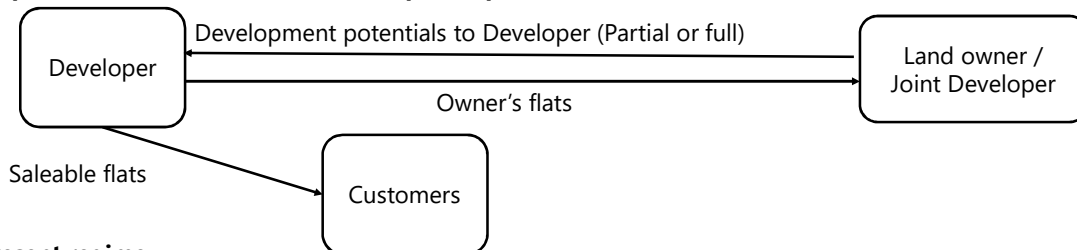
Oct 15, 2017

CA Naresh Sheth

44

Pre GST - Joint Development (Area sharing)

- **Land Owner transfers certain percentage of development potential to Developer and retains balance potential or transfers entire development potential**



Present regime:

- **Service tax:**
 - Flats allotted to Land owner – service tax payable under works contract category or construction service on the value of development potentials received
 - Saleable flats – service tax payable on sale of under construction units
- **VAT:**
 - not payable on flats allotted to land owner as it amounts to barter
 - payable on saleable flats under construction

Oct 15, 2017

CA Naresh Sheth

45

Post GST - Joint Development (Area sharing)

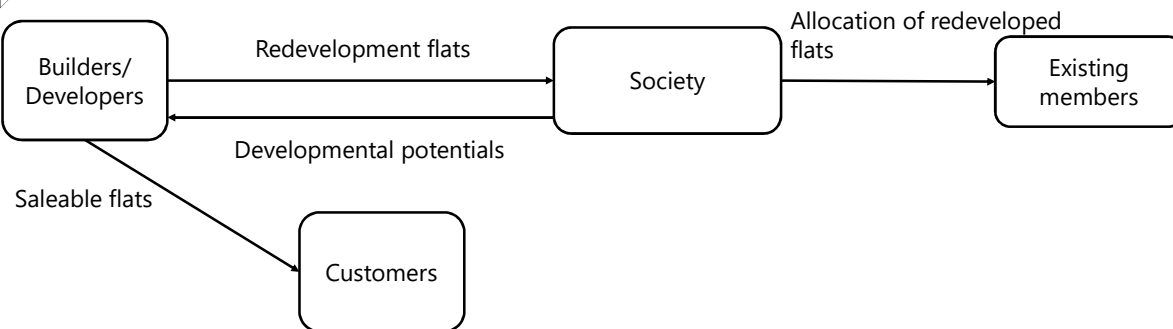
- **Taxability of flats allotted to Land Owner:**
 - Supply includes all barter and exchanges
 - Flats allotted to land owner will be a taxable supply liable to GST where consideration is received in kind form of development potentials
 - Time of supply:
 - Receipt of development rights amounts to advance receipt of consideration in kind
 - Hence, date when irrevocable rights are received will be time of supply
 - Receipt voucher has to be issued by developer to owner on receipt of development right
 - Valuation to be done as per GST Valuation Rules
 - Taxable @ 18% or 18% (after deducting land value) depending on facts of the case
- **Taxability of saleable flats:**
 - Taxable on transaction value under construction service category @ 18% (after deducting land value)
- **Taxability of development rights in the hands of owner:**
 - Refer earlier slides
 - Whether transfer of development rights by landlord can be said in course or furtherance of business?

