Income Tax, GST & TDS provisions with special reference to Housing societies and Taxation

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What is a co-operative society?

Section 4 of the Co-operative Societies Act, 1912 defines cooperatives as

"a society which has its objectives the promotion of economic interest of its members in accordance with cooperative principles."

The principles of co-operation enunciated by the Roach Dale Pioneers are:

- 1. Open Membership
- 2. Democratic Control
- 3. Limited Interest on Share Capital
- 4. Distributive Justice(Patronage Dividend)
- 5. Cash Trading
- 6. Selling pure and unadulterated goods
- 7. Education of Members; and
- 8. Political and Religious neutrality

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What is a co-operative society?

Co-operative society is a voluntary association of individuals having common needs who join hands for the achievement of common economic interest.

Its main aim is to serve the interest of the poorer sections of society through the principle of self-help and mutual help. The main objective is to provide support to the members. People come forward as a group, pool their individual resources, utilise them in the best possible manner and derive some common benefit out of it.

Thus, following characteristics emerge from the definition –

- Open membership
- Voluntary Association
- State Control
- Source of Finance – usually from members themselves
- Democratic Management
- Limited interest in Capital
- Distribution of surplus
- Self help through mutual co-operation

Considering the above characteristics, let us analyse income tax incentives and applicability of various provisions.

What is a co-operative society?

'Co-operative society' means a co-operative society registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State for the registration of co-operative societies. [S. 2(19) of Income Tax Act, 1961]

However, it is not assessable as 'person' as defined u/s. 2(31) of Income Tax Act, 1961.

Thus, an organisation having various characteristics discussed earlier and registered either under Central Law or State Law is recognised and covered in the definition.

It is needless to state that benefits available under income tax law are available to an organisation satisfying above conditions.

The activities carried out by such organisation i.e. co-operative society shall make it eligible for different benefits.

Definition of Co-operative society - Income Tax

Co-operative society has been defined under section 2(19) as :

“co-operative society means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies.”

Further as per **Circular No. 319, dated January 11, 1982** a regional rural bank (to which provisions of the Regional Rural Banks Act, 1976, apply) is deemed as co-operative society. However, this has been withdrawn by CBDT vide circular no. 6/2010 dated 20-09-2010

Is co-op. society a person as defined u/s 2(31)?

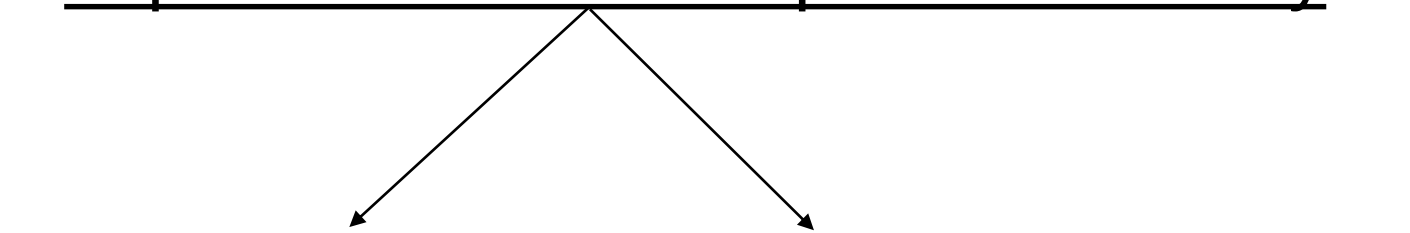
No, it is not a person under 2(31).

The co-operative society would be assessed in the manner of AOP or BOI which is a person under 2(31).

Although, status of a cooperative society is to be taken as an Association of Persons, the ***Section 67A*** and ***Section 86*** of the Act have been ***excluded*** from application to the members of society.

1. Nasik District Labour Societies v/s Income Tax Officer on 5 May , 1986 Equivalent citations : (1986) 18 ITD 354 Pune
2. M.V. Rajendran v/s Income Tax Officer (2003) 260 ITR 442 Ker

Impact of Tax on Co-operative Society



We shall be looking at & studying the impact of both
through the balance presentation.

Tax Compliance for Co-operative Society

Is it mandatory to file Income Tax Return by a co-operative society?

YES.

A reference to proviso added by Finance Act, 2005 (w.e.f. 01.04.2006) in provisions of section 139(1) make it mandatory for every co-operative society to file income tax return.

Finance Act 2018 has added section 80AC whereby deduction is not allowed under Chapter VIA Heading 'C-Deduction in respect of certain incomes' unless the income tax return is filed within time allowed under section 139(1), thus effectively denying allowance of deduction under section 80P.

Needless to state that therefore, every co-operative society has to apply and obtain PAN as well as file income tax return within the time allowed under section 139(1).

Tax Compliance for Co-operative Society

Even if it does not have any taxable income?

The question whether a co-operative society has a taxable income or not shall depend on many factors and shall differ from case to case.

Before venturing to analyse the term 'taxable income', it is necessary to look at what is taxable income.

A reference to 'Gross Total Income' AND 'Total Income' shall make this distinction clear. Combined reading of section 5 with section 14 and section 80B(5) makes it clear that income before applying the deductions allowable under Chapter VI-A is 'Gross Total Income'.

After allowing deductions in Chapter VI-A, the net result of such deduction is 'Total Income' which is also 'taxable income' since tax at the applicable rates is payable on it. Since tax liability for every society commences from Re. 1/-, every society is liable to file income tax return.

Tax Compliance for Co-operative Society

What if a society only has interest from deposits kept with co-operative bank and no other income?

Such income shall be eligible for deduction under Chapter VI-A subject to prior discussion and since, income from deposits kept with co-operative bank forms part of 'Gross Total Income', the same is covered under proviso to section 139(1) making society liable for filing income tax return.

Also, deduction under section 80P is allowable only on filing of income tax return.

Tax Compliance for Co-operative Society

What about TAN and liability for TDS?

This shall depend upon the nature and quantum of payments incurred by a society and as covered by Part-B of Chapter XVII under sections 192 to 195.

Thus, if a society does not have any such payment during the year nor is it likely to have any such expenditure in the next year, it may not apply for TAN and file any return for TDS.

Practically speaking, every society is some time or the other liable to obtain TAN, deduct TDS, deposit with Government, file TDS return and issue TDS Certificate as applicable.

Hence, it is in the interest to obtain TAN and comply with TDS provisions.

Heads of Income

1. Income from House Property

2. Income from Business & Profession

3. Income from Capital Gains

4. Income from Other Sources.

However, considering the focus of this presentation only on Housing Society, we shall not look at all the above sources.

Principle of Mutuality

Principle of Mutuality has been the subject of deep scrutiny by the High Courts, Supreme Court and the House of Lords in very many cases and has a chequered history of its development.

So far as co-operative housing society is concerned, there are a few direct judgments.

Concept of mutuality

No man can trade with himself; he cannot make, in what is in its true sense or meaning, taxable profit by dealing with himself" – **(As per Palles, C.B. in Dublin Corpn. v. M. Adam 2 T.C. 387 at p. 397)**

The principle of mutual association is that all contributories to the common fund are entitled to participate in surplus and all the participators to the surplus fund must contribute.

If the service is provided to the members as well as non-members alike for the same consideration, then the dealing is tainted with commerciality and profit earning motive and hence resultant profit would not be exempt**.**

CIT v Bankipur Club Ltd [1997] 226 ITR 97 (SC)

ITO v Venkatesh Premises Co-op. Soc. Ltd. [2018] 402 ITR 670 (SC)reaffirmed

Concept of mutuality

A service cannot be said to be rendered, if mutuality exists, it is not important under Concept of Mutuality that the service provider and service receiver are separate legal entities.

This is laid down by the Hon'ble Supreme Court in the case of Young Men's Indian Association, Madras and Others [1970 (26) STC 241].

Concept of mutuality applies to Service tax / VAT as well.

Principle of Mutuality

Principle of mutuality is not defined under Income Tax Act, 1961.

However, its reference and reliance have been drawn from various SC and HC judgments.

