

**Government of India**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Direct Taxes**  
**Notification No. 54/2017**

New Delhi, the 21<sup>st</sup> of June, 2017

**NOTIFICATION**

In pursuance of [sub-clause \(ii\) of clause \(a\) of sub-section \(1\) of Section 138](#) of the [Income-tax Act, 1961](#), the Central Government, hereby specifies Joint Secretary (Ops.), NATGRID, Ministry of Home Affairs, Government of India, for purposes of the said clause.

This Notification has to be read with order under [section 138\(1\)\(a\)](#) of [Income-tax Act, 1961](#) dated 21.06.2017 in file of even number, issued by the Central Board of Direct Taxes, notifying Principal Director General of Income-tax (Systems) as the 'designated authority' for furnishing the 'bulk information' on certain identified parameters to the above authority, being notified

(Rohit Garg)

Director-(ITA.II), CBDT

(F.No. 225/300/2016-ITA.II)

Builders' contracts, i.e., construction of complex, have been considered as works contracts under the GST; and are taxable as "services".

- **Taxability:** Vide [entry no. 5 of the Schedule III](#) of the [CGST/SGST Act](#), sale of building, subject to [clause \(b\) of paragraph 5 of Schedule II](#), is neither a supply of goods nor service.

As per [clause \(b\) of paragraph 5 of Schedule II](#), 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, is considered as service.

Thus, in short, where the complex or part thereof is supplied after issuance of completion certificate, supply of units is not subject to GST.

- **Rate of GST:** As per entry no. 19 of the rates list of GST on services decided by the GST Council in its meeting dated 19 May 2017, construction of a complex, building, civil structure or a part thereof, intended for sale to a buyer, wholly or partly [The value of land is included in the amount charged from the service recipient] is taxable @12% with full input tax credit (ITC) but no refund of overflow of ITC.

It is significant to mention that composite supply of Works contract as defined in [section 2 \(119\)](#) of [CGST/SGST Act](#) is taxable @18% with full ITC. [Entry no. 27 of the rate list]

It may be noted that the GST Act has, instead of providing a mechanism for valuation of land involved in the composite works contract and to reduce the same from the gross consideration, specified reduced tax rate of 12%. It implies that the legislature has assumed the value of land as 33% of the total consideration.

- **After considering the above stated legal matrix, following are few important issues which either worry the builders or confuse them in the compliance of GST: -**

1. Mandatory abatement towards land @33% (i.e., reducing the tax rate from 18% to 12%) might be sufficient or even be on the higher side if the project is located in sub-urban or rural area. However, in the premium or semi-premium localities, such as, south Delhi or South Mumbai, where land value is almost 80-90% of the unit value, this rebate is just insufficient. The legislature should have provided the mechanism to reduce the value of land in the prescribed manner; and it should have been left at the option of the builder to pay tax at the reduced rate of 12% if he is unable to value the land, or otherwise.
2. The GST rate of 12% also restricts and states “no refund of overflow of ITC”, which means that no refund shall be allowed if the ITC exceeds the output tax. It is important to mention that in those localities where the value of land is comparatively low, the cost of material and services would certainly be proportionately higher (and thus, ITC). Thus, in such localities there are chances that ITC will be higher in comparison to output tax; which would not be allowed as refund. If we look at the GST rate of inputs and input services for the builders, it mainly varies from 18% to 28%. If we assume the land proportion of 30%, there would certainly be overflow of ITC. Looking at from different prospective, by specifying the rate of GST at 12%, the builders could not collect GST more than 12% from the customers; and remaining amount of overflow of ITC would be either be adjusted from profit margin of the builders or they would increase the base price of the property.
3. Further, it is not clear whether such ITC overflow would be calculated for each and every project separately; or can the overflow of ITC of one project be adjusted from the underflow of another project in the subsequent or same tax period?
4. Moreover, the legislature has not envisaged the complexities in computation of GST. Suppose, a builder enters into an agreement with a landowner to construct 100 units; and out of which, 60 units are agreed to be given back to the landowner in exchange of proportionate land. In respect of construction of 60 flats for landowner, he is simply a works contractor which would be taxable @18% with full ITC. However, in relation to his 40 flats, which are to be sold with land to the buyers, he would pay GST @12% with no refund of overflow of ITC. In such cases, how the ITC inflow would be calculated. It is to be remembered that ITC also includes various common input services and common inputs and capital goods. How these common ITC would be bifurcated to arrive at the overflow of ITC?
5. The builders also face another uncertainty in respect of sale of units; that is, at the initial period, they are not certain whether the entire project would at all be sold before completion of construction. Continuing the illustration in preceding para, suppose the construction period of 100 flats is 48 months.

So far as 60 flats of landowner, it is clear that the builder would pay GST as works contractor @18%. But, what is the time of supply: is it the time when he receives the proportionate land from the land owner. If yes, he would need the working capital to pay full GST on 60 flats on the date of agreement with the landowner.

In respect of his share of 40 flats, builder is not aware when these would be sold. Suppose, 10 flats are sold in the first month; 12 flats are sold in 24<sup>th</sup> Month; 14 flats are sold in 45<sup>th</sup> Month; and 4 flats are sold after completion of construction. He starts procuring goods and services including designing services, architect services at the start of project. When the builder procures material or services, it would be for entire 100 flats; whether sold on that date or not. In our illustration, in the first month only 70 flats are sold; and remaining 30 flats belong to the builder at least till 24<sup>th</sup> month, when another 12 flats are sold. 4 flats are not taxable in GST since these are sold after completion of construction. How would builder claim ITC pertaining to goods and services in respect of unsold flats in the intermediate months? Will he reverse ITC in respect of flats not yet

booked and reclaim later on at the time of booking thereof; or will he claim the entire ITC at the time of purchase, but avail only to the extent of ITC pertains to flats booked?

These are few questions which should be addressed only by the Government, either through Rules or clarifications, for the sake of clarity in respect of proper compliance by the builders.

**(Rakesh Garg, LLB, FCA)**

Author and GST Consultant

*ssarca.rgarg@gmail.com*

*[Personal observations of the author; for academic use]*

By: **Rakesh Garg** - June 26, 2017