



Recommendations on GST

November 2020

Subject	Present Provisions	Issues	Suggestions for Amendment	Rationale for Amendment
1. Affordable Housing				
Affordable Housing Definition	A dual threshold of sale value of INR 45 lakhs and carpet area of up to 90 sqm (in non-metropolitan cities/towns) or 60 sqm (in metropolitan cities) has been prescribed for the lower GST rate of 1% to apply on affordable housing units	Section 80 IBA of IT Act, GST Act, DEA Notification dated 14.11.2017, Ministry of Housing and Urban Affairs in respect of CLSS and RBI adopt varying definitions of affordable housing. A uniform definition of 'affordable housing' would provide clarity, certainty and direction to the different agencies for extending the benefits of Government policies on affordable housing to eligible projects.	<p>The following definition of "Affordable Housing" may be adopted in all schemes-</p> <p>The limit on value of the unit be raised to INR 75 lakh (for non-metro cities)/ INR 1.50 Crore (for metro cities)</p> <p>and unit with carpet area as defined under RERA may be re-defined as 'that does not exceed 90 sqm in the metros and 120 sqm elsewhere.'</p>	HOUSING FOR ALL is one of the flagship schemes of the government with utmost importance. To achieve this, a right alignment of the affordable housing scheme is desirable in-order to push the scale of this project.
2. Works Contract				
GST on Works Contract	Notification No. 20/2017-Central Tax (Rate) dated 22 nd Aug, 17 has reduced the GST rate on composite supply of works contract for low cost housing scheme qualified for affordable housing under any of the defined scheme to 12%.	At the time of the reduction, the primary GST rate of real estate was 12% (Regular Housing) and 8% (affordable housing). Since then the government has reduced the effective GST rate on residential real estate project to 5% and 1% whereas the GST rate for composite supply of works contract remains the same. In the absence of ITC, this GST becomes a cost for the residential unit.	The GST rate on composite supply of works contract for residential real estate should be reduced to 5% with Input Tax Credit benefit	Higher input costs in the form of GST on works contracts operates against the stated policy of the government i.e. housing for all by 2022. In the absence of ITC, 12% GST on works contracts is quite prohibitive and takes the cost of a residential unit beyond the reach of a common citizen.

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3. GST on Inputs for Housing				
Reduction of GST on Inputs charged at non-merit slabs	Present GST rates: <ul style="list-style-type: none"> ➤ Cement 28% ➤ RMC, steel, flooring, doors and windows 18% ➤ Electrical, plumbing, sanitary items 18%, Labour charges/ Services 18% 	<p>At present, affordable housing is subjected to GST at 1% and other housing is subjected to GST at 5%. However, unlike all other goods and services the benefit of input tax credit is denied to the sector. It is in this context that GST rates on the procurement side becomes relevant for this sector.</p> <p>Specifically, cement constitutes a major component of construction cost (almost 10-15%) for any real estate project. Similarly, rate of labour and contract services is currently 18%.</p>	Higher GST rates on these inputs for residential real estate is quite prohibitive. Accordingly, either GST rate on these goods may be reduced to 12% or residential real estate projects may be allowed refund of ITC in the form of 'inverted duty structure' together with refund of input services as well	These inputs are a major part of the cost of construction and there is no ITC at present. Such exorbitant rates operates against the stated policy of the government i.e. housing for all by 2022. In the absence of ITC, 12% GST on works contracts is quite prohibitive and takes the cost of a residential unit beyond the reach of a common citizen.
4. GST on land and land related benefits				
Taxability of Long Term Lease Premium	Government authorities especially Town Development Authority, Industrial Development Corporations, Municipalities allot land on long term leases for a period upto 99 years which are then used for development of housing projects. Stamp duties are also levied on the long term lease of lands of more than 30	The exemption is restricted to only industrial units or for setting up infrastructure for financial service sector.	Similar benefits should be extended to land allotted to non profit institutions, educational institutions, hospitals or similar institutions where outward supply is exempt from GST.	Cost of land is a major impediment in setting up such institutions which provide essential services to general public. This is the underlying reason for exempting outward supply of such institutions from GST. Charging GST on already exuberant cost of land only discourages setting up such public utility