Prominent cases to be referred –

- Municipal Mutual Insurance Ltd v Hills 16 (TC) 430 (HL)
- CIT v Bankipur Club Ltd [1997] 226 ITR 97 (SC)
- CIT v Apsara Co-op. Hsg. Soc. Ltd. [1993] 204 ITR 662 (Cal)
- CIT v Adarsh Co-op. Hsg. Soc. Ltd. [1995] 213 ITR 677 (Guj)
- Sind Co-op. Hsg. Soc v ITO, Ward 1(7),Pune [2009] 317 ITR 47 (Bom)
- ITO v Venkatesh Premises Co-op. Soc. Ltd. [2018] 402 ITR 670 (SC)

Principle of Mutuality

'*For this doctrine to apply, it is essential that all the contributories to the common fund are entitled to participate in the surplus and that all its participants in the surplus are contributors, so that there is complete identity between contributors and participators.'*

[Extract from CIT v Bankipur Club Ltd *supra*]

Principle of Mutuality

Test of applicability of ‘Principle of Mutuality’

- Is there any commerciality involved?
- From the monies received, are there services offered in the nature of profit sharing or privileges, advantages and conveniences?
- Are the participants and contributors identifiable and belong to the same class of co-operative housing society?
- Do the members have right to share in the surplus and do they have a right to deal with its surplus?

Principle of Mutuality

The principle of mutuality assumes importance because where the surplus arises from transactions by a co-operative society with its own members, there is no question of such surplus being taxed.

This is because, one can not make profit from oneself.

In the case of a co-operative society, the individual members may come and go, but the members as a class remain the same and hence, so long as group of members or individuals are covered under members, the transactions with them are covered under principle of mutuality and thus, need not be subject to tax.

The above principle applies so long as a co-operative society carries out transactions with its own members and not outsiders.

As such, transactions with outsiders shall be taxed provided there is taxable surplus from such transactions.

Principle of Mutuality

However, in the following cases, the Principle of Mutuality was held to be not applicable on the facts and circumstances of the case:

- Totgar's Co-operative Sale Society Ltd v ITO [2010] 322 ITR 283 (SC)
- Sri Laxminarayan Swamy Co-op. Soc. Ltd v ITO [2010] 4 ITR (Trib) 27 (Bangalore)

Hon'ble SC observed that the co-operative society regularly invests funds not immediately required for business purposes and interest on such investments cannot fall within the meaning of 'profits and gains of business or profession'. Hence, such income is not eligible for deduction under section 80P(2)(a)(i).

Exceptions to principle

Interest on Bank Deposits- Not governed by principle of Mutuality-Decision to invest was motivated by desire to earn interest**-Bombay HC in Common Effluent Treatment Plant (Thane-Belapur) Association 2010 328 ITR 362.**

Interest on bank deposits with member banks and other institutions-Not governed by principle of Mutuality-Madras Gymkhana Club vs DCIT 328 ITR 348(Madras HC).

What are the tax rates for Co-operative society?

❖**Up to Rs. 10,000**	**10% of the income**
❖**Rs. 10,000 - Rs. 20,000**	**Rs. 1000 + 20% of (total income less Rs.10,000)**
❖**Above Rs. 20,000**	**Rs. 3,000 + 30% of (total income less Rs.20,000)**

a)Surcharge - 7% of the Income Tax, where total taxable income is more than Rs. 1 Crore and 12% where the total taxable income exceeds Rs. 10 Crores.

b)Health and Education Cess (for A.Y. 2023-24 & A.Y. 2024-25) **-** It is 4% of income-tax and surcharge.

PAYMENT OF ADVANCE TAX

By 15th June	**25%**
By 15th September-	**25%,**
By 15th December-	**25%**
By 15th March -	**the whole amount of such advance tax as reduced by the amount paid in earlier instalment(s).**

Exemptions and Deductions

The word ‘exemption’ signifies that the particulars income is not to be included in the total income as per the provisions of Income Tax Act, 1961 whereas ‘deduction’ signifies that the particular amount of income or payment is eligible to be deducted after computing the gross total income.

Hence, in the former case, the amount is not included at all whereas in the latter case, the relevant taxable amount is included (in the case of income, as the case may be) and then, the same is deducted under relevant provisions of income tax act to arrive at taxable income.

Exemptions and Deductions

In Asstt. CIT vs Kribhco (2011) 38 (II) ITCL 402 (Del 'D' – Trib.) : (2010) 6 ITR (Trib.) 686 (Del.)

Assesse received dividend and deposits from co-operative societies and claimed deduction, the terms "deduction from income" and "exempt income" are two different propositions and a deduction from income will not amount to an exempt from income.

Since both the above receipts of the assessee were not exempt and includible in income merely because deduction under section 80P is provided, it cannot be assumed to be hit by section 14A.

Similar view in :

Punjab State Co-operative Milk Producer Federation Ltd. Vs. CIT & Anr. (No.1) (2011) 42 (I) ITCI. 216 (P&H-HC) : (2011) 336 ITR 495 (P&H) : (2011) 245 CTR (P&H) 432

APPLICABILITY OF SECTION 14A

- It is now established by various judicial pronouncements that section 14A has ***no applicability*** with regard to the deductions allowable u/s 80P.
- The provisions of section ***14A apply to exempted income*** while ***80P confers a right for deduction from the gross total income.***
- While exempted income is not at all included in computing the Total Income, incomes subjected to 80P deductions are required to be made from the Gross Total Income following the provisions of section 80A & 80AB.

S. 80P-Incentives under Income Tax

Though, there are different types of co-operative society based on various parameters, S. 80P of Income Tax Act, 1961 covers applicability in following manner:

- Co-operative Credit Society [S. 80P (2)(a)(i)]
- Cottage Industry [S. 80P(2)(a)(ii)]
- Marketing Society marketing agricultural produce [S. 80P(2)(a)(iii)]
- Supportive society [S. 80P(2)(a)(iv)]
- Society processing of agricultural produce [S. 80P(2)(a)(v)]
- Society providing collective disposal of the labour[S. 80P(2)(a)(vi)]
- Society indulging in fishing or incidental activities [S. 80P(2)(a)(vii)]
- Primary society supplying milk, etc. to federal society & others [S. 80P(2)(b)]
- Consumers Co-operative society [S. 80P(2)(c)(i)]
- Co-operative Bank [S. 80P(4)]
- Any Other Society [S. 80P(2)(c)(ii)]

S. 80P - Income Tax

S. 80P denotes various exemptions enumerated under different heads in the section.

Each is a distinct and independent head of exemption.

If one has to ascertain whether a particular type of a co-operative society is exempt from tax, one will have to see whether such income falls within any of the several heads of exemption.

- [U.P. Co-operative Bank Ltd v CIT 61 ITR 563 (All)]
- [Surat Vankari Sahakari Sangh Ltd v CIT 79 ITR 722 (Guj)]

S. 80P

Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee. [S. 80P (1)]

- Accordingly, sub-section (2) gives deductions available as shown hereafter.
- Such co-operative societies having such income are eligible for deductions.
- The quantum of deductions are also given therein.

S. 80P (2)

If a co-operative society carries on certain activity, income from which is exempt and also certain activity, income from which is not exempt, the profits and gains attributable to the exempt activities shall enjoy the exemption and those attributable to the non-exempt activities shall be taxed.

At the same time, it is just and proper that in order to ascertain the income referable to non-exempt activity, the proportionate expenditure out of the total expenditure should be deducted, in order to arrive at correct income from non-exempt activity.

Besides, if the society has income some of which is exempt under one clause and the other under another clause of S. 80P(2), both will enjoy exemption.

- [Allahabad District Co-op. Bank Ltd v Union of India 83 ITR 895 (All)]
- [Addl.CIT v U P Co-operative Cane Union 114 ITR 70 (All)]

S. 80P

As the provision of S. 80P is intended to encourage and promote the growth of co-operative societies, a liberal construction should be placed on the language employed in the provision.

- [CIT v South Arcot District Co-op. Marketing Society Ltd. 76 ITR 117 (SC)]

The benevolent purpose of the exemption scheme u/s. 80P (2)(a)(iii) is to encourage a vital national activity in the interest of rural economy. Therefore, the term 'marketing' occurring in that section has to be construed in a manner which would achieve the benevolent purpose of exemption rather than defeat the said purpose.

