

**GOODS**

**AND**

**SERVICES**

**TAX**

# **GST** **UPDATES**

Impact of GST in the Real Estate Sector  
and Construction Service

## IMPACT OF GST IN THE REAL ESTATE SECTOR AND CONSTRUCTION SERVICES

One of the most well-known industries in the world is the Real Estate. Currently, it contributes to 6% of India's GDP. Real estate consists of four sub-sectors: housing, retail, hospitality, and business. Prior to the introduction of the current tax regime, various taxes like VAT, Stamp duty, and registration charges were paid by buyers. Moreover, other duties were paid like state sales tax, custom duty, OCTROI, etc., on which credits were not available.

### **GST provisions on Sale/renting of land and building:**

**Section 7(2) (a) of the CGST Act, 2017** specifies that activities or transactions specified in **Para 5 of Schedule III** relating to the Sale of Land and building (except when sold before completion certificate) will neither be treated **as goods or services**, thereby, making both the above scenarios outside from the GST ambit.

As per Schedule II of CGST Act 2017, Construction (including additions, alterations, replacements or remodelling of any existing civil structure) 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 is **Supply of Service**.

Accordingly, construction of a complex, building, civil structure intended for sale to a buyer is considered **a service and liable for GST** – if any consideration is received before issuance of completion certificate. However, GST is not applicable if the whole of the consideration for a property is paid after issuance of completion certificate by a competent authority or after its first occupancy, whichever is earlier. In many places, there is a delay in issuing a completion certificate, in such cases building is said to be completed when the first occupation is done. Moreover, **FAQ (Part 1) No. 29** issued by CBIC treats first occupation as equivalent to Certificate of Completion (COC). However, if any one or more units are sold before obtaining the COC, the sale of such units will be subject to GST.

### Valuation

While calculating the value of supply, in case of sale of under-construction property, 1/3rd of total amount charged for transfer is deducted, to arrive at the taxable value of supply. Accordingly, value of taxable supply shall be 2/3rd of total value of supply. 1/3rd of the total amount is deemed as value of land or undivided share of land supplied to the buyer and is not taxable under GST.

Currently, tax rate of 18 percent is applied on 2/3<sup>rd</sup> of the total sale price of the building making effective rate of tax at 12 percent. Even if the structure is constructed on leased land, the said 1/3rd abatement is available.

In the event of rental income, there is no GST on residential property rentals whereas in case of letting out of commercial properties, GST shall be applicable at the rate of 18 percent. Further, GST liability shall arise only when the annual rental value exceeds INR 20 lakhs.

In the case of Construction services, if a separate contract is taken for material and labour then the contract for material is subject to GST but a pure labour contract is **exempt vide N/N 12/2017 CT(R) Entry number 10 and 11**. Also, if a single price contract is taken for material and labour in the construction of a building, the contract shall be considered as a supply of services and is referred to as a works contract under Section 2(119).

### Works Contract Services:

The Works Contracts has been defined in **Section 2(119) of the CGST Act, 2017** as “**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.”

**As per Para 6 (a) of Schedule II to the CGST Act, 2017**, works contracts as defined in section 2(119) of the CGST Act, 2017 shall be treated as a supply of services. Thus, there is a clear demarcation of a works contract as a supply of service under GST.

It also includes transactions by the applicant or the developer on behalf of the applicant who sold the applicant's share of units/flats before issuance of the completion certificate. The time of supply of such contract would be the time at which the constructed flats are handed over by the developer to the applicant.

As per section 17(5) (c) of the CGST Act, 2017, the input tax credit shall not be available in respect of the 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.

Thus, ITC for works contract can be availed only by people who are in the same line of business and are using such services received for further supply of works contract service. For example, a building developer may engage the services of a sub-contractor for a certain portion of the whole work. The sub-contractor will charge GST in the tax invoice raised on the main contractor. The main contractor will be entitled to take ITC on the tax invoice raised by his sub-contractor as his output is works contract service. However, if the main contractor provides works contract service (other than for plant and machinery) to a company say in the IT business, the ITC of GST paid on the invoice raised by the works contractor will not be available to the IT Company.

### Conclusion

Thus, in the light of the above, it can be concluded that the Government has tried to lighten the burden of taxation on the final consumer in case of real estate sector by keeping the majority portion of the transactions of the said sector under the shadow of exemption provided by it.

### *Disclaimer:-*

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