

Western India Regional Council of ICAI

Topic : GST implications of Real Estate

Date & Day : 22nd April 2017

Venue : ICAI Tower, Plot No C-40, G Block,
Bandra Kurla Complex, Bandra East,
Mumbai 400051

Presented by : CA Naresh Sheth

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Preamble

- Centre has enacted CGST Act, IGST Act, UTGST Act on **12/04/2017**
- GST is all set to roll out by 1st July, 2017
- Presentation does not deal with basic provisions of GST
- Purpose of this presentation is to:
 - highlight the issues and challenges arising in GST for real estate sector
 - apprise participants of difference in present indirect tax structure and proposed GST structure
 - enable participants to understand GST implications on real estate sector
- Real Estate Sector has less than 3 months to prepare for this game changing indirect tax reforms

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Pre-GST Indirect tax incidence for real estate

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Builders / Developers - Tax incidences on Sale

Transaction	Tax/ Duty rates	Remark
Under-construction sale of flats/ units	Service tax @ 4.5%	<ul style="list-style-type: none"> Cenvat credit on input services and capital goods allowed No cenvat on inputs
Rehab flats and constructed area in Joint Development	Service tax @ 4.5% or 6% depending on facts of the case	<ul style="list-style-type: none"> Cenvat credit on input services and capital goods allowed No cenvat on inputs
Sale of flats in Maharashtra	Vat @ 1% on agreement/ stamp duty valuation payable on registration	ITC set off not allowed
Rehab flats and constructed area in Joint Development	No VAT – as there is no cash consideration	ITC set off not allowed
Sale of materials	Vat at applicable rates	ITC set off allowed
Other services income	Service tax @ 15%	Cenvat credit allowed

Input material - Tax Incidence on purchase of Inputs

Materials	Pre-GST	Remark
Cement	Excise Duty @12.5% MVAT @ 13.5%	<ul style="list-style-type: none"> No Cenvat credit available VAT ITC available subject to retention
CTC / TMT bars	Excise Duty @12.5% MVAT @ 13.5%	<ul style="list-style-type: none"> No Cenvat credit available VAT ITC available subject to retention
Read Mix Concrete purchased	Excise Duty @12.5% MVAT @ 13.5%	<ul style="list-style-type: none"> No Cenvat credit available VAT ITC available subject to retention
Ready Mix Concrete made at site	Excise Duty - Nil	Not applicable
Entry tax/ Octroi/LBT on material purchases (wherever applicable)	At applicable rates	Cost to company

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Builders / Developers - Tax incidences on Imports and Capital goods

Transaction	Tax/ Duty rates	Remark
Import of Materials	Basic Customs Duty } CVD } SAD } At applicable rate	Cost to company
Purchase of Capital Goods	Excise Duty } VAT } At applicable rate	<ul style="list-style-type: none"> Cenvat of Excise Duty available VAT is cost to company
Import of Capital Goods	Basic Customs Duty } CVD } SAD } At applicable rate	<ul style="list-style-type: none"> Cenvat of CVD allowed Basic Customs Duty and SAD is cost to company
Entry tax/ Octroi/LBT on material purchases (wherever applicable)	At applicable rates	Cost to company

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Builders / Developers – Other Tax incidences

Transaction	Tax/ Duty rates	Remark
Purchase of land / building where conveyance is done	Stamp duty @ 5% on agreement/ market value of property in Maharashtra	Cost to company
Development rights	Stamp duty @ 5% on agreement/ market value of property in Maharashtra	Cost to company
Lease hold rights	Stamp duty @ 5% on agreement/ market value of property in Maharashtra	Cost to company
Property tax	At applicable rates	Cost to company

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Contractors - Tax incidences (Procurement)

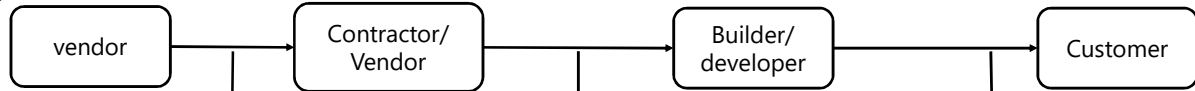
Transaction	Tax/ Duty rates	Remark
Works contract (new construction)	<ul style="list-style-type: none"> VAT @ 5% in composition scheme in Maharashtra Service tax @ 6% of contract value 	<ul style="list-style-type: none"> ITC allowed subject to retention of 4% of value to contractor Cenvat credit on input services and capital goods allowed. No cenvat on inputs
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

