

Impact of GST on Real Estate Sector



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Provisions to be kept in mind

- Changes in concept and definition of works contract,
- Registration requirements for Intra-state, Inter-state and for different business verticals,
- Levy – Forward and Reverse Charge Mechanism,
- ITC provisions for inputs, Input services and Capital goods,
- Transitional provisions
- Provisions related to Invoice, Debit notes and Credit notes,
- Return filling and Invoice matching concept,
- Dealers Rating and E-way bill concept overview,
- Other miscellaneous provisions, applicable to this sector.

Basic concepts ...

- GST is leviable on supply of Goods and/or Services
- As per sec.2(52), goods means every kind of movable property other than money and securities includes actionable claims,
- It means Immovable property is not 'goods' as defined u/s 2(52) of CGST Act
- 'Service is defined u/s 2(102) of CGST Act to mean 'anything other than goods, money and securities'
- Immovable property, therefore, will be a 'service' as defined u/s 2(102) of CGST Act
- As per clause 5 of Schedule III to CGST Act following are **neither supply of goods nor supply of services** :
 - sale of land
 - Sale of building (other than under construction sale of flat/unit)
- Sale of completed flats will not be taxable under GST

Construction- Defined as Service

Schedule II- clause 5 (b) entry



Construction of complex, building, civil structure or a part thereof, including a complex or building **intended for sale** to 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**.

Schedule-II- clause 6 (a) entry



Works Contract S. 2(119)



**Composite supply
(naturally bundled)**

Works Contract S. 2(119)

Means a contract for

- building, construction,
- fabrication, completion,
- erection, installation,
- fitting out, improvement,
- modification, repair,
- maintenance, renovation,
- alteration or commissioning of-

