



Impact on



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Positive impact

Set off of taxes on goods

- Inputs under service tax
- VAT
 - Retention
- No set off-Composition

Non-creditable taxes vanish

- CST
- VAT
- Octroi
- LBT
- Cess
- Entry Tax

Number of taxes reduced to 3 – lesser valuation issues. Tax Authorities one

Tax not payable on the whole value on day one

Tax defaulting vendor can be detected at early stage

No tax after first occupation

Challenges posed by GST



**First occupation-
first confusion**

**Higher tax rate on
output**

**Set off may not be
adequate-Land
value**

**Immovable
properties other
than land and
building**

Free supply

**Government
contracts**

Transitional issues

**Legacy issues-
unresolved**

First occupation

- **Schedule II**
- Point no. 5 (b) 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
- What is first occupation?
- What is completion certificate? Who gives it?
- Can there be an occupation without Completion certificate?
 - Section 353A of Mumbai Municipal Corporation Act 1949
- How to prove?



Higher rate of tax (Maharashtra)

| Rate per square feet (Rupees) | Output tax | Set off | Net tax | Effective tax rate |
|--|---------------------------------------|-------------------------------------|-------------|--------------------|
| 20,000 Pre GST 1800 material 1200 Services Inclusive of tax | 1100 (In most cases @ 1% VAT 4.5% ST) | 174 (14.5% of Service portion 1200) | 926 | 4.63% |
| Post | 2400 (18% on 67%) | 540 (18% on Construction cost 3000) | 1860 | 9.3% |
| | | Impact | 934 | 4.67% |
| 40,000 Pre | 2200 | 174 | 2026 | 5.07% |
| Post | 4800 | 540 | 4260 | 10.65% |
| | | Impact | 2234 | 5.58% |



Can land portion be taxed?

- Land is subject matter of States (Entry 18 of State List of 7th Schedule to COI)
- Can Land involved in Supply of Construction services be subjected to tax by Centre?
- Notification No. 11/2017-Central tax (Rate) dated 28th June, 2017 - 2nd paragraph- **value of land shall be deemed to be one third of total amount** charged
- Is it going beyond the intent of the law?
- Entry no. 5 of Schedule III CGST Act- **Sale of land and building – neither supply of goods nor supply of service**
- Suresh Kumar Bansal 43 STR 3 (Delhi High court)- Service tax
- Indian Acrylics 113 ELT 373 (SC) followed by Wipro Ltd. 337 ELT A 138 (SC)- Customs
- Jawajee Nagnatham (1994) 4 SCC 595 (SC) and R. Sai Bharathi vs J. Jayalalitha, Special Leave Petition (Crl.) 477 of 2002 SC- Stamp duty

Immovable properties taxable under GST?

- Land development rights/ Floor Space Index (FSI)/ Transferable Development Right (TDR)
- **Land Acquisition, Rehabilitation And Resettlement Act, 2013**
 - Land includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth
- **Section 3(26) of General Clauses Act, 1897**
 - "immovable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth
- **Constitution of India-Entry 18, List 2**
 - Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization



Free supply



Service tax

- 2013 (32) S.T.R. 49 (Tri. - LB) Bhayana Builders (P) Ltd.

Sales tax

- 1989 AIR 285 (SC) N.M. Goel & Co.

GST

- 15 (2) (b) any amount that the supplier is liable to pay in relation to such supply but has been incurred by the recipient of the supply and not included in the price

Government Contracts



Notification No. 12/2017-Central tax (Rate)

- Exemption only to pure labour supply



No exemption to sub contractors providing works contractor who is providing exempt services like Entry 29(h) of Notification No. 25/2012 – Service tax

Transitional issues and Anti-profiteering

- Set off on WIP
- Post GST Cancellation of flats booked under pre-GST
- VAT paid on the whole value
- Transitional credits – how to calculate?
- Where to report 140(9)?
- How much to pass on?
- To whom?
- How to prove?
- Legacy of past issues- post OC reversal of credits, joint development



Overall impact



Higher burden of taxes



Higher compliance costs



Higher working capital



Stress sale

- Retail
- Wholesale



Increase in prices in the long run



Litigations due to tax planning measures