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Pre GST- Taxability and tax credit of construction/ WCT activity



Supply	Tax	Tax Credit to Contractor
Material	VAT	Yes, as per applicable law
Hire of machinery	Service tax or VAT	
Other Services	Service tax	
Purchase of machinery	VAT/ Excise/ Customs	

Supply	Tax	Tax credit to Builder
Works contract	VAT & Service tax	<ul style="list-style-type: none"> VAT not allowed Service tax allowed
Goods	VAT/ Excise	Not allowed
Services	Service tax	Allowed

Supply	Tax	Tax Credit
Sale of Flats/ Units before OC/ CC	<ul style="list-style-type: none"> Stamp duty Service tax VAT 	Not allowed

Total tax incidence today on customer : 10.5% of transaction + registration charges

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Post GST- major impact areas for Real Estate Sector

Tax incidence on input cost - Pre and Post GST

➤ Materials:

Tax component	Pre-GST		Post- GST
Excise	12.5%	12.5%	18%**
VAT	13.5%	6%	
Octroi/ LBT	5.5%	5.5%	
TOTAL	29%*	21.5%*	
Effective rate	34.71%	25.81%	

* In case of imported material, basic custom duty incidence to be considered

** Presumed Rate. It could be 12% for some items

➤ Services:

Tax component	Pre-GST	Post GST
Service tax (general)	15%	18%
Works Contract	6% (S.T) + 5% (VAT)	18%



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

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
- 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

Sale of under construction flats / units

- Schedule II(5)(b) deems sale of under construction property as "Supply of services"
- Abatement is not prescribed till date for sale of under construction property
- Flat value always includes the land value and hence there are all chances of providing exemption / abatement to that extent
- **If no abatement is prescribed in GST law**, sale of under construction flats may be liable to GST at full rate i.e. may be at 12% or 18% as against present effective rate of 5.5% (4.5% Service tax + 1% VAT)

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?

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Sale of under-construction flats- Point of Taxation

Present position:

Service tax:

- Usually progress payments from buyers are due on completion of slabs
- Builder's liability to pay service tax is linked to the date on which instalment is due from flat/ unit buyers
- Point of taxation in such case is as under:
 - When invoice/ demand letter is made **within 30 days** from completion of slabs -**Date of invoice**
 - When invoice/ demand letter is **not** made within 30 days from completion of slabs -**Date of completion of slab**
 - When consideration is received in advance before due date – **Date of such advance**

VAT:

- Payable upfront at the time of registration of agreement
- Payable on higher of value of the agreement or stamp duty value

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Sale of under-construction flats- Time of supply

GST regime:

- Construction service is a continuous supply of service under GST
- Time of Supply in such case is as under [Section 13(2) r.w. section 31(5) of the CGST Act]:
 - When invoice/ demand letter is made on or before from completion of slabs -**Date of invoice**
 - When invoice/ demand letter is **not** made on or before from completion of slabs -**Date of completion of slab**
 - When consideration is received in advance before due date – **Date of such advance**
- Builder is losing window of 30 days for payment of tax as available in present regime

Points for consideration:

- Whether Builder will be liable to pay GST when customer pays before the due date as per the contract?
- Whether loan received with the option to buy flats/ units at a later date will be liable to GST at the point of receipt of such loan or advance?

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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 (assuming same rate)

Date	GST (in lakhs)
01.10.2017	1.10 (on 20L)
15.11.2017	2.75 (on 50L)
12.12.2017	NIL

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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

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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
- This resolves present issue whether service 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

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Sale of Completed flats – Reversal of ITC

- It has to be reversed as per formula = **A / B X C**

Where:

A	Means aggregate stamp duty value of completed flats sold
B	Means Total turnover (exempt + taxable) of builder / developer
C	Means Common input tax credit*

- * Common input tax credit on **input and services** is to be computed as under:

	Total input tax credit availed
Less:	ITC attributable for purposes other than business
Less:	ITC attributable to making exempt supplies
Less:	ITC disallowed u/s 17(5)
Less:	ITC attributable to taxable supplies
	Common input tax credit on inputs and input services

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Sale of material by Builder to the contractor

➤ **Present regime:**

- It amounts to trading of goods
- Builder pays VAT at applicable rate after claiming eligible set off
- Builder to reverse the proportionate cenvat pertaining to such trading activities

➤ **GST regime:**

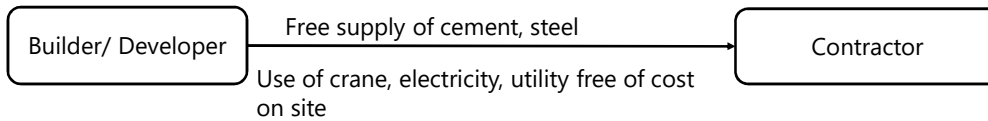
- It would a taxable supply liable to GST
- Builder would be entitled to Input tax credit of GST paid to vendors
- No reversal of ITC would be required

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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

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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
- Clause 1 of Schedule 1 to the CGST Act deems permanent transfer of business assets (where ITC has been availed) without consideration as a taxable supply. Whether definition of supply u/s 7 and Clause 1 of this schedule are contradictory?

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Taxability of other transactions

Particulars	Service tax	GST
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"> Liabe Issue will remain whether it is includible in value of the flat and taxed accordingly?
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"

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Taxability of other transactions

Particulars	Service tax	GST
Electricity/ water meter deposit	<ul style="list-style-type: none"> If collected as pass-through entity : not liable If extra amount charged separately : liable to service tax as naturally bundled services 	<ul style="list-style-type: none"> If collected as pass-through entity : not liable If extra amount charged : liable to GST
Preferential location charges	<p><u>2 views:</u></p> <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
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

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Taxability 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

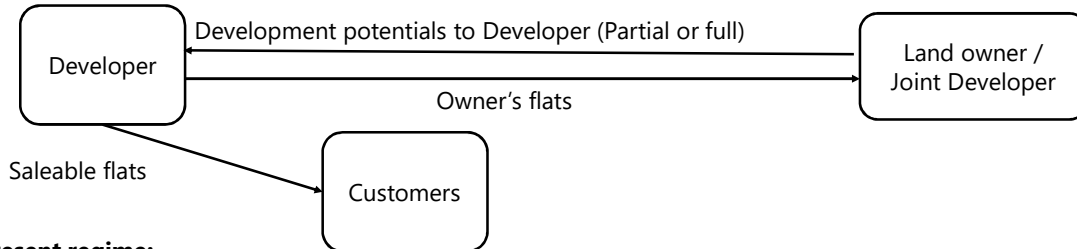
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Joint Development (Area sharing) - Pre GST Regime

- **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

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Joint Development (Area sharing) - Post GST

➤ 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
- Hence, valuation will be open market value of such flats as per Valuation Rules

➤ Taxability of saleable flats:

- Taxable on transaction value

➤ Taxability of development rights in the hands of owner:

- Refer slide no. 11 and 12

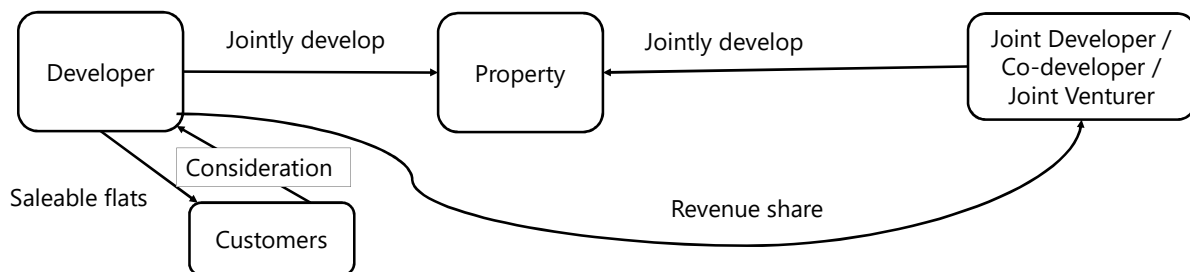
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Joint Development (Revenue sharing) - Pre GST

