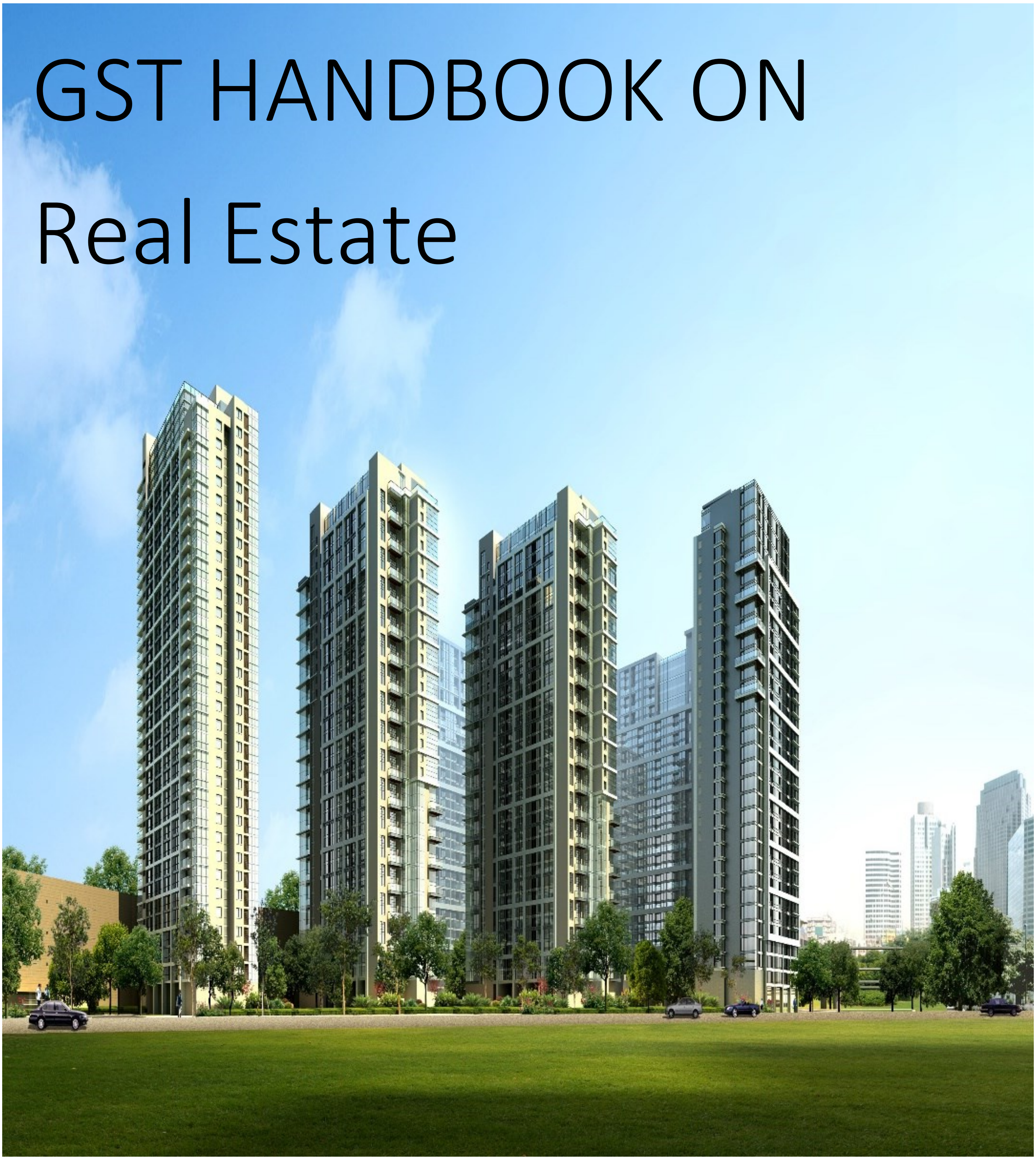
GST HANDBOOK ON Real Estate



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About the Author

CA Venugopal Gell is Partner in M/s. Venu & Vinay chartered Accountant, qualified in the year 2002 by securing all India 45th Rank. He is also Certified Information Security Auditor. He has also completed Various Other Certificate courses from ICAI namely DISA, Course on Business Valuation, Course on Internal Audit, Course on Fraud Detection and Forensic Accounting. He has also completed a One Year Course from IIM on - Data Analysis and Business Intelligence.

He is an active speaker at ICAI on GST esp on Technology and its implementation challenges. He has authored various Industry Specific Handbooks on GST. Conducted Workshops on filing returns with ease. He has developed lot of Excel based free Utilities on GST like Json reader, creating Json files, GSTIN Validator, Composition vs Regular Benefit Analysis, GST Impact Reader etc. He is a GST faculty for ICAI and conducted various workshops and webinars. He is co-opted member of Indirect Taxes Committee ICAI for the year 2018. He is Core-Committee member of FKCCI GST Wing.

His major Areas of the practice are

1. Design and Development of internal Controls and Process Documentation
2. GST Implementation and Integration of Accounts & Return filing Utilities.
3. Consulting in ERP Implementation / Migration.
4. Management consultancy for Business Analysis and Growth and Design of Management Information Systems.

Apart from Audits, he is a hands-on Coding in VB .Net, R, Python. He also reviews Database Design.

He conducted various workshops for corporates on

1. Use of Technology
2. Improve efficiency at work using Excel
3. Building Automated Reports from Accounting & Financial Applications

He was behind in the development & managing of cloud application like “Tax smile”, “InstaFinancials” and others.

Contents

Registration

General Provisions

1. Liable to register
    a. Only if aggregate turnover* of a person is >20 Lakhs in a financial year (>10 lakhs in North-eastern states, Uttarakhand, Sikkim)
    b. This threshold doesn't apply to interstate supply of goods[1] i.e. in case goods are supplied to different states compulsory registration has to be taken.
    c. Persons having VAT, service tax registration need to **migrate** to GST.

* Aggregate turnover under real estate includes the receipts accepted by the company towards all the services and sales excluding the taxes paid under CGST, SGST, IGST, UTGST Acts

2. Not Liable to Register Person doing ONLY:
    a. **Pure Labor Contracts** for Construction of Single Residential units
    b. Enhancement under the Housing for All (Urban) Mission or Pradhan A builder Awas Yojana (PMAY)

3. Other Points to Note
    a. Registration should be taken in every **state** of operation.
    b. Branches **within the same state** need not take separate registration. However, details of every branch located in the same state shall be shown as additional place of business for the purpose of availing the Input Tax Credit.

