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Treading the GST path – XL GST for ongoing constructions



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How to pay GST for an ongoing residential project, after 01.07.2017?

Prior to 01.07.2017, builders were following any one of the following methods.

- (i) After excluding UDS value from total value – Service Tax was being paid under Works Contract Service on 40 % of such value. Predominantly, this method was followed in South India, where the UDS land is sold in favour of the buyer and a separate construction agreement is entered into, both having individual value break ups. The construction agreement by itself would be a works contract.
- (ii) As per Notification 26/2012,

(1)	(2)	(3)	(4)
"12	Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer , wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority	30	(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004. (ii) The value of land is included in the amount charged from the service receiver.

This method was meant for cases, where stagewise payments are received from the buyer during the stage of construction and upon completion of construction, the flat is sold and registered in favour of the buyer. No separate value would be available for UDS land in this type of model. In such cases, ST was being paid on 30 % of the gross amount charged.

Both the methods were being followed by builders across the country.

So, now the question is, how a builder, who has followed either method (i) or method (ii) above prior to 01.07.2017, should discharge his GST liability post 01.07.2017, where part of the amount has been received prior to 01.07.17 and the balance after 01.07.2017?

The rates available under GST are:

S.No. 3(i) of Notification 11/2017

3	<p>Heading 9954 (Construction services)</p>	<p>(i) 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. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)</p>	9
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2. 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.

S.No. 3(ii) of Notification 11/2017

(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9
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It may be noted that under S.No. 3 (i), after excluding one third of total value as land value, GST can be paid on the balance two third value @ 18%, which effectively works out to 12 %.

Under S.No. 3 (ii), GST is payable at 18 % on the total value minus value of UDS.

Case I. A builder who was paying ST on 30 % of the total value including UDS value prior to 01.07.2017.

Case II. A builder who was paying ST on 40 % of the construction value, under WCS prior to 01.07.2017.

First, it may be noted that unlike the position prior to 01.07.2017, which required an element of sale of complex to claim 70 % abatement, the wordings under Notification 11/2017 is different. To reproduce, "Construction of a complex, building, civil structure or a part thereof, **including** a complex or building intended for sale to a buyer". So a mere construction, where UDS is sold separately, is also entitled to claim under this, thereby leaving no uncertainty in this regard. It appears that the options under 3 (i) and 3 (ii) are two options simultaneously available to a builder.

It may be observed that under 70 % abatement under Service Tax, which is akin to 3 (i) of Notification 11/2017 under GST, a notional value is considered as land value and excluded from the levy. Prior to 01.07.2017, the rate of abatement was higher @ 70%, as goods value also needs to be excluded, whereas under GST the abatement is 1/3, as goods value is also liable to GST.

It may be further observed that in case where part of the liability has already been discharged under ST regime (for ongoing projects), if the option under 3 (ii) is opted, on the total amount realised after 01.07.2017, which represents the value of works contract, GST would be payable @ 18 %. In such cases, assuming that the value towards UDS would have been received already, the amounts received after 01.07.2017 would only be towards works contract. But, if option under 3 (i) is opted, GST is payable on 2/3 of the amounts received after 01.07.2017. It may be noted despite the fact that the value of UDS would have been received prior to 01.07.2017, under 3 (i), out of the total amount received, only 2/3 is liable to GST. So, in respect of ongoing projects, the GST liability on the amounts received after 01.07.2017 would be effectively 12 % (18 % on 2/3 of the amount received) under 3 (i), but it would be 18 % on the amounts received after 01.07.2017 under 3 (ii).

Hence, whatever be the method followed by the builder prior to 01.07.2017, post 01.07.2017, GST is payable on two third of the amounts received after 01.07.2017 (thus effectively 12 % under S.No. 3 (i)).

Example:

Total flat value	:	Rs.50 lakhs.
UDS Value	:	Rs.10 lakhs.
Amount received prior to 01.07.17	:	Rs.20 lakhs.
Amount received after 01.07.2017	:	Rs.30 lakhs.

ST paid under Case I prior to 01.07.17:	Rs.20 lakhs x 30 % x 15%
	= Rs.90,000

ST paid under Case II prior to 01.07.17	Rs.10 lakhs x 40 % x 15%
	= Rs.60,000

GST payable under 3 (i)	:	RS.30 lakhs X 2/3 x 18 %
		= Rs.3,60,000

GST payable under 3 (ii)	:	Rs.30 lakhs x 18 %
		= Rs.5,40,000

It is concluded that irrespective of the method followed prior to 01.07.2017, in respect of ongoing projects, the builder can pay GST on two third of the amounts received after 01.07.2017 @ 18 % (effectively 12 %).

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