
SIRC OF ICAI

CPE MEETING ON

GST Issues & Challenges in Real Estate Sector

13-06-2022 Tuesday, 5 PM to 8 PM

CA. N K Bharath Kumar, Chennai

AGENDA

- Definitions & Interpretations
- Registration
- E-Way Bill
- Time of Supply
- Value of Supply – FCM & RCM
- Value of Supply – Reverse Charge
- Rates of Taxes
- Place of Supply
- Input Tax Credit
- Works Contract Service
- Construction Service
- Transfer of Development Right
- Joint Venture Agreements
- Joint Development Agreements

DEFINITIONS & INTERPRETATIONS

- **Section 2(89) of CGST Act**: “Principal Place of Business” means the place of business specified as the principal place of business in the certificate of registration
- **Section 2(85) of CGST Act**: “place of business” includes—
 - (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown **or any other place where a taxable person stores his goods, supplies or receives goods or services or both**; or
 - (b) a place where a taxable person maintains his books of account; or....

DEFINITIONS & INTERPRETATIONS

- **Section 2(50) CGST Act:** “Fixed establishment” means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs
- Additional Place of business (APOB) is the place of business where taxpayer accomplish business related activities within the State, in addition to the Principal Place of Business (PPOB)

DEFINITIONS & INTERPRETATIONS

- **Section 2(71) of CGST Act:**
- “Location of the supplier of services” means,—
 - (a) where a supply is **made from a place of business for which the registration** has been obtained, the location of such place of business
 - (b) where a supply is **made from a place other than the place of business** for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment
 - (c) where a supply is **made from more than one establishment**, whether the place of business or fixed establishment, the location of the **establishment most directly concerned** with the provisions of the supply and
 - (d) in absence of such places, the **location of the usual place of residence of the supplier**

DEFINITIONS & INTERPRETATIONS

- **Section 2(94)** "registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number
 - 25:“.... Every person who is liable to be registered under section 22 or section 24 shall apply for registration....”
 - 22:“.... Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover....”
- **Section 2(107)** "taxable person" means a person who is registered or liable to be registered under section 22 or section 24;

DEFINITIONS & INTERPRETATIONS

- **Section 2(119)** "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;
- **Schedule II - 2. Land and Building**
 - (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
 - (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

DEFINITIONS & INTERPRETATIONS

■ 5. Supply of services (Schedule II)

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

- (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 authorised to issue 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 (20 of 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 remodelling of any existing civil structure;

■ 6. Composite supply (Schedule II) DEFINITIONS & INTERPRETATIONS

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

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

■ **Rule 18(1)** of the CGST/SGST Rules (Display of GST Certificate):

- Under the GST law, every registered taxpayer is obliged to display their registration certificate at a clearly visible location at their primary place of business as well as any other secondary places of business
 - Punjab Pradesh Beopar Mandal – Oye... Nothing Like that... Chill!!!! (Times of India)



REGISTRATION & E-WAY BILL



REGISTRATION & E-WAY BILL

- Whether the construction site needs to be registered?
 - Yes.
- Whether E-Way Bill needs to be raised for Construction / WCS Service?
 - Yes
- When Goods are moved to Construction site, whether E-Way Bill Required?
 - Yes
- Movement of Own Machineries and bringing back – E-Way Bill Required?
 - Yes
- What if the project is in Other State? – Taxability?



TIME OF SUPPLY



TIME OF SUPPLY

Section 12 – For Goods

Section 13 – For Services

(2) The 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 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 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:

TIME OF SUPPLY

Sr. No.	Goods / Services Supplied	Issue of Invoice	Receipt of Payment	Time of supply
Section 14(a) – Where Goods / Services are supplied BEFORE the change in rate of tax				
1	Before Change	After Change	After Change	Date of Invoice or Receipt of Payment, whichever is earlier
2	Before Change	Before Change	After Change	Date of Issue of Invoice
3	Before Change	After Change	Before Change	Date of Receipt of Payment
Section 14(b) – Where Goods / Services are supplied AFTER the change in rate of tax				
4	After Change	Before Change	After Change	Date of Receipt of Payment
5	After Change	Before Change	Before Change	Date of Invoice or Receipt of Payment, whichever is earlier
6	After Change	After Change	Before Change	Date of Issue of Invoice

TIME OF SUPPLY

Section 2(33) of CGST Act: “Continuous supply of services” means a supply of services

- which is provided, or agreed to be provided,
- continuously or on recurrent basis,
- under a contract,
- for a period exceeding three months
- **with periodic payment obligations** and
- includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify.

