

GST HANDBOOK ON Real Estate



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Contents

Registration.....	3
General Provisions	3
Taxes	4
Rates of taxes applicable on different activities.....	4
HSN Codes for various activities	4
Time of raising Invoice / Dis-charge of Payment of Taxes.....	6
Type of Tax to charge in Invoice	7
Value of supply	7
JDA – Joint Development Agreements.....	8
PRESENT TAX REGIME.....	8
GST REGIME	8
Transactions in JDA & GST Treatment	10
GST Rates	12
Transition Provisions.....	16
File TRAN -1 before 29 th Sept 2017, detailing:	16
Filing of TRAN -2:	16
Accounts	17
Journal Entries in Books of accounting.....	17
Returns.....	20
Return for the Month of July, August & September due dates	20
Penalty	20
Frequently asked Questions	21

Registration

General Provisions

1. Liable to register
 - a. Only if aggregate turnover* of a person is >20 Lakhs in a financial year (>10 lakhs in North-eastern states, Uttarakhand, Sikkim)
 - b. This threshold doesn't apply to interstate supply i.e. in case supply is made to different states, even for Rs 1 of sales, registration has to be taken.
 - c. Existing companies having VAT, service tax registration need to **migrate** to GST

* Aggregate turnover under real estate includes the receipts accepted by the company towards all the services and sales excluding the taxes paid under UGST, SGST, IGST, UTGST acts

2. Not Liable to Register
 - a. Person doing **Pure Labor Contracts** for Construction of Single Residential units
 - b. Enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana (PMAY)
3. Other Points to Note
 - a. Registration should be taken in each **state** of Business operation.
 - b. In case of branches within the state, **no need** of taking separate registration, however site office should be shown as additional place of business
4. **New registrations** to be applied on 'www.gst.gov.in' with valid e-Mail ID and phone number
 - a. If the information is entered, the documents are uploaded and submitted, after validation of data with PAN database, ARN (Application Reference Number - Acknowledgement) will be generated.
 - b. Proper officer shall approve the same within 3 common working days. If not the same gets auto-approved on 4th day from the date of application for registration.
 - c. If the information provided and documents uploaded are not satisfactory to the proper officer, a Show cause notice will be raised by officer, and should be replied for the same within 7 working days.
5. Input Service Distributor: If there are operations in multiple states, the person needs to take an Additional registration for Head office to transfer the Common Input Service Credits received for branches. Like the Marketing Spends, Audit services, where the service provider issue one invoice, and the services is applicable to all the branches of the company.

Taxes

Rates of taxes applicable on different activities

Sl. No.	Particulars	HSN	GST Rate
	TAXABLE		
1	Construction of a complex, building, civil structure	9954	18%
2	Composite supply of works contract as per sec 2(119)	9954	18%
3	Sale of construction services along with Land *	9954	12%
4	Other construction services	9954	18%
	EXEMPTED		
1	pure labour contracts of construction, pertaining to a single residential unit	9954	NIL %

* Building with Land / Apartments

In case of supply of service specified in column (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

HSN Codes for various activities

	Heading No.9954 : Construction services
HSN	Group 99541 : Construction services of buildings
995411	Construction services of single dwelling or multi dwelling or multi-storied residential buildings
995412	Construction services of other residential buildings such as old age homes, homeless shelters, hostels etc.
995413	Construction services of industrial buildings such as buildings used for production activities (used for assembly line activities), workshops, storage buildings and other similar industrial buildings
995414	Construction services of commercial buildings such as office buildings, exhibition & marriage halls, malls, hotels, restaurants, airports, rail or road terminals, parking garages, petrol and service stations, theatres and other similar buildings.

GST Handbook for Real Estate Transactions

995415	Construction services of other non-residential buildings such as educational institutions, hospitals, clinics including veterinary clinics, religious establishments, courts, prisons, museums and other similar buildings
995416	Construction Services of other buildings n.e.c
995419	Services involving Repair, alterations, additions, replacements, renovation, maintenance or remodelling of the buildings covered above.
	Other Activities Group
99542	General construction services of civil engineering works
99543	Site preparation services
99544	Special trade construction services
99546	Installation services
99547	Building completion and finishing services

Time of raising Invoice / Dis-charge of Payment of Taxes

Section 13 of CGST Act, says 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 sub-section (2) of 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 sub-section (2) of 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.
- Under sub-section (2) of section 31 the government notifies the period within which the invoice to be raised
 - If the raising of invoice is linked to milestones, the invoice to be raised once the milestone is reached

*According to Rule 47, 30days is the time limit prescribed

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount

Type of Tax to charge in Invoice

Services 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 or any services ancillary to the above services is location at which the **immovable property is situated**.