- [Meenachil Rubber Marketing & Processing Co-op. Soc. Ltd v CIT 193 ITR 108 (Kar)]

S. 80P

A Co-operative society is entitled to deduction only on its **net amount of profits and gains**, i.e. on income of its business otherwise computable in accordance with the provisions of the I.T. Act for the purpose of charging income-tax thereon and which is included in its total income, and not on the amount of its gross profits and gains of business.

- [Sabarkantha Zilla Kharid Vechan Sangh Ltd Vs CIT 203 ITR 1027 (SC)

Similar view was taken by ITAT Bench, Nagpur where it considered definition of 'gross total income' in S. 80B(5) and in view thereof, held that the deduction should be allowed on the total income as computed under the provisions of the Act and not on the gross income.

- [Second ITO v Nagpur Zilla Krishi Audyogik Sahakari Sangh Ltd 2 ITD 138]

S. 80P

The deduction U/s 80-P is from gross total income determined in accordance with other provisions of the Act. Therefore, unabsorbed losses and unabsorbed depreciation of earlier years are to be set off before allowing deduction U/s 80-P.

- [C.I.T. Vs Kottagiri Industrial Co-operative Tea Factory Ltd 224 ITR 604 (SC)]

S. 80P

A society is not disentitled from claiming exemption only because it also carries on the activities, the income from which is not exempt. All sales of specified commodities to members, irrespective of their proportion and quantum, would belong to exempted category and such sale to non-members, irrespective of their proportion and quantum, would belong to non-exempt category.

- [C.I.T. Vs Nagpur Jilla Krishi Audyogik Sahakari Sangh Ltd, 209 ITR 481(Bom)]

Similarly if a co-operative society carries on certain activities, income from which is exempt and also certain activities, income from which is not exempt; only profits attributable to exempted activities shall enjoy exemption.

- [C.I.T. Vs Ratanabad Co-operative Housing Society Ltd. 215 ITR 549 (Bom)]

Likewise, if a society carries on certain activities which are exempted and certain other activities which are non-exempted, the profits and gains attributable to such non-exempted activities must necessarily be taxed.

- [C.I.T. Vs Broach District Co-operative Cotton Sales, Ginning & Pressing Society Ltd, 97 ITR 575 (Guj)]

S. 80P

Where the co-operative society was earning income which was partly taxable and partly entitled to special deduction U/s 80-P, proportionate share of expenses attributable to the earning of income which is entitled to deduction, should be deducted in computing such income for the purpose of deduction U/s 80-P.

- [Kota Co- operative Marketing Society Ltd Vs C.I.T. 207 ITR 608 (Raj)]

Similarly where assessee society has maintained a composite account of expenses in respect of both exempt income and taxable income, expenses related to non-exempt income have to be estimated, and expenses found to be incurred for exempted activities, have to be deducted from assessee's income before allowing deduction U/s 80-P.

- [C.I.T. Vs Rajasthan Rajya Sahakari Upbhokta Sangh Ltd. 215 ITR 448 (Raj)]

S. 80P

The exemption granted under the I.T. Act 1961 are of two kinds.

Certain classes of income are exempt from tax and also excluded from the computation of total income, while certain other classes of income, though eligible for deduction from tax are to be included in the Assessee's total income.

The former types of income fall under chapter III which comprises sections 10, 10-A, 10-B, and 11 etc. AND the latter types of income fall under chapter VI -A which are comprised in sections 80-A to 80-U.

Further in latter types of cases, return of income is required to be filed, which is not the case regarding former types of income.

Therefore, it is necessary to compute the income of a co-operative society from business under the relevant provisions of the I.T. Act, even though it may be eligible for deduction U/s 80-P.

- [Chatrapati Shivaji Sakhar Karkhana Ltd Vs CIT 115 ITR 312 (Bom)]

Significance of Terms

S. 80P specifies that the whole amount of profits and gains of business attributable to the activities enumerated therein, shall be deducted from the income of the co-operative society.

The expression ‘attributable to’ has been treated of wider import.

- [Cambay Electric Supply Industrial Co. Ltd v. CIT 113 ITR 84 (SC)

In yet another case, interest on Government securities and dividends on shares of Industrial Finance Corporation were entitled to deduction U/s 80-P (2) (a)(i), because such income was held by the ITAT as attributable to assessee’s business.

- [CIT v Bangalore District Co-operative Central Bank Ltd 233 ITR 282(SC)

Co-operative Credit Society – 80P(2)(a)(i)

(*a*) in the case of a co-operative society engaged in—

- (*i*) carrying on the business of banking or providing credit facilities to its members.

The quantum of deduction is 'whole of the amount of profits and gains of business attributable to any one or more of such activities'.

However, with the insertion of sub-section (4) vide Finance Act, 2006 w.e.f. 01.04.2007, a co-operative society carrying on the business of banking is not eligible for deduction.

The distinction between co-operative society 'carrying on banking business' AND 'providing credit facilities to its members' has been the bane of number of litigation matters.

Deduction u/s 80P

All urban Co operative credit society and Pat-Pedhis are defined by virtue of provisions of [Note :Part V contains amendment in definition] – Section 5(ccii), 5(ccv) and 5(ccvi) of Banking Regulation Act, 1949.

Further, Section 5A of Banking regulation Act, 1949 overrides Bye laws of the co op credit society whose principal business of a primary credit society is the transaction of banking business and when its paid up capital and reserves attain the level of Rs. 1 lakh, a primary credit society automatically becomes a primary co-operative bank.

Further, vide para 8 in the case of [Salgaon Sanmitra Sahakari Pathpedhi Ltd. v. Additional Commissioner of Income-tax, Ward-17(3),Mumbai. – [12 Taxmann.com 246 (2011)] the assessee society was classified as 'co-operative bank' under Section 12(1) of the Maharashtra Co-operative Society Act, 1960 as per the registration certificate issued by the Assistant Registrar, Co-operative Society, Mumbai.

Once the urban Co operative credit society and Pat-Pedhis are classified as Bank then they are not eligible for benefit provided under Section 80P of the Income Tax Act,1961, from Assessment Year 2007-08 by virtue of Section 80P(4) read with Section 2(24)(viia) both of income Tax Act, 1961

Credit Facilities

The expression ‘facilities’ used in the provision is an inclusive term of wide import embracing anything which aids or makes easier the performance of a duty.

- [Andhra Pradesh Coop. Central Land Mortgage Bank Ltd. v. CIT 100 ITR 472 (AP)]

The expression ‘providing credit facilities’ would comprehend not only the business of lending money on interest but also the business of lending services for guaranteeing payments

- [CIT v. U.P. Co-op. Cane Union Federation Ltd. 122 ITR 913 (All)]

When Section 80P(2)(a)(i) refers to a cooperative society engaged in providing credit facilities to its members, it really refers to a credit society whose primary object is to provide loans or other credit facilities to its members; it does not include any society whose primary object is something other than the provision of loans or other credit facilities, such as a consumer co-operative society.

- [Rodier Mill Employees’ Co-op. Stores Ltd. v. CIT 135 ITR 355 (MAD)]

Credit Facilities

Where an assessee, a cooperative society could not be regarded as 'Co-operative Bank' on mere fact that an insignificant proportion of revenue was coming from non-members and thus was entitled for deduction u/s. 80P(2)(a)(i).

- Quepem Urban Co-op. Credit Soc. Ltd v ACIT, Circle-1, Margao [2015] 58 taxmann.com 113 (Bom)

Where assessee had fulfilled all three basic conditions to be regarded as a primary co-operative bank, it was co-operative bank and therefore, provisions of section 80P(4) were applicable and it was not entitled for deduction u/s. 80P(2)(a)(i).

- ITO, Ward-1(3), Belgaum v Shri Durundeshwar Urban Co-op. Credit Soc. Ltd. [2015] 53 taxmann.com 165 (Panaji Trib)

Credit Facilities contd. . .