Oct 15, 2017

CA Naresh Sheth

46

Pre GST - Redevelopment of society



Present regime:

- **Service tax:**
 - Redeveloped flats are taxable on value of development rights
 - Payable on saleable flats under construction
- **VAT:**
 - Not payable on redeveloped flats as it amounts to barter
 - Payable on saleable flats under construction

Oct 15, 2017

CA Naresh Sheth

47

Post GST - Redevelopment of society

- **Taxability of redeveloped flats:**
 - supply includes all barter and exchanges
 - Flats allotted to society members will be a taxable supply liable to GST where consideration is received in kind form of development potentials
 - Time of supply:
 - Receipt of development rights amounts to advance receipt of consideration in kind
 - Hence, date when irrevocable rights are received will be time of supply
 - Receipt voucher has to be issued by developer to society on receipt of development right
 - Valuation to be done as per Valuation Rules
 - Taxable under works contract service category @ 18%
- **Taxability of saleable flats:**
 - Taxable on transaction value
 - Taxable on transaction value under construction service category @ 18% (after deducting land value as prescribed)

Oct 15, 2017

CA Naresh Sheth

48

Post GST - Redevelopment of society

➤ **Taxability of development rights in the hands of landlord:**

- Refer earlier slides
- Whether transfer of development rights by society can be said in course or furtherance of business?

➤ **Various allowances paid to society members:**

- Schedule II (5) (e) deems agreeing to the obligation :
 - to refrain from an act; or
 - To tolerate an act or a situation; or
 - To do an act

As supply of service

- If society members are unregistered, whether builder will be liable under RCM?

Oct 15, 2017

CA Naresh Sheth

49

Consideration not wholly in money

To be valued in following manner in chronological order of Rules:

Rule 1 (a) - Open market value of Supply

Rule 1 (b) - Open market value not available then

Value = Money consideration + money equivalent of non-monetary consideration

Rule 1 (c) - Not determinable in clause (a) and (b) then

Value will be supply of goods or services or both of **like kind and quality**

Rule 1 (d) - Not determinable in clause (a),(b) and (c) then

Value = Money consideration + money equivalent of non-monetary consideration as determined by application of Rule 4 or Rule 5

Oct 15, 2017

CA Naresh Sheth

50

Rule 4 and 5

Rule 4: Cost based Valuation

Where value of supply cannot be determined under Rules 1 to 3:



Value shall be **110% of** cost of provision of services

Rule 5: Residuary Rule:

Where value of supply cannot be determined under Rules 1 to 4:



Value to be determined using **reasonable means** consistent with principles and general provisions of section 15 and these Rules

Supplier of services
has option to
disregard Rule 4 and
opt for Rule 5

Oct 15, 2017

CA Naresh Sheth

51

Services by
government or local
authority

Oct 15, 2017

CA Naresh Sheth

52

Payments to Government or local authorities

- Services supplied by Government or local authority is under reverse charge notification
- Relevant exemption notifications in respect of services provided by government / local authority:

Sl. No.	Exemption entry
4	Activity in relation to any function entrusted to a municipality under article 243 W of the Constitution Such functions include Regulation of land use and Construction, Town and Urban planning, Public Health, Sanitation and Conservancy, Slum Improvement and Rehabilitation, Water Supply and other services listed in Twelfth Schedule to the Constitution
7	Services provided by government or local authority to business entity with aggregate turnover up to Rs. 20 lakhs in previous financial year
9	Services provided by government or local authority where consideration for such services does not exceed Rs. 5000 In case of continuous supply of services consideration for such services should not exceed Rs. 5000 in a financial year

Oct 15, 2017

CA Naresh Sheth

53

Payments to Government or local authorities

Sl. No.	Exemption entry
47	Services by way of: <ul style="list-style-type: none"> • Registration required under any law for time being in force • Testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for time being in force
43	One time upfront amount on long term lease (30 years or more) of industrial plot payable to state government industrial development corporations / undertakings
61	Services by way of issuance of passport, visa, driving license, birth certificate or death certificate
62	Services by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to government or local authority under such contract

Oct 15, 2017

CA Naresh Sheth

54

Transitional provisions for builders

Oct 15, 2017

CA Naresh Sheth

55

Unutilised input tax credit under earlier law

- **Registered person is entitled to ITC of unutilised credit in existing law by way of carry forward of:**
 - Cenvat credit balance in return relating to period immediately preceding appointed day
 - VAT and Entry tax credit balance in return relating to period immediately preceding appointed day, furnished **not later than 90 days** from the appointed day
- Taxable person shall be allowed to take such credit provided:
 - **he has furnished all the returns required under the existing law for period of 6 months immediately preceding the appointed day**
- **Action point:**
 - **Form GST TRAN-1** specifying the amount of tax/duty eligible as ITC in GST regime to be submitted within **90 days of appointed day**