TIME OF SUPPLY

- What is Payment Schedule in the Agreement?
- What if Payment Schedule is “as and when” demanded?
- Profit and Loss Vs. Advances Received
- How to determine Time of Supply in “Barter System”? – Land Owner Case

TIME OF SUPPLY – WITH INVOICING - SECTION 31(5)

- **Before the due date of payment** – Where the due date of payment is **ascertainable** from the contract, the invoice shall be issued on or before the due date of payment. Receipt voucher is required to be issued in case of advance received.
- **When due date of payment is not ascertainable**, the date on which payment received – Where the due date of payment is **not ascertainable** from the contract, the invoice shall be issued before or at the time when the supplier receives payment
- **When payment linked with completion of event** i.e. milestones – Where milestones specified in the contract and the payment is linked to the completion of such milestone the invoice shall be issued on or before the date of completion of that milestone.

NOTIFICATION NO. 4/2018-CENTRAL TAX (RATE) DATED 25-1-2018 (NOT APPLICABLE FOR TDR TRANSFERRED ON/AFTER 01-04-2019)

- In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely :—
- (a) **registered persons who supply development rights to a developer**, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and
- (b) **registered persons who supply construction service** of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights,
- as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) above and in the form of development rights referred to in clause (b) above, **shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument** (for example allotment letter).

NOTIFICATION NO. 6/2019-CENTRAL TAX (RATE) AS AMENDED BY 3/2021 DT. 2-6-2021

- Time of supply for supplies made to Landowner changed to:
- *“.... in a tax period not later than the tax period in which the date of issuance of the completion certificate for the project, where required, by the competent authority, or the date of its first occupation, whichever is earlier, falls....”*

TIME OF SUPPLY FOR RCM

- Section 13(3) – Earliest of:
 - (a) Date of Payment as per books of recipient or date of debit in bank w.e. is Earlier
 - (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:
 - (c) Date on entry in books of recipient, in a case where the provisions of clause (a) or clause (b) do not apply:



VALUATION



VALUATION

- Section 15 (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually 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.
 - Buyers – Not Related
 - Rate Difference between apartments
 - Preferential Location Taxability – Composite? / Separately Taxable? DLF – AAAR - Haryana

VALUATION

- Section 15 (2) The value of supply shall include—
 - (a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

Stamp Duty? / Corpus ? / Maintenance? / Pure Agent – Rule 33?

Notification	Remarks
3/2019-	New Rates, New Definitions, Differentiating Construction with Works Contract Services, Valuation Mechanism to Exclude Land, Ongoing Projects, Option Exercising
4/2019 (Both amending 11/2017-CT (R))	<p>Valuation for Landowner's Flat - shall be deemed to be equal to the value of similar apartments charged by the promoter from the independent <u>buyers nearest to the date on which such development rights or FSI</u> is transferred to the promoter.</p> <p>Value of portion of residential or commercial apartments remaining un-booked on the date of issuance of completion certificate or first occupation, as the case may be, shall be deemed to be equal to the value of similar apartments charged by the promoter <u>nearest to the date of issuance of completion certificate</u> or first occupation, as the case may be.</p>

VALUATION

- **Munjaal Manishbhai Bhatt Vs. Union of India** – Adhoc Land Deduction is Violative of Article 14 but can be permitted wherever land value is not ascertainable.

Particulars	Amount
UDS Registration Cost	Rs.3,000 / Sq. Ft
Construction Cost	Rs.2,500 / Sq. Ft
Total	Rs.5,500 / Sq. Ft
Less: 1/3 rd Adhoc Land Deduction	Rs.1,833 / Sq. Ft
Taxable Value	Rs.3,667/ Sq. Ft

VALUATION

- Sale of Developed or Undeveloped Plots – Taxability & Valuation (CIRCULAR NO. 177/09/2022-TRU [CBIC-190354/176/2022-TRU])
- Valuation for Land Owners – Inclusions & Exclusions
 - Rule 27 (OMV, Like kind and Quality, Cost + 10%)

VALUATION – REVERSE CHARGE MECHANISM - SEC. 9(4)