4. **New registrations** to be applied with GSTIN with valid e-Mail ID and phone number
    a. The information entered and the documents uploaded are validated with PAN database, ARN (Application Reference Number - Acknowledgement) will be generated.
    b. Proper officer shall approve the same within 3 working days. If not the same gets auto-approved on 4th day from the date of application for registration.
    c. If the information provided and documents uploaded are not satisfactory to the proper officer, a show cause notice will be raised by the officer, and should be replied within 7 working days.
5. Input Service Distributor: If there are operations in multiple states, the person needs to take an Additional registration for Head office to transfer the Common Input Service Credits received for branches. Like the Marketing Spends, Audit services, where the service provider issue one invoice, and the services is applicable to all the branches of the company.

[1] Notification 10/2017- Integrated Tax: Person making an Interstate supply of service needs to register only if the threshold limit is exceeded.

Taxes

Rates of taxes applicable on different activities

Sl. No.	Particulars	HSN	GST Rate
	TAXABLE		
1	Construction of a complex, building, civil structure	9954	18%
2	Composite supply of works contract as per sec 2(119)	9954	18%
3	Sale of construction services along with Land *	9954	12%
4	Other construction services	9954	18%
	EXEMPTED		
1	Pure labour contracts of construction, pertaining to a single residential unit	9954	NIL

* Building with Land / Apartments

In case of supply of service specified in column (3) of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to

- the total amount charged for such supply **less**
- the value of land or undivided share of land, as the case may be,

The value of land or undivided share of land, as the case may be, in such supply shall be **deemed to be one third** of the total amount charged for such supply.

Explanation. – For the purposes of paragraph 2, "total amount" means the sum total of, - (a) consideration charged for aforesaid service; and (b) amount charged for transfer of land or undivided share of land, as the case may be

HSN Codes for various activities

	Heading No.9954: Construction services
HSN	Group 99541: Construction services of buildings
995411	Construction services of single dwelling or multi dwelling or multi-storied residential buildings
995412	Construction services of other residential buildings such as old age homes, homeless shelters, hostels etc.
995413	Construction services of industrial buildings such as buildings used for production activities (used for assembly line activities), workshops, storage buildings and other similar industrial buildings
995414	Construction services of commercial buildings such as office buildings, exhibition & marriage halls, malls, hotels, restaurants, airports, rail or road terminals, parking garages, petrol and service stations, theatres and other similar buildings.
995415	Construction services of other non-residential buildings such as educational institutions, hospitals, clinics including vertinary clinics, religious establishments, courts, prisons, museums and other similar buildings
995416	Construction Services of other buildings n.e.c
995419	Services involving Repair, alterations, additions, replacements, renovation, maintenance or remodelling of the buildings covered above.
	Other Activities Group
99542	General construction services of civil engineering works
99543	Site preparation services
99544	Special trade construction services
99546	Installation services
99547	Building completion and finishing services

Time of raising Invoice / Discharge of Payment of Taxes

Section 13 of CGST Act, states that time of supply of services shall be the earliest of the following dates, namely: —

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.

- Under sub-section (2) of section 31 the government notifies the period within which the invoice to be raised
- If the raising of invoice is linked to milestones, the invoice to be raised once the milestone is reached

*According to Rule 47. Time limit for issuing tax invoice is thirty (30) days from the date of the supply of service

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Type of Tax to charge in Invoice

Services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work or any services ancillary to the above services, is deemed to be provided at the location at which the **immovable property is situated**.

Example:

Seller place	Recipient place	Place of supply	Transaction type	GST in Invoice
Bangalore(KA)	Chennai (TN)	Bangalore	Intra-state	CGST +SGST
Bangalore(KA)	Udupi(KA)	Bangalore	Intra-state	CGST +SGST

Value of supply

The value of a supply of goods or services or both shall be the transaction value, which is the price paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

Include	Excludes

• Other taxes, duties, cesses, fees, Except: SGST, CGST, IGST
• Value of goods or services supplied by the recipient
• Incidental expenses
• ***"interest, late fee or penalty"***
• Subsidies (except central and state govt. subsidies)
	• Discounts given
	  • before or at the time of supply
	  • after the supply has been affected
	  a. if such discount is as per agreement
	  b. input tax on such discount is reversed

Value at which tax to be calculated

Particulars	Amount
Land	XXX
Construction	XXX
Parking	XXX
One-time maintenance	XXX
SPA, Other amenities	XXX
(-) Discount (any type)	(XX)
Total Value (A)	XXX

Calculation of TAX

GST = Total value (A) *2/3*18%

Note: 1/3 of the value is deemed to be the land value, so effectively 12% on the total value of apartment/Villa would be charged as GST.

JDA – Joint Development Agreements

Previous tax regime

Suppose the Land owner share is 40% and that of the developer is 60%. Total flats are 100, hence 40 belongs to land owner and 60 belongs to developer.

VAT – can be under Composition or Regular	Service tax
1) Deduction for land a) Option 1: Land deduction will not be available to the developer – Developer Needs to pay on whole amount received from sale of flats from its customers. b) Option 2: Land deduction will be available based on either market value of land or Guidance value of land or agreed value of land to the developer. c) Valuation in case of Regular dealer will be 70% of the Construction value. In case of Composition Scheme-no partial rebate.	1) Deduction of land Deduction of land is available to the service provider, provided that he will pay tax on the flats given to the land owner based on the valuation methods such as: a. Similar value of flats b. Cost + markup c. Value as on the date of entering JDA Valuation will be either 30% based on 26/2012 Notification or 40% based on the valuation rule.

Note: VAT Laws are state specific and each state has a method of computing VAT for Regular and Composition dealers

Under the previous regime there could have been either two or one agreement

1) Two agreements – One for sale of land i.e. UDS and one for Construction agreement
2) Single agreement – Both Sale of land and Construction are under the same agreement

GST REGIME

Backdrop with a small example

Share- Land owner 40% and Developer 60%; Land owner transfers full rights of 60% of the Land portion to Developer, in exchange of constructing 40% apartments.