➤ Two developers come together to develop a property on revenue sharing basis



Present regime:

➤ Service tax:

- Flats / units under construction sold to customers – leviable to service tax
- Share of revenue – not liable to service tax [recent decision of Mumbai Tribunal in case of Mormugao Port Trust 2016 – TIOL – 2843 – CESTAT – MUM]

➤ VAT:

- payable on saleable flats under construction

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Joint Development (revenue share) - Post GST

➤ Taxability of revenue share in the hands of owner:

- Issue may be checked up whether there is a supply of goods / service between two joint developers?
- Revenue share to owner / developer is a consideration in lieu of development potentials received from owner / developer
- If transfer of development potentials are considered to be "supply" then revenue share will be liable to GST
- If transfer of development rights are not considered to be "supply" then revenue share will not liable to GST

➤ Taxability of saleable flats in the hands of developer:

- Taxable on transaction value

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SEZ developers – Tax implications

- Supply to SEZ unit or SEZ developer are **zero rated supply** u/s 16(1) of IGST Act
- Supplier will have 2 options u/s 16(3) of IGST Act:
 - Supply goods or services or both without payment of GST and claim refund of unutilised Input tax credit; or
 - Supply goods or services on payment of GST (in cash or from ITC balance) and claim refund of GST paid on such supplies
- Output supply by SEZ developers will be Nil rated as they will be providing services to SEZ units
- Input supply to SEZ developers will also be Nil rated

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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

ITC of the retention payments

- Retention amount is the money retained by the Developer/ Builder as a safeguard against the defects which may subsequently develop which the contractor may fail to rectify
- As per the current practice, contractor will account for the entire amount (including retention payments) in his books of account
- GST will have to be paid on the entire amount (including retention payments) as the services pertaining to the invoice raised are completed
- 2nd proviso to Section 16(2) of CGST Act stipulates payment of value of supply and tax thereon within 180 days from the date of issue of invoice. If not paid, ITC availed would be added to output tax liability along with interest.
 - Whether payment made net of retention will jeopardize ITC claim?

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?

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Renting
- Malls
- Commercial
premises

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Renting of immovable property

- Renting of immovable property is considered as "supply of services" taxable at 18%
- Reimbursement of:
 - Municipal taxes;
 - Water;
 - Electricity charges

will be included in the value of renting services
- Till date no exemption is provided in respect of renting of residential property
- 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

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Road
 Airport
 Ports
 Railways
 Transport terminals

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Present Indirect Tax Incidence – Output tax

Construction of:	VAT rate	Service tax
Civil structure or other original works for the Government, local authority or governmental authority	Composition scheme: 5%* Normal scheme: 70% of (6% / 13.5%)* - ITC Credit subject to State VAT laws	Contracts entered prior to 01.03.2015 are exempt till 31.03.2020 Contracts entered on or after 01.03.2015 are taxable w.e.f. 01.04.2015 : 6% (40% of 15%) - Subject to Cenvat credit of input services and capital goods
Port and Airport	Same as above	Same as above

* Subject to specific exemption, if any, granted by State government

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Present Indirect Tax Incidence – Output tax

Construction of:	VAT rate	Service tax
<ul style="list-style-type: none"> • Railways • Roads • Bridge • Tunnel • Transport Terminal 	Same as above	Exempt
Monorail and metro	Same as above	Contracts entered prior to 01.03.2016 are exempt Contracts entered on or after 01.03.2016 are taxable - Subject to Cenvat credit of input services and capital goods

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GST Scenario – Output Tax

- Section 2(119) of CGST Act defines term 'works contract' to mean a contract for:

building	construction	fabrication	completion	erection	installation	fitting out
improvement	modification	repair	maintenance	renovation	alteration	commissioning

of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in execution of such contract

- All infrastructure projects are usually on turnkey basis will be a works contract
- Works contract is deemed to be service [Schedule II(6)(a)]
- No exemption / abatement is yet prescribed for such infrastructure projects
- If exemption is not prescribed for infrastructure projects then it may be taxable at 12% or 18%
- Concessionaires operating on BOT basis will also be liable to GST as consideration in kind is also taxable