IMMOVABLE PROPERTY wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

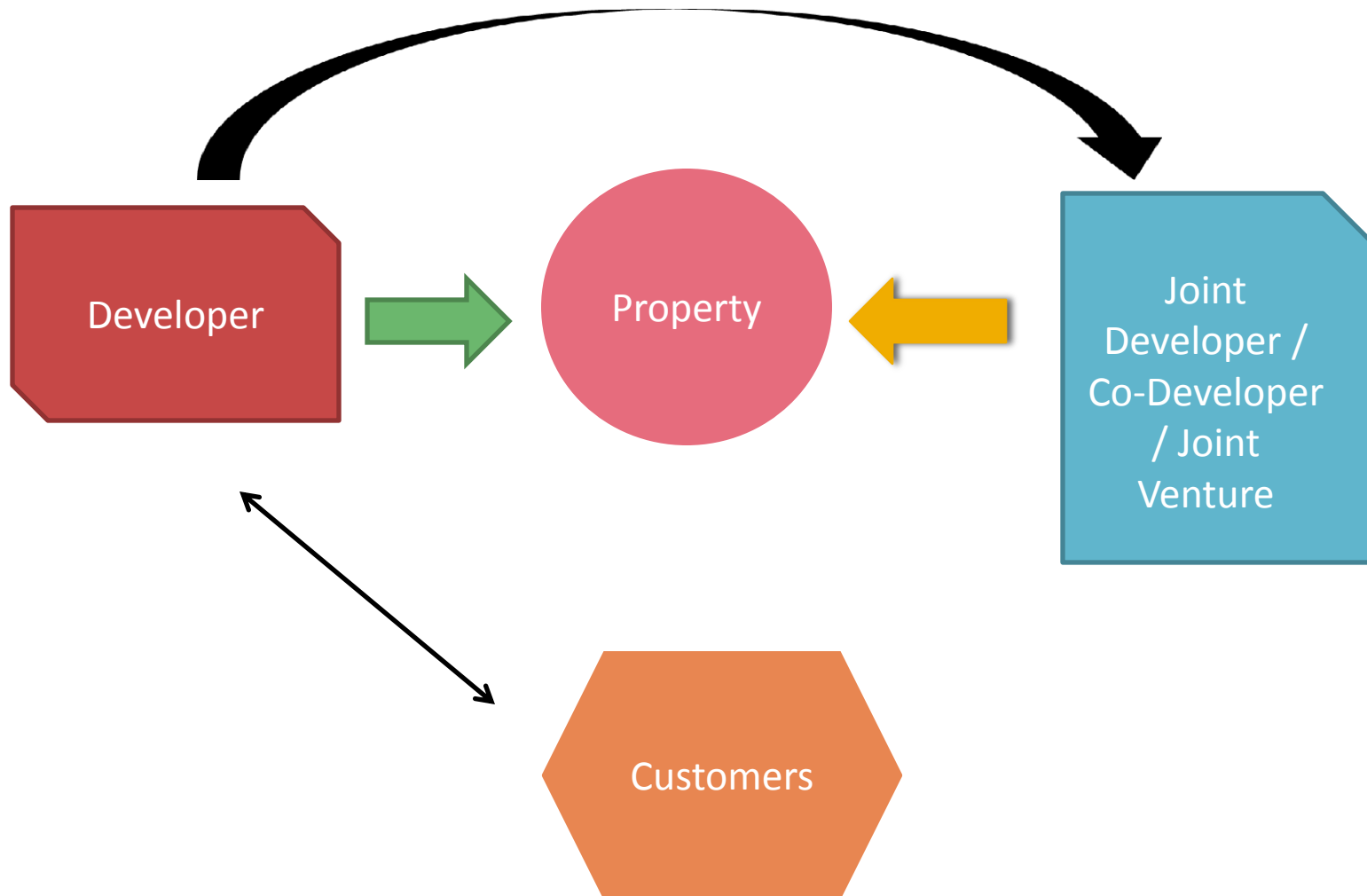
Registration

- Supplier is liable to be registered in the state from where he makes taxable supply
- A builder/developer having projects in different states, what will be the right course of action?
 - Register in a state where it has head/corporate office and treat sale in projects of other state as inter state supply
 - Register as normal supplier in each state where it has a project
 - Register as casual taxable person in other state where it has project

Place of supply of services

- As per section 12(3), where services are directly in relation to an immovable property including services provided by architects, interior decorators, surveyors, engineers and other related experts – the place of supply shall be the location at which the **immovable property is located or intended to be located.**
- Determination of place of supply is crucial with respect to ITC provisions.

Joint Development



Time of Supply for development rights...

Receipt of Development Rights amounts to advance receipt of consideration in kind

When Irrevocable Rights are received will be time of supply

Receipt Voucher has to be issued by Developer to owner on Receipt of Development Rights

Development rights - continue...

In case of barter,

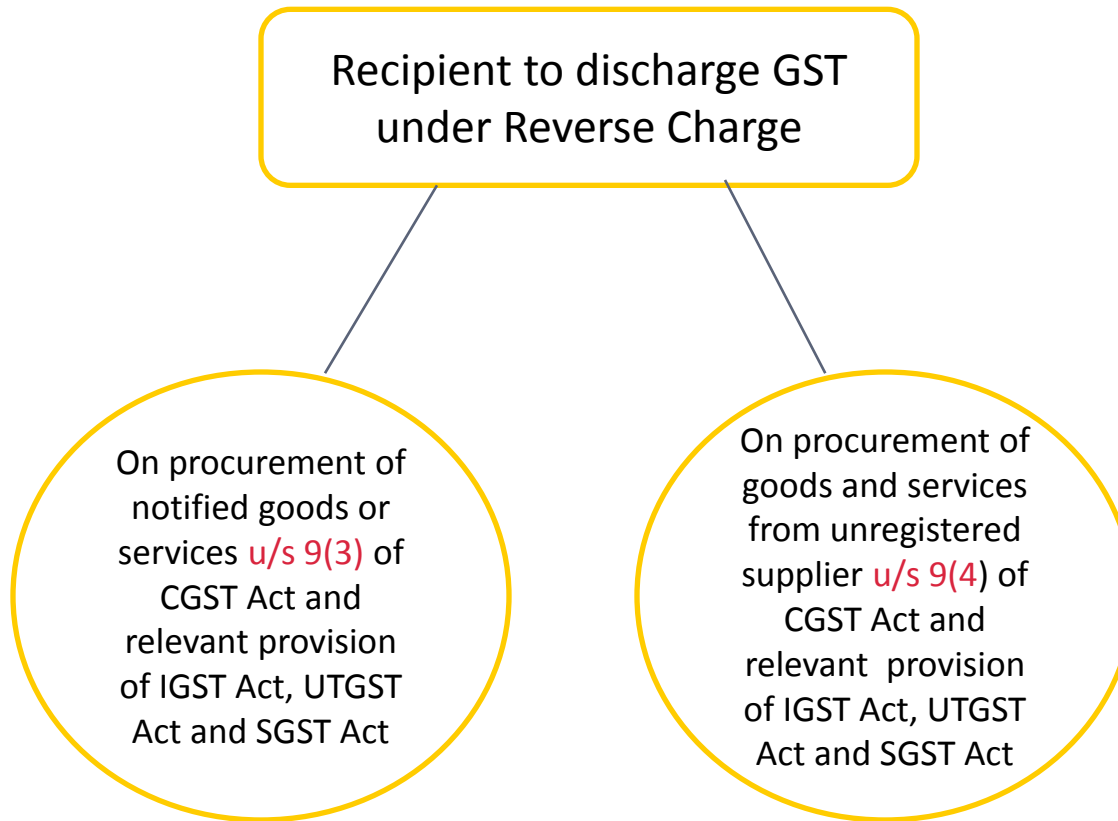
- flats allotted to Land Owners – Sale of land is not taxable being Entry no. 5 of Schedule III.
- Developer received development and sales rights - developers has to make receipt voucher with a value as per Rule 4 of ITC Rules (Estimated Cost + 10% margin).

