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Overview of GST implications on Developers and Contractors

Developers: Overview of GST Implications

Under the current indirect tax regime, both Service Tax and Value Added Tax are applicable to developers. Generally, the composition scheme is availed in the case of VAT wherein output VAT is discharged at 1% and no credit is available. Also, stamp duty is applicable on purchase of land, on sale of building and on transfer of development rights. VAT and stamp duty are state based levies whereas service tax is a centralized levy. The table given below summarises the levy and rates applicable in relation to different types of transactions entered into by developers:

1.0 Major costs and analysis under GST and current tax regime

Sr. no.	Cost	Present taxes	Taxes under GST regime
1	Purchase of land	Stamp Duty	Stamp Duty
2	Preparation of designs and building blueprints	Service Tax	GST
3	Purchase of local materials	Excise Duty	GST
		State VAT	
		CST	
		Entry Tax	Local Body Tax?
		Octroi	
		Local Body Tax	
4	Purchase of capital goods local	Excise Duty	GST
		State VAT	
		CST	
		Entry Tax	Local Body Tax?
		Octroi	
		Local Body Tax	
5	Import of materials	BCD, CVD and SAD	BCD
			GST
6	Import of capital goods	BCD, SAD	BCD
		CVD	GST
7	Hiring of contract labour	Service Tax	GST
8	Payments to works contractors	Service Tax	GST
		State VAT	
9	Payments to brokers and marketing agencies	Service Tax	GST

* References to GST include reference to CGST/SGST in case of intra state purchases and IGST in case of inter state purchases.

Input tax credit of VAT is allowed only if developer does not avail composition scheme. Under the composition scheme, 1% VAT is paid and no input tax credit of VAT paid on raw materials such as cements, steel etc. is allowed. The other options available to developers is availing VAT credit on inputs based on actual records maintained as per books of accounts or to avail credit of VAT paid on inputs after taking a standard deduction at rates set out in rules or respective State Value Added Tax Acts.

2.0 Major revenue streams and analysis

The major revenue stream for developers is income from sale of flats. Under the GST regime, sale of land and buildings is deemed to be neither a supply of goods nor a supply of service, in accordance with Schedule III to the CGST Act, 2017. However, where the consideration towards sale of flats is received either before issuance of completion certificate by competent authority or before the first occupation (in case if the said occupation takes place before the issuance of completion certificate) the same is deemed to be a supply of service as per Schedule II to the CGST Act, 2017. The term 'first occupation' is not defined under the GST law. Stamp duty shall continue to be applicable on sale of flats and sale of land as the case may be. One of the issues under both, existing system of taxes

And as may arise in the GST regime is the taxability of transferable development rights. Under the present system of indirect taxes, sale of under construction flats attracts both service tax and VAT. Sale of flats after issuance of completion certificate neither attracted VAT nor service tax under present regime nor will it attract GST by virtue of the exclusion contained in Schedule III. Renting of immovable property i.e. where the developer gives flats on rent is a supply of service as per Schedule II of the CGST Act.

3.0 Avoid Pitfalls

- Builders will be required to maintain books of accounts and relevant records in respect of each project undertaken. Automation of return filing will require proper and robust ERP systems
- The cost of land is to be included in determining taxable value of the supply. Under service tax law, abatements to the extent of 70% were given for determination of taxable value of service. Under GST, at a rate of 12% proposed, the effective tax incidence is increasing as the value of land is also included.
- Taxability of transferable development rights is a contentious issue and there is no clarity on this aspect under the GST regime.
- The place of supply in case of construction services and services related to immovable property such as fit-outs etc. is held to be the place where the immovable property is situated. There may be cases where developers are undertaking construction work in states where they do not have a presence or even a fixed establishment i.e. they are outsourcing work to local contractors and developers. This may create an issue of difficulty in showing a place of business as a location of supplier and may result in loss of input tax credit as the local contractors and developers will pay CGST and SGST in lieu of a centralized service tax. CGST and SGST of one state cannot be used as credit against CGST and SGST of another state.
- The rate of tax on works contract, cement and steel is higher than the rate of tax on under construction flats, based on the tentative rates made public by the GST Council. This creates an inverted duty structure but there is however no refund for such overflow of Input Tax credit.
- The construction industry deals with contract labour. Under service tax laws, manpower supply services and works contract, were services in respect of which the recipient, in this case, the developer, was liable to discharge taxes on reverse charge basis. Under the GST scenario, the reverse charge provisions for such services have been done away with.
- Under GST regime even barter transactions are included within the definition of supply. Generally, in real estate sector, there are cases where the landowner grants the right to land development to builder in return for buildings/ flats/ commercial units etc. being allotted to him. This partakes the character of a barter and will thus be a taxable supply under the GST act. Even under the current regime, as per the judgement in Rohan Builders Ltd vs CST, right to construct on a land belonging to a third party is a construction service vis a vis the owner or occupier of the land.
- Sometimes in respect of renting of mall spaces and premises, builders also recover water and electricity charges. Under the GST regime, this may create an issue of interpretation as to whether the single consideration charged for rent and utilities is a consideration towards a mixed supply or a composite supply.
- Under GST regime, it appears that credit of taxes paid in relation to motor vehicles used on construction site such as forklifts, cranes etc. will not be available. However, notification is awaited on this aspect
- Transitional provisions, especially in case of construction and development projects which have a long gestation period become extremely relevant. Under the GST law, where both VAT and service tax has been levied in respect of a transaction, GST shall be levied on the said transaction and taxable person shall be entitled to take credit of VAT or service tax paid under existing law to the extent of supplies made after the appointed date. The rules relating to calculation of such credit are yet to be finalized