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	<p>years on same rates as sale of land.</p> <p>Recognizing the problem, Government exempted 'Lease Premium' charged by State Government Industrial Corporation and other specified entities in respect of industrial plots and other specified plots by virtue of Entry No 41 of the Notification No 12/2017-CTR.</p>			<p>facilities and operates against the government policy demonstrated by granting exemption on their outwards supply.</p>
5. Slum Rehabilitation Projects				
<p>ITC on Slum Rehabilitation Projects</p>	<p>At present GST becomes chargeable on land plus construction cost of units, even when there is absence of any transfer of land.</p>	<p>The modus operandi adopted in SRA Project is as follows –</p> <p>a. The Project (to be undertaken by the developer with consent of co-operative society of slum dwellers) is submitted by the developer to the SRA;</p> <p>b. The proposal is scrutinized by SRA and accepted;</p> <p>c. The developer provides alternative accommodation to slum dwellers as per guidelines of the SRA</p> <p>d. The construction of rehabilitation building is commenced post receipt of Letter of Intent ('LOI') from the SRA;</p>	<p>The service by developers under SRA should be considered as construction service to society members / tenants / land owner and be charged at full rate of tax only on cost of construction and not land. Tax cost borne by the Developer on the construction service provided to SRA / Society under the SRA and Redevelopment project respectively, should be allowed as credit as the said cost is incurred by the Developer for the purpose of earning the revenue from the sale building.</p> <p>Input Tax Credit towards the construction expenses incurred</p>	<p>Slum rehabilitation is necessary pre-requisite to urban revival.</p>

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		<p>e. The units constructed by the developer are allotted to slum dwellers by the SRA;</p> <p>f. The SRA permits construction on sale building as per provisions of the Scheme.</p> <p>Developer undertakes redevelopment of the property owned by the 'Society under Redevelopment Scheme' by demolition of the existing building and construction of a new building in place thereof for which the Society / members of the Society grant the development rights in favour of the Developer which is ultimately used for the construction of the sale building.</p> <p>The reason for undertaking the construction of a rehab building under both the Schemes is to construct the sale building. The nature of transaction is similar to purchase of FSI / TDR from market with the difference that in case of purchase from market the developer would be required to pay consideration in monetary terms whereas in the instant case, the consideration is non-monetary. Consequently, the</p>	<p>for the units to be given to existing occupants without consideration.</p>	

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		<p>construction service provided to SRA and Society though being an output service, is also an input service without which Developer will not be able to construct sale</p>		
6. Removing Input Tax Credit (ITC) restrictions				
<p>Removal of restrictions on ITC Credit in respect of construction costs of residential/ commercial units like malls, hotels, industrial warehouses etc that are leased out</p>	<p>Section 17(5) of the CGST Act places restrictions on availment of ITC on construction services.</p>	<p>The restrictions of Input tax credit on the construction activity increases the cost of construction forcing the Developers to pass it on to the lessees by way of increase in lease rental charges.</p> <p>Hon'ble High Court of Orissa in the case of M/s Safari Retreats Private Limited and another vs. Chief Commissioner of CGST and others and in several other judgements, has allowed the petitioners to avail ITC of goods/ services used for construction of immovable property meant for letting out. The High court observed that the narrow construction of interpretation of Section 17(5)(d) is to be read down as it defeats the purpose of free flow in credits as indoctrinated by the GST law.</p>	<p>1. Considering the chance of differing interpretations likely to be taken across the Sector, including the revenue authorities, it is recommended that the Government issue a circular clarifying the scope of the restriction covered under section 17(5) © and (d) of the CGST Act.</p> <p>2. Amendments to be carried out in the GST Law : Section 17(5) (C) of the CGST Act, 2017 be specifically amended as follows (mentioned in Bold and Underlined text)</p> <p><i>“(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection(1) of section 18, input tax credit shall not be available in respect of the following, namely:—</i></p> <p><i>(a).....</i></p> <p><i>(b).....</i></p>	<p>This should immensely help in addressing the ambiguities pertaining to the interpretation of this entry restricting the GST credits on input goods/ services, like civil works, plumbing, electrical, project management services, interior decorator services, architect services, steel, cements, carpets, electrical fittings, lighting works etc.,</p>

