

Pimpri Chinchwad Branch of WIRC of ICAI

TAX MANTHAN - National Conference on Direct Taxes

- Subject** : Taxation of DA, JV and Real Estate sale agreements under VAT, Service-Tax and GST
- Day & Date** : Saturday, 8th June 2019
- Venue** : Ankushrao Landge Auditorium, Pune Nashik road,
Near Flyover Bridge, Bhosari, Pune 411039
- Presented by** : CA Naresh Sheth



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Scope of Presentation

- Presentation does not deal with Basic provisions of GST legislation
- Presentation deals with indirect tax implications of Joint Development and Redevelopment projects during:
 - Negative list based Service Tax regime (1st July 2012 to 30th June 2017)
 - Pre amended GST Regime (1st July 2017 to 31st March 2019)
 - Post amended GST Regime (1st April 2019 onwards)

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Amended scheme of GST for Real Estate sector w.e.f. 01.04.2019

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Amended Scheme of Taxation (in brief)

Projects

| | | | |
|--|---|--|---|
| Ongoing projects (Option exercised for old scheme) | | Ongoing projects (Option not exercised) or New Projects - Subject to specified conditions | |
| Residential Projects: - Affordable 8% - Non-Affordable 12% (With ITC) | Commercial Projects: 12% With ITC | Residential Projects: - Affordable 1% - Non-Affordable 5% (No ITC) | Commercial Projects: 12% With ITC |
| Mixed Projects(RREP): - Res. Affordable 8% - Res. Non-Affordable 12% - Commercial 12% (With ITC) | Mixed Projects(Rep): - Res. Affordable 8% - Res. Non-Affordable 12% - Commercial 12% (With ITC) | Mixed Projects(RREP): - Res. Affordable 1% - Res. Non-Affordable 5% - Commercial 5% (NO ITC) | Mixed Projects(Rep): - Res. Affordable 1% - Res. Non-Affordable 5% - Commercial 12% (Proportionate ITC) |

➤ **Sale of completed flats/ commercial units (Post OC) – Not liable to GST**

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Tax implications of Ongoing Projects opting for Old Scheme

| Particulars | Effective Tax Rate |
|--|--------------------|
| Sale of under-construction residential affordable house | 8% (with ITC) |
| Sale of under-construction residential units (other than affordable) | 12% (with ITC) |
| Sale of under-construction commercial units | 12% (with ITC) |
| Sale of Residential or Commercial units after Completion | Nil |

- Accumulated ITC as on 31st March, 2019 remains intact
- ITC for inputs, input services and capital goods procured on or after 1st April, 2019 can be availed
- Output tax liability can be discharged from ITC balance
- No stipulation as to procurement of 80% of input and input services from registered vendors
- No stipulation for payment under RCM on procurement of Cement and Capital Goods from unregistered vendors

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Tax implications of Ongoing Projects (not opting for old Scheme) and New Projects

| Particulars | Effective Tax Rate | Mode of payment |
|---|-------------------------|-----------------|
| Sale of under-construction residential affordable house (Including houses under Specified Schemes) | 1% (without ITC) | Cash |
| Sale of under-construction residential units (other than affordable) | 5% (without ITC) | Cash |
| Sale of under-construction commercial units (in RREP i.e. upto 15% of total carpet area) | 5% (without ITC) | Cash |
| Sale of under-construction commercial units (in REP) | 12% (proportionate ITC) | Cash / Credit |
| Sale of under-construction commercial units (in exclusive commercial complex) | 12% (with ITC) | Cash / Credit |
| Sale of completed flats / Units Post Completion | Nil | NA |

- **Builder not entitled to ITC in respect of services taxed at concessional rate**
- **Mandatory procurement to the extent of 80% from Registered Person for paying at concessional rate**

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Tax implications of Works Contract Service

| Particulars | Rate of Tax | |
|---|-------------------|-------------------|
| | Upto 31.03.19 | From 01.04.19 |
| Construction of commercial apartments | 18% (With ITC) | 18% (With ITC) |
| Construction of residential apartments (Other than Affordable) | 18% (With ITC) | 18% (With ITC) |
| Construction of residential affordable apartments under specified schemes | 12% (With ITC) | 12% (With ITC) |
| Construction of affordable houses in new projects commencing on or after 01.04.2019 | 12% (With ITC) | 12% (With ITC) |