Relevant points of the acts to consider before understanding Taxation

1. Supply includes Exchange – Section 7 of CGST act

2. Schedule III, clause 5: Exclusion from Supply
    a. Sale of land
    b. Sale of Building; after completion

3. Schedule II, 5(b): Works contract
    a. If first Consideration has been received after receiving
        i. the completion certificate from the competent authority or
        ii. 1st occupancy occurred in any of the building

        Then No GST is applicable.

    b. Other way round: If property is sold before getting completion certificate from the competent authority or the 1st occupancy then GST will be applicable.

    c. If the flats are recognized at the time of entering the JD agreement even if the facing of the apartment, then it is the consideration for the development rights and this attracts GST

Transactions in JDA & GST Treatment

Applicability of Tax

1. **Land owner:** Transfer of Land/Right by owner to developer for construction: Land is not a Good and a specific entry in Schedule III and hence no GST is leviable on sale of immovable property.

2. **Developer to Land Owner:** Developer constructs & sells the 40% share of flats to Land owner over a period. GST is applicable.
   a. Time of supply: Continuous supply: Stage of completion of supply + Advances if any
      i. Receiving of land is in the form of advance received and hence GST needs to be paid as on the date of entering JDA

   b. Value of supply: 1) Open market value of 60% of UDS (Undivided share of land) + Non-refundable deposit
      2) Like value of similar goods i.e. 40% Apartments or 60% UDS;
      3) Cost of constructing 40% Apartments + 10% Markup.

   c. Rate of Tax: There is **no Sale of Land**, hence deduction of 1/3rd towards Land doesn't arise. Hence Tax = Value of Supply * 18% is the tax rate.

3. **Developer– End Customer:** As there is a sale of land, deduction of 1/3rd of Total Value arises and as discussed above GST is applicable on total collection @ 12%.

4. **Land owner to customer:** Sale of Flats during construction will be liable to GST and the Land owner will have to pay GST. Same concept of 12%.

5. **Developer retained units**: If after issuance of Certificate of Completion or 1st occupancy then not liable to GST. But input tax credit proportionately needs to be reversed.

6. **Land owner retained units**: Similar as above point 5.

Time of Tax

Sl No	Transaction	Point of Taxation
1.	Transfer of Land by Land Owner	NO GST to LAND Owner
2.	Transfer of Apartment by developer to Land Owner	At the time of conveyance deed / allotment letter.
3.	Developer– End Customer *Earliest of*	1. Completion of Mile Stone (or) 2. Receipt of Money from Customer
3.	Land Owner– End Customer *Earliest of*	1. Completion of Mile Stone (or) 2. Receipt of Money from Customer

Agreement for sale of undivided share in land to Purchasers

Transaction	Impact of GST
Taxability – Sale of Land	The Agreement for Sale entered between the Land Owners, the Developer and the Purchaser is for sale of undivided share in the land. In this regard, it may be noted that 'Immovable Property' is outside the scope and ambit of GST as per Schedule III of the CGST Act and accordingly, the said transaction will not be considered as a 'Supply' under the GST Laws and hence, no GST is payable on the same.

Construction Agreement between the Developer and the Purchaser

Transaction	Impact of GST
Taxability -	As discussed above, any construction of a property by a developer for a purchaser amounts to 'Works Contract' and accordingly, the subject transaction will be taxable under the GST laws @18%. For the discussions on 'Taxability', 'Place of Supply', 'Time of Supply', 'Input Tax Credit', 'Valuation' etc., the portion dealing with 'Outward Supply' may be referred to.

Value of Supply

Sl No	Transaction	Point of Taxation
1.	Transfer of Land by Land Owner	NO GST to LAND Owner
2.	Transfer of Apartment by developer to Land Owner	To be determined as CHAPTER IV: DETERMINATION OF VALUE OF SUPPLY of CGST Rules. Ref Rule 27 Open Market Value of 1) Undivided Share of Land received by builder 2) Market Value of Apartments transferred to Landowner
3.	Developer– End Customer *Earliest of*	Actual Money received / Receivable.
4.	Land Owner– End Customer *Earliest of*	Actual Money received / Receivable.

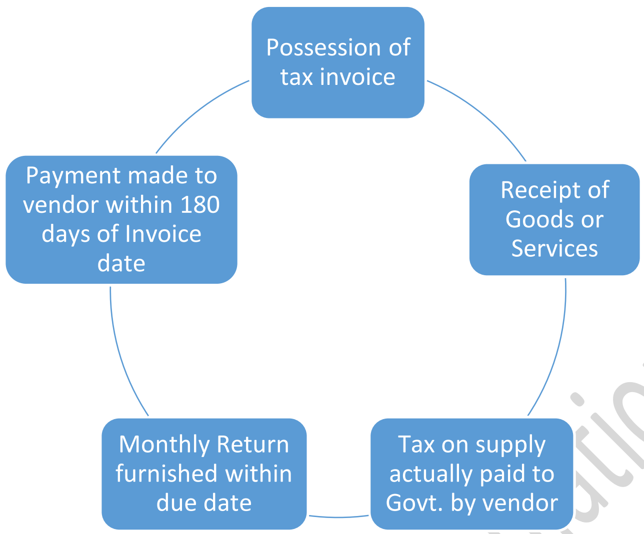
Input Tax Credit

General Provisions

1. Every registered person shall be entitled to take **credit of input tax (ITC)** charged on any supply of goods or services or both

2. ITC available on any inward supply of goods or services or both only if **used or intended to be used in the course or furtherance of his business**

3. **Conditions** for availing eligible ITC by a registered person:



4. ISD Credit Transfer:
   1. This would also include common services like Audit, Software services commonly procured at HO but portion of which is attributable to branches. To deal with this, HO has two options,

      2. opt as Input service distributor and distribute proportionate credits to respective branches, OR

   3. Invoice from HO to its branches for said common services. Rate of GST for such cross charge is the same rate as applicable to such Input Services.