Oct 15, 2017

CA Naresh Sheth

56

Credit in respect of inputs held in stock

A registered taxable person under GST who was:

- Providing works contract service; **and**
- availing the benefit of Notification No. 26/2012- ST- dated 20.06.2012 under earlier laws



Eligible to take credit of following:

Excise duty	CVD	SAD
VAT	Entry Tax	Purchase tax

In respect of

- Inputs held in **stock** on appointed day;
- Inputs contained **semi-finished goods** on appointed day;
- Inputs contained in finished goods on appointed day

➤ Points for consideration:

- Whether works contractor paying tax as per Rule 2A of Service Tax Valuation Rules is eligible to carry forward credit?
- Whether inputs contained in unsold work in progress is eligible for carry forward:
 - One view: unsold work in progress amounts to stock
 - Other view: it amounts to immovable property and hence not goods

Oct 15, 2017

CA Naresh Sheth

57

Credit in respect of inputs held in stock

- Such inputs / goods are used/ intended to be used for making taxable supplies under GST
- Such person is eligible for ITC under GST law
- He is in **possession of invoice** or other prescribed documents evidencing payment of tax / duty under earlier law in respect of inputs held in stock, semi-finished or finished goods
- Such invoices / prescribed documents are issued within **12 months** immediately preceding appointed day
- Supplier of services is not eligible for any abatement under GST law

Oct 15, 2017

CA Naresh Sheth

58

Credit in respect of inputs held in stock

➤ Action Points:

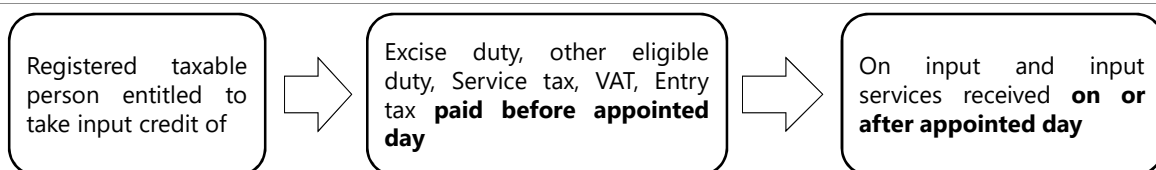
- Procurement of cement, steel and other important material on excise and VAT paid invoices
- Capture excise duty and VAT paid on purchases
- Track inventory built out of 12 months purchases and to capture data of excise, VAT, CVD, SAD, etc. contained in such inventory
- To decide whether credit of ITC contained in work in progress can be taken?
- **Form GST TRAN-1** specifying the amount of tax/duty eligible as ITC in GST regime to be submitted within **90 days of appointed day**

Oct 15, 2017

CA Naresh Sheth

59

Credit in respect of inputs or input services during transit



➤ Conditions for claiming ITC in respect goods and services in transit:

- Invoice / duty paying document is recorded in books of account **within 30 days** from appointed day
- On sufficient cause being shown, aforesaid period of 30 days may be extended by Commissioner for a **further period not exceeding 30 days**
- Claimant should furnish statement of credit in the manner prescribed in **Rule 1(2)(c)** of Transitional Provision Rules

➤ Action Points:

- Set up cut off date for procurement to avoid goods in transit, wherever possible
- To file **GST TRAN – 1** within **90 days from appointed day**
- Ensure accounting of invoices for such goods in transit is done within 30 days from appointed day

Oct 15, 2017

CA Naresh Sheth

60

Service tax paid in pre GST regime and refunded on cancellation post GST

- No provision for adjustment of service tax paid before appointed date and refunded to customer on cancellation after appointed date
- Builder is entitled to refund of such service tax u/s 142(5) refunded to customers on cancellation of flat post GST
- **Action points:**
 - Policy decision to be taken whether to refund such tax to customer and chase department for refund; or
 - Customer to apply refund directly from government
 - To take security deposit from customer to the extent of service tax amount which is to be refunded
 - To take undertaking from customer that he will repay the amount if not refunded by customer