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Transfer of DR/TDR/FSI for Construction of Residential apartments

| | |
|--|---|
| Taxability | <ul style="list-style-type: none"> • Transfer of DR/ TDR/ FSI used for sale of under construction residential units is exempt • Taxable to the extent of residential flats remaining unsold on the date of issuance of completion certificate or first occupation, whichever is earlier |
| Tax rate on transfer of DR/ TDR/ FSI pertaining to unsold flats on completion of project | <p>Lower of:</p> <ul style="list-style-type: none"> • 18% on Value of DR/TDR/FSI in proportion to carpet area of such unsold flats to total carpet area of residential flats; or • 1% / 5% of value of such unsold flats* <p>* 'Value of unsold flats' is deemed as equal to value of similar apartments charged by the promoter nearest to the date of completion certificate or first occupation, whichever is earlier</p> |

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Transfer of DR/TDR/FSI for Construction of Residential apartments

| | |
|---|--|
| Valuation of DR/TDR/FSI | <p>Area sharing: value of similar apartments charged by promoter from independent buyers nearest to the date of transfer of DR/TDR/FSI;</p> <p>Revenue sharing: monetary consideration paid to the Landowner as revenue share;</p> <p>Outright purchase: value of monetary consideration paid for outright purchase</p> |
| Time of Supply / Payment of Tax | <p>Earlier of:</p> <ul style="list-style-type: none"> • Issuance of Completion certificate; or • First occupation of project |
| Person liable to pay Tax | Promoter – Developer (to be paid under RCM) |
| Credit of tax paid under RCM by Developer | <p>New Scheme – ITC not eligible;</p> <p>Old Scheme – ITC eligible</p> |

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Transfer of DR/TDR/FSI for Construction of Commercial apartments

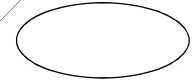
| | |
|-------------------------|--|
| Taxability | Taxable |
| Tax rate | 18% on Value of DR/TDR/FSI |
| Valuation of DR/TDR/FSI | <p>Area sharing: value of similar apartments charged by promoter from independent buyers nearest to the date of transfer of DR/TDR/FSI;</p> <p>Revenue sharing: monetary consideration paid to the Landowner as revenue share;</p> <p>Outright purchase: value of monetary consideration paid for outright purchase</p> |

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Transfer of DR/TDR/FSI for Construction of Commercial apartments



| | |
|---|--|
| Time of Supply / Time of payment of Tax | <p>Area Sharing: Earlier of:</p> <ul style="list-style-type: none"> • Issuance of Completion certificate; or • First occupation of project <p>Revenue Sharing:</p> <ul style="list-style-type: none"> • SRA Projects (continuous supply of service) → Periodical release of FSI; • JDA projects → Date of transfer of DR/FSI irrevocably <p>Outright purchase: Date of transfer of DR/TDR/FSI</p> |
| Person liable to pay Tax | Promoter – Developer (to be paid under RCM) |
| Credit of tax paid under RCM by Developer | <p>For RREP (with Commercial portion less than 15%) - ITC not eligible for developer opting New scheme. However, same is eligible for developer opting Old scheme;</p> <p>For REP – ITC attributable to Commercial portion can be claimed</p> <p>For Commercial projects - ITC is eligible</p> |

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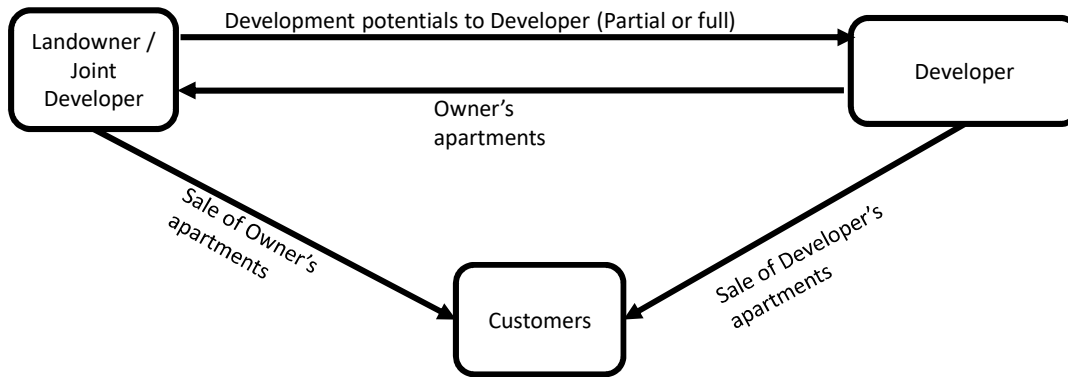
Joint Development Agreement (JDA)
– Area Sharing

