

GST implication on  
Expenses  
(ITC & RCM) of Builders

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## *Coverage of this session*

- Transitional issues w.r.t. transfer of credits – VAT, ST, Excise;
- Eligibility of Input Tax Credit prior to April 2019;
- Eligibility of Input Tax Credit after April 2019;
- Transition of credits from old scheme to new scheme;
- ITC reversal on unsold units as on CC/OC – Pre & Post April 2019;
- RCM implication on Govt. Expenses, TDR, FSI etc.;
- ITC on JDA Contracts for landowners & Developers;
- RCM implication on 80:20 procurements Rule;
- ITC on lease hold projects.

## Major Expenses

<b>Nature of expenses</b>	<b>Nature of expenses</b>
Acquisition of land/ Development rights on land	Marketing & Promotion expenses
Government Permissions & Approvals	Freight & Insurance
Liaison work	Commission/ Brokerage charges
Architectural Design & Consulting	Interest & Finance Cost
Construction equipment's/ machines	Legal Expenses
Site Preparation, Earthwork, Excavation	Duties/ Taxes & levies
Construction & Developmental work	Professional Consultancy expenses
Completion & Finishing Works	Salaries & wages
Labour contractor/ manpower supply	Other Indirect Expenses

## Major Expenses

Sl. no.	Description of goods	HSN code	Rate of GST
1	Iron and Steel	7207	18%
2	Sanitary fittings & items	6907, 08	18%
3	Bricks	6815	18%
4	Natural sands of all kinds, whether or not colored.	2505	5%
5	Portland cement/aluminious cement/super sulphate cement & similar hydraulic cements	2523	28%
6	Sliding Window /Doors/Frames	3925	18%
7	Wooden Doors	4418	18%
8	Articles of Iron or Steel	73	18%
9	Aluminum and articles thereof	76	18%
10	Plastics and articles thereof	39	18%
11	Ready mix concrete (RMC)	3824	18%
12	Services	SAC	18%

## *Set-off of Taxes prior to GST regime*

<b>Nature of Taxes</b>	<b>Set off Allowed?</b>
Excise Duty/ CVD on inputs & input services	<b>Not Allowed</b>
Excise Duty/ CVD on Capital goods	Allowed
VAT/ SAD (If project is under composition scheme)	<b>Not Allowed</b>
Central Sales Tax;	<b>Not Allowed</b>
Service tax including KKC;	Partially Allowed proportionate to flats sold prior to OC
Swachh Bharat Cess;	<b>Not Allowed</b>
Stamp Duty	<b>Not Allowed</b>
Purchase tax, Entry tax, Octroi, LBT, Entertainment tax, Luxury tax paid, if any etc.	<b>Not Allowed</b>

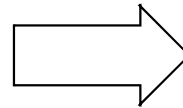
## *Transition of ITC from Past regime*

- Credits lying as closing balance in VAT and Service Tax Returns was transferred to electronic credit ledger in GST;
- Balance credit of Capital goods was availed by submitting details in Form TRAN 1;
- Carry forward of Education Cess/ SHE Cess/ KKC in TRAN-1?
  - *Credits earned were a vested right in terms of the Hon'ble Apex Court judgement in Eicher Motors case and will not extinguish with the change of law unless there was a specific provision which would debar such refund - **M/s Bharat Heavy Electricals Ltd/ Schlumberger Asia services ltd/ Kirloskar Toyota Textile Machinery pvt. Ltd.***
  - *“Notwithstanding anything contrary contain in said law” employed u/s 142(9)(b), shall apply to the refund claims and hence the refund cannot be rejected on the basis of being time barred. **There is no application of Section 11(B) of the Central Excise Act, as these refunds arise due to transitional provisions - Punjab National Bank CESTAT BANGALORE/ M/S HINDUSTAN ZINC LTD CESTAT NEW DELHI***

## Transition of ITC from Past regime

### A registered taxable person under GST who was:

- Providing works contract service; and
- availing the benefit of Notification No. 26/2012- ST- dated 20.06.2012 under earlier laws



