

GOODS & SERVICES TAX

Navigating the Tax Terrain in the Real Estate Sector

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Agenda

GST & Real Estate Projects

Tax Schema

Rate Structure

ERAs of GST for Real Estate Industry

Taxability of Various Transactions under Real Estate

Q&A



Taxes before Implementation of GST

Prior to the implementation of the GST, housing projects incurred a multitude of state and Central taxes during their construction.

These taxes, such as **Value Added Tax (VAT), Central Excise, Entry Tax, Octroi, Service Tax, and others**, raised the overall development costs for developers. Notably, builders did not have the opportunity to offset these taxes against their output liability, contributing to financial challenges in the pre-GST era.

Introduction to GST



Goods and Services Tax (GST) is a comprehensive indirect tax levied on the supply of goods and services across India.

Introduced to streamline the complex tax structure, GST replaced multiple indirect taxes which were applicable before its implementation, fostering a unified and transparent taxation system.



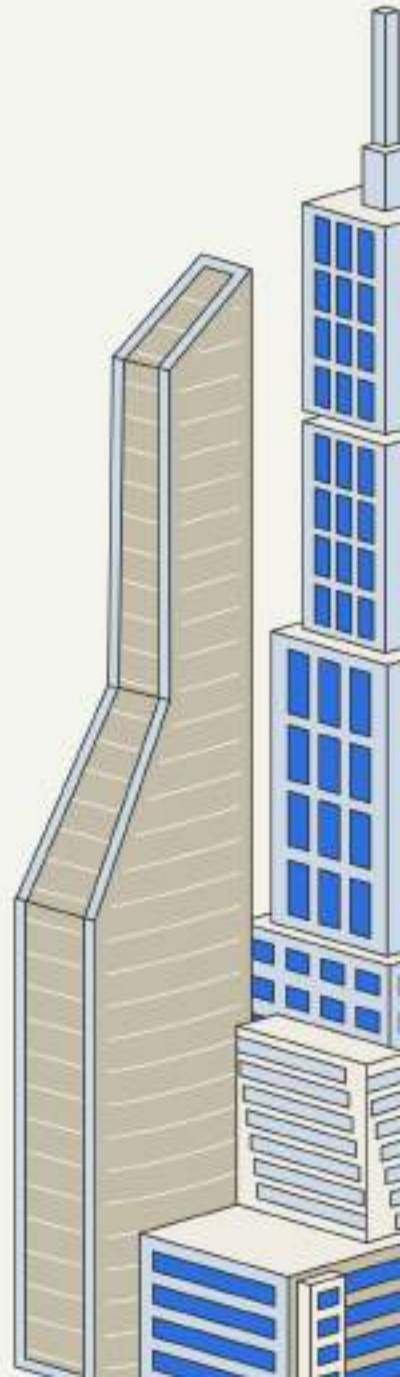
GST was a crucial economic reform aimed at fostering economic growth, enhancing competitiveness, and creating a harmonized tax environment.

GST & Real Estate

The advent of Goods and Services Tax (GST) has significantly impacted the dynamics of the real estate sector, bringing forth resilience and stability, particularly after April 2019.

With the implementation of GST, the government aimed to achieve a downward adjustment in the effective rates of indirect taxes affecting real estate. Noteworthy changes in GST concerning the real estate domain, initiated in April 2019, have materialized through collaborative inputs from developers, tax authorities, and consumers.

Since April 1, 2019, a substantial reduction in tax rates for the housing sector has been implemented, strategically designed to fortify and invigorate this crucial segment, with positive outcomes becoming evident.



Types of Real Estate Projects



Real Estate Project

Affordable Residential Apartment

Residential Real Estate Project

Real Estate Project:

- Constructing a building
- Developing apartments within a building
- Converting existing structures into apartments
- Transforming land into plots or apartments.

The objective is to sell all or some of the apartments, plots, or the building, along with common areas, development works, improvements, structures, easements, rights, and appurtenances. This definition also applies to commercial buildings.

Affordable Residential Apartment (ARA):

An apartment in a development, with a carpet area under 60 square meters in metropolitan cities or 90 square meters in other areas, and a total cost not exceeding INR 45.00 lakh.