Oct 15, 2017

CA Naresh Sheth

61

Reclaim of Service tax due to non-payment [Section 140(9)]

- Registered person is entitled to reclaim credit in respect of:
 - Service tax on input services provided under existing law
 - which has been reversed due to non payment for service consideration within a period of 3 months
 - Payment for consideration for such supply of services is made within a period of 3 months from appointed day

Oct 15, 2017

CA Naresh Sheth

62

VAT and service tax both paid before appointed date

Section	Provision
142(11)(c)	<p>Where VAT and Service Tax has been paid on any supply under both State VAT Act and Finance Act, 1994:</p> <ul style="list-style-type: none"> • tax shall be payable under CGST / SGST / UTGST Act to the extent supplies made after appointed day • taxable person will be entitled to credit of VAT or service tax paid under existing law to the extent supplies made after appointed day • Such credit to be calculated in such manner as may be prescribed
Maharashtra Trade Circular 18T of 2017	<ul style="list-style-type: none"> • VAT applicable on amount received before registration of agreement (w.e.f 01/06/2017)

Oct 15, 2017

CA Naresh Sheth

63

VAT & service tax both paid before appointed date - scenarios

➤ Scenario 1: Agreement registered before 01/06/2017

- Value of flat: Rs. 5,00,00,000
- Demand raised and received till 30/06/2017: Rs. 2,00,00,000
- Amount payable after 30/06/2017: Rs. 3,00,00,000
- Vat paid Rs. 5 lakhs (1% on 5 crores)
- ST paid Rs. 9 lakhs (4.5% on 2 crores)

View 1*	CGST	SGST	Total
Tax payable on 5 crore	30,00,000	30,00,000	60,00,000
Less: Credit on tax paid	9,00,000	5,00,000	14,00,000
Net tax payable	21,00,000	25,00,000	46,00,000

View 2*	CGST	SGST	Total
Tax payable on 3 / 5 CR	18,00,000	30,00,000	48,00,000
Less: Credit on tax paid	-	5,00,000	5,00,000
Net tax payable	18,00,000	25,00,000	43,00,000

View 3*	CGST	SGST	Total
Tax payable on 3 CR	18,00,000	-	18,00,000
Less: Credit on tax paid	-	-	-
Net tax payable	18,00,000	-	18,00,000

View 4*	CGST	SGST	Total
Tax payable on 3 CR	18,00,000	18,00,000	36,00,000
Less: Credit on tax paid	-	3,00,000	3,00,000
Net tax payable	18,00,000	15,00,000	33,00,000

*View 4 seems to be better view

Oct 15, 2017

CA Naresh Sheth

64

VAT & service tax both paid before appointed date - scenarios

➤ Scenario 2: Agreement NOT registered before 01/06/2017

- Value of flat: Rs. 5,00,00,000
- Demand raised and received till 30/06/2017: Rs. 2,00,00,000
- Amount payable after 30/06/2017: Rs. 3,00,00,000
- VAT paid Rs. 2 lakhs (1% on 2 crores)
- ST paid Rs. 9 lakhs (4.5% on 2 crores)

View 1*	CGST	SGST	Total
Tax payable on 5 crore	30,00,000	30,00,000	60,00,000
Less: Credit on tax paid	9,00,000	2,00,000	11,00,000
Net tax payable	21,00,000	28,00,000	49,00,000

View 2*	CGST	SGST	Total
Tax payable on 3 / 5 CR	18,00,000	30,00,000	48,00,000
Less: Credit on tax paid	-	2,00,000	2,00,000
Net tax payable	18,00,000	28,00,000	46,00,000

View 3*	CGST	SGST	Total
Tax payable on 3 CR	18,00,000	18,00,000	36,00,000
Less: Credit on tax paid	-	-	-
Net tax payable	18,00,000	18,00,000	36,00,000

*View 3 seems to be better view

Oct 15, 2017

CA Naresh Sheth

65

THANK YOU
naresh.sheth@nashah.com

Oct 15, 2017

CA Naresh Sheth

66