If consideration is separately finalized for development rights then valuation problems will not arise.

Levy – Forward Charge

- Forward charge on all intra state and inter state taxable supplies
- On land and construction
- On construction only
- Other incomes...??
 - Extra work income
 - One time maintenance charges
 - Maintenance charges
 - Booking cancellation charges
 - Preferential location charges
 - Car Parking charges
 - Rent Income
 - Sale of scrap
 - Sale of excess material
 - Referral commission from bank
 - Disposal of assets
 - Other miscellaneous incomes.

Levy – Reverse Charge Mechanism



- Recipient to discharge GST under RCM as if he is the person liable for paying the tax on supply
- Recipient to make payment on his own account through Electronic Cash Ledger.
- Recipient is entitled to ITC subject provisions
- As per notification no .8/2017 dated 28-06-2017, sec.9(4) will not apply if aggregate intra-state supplies from all URD to RD is up to Rs.5000 in a day.

Service covered under Reverse Charge u/s 9(3)

Description of Services	Existing Law		GST	
	Liabilities of SP	Liabilities of SR	Liabilities of SP	Liabilities of SR
Services provided or agreed to be provided by GTA	Nil	100%	Nil	100%
Service provided or agreed to be provided by an Individual advocate or firm of advocates by way of legal services, directly or indirectly	Nil	100%	Nil	100%
Sponsorship services	Nil	100%	Nil	100%

RP purchase from URP covered under Reverse Charge u/s 9(4)

Description of Services/Goods	Existing Law		GST	
	Liabilities of SP	Liabilities of SR	Liabilities of SP	Liabilities of SR
Commission\ Brokerage	100%	Nil	Nil	100%
Machine Hire Charges	100%	Nil	Nil	100%
Labour Charges	100%	Nil	Nil	100%
Printing and Stationary Expenses	100%	Nil	Nil	100%
Telephone Expenses	100%	Nil	Nil	100%
Site Expenses	100%	Nil	Nil	100%
Sales Promotion Expenses	100%	Nil	Nil	100%
Professional Fees	100%	Nil	Nil	100%
Partners Remuneration	Nil	Nil	Nil	Nil