5. **ITC not available** on the following (Sec. 17(5) of CGST Act):

   a. motor vehicles except when they are used:

      i. for further supply of such vehicles, transportation of passengers

      ii. for transportation of goods

   b. following supplies:

      i. Food & Beverages, Outdoor catering etc. except where they are used for making an outward taxable supply of **same category** of goods or services

      ii. membership of a club, health and fitness center

      iii. rent-a-cab, life insurance and health insurance except where Government notifies it as obligatory or are used for making an outward taxable supply of **same category** of goods or services

iv. travel benefits extended to employees on vacation such as leave or home travel concession

c. works contract services for construction of Immovable property

d. goods or services or both used for personal consumption

6. Persons registered under Composition scheme not eligible for any Input Tax Credit
7. The registered person making purchases from a taxable person who is under composition scheme is not eligible for Composition input tax credit.
8. ITC set off and the preference in which it is set off:

Taxes	CGST	SGST	IGST
CGST	✓ 1st	✗ NA	✓ 2nd
SGST	✗ NA	✓ 1st	✓ 2nd
IGST	✓ 2nd	✓ 2nd	✓ 1st

Special Provisions to Real Estate Industry

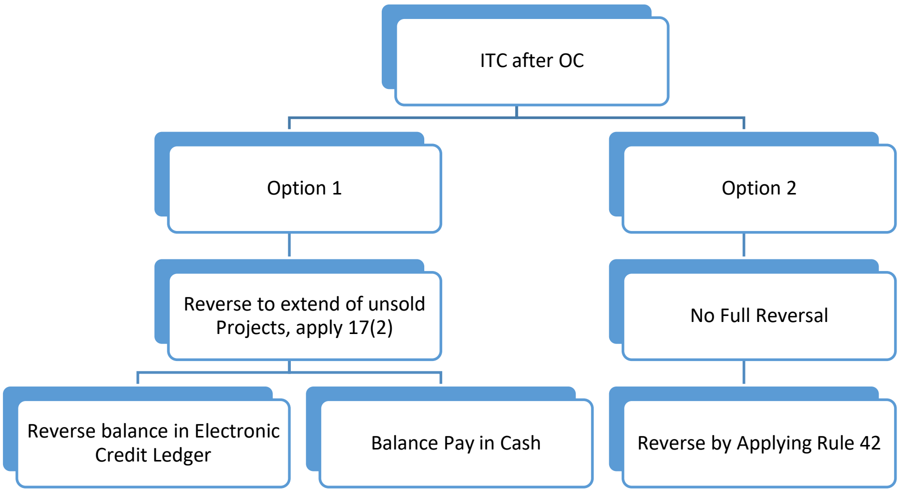
1. General Rules of availing credit to be complied as per sec 16(2)
2. Blocked credit of Works contract under Sec 17(5) (c) and (d) is NOT applicable since the same is used in further supply of such Works Contract.
3. Refund of ITC i.e. excess utilized credit cannot be claimed as a refund.
4. Input tax credit cannot be availed on the materials purchased and expenses incurred after obtaining the Completion certificate.

Cross Utilization of Input Tax Credit between to Projects

1. In this Industry there is a possibility that one person is simultaneously carrying multiple projects under single GSTIN.
2. Purchase of Materials will be project specific or cross utilized
3. Since the materials get utilized across the project, there is NO restriction under the Act to Utilize ITC project specific.
4. Hence Input tax credit of One Project can be utilized for another.

Reversal of Input Tax Credit after completion of Project

This is most debated topic in this Industry on the treatment of Input Tax Credit availed and utilized along with balance un utilized after the completion of the Project



Option 1

As per the Option 1, after the completion of the project the dealer should follow the reversal as below

1. Since the project is completed, it shall be treated as Exempt supply as per 17(3)
2. No further credits to be accrued on the subsequent purchases as per 17(2)
3. Credits availed in the past to be reversed as per 18(4),
    a. By Reversing the balance available in In Electronic Credit ledger.
    b. In case the balance is not sufficient then differential amount to be paid by way cash.

The above method is very logical conclusion thought not specified in the Act specifically for Real estate Industry.

Option 2

A Detailed analysis is made for this option, since this will save huge cashflows to the Industry.

- Sec 16 of the CGST law provides that a registered taxable person is entitled to avail the benefit of 'Input Tax' charged on any supply of goods or services. The benefit of credit is available, when the goods / services are '**used or intended to be used in the course or furtherance of business**'.

- The term 'Input Tax' is defined vide Sec 2(62) of CGST law, to mean the CGST, SGST, IGST, UTGST charged on any supply of goods or services or both including IGST paid on import of goods and tax paid under the reverse charge mechanism. Thus, the taxes in the form of CGST, SGST, UTGST and IGST charged on the procurement of goods and / or services are available as Input Tax credit in terms of Sec 16.

- The words "used or intended to be used" and "in the course or furtherance of business" are not being defined under GST Acts. Though not defined, the words are of wide import. The words "In the course or furtherance of business" could include all such activities, which are being carried out during the course of running of the business and also activities, which are in the interest of business.

- Whenever a builder starts building a complex, their prima facie motive is to sell all the flats to buyers. Thus, A builder assumes that all the flats will be sold before completion thereby making them taxable supplies.

- Given the above, the tax paid on supplies, which are used or intended to be used in the course or furtherance of business and which falls within the definition of "Input Tax" would be available as Input Tax Credit on the basis of satisfaction of other conditions as prescribed under Sec 16 of the CGST Act.

- Further, Sec 17 of the CGST Law provides for restriction of GST paid on certain specified supplies of Goods or Services.

- In the present context, it is important to note Sl no 5 of Schedule III, which provides that "sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building", shall be treated as activities or transactions which **shall be treated neither as supply of goods nor supply of services**. The reference of clause (b) of paragraph 5 refers to supply, where either completion certificate is received or there has been first occupation.

- In this regard, it is important to note Sec 17(2) of the CGST law, which provides for the following:

Here the goods or services or both are used by the registered person partly for effecting taxable supplies including zero rated supplies under this act or under the Integrated Goods and Services Tax Act and partly for effecting **exempt** supplies under the said act, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero rated supplies".

- Sec 17 provides for apportionment of credit and blocked credits and Sec 17(2) in specific provides for restriction in Input Tax Credit, when used in making 'Exempt Supply'. It is now important to understand 'Exempt Supply' and the same is defined vide Sec 2(47) of the CGST law.
"exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11 or under section 6 of the integrated Goods and Services Tax Act, and includes non - taxable supply.

- On perusal of the above, it is clear that, for the supply to be considered as 'Exempt', there has to be a 'Supply' in the first instance and then should be exempted. In the instant scenario, the transactions listed in schedule III are those activities or transactions, which are considered neither as supply of goods or services and accordingly, Sec 17(2) would have no applicability. We now proceed further to examine, whether the transactions covered under Schedule III can be construed as 'Non – Taxable Supply'.

- The term 'Non- Taxable Supply' is being defined vide Sec 2(78) of the CGST law to mean "a supply of goods or services or both which is not leviable to tax under this act or under the Integrated Goods and Services Tax Act".

- On perusal of the above, the definition also starts with 'supply of goods or services' and as the transactions listed in Schedule III are neither goods nor services and therefore, cannot be considered as non – taxable supply.

- It is now relevant to note the provisions of Sec 17(3) which provides for the value of exempt supply, as per which, "the value of exempt supply under sub – section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transaction in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building".