Residential Real Estate Project (RREP): A Real Estate Project in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP.



The GST Tax Schema for Real Estate Industry



Works Contract

SECTION 2, SUB SECTION-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;



Composite Supply

SECTION 2, SUB SECTION-30

"Composite Supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply; **For eg.,** a builder offering Residential Flat, Parking Area, Maintenance and Clubhouse Facilities



Section 7



Section 7: Scope of Supply

Goods [Section 2(52)]

Every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply

Services [Section 2(102)]

means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged

Relevant Clauses of Schedule II



Schedule II, Clause 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.

Schedule II, Clause 5, Sub-clause (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.

Schedule II, Clause 6, Sub-clause (a)

Works contract as defined in clause (119) of section 2 is a composite supply

Relevant Clauses of Schedule III



Entry No. 5 of the Schedule III of the CGST Act, 2017 provides the list of transaction which should be treated neither supply of goods nor supply of service, which includes:

- a) Sale of Land
- b) Sale of Building, i.e. residential or commercial units where completion certificate is received.

Rate Structure

The Tax Rates — Notification No. 11/2017 of Central Tax (Rate) dated 28th June, 2017 prescribes the following tax structure:



HSN/SAC	Particulars
9954 : Construction Services	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 the issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)
	Composite Supply of Works Contract as defined in Clause 119 of Section 2 of the Goods and Services Tax Act, 2017.
	Construction Services other than (i) and (ii) above.