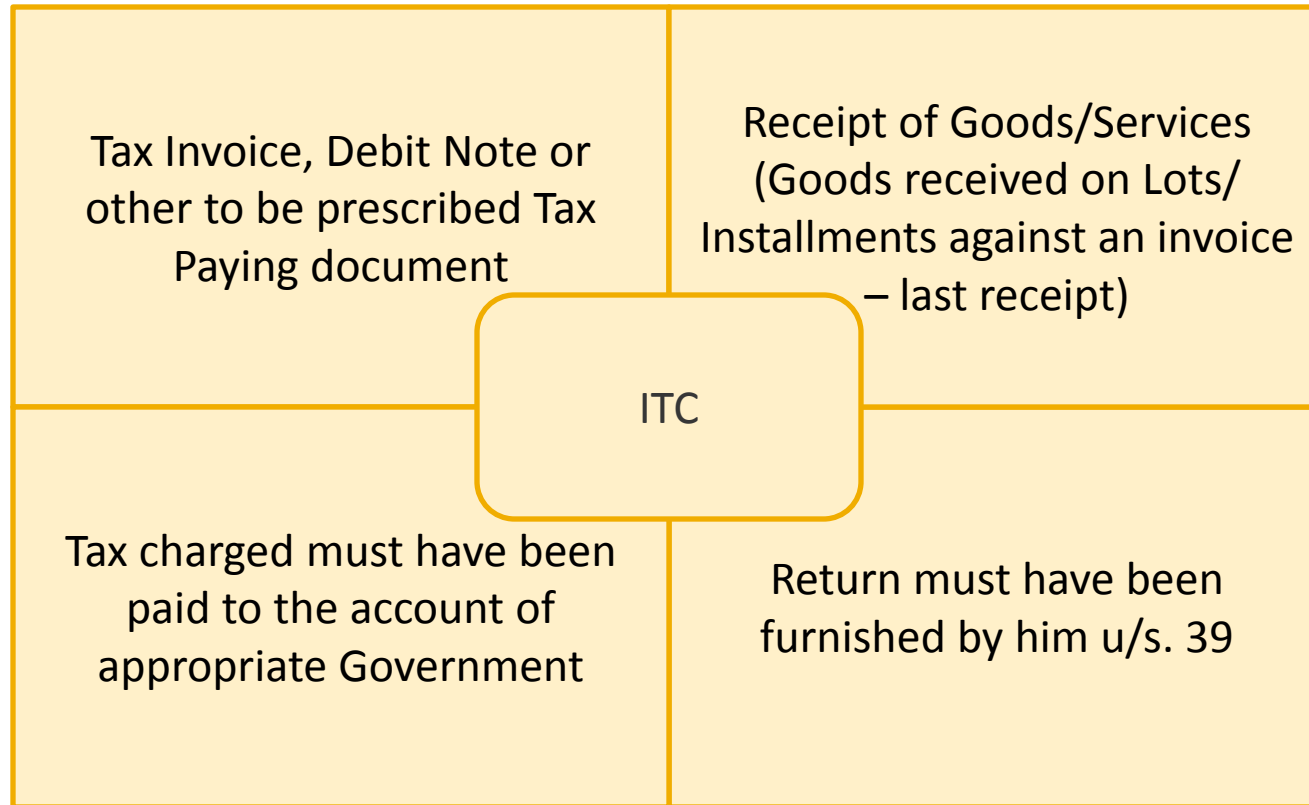
RP purchase from URP covered under Reverse Charge u/s 9(4)

Description of Services/Goods	Existing Law		GST	
	Liabilities of SP	Liabilities of SR	Liabilities of SP	Liabilities of SR
Security Services	100%	Nil	Nil	100%
Temp. Office Rent	100%	Nil	Nil	100%
Salary	Nil	Nil	Nil	Nil
Advertisement Expenses	100%	Nil	Nil	100%
Other Purchases/Expenses	100%	Nil	Nil	100%

Rate applicable to Construction Activities

Activity	Rate	ITC
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 deemed to be one-third of the total amount charged for such supplies)	12%	Full ITC, however no refund of accumulated ITC
Composite supply of Works contract as defined in clause 119 of section 2 of CGST Act	18%	Full ITC

Conditions for ITC - (Section 16)



As per section 16(3) where registered person has claimed depreciation on the tax component of the cost of capital goods, the input tax credit on the said tax component shall not be allowed.

Reversal of ITC

As per Section 17(1), (2) and (3)

Inputs - Goods/ Services/ Both used for

Business purpose/
Taxable supplies

Input tax attributable is
allowable

Non Business purpose/
Exempt supplies
(Land, sale of completed building)

Input tax attributable is
not allowable

As per Rule 8(1)(c), ITC on capital goods to be reversed at the rate 5% points for every quarter or part thereof.

Section 17(5) – Where ITC not admissible

Works contract services

[Section 17(5)(c)]

- 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

Goods or services

[section 17(5)(d)]

- Goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Transitional provisions

- Section 139

Every person registered under any of the existing laws and having a valid PAN shall be issued a certificate of registration on provisional basis subject to such conditions prescribed.

Final registration certificate shall be granted.

Transitional Provisions - continue...