From the definition of Primary Co-operative bank under section 5 clause (CCV) of Banking Regulation Act, 1949, it is apparent that if the co-operative society complied with all the three conditions;

- firstly that the primary object or principal business transacted by it is a banking business,
- secondly, the paid up share capital and reserve of which are 1 lakh or more and
- thirdly, by-laws of the Co-operative society do not permit admission of any other Co-operative society as a member, it will be regarded to be primary co-operative bank. If co-operative society does not fulfil any of the conditions, it cannot be regarded to be a primary Co-operative bank. Therefore, in the case of the assessee it is to be examined on the basis of the facts and materials on record whether the assessee co-operative society complies with all the three conditions.

Other issues under 80P

The Hon'ble Supreme Court of India in the case of Totgars' Co-operative Sale Society Ltd. Vs Income-tax Officer [2010] 188 Taxman 282 (SC), held that fund not required immediately for business of providing credit facilities and interest earned on such fund would come under the category of 'Income from Other Sources' taxable u/s 56 of the Income-tax Act, 1961 and the same would not qualify for deduction as business income u/s 80P(2)(a)(i) of the Income-tax Act, 1961.

Totgars' decision explained

The issue dealt with by the Hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd v ITO [2010] 322 ITR 283 (SC) is extracted, for appreciation of facts, as under:

"What is sought to be taxed under section 56 of the Act is the interest income arising on the surplus invested in short term deposits and securities which surplus was not required for business purposes. The assessee(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, is-whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under section 28 of the Act? in our view, such interest income would come in the category of 'income from other sources', hence, such interest income would be taxable under section 56 of the Act, as rightly held by the assessing officer…"

Totgars' decision explained

i) At the first instance, the ratio of the decision in case of *Totgars Co-op. Sale Society (supra),* as observed by Supreme Court itself, was confined only to the facts of the case before it & accordingly cannot be applied in general to all kinds of co-op. societies.

ii) In the case of Totgars, the Hon'ble Supreme Court had not spelt out anything with regard to operational funds in the hands of pure Co-operative Credit Societies and the ratio was **applicable to co-operative sale societies only**.

Contd..

iii) Assessee in Totgars' case had admitted that it had invested surplus funds, which were not immediately required for the purpose of its business, in short term deposits;

iv) The surplus funds arose out of the amount retained from marketing the agricultural produce of the members;

v) Assessee in Totgars case carried on two activities, namely, (i) acceptance of deposit and lending by way of deposits to the members; and (ii) marketing the agricultural produce; and (d) **that the surplus had arisen emphatically from marketing of agricultural produces.**

Whereas**,** in the case of co-op. credit societies, generally, it doesn't carry out any activity except in providing credit facilities to its members and that the funds are operational funds. The only fund available with the pure credit societies is deposits from its members and, thus, there are no surplus funds as such.

Contd..

By considering all the above clinching dissimilarities, recently Hon'ble ITAT Ahmedabad bench in Jafari Momin Vikas Co-op Credit Society Ltd., vs. ITO [ITA No.1491/Ahd/2012 for A.Y. 2009-10], rightly held that ratio laid down by the Hon'ble Supreme Court in the case of Totgars Co-op Sale Society Ltd (supra) cannot be applied to the facts of the appellant credit society and accordingly deduction u/s 80P was allowed against interest income from deposits with nationalized banks.

Deduction u/s 80P

80P(2) states that in the case of co-operative society engaged in **carrying on the business of banking or providing credit facilities to its members**, the whole of the amount of profits and gains of business **attributable** to any one or more of such activities.

Section 80P(4) states the provisions of this section shall not apply in relation **to any co-operative bank** other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Thus section 80P(4) overrides section 80P(2) and hence deduction would only be available to primary agricultural credit society and rural development bank.

Thus, Section 80P(4) does not apply to co-operative credit society.(Jafari Momin Vikas Co-op credit society Ltd vs CIT,Gandhinagar).

Contd..

Similar views:

Section 80P of the Income-tax Act, 1961 – Deduction – Income of co-operative societies (**Credit co-operative society**) – Assessee was registered as a co-operative credit society under Karnataka Co-operative Societies Act – Its main object was only to advance loan – Whether deduction under section 80P(2)(a)(i) could not be denied to assessee for investment made by it in private or public limited company – Held, yes –

[Yamakanmardi Urban Co-operative Credit Society Ltd. v. CIT [2014] 45 taxmann.com 297 (Karnataka)]

Contradictory decisions are also prevailing in case of income from transactions in Mutual funds by Co-op. credit society.

Attributable to Business:

To elaborate further, the decision of Hon'ble ITAT Mumbai Special Bench in ***The Maharashtra State Co-operative Bank Ltd. vs. ACIT [(2010) 38 SOT 325]*** is worth seeking readers' attention, wherein the phrase '***Attributable to business of banking'*** is explained authoritatively:

Deduction under s. 80P(2)(a)(i)—Business of banking—In order to categorize an income under the head 'Profits and gains of business or profession' it is imperative that the income should have arisen from business carried on by the assessee—what is deductible under s. 80P is the amount of 'profits and gains' of business attributable to carrying on of the business of banking—"

Contd..

Expression 'profits and gains of business' is wider in scope and encompasses not only the income chargeable under the head 'Profits and gains of business or profession' but also other incomes which have some relation with the business, though not arising directly from the carrying on of the business— Further, the term 'gain' is of wider import then the word 'profit'—

Thus, the expression 'profits and gains' in s. 80P(2) also includes other items of income (as covered by 'gains') which have some relation with the business of banking even though they do not fall under the head of business income

Contd..

Therefore, interest on refund of tax is covered within the expression "profits and gains of business" notwithstanding the fact that it falls under the head 'Income from other sources'—Phrase 'attributable to' brings within its fold not only the items of income having direct nexus but also items of income having some commercial or causal connection with the source—Therefore, the assessee is entitled to deduction under s. 80P(2)(a)(i) on the amount of interest received under s. 244A on the refund of tax

What is a co-operative Bank?

Section 80P provides that word ‘co-operative bank’ has meaning assigned to it in Chapter V of the Banking Regulations Act, 1949.

A co-operative bank is defined in section 5 (cci) of Banking Regulation Act, 1949 to mean a State Co-op. Bank, a Central Co-op. Bank and a primary co-op. Bank.

A primary co-op. bank as per section 5(ccv) of Banking Regulation Act, 1949 means a co-op. society which cumulatively satisfies following conditions:

- Its principle business or primary object should be business of banking;
- Its paid up share capital and reserves should not be less than rupees one lakh;
- Its bye-laws do not permit admission of any other co-op. society as its member.

Distinction in Applicability

Section 80P(2)(a)(i) provides for deduction to a co-op. society ‘engaged in carrying on business of banking OR providing credit facilities to its members.

However, section 80P (2)(4) states that provisions of section 80P shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary c0-operative agricultural and rural development bank.

Hence, one needs to bear in mind the operations of credit co-op. society as recently IT Department has been treating every credit co-op. society as co-op. bank.

Meaning of the term ‘members’

In Section 80P(2)(*a*)(*i*) when Parliament has used the expression “members”, it has used it in the normal sense of a member of a cooperative society.

The intention was to extend the exemption to co-operative societies directly extending credit facilities to its members.

There is nothing in the said provisions to show that the intention was to grant exemption to cooperative societies which were extending credit facilities to the persons, who, though not the members of the said society, were members of another co-operative society which was a member of the co-operative society seeking exemption.

The meaning of the expression “members” cannot, therefore, be extended to include the members of a primary co-operative society which is a member of the federated cooperative society seeking exemption.

- [*U.P. Cooperative Cane Union Federation Ltd.* v. *CIT* [1999] 237 ITR 574 (SC)]

Meaning of the term ‘members’

The facility of selling goods on credit to members is an activity of business of selling of goods, of which the credit facility is only an incidence; it will **not amount to providing credit facilities** in the nature of the business of banking so as to amount to carrying on the business of banking or providing credit facility to its members.

- [CIT v. Co-operative Supply & Commission Shop Ltd. 204 ITR 713 (Raj.)]
- [CIT v. Kerala State Co-operative Marketing Federation Ltd. 234 ITR 301 (Ker)]

Conducting chit fund amounts to providing credit facilities

- [CIT v. Kottayam Co- operative Bank Ltd. 96 ITR 181 (Ker.)]