### Eligible to take credit of eligible duties/taxes\* in respect of:

- Inputs held in stock on appointed day;
- Inputs contained semi-finished goods on appointed day;
- Inputs contained in finished goods on appointed day

Excise duty	Countervailing duty	Special Additional Duty
VAT	Entry Tax	Purchase tax

## *Transition of ITC from Past regime*

- Such inputs / goods are used/ intended to be used for making taxable supplies under GST.
- Such person is eligible for ITC under GST law.
- He is in **possession of invoice** or other prescribed documents evidencing payment of tax / duty under earlier law in respect of inputs held in stock, semi-finished or finished goods.
- Such invoices / prescribed documents are issued within 12 months immediately preceding appointed day.
- Supplier of services is not eligible for any abatement under GST law.



## *Transition of ITC from Past regime*

- The term 'inputs' cover only Goods and does not cover Capital Goods. hence the credit is not allowed – MH Internal Circular – Validity??
- Unsold flats which are stock in trade when they were sold they were assessable under the head income from the business and therefore Assessing Officer is not correct in bringing to tax notional annual letting value – [**M/s. Runwal Constructions v. ACIT in ITA. No. 5408 & 5409/Mum/2016 dated 22.02.2018**]
- Goods which have by incorporation become part of immovable property are deemed as goods - Tax was levied as Goods/ services under VAT / ST and the levy continued under GST regime.
- Transfer of Credits for inputs lying in stock for Past 1 year was availed to the extent of unsold portion – Beyond 1 year??;

## *Transition of ITC from Past regime*

- In the writ petitions filed by *GMMCO Limited vs UOI (W.P.(C) 9539/2017, C.M. APPL.38777/2017) & ANR* and *Hafele India Private Limited Vs. Union of India & ANR (W.P.(C) 9572/2017, C.M. APPL.38984/2017)* assessee contented that such restriction upon persons possessing invoice is arbitrary in as much as proviso thereto allows deemed credit at prescribed percentage without any restriction to persons not possessing invoice.
- Therefore, Delhi High Court has allowed and heard the writ petition and passed an order on 11.12.2017 allowing interim relief by stating that *“we have heard learned counsel for the parties and are of the opinion that the matter requires to be heard in greater detail. In the meanwhile, it is open to the petitioners to proceed and claim credit or pay duty, as the case may be. In case any duty amounts are paid, that will be subject to final outcome of the proceedings.”*

## *Transition of ITC from Past regime*

- Where VAT and Service Tax has been paid on any supply under both State VAT Act and Finance Act, 1994:
  - Tax shall be payable under CGST / SGST Act to the extent supplies made after appointed day;
  - Taxable person will be entitled to credit of VAT or service tax paid under existing law to the extent supplies made after appointed day; and
  - Such credit to be calculated in such manner as may be prescribed.

## *Transition of ITC from Past regime*

- **Transitional levy under MVAT and corresponding ITC claim:**
  - As per Trade Circular No. 18T of 2017, new composition scheme under MVAT was introduced i.e., June 1<sup>st</sup>, 2017. As per new scheme, the registered developer who undertakes construction & who desires to opt for the revised composition scheme is required to pay 1% of the amount received as advance or otherwise.
  - **Agreement to sale is registered on or before May 31, 2017:** Additional Tax paid on account of 1% over and above the monies received can be availed as credit.
  - **Agreement of sale is not registered after May 31, 2017:** Tax payable @ 1% of the advances received by June 30, 2017.
  - **Agreement of sale is registered after May 31, 2017:** Tax payable @ 1% of the advances received by June 30, 2017.