Section 140(1) – Amount of CENVAT/VAT Credit carried forward in the return, allowed as ITC

This section provides for transfer of credit into electronic credit ledger maintained by government on the basis of CENVAT/VAT credit balance shown in the return as at the end of the date, immediately preceding the appointed date, i.e., 30.06.17

○ REFLECTION OF CREDIT IN RETURN

- Reflection of credit in return furnished by registered taxable person under earlier law for the period ending 30.06.17 is essential.
- It should be reflected either in ST-3 or 201.

Transitional Provisions - continue...

Section 140(3) – Credit of Inputs, WIP and Finished Goods

- A registered person who was:
 - Providing works contract services and was availing of the benefit of Notification No. 26/2012-ST, dated 20th June, 2012
 - Shall be entitled to take credit of eligible duties and taxes in respect of inputs held in stock as on date immediately preceding the appointed date.

Section 140(3) – continue....

○ **Conditions to be satisfied for availing the credit :**

- Such inputs or goods are used or intended to be used for making taxable supplies under CGST Act
- The said registered person is eligible for input tax credit on such inputs under CGST Act
- The said registered person is in possession of invoice and/or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs
- Such invoices and/or other prescribed documents were issued not earlier than 12 months immediately preceding the appointed day and
- The supplier of services is not eligible for any abatement under the CGST Act
- In terms of Sub Rule 2(b) of the Transition Provision Rules the application in Form GST TRAN -01 shall specify separately the details of stock held on the appointed day up to 6 tax periods indicating the details of supplies effected during each tax period.

142(5) – Misc. Transitional Provisions

Claim for refund filed after the appointed day for refund of tax paid under existing law in respect of services not provided

Every claim filed by a person after the appointed day.

For refund of tax paid under the existing law

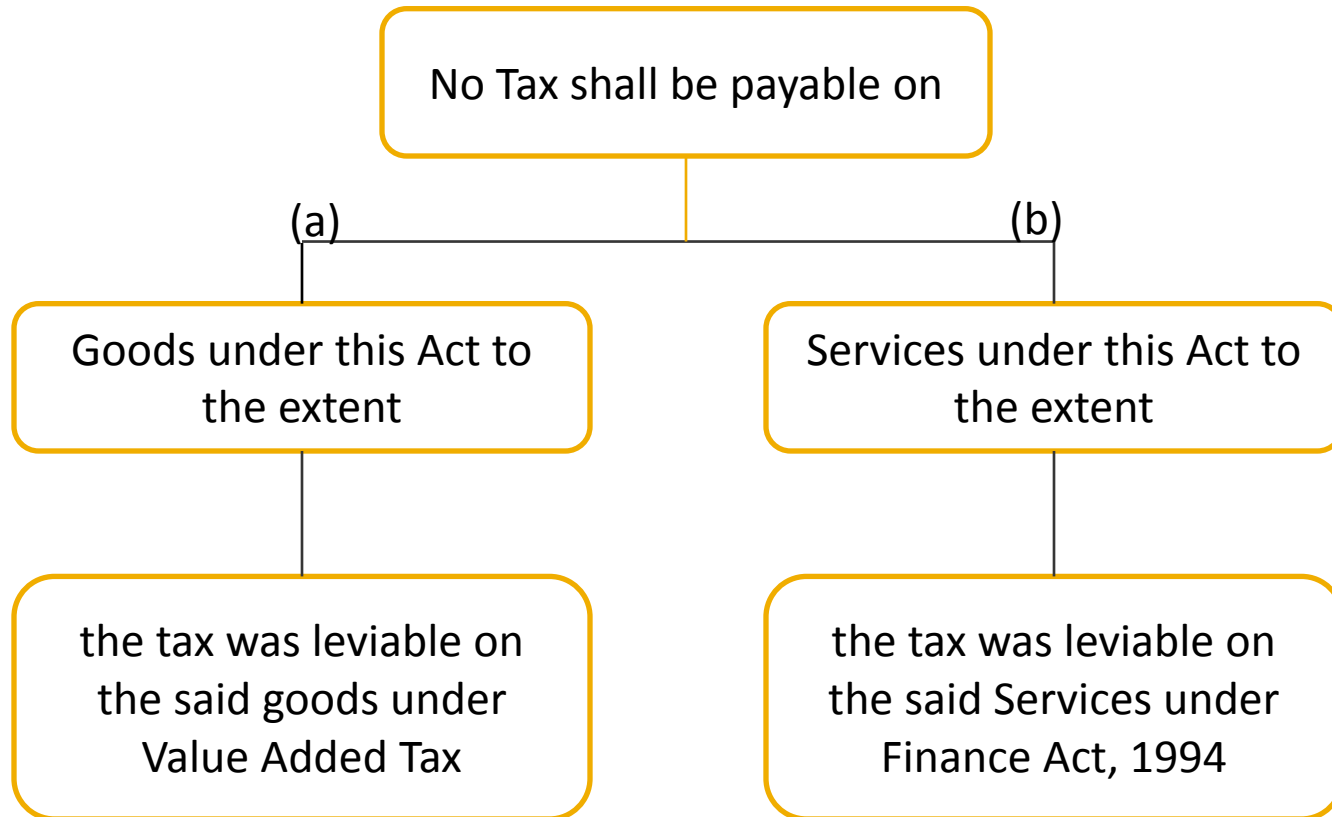
In respect of services not provided shall be

