



THE COIMBATORE BRANCH OF SIRC OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Setup by an Act of Parliament)

NEWSLETTER

FEBRUARY 2023

ISSUE 02

From the Chairman's Desk...

Esteemed Professional Colleagues,

As I am communicating with you for the last time through the newsletter of our Branch, my warmest greetings and Best Regards to you. As the 52nd Chairman of the Coimbatore Branch of SIRC of The Institute of Chartered Accountants of India, it was a great privilege and honor to lead the Managing Committee of the Branch for the year 2022-2023. I salute all my distinguished predecessors for creating a great foundation and laying a path for a smooth and comfortable journey. Their contribution to the Branch was a great motivation and inspiration.

The year 2022 is indeed an unforgettable year in my life, starting my journey as a Committee Member from the year 2016 I was able to serve the branch in various capacities with the support and guidance of my guru the Past President of ICAI CA. G. Ramaswamy, Immediate Past Chairmen of SIRC CA. K. Jalapathi, other past Chairmen of SIRC, Ex-Officio Members, Central Council Members, Regional Council Members, Past Chairmen of the Branch, Senior Members, and my Colleagues in the Committee. I humbly express my sincere gratitude to all of them for their continuous guidance and support.

With expectations building up for the upcoming Union Budget 2023, I am sure that our nation would enter a new era of development and growth in tune with its potential. Let us be prepared to face new challenges and continue to serve the profession and nation in a better way. I would like to inform you that a Half Day seminar on Union Budget 2023 is to be held at our Thudiyalur Branch premises on 4th February 2023, CA. Pradip Kapasi and CA. Ganesh Prabhu will be addressing the proposals in Direct Taxes and Indirect Taxes, respectively. Also please note, Certificate Course on Forensic Accounting and Fraud Detection is also planned for the month of February, details will be mailed.

During the month of January 2023, we organized the 11th Annual Day of the Branch on 19th January, past Presidents of ICAI CA. Sunil Talati and CA. G. Ramaswamy, Ex-Officio Member CA. S. Rajesh, Immediate Past Chairman of SIRC CA. K. Jalapathi were the guests and faculty Members CA. Abhishek Murali and CA. V. Prasanna Krishnan addressed the Members. I thank all of them for sparing their time to share their knowledge and wisdom with us. I am pleased to inform you that we had the opportunity to interact with the Chairman of the International Taxation Committee of ICAI CA. Sanjay Kumar Agarwal at our Branch on 22nd January 2023.

As I lay down Office as Chairman of the Branch, I would like to Congratulate the New team of Office bearers and wish them all the very best in their journey ahead. I am sure that they will bring in more laurels and take our branch to further heights. I once thank all the noble souls for their support in my journey with the Managing Committee of this great Branch. Wishing you all the very best in all your future endeavors.

With Best Regards,
CA. N.V. Palanisamy
Chairman



Inside...

- Goods & service tax on Real Estate – Rationale, Rigour and Relief

Bulletin Editor :
CA. R. Harish

11th ANNUAL CONFERENCES



74th REPUBLIC DAY CELEBRATIONS





GOODS & SERVICE TAX ON REAL ESTATE – RATIONALE, RIGOUR AND RELIEF

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GST – Works Contract or Worst Contract?



Whether the term 'works contract' refers to works on goods also for the purpose of GST?



What is the big change required in understanding the Concept of 'Works Contract' WEF 01.07.2017?



Section 2 (119) -

"Works contract" means 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

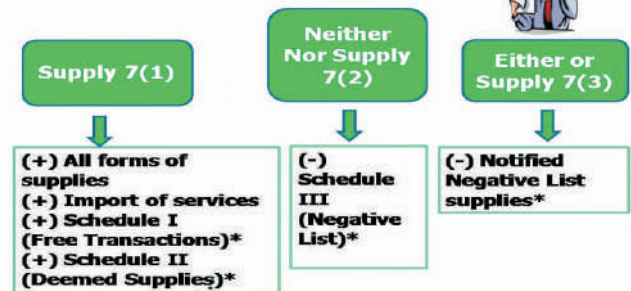


Composite supply (Sch II)

The following composite supplies shall be treated as a supply of services, namely:—

- (a) works contract as defined in clause (119) of section 2; and
(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