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Joint Development (Area sharing)



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Tax Implications of JDA (Area sharing) 1st July 2012 to 30th June 2017 – Service Tax Regime

Landowner

Service tax on transfer of development rights

- Landowner transfers development rights to Developer
- Landowner receives consideration in form of constructed apartments (Owner's Area)
- Point of Taxation (**POT**) arises on irrevocable transfer of development rights
- Development rights, being rights in immovable property, is excluded from the definition of service as defined u/s 65B(44) of the Finance Act, 1994
- Transfer of development rights is not liable to service tax
- Department contends that transfer of development rights does not amount to transfer of title in immovable property and hence is a "service" liable to tax

VAT on development rights

- VAT not applicable as transaction is of immovable property

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Tax Implications of JDA (Area sharing) 1st July 2012 to 30th June 2017 – Service Tax Regime

Landowner

Service tax on sale of owners flat

- Landowner sells under construction apartments/ units to ultimate customer
- Landowner is liable to register for service tax
- Landowner is liable to discharge service tax liability on sale of under-construction apartments / units at applicable rate after claiming the land deduction
- Landowner is entitled to input tax credit of service tax levied by developer on construction of owners flat

VAT on sale of owners flat

- Landowner is also liable to register for VAT
- VAT payable at applicable rate

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Tax Implications of JDA (Area sharing) 1st July 2012 to 30th June 2017 – Service Tax Regime

Developer

Service Tax on owner's apartments

- apartments allotted to Landowner – It is service provided to landowner
- Point of Taxation (**POT**) arises on irrevocable transfer of development rights
- Usually development potential relating to owner's area is retained by landlord. If it is so, then developer provides "works contract" service to the landowner
- Said service is to be valued u/s 67(1)(ii) of Finance Act, 1994. The monetary value of development rights would be consideration for services provided
- Taxable value is 40% of consideration and to be taxed at applicable rate (6% on total consideration)
- Implications of recent decision of Hyderabad CESTAT in case of Vasantha Green Projects where it is held that service tax is not payable on owner's area

VAT

- Not payable on apartments allotted to landowner as it amounts to barter

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Tax Implications of JDA (Area sharing) 1st July 2012 to 30th June 2017 – Service Tax Regime

Developer

Service Tax on saleable apartments

- Service tax payable on sale of under construction apartments/units at applicable tax rate after claiming land rebate
- ITC available for Input services and capital goods for entire project
- ITC reversal on unsold apartments/ units as on date of completion:
 - Whether ITC to be reversed for entire project period?
 - Whether ITC to be reversed on the date of completion?
 - Whether ITC to be reversed on area basis?
 - Implications of Ahmadabad CESTAT decision in case of Alembic limited, Bangalore CESTAT decision in case of M/S. TPL Developers and Hyderabad CESTAT decision in case of Prajapati Developers

VAT

- Payable on saleable apartments under construction

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GST Implications of JDA (Area sharing) 1st July 2017 to 31st March 2019 – GST Regime (Old)

Landowner

GST on transfer of development rights

- Landowner transfers development rights to Developer
- Landowner receives consideration in form of constructed apartments (Owner's Area)
- Whether transfer of development rights is liable to GST?
 - Whether transfer of development rights is akin to sale of land and hence excluded from the scope of "supply"?
 - Whether transfer of development rights is in course of or furtherance of business?
- Implication of **Notification No. 4/2018-Central Tax (Rate)**, dated 25th January, 2018:
 - Notification applies to Area sharing and when both the parties are registered under GST
 - This notification defers liability to pay tax on development rights to the date when the builder/developer **transfers possession** or the **right** by entering into a **conveyance deed** or **similar instrument (for example allotment letter)**

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GST Implications of JDA (Area sharing) 1st July 2017 to 31st March 2019 - GST Regime (Old)

- If transfer of development right is liable to GST:
 - What is the time of supply?
 - What is the taxable value?
 - What is the HSN Code and applicable rate?
 - Whether developer will be entitled to ITC of GST charged by landowner?

