



## Overview of GST in Real Estate Sector

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### I. Overview

The real estate sector is one of the major and fast developing sectors of a country's economy. With modernization and westernization having an impact in the people's mind, the lifestyle and priorities of people over the years have changed the approach of doing things. This shift of focus has significantly contributed to the connotation of urbanization which has subsequently assisted in the growth of real estate sector. Further, rising income level and large population base have also given a major boost to this sector.

Having said that, the real estate sector is one of the sectors which is heavily driven and effected by the government policy. This is because the growth in this sector has a direct connection to the growth of the country's economy. The Indian real estate sector contributes approximately 9% to the country's total GDP. The Indian diaspora has seen several changes in the real estate sector made by the government in the recent times in order to contribute to ensure smooth regulation, growth and consumer protection vis-à-vis Real Estate (Regulation and Development) Act, 2016, Goods and Services Act, 2017.

In this article, I will be discussing the present scenario of indirect tax regime which is undergoing a transition on introduction of Goods and Services Tax Act, 2017 ('GST') in the real estate sector.

### II. Understanding Real Estate

Real estate has not been specifically defined in the GST. Under common parlance, Real estate is a property comprised of land and the buildings on it, as well as the natural resources of the land, including flora and

fauna, farmed crops, livestock, water and mineral deposits.

There are four types of real estate in India:

- i) Commercial real estate includes residential house such as duplexes, residential apartments, single-family home and others
- ii) Residential real estate includes shopping centers and malls, medical and educational buildings, hotels and offices
- iii) Industrial real estate includes manufacturing buildings and property, as well as warehouses. The buildings can be used for research, production, storage, and distribution of goods.
- iv) Land including vacant land, working farms and ranches

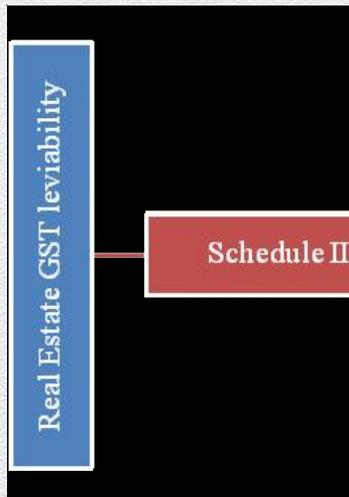
### III. Introduction of Goods and Services Tax

GST was touted as one of the major reforms in the Indian history. GST is one indirect tax for the whole nation, which has been introduced with an objective to make India a one unified market. Major taxes (i.e. State taxes and Central taxes) that were levied under the erstwhile indirect tax regime such as VAT, Sales tax, Service tax, Excise Duty and others are subsumed to the present GST regime. The concept of manufacture, sale, and provision of services has been done away with and has been replaced by the concept of 'supply' which has been categorized as the supply of goods and supply of services. The Indian indirect tax regime is currently undergoing a complete makeover. A complete overhaul of a tax regime is no mean task but India is, in fact, walking on a new path of change. The idea of



one nation, one tax is in force and citizens, although struggling, is still moving on.

However, GST on real estate sector has been a different scenario. Indirect taxes that were being levied in the erstwhile regime in the real estate sector are not completely brought under the ambit of GST. This means not all taxes that were levied in a real estate transaction has been subsumed to GST. Since India is a federal country where both center and state have power to levy and collect taxes, Stamp duty would continue to be in force under the State power, even after the introduction of GST. Further, discussions are underway in the GST council and efforts are being made to subsume all taxes to GST.



Clause (a), (b) of paragraph 5 and clause (a) of paragraph 6 of Schedule II reads as follows:

**5. Supply of services**

- (a) *renting of immovable property;*
- (b) *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 issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.*

*Explanation — for the purposes of this clause—*

*(1) the expression "competent authority" means the Government or any authority authorized to issue*

**IV. Levy/Chargeability under GST**

The leviability of GST has been specified in Section 9 of the Central Goods and Services Tax Act, 2017 ('CGST Act'). GST will be levied on every supply of goods and/or supply of services as per Section 7 read with section 9 of CGST Act. Thus, a transaction will come under the purview of GST law if it qualifies to be a supply. Supply has been expressed under Section 7 of CGST Act as an inclusive definition which also includes 'the activities that are treated to be supply of services or supply of goods as referred to in Schedule II.'