* Words used herein for easy understanding;
Not in fine text of law



SCHEDULE II

Activities To Be Treated As Supply Of Goods Or Supply Of Services

- ♦ Renting of immovable property (No specific nature of property referred herein)
- ♦ construction of a complex, building, civil structure or a part thereof – wholly or partly [sale of completed building/flat does not fall under this*]



SCHEDULE III

Activities – not Supply at all

Employment	Courts	Land	Funeral
<ul style="list-style-type: none"> Services by an employee to an employer in the course of or in relation to his employment 	<ul style="list-style-type: none"> Services by any court or tribunal established under law for the time being in force 	<ul style="list-style-type: none"> Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building 	<ul style="list-style-type: none"> Services of funeral, burial, crematorium or mortuary including transportation of the deceased

Construction Services - What is the rate of GST?

Heading	Nature of Services	Rate
Heading 9954 (Construction services)	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)	CGST @ 9% + SGST @ 9%



What does Para 2 say?

Value of Goods & Services = Total Value Minus
Deemed Land Value (which is 1/3rd of Total Value)



Note the importance of the recent decision of the Hon'ble Gujarat High Court in the case of **Munjaal Munish Bhai [2022] 138 taxmann.com 117 (Gujarat)-**

"... 124. The impugned paragraph 2 of Notification No. 11/2017- Central Tax (Rate) dated 28th June 2017 and the parallel State tax Notification is read down to the effect that the deeming fiction of 1/3rd will not be mandatory in nature. It will only be available at the option of the taxable person in cases where the actual value of land or undivided share in land is not ascertainable..."

Works/other Cons. contract - What is the rate of GST?

Heading	Nature of Services	Rate
Heading 9954 (Construction services)	Composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	CGST @ 9% + SGST @ 9%
	(iii) construction services other than (i) and (ii) above.	CGST @ 9% + SGST @ 9%

GST on Construction of Residential complex

Chapter 9954

^ From 01.04.2019 (subject to exceptions; it was 9%+9% till 31.03.2019)

Rate^ = CGST 3.75% + SGST 3.75% on construction value

Place of Supply = Location of immovable property [Sec 12 (3) (a)]

Property not the one with completion certificate; construction to happen

If consideration is for land and construction, then 1/3rd of Gross shall be land value; 2/3rd shall be construction

12% Special Works Contracts

A road, bridge, tunnel, or terminal for (Public) Road Transportation

Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awas Yojana

HFAUM/PMAYU/ EWS (?) /LIG housing (?)/ MIG housing (?)
(25 01 2018)

12% Special Works Contracts (Contd...)

A pollution control or effluent treatment plant, except located as a part of a factory

A structure meant for funeral, burial or cremation of deceased

Building owned by an entity registered under the Income-tax Act, - used for CGs Midday meal scheme (25 01 2018)

12% Special Works Contracts (Contd...)

^a WEF 25 01 2018 - Covers Sub Contract also

Chapter 9954- To the Central Government, State Government, Union Territory, [a local authority, a Governmental Authority or a Government Entity]

by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of

Non Commerce – civil structures

Predominantly – Education / Clinical / Art purpose

Residential complex for Self Use / Employees / Specified persons

12% (Till 18.07.2022 it was 5%) Government Contracts (Earth work oriented)

Chapter 9954-

Involving predominantly earth work (that is, constituting more than 75 per cent 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.

Till 31.12.2021 - If supplied to Government entity, such entity should have got work from G/LA; after that no such condition

WEF 13 10 2017 (Ref: Ntn 39/2017)

Covers – Works by contractor as well as sub contractors



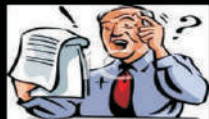
How to decide that a body is 'Government' or not?

Central Board of Indirect Taxes and Customs has very clearly clarified in the FAQ issued by it too (<https://cbec-gst.gov.in/sectoral-faq.html>)—

Question 6: Would a statutory body, corporation or an authority constituted under an Act passed by the Parliament or any of the State Legislatures be regarded as 'Government' or "local authority" for the purposes of the GST



A statutory body, corporation or an authority created by the Parliament or a State Legislature is neither 'Government' nor a 'local authority'. Such statutory bodies, corporations or authorities are normally created by the Parliament or a State Legislature in exercise of the powers conferred under article 53(3)(b) and article 154(2)(b) of the Constitution respectively.