GST on sale of owner's apartments by landowner

- Landowner is a joint promoter of the project under RERA
- Landowner is liable to GST on sale of under-construction apartments / units at 12% or 8% as applicable
- Landowner is entitled to input tax credit of GST levied by developer on construction of owners flat
 - At what point of time landowner is entitled to input tax credit of GST levied by developer?

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GST Implications of JDA (Area sharing) 1st July 2017 to 31st March 2019 - GST Regime (Old)

Developer

GST on owner's apartments

- apartments allotted to Landowner – It is service provided to landowner
- Point of Taxation (**POT**) arises on irrevocable transfer of development rights
- Usually development potential relating to owners area is retained by landlord. If it is so, then developer provides “works contract ” service to the landowner
- Said service is to be valued Rule 27 of CGST Rules 
- It is be taxed at 18% or 12% as applicable
- Implications of recent decision of Hyderabad CESTAT in case of Vasantha Green Projects where it was held that service tax is not payable on owner's area

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GST Implications of JDA (Area sharing) 1st July 2017 to 31st March 2019 - GST Regime (Old)

GST on saleable apartments/ units

- GST payable on sale of under construction apartments/units at 12% or 8% as applicable
- ITC available for inputs, input services (including development rights) and capital goods
- ITC reversal on unsold apartments/ units as per Rule 42 and 43:
 - ITC for tax period to be reversed (tax period should mean a financial year in which project is completed)
 - ITC not to be reversed on the date of completion
 - ITC to be reversed in proportion of value of exempted supplies (sale of completed apartments) to total supplies

Valuation – Consideration not wholly in money

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

Rule 27(a) - Open market value of Supply

Rule 27(b) - Open market value not available then

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

Rule 27(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 27(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 30 or Rule 31

Valuation - Consideration not wholly in money

Rule 30: 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 31: 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

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GST Implications of JDA (Area sharing) On or after 1st April 2019 - GST Regime (New)

Landowner

GST on transfer of development rights

- Landowner transfers development rights to Developer
- Landowner receives consideration in form of constructed apartments (Owner's Area)
- Time of supply arises on irrevocable transfer of development rights
- Transfer of development rights on or after 01.04.2019 is exempt where it is used for construction of:
 - residential apartments to be sold before issuance of completion certificate; and
 - Such apartments are liable to GST
- Development rights, TDR, FSI used for following will still be **liable to GST**:
 - Construction of commercial premises (to be paid by developer under RCM)
 - Construction of Residential Complex intended for sale after completion (to be paid by developer under RCM)
 - Construction of apartments remaining unsold on completion (to be paid by developer under RCM)

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GST Implications of JDA (Area sharing) On or after 1st April 2019 - GST Regime (New)

Rate of GST payable by developer under RCM on development rights relatable to:

| Apartments | Taxability |
|--|--|
| Construction of commercial apartments | Value of Development Rights shall be deemed to be value of similar commercial apartments charged by promoter from Independent buyer nearest to date of transfer of Development Rights or FSI. Tax rate will be 18% thereof - Clause iii of Notification No. 04/2019-CT(R) dated 29.03.2019 |
| Residential apartments remained unsold on completion | <ul style="list-style-type: none"> • Value of Development Rights shall be as per above • Value of unsold apartments shall be deemed to be value of similar apartments charged by promoter nearest to date of completion or first occupation; or • Tax payable will be lower of: <ul style="list-style-type: none"> • 18% of DR / TDR/ FSI value (as worked out above) attributable to unsold apartments; or • 5% or 1% of value of unsold apartments |

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GST Implications of JDA (Area sharing) On or after 1st April 2019 - GST Regime (New)

GST on sale of owner's apartments by landowner

- Landowner is liable to GST on sale of under-construction apartments / units at 5% or 1% or 12%
- Developer will charge GST @ 5% or 1% or 12% on apartments allotted to landowner
- Developer can pay GST on earlier of date of completion of project or first occupation
- Landowner is entitled to input tax credit of GST levied by developer on construction of owner's flat subject to cap of output tax payable on Residential apartments sold under construction
- If developer pays tax on completion of the project, landowner will not be in a position to avail or utilise ITC

