



MEDIA & ENTERTAINMENT SECTORAL GROUP

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FAQ on GST in respect of Construction of Residential Complex by Builders/Developers.

Q. 1) Whether sale of a Flat / House by a builder / developer is a supply of a service or a sale of immovable property under GST law?

Ans. 1) As per the clause 5(b) of the Schedule II of CGST, Act, 2017, construction of a flat / house / complex intended for sale is a supply of service.

However, if the entire consideration towards the Flat/House/complex is received after the receipt of completion/occupancy certificate from the competent authority or after its first occupation, whichever is earlier, then such activity is neither a supply goods nor a supply of Service, as provided under Clause 5 of Schedule-III of CGST Act, 2017. Accordingly, a transaction involving sale of such immovable property after initial occupation or after receipt of occupancy certificate, is a sale of immovable property and it does not attract GST.

Q. 2) Is there any levy of GST on sale of Land?

Ans. 2):- The sale of "Land" (being an immovable property, which is neither Goods nor Service as per GST law) does not attract GST, as provided under Clause 5 of schedule III of the CGST Act, 2017.

Q. 3) What is the applicable rate of GST in respect of supply of services relating to construction of residential Complex?

Ans. 3:- As per Sl. No. 3(i) of Notification No. 11/2017-CT (Rate) dated 28.06.2017 construction of residential complex attracts GST @18% [CGST @ 9% and SGST @ 9%] {which includes construction of 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}.

However, as the supply of service in relation to construction of Flat/House/Complex also involves transfer of "land/undivided share of land" which do not attract GST, the value of such land/undivided share of land shall be deemed to be 1/3rd of the total amount charged for such supply, as provided in Para 2 of the said Nfn. No:11/2017-CT (R) dt: 28.06.2017.

This implies that GST on a Flat/House/Complex [for which a part or total consideration is received prior to issue of a completion/occupancy certificate or it's first occupancy, whichever is earlier], shall be 2/3rd of the total consideration charged for such supply (thus GST payable on a



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Flat/House/Complex would works out to be 12% of the total consideration inclusive of the value of land/ undivided share of land).

4) What are all the exemptions available under GST provisions in respect of supply of 'Construction Services" in relation to residential/commercial complex?

Ans. 4:- The following exemptions are available to the construction services, under GST law:

Description of services	Authority
<i>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.</i>	Sl. No. 10 of Not. No. 12/2017-CT (Rate) dated 28.06.2017
<i>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.</i>	Sl. No. 11 of Not. No. 12/2017-CT (Rate) dated 28.06.2017

Accordingly, the services of construction of residential complexes (without material) under the above specified Government schemes or construction of single residential unit other than as a part of a residential complex (without material) are exempted from GST.

Apart from the above, the services rendered by the departments of the Central/State Governments, Union Territories and local authorities (E.g.: CPWD or State PWD) to other Central/State Governments, Union Territories and local authorities (Recipients) are fully exempted as per Entry No. 8 of Notification. No. 12/2017-CT (Rate) dated 28.06.2017.

5) Whether Input Tax Credit is available on goods/inputs (Viz., sand, gravel, steel items, cement etc.) and input services (Viz: Designing, Plan drawing, site preparation, construction etc.) used in provisioning the construction service?

Ans. 5:- The builders/developers are entitled to avail credit on the goods (i.e. inputs as well as capital goods) and input-services used or intended to be used in the course or furtherance of their business, subject to the conditions



provided in Section 16 read with Section 17(5) of the CGST Act, 2017. Accordingly Builders/Developers are eligible to avail ITC of the GST paid on goods viz., inputs like: sand, Gravel, Cement, steel, electrical cables, switches etc.; and Capital Equipment like: Mixer, Crane etc.; and input-services Viz: Architectural services like Designing, drawing etc.; Manpower Supply Service etc.

Further, GST paid on sub-contracted construction services (with or without material) by other (sub-)contractors (suppliers) to whom certain construction services are outsourced, is also available as ITC as the same do not fall under clauses (c) and (d) of Section 17(5) of CGST Act, 2017. The sub-contractors are independent taxable persons as per GST law.