- CEMENT – Compulsory RCM - time of supply – every month
- 80:20 Rule – Input & Input Services - End of the Qtr following the Financial Year
- Payment of Tax towards TDR under RCM by Developer
 - Residential
 - Commercial



RATES OF TAXES



RATES OF TAXES

- RESIDENTIAL REAL ESTATE PROJECT – Where Commercial Portion is Less than 15% (Carpet Area) – After Deduction of 1/3rd Deduction of Land
 - Affordable –0.75% + 0.75%
 - Other than Affordable – 3.75% + 3.75%
 - Commercial - 3.75% + 3.75%
 - NO ITC
 - Transfer of Development Rights – 18% Subjected to 1% or 5%

RATES OF TAXES

- REAL ESTATE PROJECT – Commercial Portion is **MORE** than 15% (Carpet Area) – After Deduction of 1/3rd Deduction of Land
 - Affordable Residential – 0.75% + 0.75%
 - Other than Affordable – 9% + 9%%
 - Commercial - 9% + 9%
 - ITC AVAILABLE
 - Transfer of Development Rights – 18%

RATES OF TAXES

- Ongoing Project Option Exercised - 6% + 6% - ITC Available
- Schemed Development / Government contracts – 9% + 9% - ITC Available
- Works Contract – Ongoing Project – (Sub contractors) – 6% + 6% - **Provided** Affordable Housing is not less than 50%
- RCM Liabilities - 18%



EXEMPTIONS



3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority ¹ [or a Government Entity] by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.	Nil	Nil
10	Heading 9954	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/Pradhan Mantri Awas Yojana.	Nil	Nil
10A	Heading 9954	Services supplied by electricity distribution utilities by way of construction, erection, commissioning, or installation of infrastructure for extending electricity distribution network upto the tube well of the farmer or agriculturist for agricultural use	Nil	Nil
11	Heading 9954	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.	Nil	Nil



PLACE OF SUPPLY



PLACE OF SUPPLY

- Section 12 (3) of IGST Act —
- The place of supply of services,
 - (a) 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;
 - (d) any services ancillary to the services referred to in clauses (a), (b) and (c),
- **shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:**
- Provided that if the location of the immovable property or boat or vessel is **located or intended to be located outside India, the place of supply shall be the location of the recipient.**
- Registration Mandatory where the project is being undertaken (APOB / PPOB if in Other states)
- CGST + SGST Payable.



INPUT TAX CREDIT



INPUT TAX CREDIT

- ITC Available only for Ongoing Projects if the builder has opted for old scheme with ITC.
- All New Projects commencing on or after 1-4-2019 has to mandatorily opt for concessional rate without ITC.
- Commercial Construction – ITC Available & Eligible Subject to Sec. 17(5) and Rule 42/43 reversals.
- No Credits to Builder even for taxes paid under RCM for Residential Constructions.
- Credit Permitted to Land Owner if he sells his share of apartments before obtaining Completion Certificate. – Required to pay minimum of the tax claimed as ITC.



DOCUMENTATION



DOCUMENTATION

- The promoter shall maintain project-wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically (DRC-03) on the common portal by end of the quarter following the financial year and it shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.
- Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2)]



TRANSFER OF DEVELOPMENT RIGHTS



TRANSFER OF DEVELOPMENT RIGHTS

What is this transfer imply?

Land Owner Permitting the developer to

- Enter and take possession and control
- Engage people to work on i.e. surveyor, architects, labour...etc
- Sell, Allot, Lease, License...etc the saleable area and other spaces
- Advertise
- Create Mortgage if the agreement permits
- Manage or Maintain
- Carry out all necessary legal and statutory requirements including documentation, registration ...etc

TRANSFER OF DEVELOPMENT RIGHTS - Taxability

Service Tax Regime

As per section 66B of the Finance Act, 1994 the service tax is levied on the value of all services, provided or agreed to be provided in taxable territory, other than those services specified in the negative list.

It was prerogative to determine whether the activity qualifies as service as per the interpretation prescribed in the Act.

The following analogies are drawn, to settle whether the activity of transferring the development right is “SERVICE”:

- a. **Sub-section (44) to the Section 65B** of the Finance Act, 1994 in its interpretation to the **term “service” categorically excluded “a transfer of title in goods or immovable property, by way of sale, gift or in any other manner”.**
- b. Term “immovable property” is not defined in the Finance Act, 1994.