Contractors: Overview of GST Implications

1.0 A contractor may have following types of contract

Type of contracts	Chargeability under present regime
Pure material supply contract	Excise Duty, VAT, CST (In case of inter-state)
Pure labour contract	Service Tax
Works Contract	Excise Duty, VAT/CST and service tax on the value decided as per respective state-wise VAT laws and service tax regulations respectively. Composition scheme available for VAT TDS (VAT) of Range 2% (registered) to 5% (unregistered) is applicable on payments made for a works contract.

VAT is a state-based levy whereas service tax / CST is a centralized levy. The said taxes are subsumed into the GST regime. The table given below summarises the levy and rates applicable in relation to different types of inward transactions entered into by a contractor:

Sr. No.	Cost	Present taxes	Taxes under GST regime
1	Preparation of designs and building blueprints	Service Tax	GST
2	Purchase of local materials	Excise Duty	GST
		State VAT	
		CST	
		Entry Tax	Local Body Tax?
		Octroi	
3	Purchase of capital goods local	Local Body Tax	GST
		Excise Duty	
		State VAT	
		CST	Local Body Tax?
		Entry Tax	
4	Import of materials	Octroi	BCD
		Local Body Tax	
5	Import of capital goods	BCD, CVD and SAD	IGST
		BCD, SAD	BCD
6	Hiring of contract labour	CVD	GST
7	Payments to works contractors (sub-contract)	Service Tax	GST
		State VAT	GST

References to GST include reference to CGST/SGST in case of intra state purchases and IGST in case of inter state purchases.

Input tax credit of VAT in case if contractor avails composition scheme is subject to certain restrictions.

2.0 GST Overview

The taxability for the contractors under GST regime shall be as under:

Type of contracts	Taxable under GST	Treated as supply of
Pure material supply contract	Yes	Goods
Pure labour contract	Yes	Services
Works Contract	Yes	Services

Works contract under GST has been defined as 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; The rate of tax levied on works contract services as per recent announcement made by the GST council is 18% with entitlement to avail credit of inputs, input services as well as capital goods.

- The value of supply shall be invoice value (In case of transaction between unrelated persons). Rates under GST have not been yet finalized. Works contract service shall be treated as continuous supply of services under GST regime.
- Supply of goods / services by a builder to a contractor free of cost shall not be chargeable to GST provided builder and contractor are unrelated
- GST shall also be leviable on retention money (retained by a builder) as service pertaining to the same has already been provided.
- Reverse charge shall be applicable for purchases made from an unregistered dealer.
- Compliances under GST shall increase. An e-Way bill needs to be generated for causing any movement of goods for the transaction value above Rs. 50,000.
- GST shall be leviable in case of every supplies made after the appointed day. GST shall not be leviable if VAT or service tax leviable.
- Where on any supply, both VAT and service tax has been paid, GST shall be applicable on supplies made after appointed day and the contractor will be entitled to credit of VAT and service tax paid to the extent of supplies made after appointed day.
- A contractor shall be eligible for carry forward of input tax credit (available under present laws) under GST. He shall take credit of Unavailed cenvat credit on capital goods.
- A works contractor shall be entitled to take credit of duties paid (CVD, SAD, excise duty) on stock available with him on the appointed day subject to certain conditions.

3.0 Certain issues pertinent to contractors under GST regime

- A person has to obtain registration in a state / union territory from where he makes a taxable supply. In such a case, whether a contractor is required to register in every state where he undertakes contract for construction of immovable property. If yes, whether as a normal supplier or as a casual taxable person
- A supply by a contractor to a related party shall entail valuation issues and open market value may be deemed to be value of transaction for the levy of GST
- Anti-profiteering measure has been introduced under GST stating that the supplier shall pass on the benefit arising out of reduction in rate of tax or availability of input tax credit. It shall be important to see how the same is implemented. If properly implemented, the same can reduce price of cement, steel etc, for the contractor.
- Taxability of liquidated damages and advances is a contentious issue.

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