It is a settled position of law (Agarwal Vs. Hindustan Steel AIR 1970 Supreme Court 1150) that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) of the Constitution and similarly to the Governor under article 154(1).

Such a statutory body, corporation or an authority as a juridical entity is separate from the State and cannot be regarded as the Central or a State Government and also do not fall in the definition of 'local authority'. Thus, regulatory bodies and other autonomous entities would not be regarded as the government or local authorities for the purposes of the GST Acts.



Before we move to much debated or disputed 'GST on Joint Development Ventures—

Note the Mega changes in GST on Construction Industry.

With Effect From 01.04.2019



Notification No. 3/2019-C.T.(Rate) provides for new rates for construction services in respect of specified units.

These new rates

- (i) mandatorily apply to projects commencing on or after 1st April, 2019 and
- (ii) optionally to ongoing projects, in case the developer does not opt to pay tax at old rates, on the installments payable by the customer on or after 1st April, 2019 .

GST on Construction of Residential Real Estate Project or Other than RREP -

No ITC

Chapter 9954

Rate = CGST 3.75% + SGST 3.75% on 'taxable value'

Taxable Value = Total Consideration (-) 1/3rd of TC being assumed land value

Property not the one with completion certificate; construction to happen

Know the concept of RREP and REP

Just for easy academic reference (Not in law)-
Effective rate is $3.75 \times 2/3 = 2.5\%$
2.5%+2.5% on TOTAL CONSIDERATION (L + B)

GST on Construction of RREP/REP – Affordable Housing Scheme

No ITC

Chapter 9954

Rate = CGST 0.75% + SGST 0.75% on 'taxable value'

Taxable Value = Total Consideration (-) 1/3rd of TC being assumed land value

Property not the one with completion certificate; construction to happen

Just for easy academic reference -
Effective rate is $0.75 \times 2/3 = 0.50\%$
 $0.50\% + 0.50\% = 1\%$ on
TOTAL CONSIDERATION (L + B)

Pure Labour Contracts – Exemption granted -

Works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana.

works pertaining to a single residential unit otherwise than as a part of a residential complex



The reduced rate is applicable where -

- ◆ such residential apartments constitute at least 50% of the total carpet area of all the apartments in the project; and
- ◆ in respect of ongoing projects, the developer has not opted to pay GST at the old rates on such construction services.

In case it turns out that the aforesaid criterion of 50% is not achieved at the end of the project, the shortfall in GST i.e. 6% is payable by the developer.

The residual GST rate for works contract services in respect of certain works under Notified Schemes remains 12%, and in all other cases remains 18%.

Affordable housing scheme WEF 01.04.2019 –

Residential apartments in a project with carpet area of up to 60 sq. m. in metropolitan cities or 90 sq. m. otherwise, and for which the gross amount charged is not more than Rs. 45 lakhs

60 Sq Mt = 645.84 Sq Ft

90 Sq Mt = 968.75 Sq Ft



How to bill for a works contract? Whether it is a Continuous Supply or not? What is the time of supply?

Residential Complex..?



What about 'free materials' supplied to Supplier by the Recipient of Works Contract?

Whether Re: Bhayana Builders' case is of any use in GST law too?

Ref: Circular No 47/21/2018 dated 08.06.2018 –

1.2 Value Moulds and dies given by OEM to Component manufacturer does not merit inclusion in the value of supply in terms of section 15(2)(b) of the CGST Act 2017.



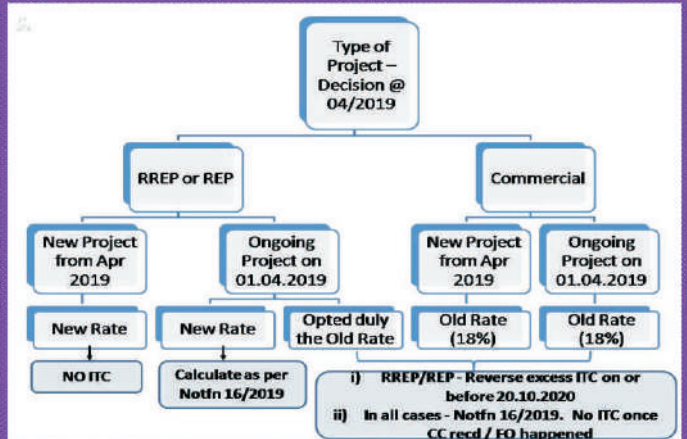
Input Tax Credit Reversal –

Earlier (Till March 2019), Rule 42 of CGST Act 2017 was to applied by Developer or Builders. Thus project wise reversal of ITC on completion was implied. But no strong law to enforce the same in flowing ITC through out the year – through out various projects.