Example:

Seller place	Recipient place	Place of supply	Transaction type	GST in Invoice
Bangalore(KA)	Chennai (TN)	Bangalore	Intra-state	CGST +SGST
Bangalore(KA)	Udupi(KA)	Bangalore	Intra-state	CGST +SGST

Value of supply

The value of a supply of goods or services or both shall be the transaction value, which is the price 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.

Include	Excludes
<ul style="list-style-type: none"> Other taxes, duties, cesses, fees, Except: SGST, CGST, IGST Value of goods or services supplied by the recipient Incidental expenses "interest, late fee or penalty" Subsidies (except govt. subsidies) 	<ul style="list-style-type: none"> Discounts given <ul style="list-style-type: none"> before or at the time of supply after the supply, has been affected <ul style="list-style-type: none"> <i>a. if such discount is as per agreement</i> <i>b. input tax on such discount is reversed</i>

Value at which tax to be calculated

Particulars	Amount
Land	XXX
Construction	XXX
Parking	XXX
One time maintenance	XXX
SPA, Others amenities	XXX
(-) Discount(any type)	(XX)
Total Value (A)	XXX

Calculation of TAX

GST = Total value (A) *2/3*18%

*1/3 of the value is deemed to be land value, so effectively 12% on the total value of apartment/Villa

JDA – Joint Development Agreements

PRESENT TAX REGIME

Suppose the Land owner share is 40% and that of the developer is 60%. Total flats are 100 and hence 40 belongs to land owner and 60 belongs to developer.

VAT – can be under Composition or Regular	Service tax
1) Deduction for land a) Option 1: Land deduction will not be available to the developer – Developer Needs to pay on whole amount received from sale of flats to its customer b) Option 2: Land deduction will be available based on either market value of land or Guidance value of land or agreed value of land to the developer. c) Valuation in case of Regular dealer will be 70%. In case of Composition Scheme – no Valuation	1) Deduction of land Deduction of land is available to the service provider provided that he will pay tax on the flats given to the land owner based on the valuation methods a. Similar value of flats b. Cost + markup c. Value As on the date of entering JDA Valuation will be either 30% based on 26/2012-st Notification or 40% based on the valuation rule.

Currently there can be either two or one agreement

- 1) Two agreements – One for sale of land i.e. UDS and one for Construction agreement
- 2) Single agreement – Both Sale of land and Construction are under same agreement

GST REGIME

Backdrop: Share: Land owner 40% and Developer 60%; Land owner transfers full rights of 60% of the Land portion to Developer, in exchange of constructing 40% apartments.

Relevant points of the acts to consider before understanding Taxation

1. Supply includes Exchange – Section 7 of CGST act
2. Schedule 3: Exclusion for
 - a. Sale of land
 - b. Sale of Building; after completion
3. Schedule 2: Works contract
 - a. If Consideration has been received after receiving completion certificate from the competent authority or 1st occupancy in the building and the flats to be transferred are not recognized till the transfer, then **No GST** is applicable and the proportional ITC to be reversed.

- b. Other way round: If property is sold before getting completion certificate from the competent authority or the 1st occupancy then GST will be applicable.
- c. If the flats are recognized at the time of entering the JD agreement even if the facing of the apartment, then it is the consideration for the development rights and this attracts the GST

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Transactions in JDA & GST Treatment

1. **Land owner:** Transfer of Land/Right by owner to developer for construction: Land is not a Good and specific entry in Schedule III item and hence no GST due to sale of immovable property.
2. **Developer to Land Owner:** Developer constructs & sells the 40% share of flats to Land owner over a period: GST is applicable
 - a. Time of supply: Continuous supply: Stage of completion of supply + Advances if any
 - i. Receiving of land is in the form of advance received and hence GST needs to be paid as on the date of entering JDA
 - b. Value of supply: 1) Open market value of 60% of UDS (Undivided share of land) + Non-refundable deposit
2) Like value of similar goods i.e. 40% Apartments or 60% UDS;
3) Cost of constructing 40% Apartments + 10% Markup.
 - c. Rate of Tax: There is **no Sale of Land**, hence deduction of 1/3rd towards Land doesn't arise. Hence Tax = Value of Supply * 18% is the tax rate.
3. **Developer– End Customer:** As discussed above GST is applicable on total collection @ 12%.
4. **Land owner to customer:** Sale of Flats during construction will be liable to GST and the Land owner will have to pay GST. Same concept of 12%.
5. **Developer retained units:** If after issuance of Certificate of Completion or 1st occupancy then not liable to GST. But input credit proportionately needs to be reversed.
6. **Land owner retained units:** Similar as above point 5.