## *Transition of ITC from Past regime*

- Service tax to be paid as per project cut-off as on 30<sup>th</sup> June 2017. GST needs to be paid on the balance;
- Any service tax paid on advances over and above the project completion viz., mobilization advance, customer advances etc. shall be available as credit;
- VAT on receipt basis – VAT payable to be extent monies received up to 30.06.2017 and GST on the balance;

**\*CGST and SGST not to go hand in hand during transition as levy of MVAT is on receipt basis and service tax levy is on point of taxation basis.**

## *Availability of ITC prior to April 2019 – Old Scheme*

- ITC on all expenses towards inputs, input services & Capital goods including Staff welfare, Project launch expenses, Customer promotional expenses etc.
- Proportionate reversal of credits for units sold post issuance of OC/ CC.
  - Computation of ITC reversal based on turnover of sales made prior to OC/ CC at the GSTIN level up to March 2019.
  - From April 2019 onwards, the computation of ITC reversal is based quantum of carpet area in sq ft. sold prior to OC/CC – To be computed at the project level.
- ITC balance accumulated in a project could be utilised for any other project, even if the project site in which the expense incurred is completed.
- Refund of accumulated ITC for projects completed – No further utilization.
  - Commissioner v. Slovak India Trading Co. Pvt. Ltd. — 2008 (223) E.L.T. A170 (S.C.)
  - Bangalore Cables Limited 2017 (347) E.L.T. 100 (Tri. - Bang.)
  - Shree Krishna Paper Mills [2019 (12) TMI 1348 – P&H HC]

## *New scheme of taxation for Real-Estate - April 2019 onwards*

Sl no.	Description	New scheme		Old scheme	
		Effective Rate*	ITC	Effective Rate*	ITC
1	<b>Affordable</b> Residential Apartment in REP or RREP	1%	✘	8%	✓
2	<b>Other than affordable</b> Residential Apartment in REP or RREP	5%	✘	12%	✓
3	<b>Commercial portion</b> (< 15%) in <b>RREP</b>	5%	✘	12%	✓
4	<b>Commercial portion</b> (> 15%) in <b>REP</b>	12%	✓	12%	✓
5	<b>Ongoing projects</b> not opted for the new scheme	12%	NA	12%	✓

\* The tax rates are net of 1/3<sup>rd</sup> land deduction

## *New scheme of taxation for Real-Estate - April 2019 onwards*

<b>New scheme</b>	<b>Old scheme</b>
ITC shall not be available – Tax to be paid through Electronic Cash ledger (ECL)	ITC is available – Tax can be paid by using ITC in Electronic Credit ledger
Future procurements – No ITC – ITC would be a cost	Future procurements – ITC benefit available
ITC already availed is restricted as per Annexure 1 & II	Balance ITC on 31-Mar-19 can be c/fwd
80% of inputs and input services shall be purchased from registered dealers (Includes Composition dealer)	80% criteria is not applicable. 7% GST liability becomes cost (If customer will accept to pay only 5%)
In case of shortfall, Tax to be paid under RCM for shortfall – No ITC.	No such cost



## *Ongoing projects – Choosing between old/ new scheme*

- **Ongoing Projects - Conditions:**

- Commencement certificate issued - on/ before 31.03.2019
- Construction\* has started - on/before 31.03.2019
- Completion certificate not issued or no first occupation on / before 31.03.2019
- Booking\* - on/ before 31.03.2019

\*Construction to be considered as started if earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019.

- Booking means an apartment booked - Conditions
  - Part of supply of construction – ToS
  - Atleast one instalment has been credited to the bank account
  - Allotment letter or sale agreement or any other document evidencing booking is issued.
- Suggested to intimate through a letter to department.

## *New scheme of taxation for Real-Estate - April 2019 onwards*

- Promoter needs to reverse the ITC pertaining to un-booked flats and installments not due, pertaining to booked flats as on 31<sup>st</sup> of March 2019, which becomes a cost.
- Negative Cash flow of such reversal if no sufficient credit in books.
- Utilization against commercial projects, if all residential projects under the new scheme..??
- Purchase records to be maintained project-wise – Multiple phases in the same project/ Separate project for each phase;
- Records to be maintained for procurements from regd persons and un-regd persons.