Selling goods on hire-purchase basis does not amount to providing credit facilities.

- [CIT v. Madras Autorickshaw Drivers’ Co-operative Society Ltd. 143 ITR 981 (Mad)]

Co-operative Credit Society – 80P(2)(a)(i)

Where the assessee-society had been carrying on business of providing facilities to its members for obtaining fertilizers, etc., as also arranging loans from bank by giving certificates about cultivated land,etc., for which certain amount was charged as service charges,such service charges received by the assessee would not be eligible for deduction under Section 80P(2)(a)(i)

- [CIT v. Anakapalli Co-op. Marketing Society Ltd. 245 ITR 616 (AP)]

If a society regularly earns interest on funds (not required immediately for business purposes), such interest income is taxable under Section 56 under the head "Income from other sources" and not eligible for deduction under Section 80P.

- [Totgars' Co-operative Sale Society Ltd.v ITO 188 Taxman 282 (SC)]

Interest received on income-tax refund is subject to deduction under Section 80P(2)(*a*) (*i*)

- [Maharashtra State Co-operative Bank Ltd. v. CIT 38 SOT 325 (Mum.)(SB)
- [CIT v. Haryana State Co-operative Apex Bank Ltd. 322 ITR 404 (Punj. & Har)]

Co-operative Credit Society – 80P(2)(a)(i)

Further the following additional judgments may be referred to in respect of deduction under section 80P(2)(a)(i):

[Mahapalika Kshetra Madhyamik Shikshak Sahakari Patsanstha Maryadit *v.* Income Tax Officer 21(2)(2), Mumbai [2019] 112 taxmann.com 165 (Mumbai - Trib.)]

[Mavilayi Service Co-operative Bank Ltd. *v.* Commissioner of Income Tax, Calicut [2021] 123 taxmann.com 161 (SC)]

Other Societies

If a co-operative society is engaged in any other activity (either independently or in addition to those specified in clause (a) or clause (b) then the following amount is deductible under Section 80P(2)(c) :

- In the case of a consumer co-operative society (i.e., a society for the benefits of consumers): Rs. 1,00,000; and
- In any other case: Rs. 50,000.

This is a general deduction available to any cooperative society which does not carry any of the activities which are specified.

The explanation below this clause also defines the consumer's co-operative society as a society for the benefit of consumers.

As is evident from the language of the section that it is a general section and no specific restriction or classification has been made. It only mentions the cases which are to be excluded and, therefore, there is bound to be litigation on the issue.

Housing Societies

Housing societies would fall under ‘other societies’.

Accordingly, the taxation of such societies would have to be looked at with a different perspective.

The ‘Principle of Mutuality’ would be squarely be applicable since here the members constituting the society are the members who are also beneficiaries.

The services rendered by society to its members against service charges collected shall be covered under ‘Principle of Mutuality’ and consequently, the same would be exempt from tax.

However, some specific incomes peculiar to a housing society are necessarily to be considered in different perspective.

Tax Incidence on Specific Income

In the backdrop of earlier discussion, let us see the taxability of incomes peculiar to a co-operative housing society.

The specific incomes so considered are –

- Transfer Fees
- Non Occupancy Charges
- Rental from Cable Tower/Hoardings/Open Spaces (Terraces, etc)
- Parking Charges
- Transfer of TDR/FSI
- Interest received from co-operative banks/nationalized or private banks

Transfer Fees

Transfer Fee has also been contentious issue and has attracted various judgments.

It is a fee collected from members (existing/incoming) towards admission of new members to the benefits of various services rendered by the society including right to occupy the premises.

The quantum may differ and may have been collected under various nomenclature.

Transfer Fees

Prominent judgments to be referred are –

- CIT v Bankipur Club Ltd [1997] 226 ITR 97 (SC)
- CIT v Apsara Co-op. Hsg. Soc. Ltd. [1993] 204 ITR 662 (Cal)
- CIT v Adarsh Co-op. Hsg. Soc. Ltd. [1995] 213 ITR 677 (Guj)
- Walkeshwar Triveni Co-op. Hsg. Soc v ITO [2004] 88 ITD 159 (Mum)(SB)
- Sind Co-op. Hsg. Soc v ITO, Ward 1(7),Pune [2009] 317 ITR 47 (Bom)
- Mittal Court Premises Co-op. Soc Ltd v ITO, Ward 12(3)(1) [2009] 184 Taxman 292 (Bom)
- ITO v Venkatesh Premises Cooperative Society Ltd. [2018] 402 ITR 670 (SC)

Non Occupancy Charges

Non occupancy Charges are the charges levied for not occupying its premises by member of the society.

These are paid by member or non member depending upon the facts and circumstances of the case.

Maharashtra Government has issued a notification dated 01.08.2001 restricting the levy of non occupancy charges to 10% of service charges (excluding municipal corporation/nagar palika taxes).

Though the taxability is a contentious issue, the same was held as non taxable in the following case-

- Mittal Court Premises Co-op. Soc Ltd v ITO, Ward 12(3)(1) [2009] 184 Taxman 292 (Bom)

Rental Income from Hoardings

This is a common income for many housing societies depending on their locational advantages.

This is received from any outside agency or entity who is not a member of the society and is levied for display of hoarding of such an entity.

Since the tests of mutuality are not satisfied, the same is taxable in the hands of the society.

However, all direct and indirect expenses which are incurred for earning as well as maintaining the hoarding facility can be claimed as expenses.

Rental Income from Cable Tower

Again, in view of various advantages, the mobile towers erected on the terraces of the housing society fetch rental income for society.

However, the same is taxable in the hands of the housing society.

This shall be taxable under the head ‘Income from House Property’ and accordingly, the deductions of property taxes and other standard deduction can be claimed.

Principle of mutuality shall not be applicable.

Rental Income from use of Open Spaces, Terraces etc.

These represent an income from temporarily letting out of open spaces by the housing society.

The taxability shall depend upon the recipient of such services, whether a member or a non member.

In case of member recipient, the ‘Principle of Mutuality’ shall apply and accordingly, the same will be exempt from income tax.

In case of non member recipient, the same shall be taxable in the hands of housing society as ‘Income from House Property’.

Parking Charges

These are the charges collected by the housing society for parking vehicles in the society premises.

Municipal Corporations also levy certain share of property tax for parking spaces as allowed under its Development Control Rules.

Though Supreme Court has held that the open spaces within the society premises can not be let out to its members for consideration, the levy and collection of charges from members and in certain non members continues.

The taxability shall depend upon the status of recipient as to whether he is a member or non member.

Transfer of FSI/TDR

FSI is ‘Floating Space Index’ and represents a right to construct an area based on various eligibilities under Development Control Rules.

TDR is ‘Transfer of Development Rights’ under Development Control Rules represented by a certificate issued by authorities.

Both these rights are generated by the plot/property/land held by the housing society.

Since these are dependent on and related to immovable property, the gains represent ‘Capital Gains’ under Income Tax Act, 1961.

However, the detailed impact on taxation is being discussed separately later in the presentation.

Transfer of FSI/TDR

The taxability on transfer of such FSI/TDR has raised questions on its taxability.

The issue needs to be understood in the light of provisions of S. 48, 49 and 55 of Income Tax Act, 1961.

Though these are Capital Assets as seen earlier, the levy and collection of provisions of Chapter on 'Capital Gain' failed to apply as held in –

- New Shailaja Co-op. Hsg. Soc. Ltd v Income Tax Officer [2010] 36 SOT 19 (Mum)
- CIT-18 v Sambhaji Nagar Co-op. Hsg. Soc. Ltd [2014] ITA No. 1356 of 2012 (Bom)

This was mainly because the description of various assets referred to in S. 55(2) does not include the above assets.