TRANSFER OF DEVELOPMENT RIGHTS - Taxability

Section 3(26) of the General Clauses Act, 1897 and Section 2(6) of the Registration Act, 1908 defines the term “**immovable property**”.

As per both the definitions, immovable property includes land as well as benefits that arise out of land. Normally, an agreement for transfer of development rights is permanent (i.e.) on irrevocable basis.

Accordingly, one can conclude that transfer of development right, which are irrevocable in nature, was recognized as a benefit arising out of land and thereby, an immovable property under the pre-GST regime. Hence, it was outside the service tax ambit.

This has also been confirmed by the CBIC in FAQ No. 6.2.1 in their Taxation of Services: An Education Guide dated 20.06.2012, where the transfer of development right is considered as sale of land by the landowner.

TRANSFER OF DEVELOPMENT RIGHTS - Taxability

GST Regime

- Section 7 of the CGST Acts, 2017 prescribes the scope for the event to get classified as “Supply”.
- Accordingly, all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business is a supply.
- As per sub-section (102) of the section 2 of the CGST Act, 2017 ‘services’ means anything other than goods.....
- **The exclusion of a transfer of title in immovable property prescribed in erstwhile Act did not continue in GST as only a strict transfer of ownership has been envisaged as sale of land under Schedule III.**
- Accordingly, TDR was brought within the purview of GST and became taxable from 01.07.2017.

Should TDR be subject to GST?

- What is Land? - No Definition under the GST Law.
- Section 3(a) of the Land Acquisition Act, 1894 defines “land” *includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.*
- Change in the nomenclature used in Service Tax vs. GST – Immovable Property Vs. Land - Will it have impact?
- In the case of ***Anand Behera Vs. The State of Orissa and another [1956 AIR 17 SC]*** the Honourable Supreme Court has held that *lake is an immovable property and hence right to catch and carry fishes from the lake is a ‘profit a prendre’*. Hence, it should be considered as benefit arising out of land and accordingly to be considered as immovable property.
- ***Smt. Shantabai Vs State of Bombay [1958 AIR 532]*** – right to cut trees – benefit arising out of land,
- ***State of Orissa Vs. Titagarh Paper Mills Company 1975 AIR Orissa 90***

Should TDR be subject to GST?

Judgements on TDR

- In the case of ***Chheda Housing Development Corporation Vs. Bibijan Shaikh Farid [2007 (3) MhLj 402, Bombay High Court***

After considering various judgements, it was held that

FSI/TDR being a benefit arising from the land, consequently must be held to be immovable property and an Agreement for use of TDR consequently must be held to be immovable property..

- ***DLF Ltd Vs. Commissioner of Service Tax, Gurugram [2019-VIL-300-CESTAT-CHD-ST]***
- ***DLF Commercial Projects Corporations Vs. Commissioner of Service Tax, Gurugram [2019-VIL-299-CESTAT-CHD-ST]***

the Honourable Tribunal had opined that the development rights shall be considered as benefits arising out of land and accordingly shall get covered under the ambit of immovable property.

- The transfer of Development Rights is effectively an agreement for transfer of land. Therefore, should get covered as 'Sale of Land under Entry 5 of Schedule III' of CGST Act.
- Can a Notification Supercede the Legislation?

Valuation Mechanism

- In view of Parting with the development rights, the land owner receives the constructed units on his share of land.
- Hence, the transaction being in nature of barter transaction, Developer pays the consideration in the form of CONSTRUCTED UNIT.
- Therefore, the value of SIMILAR CONSTRUCTED UNIT to be adopted for the purposes of valuation.

Person Liable to pay Tax & Time of Supply

Period of Supply	Notification	Who is liable?	Point of Supply
01.07.2017 to 24.01.2018	No Notification	Land Owner - FCM	As per sec. 13 of the CGST Act, 2017 i.e., the date of transfer of development right.
25.01.2018 to 31.03.2019	04/2018 C.T. (Rate) dt. 25-01-2018	Land Owner - FCM	At the time of receipt of possession or the right in the constructed complex, building or civil structure, by way of a conveyance deed or similar instrument (for example allotment letter).
01.04.2019 onwards	06/2019 C.T. (Rate) dt. 29-03-2019 as amended	Promoter – RCM [05/2019-C.T (Rate) dated 29-03-2019	Any tax period not later than the below mentioned events: <ul style="list-style-type: none"> - date of issuance of the completion certificate for the project, where required, by the competent authority. - date of its first occupation.