## *New scheme of taxation for Real-Estate - April 2019 onwards*

- Mechanism of apportioning the indirect expenses/ common costs / Capital goods between different projects viz., residential/ commercial– Separate invoicing from the vendors??
- Old scheme flat being cancelled in new scheme - Tax @12% paid by using ITC, however adjustment of such tax paid in the new scheme @5% is possible - Restriction is on availment of ITC and not on adjustment of CN towards tax liability.
- Once a flat in the old scheme is canceled, credit taken in respect of such flats shall be required to be reversed fully.
  - Few builders don't charge taxes separately again;
  - Suggested to issue a CN, reverse ITC and levy taxes under the new scheme @ 5%.
  - Developer for flat resale to new customer to capture the ITC cost incurred towards the flat.

## *Reversal of ITC on unsold units as on CC – Input/ Input services*

- Projects commenced prior to GST regime;
- Projects commenced in GST regime and completed prior to April 2019;
- Projects commenced in GST regime and completed after April 2019 - Builder opted for Old scheme;
- Projects commenced in GST regime and completed after April 2019 - Builder opted for New scheme;
- Projects commenced in GST regime and completed after April 2019 - Builder continues with both the schemes.
- Projects commenced after April 2019 covered under new scheme.

## *Reversal of ITC on unsold units as on CC – Input/ Input services*

### **Mode of computation of the eligible common credit - Monthly:**

Credit attributable towards exempt supply **D1= C2 \*E/F**

Where

C2 = Common credit (input and input services)

E = Aggregate carpet area (**Previously T.O.**) of the apartments construction of which is

- exempt
- Not exempt but identified to be sold after cut-off date.

'E' will include the carpet area of all apartments that remain un-booked

'F' = Aggregate carpet area of the apartments in the project

## *Reversal of ITC on unsold units as on CC - Input/ Input services*

### **Final computation of eligible ITC:**

By due date of September return following the FY in which the cut-off date occurs

Credit attributable towards exempt supply **D1= C2 \*E/F**

Where 'E' will be Aggregate carpet area of the apartments, construction of which is

-exempt and

-Not exempt but remain un-booked after cut-off date

In all the above cases:

- Excess ITC availed – Reversal with interest @ 18%
- Short ITC availed – Claim as credit
- The final adjustment (excess/short) - Form GSTR-3B or through Form GST DRC-03

## *Reversal of ITC on unsold units as on CC - Input/ Input services*

### **Final computations of eligible ITC in respect of commercial portion (other than RREP) - ITC transitioned due to introduction of new rates**

C3 (Agg) = (Aggregate of monthly C3 determined for the period 01.07.2017 to 31.03.2019) \* AC/AT **(+)** (Aggregate of monthly C3 determined for the period 01.04.2019 to the cut-off date)

**C3 (Agg)** = Aggregate common credit on commercial portion in the project

**AC** = Total carpet area of commercial apartments in the project

**AT** = Total carpet area of all apartments in the project

## *Reversal of ITC on unsold units as on CC - Input/ Input services*

- Mode of computation of the eligible common credit – Monthly – same as 42, except where C2- common credit (capital goods)
- **Final computation of eligible ITC**  
 **$Te \text{ (final)} = [(E1 + E2 + E3)/F ] * Tc \text{ (final)}$**

Where,  $Te \text{ (final)}$  = common credit attributable to exempt supplies

E1 = Total carpet area of apartments - exempt from tax

E2 = Total carpet area of apartments - sold before 31.03.2019 and opted for new rates.

E3 = Aggregate carpet area of apartments not booked before cut-off date.

F = Aggregate carpet area of apartments in the project.

$Tc \text{ (final)}$  = Aggregate of credit of all capital goods attributable to the project.



## *Reversal of ITC on unsold units as on CC - Input/ Input services*

- Workings to be computed at the project level;
- Whether the final computation needs to be derived annually or at the end of project upon receipt of OC/ CC;
- Whether interest needs to be computed from 1<sup>st</sup> day of April or the due date of filing the returns in April – Lex non cogit impossibilla;
- Interest on excess ITC availed, whether to be paid if the same is not utilized.
- Excess reversal as per the provisional workings can be claimed back as ITC prior to September following the end of FY – Time-limit of availing credit u/s 16(4);

## *Reversal of ITC on unsold units as on CC - Input/ Input services*

- Legal validity of sub rule (3) requiring reversal computation to be computed retrospectively for the past period prior to April 2019 i.e., July 17 to Mar 19 – What if taxpayer has already reversed the ITC for past based on law applicable for the corresponding period;
- Where any input, input service or capital goods are used for more than one project, ITC to be assigned for each project on a reasonable basis;
  - ITC to be apportioned at the invoice level for transactions between multiple GSTIN's;
  - What if projects covered under same GSTIN – mechanism of apportionment..??