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			<p>(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service <u>or in respect of any output supply which entails payment of output GST.</u></p> <p>(d) <i>This clause should be deleted.</i></p>	
7. GST on development rights for commercial development				
<p>Transactions relating to grant of development rights (pertaining to land) in whatever form should be outside the purview of GST</p>	<p>Notification No. 4/2018 – Central Tax (Rate) dated 25 January 2018 appears to subject transfer of development rights by a landowner to a developer, in a joint development agreement ('JDA') to GST.</p>	<p>Keeping in mind the hardships being faced by the Residential Property Developers, the Ministry of Finance vide Entry No. 41A of Notification No. 4/2019 – Central Tax (Rate) dated 29th March 2019 exempted the levy on transfer of development rights towards construction of residential apartments, except where the entire consideration has been received after issuance of completion certificate with effect from 1st April 2019.</p>	<p>Either the Notification, which seeks to tax transfer of land development rights (effectively taxing conveyance of land), be withdrawn, as the same is in contravention to GST laws or we request that a Notification similar to 4/2019 Central Tax (Rate) is issued by the government granting exemption to Commercial projects as well. The Schedule III Sl No 5 should be amended to include the following:</p> <p><i>Sale of land or benefit arising out of land and, subject to clause (b) of</i></p>	<p>Commercial projects (developed for sale) as residential projects with respect of land. Further, both commercial and residential properties are subject to Stamp Duties.</p> <p>The measure will reduce the cascading effects and serve as a major fillip to economic activity.</p>

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		<p>With effect from 1 April 2019, a specific exemption has been granted for transfer of development rights in a residential JDA, commercial developments have not been covered under the said exemption.</p> <p>Recently in the case of DLF Commercial Projects Corporations vs CST Gurugram, the CESTAT at Chandigarh has held that transfer of development rights shall not be chargeable to service tax, since it is a benefit arising out of land and hence is a transaction in or of an immovable property.</p>	<p><i>paragraph 5 of Schedule II, sale of building.</i></p>	
8. GST on electricity charges on Developers				
<p>GST on electricity charges collected from the tenants</p>	<p>GST is leviable on electricity consumption charges recovered from occupants by developers based on the concept of composite supply after the judgment by Hon. High Court of Kolkata in Srijan Realty case in which obtaining high tension electric supply and converting it to low-tension supply for onward</p>	<p>There is no quid pro quo in the instant case for qualifying the mere reimbursement of expenses as a taxable supply.</p> <p>Developers have no commercial interest in supply of electricity, and the arrangements are only for operational ease.</p>	<p>Typically, the activity of recovering such electricity charges are undertaken independently and a separate invoice is raised for the same. Given this, the department should issue a clarification that such an arrangement does not qualify to be a composite supply and GST shall not be levied by developers.</p> <p>As electricity charges are recovered from individual unit</p>	<p>The ambit of composite supply introduces an unwarranted burden on the developer. The consequences of developers reducing the services just to reduce their tax liability would be deleterious to occupants and home owners.</p>

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	transmission to individual occupants was deemed to be a service.		owners based on their respective sub-meter readings on a cost to cost basis, and is paid to a third party, the clarification issued could also bring out the clear pure agency position involved in the said arrangement.	
9. Restoring Input Tax Credit				
Restoring Input Tax Credit Option as was existing prior to April 1, 2019	The Revised GST scheme for residential projects effective from 1 st April 2019 stipulates GST at 5% and 1% for affordable housing without providing for Input Tax Credit (ITC).	Revised GST scheme has resulted in heavy increase in construction cost on account of cascading effect of GST on inputs adversely affecting demand all over the country.	An option may be given to developers to choose from either of two schemes below : 1. To opt for the Revised scheme of 5% / 1%(affordable housing) with no ITC availment and fulfilment of all related conditions like 80/20 rule. 2. Avail ITC with GST rate of 12% as applicable to GST on works contract for Government contracts and PMAY (3% for affordable housing units) in serial number 3 of Notification No. 11/2017-Central Tax (Rate).	The heart and soul of GST is to avoid cascading by allowing input tax credit. With respect to real estate, stamp duty continues to subsist. ITC is a practically ameliorative step to address cascading in real estate.
10. Cancellation/ surrender of unit				
Cancellation/ surrender/ change of unit	The present provision on adjustment of GST in case of cancellation/ surrender/ change of unit by a buyer is not very clear. It is generally understood that such adjustment can only be done	Real estate projects are long term projects wherein in case of cancellation/ surrender/ change of unit, refund of amount received since beginning of the project has to be made. The amount being refunded might have	A suitable amendment in the law should be made permitting adjustment of GST paid in section 34 of the CGST Act should be inserted including amendment in relevant Rules, permitting the adjustment of GST paid beyond 30 th September of the last fiscal.	Once the unit is cancelled/ surrendered by the customer, the entire consideration is refunded. In such a case, refund of GST component already deposited with the government becomes the