Interest earned from co-operative banks

- As is well known, the co-operative housing societies have their bank accounts with one or more co-operative banks and other banks, which may be nationalized or private banks.
- Whether the interest earned on deposits with co-operative banks is eligible for deduction u/s. 80P (2)(d)?
- The answer is 'YES'. The interest received from co-operative banks is eligible for claim of deduction u/s. 80P (2)(d).
- Following direct judgments may be referred to in this regard:
  - Palm Court M Premises Co-op.Soc.Ltd v Pr.CIT [2022] 145 taxmann.com 415 (Mumbai Trib)
  - Kaliandas Udyog Bhavan Premises co-op. soc. Ltd v ITO [2018] 94 taxmann.com 15 (Mumbai Trib)
  - Surendranagar District Co-op. Milk Producers Union Ltd. v DCIT [2019] 111 taxmann.com 69 (Rajkot Trib)
  - Sant Motiram Maharaj Sahalari Pat Sanstha v ITO [2020] 120 taxmann.com 10 (Pune Trib)
  - Rena Sahakari Sakhar Karkhana Ltd v Pr.CIT [2022]138 taxmann.com 532 (Pune Trib)

Interest earned from co-operative banks

- However, savings interest received from co-operative bank by a co-operative society is not allowed as eligible for deduction u/s. 80P by ITR 5 utility.
- This is in view of the word 'investments with any other co-operative society' used in sub-section (2)(d) of section 80P and the amount held by co-operative society in its savings bank is not an investment.
- On the other hand, any interest earned from nationalized or private bank is taxable as the claim for deduction is not available u/s. 80P(2)(d).
- Courts have clearly declared that the source of investment by co-operative society is not material for eligibility of deduction u/s. 80P(2)(d).

[Mantola Co-operative Thrift & Credit Society Ltd. v Income Tax Officer[2020] 118 taxmann.com 276 (Delhi - Trib.)]

Misc. Issues-Co-operative Society

Deduction under Section 80P(2)(d) would be allowed to assessee after excluding expenditure attributable to earning of eligible income.

[Punjab State Co-operative Milk Producer's Federation Ltd. v Commissioner of Income Tax-II [2011] 336 ITR 495 (PUNJ. & HAR.)

Assessee-society was not entitled to deduction under Section 80P(2)(d) in respect of interest received on advances provided to its member cooperative societies.

[Punjab State Co-operative Milk Producers Federation Ltd. VS. Commissioner of Income Tax [2012] 20 taxmann.com 834 (PUNJ & HAR)]

Unabsorbed losses of earlier years are to be set off before allowing deduction under Section 80P.

[Shahbad Cooperative Sugar Mills Ltd. VS. Deputy Commissioner of Income-tax. [2012] 20 taxmann.com 789 (PUNJ & HAR)]

Society and Redevelopment – Issues in Income Tax

For better understanding of Tax implications during Redevelopment vis-à-vis Society, one needs to look at various modes of redevelopment as adopted by Society while entering into Joint Development Agreement.

Common mode is:

A. Developer offers additional area in the new flat as compared to the existing area occupied by members.

B. Developer offers Cash Compensation – lump sum often by way of hardship allowance.

C. Developer offers periodic payment in the form of rent for alternate accommodation during the period of construction.

D. Developer transfers contribution towards corpus from the new members so as to equalize the share of the new and existing members.

Society and Redevelopment – Issues in Income Tax

It is well settled position now that Hardship Compensation is a Capital Receipt not chargeable to tax.

[Kushal k. Bangia v ITO (2012) 18 taxmann.com 31 (Mum Trib)]

[Ajay Parasmal Kothari v ITO (2023) ITA No.2823/Mum/2022]

Similar principle is followed in respect of periodic rentals received from Developer.

In some cases, provisions of section 45(5A) are followed and capital gains are offered and claim is made u/s. 54.

Society and Redevelopment – Issues in Income Tax

Since Society is the owner prior to the Redevelopment as well as even after the Redevelopment, is it that there is no transfer and consequently, there is no Capital Gain?

Issues:

Legal Owner v Real Owner

Who is the real owner? Members??

What then is transferred?

Development Potential- consisting of benefit of FSI increase + TDR + Fungible FSI

Taxability vis-à-vis Society OR Members??

TDS

TDS PROVISONS

- ***No tax*** shall be deducted from any ***interest payable on debentures*** issued by any co-operative society ***u/s 193.***

- ***TDS u/s 194A is deductible on interest paid exceeding Rs.10,000/-. This has been increased to Rs. 40,000/- w.e.f. 1st April 2019.***

- ***TDS provisions u/s 194A*** are not applicable for :
  - if such income is credited or paid by a cooperative society(not being a co-operative bank) to a member thereof or to any other cooperative society.
  - Interest payment on deposits by a primary agricultural credit society or primary credit society or co-operative land mortgage bank or co-operative land development bank
  - Interest payment on deposits **other than time deposits** by a co-operative society.

TDS PROVISONS

Interest paid on time deposits liable for TDS.

The banks used to make depositors as their members and availed exemption from TDS

FA 2015 has clarified that interest paid to members by co-operative banks (not co-operative societies) on time deposits are liable for TDS w.e.f.01/06/2015.

Form 15G can be given when tax payable is NIL because S.197A(1A) applies to all persons other than Co. or Firm.

TDS PROVISONS

After the amendment by **Finance Act 2020**, TDS has to be deducted u/s 194A by a co-operative society having gross receipts exceeding Rs 50 Cr in case of payment of interest to its members and also to other co-operative societies irrespective of the fact that whether it is engaged in the business of banking or not.

TDS Provisions – section 194IC

Payment under specified agreement:

Notwithstanding anything contained in section 194IA

Any person responsible for paying to a resident

Any sum by way of consideration

Not being consideration in kind

Under the agreement referred to in section 45(5A)

Shall at the time of credit or payment whichever is earlier

Deduct 10% of such sum as income tax thereon.

TDS Provisions – section 194IC

Specified Agreement:

“A registered agreement in which a person owning the land or building or both agrees to allow another person to develop a real estate project on such land or building or both in consideration of a share, being land or building or both in such project with or without payment of part consideration in cash.”

Payment of “corpus” or “hardship compensation” or “rent” are all payments under the agreement referred to in section 45(5A).

TDS u/s. 194IC should apply to the entire cash element of the consideration as it overrides section 194IA. Hence, section 194IA shall not apply.

OTHER ISSUES

Income Tax Return Filing

- The co-operative society is not a separate person as seen earlier and hence, the status is AOP/BOI with sub-status as co-operative society.
- The Return is required to be filed in ITR-5.
- Issues for discussion?
  - No claim under section 80P is allowed? PAN issue?
  - No claim under section 80P is allowed? Matching income vis-à-vis ITR?
  - No claim under section 80P is allowed? Late filing of return?
  - How to fill the income in the return form?

GST on Co-operative Society including Redevelopment

GST on Co-operative Society

There is a general belief that the cooperative societies are exempt from the various compliances of direct or indirect taxation.

A cooperative society must set up a process for tax compliance, tax management and tax planning.

Few terms in GST related to Housing Society

As per Section 2 Sub Section (*84) clause (i) "**person**" includes a co-operative society registered under any law relating to co-operative* societies	As per section 2 sub section (17) provide "business" includes - provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members; - admission, for a consideration, of persons to any premises;

What is the Definition of Aggregate turnover?

As per section 2 sub section (*6) "aggregate turnover" means the aggregate value of all taxable supplies*

- (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis),
- exempt supplies,
- exports of goods or services or both and
- inter-State supplies

What is Exempt Supplies?

As per Section 2 sub section (*47) :*

"exempt supply" means supply of any goods or services or both

- *Which* attracts *nil rate of tax or*
- ***which may be wholly exempt from tax under section 11 CGST Act, or* under section 6 of the IGST Act, and**
- Includes non-taxable supply;

What is supply?

7. (*1) For the purposes of this Act, the expression "supply" includes—*

(*a) all forms of supply of goods or services or both such as sale, transfer, barter,* exchange, licence, rental, lease or disposal made or agreed to be made for a consideration

by a person in the course or furtherance of business;

(*b) import of services for a consideration whether or not in the course or* furtherance of business;

(*c) the activities specified in Schedule I, made or agreed to be made without a* consideration; and

(*d) the activities to be treated as supply of goods or supply of services as* referred to in Schedule II.

Persons liable for Registration

Aspects of registration under the GST regime are covered under section 22 of the CGST Act,2017.