- Though the definition of 'Exempt Supply' doesn't include transactions listed in Schedule III, however Sec 17(3) is being provided to expand the meaning of Exempt Supply for the purpose of providing restrictions in availment of Input Tax Credit.

- On perusal of Sec 17(3), the supply of units on which no GST is applicable by virtue of clause (b) of paragraph 5 of Schedule II shall be considered as a part of 'Exempt Supply' and accordingly, there would be restriction in availment of Input Tax Credit.

- On examination of Sec 17(2) with Rule 43 and Sec 17(3), the restriction with respect to availment of Input Tax Credit would arise only when A builder does the transaction of sale, which are outside the ambit of GST. In simple, the restriction of Input Tax Credit would arise, only prospectively.

- Further, I would also like to comment, that the provisions of Sec 18(4) would not be applicable to the facts of the said case as its applicability would arise only when the supplier is engaged in the supplies, which have become exempt. The term 'Exempt' is defined vide Sec 2(47), where the activities listed in Schedule III is not considered.

- We should follow the principle of harmonious construction. Following the principle of harmonious interpretation of the provision, we can conclude that the sale of constructed flats after obtaining completion certificate is not an exempt supply under section 2(47) of the CGST Act, 2017 so as to attract the provisions of section 18(4) of the CGST Act, 2017. Had this been an exempt supply there shall not be a levy for the delivery and payment schedules linked to the ongoing buyers for the works done after OC.

- Therefore, A builder would be liable to restrict its availment only on that part of the consideration received from the units sold post the receipt of OC / Completion Certificate or First Occupation. We, now in the ensuing paragraphs, would detail the procedure for availment of Input Tax Credit.

However there shall be a clarification to be sought especially on this matter from the GST.

Partial Reversal of Credits by applying Rule 42 / Rule 43

1. Reversal of credits when outward supply is partly taxable or partly exempted. As per the above options 1 or 2.
2. The common inputs availed during the year attributing to taxable and exempted supply shall be reversed as follows
3. Rule 42 provides for the manner of apportionment of credit in respect of inputs or input services, when the same is used partly for effecting taxable including zero rated supplies and partly for exempted supplies.

4. The methodology for availment of Input Tax Credit are given below:

Particulars	Amount
Total Input Tax on Inputs and Input Services	T
Input Tax on Input and Input services intended to be used exclusively for purpose other than business	(T1)
Input Tax on Input and Input Services intended to be used exclusively for effecting exempt supplies	(T2)
Input Tax on Inputs on which credit is not available u/s 17(5)	(T3)
Input Tax Credit credited to the Electronic Credit Ledger	C1
Input Tax attributable to inputs and input services used exclusively or in relation to business (Incl. zero rated supplies)	(T4)
Common Credit	C2

$$D1: \text{ITC attributable to exempted supplies} = C2 \times \frac{\text{Aggregate value of exempt supplies during tax period}}{\text{Total turnover in a state during tax period}}$$

D2: ITC attributable to Non – Business purpose: D2 = C2 X5%

5. To conclude, the available ITC shall be C3 = C2 – (D1 + D2) and the same needs to be computed independently for IGST, CGST and SGST. Further, the following points are worth noting:

    a. If turnover details are not available for a particular tax period to compute D1, then the turnover details of the last tax period shall be considered
    b. D1 and D2 shall be added to the output tax liability.
    c. The above computation on apportionment of credit shall be computed for the full year before the due date to file September following the financial year to which such credit relates.
    d. If D1**+D2 for the year > Sum of D1+D2 for each month**, difference shall be paid along with interest computed from April 1st of the following the financial year till the date of payment.
    e. If D1**+D2 for the year < Sum of D1+D2 for each month**, difference shall be claimed as credit not later than due date to file return for September of the following financial year.

6. The above is illustrated by the way of example:

Facts:

Tax Period – November 2017.

Input Tax Credit (CGST) – INR 10,00,000/- (C2)

First Bookings / First Consideration post OC – INR 5,00,000/-

Consideration received from other customers – INR 42,00,000/- (who have booked the apartment before OC, but amount received post OC

Input Tax Credit Not Eligible:

$$10{,}00{,}000/- \times \frac{5{,}00{,}000}{47{,}00{,}000}$$

The above mechanism is for the Input Tax Credits to be availed on the supply of unit's post OC / first occupation, however the said mechanism is silent in providing the mechanism for restriction of Input Tax Credit, which is already availed and used in the construction, which are pending to be sold. Further, Sec 18(4) is also silent in providing mechanism for reversal of credit in the instance in hand.

Tax Planning Scope

1. Majority of Input tax credit arising at the time of pre-booking laying foundation etc.
2. In terms of the cash flow, the Liability to pay tax arise as and when the bookings start.
3. When there are two projects which is at the beginning stage and another mid construction, the inflow -outflow cash flows equate
4. If there are projects where there are not many apartments got sold before the completion of the project, the apartments getting sold after completion will be treated as exempt supply and it will participate in the numerator for Rule 42 Reversal.
5. If the reversal of credits after project completion is restricted to Rule 42, chances of exploring new SPV /GSTIN for new projects would be wiser and tax efficient.

GST Rates for various services

<table>
<tr><th>Sl.no</th><th colspan="2">Description</th><th>Rate</th><th>Calculation of Value of Supply Applies to:</th><th>Effective Rate</th></tr>
<tr><td>1.</td><td colspan="2">Construction of a complex, building, civil structure</td><td>18%</td><td>Yes</td><td>18*2/3=12%</td></tr>
<tr><td>2.</td><td colspan="2">Composite supply of works contract as per sec 2(119) of Central Goods and Service Tax</td><td>18%</td><td>No</td><td>18%</td></tr>
<tr><td rowspan="4">3.</td><td rowspan="4">Composite supply of works contract as per Sec 2(119) of CGST Act, to Central / State Government / UT / Local authority / Government authority *</td><td>Construction, erection, commissioning, installation, repair of</td><td rowspan="4">12%</td><td>No</td><td>12%</td></tr>
<tr><td>a. Archaeological sites</td><td>No</td><td>12%</td></tr>
<tr><td>b. Canal, dams or other irrigation works</td><td>No</td><td>12%</td></tr>
<tr><td>c. Pipelines for water supply, water treatment or sewerage treatment</td><td>No</td><td>12%</td></tr>
<tr><td rowspan="8">4.</td><td rowspan="8">Composite supply of works contract as per Sec 2(119) of Central Goods and Service Tax</td><td>Road, bridge, tunnel for transportation of general public</td><td rowspan="8">12%</td><td>No</td><td>12%</td></tr>
<tr><td>Jawaharlal Nehru National Urban Renewal Mission/ Rajiv Awas Yojana</td><td>Yes</td><td>12*2/3=8%</td></tr>
<tr><td>In-situ redevelopment of existing slums under the Pradhan A builder Awas Yojana</td><td>Yes</td><td>12*2/3=8%</td></tr>
<tr><td>Beneficiary led Individual house construction under the Pradhan A builder Awas Yojana</td><td>Yes</td><td>12*2/3=8%</td></tr>
<tr><td>Pollution control/ effluent treatment which is not a part of the factory</td><td>No</td><td>12%</td></tr>
<tr><td>Structure meant for funeral /burial/ cremation of deceased</td><td>No</td><td>12%</td></tr>
<tr><td>Economically weaker section houses under the Pradhan A builder Awas Yojana</td><td>Yes</td><td>12*2/3=8%</td></tr>
<tr><td>Constructed /acquired under Credit Linked Subsidy scheme for Economic Weaker Section, Lower Income group, Middle Income Group-1 and Middle-Income Group-2</td><td>Yes</td><td>12*2/3=8%</td></tr>
</table>