But, from 01.04.2019 unless one opts – if eligible – the old rates, there cannot be any Developer Promoter of REP/RREP in this country claiming ITC.

What about closing balance on 31.03.2019?



What is the surprising RCM applicable only for Developers who pay effectively 1%/5%?

Whether RCM attracting even 28% is there?





Work Contracts –

Whether any Compound Levy Scheme is applicable?

Ref: Sec 10 of CGST Act 2017 RTW Sch II thereto

Work Contracts –

I construct a Commercial Complex for a land owner as per Construction Agreement entered into.

What is the rate of GST from 01.04.2019?



Work Contracts –

Whether ITC is prevented for works contractors doing 'pure commercial construction' 'sub contract to affordable housing scheme'?



Whether Input Tax Credit is available from works contractors invoice?



Sec 17 (5) (c) of the Act reads the restriction list - Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service



Whether one can take GST ITC on goods and services received by him while constructing own building?

Sec 17 (5) (d) prevents the same!



Whether GST credit can be used for paying GST reverse charge?

No.

Why?

Refer Sec 49 (4) and Sec 2 (82)



• What about Joint Development Agreement?

• Whether Land Owner who is after all bartering (land <> specified flats) is liable to pay GST to Developer land lord?



Land owner retains this part (1/4th land)*
- Say worth Rs 10 Crore

On the date of JDA, Developer gets right to hold this land and later to transfer to prospective flat buyers
- Say, worth Rs 30 Crore

***Representing picture of unidentified, undivided share of land - for academic purpose**

Now, check and respond – Whether Developer does any service to land owner or not?



Out of 100 flats totally constructed in the project, 30 flats (presented in orange colour in the picture) are for the LO. 70 flats (presented in grey colour in the picture) are for the developer.



Total construction total cost of the project is 60 crore. Developer sells his each flat for gross price of Rs 1 crore (70 flats X Rs 1 Crore).

A) He pays GST on Rs 70 crore 'effectively' at 5% (No ITC)
B) He hands over 30 flats to LO without collecting any consideration in monetary terms from the latter; but collects GST on deemed value.



What is the deemed value?

All time it has been as per Section 15 of the CGST Act 2017 RTW Rule 27 of the CGST Rules 2017.



From 01.04.2019, same view was explicitly confirmed by CBIC vide its Notification No 03/2019 CT R, 04/2019 CT R and Specific FAQ in F.No. 354/32/2019-TRU dated 14.05.2019



**Specific FAQ
in F. No.
354/32/
2019-TRU
dated
14.05.2019**

26 How to determine value of construction services provided by the promoter to land owner in such cases shall be determined based on the total amount charged by the promoter for similar of transfer of apartments in the project from development rights, independent buyers, other than the land owner, nearest to the date on which such development right etc. is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 of Notification No 11/2017 CTR (amended) originally dated 28.06.2017.

What is the importance of Para 9 and 12 of decision in Re: Vasantha Green Projects Vs CCT Ranga Reddy GST Comm. (CESTAT – H Bad bench-2017)? Whether the decision valid even for GST law of present days?

What is the value of flat constructed for land owner by Developer – in case of JD Agreement Till 31.03.2019?

Whether Notification No 4/2018 – CT R is valid even after 01.04.2019 in respect of JDA dated till 31.03.2019?



What is Transfer of Development Right?

How to value it?

Who has to pay – land owner or developer?

When to pay GST for the same (Time of Supply)?

Representations to the CG on 'No GST to LO in JDA'



For JDA entered from April 2019 what is the value of flat constructed for land owner by Developer?

Who has to pay – land owner / developer?

What if all the flats got booked before the date of Completion Certificate/First Occupancy?

What if none or few of the flats did not get booked before the date of CC or FO?





CORPORATE LAWS & CORPORATE GOVERNANCE COMMITTEE THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

26th January 2023

ANNOUNCEMENT

Sub: MCA 21 Version 3- LLP filing and Company Filing for 9 and 56 Forms– Issues/ Feedback (If any)- Initiative of the Corporate Laws & Corporate Governance Committee of ICAI

As you are aware, the MCA has migrated the version 2 of MCA V3 portal to an enhanced version 3 portal.