Disposed of in accordance with the provisions of existing law and

Any amount eventually accruing to him shall be paid in cash

142(11) – Misc. Transitional Provisions

Tax not to be paid under this Act if paid under existing law



Section 142(11)(c)

Tax shall be leviable under this Act **to the extent of supplies made after the appointed day** and

The taxable person shall be entitled to take credit of VAT and ST paid under existing Law

Provisions related to Invoices, Debit note and Credit note

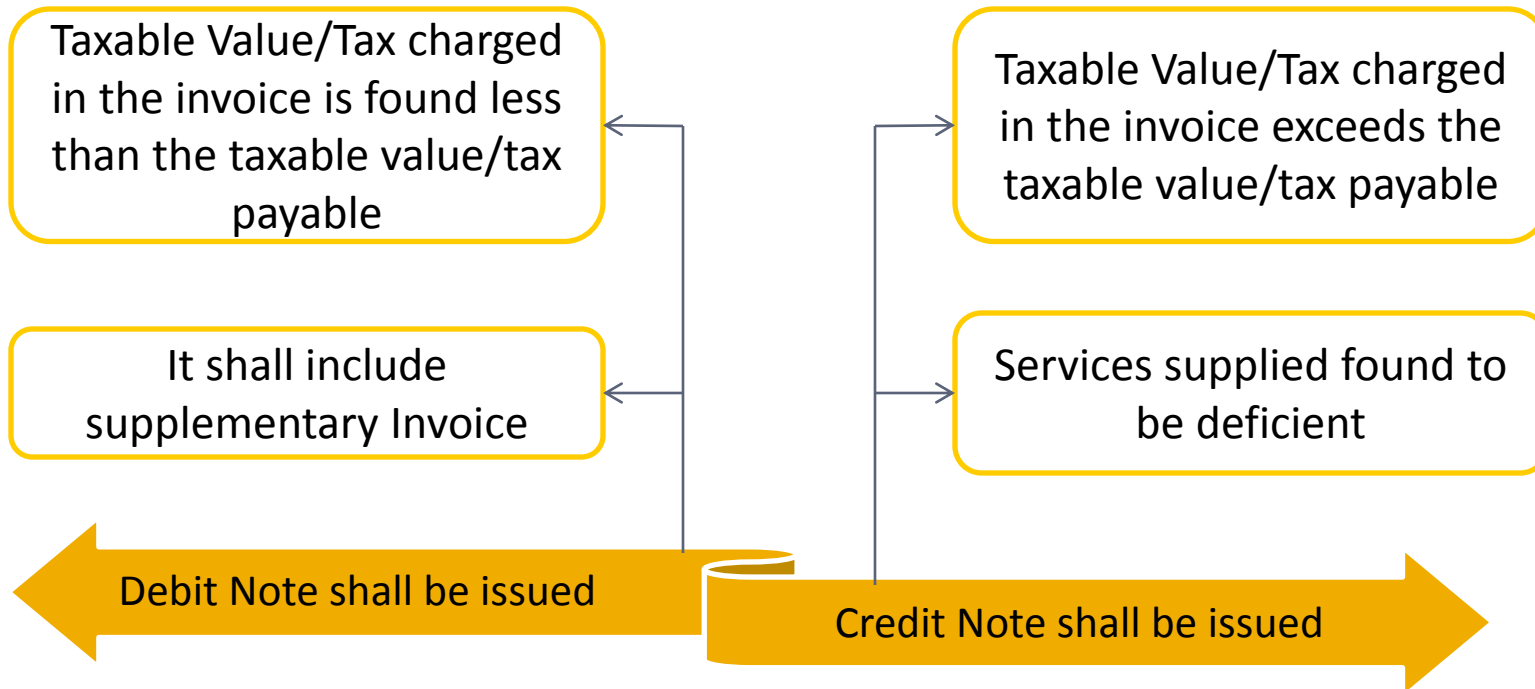
As per Section 2(33) Continuous Supply of Services means