Agreement for sale of undivided share in land to Purchasers

Transaction	Impact of GST
Taxability – Sale of Land	<p>The Agreement for Sale entered between the Land Owners, the Developer and the Purchaser is for sale of undivided share in the land.</p> <p>In this regard, it may be noted that 'Immovable Property' is outside the scope and ambit of GST and accordingly, the said transaction will not be considered as a 'Supply' under the GST Laws and hence, no GST is payable on the same.</p>

Construction Agreement between the Developer and the Purchaser

Transaction	Impact of GST
Taxability -	As discussed above, any construction of a property by a developer for a purchaser amounts to 'Works Contract' and accordingly, the subject transaction will be taxable under the GST laws @18%.

Transaction	Impact of GST
	<p>For the discussions on 'Taxability', 'Place of Supply', 'Time of Supply', 'Input Tax Credit', 'Valuation' etc., the portion dealing with 'Outward Supply' may be referred to.</p>

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GST Rates

Sl.no	Description	Rate	Calculation of Value of Supply Applies to:	Effective Rate	
1.	Construction of a complex, building, civil structure	18%	Yes	$18 \times \frac{2}{3} = 12\%$	
2.	Composite supply of works contract as per sec 2(119) of Central Goods and Service Tax	18%	No	18%	
3.	Composite supply of works contract as per Sec 2(119) of Central Goods and Service Tax, to Central government/State Government/Union territory/Local authority/Government authority *	12%	Construction, erection, commissioning, installation, repair of	No	12%
			a. Archaeological sites	No	12%
			b. Canal, dams or other irrigation works	No	12%
			c. Pipelines for water supply, water treatment or sewerage treatment	No	12%
4.	Composite supply of works contract as per Sec 2(119) of Central Goods and Service Tax	12%	Road, bridge, tunnel for transportation of general public	No	12%
			Jawaharlal Nehru National Urban Renewal Mission/Rajiv Awas Yojana	Yes	$12 \times \frac{2}{3} = 8\%$
			In-situ redevelopment of existing slums under the Pradhan Mantri Awas Yojana	Yes	$12 \times \frac{2}{3} = 8\%$
			Beneficiary led Individual house construction under the Pradhan Mantri Awas Yojana	Yes	$12 \times \frac{2}{3} = 8\%$
			Pollution control/ effluent treatment which is not a part of the factory	No	12%
			Structure meant for funeral /burial/ cremation of deceased	No	12%
			Economically weaker section houses under the Pradhan Mantri Awas Yojana	Yes	$12 \times \frac{2}{3} = 8\%$
			Constructed /acquired under Credit Linked Subsidy scheme for Economic Weaker Section, Lower Income group, Middle Income Group-1 and Middle-Income Group-2	Yes	$12 \times \frac{2}{3} = 8\%$

Sl.no	Description	Rate	Calculation of Value of Supply Applies to:	Effective Rate	
			No	12%	
5.	Composite supply of works contract as per Sec 2(119) of Central Goods and Service Tax	Railway including Monorail and metro	No	12%	
		Single residential units other than those part of residential complexes	Yes	12*2/3=8%	
		low cost houses upto a carpet area of 60sq meters per house under "Scheme for affordable housing in partnership" Framed by Ministry of housing and poverty alleviation, GOI / "Affordable housing in partnership of Pradhan Mantri Awas yojana"/ Any housing scheme of State government/Affordable housing project given an infrastructure status by the GOI, Ministry of finance (department of Economic affairs)	Yes	12*2/3=8%	
		Post-harvest storage infrastructure	No	12%	
		Mechanised food grain handling system, machinery/equipment for processing agriculture produce as food stuff other than alcohol for human consumption	No	12%	
6.	Composite supply of works contract as per sec 2(119) of	Construction, erection, commissioning, installation, repair of	12%	No	12%