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GST Implications of JDA (Area sharing) On or after 1st April 2019 - GST Regime (New)

Developer

GST on owner's apartments

- Construction of owner's apartments is a service by developer to landowner which is liable to GST
- Implications of recent decision of Hyderabad CESTAT in case of Vasantha Green Projects where it was held that service tax is not payable on owner's area
- Developer shall pay tax on owner's area at the time of completion certificate or first occupation, whichever is earlier
- GST to be paid on the value of total amount charged for similar apartments in the project to independent buyers nearest to the date of transfer of development rights
- Developer is liable to GST on sale of under-construction apartments / units at 5% or 1% or 12% subject to conditions mentioned in Notification 3/2019 – CT(R)
- If one follows notification:
 - Developer is liable to pay GST on market value of apartments allotted to owners (which also includes value of land)
 - Developer will not be entitled to ITC relatable to owner's area
- Whether explanation put in Rate Notification can change the nature of supply from "works contract" to "sale of under-construction flat" resulting into higher tax liability?

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GST Implications of JDA (Area sharing) On or after 1st April 2019 - GST Regime (New)

GST on saleable apartments/ units

- GST payable on sale of under construction apartments/units at 1% or 5% or 12% as applicable
- ITC **not available** for inputs and input services (including development rights) relatable to residential/ commercial units sold at concessional rate of 1% or 5%
- Proportionate ITC relatable to under construction commercial units to be taxed at 12% **is allowable**
- ITC reversal on unsold commercial units to be done as per Rule 42 and 43:
 - On area basis; and
 - For entire project period
- In case of **unsold apartments** as on the **date of completion**, Developer will be liable to pay tax under **RCM** (on such TDR, FSI, etc.) **in cash** at 18% on value of TDR/FSI/DR attributable to unsold flat subject to cap of:
 - 1% of value of affordable residential apartments remaining un-booked and
 - 5% of value of Non-affordable residential apartments remaining un-booked

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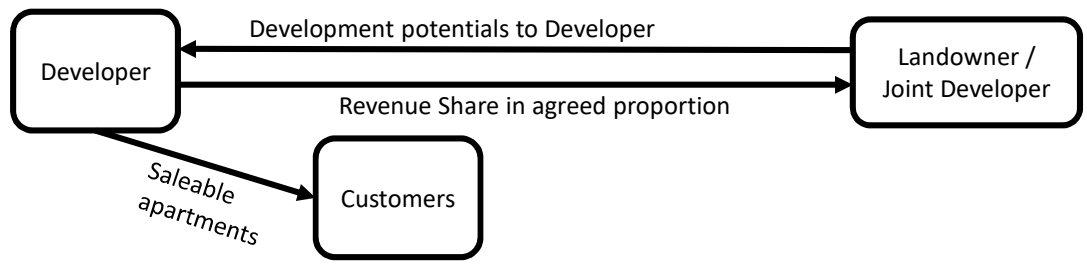
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Joint Development Agreement (JDA) – Revenue Sharing