6) Whether Input Tax Credit is allowed on Tippers, Dumpers and JCBs used in connection with supply of construction Services in view of the exclusion clause at Sec. 17(5) (a) of the CGST Act, 2017?

Ans. 6:- In terms of Sec. 17(5) (a)(ii) of the CGST Act, 2017, Input Tax Credit is allowed on Tippers and Dumpers which qualify as Motor Vehicles (under Clause (28) of Section 2 of the Motor Vehicle Act, 1988 read with Section 2(76) of the CGST Act, 2017) used for transportation of goods. Thus, the restrictions envisaged under Section 17(5)(a) ibid is not applicable in respect of Tippers, Dumpers & JCBs; and as such Input Tax Credit of GST paid on them, is admissible.

7) Whether GST is leviable on stock transfer of inputs and capital equipment from one site to another site of the same builder, within or across a state?

Ans. 7:- Transfer of inputs or capital equipment of the builder/developer from one location to another location within a state for undertaking construction activity under the same registration, is not a taxable supply; hence such transfer can be made without payment of GST; and under a delivery challan.

It may be noted that the builder/ developer who is not required to take registration in a different state (providing inter-state supplies and not having a place of business in the other state); and is required to transfer his capital equipment



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or inputs, is not liable to pay GST; hence such capital equipment or inputs can be transferred under a delivery challan.

However, in terms of the Section 25(4) of the CGST Act, 2017, a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory, shall, in respect of each such registration, be treated as distinct persons for the purposes of GST. Further, as per clause 2 of Schedule-I to the CGST Act, 2017 supplies between such distinct persons, even without consideration, are taxable supplies.

Accordingly, in a case where the builder/developer having two different registrations for different braches/ sites with in a state/UT or in different states/UTs, then they are two distinct persons for GST; therefore, transfer of inputs/capital equipment between them would be treated as a taxable supply; and hence attract GST.

However, GST paid on such supplies can be taken as Input Tax Credit by the recipient. The valuation of such supplies of shall be as per provisions of Sections 15 and 18(6) of CGST Act, 2017 read with Rule 28 of CGST Rules, 2017.

Q 8) What are the consequence under GST law if the builder avails ITC on inputs/input services used by the builders/developers for construction of flats out of which certain flats are sold on payment of GST and remaining sold without payment of GST (when the same are sold and entire sale consideration is received consequent to issuance of completion certificate)?

Ans. 8:- In terms of the provisions of Section 17(2) of the CGST Act, 2017, where the goods or services or both are used by the registered person partly for effecting taxable supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies. Further, sale of flats after issuance of completion certificate without payment of GST in terms of clause 5 of schedule-III to CGST Act are exempt supplies for the purpose of Section 17(2) *ibid* as specified vide Section 17(3) *ibid*, read with ~~clause~~ (b) of paragraph 5 of Schedule II and clause 5 of schedule III to the CGST Act, 2017.



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In view of the above, Input Tax Credit in the above mentioned situation would be restricted to the amount as is attributable to the taxable supplies (flats on which GST is liable to be paid). The method of attribution of eligible ITC has been prescribed under the provisions of Rules 42 (for inputs and input services) and Rule 43 (for capital goods) of the CGST Rules, 2017.

9) Whether refund of accumulated input tax credit on account of invert duty structure, if any, is allowed?

Ans. 9:- No. As per Notification No. 15/2017-CT (Rate) dated 28.06.2017 issued under the provisions of Section 54(3) of the CGST Act, 2017, refund of un-utilised input tax credit is not allowed in respect of the construction services covered under clause 5(b) of schedule-II to CGST Act, 2107.

10) Whether Credit of duties/taxes paid on the inputs lying in stock as on the appointed day i.e. 01.07.2017 is allowed in respect of residential/commercial complexes which are under construction as on 1.7.2017?