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	till filing of GST return for the month of September next year.	been received during the last 3-4 years wherein it appears that refund of amount received during the last financial year alone can be adjusted.	The amount of GST attributable to the cancelled/ surrendered unit should be allowed as an adjustment from the GST liability on other outward supply and in the absence of an outward GST liability, the GST should be refunded.	issue and becomes a ground of avoidable dispute between the developer and the customer. Also, when eventually no taxable supply was made by the developer and the entire consideration is refund, GST should not be retained by the government.
11. Adjustment of purchases from unregistered persons				
Adjustment of purchases from unregistered persons	Currently, GST is paid on the procurement of goods or services made from unregistered persons wherein supply from registered persons is below 80% of the total procurement of inputs and input services (except certain specified services). GST on amount of shortfall is liable to be deposited on financial year basis.	Generally, real estate projects are long term projects and due to vary nature of inputs and input services, it is not practically possible to procure entire inputs and input services from registered persons. Hence, the limit of 80% has been prescribed. Due to seasonal nature of input and input services required for such projects, the adjustment on financial year basis create extreme hardship for the developers.	The adjustment of procurement of inputs and input services should be permitted for the entire duration of the project instead on each financial year basis.	The adjustment of procurement from registered and unregistered persons for the entire project would serve the purpose of the government of encouraging supplies from registered persons only. At the same time, it would also allow industry to align its procurement to its seasonal requirements.
12. Deduction of value of land				

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Deduction of value of land	Para 2 of the Notification No. 11/2017-Central Tax (Rate) provides for deduction of one third of the total amount charged for the supply which involves 'transfer of land or undivided share of land' .	This clause is applicable to the real estate projects which involves transfer of development rights of FSI whereas the deduction is for transfer of land or undivided share of land . Such language inconsistency can result in huge amount of litigation in the future.	A suitable amendment effective from 1 st April 2019 be made in order to clarify that the deduction would be permitted in case of transfer of development rights or FSI.	The inconsistency in language would create avoidable litigation whereas the intention of the government to levy GST @ effective rate of 1% & 5% is absolutely clear.
13. GST on construction services by developer to the land owner				
GST on construction services by developer to the land owner	The developer is liable to pay GST at the time of entering into an agreement for transferring rights of the constructed units to the land owner.	The arrangement of Joint Development Agreement is aimed at reducing cash outflow in the hands of the developer and facilitate expeditious completion of the projects. At the time of entering into a contract transferring rights of the constructed units to the land owner, the developer does not receive any money and payment of GST at that point in time on the entire value puts huge burden on his cash flow and delays the execution of the project.	The developer should be permitted to pay GST at the time and to the extent of such units are booked by the land owner and the amount of installments received.	Such amendment would align the payment of GST with the receipt of consideration while having no adverse impact on the revenue of the government.
14. Multiple points of GST levy				

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Multiple point of GST levy	GST is payable on upfront payment towards allotment of land on long term lease. The entry number 41 of Notification 12/2017 provides exemption in case of allotment to specified industries by government agencies.	In case of sale of units or factory building, GST is again payable even if the said upfront payment has already suffered GST. The levy of 18% GST on the amount of land is quite prohibitive as Stamp duty is also levied on the same transaction. This often becomes the obstacle for resolution of sick industries.	An exemption should be provided whereby subsequent transfer of lease or sub-lease of land allotted by the government agencies under the said exemption entry should also be exempt.	A large number of sick units can be resolved once the said exemption is provided. Once a sick unit is resolved, the governments and public receive several benefits in the forms of taxes, duties, employment etc. for a very long period of time. The benefits far exceeds the amount of GST that would be forgone on such transactions.
15. Valution and time of supply of TDR/ FSI attributable to unsold inventory				
Valuation and time of supply of TDR/ FSI attributable to unsold inventory	In case of residential real estate, GST is payable on the area remained unsold on the date of receipt of completion certificate or first occupation. The GST is payable on the value at which a unit is booked closer to such date.	The GST is payable on the area remained unsold on a deemed value and without actually receiving any consideration. This significantly increases the inventory carrying cost alongwith interests etc. for the developers.	The developer should be asked to pay GST only on at the time and to the extent of consideration received. A mechanism may be evolved wherein the payment of GST is ensured at the time of receipt of consideration of such unsold units.	GST is payable on the amount of consideration. In this case, a developer is liable to pay GST without having received any consideration which would put enormous burden on the developers while giving no additional revenue to the government.