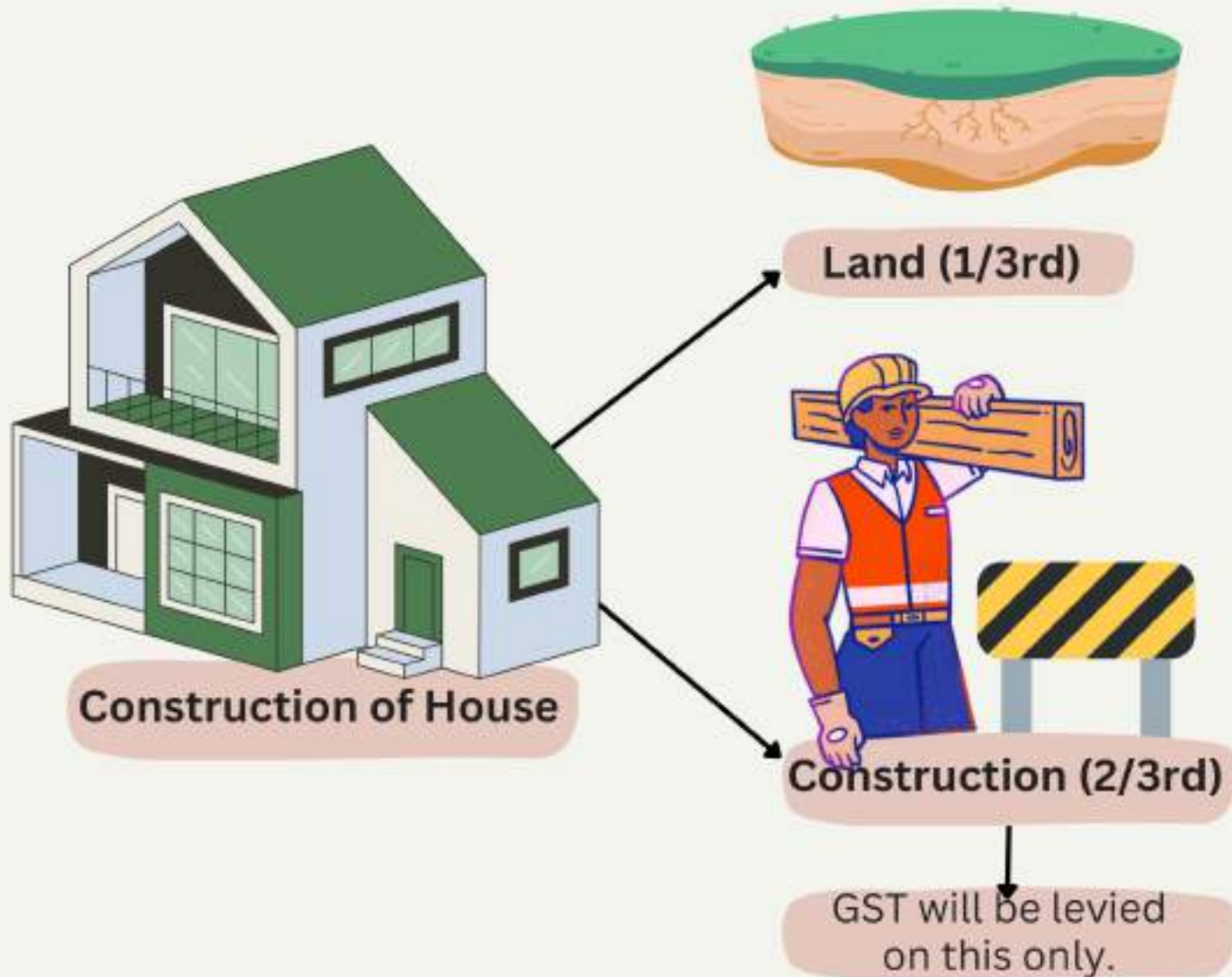
Deemed Value of Land



As per **Tax Rates – Notification No. 11/2017 of Central Tax (Rate), dated 28th June, 2017**, in case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the **value of supply** of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be in such supply shall be **deemed to be one-third** of the total amount charged for such supply.

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

Deemed Value of Land



Summary of Leviability of GST



Serial	Transaction	Whether GST is Payable	
1	Sale of Land	No	
2	Sale of Building	Where entire consideration is received after issuance of Completion Certificate	No
		Where full or part consideration has been received before issuance of Completion Certificate	Yes
3	Works Contract Services	Yes	

ERAs of Indirect Tax Regimes

1

GST (With ITC)
(till 31.03.2019)

2

GST (Without ITC)
(after 01.04.2019)



Tax Rates under GST from 01.07.2017 till 01.04.2019



Tax Rates under GST from 01.04.19



Rate Comparison in both the Regimes



Particulars	1st July, 2017 to 31st March, 2019		
	Affordable Residential Projects	Residential Apartments	Commercial Apartments
Actual GST rate	12	18	18
Less: Deemed Value of Land	1/3	1/3	1/3
Effective GST Rate	8	12	12

Particulars	From 1st April, 2019			
	Affordable Residential Projects	Residential Apartments	Commercial Apts in RREP	Commercial Apartments
Actual GST rate	1.5	7.5	7.5	18
Less: Deemed Value of Land	1/3	1/3	1/3	1/3
Effective GST Rate	1	5	5	12

Other Provisions under New Scheme



1 No Input Tax Credit

2 80% of value of inputs and inputs services other than TDR, Electricity, HSD, Motor Spirit and Natural Gas should be purchased from a registered supplier

3 GST is paid only in cash.

4 Total ITC to be shown as Ineligible ITC in GSTR3B every month.

Additional Liability under RCM

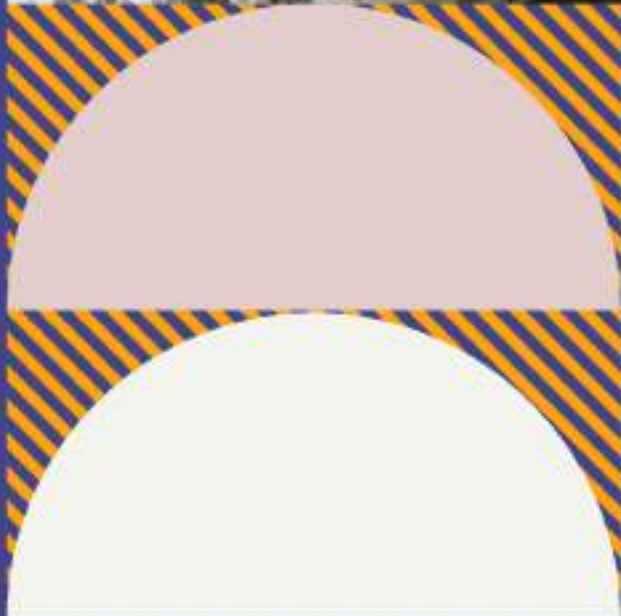


1 Supply of Goods and/or Services other than TDR, FSI which constitute the shortfall from 80% of Inputs required to be purchased from a registered person.