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JDA -Revenue sharing



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graph LR
    Landowner[Landowner / Joint Developer] -- "Development potentials to Developer" --> Developer[Developer]
    Developer -- "Revenue Share in agreed proportion" --> Landowner
    Developer -- "Saleable apartments" --> Customers[Customers]
  
```

➤ Revenue Share could be on:

- **Top Line** (Sales proceeds/ Realization); or
- **Bottom Line** (Project Profit); or
- **Any other basis**

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Tax Implications of JDA (Revenue sharing) 1st July 2012 to 30th June 2017 – Service Tax Regime

Landowner

Service tax on transfer of development rights

- Landowner transfers development rights to Developer
- Point of Taxation (**POT**) arises on irrevocable transfer of development rights
- Landowner receives revenue share as deferred consideration for development rights
- Development rights, being rights in immovable property, is excluded from the definition of service as defined u/s 65B(44) of the Finance Act, 1994
- Transfer of development rights is not liable to service tax
- No service tax on receipt of revenue share by landowner even if some part of revenue share received in GST regime
- Department may contend that transfer of development rights does not amount to transfer of title in immovable property and hence is a “service” liable to tax.
- It may contend that time of supply falls in GST regime for Revenue share received during the period 1st July 2017 till 31st March 2019 and hence liable to GST

VAT on development rights

- VAT not applicable as transaction is of immovable property

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Tax Implications of JDA (Revenue sharing) 1st July 2012 to 30th June 2017 – Service Tax Regime

Landowner

Service tax on sale of under construction apartments / units to ultimate customers

- Revenue share received by landowner is consideration for transfer of development rights and not for sale of under construction apartments / units
- Developer is a service provider in respect of all apartments / units sold to ultimate customers
- Developer is obliged to discharge Service tax liability in respect of all apartments/ units
- Developer charges and collects service tax from ultimate customers and discharge service tax liability
- Landowner is not liable to service tax on his share of sale proceeds of under construction apartments even though he is a party to sale agreement as executor or consenting party

VAT on sale of under construction apartments / units to ultimate customers

- Landowner is not liable to VAT due to reasons stated aforesaid

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Tax Implications of JDA (Revenue sharing) 1st July 2012 to 30th June 2017 – Service Tax Regime

Developer

Service Tax on all apartments / units

- Service tax payable on sale of **all** under construction apartments/units at applicable tax rate after claiming land rebate
- ITC available for Input services and capital goods for entire project
- ITC reversal on unsold apartments/ units as on date of completion:
 - Whether ITC to be reversed for entire project period?
 - Whether ITC to be reversed on the date of completion?
 - Whether ITC to be reversed on area basis?
 - Implications of Ahmadabad CESTAT decision in case of Alembic limited, Bangalore CESTAT decision in case of M/S. TPL Developers and Hyderabad CESTAT decision in case of Prajapati Developers

VAT

- Payable on all apartments/ units under construction

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GST Implications of JDA (Revenue sharing) 1st July 2017 to 31st March 2019 – GST Regime (Old)

Landowner

GST on transfer of development rights

- Landowner transfers development rights to Developer
- Landowner receives consideration in form of revenue share
- Whether transfer of development rights is liable to GST?
 - Whether transfer of development rights is akin to sale of land and hence excluded from the scope of “supply”?
 - Whether transfer of development rights is in course of or furtherance of business?
