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GST UPDATES

SALE OF COMMERCIAL APARTMENTS: A DETAILED LEGAL AND TAX GUIDE

This article will break down the Joint Development Agreement (JDA) between a landowner and a promoter, specifically focusing on the tax implications in both Area Sharing and Revenue Sharing agreements.

What is a JDA?

A JDA is a contract between a landowner and a promoter where the landowner provides land for development, and the promoter develops the land at their own cost, sharing the project's benefits with the landowner upon completion.

Types of JDAs:

- Area Sharing: The landowner receives a pre-determined share of the developed area (apartments, shops, etc.) as their compensation.
- Revenue Sharing: The landowner receives a pre-determined share of the revenue generated from the sale of the developed property.

Tax Implications:

Under both Area and Revenue Sharing:

- **Promoter's Liability:**
  - Reverse Charge Mechanism (RCM): In case of commercial units the promoter is liable to pay Goods and Services Tax (GST) on the transfer of development rights (TDR) from the landowner under RCM, irrespective of booking dates. The current GST rate on TDR is 18%.

- **Valuation of TDR:**
  - Area Sharing: TDR value is equal to the value of similar commercial apartments charged by the promoter from independent buyers at the time of TDR transfer.
  - Revenue Sharing: Value of TDR is the total anticipated revenue share of the landowner from the final sale of commercial apartments.

- **Landowner's Liability:**
  - Construction Services: The landowner is liable to pay GST on the construction services received from the promoter.

- **Valuation of Construction Services:**
  - Area Sharing: The value is the total amount charged for similar commercial apartments in the project from independent buyers, less the value of transferred land.
  - Revenue Sharing: Currently, the law doesn't specify the value, but it could potentially be based on the actual cost.

Tax Illustrations:

Area Sharing Agreement:

- Total commercial units: 20
- Un-booked commercial units before completion certificate (CC): 5
- Unit price: INR 20 lakhs
- Landowner's share: 5 units

GST on TDR: (5 units * INR 20 lakhs/unit) * 18% = INR 18 lakhs

Revenue Sharing Agreement:

- Landowner's revenue share: INR 1 crore
- Total commercial units: 100
- Unsold commercial units till CC: 10

GST on TDR to be paid under RCM: INR 1 crore * 18% = INR 18 lakhs

Conclusion:

Understanding the tax implications of both Area and Revenue Sharing agreements under a JDA is crucial for both landowners and promoters. This detailed breakdown provides essential information to navigate the complexities of this type of agreement and ensure tax compliance.

DISCLAIMER:

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