

Recent Changes in GST for Infrastructure and Real Estate Construction Sector

As explained in our GST Alert 25, GST Council has made some important changes for 2 sectors, namely Real Estate and Infrastructure construction sector. Following is further clarity on these changes.

All these changes are effective from 25.01.2018 onwards unless otherwise specified.

Infrastructure Industry

1. Relief in taxability of Sub-Contractors

Many infra project were shifted from 18% to 12% over the last 6 months, but sub-contractors thereof were still being taxed at 18%. This resulted in major credit issues and working capital were getting blocked unnecessarily. Vide notification 1/2018-CTR government has prescribed that certain projects wherein the principal contractor is taxable at 12%/5%, his sub-contractor will also be taxable at the same rate as applicable to him.

Projects falling under 12% where sub-contractor will also be taxable @ 12% now:

- a. Works Contract Services supplied to the Government, a local authority, a Governmental authority or a Governmental Entity by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -
 - i. A historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958
 - ii. Canal, dam or other irrigation works
 - iii. Pipeline, conduit or plant for water supply, water treatment, or sewerage treatment or disposal projects.

- b. Works Contract Services supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of -
 - i. Civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession
 - ii. Structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment
 - iii. Residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.

Projects falling under 5% where sub-contractor will also be taxable @ 5% now:

- a. Works contract Services involving predominantly earth work (that is, constituting more than 75% of the value of the works contract) provided to the Central Government, State Government, Union territory, local authority, a Governmental Authority or a Government Entity.
2. Works contract Services supplied by way of construction, erection, commissioning, or installation of original works pertaining to Metro rail and Monorail projects will now be taxable @ 12% with full Input Tax Credit

Real Estate Industry

1. Contractors providing Works contract services in relation to construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of the following projects will now be taxable @ 12% only.
 - a. In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban). **Earlier the entry was**

applicable only to land being sourced through private participation, now land sourced from anywhere will be also be eligible for rate of 12%.

- b. Civil structure or any other original works pertaining to the “Economically Weaker Section (EWS) houses” constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban)
 - c. Civil structure or any other original works pertaining to the “houses constructed under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2)” under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban)
 - d. Building owned by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralized cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.
- 2. Works contract Services supplied by way of construction, erection, commissioning, or installation of original works pertaining to following project will now be taxable @ 12% with full Input Tax Credit:**
- a. Low-cost houses up to a carpet area of 60 square metres per house in an 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;
- 3. Houses constructed in any of the following projects will be taxable @ 8% instead of 12% if sale value includes value of Land (whether being undivided share or by way of lease), benefit of Input tax credit shall also be available. Some of these projects marked with (***) were earlier also taxable @ 8% but for ease of listing we have given the full list of real estate projects which will be taxed @ 8%:**
- a. Scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana (***)

- b. In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban) (***)
- c. “Beneficiary led individual house construction / enhancement” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana (***)
- d. Single residential unit otherwise than as a part of a residential complex (***)
- e. Low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered 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;
- f. “Economically Weaker Section (EWS) houses” constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);
- g. Houses constructed or acquired under the **Credit Linked Subsidy Scheme (CLSS)** for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2) under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);;

CLSS is one of the components of Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana. Under this component, subsidy would be provided on home loans taken by eligible urban poor (EWS/LIG/ MIG-I/ MIG-II) for acquisition and construction of house. Credit linked subsidy would also be available for housing loans availed for new construction and for addition of rooms, kitchen, toilet etc, to existing dwellings as incremental housing. The carpet area of houses constructed under this component of the mission would be up to 30 square meters for EWSA, 60 Square Meters for LIG, 120 sqm for MIG I and 150 Sqm for MIG II. The benefit of Credit Linked

Subsidy Scheme may be taken by the Economical Weaker sections or Low/Middle Income Groups for purchase of houses under any project. The maximum annual income for eligibility of beneficiaries under the scheme can be up to Rs.18 lakhs. It covers a very large section of population which aspires to own a home.

- h. Residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017. This clause mainly covers constitutional authorities like Judges, President or elected representatives like Member of Parliaments, legislative authorities, Panchayats, Municipalities and other local authorities.
 - i. Structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment
4. Service by a housing society to its own members by way of reimbursement of charges or share of contribution up to an amount of Rs. 7500 per month per member for sourcing of goods or services from a third person for the common use of its members in a residential complex. Prior to 25.01.2018 this exemption stood at Rs. 5000 per month per member.
5. Vide notification 4/2018-CTR, A person who transfers development rights to a construction company and in consideration thereof receives certain number of flats / offices as barter, will now be required to pay tax at the time when the said developer, builder, construction company transfers possession or the right in the constructed flats / offices to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter). Issues that arise out of this notification are as under
- a. In our view Transfer of development rights is not taxable under GST at all. This notification purports to prescribe time of taxation of an Income which is not taxable at all. This will raise unnecessary issues and will lead to litigation for sure.
 - b. Secondly even if one agrees and wants to pay GST on development rights, this notification shifts the time of supply to when the flats are constructed and possession is handed over, which means in all probability the complex would have achieved completion. If the builder then pays GST to the seller of development rights, he will

not be eligible to claim credit as the project would then have become immovable property and hence not taxable.

- c. This notification also does not talk about the time of supply of the flats being transferred by the builder to the development rights owner, if we assume that the same would be at the time of handing over possession then there would be no GST payable thereon.
- d. In case the builder does charge GST on the flats, the seller of development rights wont be eligible to claim credit of construction service as it is specifically barred under section 17 (5) of the CGST Act, 2017.
- e. Language employed in the notification is very vague, it will be misinterpreted by all stakeholders which will fuel uncertainty and litigation

Above explained reduction in tax rates is available with Input credit, in other words builders and contractors executing above projects will be eligible to claim full input tax credits.

In terms of section 171 of the CGST Act, 2017 we urge all concerned to pass on the benefits of this reduction in rates alongwith enhanced credit eligibility to the end users / customers.

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