2 Cement in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975

3 Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975

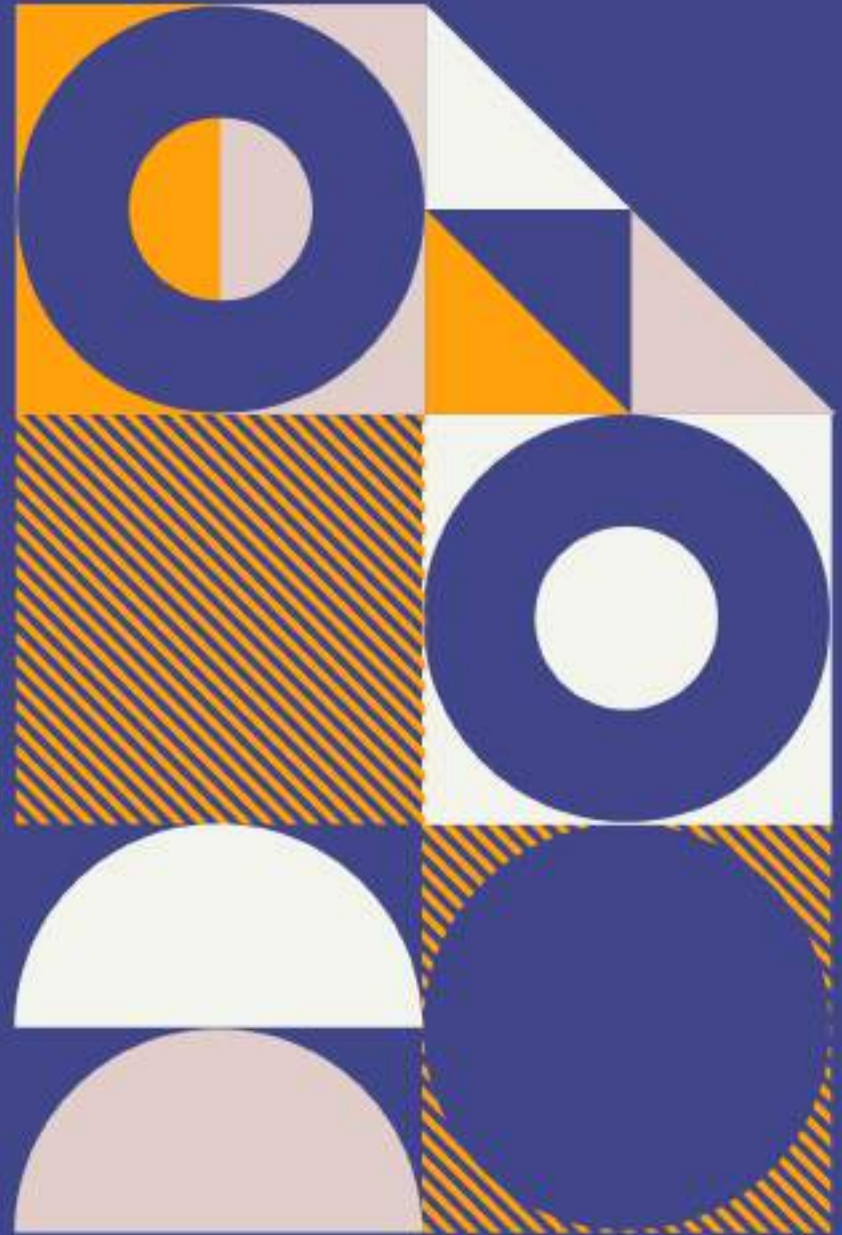
RCM



Taxability of Various Transactions under Real Estate

GST & Joint Development Agreements

As the real estate landscape evolves, understanding the intricacies of Goods and Services Tax (GST) and its impact on JDAs has become paramount. JDAs often involve the transfer of land rights or development rights in exchange for construction services, and the application of GST in such cases can be complex.