## *80% Procurement from registered persons*

<b>Description</b>	<b>Rate</b>	<b>Recipient</b>
Supply of such goods or services (shortfall of 80%) purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of CC or first occupation, whichever is earlier) other than services by way of grant of development rights, long term lease of land or FSI by <b>unregistered person</b> to the promoter for construction	18%	Promoter
Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975).	18%	Promoter
Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) supplied to a promoter for construction of a project on which tax is payable or paid under the new scheme	As Applicable	Promoter

## Illustration

Sl. No	Name of input goods and services	Percentage of input goods and services received during the financial year	Whether inputs received from registered supplier? (Y/ N)
1	Sand	10	Y
2	Cement	15	N
3	Steel	20	Y
4	Bricks	15	Y
5	Flooring tiles	10	Y
6	Paints	5	Y
7	Architect/ designing/ CAD drawing etc.	10	Y
8	Aluminium windows, Ply, commercial wood	15	Y

Here the promoter has procured 80% of the inputs from a registered person but the cement procured by him was from unregistered person and hence he is required to pay GST on cement at the applicable rates on reverse charge basis.

## *80% Procurement from registered persons*

- On shortfall of purchases from 80%, tax shall be paid by the builder on RCM basis as follows:
  - Cement – 28% - Payable on monthly basis
  - Capital goods – Applicable rate
  - Others – 18%
- Compulsory payment of GST @ 28% under RCM, if cement purchased from unregistered persons – No 20% relaxation
- Compulsory payment of GST at applicable rates under RCM, if Capital goods purchase from unregistered dealers – No 20% relaxation.
- This rule is applicable for **each project** separately and for **each FY**. Project wise records to be maintained

30<sup>th</sup> June from  
the end of F.Y.

## *80% Procurement from registered persons*

- Computation of 80% procurements from unregistered persons:
  - Accrual v/s receipt basis;
  - Advances/ prepaid expenses;
  - Procurements from the composition suppliers;
  - Computation to be made Financial year wise – Spill over to next FY??
  - Procurements during initial phase of the project..??
  - Computation to be made Project wise:-
    - ✓ Commonly used Capital Goods – What if used for multiple projects – Old & new scheme – Commercial & Residential – Mechanism of allocation..??
    - ✓ Inputs/ input services commonly used for multiple projects – Old & new scheme – Commercial & Residential – Mechanism of allocation..??
    - ✓ Allocation of common costs from HO..??

## *80% Procurement from registered persons*

- Treatment in the following cases:
  - Stamp duty, Income Tax etc,
  - HSD, Natural gas, Electricity,
  - TDR/ JDA, FSI, long term lease (premium),
  - Salary to the employees,
  - Employee reimbursements,
  - Interest on loan,
  - Exempt supplies received from URD persons,
  - Depreciation,
  - Approvals/ Sanctions - Fees paid to government etc.,
  - Transactions on which tax is paid as RCM under 9(3).

## *Cost of ITC – Tax optimization possibilities*

- Vendor contracts restructuring – Composite/ un-bundling possibilities;
- Employment contract vs. Manpower supply contracts;
- Procurement from unregistered suppliers – Goods/ Services;
- Suppliers under composition scheme - Material/ labour contracts;
- Interim computations to be prepared in February to assess the short fall of 80%;
- The calculation of 80% is not GSTN wise but project wise thus apportionment of expenses towards each project must be properly assessed;
- Purchases with rate of tax less than 18%, say Sand @5% shall be purchases from registered person only.