- supply of services which is provided or will be provided
- continuously or on recurrent basis
- under a contract
- for a period exceeding 3 months
- with periodic payment obligation

As per Section 31(5), In case of continuous supply of services,

- a) Where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;
- b) Where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
- c) Where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

Provisions related to Debit notes and Credit notes



- Person shall declare the details of DN in the return for the month in which such DN has been issued.
- Tax liability shall be adjusted in accordingly

- Person shall declare the details of CN in the return for the month in which such CN has been issued but not later than
- September following end of year OR
 - Date of filling of relevant Annual Return. Whichever is Earlier.

Refund on booking cancellations.

- Current provisions of Service Tax Rules, 1994 permits self adjustment in case of booking cancellations against output Service Tax Liability.
- Section 54(8)(c) refund of tax paid on a supply which is not provided, either wholly or partly, and for which invoice has not been issued, or where a refund voucher has been issued;

Return filling and invoice matching concept

Type of Return		Due Date	
GSTR - 1	Outward supplies of taxable goods and/or Services	10 th of next month	Monthly
GSTR - 2	Inward supplies of taxable goods and/or Services	15 th of next month	Monthly
GSTR - 3	Monthly Return	20 th of next month	Monthly
GSTR - 9	Annual Return	31 st December from end of financial year	Annually

Return filling and matching concept continued....

- Correction of mismatched entries and Mapping with financial ledgers – a tedious task.
- B2C Invoice wise Details beyond a prescribed limit to be fed shall also consume much of the time.
- HSN Codes to be used.

GST Compliance ratings

- Every registered person may assign GST compliance rating score by the Government based on his record of compliance with the provision of this act.
- GST compliance rating score may be updated at periodical intervals and intimated to registered person.
- Compliance rating score also placed in public domain.
- Having crucial importance of GST compliance rating score and RERA implications.

E-Way bill concept

- E-Way or Transit Bills to be required even if the goods are outside the ambit of GST
- Requires participation of supplier, transporter and even the recipient.
- For Consignment exceeding Rs. 50,000/-, consignor – the first person to upload the details on the common portal.
- In the event of contingencies, new e-way bill to be generated.
- Presently, implementation of E-way bill is postponed.

Impact of Anti-profiteering measure (S.171)

- Reduction in Tax Rate or Benefit of ITC to be passed on to the recipient by way of commensurate reduction in prices.
- De-Motivation to Business Entity for cost reduction as all the benefits to be passed on the consumers.
- Savings arising out of logistics or other efficiencies not to be passed on.
- As per press note dated 15th June 2017, peoples who have book flats are being ask to make payment before 1st July, 2017 or to face higher tax incidence for payment made after 1st July, 2017. This is against the GST law. If any builder resorts to such practice, the same can be deemed to be profiteering u/s 171.

Renting of Immovable Property

- Entry no. 5 to Schedule II specifies 'Renting of Immovable Property' as Supply of Services.
- Renting of residential property for use as residence to be exempted under GST
- Lease or letting out of building commercial, industrial or residential complex for business or commerce is taxable at 18%
- Reimbursement of expenses incidental to renting such as municipal taxes, water charges, electricity charges and other charges will be included in the value of renting services
- Repairs to Building/Immovable property
 - Input tax credit of GST paid on repairs to building/immovable property to the extent of capitalization will not be allowed
 - Repairs to building/immovable property expensed out in financial statement will be eligible

Renting of Immovable Property Continue..

- Renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act, 1961 is exempted.