Real estate transactions are specified in Schedule II of CGST Act. Below is a pictorial representation of various transactions that have been covered under the GST regime.

*completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—*

- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or*
  - (ii) a chartered engineer registered with the Institution of Engineers (India); or*
  - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;*
- (2) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure;*



**6. Composite supply**

The following composite supplies shall be treated as a supply of services, namely:—

(a) works contract as defined in clause (119) of section 2; and

It can be concluded from reading Schedule II that most of the real estate transactions are categorized as supply of services under GST.

**i) Construction Services** - Similar to the provisions of declared service under the Service tax regimewhich dealt with the taxability of under construction flats, wherein the receipt of money before the issuance of completion certificate attracted service tax and receipt of money after the issuance of completion certificate excluded the transaction from the levy of service tax, GST would be levied only if the money is received prior to the issuance of completion certificate (or occupation) and there would be no GST incase if the entire money is received after the completion certificate (or occupation).

However, we can observe a minor change in the GST provisions in this regard, the tax leviability under Service tax regime depended only on issuance of completion certificateafter the entire consideration is received whereas the leviability under GST regime depends on receipt of entire consideration after:

- issuance of completion certificate by the competent authority, if required; or
- its occupation

Whichever is earlier

This means that where a property has been occupied by the occupants, then the same shall be excluded from

GST leviability, even if the completion certificate has not been issued by the competent authority. This provision would prove to be a huge sigh of relief to the builders who for various reasons were unable to obtain the completion certificate from the authorities and hence, were denied the exemption from service tax.

*Please note that sale of building (i.e. money received after issuance of completion certificate or occupation) has been categorized as 'Transaction which shall be treated neither a supply of goods nor supply of services' under Schedule III of CGST Act and hence, the transaction is not chargeable to GST.*

**ii) Works Contracts services** – The definition of works contract mentioned under section 2(119) of CGST Act above is reproduced below:

*"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;*

Works Contract can be defined as a composite contract which includes in itself an element of sales as well as service. The definition of works contract under GST regime has undergone a slight change from the erstwhile Indirect tax regime. The perusal of new definition would come upto the fact that it has been defined only in the context of immovable property. The movable property has been kept outside the scope of works contract.

Further, clause (b) of Para 6 of Schedule II mentions works contract under section 2(119) of CGST Act as a supply of services and hence, chargeable to GST.

**Chargeability of works contract supply under the erstwhile law v/s GST law:**

Activity	Chargeability under VAT	Chargeability under Service Tax	Chargeability under GST
Works contract relating to immovable property	On value of goods	On value of services	Aggregate contract is considered as supply of service
Works contract relating to movable property	On value of goods	On value of services	Aggregate contract is considered as composite supply and taxability depends upon the nature of principal supply.



**i) Renting of Immovable Property** has been included in the Schedule II vide clause (a) of Paragraph 5 and shall be chargeable to GST as supply of services.

The GST law also provides a list of exemptions services which are exempted from leviability of GST vide Notification Number 12/2017 – Central tax (rate) and certain exemptions that are relatable to real estate sector are as follows:

• *Services provided by way of **pure labour contracts** of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana.*

• *Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex.*

• *Services by way of renting of residential dwelling for use as residence.*

• *Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent.*

### **I. Registration under GST**

Section 22 of CGST Act requires a person to obtain GST registration in a State or Union territory from where he makes a taxable supply if the aggregate turnover on PAN India basis exceeds 20 lakhs (10 lakhs in case of special category states). This means that under GST, the concept of centralized registration for all the projects situated at different states shall be done away with and multiple registrations needs to be obtained where the builders are having sites/construction projects at multiple states. This scenario of multiple registrations was existent in the erstwhile VAT regime but the same will be done for the central taxes also (i.e. service tax).

A new concept of distinct person has been introduced under Section 25 of CGST Act. Same person having separate registration in different states under the same PAN shall be deemed to be distinct person. It is a very common phenomenon in the real estate sector that the builder transfers the stocks or capital equipment from one project to another. The concept of distinct person has led the builders operating in multiple locations from various states to pay GST on stock/asset transfer from

premises in one state to premises in other state.