As per section 22:

Every person who supplies taxable goods and the aggregate turnover exceeds Rs. 40 lakhs in a financial year then, such person shall be liable to register under the GST Act.

Every person who supplies taxable services and the aggregate turnover exceeds Rs. 20 lakhs in a financial year then, such person shall be liable to register under the GST Act.

***Note**: If the person supplies taxable goods from any of the special category States and the aggregate turnover exceeds Rs. 20 lakhs in a financial year then shall be liable to register under the GST Act. Similarly, if the person supplies taxable services from any of the special category States and the aggregate turnover exceeds Rs. 10 lakhs in a financial year then shall be liable to register under the GST Act.*

Notification No. 12/2017
Dated 28.06.2017

Sr No	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent)
77	Heading 9995	Service by an unincorporated bode or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution – (a) As a Trade Union (b) For the provision of carrying out any activity which is exempt from the levy of Goods and Service Tax (c) Upto an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex	Nil

Notification No. 02/2018
Dated 25.01.2018

As per this Notification, Notification No. 12/2017 has been amended.

Amendment:

Against serial number 77, in the entry in column (Description of Services) for the words “five thousand”, the words “seven thousand” five hundred” shall be substituted.

The exemption ceiling was enhanced from Rs. 5,000/- per member per month to Rs. 7,500/-.

So, services up to Rs. 7,500/- per member per month are exempted irrespective of the turnover.

Registration

Section 22(1) of the CGST Act states that if the turnover of the supplier of services exceeds Rs. 20 lacs in a financial year, the supplier should get registered under the GST.

Thus, if the annual receipts of the co-op society from its members exceed Rs. 20 lacs, then registration should be obtained.

However, Section 23(1) of the CGST Act gives exemption from registration to the suppliers who are supplying services which are not liable to tax or wholly exempt from tax.

Thus, if the **total turnover** of the society is below Rs. 20 lacs, there is no need to take registration under GST to the society.

Registration

Income for the society can be divided into three categories -

1) Common services – Charges collected for Maintenance / cleaning of society, security service, maintenance of lifts and other facilities viz. club house, swimming pool, gym, external maintenance of building, Generator back up facility, running of water treatment plant etc.
2) Individual specific services – viz. Share Transfer fee, late fee (Tolerating an Act), rent of club house, rent for use of terrace, parking charges, non occupancy charges etc.
3) Income from renting of space for advertisement boards, mobile towers etc.
4) Income from interest on deposits.

Thus, the contribution for common services is exempt from GST. But the other income for services provided is taxable under GST. Registration is required to be obtained in such cases.

Registration

A combined reading of all these provisions would reveal –

Sr.No	Situation	Registration status
1	Total receipts of society – below Rs. 20 lacs in a year	Not required.
2	Contribution per member per month below Rs. 7500/- Total Income exceeds Rs. 20 lacs. No income earned for individual services.	Not Required.
3	Contribution per member per month above Rs. 7500/- Total income below Rs. 20 lacs	Not required.
4	Contribution per member per month above Rs. 7500/- Total income above Rs. 20 lacs	Required.
5	Society has income from other services – total income exceeds Rs. 20 lacs (Even if contribution is less than Rs. 7500/-)	Required

Turnover :

The applicability of GST is determined on the basis of Aggregate Turnover, which means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

Thus all turnover–taxable and exempted is required to be considered for calculating the limit of Rs. 20 lacs.

Also, the value excludes any discount given at the time of supply or after the supply as per the agreement. Hence, discount given for yearly payment of charges should be excluded from the turnover amount.

FAQ on levy of GST on Housing Society

The society collects the following charges from the members on quarterly basis as follows:

1.Property Tax-actual as per Municipal Corporation of Greater Mumbai (MCGM)
2.Water Tax- Municipal Corporation of Greater Mumbai (MCGM)
3.Non- Agricultural Tax- Maharashtra State Government
4.Electricity charges
5.Sinking Fund- mandatory under the Bye-laws of the Co-operative Societies
6.Repairs & maintenance fund
7.Car parking Charges
8.Non Occupancy Charges
9.Simple interest for late payment.

From the tax/ charge as listed above, on which GST is not applicable.

1. Services provided by the Central Government, State Government, Union territory or local authority to a person other than business entity, is exempted from GST. So, Property Tax, Water Tax, if collected by the RWA/Co-operative Society on behalf of the MCGM from individual flat owners, then GST is not leviable.

2. Similarly, GST is not leviable on Non Agricultural Tax, Electricity Charges etc, which are collected under other statutes from individual flat owners. However, if these charges are collected by the Society for generation of electricity by Society's generator or to provide drinking water facility or any other service, then such charges collected by the society are liable to GST.

3. Sinking fund, repairs & maintenance fund, car parking charges, Non- occupancy charges or simple interest for late payment, attract GST, as these charges are collected by the RWA/Co-operative Society for supply of services meant for its members.

FAQ on levy of GST on Housing Society

As per guidelines on maintenance charges upto Rs. 7,500/- , no GST is applicable. **Maintenance charges means only maintenance or collection of all charges**	**This is applicable to only the reimbursements of charges or share of up to an amount of seven thousand five hundred rupees per month per member for sourcing of goods or services from a third person for the common use of its members.** **Here, charges mean the individual contributions made by members of the society to avail services or goods by the society from a third party for common use. [*Entry 77(c) of notification no 12/2017 Central Tax (Rate) dated 28.6.2017 refers]**

FAQ on levy of GST on Housing Society

Monthly maintenance (all above charges) are below Rs.7,500/-but yearly total collection exceeds Rs. 20 lakhs limit, whether GST is applicable?

Reimbursement of charges or share of contribution up to an amount of Rs. 7,500/- per month per member for sourcing of goods or services from a third person for the common use is not liable to GST.

However, if the Co- operative society/ RWAs provide specific services of its own to its members or to any third party (e.g. use of community hall for social function by a non-member) cumulatively exceeds the threshold limit as per GST, then GST is leviable on such supply of services.

FAQ

What if Service is provided to specific member and not for common use of Its Member???

- Not cover under Notification and therefore liable to tax?

Example

- Charges for use of terrace for marriage of one of the member.

FAQ

Transactions of Housing Society

1. Property Tax

What is Property Tax?	• Collection of property tax is statutory levy by a municipal corporation or a local authority under the Constitution of India.
On what basis it is charge?	• The property tax is levied on sq. ft. basis and the owner of the property is liable to pay the same.
What is role of Society in This?	• A society is a mere collecting agent and pays the same to the authority.
Whether it is Taxable?	• As Society act merely as Pure Agent, no service portion is involved. Therefore not Liable to tax. However it is advisable to have separate invoice for this.

1. Property Tax cont..

What About Property tax on common area?

- This is taxable subject to limit of exemption of 7500.

What about property tax on parking which is sold to member?

- As it is separately identifiable for each member, this is pure agent service.

2. Sinking Fund/ Building

What is Sinking Fund/building fund?	• Fund collected for development of building in future
Whether it is Taxable?	• It is used by society in future for its member for development. Therefore it will be treated as service and will be taxable on receipt basis.
Whether it is covered for calculating exemption limit?	• Yes, as it is contribution from member for common purpose it will be counted for 7500 limit.

3.Maintenance and Repair charges

What is Maintenance and Repair charges?

- ‘Maintenance’ as the name suggest is the amount collectively reimbursed to the society to upkeep and maintain the building and premises on regular basis.

What type of Charges are include in this?

- Electricity charges for common areas, watchman or security charges and other miscellaneous expenses incurred by the society including accounting, audit etc. is part of maintenance charges.

Whether it is Taxable?

- Yes, subject to to limit of exemption of 7500.

4. Share Transfer Fees

What is Share and Transfer Fees?

- Share transfer fees are the amount charged by the society for transfer of shares by member

Whether it is Taxable?

- Yes, it is taxable.

Whether it is covered for calculating exemption limit?

- No, it is not cover in exemption as it is not contribution for sourcing of service from third person

5. Non Occupancy Charges

What is Non occupancy Charges?	• Non occupancy charges are charges levied by a housing society only when a flat or unit is let out by its members
Whether it is Taxable?	• Yes, it is taxable.
Whether it is covered for calculating exemption limit?	• No, it is not cover in exemption as it is not contribution for sourcing of service from third person

6. Parking Charges

What is Parking Charges?