Provided that nothing contained in this exemption shall apply to,-

- (i) renting of rooms where charges are one thousand rupees or more per day;
- (ii) renting of premises, community halls or open area, and the like where charges are ten thousand rupees or more per day;
- (iii) renting of shops or other spaces for business or commerce where charges are ten thousand rupees or more per month.

Mandatory Audit and Other Compliances

- Assesse (including composite dealer) needs to file annual return on or before 31stDecember following the relevant financial year
- Annual returns are to be filed for each registered branch/warehouse
- Mandatory audit by CA or Cost Accountant where registered entity's **turnover during financial year crosses Rs. 2 crore**
- In case where audit is mandatory, annual return needs to be filed along with:
 - Copy of audited annual account
 - Reconciliation statement reconciling annual return and audited accounts

Tax Deducted At Source

Person liable to deduct tax at source	<ul style="list-style-type: none">• CG/SG/LA/Govt. Agencies• Such category of persons as notified
Threshold limit for deduction	Total value of supply, under a contract, exceeds Rs. 2,50,000
Time of deduction	Earlier of date of payment or credit to supplier
Rate of deduction	2% [CGST 1% + SGST/UTGST1% or IGST 2%]
Due date of payment	10 th of subsequent month in which deduction is made
Due date to issue certificate	Within 5 days of crediting the amount to the appropriate Government
Late fees for failure to issue certificate	Rs.100 for every day of delay subject to maximum of Rs.5,000
Due date for filing TDS return	10 th of subsequent month in which deduction is made
Excess or erroneous deduction by deductor	If credited to deductee's account –No refund If not credited to deductee's account –Refund to be granted to deductor.

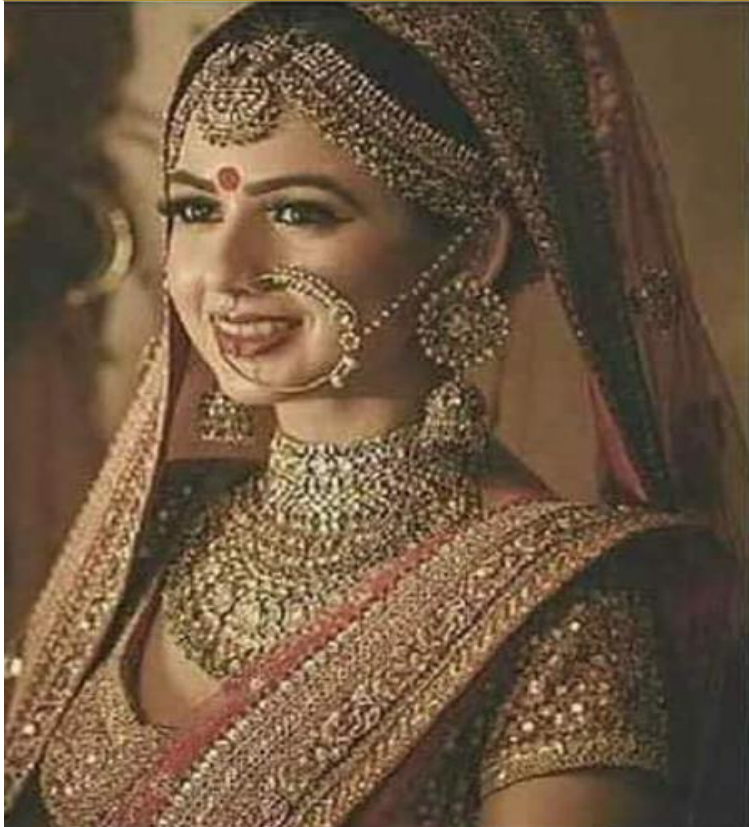
GST – Perceived Disadvantages

- Non adjustment of erroneous payment of tax to other government
- Effective rate of tax on services will be 18% as compared to earlier rate of 15%
- Reverse charge in respect of supplies procured from unregistered dealer exceeding Rs. 5,000 per day
- TDS compliances and blockage of funds
- Taxes on advances
- System of E-way will in respect of movement of goods exceeding Rs.50,000

GST – Perceived Disadvantages

- Dual Control by State and Centre,
 - multi-state businesses may be assessed by State Government authorities in some States and by Central Government authorities in some other State
 - This will lead to different authorities taking different view on same transaction
- Registration in multiple states
- Low and negligible threshold
- Voluminous and Burdensome Compliances

GST



EXPECTATION



REALITY

Thank You

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