CALCULATION OF TAX FOR TDR



41 A	Heading 9972	<p>Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of residential apartments by a promoter in a project, 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.</p> <p>The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under:</p> <p>[GST payable on TDR or FSI (including additional FSI) or both for construction of the project] × (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project)</p>	Nil	<p>Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner—</p> <p>[GST payable on TDR or FSI (including additional FSI) or both for construction of the residential apartments in the project but for the exemption contained herein] × (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project):</p> <p>Provided further that tax payable in terms of the first proviso hereinabove shall not exceed 0.5 per cent of the value in case of affordable residential apartments and 2.5 per cent of the value in case of residential apartments other than affordable residential apartments remaining unbooked on the date of issuance of completion certificate or first occupation.</p> <p>The liability to pay central tax on the said portion of the development rights or FSI, or both, calculated as above, shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier.</p>
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■ 41 B	Headin g 9972	<p>Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 1-4-2019, for construction of residential apartments by a promoter in a project, 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. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under:</p> <p>[GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] × (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project).</p>	Ni l	<p>Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner—</p> <p>[GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the residential apartments in the project but for the exemption contained herein] × (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project);</p> <p>Provided further that the tax payable in terms of the first proviso shall not exceed 0.5 per cent of the value in case of affordable residential apartments and 2.5 per cent of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation.</p> <p>The liability to pay central tax on the said proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case may be.</p>
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S.No	Particulars	Area / Value
1	Carpet Area of Project (A)	50,000 Sq. Ft
2	Carpet Area of Residential Apts (B)	40,000 Sq. Ft
3	Carpet Area of Commercial Apts (C)	10,000 Sq. Ft

4	Total Number of Residential Apts	40
5	Carpet Area of Single Residential Apt	1000 Sq. Ft
6	Sale value of ALL Residential Apts @ 5K	20,00,00,000
7	Sale value of ALL Commercial Apts @ 5K	5,00,00,000
8	Total Sale Value of all Apts (R +C)	25,00,00,000

9	Land Owner's Share	35%
10	Revenue Land Owner's Share (35%X 25C)	8,75,00,000
11	GST Payable on Development Rights @ 18% on 8.75 C	1,57,50,000
12	Eligible Exemption (15750000 X 40,000 SFt/50,000 SFt)	1,26,00,000*
13	GST Payable on TDR on Commercial Apts (1.575-1.26)	31,50,000

S.No	Particulars	Area / Value
14	No. of Residential Unit Unbooked as on Date of Completion	10 Units
15	Carpet Area of Unbooked Residential Units 10 Units * 1000 Sq ft	10,000 Sq. Ft
16	GST on TDR of Unbooked Residential Apts (12.6X10K/40K)	31,50,000

Compare 16 with following

17	Value of Unbooked Res. Units 10000 Sq. Ft @ 6K	6,00,00,000
18	GST on the Unsold Value of Flats @ 5%	30,00,000
19	GST Payable on TDR on Unsold Residential flat (Min of 31.5 Vs. 30)	30,00,000

Rule 42 – Reversal in the case of RREP

- Monthly Reversal in proportion to Residential with Total Project Area
- After completion certificate received, calculate the value of taxable sale made in proportion with total value of commercial area
- Rest of the amount to be reversed on or before 30th September following the receipt of completion certificate.

Rule 43 – Reversal in the case of RREP – Reasonable Basis



JOINT DEVELOPMENT & JOINT VENTURE



Joint Development / Venture Agreements –

- a) Revenue Sharing – Developer Sells all flats to the ultimate buyers and revenue from sale of all such flats is shared between land owners and developers in agreed ratio.
- b) Area Sharing – Flats constructed by the developer on the land provided by the landowner are shared between Land Owner and Developer in pre-determined ratio.
- c) Revenue & Area Sharing – A particular number of flats are allotted to the land owner and revenue from balance flats is shared between Land Owner and Developer in agreed ratio



TAX & COMPLIANCE PLANNING







Thank you!



Thank You

SIRC of ICAI

Technical Support Staff

All Esteemed Participants

Please do share your views & suggestions about this session on
bharat@ssaca.in / +91 9362 303 406

CA. N K Bharath Kumar

Sanjiv Shah & Associates
Chennai , Coimbatore & Hyderabad