Ans. 10:- In terms of Section 140(3) of the CGST Act, 2017, credit of eligible duties is allowed to the suppliers of construction services (builders/developers who were availing abatement in terms of Notification. No. 26/2012-ST dated 20th June, 2012) in respect of the inputs lying in stock as on 01.07.2017 provided that:

- (i) such inputs or goods are intended to be used for making taxable supplies;
- (ii) the said registered person is eligible for input tax credit on such inputs;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under CENVAT Credit Rules, 2004, in respect of such inputs; and
- (iii) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day i.e., 1.7.2017.

11) Whether the builders/developers are liable to pay tax again under GST in cases where the Service Tax had already been paid/payable on flats, as per earlier law?

Ans. 11:- No. In terms of Section 142 (11) (b) of the CGST Act, 2017, GST is not payable to the extent of the Service Tax was



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paid / payable under the provisions of chapter-V of the Finance Act, 1994. Nevertheless, the leviability of Service Tax on the subject services shall be determined by applying the Point of Taxation Rules 2011 as per which if services have been provided or deemed to have been provided on or before 30.06.2017, no GST is payable on the same.

12) Whether GST is payable on 'additional charges' collected by the builder/developer, for modifications suggested by the buyers?

Ans.12) Builders/developers often charges extra amounts for providing certain additional / customised facilities / services which are like 'internal/external modification (as suggested by the buyers)', wood-work, special - plumbing fixtures / sanitary fittings; 'power backup', etc.(additional services). If such consideration is in respect of the additional services provided before the first occupation or before the receipt of occupancy certificate, the additional charges will form a part of the transactional value or total consideration for the supply of the construction service; and hence GST is payable on such additional charges at the rate as applicable to the subject construction service i.e: 18% on 2/3rd of the total consideration (1/3rd being the abatement permissible).

If the consideration is towards the 'internal/external modification (as suggested by the buyers)', wood-work, special - plumbing fixtures / sanitary fittings; 'power backup', etc. (additional services), which is undertaken after the first occupation or receipt of the occupancy certificate, such additional consideration would not be treated as a part of the construction service. In such case the additional charges would be treated as towards an independent works contract service, which is distinct from the initial construction of residential complex service. Thus, such additional charges would attract GST @ 18%, without any abatement from the value.

13. Whether 'other charges' collected by the builders/developers towards 'prime/preferential location', 'parking facility', 'firefighting installation' etc. can be deducted from the total consideration for payment of GST ?



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Ans. 13: Charges towards 'preferential location/floor/facing', 'parking facility', 'firefighting installation', 'transformer', "Gen-set facility" etc., collected by the builders/developers also attract GST as applicable to the principal supply (construction service) as they are naturally bundled and supplied in conjunction with the construction service. Therefore, GST at the rate of 18% on 2/3rd of the Value for such naturally bundled services is payable on the said charges also.

14) Whether the builders/developers providing construction services are eligible for "Composition Scheme"?

Ans. 14:- No. Provisions of composition levy as envisaged under Section 10 of the CGST Act, 2017 are not applicable to supply of services (except supply of restaurant services).

15) Please clarify as to whether Service Tax or GST is payable in respect of on-going projects, for which neither occupancy certificate was received nor it is yet to be occupied, as on the appointed date i.e. 01.07.2017?

Ans. 15: The Sec. 142(10) and 142(11) of the CGST Act, 2017 provides for the provisions to deal with the liability towards the ongoing projects. These provisions are explained with reference to the following possible situations:-

(i) when the total consideration was received prior to 30.06.2017 from the customers in respect of the property under construction (for which neither occupancy certificate was received nor it is yet to be occupied) - Service tax is/was payable on the consideration received @15% on 1/4th of the consideration; and there would be no GST on the same. (Sec. 142(11)(b) - refers);

(ii) when a part of the consideration was received prior to 30.06.2017 from the customers in respect of the property under construction (for which neither occupancy certificate was received nor it is yet to be occupied) - Service tax (ST) is/was payable on the consideration received prior to 01.07.2017 i.e.: @15%



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on 1/4th of the consideration; and there would be no GST to the extent of that amount for which ST was paid/payable. For the remaining consideration paid/payable on or after 01.07.2017, GST is payable with reference to the date of payment of the balance amount or the date of invoice issued by the builder, whichever is earlier (generally invoice reckons to the payment milestones as per the agreement between the builder/developer and the buyer).