Sl.no	Description	Rate	Calculation of Value of Supply Applies to:	Effective Rate	
	Central Goods and Service Tax to Central government/State Government/Union territory/Local authority/Government authority *		a. Civil structure for use other than commerce, industry, Business or profession	No 12%	
b. Structure for the use of Clinical, educational or Art and culture			No 12%		
c. A residential complex for Self-use or for the use of the employees/ other persons as per Schedule III of the CGST Act i.e. Members of parliament/state legislature/Panchayats/Municipalities/other Local Authorities, any person as a chairperson/member/director in a body established by CG/SG/local authority			Yes 12*2/3=8%		
7.	Composite supply of works contract as per sec 2(119) of Central Goods and Service Tax *	Predominantly earth work (75% of the Value of works contract) provided to the CG/SG/UT/Local authority/Government authority/Government entity	5%	No	5%
8.	Composite supply of works contract as per sec 2(119) of Central Goods and Service Tax and associated services	Offshore works contract relating to oil and gas exploration and production in offshore area beyond 12 nautical miles from the nearest point of the appropriate base line	12%	No	12%
9.	Composite supply of works contract as per sec 2(119) of Central Goods and Service Tax, services referred in point (3) and (4) by the sub-contractor to the main contractor		12%	No	12%
10.	Composite supply of works contract as per sec 2(119) Central Goods and Service Tax, services referred in point (7) by the sub-contractor to the main contractor to the CG/SG/UT/Local authority/Government authority/Government entity *		5%	No	5%

Sl.no	Description	Rate	Calculation of Value of Supply Applies to:	Effective Rate
11.	Construction services other than above	18%	No	18%

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Transition Provisions

File TRAN -1 before 29th Sept 2017, detailing:

1. Any unutilized ITC Credits to be carried forward from VAT Returns or excise returns – Sec 140(1)
2. Any unutilized ITC on Capital goods eligible and not fully claimed in VAT /CENVAT returns can be carried forward to GST – Sec 140(2).
3. Un-availed CENVAT Credit lying in the Stock as on 30th June 2017 - Sec 140(3).
4. Pending Works **Tax shall be leviable under GST** for which VAT & ST already paid

Filing of TRAN -2:

1. Applicable only for persons availing Deemed credit under proviso of 140(3), hence not applicable for a Real Estate Developer.

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Accounts

Journal Entries in Books of accounting

Transaction	Under GST {All Values are sample Numbers for Understanding}		
Outward Supply-Sales			
Local Sale – B2B	Dr Debtors A/c Cr B2B Sales A/c Cr Output CGST A/c Cr Output SGST A/c	1,41,600	1,20,000 10,800 10,800
Local Sale – B2C	Dr Debtors A/c Cr B2C Sales A/c Cr Output CGST A/c Cr Output SGST A/c	1,41,600	1,20,000 10,800 10,800
Interstate Sale {Architects / Consultants etc.}	Dr Debtors A/c Cr Sales A/c Cr Output IGST A/c	1,18,000	1,00,000 18,000
Advance receipt (a)	Dr Cash/Bank A/c Dr CGST+SGST Advance A/c Cr Customer A/c Cr Advance Output GST A/c	10,000 1,800	10,000 1,800
	Dr Advance Output GST A/c Cr Cash/Bank A/c	1,800	1,800
Raising of Invoice (b) in subsequent month	Dr Customer A/c Cr Sales A/c Cr Output CGST A/c Cr Output SGST A/c	1,18,000	1,00,000 9,000 9,000
	Dr Output CGST A/c Dr Output SGST A/c Cr CGST+SGST Advance A/c Cr Cash/Bank A/c	9,000 9,000	1,800 16,200
	Dr Cash/Bank A/c Cr Customer A/c	90,000	90,000
Inward Supply-Purchases from			
Registered Dealer - Intra state	Dr Purchase A/c Dr Input CGST A/c Dr Input SGST A/c Cr ABC	1,00,000 9,000 9,000	1,18,000
Registered Dealer (Inter State)	Dr Purchase A/c Dr Input IGST A/c Cr Creditor	15,000 2,700	17,700
Under Reverse Charge Mechanism	Dr URD Purchase A/c Dr Input CGST A/c Dr Input SGST A/c Cr Creditors A/c Cr Output RCM A/c (Liability)	10,000 900 900	10,000 1,800