Sl.no	Description		Rate	Calculation of Value of Supply Applies to:	Effective Rate
		A building owned by a trust or charitable institution as defined as per **Sec 12AA of the Income tax act,1961** used for Carrying out activities of providing, centralised cooking or distribution for mid-day meals under the **mid-day meal scheme** sponsored by CG/SG/UT/Local authority		No	12%
5.	Composite supply of works contract as per Sec 2(119) of Central Goods and Service Tax	Railway **including** Monorail and metro	12%	No	12%
		Single residential units other than those part of residential complexes		Yes	12*2/3=8%
		low cost houses upto a carpet area of 60sq meters per house under "**Scheme for affordable housing in partnership**" Framed by Ministry of housing and poverty allevation, GOI / **"Affordable housing in partnership of Pradhan A builder Awas yojana"**/ **Any housing scheme of State government/Affordable housing project given an infrastructure status by the GOI, Ministry of finance** (department of Economic affairs)		Yes	12*2/3=8%
		Post-harvest storage infrastructure		No	12%
		Mechanised food grain handling system, machinery/equipment for processing agriculture produce as food stuff other than alcohol for human consumption		No	12%
6.	Composite supply of works contract as per sec 2(119) of Central Goods and Service Tax to Central	Construction, erection, commissioning, installation, repair of	12%	No	12%
		a. Civil structure for use other than commerce, industry, Business or profession		No	12%

Sl.no	Description		Rate	Calculation of Value of Supply Applies to:	Effective Rate
	government/State Government/Union territory/Local authority/Government authority *	b. Structure for the use of Clinical, educational or Art and culture		No	12%
		c. A residential complex for **Self-use** or for the **use of the employees/ other persons as per Schedule III of the CGST Act** I.e. Members of parliament/state legislature/Panchayats/Municipalities/other Local Authorities, any person as a chairperson/member/director in a body established by CG/SG/local authority		Yes	12*2/3=8%
7.	Composite supply of works contract as per sec 2(119) of Central Goods and Service Tax *	**Predominantly earth work (75% of the Value of works contract)** provided to the CG/SG/UT/Local authority/Government authority/Government entity	5%	No	5%
8.	Composite supply of works contract as per sec 2(119) of Central Goods and Service Tax and associated services	**Offshore works contract** relating to oil and gas exploration and production in **offshore area beyond 12 nautical miles** from the nearest point of the appropriate base line	12%	No	12%
9.	Composite supply of works contract as per sec 2(119) of Central Goods and Service Tax, services referred in point (3) and (4) by the sub-contractor to the main contractor		12%	No	12%
10.	Composite supply of works contract as per sec 2(119) Central Goods and Service Tax, services referred in point (7) by the sub-contractor to the main contractor to the CG/SG/UT/Local authority/Government authority/Government entity *		5%	No	5%
11.	Construction services other than above		18%	No	18%

Accounts

Journal Entries in Books of accounts

Transaction	Under GST {All Values are sample Numbers for Understanding}		
Outward Supply-Sales			
Local Sale – B2B	Dr Customers A/c Cr B2B Sales A/c Cr Output CGST A/c Cr Output SGST A/c	1,41,600	 1,20,000 10,800 10,800
Local Sale – B2C	Dr Customers A/c Cr B2C Sales A/c Cr Output CGST A/c Cr Output SGST A/c	1,41,600	 1,20,000 10,800 10,800
Interstate Sale {for Architects / Consultants etc.}	Dr Customers A/c Cr Sales A/c Cr Output IGST A/c	1,18,000	 1,00,000 18,000
Advance receipt (a)	Dr Cash/Bank A/c Dr CGST+SGST Advance A/c Cr Customer A/c Cr Advance Output GST A/c	10,000 1,800	 10,000 1,800
	Dr Advance Output GST A/c Cr Cash/Bank A/c	1,800	 1,800
Raising of Invoice (b) in subsequent month	Dr Customer A/c Cr Sales A/c Cr Output CGST A/c Cr Output SGST A/c	1,18,000	 1,00,000 9,000 9,000
	Dr Output CGST A/c Dr Output SGST A/c Cr CGST+SGST Advance A/c Cr Cash/Bank A/c	9,000 9,000	 1,800 16,200
	Dr Cash/Bank A/c Cr Customer A/c	90,000	 90,000
Inward Supply-Purchases from			
Registered Dealer - Intra state	Dr Purchase A/c Dr Input CGST A/c Dr Input SGST A/c Cr ABC	1,00,000 9,000 9,000	 1,18,000
Registered Dealer (Inter State)	Dr Purchase A/c Dr Input IGST A/c Cr Creditor	15,000 2,700	 17,700
Under Reverse Charge Mechanism	Dr URD Purchase A/c Dr Input CGST A/c Dr Input SGST A/c Cr Creditors A/c Cr Output RCM A/c (Liability)	10,000 900 900	 10,000 1,800