Market Scenario





Transfer of development rights (TDR) from landowner to the developer.



Service provided by developer to landowner in the form of construction of area or flats in lieu of land development rights given.



Sale of under construction area or flats to the ultimate buyer by the developer.



Sale of under construction area or flats by the landowner to the buyers out of his own share.

Taxable Limbs under JDAs

Case1: Transfer of Development Rights from Landowner to Developer

Person Liable to Tax & Rate of Tax

Upto 31.03.2019

Landowner was liable to pay tax @18% on Supply of DRs

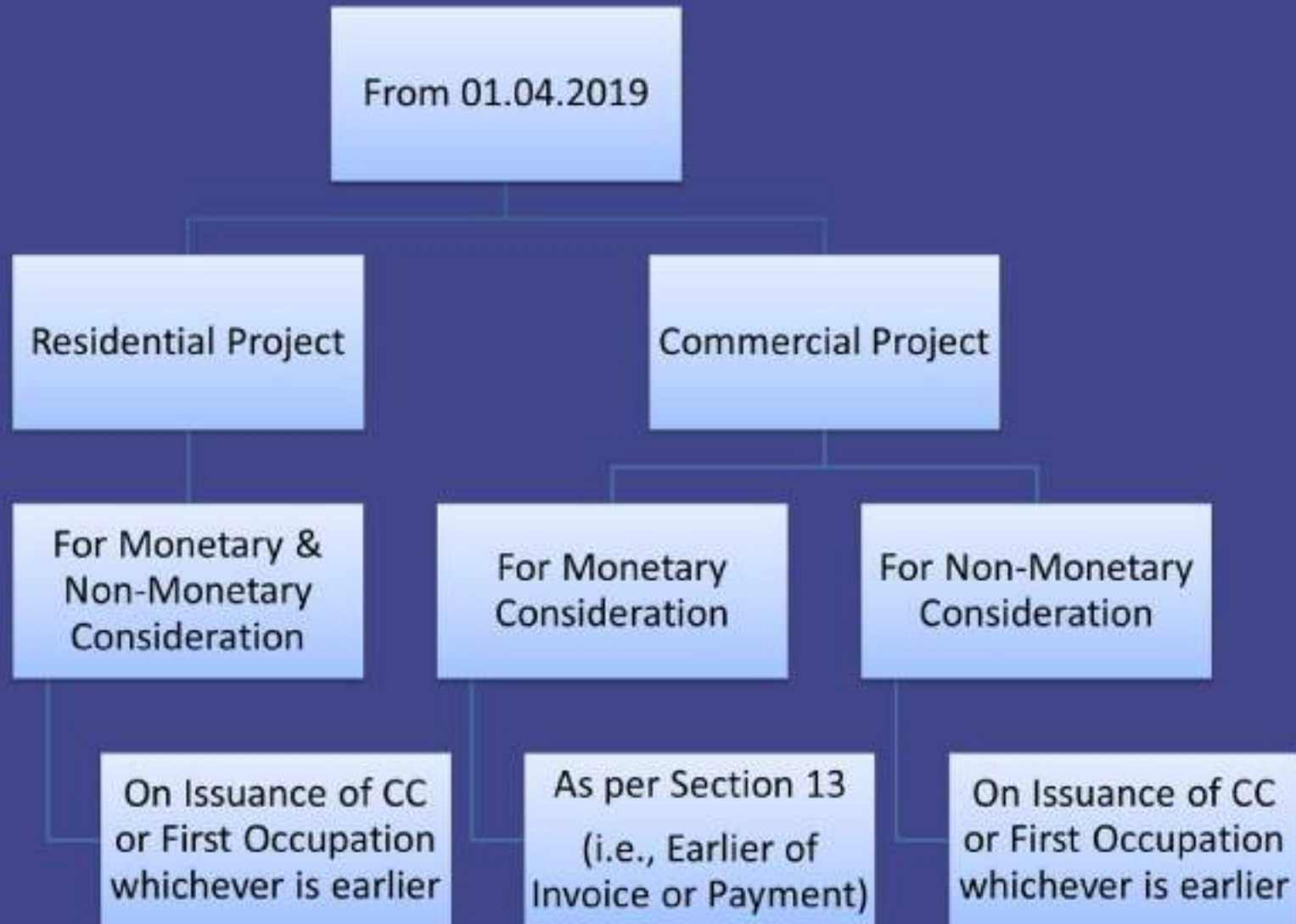
From 01.04.2019

Liability shifted on Developer @18% being recipient of TDR Service under RCM u/s 9(3)