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Transaction	Under GST {All Values are sample Numbers for Understanding}		
Payment of RCM Liability	Dr Output RCM A/c Cr Cash/Bank A/c	1,800	1,800
Composition Dealer Purchase	Dr Purchase Cr Creditors	50,000	50,000
Expenses & Purchase of Capital Goods			
Indirect Expenses	Dr Telephone Charges A/c Dr Input CGST A/c Dr Input SGST A/c Cr Bank	5000 450 450	5,900
Asset Purchase (Interstate)	Dr Furniture A/c Dr Input IGST A/c Cr ABC furniture's A/c	40000 4,800	44,800
Up on GSTR -1			
Transfer to Liability Ledger	Dr Output CGST A/c Dr Output SGST A/c Dr Output IGST A/c Cr Liability Ledger CGST A/c Cr Liability Ledger SGST A/c Cr Liability Ledger IGST A/c	21,600 21,600 19,800	21,600 21,600 19,800
Up on GSTR -2			
Transfer to Credit Ledger	Dr ITC CGST Ledger A/c Dr ITC SGST Ledger A/c Dr ITC IGST Ledger A/c Cr Input CGST A/c Cr Input SGST A/c Cr Input IGST A/c	9,450 9,450 11,100	9,450 9,450 11,100
On Payment of Taxes			
Transfer to Cash Ledger	<u>Cash Payment</u> Dr Electronic Cash Ledger {I+C+S} Cr Bank	33,000	33,000
	<u>TDS / TCS</u> Dr Electronic Cash Ledger Cr Govt / eCom Operator		

Up on GSTR -3			
Transfer to Credit Ledger	Dr Liability Ledger CGST A/c	21,600	
	Dr Liability Ledger SGST A/c	21,600	
	Dr Liability Ledger IGST A/c	19,800	
	Cr ITC CGST Ledger A/c		9,450
	Cr ITC SGST Ledger A/c		9,450
	Cr ITC IGST Ledger A/c		11,100
	Cr Electronic Cash Ledger {I + C + S}		33,000

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Returns

Return for the Month of July, August & September due dates

Q1. When can I start uploading sales/outward Invoice?

25th July onwards, Subject to GSTN portal availability

Q2. Filing of Returns for the month July & August

Month	GSTR 3B Simplified returns (Pay tax)
July	20th August
August	20th September

AND

Month	GSTR 1	GSTR 2	GSRT 3
July -17	By 5th September	By 10th September	
August – 17	By 20th September	By 25th September	
Sept - 17	10th October	15th October	20th October

Penalty

FREQUENCY	RETURNS	PENALTY
Monthly	GSTR – 1,2,3,6	Rs 100 per day To Maximum of Rs 5000
Annual Return	GSTR 9 – 31 st Dec end of Financial year	Rs 100 per day To Maximum of 0.25% of Aggregate turnover.

Frequently asked Questions

1. What is construction?

“Construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property. Please note that ‘alterations’ and ‘repairs’ are also included in this definition.

2. Can a builder take all eligible inputs?

Yes, a Builder can take all the eligible inputs used for construction. But need to reverse the proportional credits for those units sold after receiving the completion certificate.

3. Whether GST to be charged on flats sold even i.e. after completion?

GST will be charged only on those flats sold before getting the completion certificates. If the first consideration is received after Occupancy certificate or first occupation, then there shall be NO GST on such transactions.

4. Can Developer go for composition?

No. Composition scheme is not available for services & SCH II Entry 5(b) Specifies these transactions as service.

5. Whether taxes paid on change of interiors of service apartment is eligible for input tax credit?

Input tax credit is not available on goods or services received by a taxable person for construction of an immovable property on his own account other than plant and machinery even when used in course or furtherance of business. The word “construction” includes reconstruction, renovation, additions or alterations or repairs to the extent of capitalization to the said immovable property. If the cost of interiors is capitalized towards the cost of immovable property then it forms part of the cost of immovable property (Service apartment) and accordingly taxes paid on change of interiors of service apartment will not be eligible as input tax credit.

6. Does my buyer of property gets any INPUT TAX CREDIT?

Generally, No, Sec 17(5) restricts the credit of works contractor unless the recipient is also a works contractor.

7. So, all Works contract ITC is restricted?

Even here, if there are any minor repairs and civil works done to the factory or office building is allowed to the extent it is not capitalized in books of accounts.