- If transfer of development right is liable to GST:
 - What is the time of supply?
 - What is the taxable value?
 - What is the HSN Code and applicable rate?
 - Whether developer will be entitled to ITC of GST charged by landowner?

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GST Implications of JDA (Revenue sharing) 1st July 2017 to 31st March 2019 – GST Regime (Old)

Landowner

GST on sale of under construction apartments / units to ultimate customers

- Revenue share received by landowner is consideration for transfer of development rights and not for sale of under construction apartments / units
- Developer is a service provider in respect of all apartments / units sold to ultimate customers
- Developer is obliged to discharge GST in respect of all apartments/ units
- Developer charges and collects GST from ultimate customers and discharge GST liability
- Landowner is not liable to GST on his share of sale proceeds of under construction apartments even though he is a party to sale agreement as executor or consenting party

GST Implications of JDA (Revenue sharing) 1st July 2017 to 31st March 2019 – GST Regime (Old)

Developer

GST on apartments / units sold to ultimate customers

- GST payable on sale of **all** under construction apartments/units at 12% or 8% as applicable
- ITC available for Inputs, Input services (including Development Rights) and capital goods for entire project
- ITC reversal on unsold apartments/ units as per Rule 42 and 43:
 - ITC for tax period to be reversed (tax period should mean a financial year in which project is completed)
 - ITC not to be reversed on the date of completion
 - ITC to be reversed in proportion of value of exempted supplies (sale of completed apartments) to total supplies

GST Implications of JDA (Revenue sharing) On or after 1st April 2019 – GST Regime (New)

Landowner

GST on transfer of development rights

- Landowner transfers development rights to Developer
- Landowner receives consideration in form of revenue share
- Transfer of development rights on or after 01.04.2019 is exempt where it is used for construction of:
 - residential apartments to be sold before issuance of completion certificate; and
 - Such apartments are liable to GST
- Development rights, TDR, FSI used for following will still be **liable to GST**:
 - Construction of commercial premises (to be paid by developer under RCM)
 - Construction of Residential Complex intended for sale after completion (to be paid by developer under RCM)

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GST Implications of JDA (Revenue sharing) On or after 1st April 2019– GST Regime (New)

Developer

GST on apartments / units sold to ultimate customers

- GST payable on sale of **all** under construction apartments/units at 5% or 1% or 12% as applicable
- ITC **not available** for inputs and input services (including development rights) relating to residential/commercial units sold at concessional rate of 1% or 5%
- Proportionate ITC relating to under construction commercial units to be taxed at 12% **is allowable**
- ITC reversal on unsold commercial units to be done as per Rule 42 and 43:
 - On area basis; and
 - For entire project period

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GST Implications of JDA (Revenue sharing) On or after 1st April 2019– GST Regime (New)

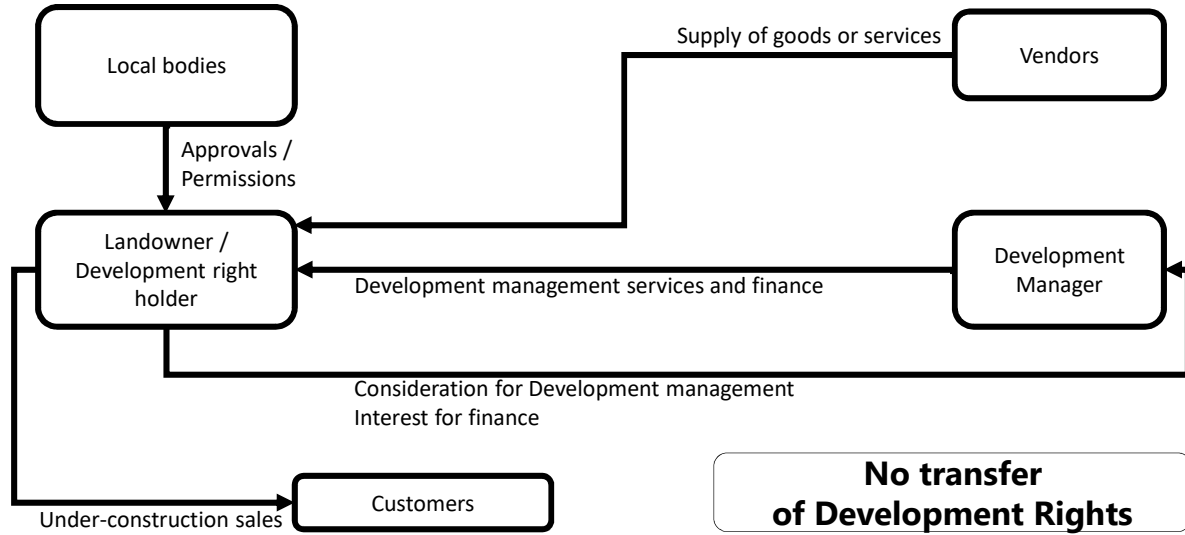
Rate of GST payable by developer under RCM on development rights relatable to:

| Apartments | Taxability |
|--|--|
| Construction of commercial apartments | GST at 18% will be payable under RCM on actual revenue share paid to landowner (How to determine this on the date of transfer of Development Rights?) |
| Residential apartments remained unsold on completion | <ul style="list-style-type: none"> • Value of Development Rights shall be as per above • Value of unsold apartments shall be deemed to be value of similar apartments charged by promoter nearest to date of completion or first occupation; or • Tax payable will be lower of: <ul style="list-style-type: none"> • 18% of DR / TDR/ FSI value (as worked out above) attributable to unsold apartments; or • 5% or 1% of value of unsold apartments |