Time of Supply



Time of Supply



Value of Supply

Upto 31.03.2019

In case of Area
Share

In case of
Revenue Share

As per CGST Valuation Rules,
2017 (i.e. Fair Market Value)

Value of Supply

From 01.04.2019

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graph LR; A[From 01.04.2019] --> B[In case of Area Share]; A --> C[In case of Revenue Share]; B --> D[The value of TDR shall be calculated taking in consideration the value of similar apartments charged from the first independent buyer nearest to the date of TDR]; C --> E[As per CGST Valuation Rules, 2017 (i.e., Fair Market Value)];
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In case of Area Share

The value of TDR shall be calculated taking in consideration the value of similar apartments charged from the first independent buyer nearest to the date of TDR

In case of Revenue Share

As per CGST Valuation Rules, 2017 (i.e., Fair Market Value)

TDR ON RESIDENTIAL APARTMENT (CONDITIONAL EXEMPTION)

Services by transfer of TDR/FSI/LTL on or after 01.04.2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly is exempt, except where entire consideration has been received after issuance of CC or OC.

It implies that GST is payable in proportion to area of flats remained un-booked as on date of issuance of completion certificate or first occupation of project whichever is earlier.

It may be noted that exemption is not available for construction of commercial apartments.



NOTE: PARAGRAPH 1A OF NOTIFICATION NO. 12/2017-CT(R) DATED 28.06.2017

1A. Value of supply of service by way of transfer of development rights or FSI by a person to the Promoter against consideration in the form of residential or commercial apartments shall be deemed to be equal to the value of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred to the Promoter.

NOTE: PARAGRAPH 1B OF NOTIFICATION NO. 12/2017-CT(R) DATED 28.06.2017

1B. 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 nearest to the date of issuance of completion certificate or first occupation as the case may be.

ILLUSTRATION ON CALCULATION OF TAX LIABILITY IN CASE OF AREA SHARE

Description	Quantity/Value
Non-Affordable Flats started on 01.07.2020	50 Flats
Landowner's Share	25 Flats
Developer's Share	25 Flats
First Booking done on 02.07.2020	2 Cr./Flat
Last Booking done just before completion of Project	3 Cr./Flat
Total Flats Sold by Developer before CC	15 Flats
Unsold Flats (20% Carpet Area)	10 Flats

CALCULATION OF GST PAYABLE UNDER RCM

1. Total Value of DR transferred by Landlord	= 25 Flats @ Rs 2 Cr. each = 50 Cr.
2. Tax payable on TDR	= 18% of 50 Cr. = 9 Cr.
3. Liability of Promoter under RCM	= 9*20% = 1.8 Cr.
4. Upper cap	= 3 Cr.* Unsold 10 Flats*5% = 1.5 Cr.
GST Payable under RCM	(Lower of 3 or 4)= 1.5 Cr.