Beginning with the first phase, the Ministry of Corporate Affairs (MCA) has upgraded the LLP filings to an improved Version 3 of the MCA- 21 Portal which were commenced from 8th March, 2022.

In the second phase, the MCA on 31st August 2022 at 12:00 AM had launched the first set of Nine (9) Company Forms on MCA21 V3 portal consisting of DIR-3 KYC (Web), DIR-3 KYC, DPT-3, DPT-4, CHG-1, CHG-4, CHG-6, CHG-8 & CHG-9 forms.

Recently, the MCA on 23rd Jan 2023 at 12:00 am, as part of its third phase has rolled out the second set of Company Forms consisting of 10 Incorporation Forms and 46 other forms.

- The Incorporation Forms which have been released are as follows:
SPICE+ PART A, SPICE+ PART B, RUN, INC-13, INC-31, INC-33, INC-34, INC-9, AGILE PRO-S and URC-1.
- The list of other 46 Forms which have been released are as follows:
<https://www.mca.gov.in/content/dam/mca/configurations/new-forms-20221226.pdf>
(please refer the link)

With respect to the above, Stakeholders are advised to note the followings:

1. All LLP forms are available in Version 3- MCA Portal
2. Lot-1 and Lot-2 Company forms are available for filing in Version-3 MCA Portal (9+10+46 = 65 Company Forms)
3. Rest of the Company Forms are available for filing in Version-2 Portal.



4. Forms can be accessed at the link:

<https://www.mca.gov.in/content/mca/global/en/foportal/fologin.html>

5. Stakeholders are advised that for hassle free form filings in V3, all Signatories have to register/upgrade themselves as Business User and associate their DSC in V3. Link for referring the video for registering/upgrading the profile:

<https://www.mca.gov.in/content/mca/global/en/about-us/video-gallery.html>

6. FAQs on Incorporation are available at the Link

<https://www.mca.gov.in/content/dam/mca/pdf/SPICEplus-and-linked-filings-FAQs-V3-20230122.pdf>

In case you face any issue or difficulty in filing the Forms, please raise a ticket with MCA and report the same on the google form link as mentioned below:

Lot-1 Issues- <https://forms.gle/wo82nxm6ubN1m26G8>

Lot-2 Issues- <https://forms.gle/qxyKeYSGcHSyY3Kx8>

This initiative is to assist the users of the MCA portal and provide proactive support as a partner in Nation Building.

With Kind Regards,

Chairperson and Vice- Chairperson
Corporate Laws & Corporate Governance Committee
The Institute of Chartered Accountants of India

(Last updated as on 27th January, 2023)

Direct Taxes Committee of ICAI invites suggestions on tax proposals of Union Budget 2023-24

The Hon'ble Finance Minister has presented the Union Budget 2023-24 in the Parliament. In view of the same, the Direct Taxes Committee, GST & Indirect Taxes Committee and Committee on International Taxation invite suggestions on the tax proposals of the Finance Bill, 2023 for consideration and inclusion of the same in the Post Budget Memoranda to be submitted to the Ministry of Finance. Please submit your valuable suggestions latest by 11th February, 2023

Kindly click the link to submit your suggestions

<https://icai.org/post/icai-ub-2023-24>

CPE STARTUP



MSME MEETING



IRS



BLOOD DONATION



CAREER COUNSELLING PROGRAMME



FORENSIC ACCOUNTING AND FRAUD DETECTION

We are conducting the Seven Days Certificate Course on Forensic Accounting and Fraud Detection at our Thudiyalur Branch premises on 3rd, 4th, 9th, 10th, 11th, 16th & 17th March 2023.

The registration fee is Rs. 14,000/- + GST. Members completing the Course successfully are entitled to 20 Hours of CPE Credit. Members willing to attend the Course may kindly register through the link

<https://learning.icai.org/committee/fafd-physical-coimbatore/>

Please register and inform us through WhatsApp to 9443536779 for updating our records and follow up. For more details, please visit

https://icai.org/post.html?post_id=3797

With Warm Regards,

CA. N.V. PALANISAMY

Chairman - ICAI - Coimbatore