Transaction	Under GST {All Values are sample Numbers for Understanding}		
Payment of RCM Liability	Dr Output RCM A/c Cr Cash/Bank A/c	1,800	 1,800
Composition Dealer Purchase	Dr Purchase Cr Creditors	50,000	 50,000
Expenses & Purchase of Capital Goods			
Indirect Expenses	Dr Telephone Charges A/c Dr Input CGST A/c Dr Input SGST A/c Cr Bank	5000 450 450	 5,900
Asset Purchase (Interstate)	Dr Furniture A/c Dr Input IGST A/c Cr ABC furniture's A/c	40000 4,800	 44,800
Up on GSTR -1			
Transfer to Liability Ledger	Dr Output CGST A/c Dr Output SGST A/c Dr Output IGST A/c Cr Liability Ledger CGST A/c Cr Liability Ledger SGST A/c Cr Liability Ledger IGST A/c	21,600 21,600 19,800	 21,600 21,600 19,800
Up on GSTR -2			
Transfer to Credit Ledger	Dr ITC CGST Ledger A/c Dr ITC SGST Ledger A/c Dr ITC IGST Ledger A/c Cr Input CGST A/c Cr Input SGST A/c Cr Input IGST A/c	9,450 9,450 11,100	 9,450 9,450 11,100
On Payment of Taxes			
Transfer to Cash Ledger	<u>Cash Payment</u> Dr Electronic Cash Ledger {I+C+S} Cr Bank	 33,000	 33,000
	<u>TDS / TCS</u> Dr Electronic Cash Ledger Cr Govt / eCom Operator		
Up on GSTR -3			
Transfer to Credit Ledger	Dr Liability Ledger CGST A/c Dr Liability Ledger SGST A/c Dr Liability Ledger IGST A/c Cr ITC CGST Ledger A/c Cr ITC SGST Ledger A/c Cr ITC IGST Ledger A/c Cr Electronic Cash Ledger {I + C + S}	21,600 21,600 19,800	 9,450 9,450 11,100 33,000

Returns

Returns to be filed for a Month

Form Name	Description	Due date / Periodicity
GSTR-3B	Summary Return	20th of the next month
GSTR 1	Outward supplies made by taxpayer Monthly: If the aggregate turnover exceeds 1.5 crore Quarterly: If the aggregate turnover does not exceed 1.5 crore	 10th of the next month 15th of the next month of the quarter
GSTR 2A	Details auto populated from GSTR 1 added corrected or deleted by recipient	11th on wards
GSTR 2	Inward supplies received by a taxpayer	15th of the next month
GSTR 1A	Details auto populated from GSTR 2 added corrected or deleted by recipient	Accept or reject by 17th of next month
GSTR 3	Monthly return (other than composition taxpayer and ISD)	20th of the next month

Late Fees

Frequency	Returns	Late Fees
Monthly	GSTR -3B	Rs.10 per day in case of NIL return Rs.25 per day in any other case subject To Maximum of Rs. 5,000
Monthly/Quarterly	GSTR -1 ,2,3	Rs.10 per day in case of NIL return Rs.25 per day in any other case subject To Maximum of Rs. 5,000

Frequently asked Questions

1. What is construction?

   "Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property. Please note that 'alterations' and 'repairs' are also included in this definition.

2. Can a builder take all eligible inputs?

   Yes, a Builder can take all the eligible inputs used for construction. But need to reverse the proportional credits for those units sold after receiving the completion certificate subject to the detailed note above.

3. Whether GST to be charged on flats sold even i.e. after completion?

   GST will be charged only on those flats sold before getting the completion certificates. If the first consideration is received after Occupancy certificate or first occupation, then there shall be NO GST on such transactions.

4. Can Developer go for composition?

   No. Composition scheme is not available for services & SCH II Entry 5(b) Specifies these transactions as service.

5. Whether taxes paid on change of interiors of service apartment is eligible for input tax credit?

   Input tax credit is not available on goods or services received by a taxable person for construction of an immovable property on his own account other than plant and machinery even when used in course or furtherance of business. The word "construction" includes reconstruction, renovation, additions or alterations or repairs to the extent of capitalization to the said immovable property. If the cost of interiors is capitalized towards the cost of immovable property then it forms part of the cost of immovable property (Service apartment) and accordingly taxes paid on change of interiors of service apartment will not be eligible as input tax credit.

6. Does my buyer of property get any INPUT TAX CREDIT?

   Generally, No, Sec 17(5) restricts the credit of works contractor unless the recipient is also a works contractor.

7. So, all Works contract ITC is restricted?

   Even here, if there are any minor repairs and civil works done to the factory or office building is allowed to the extent it is not capitalized in books of accounts.

8. Whether interest or demurrage for late payment collected from customers is liable to GST?

   Yes. In terms of Section 15(2)(d) interest or late fee or penalty of delayed payment for any consideration for any supply is liable to be included in taxable value

9. Can I offer discounts to customers i.e. Transaction value will be different between two parties?

Yes. In terms of Section 15 (3) of the CGST & SGST Act, value of supply shall not include any discount which is given before or at the time or after the supply subject to certain conditions.

10. What is the place of supply of service in relation to an immovable property?
Section 12 (3) (a) of IGST Act, 2017 provides that any service provided directly in relation to an\ immovable property including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or coordination of construction shall be the location at which the immovable property is situated.
Illustration *- If Mr. A of Ahmedabad, is constructing a house in Mumbai and appoints Mr. B of Delhi to provide architectural services with regard proposed construction of house located in Mumbai, then the place of supply of such architectural services shall be Mumbai.*

11. What would be the time of supply in case of works contract on immovable property?
In terms of entry (a) to clause 6 of schedule II, the works contract in relation to immovable property under the GST regime should be treated as supply of service.
Accordingly, in terms of Section 13, the time of supply of services shall be the earliest of the following:
(a) Date of issue of invoice; or
(b) Due date of issue of invoice under Section 31; or
(c) Date when the payment entry in relation to supply of services is recorded in books of accounts; or
(d) Date on which the payment is credited to supplier's bank account.

12. Are there any continuous supply of services in real estate?
    a. *Renting of immovable property*
    b. *Construction services*
    c. *Development of land*

13. What type GST to be charged on flats sold?
CGST and SGST taxes to be charged for all the sales.

14. On which flats we should charge IGST?
No transaction will be suffered with IGST tax as the place of supply is place of immovable property. However, if the Builder is registered in a different state and entire project is outsourced and there are no local purchases made in the state where property is located and they choose not to register in that state, which is rare instance, in such cases the Invoices would carry IGST.