## *Cost of ITC – Tax optimization possibilities*

<b>Products</b>	<b>Rate of tax</b>
Natural sand	5%
Marble, granite crude and flooring tiles	5%
Building stone and crushed stone	5%
Gypsum	5%
Building bricks	5%
Solar water heater and system	5%
marble and granite blocks	12%
Tableware, toilet and kitchenware articles	12%
LED lights or fixtures including LED lamps	12%
Cement - Portland /slag	28%
Air-condition, heaters	28%

## *Cost of ITC – Tax optimization possibilities*

- Concessional rate of tax @ 12% for Construction, erection, commissioning, or installation of original works pertaining to :
  - Low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority under:
    - ✓ 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
    - ✓ “Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;
    - ✓ Any housing scheme of a State Government;
    - ✓ Affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March,2017;]

## *Cost of ITC – Tax optimization possibilities*

- Transport, Canteen, Motor vehicle renting expenses – Differential tax rate system;
- Expenses specifically attributable to maintenance income/ Rental business etc. are fully eligible as credit;
- Cost-Benefit analysis between REP & RREP - ITC Perspective;
- ITC on outright sale of projects – Lock, Stock & barrel - Slump sale etc.
  - Taxability – Nature of supply - Land deduction..??
  - Sale of Going concern – Transfer of credits through ITC-02

## *RCM liability on TDR/ FSI procured by Promoter*

<b>Sr. No</b>	<b>Supplier of Service</b>	<b>Person liable to pay tax</b>	<b>Description</b>
1	Any Person	Promoter	Services by any person by way of TDR or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.
2	Any Person	Promoter	Long term lease of land (30 yrs or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, etc.) and/or periodic rent for construction of a project by a promoter.

## *RCM on TDR/ FSI - Exemption for residential apartments*

- Service by way of transfer of development rights on or after 1st April, 2019 for construction of residential apartments by a promoter in a project - except where the entire consideration has been received after issuance of CC.
- The amount of GST exemption available for construction of residential apartments in the project shall be calculated as under:
- [GST payable on TDR or FSI (including additional FSI) or both for construction of the project] x (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project )
- Whether the proportionate reversal of exemption towards development rights need to be seen from developer share after CC/OC sales only or need to include landowners after CC/OC sales?

## *ITC on JDA Transactions between Landowner & Developer*

### **ITC in the hands of Landowners for Commercial/ Residential projects:**

- ITC available to land-owners for billing from developers towards constructed flats issued against the development rights, if LL sells the units prior to OC/ CC.
  - Timing of billing by the developer promoter – OC/CC Date;
  - Reversal of credit – Apartment wise or carpet area wise..??
  - Paying tax on its sale of units to the customers not less than the tax charged by the Developer towards the construction services for such units.
  - Tax not leviable in the case of Revenue sharing, hence no question of eligibility of ITC.
  - Position remains the same even for JDA's entered prior to or after April 1, 2019.
  - Position remains the same for commercial and also residential projects – Tax rate would differ.
  - JDA's entered prior to GST regime – ITC of Service Tax charged by the builder..??
  - ITC on marketing/ administrative costs incurred by LL – Tax already levied by the developer on the OMV.
  - Units to be retained by the LL for further rental/ leasing/ maintenance services.

## *ITC on JDA Transactions between Landowner & Developer*

### **ITC in the hands of Developer for Commercial/ Residential projects:**

- ITC available to developers for billing from landowners for JDA's entered prior to April 2019;
- ITC can be utilised if developer opts for the old scheme;
- ITC utilization difficult if developer opts for New scheme. ITC to be reversed as per Annx I & II. The unutilized ITC could be used for:
  - a. Payment of any pending tax liability, self assessment or through annual audit, even if new scheme is opted. As the TOS for outstanding tax liability is before 01.04.2019
  - b. Tax liability on account of construction services provided to LL.

## *ITC on JDA Transactions between Landowner & Developer*

### **ITC in the hands of Developer for Commercial/ Residential projects:**

- ITC restricted for JDA's entered on or after April 2019 in case of residential projects RREP – Tax to be paid under RCM by the developer to the extent of flats sold after OC;
- ITC fully available for commercial projects – Builder to pay tax under RCM;
- No taxability on development rights prior to GST regime, hence question of ITC does not arise – Akin to sale of land under GST – Taxability??;
- Deriving a proper invoicing milestone/ scheduling for transaction between developer and landowner for effective utilisation of ITC.