Development Management Contract (DMC)

GST Implications of DMC

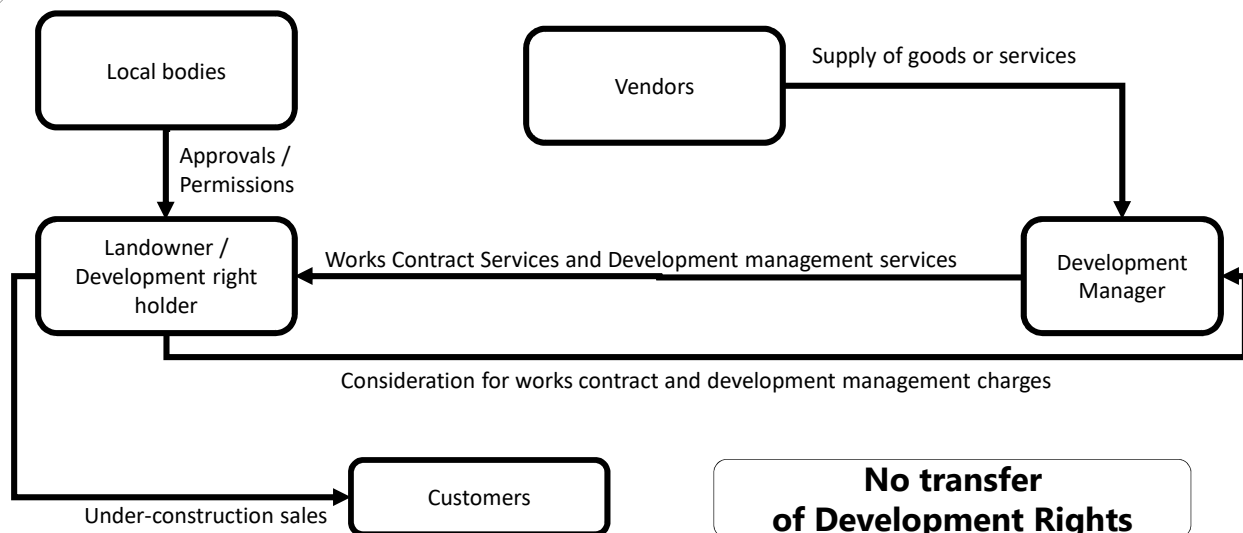


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GST Implications of DMC (Comprehensive)



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GST Implications of DMC On or before 31st March 2019

Landowner (acts as Builder / Developer)

- No stamp duty in absence of transfer of development rights
- GST on sale of under construction apartments / units:
 - GST payable on sale of **all** under construction apartments/units at 12% or 8% as applicable
 - ITC available for Inputs, Input services (including Development management charges) and capital goods for entire project
 - ITC reversal on unsold apartments/ units as per Rule 42 and 43:
 - ITC for tax period to be reversed (tax period should mean a financial year in which project is completed)
 - ITC not to be reversed on the date of completion
 - ITC to be reversed in proportion of value of exempted supplies (sale of completed apartments) to total supplies
- Above implications will remain same for Comprehensive Development Management Contract

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GST Implications of DMC On or before 31st March 2019

Development Manager (Developer acts as Development Manager)

- Developer may not be comfortable as he will not have title or rights in project land
- Developer supplies development management services to the landowner and also finance
- Interest on finance is not liable to GST
- Development management charges (whether as % of gross or net revenue or lump sum charges) is liable to GST@18%
- In case of a Comprehensive Development Management Contract:
 - Works contract service is liable to tax @ 18% or 12%, as applicable
 - Development management charges is liable to tax @18%
 - Development manager is entitled to ITC of all goods and services procured for providing works contract services.
- Landowner is entitled to ITC of tax charged by Development Manager

June 08, 2019

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GST Implications of DMC On or after 1st April 2019

Landowner cum Developer

GST on all apartments / units

- GST payable on sale of **all** under construction apartments/units at 5% or 1% or 12% as applicable
- ITC **not available** for inputs, input services (including development management charges) and capital goods relating to residential/ commercial units sold at concessional rate of 1% or 5%
- Proportionate ITC relating to commercial units sold under-construction at 12% will be allowable
- ITC reversal on unsold commercial units to be done as per Rule 42 and 43:
 - On area basis; and
 - For entire project period
- In case of Comprehensive Development Management Contract, there would be GST savings in respect of procurement from unregistered supplier as such supply is procured by Development Manager

GST Implications of DMC On or after 1st April 2019

Development Manager

- Developer may not be comfortable as he will not have title or rights in land to be developed
- Supplying development management services to the landowner and also finance
- Interest charged on finance is not liable to GST
- Development management charges (whether as % of gross or net revenue or lump sum charges) will be liable to GST@18%
- In case of a Comprehensive Development Management Contract:
 - Works contract service will be liable to tax @ 18% or 12%, as applicable
 - Development management charges will be liable to tax @18%
 - Development manager will be entitled to ITC of all goods and services procured for providing works contract services
 - RCM will not be payable on procurement of supply from unregistered person
- Landowner **will not be entitled** to ITC

Words of Caution

- Views expressed are personal views of faculty based on his interpretation of law
- Presentation needs to be revised and revisited on future amendments in GST Law
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Any Questions ?

THANK YOU

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