8. Whether interest or demurrage for late payment collected from customers is liable to GST?

Yes. In terms of Section 15(2)(d) interest or late fee or penalty of delayed payment for any consideration for any supply is liable to be included in taxable value

9. Can I offer discounts to customers i.e. Transaction value will be different between two parties?

Yes. In terms of Section 15 (3) of the CGST & SGST Act, value of supply shall not include any discount which is given before or at the time or after the supply subject to certain conditions

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10. What is the place of supply of service in relation to an immovable property?

Section 12 (3) (a) of IGST Act, 2017 provides that any service provided 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 coordination of construction shall be the location at which the immovable property is situated.

Illustration - If Mr. A of Ahmedabad, is constructing a house in Mumbai and appoints Mr. B of Delhi to provide architectural services with regard proposed construction of house located in Mumbai, then the place of supply of such architectural services shall be Mumbai.

11. What would be the time of supply in case of works contract on immovable property?

In terms of entry (a) to clause 6 of schedule II, the works contract in relation to immovable property under the GST regime should be treated as supply of service.

Accordingly, in terms of Section 13, the time of supply of services shall be the earliest of the following:

- (a) Date of issue of invoice; or
- (b) Due date of issue of invoice under Section 31; or
- (c) Date when the payment entry in relation to supply of services is recorded in books of accounts; or
- (d) Date on which the payment is credited to supplier’s bank account.

12. Are there any continuous supply of services in real estate?

- a. Renting of immovable property
- b. Construction services
- c. Development of land

13. What type GST to be charged on flats sold?

CGST and SGST taxes to be charged for all the sales.

14. On which flats we should charge IGST?

No transaction will be suffered with IGST tax as the place of supply is place of immovable property. However, if the Builder is registered in a different state and entire project is outsourced and there are no local purchases made in the state where property is located and they choose not to register in that state, which is rare instance, in such cases the Invoices would carry IGST.

15. Does rental income up to 20 lacs attracts GST or attracts any other charge?

GST is leviable only if aggregate turnover is more than 20 lacs. (Rs. 10 lacs in 11 special category States). For computing aggregate supplies turnover of all supplies made by you would be added.

Renting of Commercial Property – Taxable at 18%

Renting of Residential Property – NOT Taxable

16. How many digits of HSN should be reported in filings?

Annual Turnover	Digits compulsory
<1.5 Crores	0

1.5-5 Crores	2
>5 Crores	4

17. How can we take forward the remaining credit under VAT and service tax?

File GST TRANS -1 within 90 days from 1st July 2017 with the credits remaining unutilized in the returns.

18. Are the monthly charges payments for the upkeep of the residential /commercial complex liable to GST?

*Monthly charges for upkeep of residential / commercial complex are liable to GST. However, entry 9955 provides an exemption for "Service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution - up to an amount of **five thousand rupees per month** per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex"*

19. Is the sale of car parking whether covered or open liable to GST?

Once car parking is sold by the builder to the purchaser of a flat/ office with a separate consideration, then GST is payable if consideration is received before issuance of completion certificate.

20. A building is leased for 99 years. Will it be liable to GST?

In various judgments, CESTAT has taken a view that long term lease is akin to sale. However there are contra decisions as well. Unless otherwise exempted, long term lease should be considered as service as leasing of building is specifically covered under Schedule II.

21. Is the repair and maintenance of old buildings liable to GST?

Yes, all repairs incurred will be liable to GST, if the recipient is not capitalising this expenses in the books even they are entitled for Input tax credit and is not restricted by 17(5), if they are used in furtherance of Business.

22. Whether booking fee is subject to GST for a commercial space.?

If the booking fees (for purchase of flats or office) is paid to the builder / developer for buying a flat or office, it will be subject to GST if such amount is received by the builder / developer before issuance of completion certificate from the competent authority. However, there is another view where booking amount is received before entering Sale agreement, it is in the contingent nature and not an Advance, hence no GST Liability.

23. When and how do I pay GST for progressive payment contracts spanning more than 3 months?

This contract will be considered as continuous supply of service and GST has to be paid after the end of each successive progressive payment schedule. The Liability arise if the mile stone is accomplished even otherwise a demand letter is raised or not on the customers.

24. Are contracts signed for sale of commercial space before the GST implementation date liable for GST?

*In terms of section 142 (10) of the CGST & SGST act, goods and services or both supplied on or after the appointed date in pursuance to the contract entered prior to the appointed date is liable to GST. However Sec 142(11) (c) **Tax shall be leviable under GST**, taxable person shall be entitled to take credit under GST of VAT or Service Tax paid*

25. In Anti-Profiteering applies to Real Estate Developers, since the tax liability has increased from earlier regime to Current Regime?