15. Does rental income up to 20 lacs attracts GST or attracts any other charge?
GST is leviable only if aggregate turnover is more than 20 lacs. (Rs. 10 lacs in 11 special category States). For computing aggregate supplies turnover of all supplies made by you would be added.
Renting of Commercial Property – Taxable at 18%
Renting of Residential Property – NOT Taxable

16. How many digits of HSN should be reported in filings?

Annual Turnover	*Digits compulsory*
<1.5 Crores	*0*
1.5-5 Crores	*2*
>5 Crores	*4*

17. How can we take forward the remaining credit under VAT and service tax?

File GST TRANS -1 within 90 days from 1st July 2017 with the credits remaining unutilized in the returns.

18. Are the monthly charges payments for the upkeep of the residential /commercial complex liable to GST?

Monthly charges for upkeep of residential / commercial complex are liable to GST. However, entry 9955 provides and exemption for "Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution - up to an amount of ***five thousand rupees per month*** *per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex"*

19. Is the sale of car parking whether covered or open liable to GST?

Once car parking is sold by the builder to the purchaser of a flat/ office with a separate consideration, then GST is payable if consideration is received before issuance of completion certificate.

20. A building is leased for 99 years. Will it be liable to GST?

In various judgments, CESTAT has taken a view that long term lease is akin to sale. However, there are contra decisions as well. Unless otherwise exempted, long term lease should be considered as service as leasing of building is specifically covered under Schedule II.

21. Is the repair and maintenance of old buildings liable to GST?

Yes, all repairs incurred will be liable to GST, if the recipient is not capitalising this expenses in the books even they are entitled for Input tax credit and is not restricted by 17(5), if they are used in furtherance of Business.

22. Whether booking fee is subject to GST for a commercial space.?

If the booking fees (for purchase of flats or office) is paid to the builder / developer for buying a flat or office, it will be subject to GST if such amount is received by the builder / developer before issuance of completion certificate from the competent authority. However, there is another view where booking amount is received before entering Sale agreement, it is in the contingent nature and not an Advance, hence no GST Liability.

23. When and how do I pay GST for progressive payment contracts spanning more than 3 months?

This contract will be considered as continuous supply of service and GST has to be paid after the end of each successive progressive payment schedule. The Liability arise if the mile stone is accomplished even otherwise a demand letter is raised or not on the customers.

24. Are contracts signed for sale of commercial space before the GST implementation date liable for GST?

In terms of section 142 (10) of the CGST & SGST act, goods and services or both supplied on or after the appointed date in pursuance to the contract entered prior to the appointed date is liable to GST. However Sec 142(11) (c) ***Tax shall be leviable under GST****, taxable person shall be entitled to take credit under GST of* ***VAT or Service Tax paid***

25. In Anti-Profiteering applies to Real Estate Developers, since the tax liability has increased from earlier regime to Current Regime?

Anti-profiteering (Sec. 171 CGST Act) mentions to pass the benefit to customers, when there is

- *Any reduction in rate of tax on supplies of goods or services from erstwhile tax regime*
- ***OR*** *Any benefit of input tax credit*

For a Real Estate Developer, thought there is no reduction in Rate of tax, there is additional benefits by way of ITC, those credits to be passed on the customer by way of reduction in the price. Future demands that are due.

26. What is the GST rate to be charged?

Sl. No.	*Particulars*	*SAC*	*GST Rate*
1	*Construction of a complex, building, civil structure*	*9954*	*18%**
2	*Composite supply of works contract as per sec 2(119)*	*9954*	*18%*
3	*Other construction services*	*9954*	*18%*

** 12% if Land is part of the sale and sold before the receipt of completion certificate*

27. What are all incomes taxed to GST?

All the amounts received including for land will be taxed to GST.

Example1: No Sale of Land

Particulars	*Amount*	*Tax rate*	*Tax amount*
Construction	*1,00,000*	*18%*	*18,000*
Maintenance	*50,000*	*18%*	*9,000*
Other services	*50,000*	*18%*	*9,000*
Total	***2,00,000***	***18%***	***36,000***
Total receivable	***2,36,000***		

Example2: Sale including Land

Particulars	*Amount*	
Land	*1,00,000*	
Construction	*1,50,000*	
Maintenance	*50,000*	
Other services	*50,000*	
Total	***3,50,000***	
Discount	*50,000*	
Net total	*3,00,000*	*A*
Deduction for land	*(1,00,000)*	*A*1/3*
Taxable value	*2,00,000*	*B*
GST rate	*18%*	
GST tax	*36,000*	*C=B*18%*
Total receivable	***3,36,000***	*A+C*

28. What tax to be charged if we charge at slab basis or milestone basis?

The total amount charged to that customer if inclusive of land, Charge GST @ 12% on the receipts received.
The total amount received only for construction (other than land) Charge GST @ 18% on the receipts received.
Advances received for any of the above 2 categories, the amount is taxable at that point when the amount is received.

29. What is the tax rate on the Land owner share of apartments?

18% GST on construction services

30. How to arrive at the construction cost for land owner?

Option 1 – Open market value
Option 2 – Cost + 10% (110% of cost)
Option 3 – Developer share of Undivided share of land(UDS) + Non-refundable deposit paid to land owner (If any)

Example:
Total land area: 10,000 Sqft.
Total flats: 10
Value of land: Rs. 2,500 per Sqft.
Land owner share: 5 flats
*UDS to developer: 5,000 Sqft. (10,000*5/10)*
Cost spent for project: 5,00,00,000
Sale price per flat: 75,00,000

Option 1: Open market value – 50,00,000 (75Lacs-25Lacs)
*Option 2: Cost + 10% - 2,75,00,000 (5,00,00,000*5*/10) +10%*
*Option 3: Developer share of UDS – 1,25,00,000 (10,000*2,500*5/10)*

31. When to pay taxes on the owner share in JDA?

The amount equal to the developer share of land to be paid at 18% at time of entering the JDA agreement. The balance amount to be taxed at par with the outside customers.

Example:

Value agreed: Rs.25,00,000
Flats to land owner: 5
Value of UDS for developer: Rs.20,00,000
Open market value per flat: Rs.10,00,000
Per flat of owner share: Rs.5,00,000
Extra amount to be taxed per flat: Rs.1,00,000

Rs.20,00,000 to be taxed at the time of entering the agreement, Balance amount Rs.5,00,000 to be taxed when the demand for Rs.5,00,000 per flat is raised from the outside customers.

* * * * *

Our Other Hand Books for Reference

1. An Accountant Hand Book : Journal Entries
2. Handbook on Jeweler
3. Handbook for Hoteliers
4. Handbook for Textile Industry
5. Handbook for Tours & Travel Industry
6. Hand book for Traders