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Transitional issues

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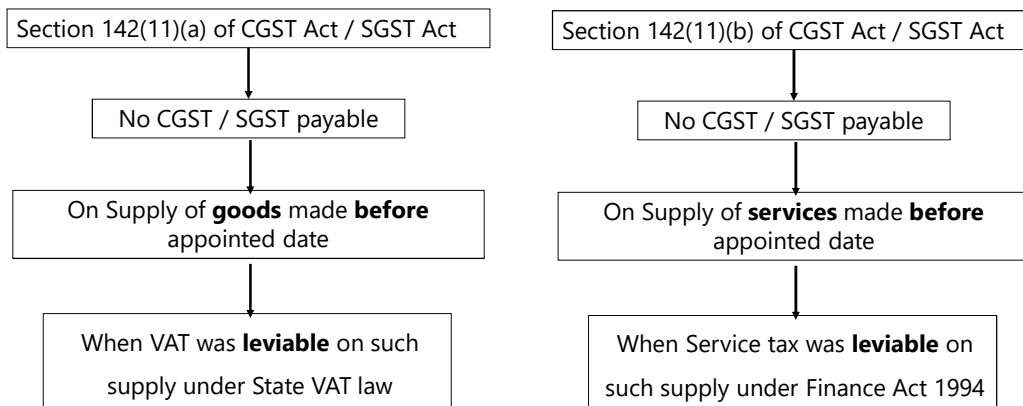
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Ongoing contracts – Taxability [section 142(10) of CGST Act]

- Contract entered prior to appointed day:
 - Goods or services or both supplied pursuant to such contract **after appointed day**
 - Such supply shall be liable to tax under CGST / SGST Act

Supply made before appointed day



VAT fully paid on registration of flat 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 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

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

- No transitional provision for adjustment of tax refunded to customer on cancellation
- Builder can go for refund claim u/s 142(5) in respect of service tax refunded to customers on cancellation of flat post GST

Unutilised input tax credit under earlier law u/s 140(1)

- **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,
 - it is admissible credit under GST
 - Said goods are not exempted under GST
- **Form GST TRAN-1** specifying the amount of tax/duty eligible as ITC in GST regime to be submitted within **60 days of appointed day**

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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

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Credit in respect of inputs or input services during transit [Section 140(5)]

Registered taxable person entitled to take input credit of



Excise duty, other eligible duty, Service tax, VAT, Entry tax **paid before appointed day**



On input and input services received **on or after appointed day**

➤ 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

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Persons eligible for credit in respect of inputs held in stock [section 140(3)]

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 eligible duties/taxes* 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

*Eligible duties / taxes include:

Excise duty	Countervailing duty	Special Additional Duty
VAT	Entry Tax	Purchase tax

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Persons eligible for credit in respect of inputs held in stock - Conditions

- 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

- Where a registered taxable person, **other than a manufacturer or supplier of service**
- Does not possess invoice / any document evidencing payment of duty in respect of inputs
- He shall be allowed to take credit @ 40% of CGST/SGST/UTGST applicable on supply of such goods after appointed day and only after payment GST on such supply
 - Above scheme available for 6 tax periods (months) from appointed day

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Compliances

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Registration – Projects in different states

- Supplier is liable to be registered in the state from where he makes a taxable supply
- A builder / developer having projects in different states, what will be right course of action?
 - Register in a state where it has head / corporate office and treat sale in projects of other states as inter-state supply
 - Register as normal supplier in each state where it has a project
 - Register as casual taxable person in other state where it has project

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Returns

Section	Type of Return	Form	Period for filing Return
37	Outward supplies	GSTR -1	10th of next month
38	Inward supplies	GSTR-2	15th of next month
39(1)	Consolidated return	GSTR-3	20th of next month
39(2)	Composition supplies	GSTR-4	18th of next month following end of quarter
39(4)	Input Service Distributor (ISD)	GSTR-6	13th of next month
39(3)	Person paying TDS	GSTR-7	10th of next month

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Returns

Section	Type of Return	Form	Period for filing Return
44	Annual Return	GSTR-9	31st December following Financial Year
45	Final Return	GSTR-10	3 months from date of cancellation or order of cancellation whichever is later