Anti-profiteering (Sec. 171 CGST Act) mentions to pass the benefit to customers, when there is

- Any reduction in rate of tax on supplies of goods or services from erstwhile tax regime
- **OR** Any benefit of input tax credit

For a Real Estate Developer, thought there is no reduction in Rate of tax, there is additional benefits by way of ITC, those credits to be passed on the customer by way of reduction in the price. Future demands that are due.

26. What is the GST rate to be charged?

Sl. No.	Particulars	SAC	GST Rate
1	Construction of a complex, building, civil structure	9954	18%*
2	Composite supply of works contract as per sec 2(119)	9954	18%
3	Other construction services	9954	18%

** 12% if Land is part of the sale and sold before the receipt of completion certificate*

27. What are all incomes taxed to GST?

All the amounts received including for land will be taxed to GST.

Example1: No Sale of Land

Particulars	Amount	Tax rate	Tax amount
Construction	1,00,000	18%	18,000
Maintenance	50,000	18%	9,000
Other services	50,000	18%	9,000
Total	2,00,000	18%	36,000
Total receivable	2,36,000		

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Example2: Sale including Land

Particulars	Amount	
Land	1,00,000	
Construction	1,50,000	
Maintenance	50,000	
Other services	50,000	
Total	3,50,000	
Discount	50,000	
Net total	3,00,000	A
Deduction for land	(1,00,000)	A*1/3
Taxable value	2,00,000	B
GST rate	18%	
GST tax	36,000	C=B*18%
Total receivable	3,36,000	A+C

28. What tax to be charged if we charge at slab basis or milestone basis?

The total amount charged to that customer if inclusive of land, Charge GST @ 12% on the receipts received.

The total amount received only for construction (other than land) Charge GST @ 18% on the receipts received.

Advances received for any of the above 2 category, the amount is taxable at that point when the amount is received.

29. What is the tax rate on the Land owner share of apartments?

18% GST on construction services

30. How to arrive at the construction cost for land owner?

Option 1 – Open market value

Option 2 – Cost + 10% (110% of cost)

Option 3 – Developer share of Undivided share of land(UDS) + Non-refundable deposit paid to land owner (If any)

Example:

Total land area: 10,000 Sqft.

Total flats: 10

Value of land: Rs. 2,500 per Sqft.

Land owner share: 5 flats

*UDS to developer: 5,000 Sqft. (10,000*5/10)*

Cost spent for project: 5,00,00,000

Sale price per flat: 75,00,000

Option 1: Open market value – 50,00,000 (75Lacs-25Lacs)

*Option 2: Cost + 10% - 2,75,00,000 (5,00,00,000*5*/10) +10%*

*Option 3: Developer share of UDS – 1,25,00,000 (10,000*2,500*5/10)*

31. When to pay taxes on the owner share in JDA?

The amount equal to the developer share of land to be paid at 18% at time of entering the JDA agreement. The balance amount to be taxed at par with the outside customers.

Example:

Value agreed: Rs. 25,00,000

Flats to land owner: 5

Value of UDS for developer: Rs. 20,00,000

Open market value per flat: 10,00,000

Per flat of owner share: Rs. 5,00,000

Extra amount to be taxed per flat: Rs. 1,00,000

Rs. 20,00,000 to be taxed at the time of entering the agreement, Balance amount Rs. 5,00,000 to be taxed when the demand for 5,00,000 per flat is raised from the outside customers.

* * * * *

Our views expressed herein are based on our understandings of the REAL ESTATE Transactions. Basis suggestions received we keep updating the document periodically. No assurance is given that the revenue authorities / courts will concur with the views expressed herein. Our views are based on the existing provisions of law and its interpretation, which are subject to change from time to time. We do not assume responsibility to update the views consequent to such changes. The views are exclusively for educational purpose and any correction you feel necessary please write to me venu@vnm.ca

Our Other Hand Books for Reference

1. [An Accountant Hand Book : Journal Entries](#)
2. [Handbook on Jeweler](#)
3. [Handbook for Hoteliers](#)
4. [Handbook for Textile Industry](#)
5. [Handbook for Tours & Travel Industry](#)
6. Hand book for Traders