### **II. Place of Supply under GST**

The place of supply ('PoS') is elaborated under section 12 of Integrated Goods and Services Tax Act, 2017 ('IGST'). PoS determines the place from where the goods and/or services are consumed and also helps to ascertain the nature of supply (i.e. Intra state supply or Inter-state supply). The provisions of PoS under GST are similar to the Place of provisioning of Services rules under the erstwhile Service tax regime.

Under GST, the PoS for services has been segregated into 2 parts which are as follows:

- i) PoS for general services (i.e. residual clause)
- ii) PoS for specific services

The PoS of all the services in relation to an immovable property are categorized as specific services and the PoS in relation services relating to an immovable property shall be the location at which the immovable property is located.

### **III. Time of Supply under GST**

The provision of time of supply of services has been specified in Section 13 of CGST Act. The time of supply shall be earliest of the following:

*(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or*

*(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or*

*(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply.*

The real estate services such as construction services or works contract services provided by developers mostly qualify to be continuous supply of services as defined under section 2(33) of CGST Act. The invoice for continuous supply of services shall be raised when:

- i) Where the due dates are ascertainable from the contract – invoice shall be raised on or before the due date of payment.
- ii) Where the due dates are not ascertainable from the contract – invoice shall be raised before or at the time when the supplier receives payment



iii) Where the payment is linked to completion of an event – Invoice shall be issued on or before the date of completion of that event.

**IV. Valuation under GST**

Section 15 of CGST Act specifies valuation of supply of goods and/or services to be the transaction value (i.e. price paid or payable for the said supply of goods and/ or services) where the parties to the transaction are unrelated and price is the sole consideration. However, in other cases such as related party transaction, valuation of supply shall be correctly accounted for and shall be the open market value of similar transaction.

The valuation provisions under GST laws is similar to the erstwhile indirect tax regime. However, one change under the GST regime that will impact is the inclusion of '*Interest or late fees or penalty on delayed payment of consideration of any supply*' in the value of supply. Since, in the real estate sector the customer generally delays the payment to the developers, such interest which was outside the scope of tax net under the erstwhile indirect tax regime shall be chargeable to GST as such charges shall be included in the value of supply.

**Special valuation** in case of real estate services where land transfer is involved - The taxable value shall be calculated on 2/3<sup>rd</sup> of the total amount charged for such supply. 1/3<sup>rd</sup> of the total amount charged shall be deemed to be the amount charged towards land.

**V. Input tax credit under GST**

One of the foremost intent of GST was to ensure seamless and free flow of Input tax credit. Under GST, tax paid in each transaction shall be available as credit to the buyer. This would ensure that the cost of construction shall get reduced over a period of time. Such was not the case in the erstwhile indirect tax regime wherein all tax credits were not available as input to the buyer.

However, GST also specifies certain transactions under section 17(5) of CGST Act which lists down the blocked credits. This means that tax paid on such lists of blocked credits shall not be available as input tax credit. Blocked credits that has been specifically mentioned in relation to real estate sector are as below:

*c) 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;*

*(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.*

*Explanation.—For the purposes of clauses (c) and (d), the expression*

*"construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;*

Builder or developer shall be eligible to take the credit of tax paid on works contract services as the same has been used for further supply of works contract services.

**VI. Rates of GST**

The GST rates that are applicable to a real estate transaction has seen constant amendment/ alteration over the period of time. Government has specified the tax rates vide notification number 11/2017 – Central tax rate wherein different rates have been prescribed by the government in relation to real estate sector. Major real estate services such as construction services without the value of land included in the consideration and works contract services shall be 18%. Further, renting of immovable property shall also be chargeable to 18%.

In case where the construction services doesn't include the amount of land, then applicable GST rate shall be 18%. Various other transactions in relation to an immovable property which has not been specifically mentioned in the above-mentioned notification such as preferential location charges, power back up charges and other charges shall be chargeable at the rate of 18%.

**VII. Conclusion**

It is expected that GST shall help in the decrease of the overall cost of construction and hence, shall benefit the consumers. The government should interfere and enact the anti-profiteering provisions immediately and cautiously on the developers so that it will help to achieve the goal of reduced cost. The provision under erstwhile indirect tax law has not seen any major changes as compared to the GST law that would have caused real estate sector to worry. Hence, it is expected that GST shall bring smiles to people involved in the real estate sector.