Case2: Taxability of construction services to landowner under GST

Person Liable to Tax & Rate of Tax

Upto 31.03.2019

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graph TD; A[Upto 31.03.2019] --> B[Developer liable to pay tax effective rate @8%/12% (after 1/3rd deduction for land value)]; A --> C[Applicable to both commercial and residential projects]; A --> D[ITC is available on TDR services and other materials and services used.]
```

Developer liable to pay tax effective rate @8%/12% (after 1/3rd deduction for land value)

Applicable to both commercial and residential projects

ITC is available on TDR services and other materials and services used.

Person Liable to Tax & Rate of Tax

From 01.04.2019

Tax rate as applicable on sale of flats to Independent buyer by developer.

@1%/5% without ITC for Residential Projects (after 1/3rd deduction for land)

However, for Commercial projects effective Tax rate @ 12% with ITC. (after 1/3rd deduction for land.)

Value of Supply

Upto 31.03.2019

As per Rule 27 of the CGST Rules
(i.e. Fair Market Value)

From 01.04.2019

The value of supply under construction services to landlord is to be determined as per **para 2A of NN-1 1/2017-CT(R) dated: 28.06.2017** inserted through **NN 03/2019-CT(R)**.

(i.e. considering the value of similar apartments charged from the first independent buyer, nearest to the date of TDR)

Case3: Sale of area to independent buyers (By Developer)

Person Liable to Tax & Rate of Tax

Upto 31.03.2019

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graph TD; A[Upto 31.03.2019] --> B[Developer liable to pay tax at effective rate @8%/12% (after 1/3rd deduction for land value)(NN 11/2017-CT(R) dated:28.06.2017) ]; A --> C[Applicable to both commercial and residential projects]; A --> D[ITC is available on TDR services and other materials and services used.];
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Developer liable to pay tax at effective rate @8%/12% (after 1/3rd deduction for land value)(NN 11/2017-CT(R) dated:28.06.2017))

Applicable to both commercial and residential projects

ITC is available on TDR services and other materials and services used.

Person Liable to Tax & Rate of Tax

From 01.04.2019

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graph TD; A[From 01.04.2019] --> B[Effective Rate @8%/12% with ITC if option for old rates exercised]; A --> C[Effective Rates @1%/5% (Affordable/Non-Affordable) without ITC for residential projects]; A --> D[However, for Commercial projects effective Tax rate @ 12% with ITC];
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Effective Rate @8%/12% with ITC if option for old rates exercised

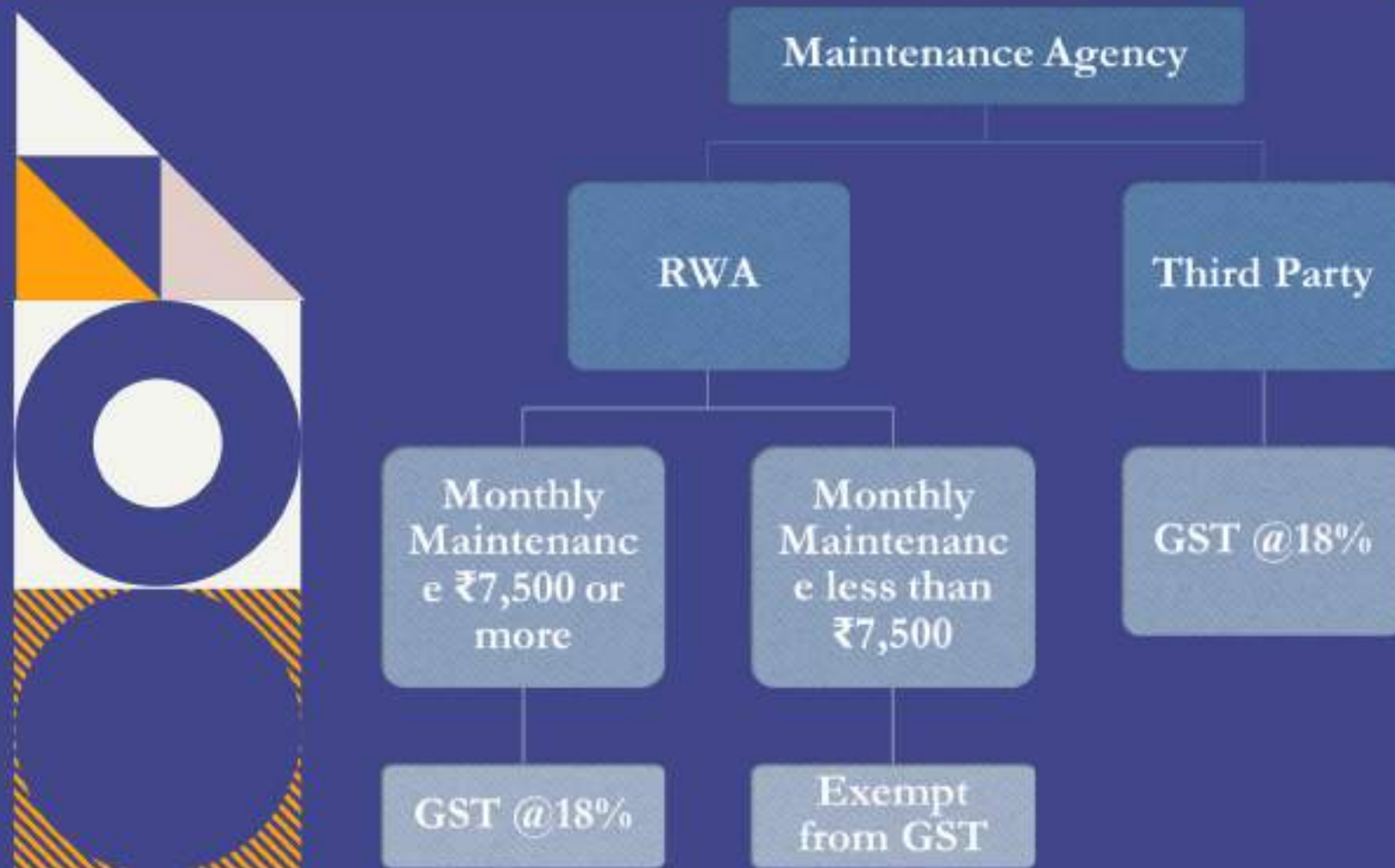
Effective Rates @1%/5% (Affordable/Non-Affordable) without ITC for residential projects

However, for Commercial projects effective Tax rate @ 12% with ITC