## *ITC on JDA Transactions between Landowner & Developer*

- Double taxation in case of procurement of TDR/ FSI by the LL and its transfer to the developer;
- Double whammy of taxation on commercial apartments covered in RREP – RCM exemption not available + No ITC;
- Cash flow impact due to RCM on commercial units on DR/ FSI/ Premium etc.;
- In case of ongoing projects opting for new scheme, whether landowner share of flats should be considered as taxable for the purpose of proportionate ITC reversal as on 31.03.2019?

## *RCM on specified services - Government*

- All services supplied by CG, SG, UT or local authority to any business entity located in the taxable territory excluding the following:
  - Renting of immovable property, and
  - Services by the Department of Posts (speed post, express parcel post, life insurance, and agency services) provided to a person other than Govt.
  - Services in relation to an aircraft or a vessel;
  - Transport of goods or passengers.
- **Note:** In case service of renting of immovable property has been provided by the Government to any registered person under CGST, then such registered person is liable to pay tax under RCM w.e.f. 25.01.2018.

## *RCM on specified services - Government*

- Services provided by the Central Government, State Government, Union territory or local authority by way of-
  - a) registration required under any law for the time being in force;
  - b) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, including fire license, required under any law for the time being in force.
- Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W / 243G of the Constitution. ***[Notification No. 12/ 2017-CT (R)]***

## *RCM on specified services - Government*

- Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under **article 243W** of the Constitution undertaken by the Central Government or State Government or Union territory or any local authority in **which they are engaged as public authority**, shall be treated neither as a supply of goods nor a supply of service.  
*[Notification No. 14/ 2017-CT (R)]*
- Functions entrusted under Twelfth Schedule to the Constitution:
  - Urban planning including town planning.
  - Regulation of land-use and construction of buildings.
- Taxability of additional FSI received in the form of TDR's from the governmental authorities;

## *RCM on services from contractor - Affordable Residential Apartments*

<b>Eligibility</b>	<b>Tax Rate</b>	<b>Condition</b>
Supply of works contract service by way of an affordable residential apartments which commences on or after 1st April 2019, or in an ongoing project in respect of which the promoter has exercised an option to pay central tax @ concessional rate of 1%	12%	Carpet area of the affordable residential apartments as is not less than 50% of the total carpet area of all the apartments in the project.

- In case the carpet area of the affordable residential apartments booked or sold turns out to be less than 50%, the recipient of the service shall be liable to pay such amount of tax on reverse charge basis as is equal to the difference amount.
- Whether balance tax of 6% needs to be paid on the entire supply from the works contractor or only to the extent of shortfall from 50%.

## *ITC on Construction cum Leasing projects*

- Admissibility of ITC on the goods or services or both used in the construction of commercial spaces given on lease - Ratio of the Decision in the case of Orissa HC in ***Safari Retreats Pvt. Ltd - 2019-TIOL-1088-HC-ORISSA-GST [Notice issued in 2019-TIOL-489-SC-GST]***
- Position under the erstwhile Service Tax regime:
  - Sai Samhita Storages Pvt. Ltd. vs. CCE -2010-TIOL-1751-CESTAT-BANG. Approved in 2011-TIOL-863-HC-AP-CX
  - Mundra Port & SEZ Ltd. vs. CCE -2008-TIOL-1691-CESTAT-AHM
  - Milroc Earth 2019-TIOL-1829-CESTAT-MUM - Hotel construction is not the end activity of the appellants - Rather their end activities are providing various taxable services like accommodation, restaurant services, spa services

## *ITC on Construction cum Leasing projects*

- Further the case of held in Nagpur Integrated Township Pvt Ltd terming the long term lease as akin to works contract, leads to view of ITC eligibility as inward and outward are in the same category of supply
- Blockage of ITC when the works contract services received used for further supply of the works contract service;
  - *(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;*
- Meaning of the term 'Works Contract'
  - *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;*

# THANK YOU



*For any clarification*

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