- Assessee (of reasonable size) having ISD facility will have to file 61 returns in a year
- If assessee has branches in all 29 states from which goods are supplied or services are provided, there would be 49 returns per branch, 12 ISD returns i.e. 1433 returns only

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Tax Deducted At Source

Person liable to deduct tax at source	<ul style="list-style-type: none"> • Central or State Government • Local authority • Governmental agencies • Such category of persons as notified
Threshold Limit for deduction	Contract value exceeding Rs. 2,50,000
Time of deduction	Earlier of date of payment or credit to supplier
Rate of deduction	1%
Due date of payment	10 th of subsequent month in which deduction is made
Due date to issue certificate	Within 5 days of crediting the amount to the appropriate Government
Late fees for failure to issue certificate	Rs.100 for every day of delay subject to maximum penalty of Rs.5,000
Due date for filing TDS return	10 th of subsequent month in which deduction is made
Excess or erroneous deduction by deductor	If credited to deductee's account – No refund If not credited to deductee's account – Refund to be granted to deductor

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TDS applicability - Issues

- Whether TDS applies on following:
 - Acquisition of development right
 - One time Lease premium paid for long term lease
 - Redevelopment potential acquired from society
 - Development potential acquired from developer / landowner
 - TDR from open market
 - Sales proceed received from customer

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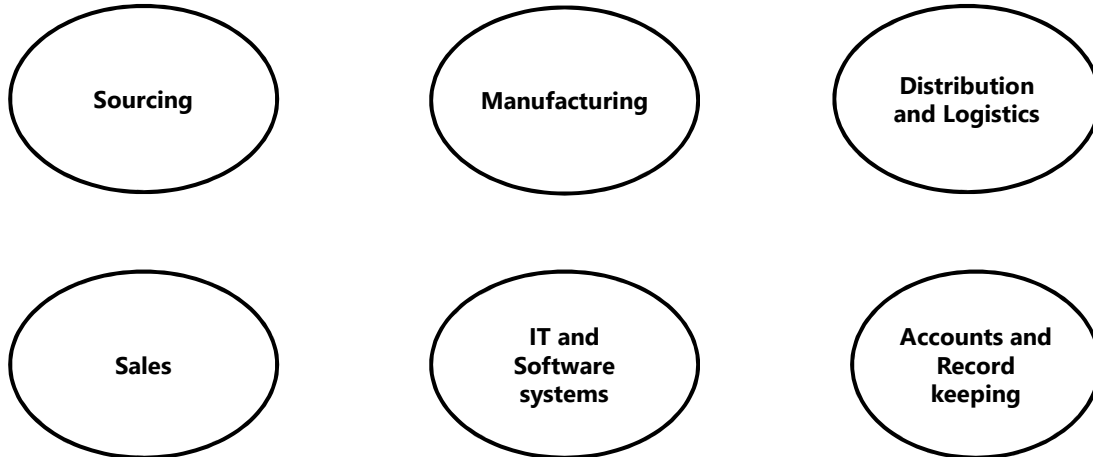
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GST impact on Business Drivers



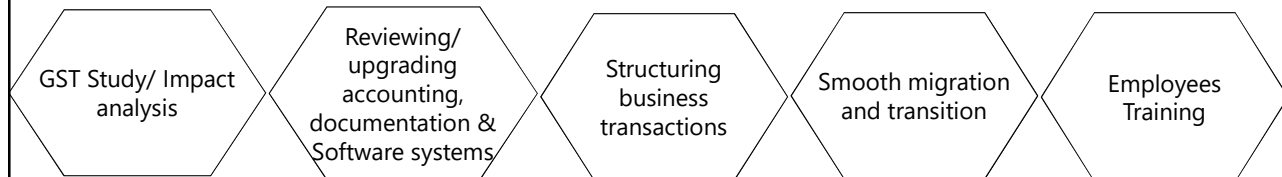
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GST – Way forward for business entity

Pre-GST Implementation



Post-GST Implementation



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Words of Caution

- Views expressed are the personal views of faculty based on his interpretation of GST Act.
- This educational meeting is arranged with a clear understanding that neither the Faculties nor WIRC will be responsible for any error, omission, commission and result of any action taken by a member or anyone on the basis of this presentation.

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THANK YOU

naresh.sheth@nashah.com

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