Case4: Sale of area to independent buyers (By Landowner)



GST on Maintenance Charges for Housing Societies



Cancellation of Units



Credit Note

Section 34

Excess Taxable
Value or Tax
Charged

Services are found to
be deficient

Refund

Section 54

Excess Payment of
Tax

Time Limit: 2 years

Earlier Regime

Section 142(5):
Refund as per earlier
provisions and
refunded in cash

Section 11B: Refund

Time Limit: 1 year

Cancellation of Units



Section 34 of CGST Act 2017

(1) Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed.

(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed

Cancellation of Units



Sr. No	Particulars	Relevant Section	Old Time Limit	New Time Limit
1	Availment of Input Tax Credit	Section 16(4)	Due date of furnishing GSTR-3B of September month of next financial year	30th November of next financial year
2.	Issuing of Credit Notes	Section 34(2)	Due date of furnishing GSTR-3B of September month of next financial year	30th November of next financial year
3.	Amendment in GSTR-1	First proviso of Section 37(3)	Due date of furnishing GSTR-3B of September month of next financial year	30th November of next financial year
4.	Amendment in GSTR-3B	Proviso of Section 39(9)	Due date of furnishing GSTR-3B of September month of next financial year	30th November of next financial year

From enactment of Finance Bill, 2022

Reversal of ITC on Unsold Units



Section 17 of the CGST Act restricts the Input tax credit on goods or services or both to so much of the input tax as is attributable to the taxable supplies including zero rated- supplies made for the purpose of business.

The manner of reversal of Input tax credit is stated in the CGST Rules, 2017:

- Rule 42 Reversal of credit received on Inputs and Input services
- Rule 43 — Reversal of credit received on Capital Goods



Reversal of ITC on Unsold Units



Rule 42 & Rule 43 of the CGST Rules, 2017

Apportionment of ITC (Rule 42)

- In cases wherein the ITC is allowed but subsequently proportionate amount relating to exempt supplies shall be reversed on the basis of turnover.

Apportionment of ITC of Capital Goods (Rule 43)

- In cases wherein ITC capital on availed in beginning goods the but proportionate amount of ITC shall be reversed every month the basis of on turnover.

Reversal of ITC availed under GST



Reversal is to be done on the basis of carpet area. For calculating proportionate common credit on exempt portion $\{C2 \times (E+F)\}$ -

E = Carpet Area of :

- a. Apartments the construction of which is exempt.
- b. Apartments remaining unsold on the date of completion certificate

F = Aggregate Carpet area of the project

Reversal is to be calculated finally, from commencement or 1st July 2017, till the date of completion certificate.

THANK YOU

Questions And Answers

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