- (iii) In respect of an ongoing construction project (for which neither occupancy certificate was received nor it is yet to be occupied), when the milestone for payment was achieved by the builder/developer, who raised an invoice within 30 days from the same (as required by law) prior to 30.06.2017, but the payment is received from the customers in respect of the said invoice on or after 01.07.2017, - Service tax is/was payable on the consideration so received @15% on 1/4th of the consideration; and there would be no GST to that extent. On the balance amount payable or paid w.r.t the subsequent payment milestones falling on or after 01.07.2017, GST is payable, as mentioned at (ii) above.
- (iv) when the total consideration is received, as per the agreed terms, on or after 01.07.2017 from the customers in respect of a property under construction (for which neither occupancy certificate was received nor it is yet to be occupied) - GST is payable @ 18%, on 2/3rds of the consideration.

Q.16) Whether GST is payable on the owner's share of the flats/houses/portion of the building constructed by the builder/developer and given to the land owner as per the development agreement?

Ans. 16:- The builder/developer is liable to pay GST even on the share of the land owner and given in lieu of the land received



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for the development, besides GST on the builder/developer's share of the complex/building.

In the above transaction, the builder/developer receives consideration for the construction service provided by him, from two categories of service receivers: (a) from landowner: in the form of land/development rights; and (b) from other buyers: normally in cash. Thus the builder is liable to pay GST not only on his portion of the complex/building, but also on the share of the land owner.

17) If the answer to above query is 'yes', then when the GST is liable to be paid; and what should be the taxable value?

Ans. 17:- As stated in the answer to the preceding question, GST is liable to be paid by the builder/developer on the share of the land owner, also. GST is liable to be paid when the possession or right in the property of the said flats are transferred to the land owner by entering into a 'conveyance deed' or similar instrument (e.g. allotment letter).

The value of the 'flats/portion of the building' supplied to the land owner by the developer/builder has to be determined under the provisions of Section 15 of the CGST Act, 2017 read with Rules governing Valuation as envisaged under Rules 27 to 35 of the CGST Rules, 2017.

In terms of Rule 27 of CGST Rules, 2017, where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall:

- (a) be the open market value of such supply;
- (b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;
- (c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

In view of the above provisions, the value of supply of those flats would be equal to the value of similar flats charged by



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the builder/developer from the buyers of his share of flats. In case the prices of flats/houses undergo a change over the period of sale (from the first sale of flat/house in the residential complex to the last sale of the flat/house), the value of similar flats as are sold nearer to the date on which land is being made available for construction should be used for arriving at the value for the purpose of tax.

Q.No. 18. Whether Layout Charges/ Development Charges, plotting Charges /conversion charges collected by the Municipal/panchayat authorities from the builders/developers attract GST under reverse charge?

Ans: 18:- As per the entry at Sl. No. 4 of Notification no.12/2017-CT(R) the services by Central Government, State Government, Union Territory, Local Authority or Governmental Authority by way of any activity in relation to any function entrusted to a municipality under Article 243 W of the Constitution, are exempted.

"Regulation of land-use and construction of buildings" is listed as one of the functions entrusted to Municipality at Sl.No. (b) of 12th schedule under Art. 243W of the Constitution. Since the subject Layout Charges/ Development Charges; plotting / land conversion charges, are collected under the authority of the respective state legislation, in relation to the said functions under Art. 243W, the said charges for the concerned services are exempted under sl.no.4 of Notification No. 12/2017-CT (R) dtd: 28.06.2017.

Hence, such charges collected by municipality/town planning/ Revenue authorities, including HMDA, VUDA etc., GST is not liable to be paid, since the such charges are collected for the services in relation to the functions under Art. 243W of the Indian Constitution.

Disclaimer:- The above replies are intended to provide a general understanding on the issues raised by the stakeholders; and is not intended to be treated as legal advice or opinion. For greater details, one may refer to the respective legal provisions of CGST Act, 2017 & SGST/UTGST Act, 2017 and IGST Act, 2017. You may also access the details on www.cbec.gov.in.