- Charges to regulate the parking place between the members and providing of space by use of vacant land belonging to the society for a consideration.

Whether it is Taxable?

- Yes it is purely service and thus it is taxable in Nature.

7.Water Charges

What is Water Charges?	• the society is not selling the water to its members. It is just providing the pipeline to deliver water in the members' premises
What is role of Society in This?	• Billing by Municipal corporation in the name of society and then on some basis society collect charges from member.
Whether it is Taxable?	• Yes, as it is again contribution from member for common use of its member. This is taxable subject to limit of exemption of 7500.
What about common Water used like Swimming Pool?	• It is also taxable subject to limit of exemption of 7500.
What if different meter is provided for each member?	• It will fall under pure agent service, so not taxable.

8. Charges for use of club house, swimming Pool, etc

What is Water Charges?

- These are specific services by the society to the member opting for such facilities.

Whether it is Taxable?

- Yes, subject to exemption limit of Rs. 7500.

9. Other Transactions

Rental for Mobile tower	• Renting Service Liable to tax at
Hording charges	• Advertisement Charges Liable to Tax
Use of terrace for function of non member or member	• Renting Service Liable to tax
Interest on default charges	• Not covered in exemption as it is not interest on advances. Therefore liable to tax

Reverse Charge Mechanism

Reverse Charge Mechanism

RCM Means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both

Illustrative List of Exempted Expenses where tax on RCM is not required to pay:

- Interest
- Travelling Expenses*
- Electricity Expenses
- Salary & Wages
- Fuel (for generator)
- Government Fees

Purchase from Unregistered Person (Section 9(4))

If Society is registered

Taxable purchase from unregistered

Liable to pay tax on reverse charge basis

Applicability of RCM to Housing Society (Section 9(3))

Entry 3 of RCM:

100% RCM in case of Services provided or agreed to be provided

- by an individual advocate or firm of advocates
- by way of legal services, directly or indirectly
- to Business Entity (If turnover exceed 20.00 Lakh)

- Being Housing Society is treated as business entity RCM is applicable for housing society in above case

Illustrative List of Input service on Which Housing society can claim ITC:

- House Keeping service
- Repair Service
- Swimming pool Contractor
- Goods purchase for Club or garden
- Security Service
- Accounting and Audit service
- Refreshment service
- Legal Service

Applicability of RCM to Housing Society

Entry 2 of RCM:

100% RCM is applicable in case of Services provided by a goods transport agency (GTA) in respect of transportation of goods by road to:

(a) any factory registered

(b) any society/Co-op Society

(d) any person registered under GST

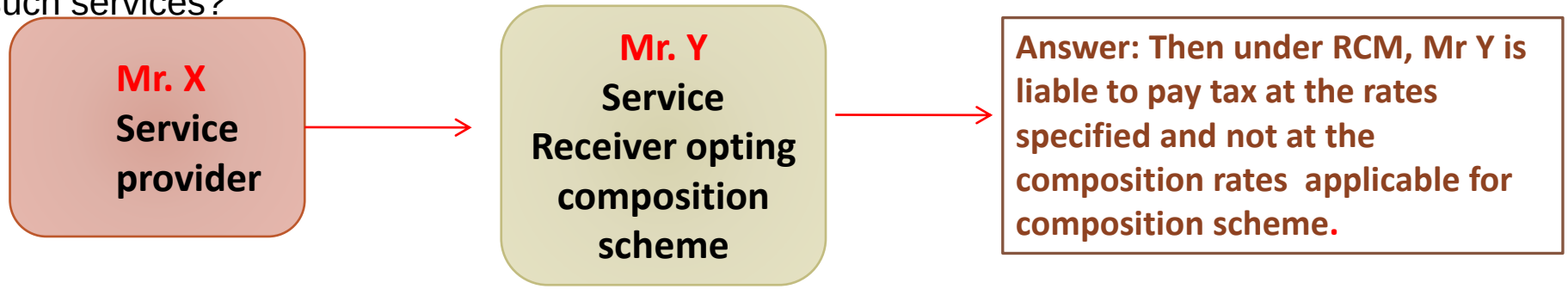
(e) any body corporate/ AOA

(f) any partnership firm registered or not

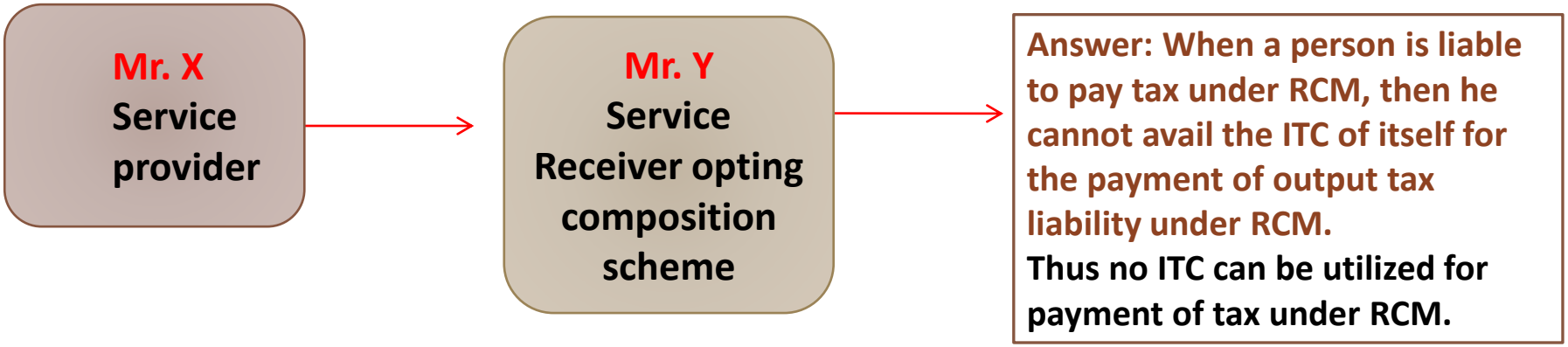
(g) Casual taxable

Reverse Charge Mechanism

Q Mr. Y who is liable to pay tax under reverse charge mechanism & is opting for composition scheme, has to pay tax whether at the composition rates or at the normal rates applicable for such services?

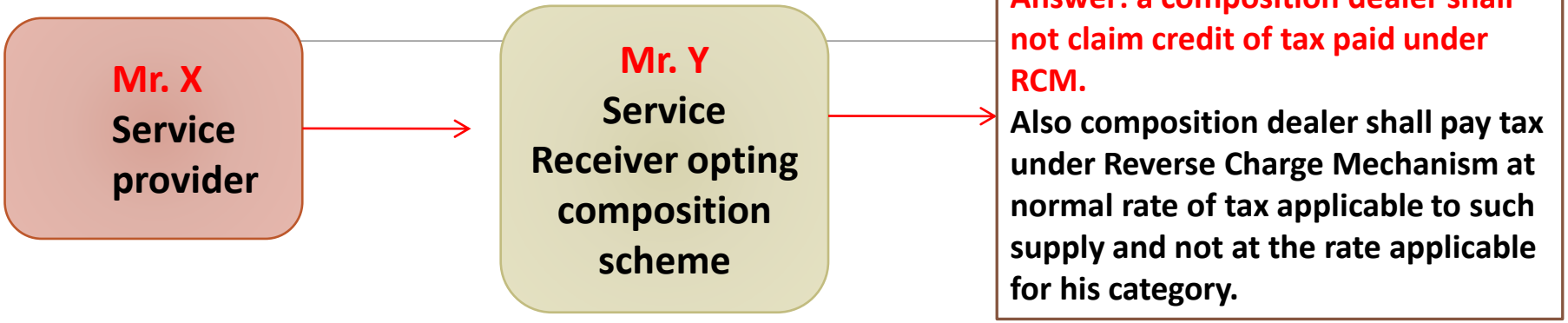


Q Whether Mr. Y liable to pay tax under RCM can avail its ITC for payment of RCM tax liability?

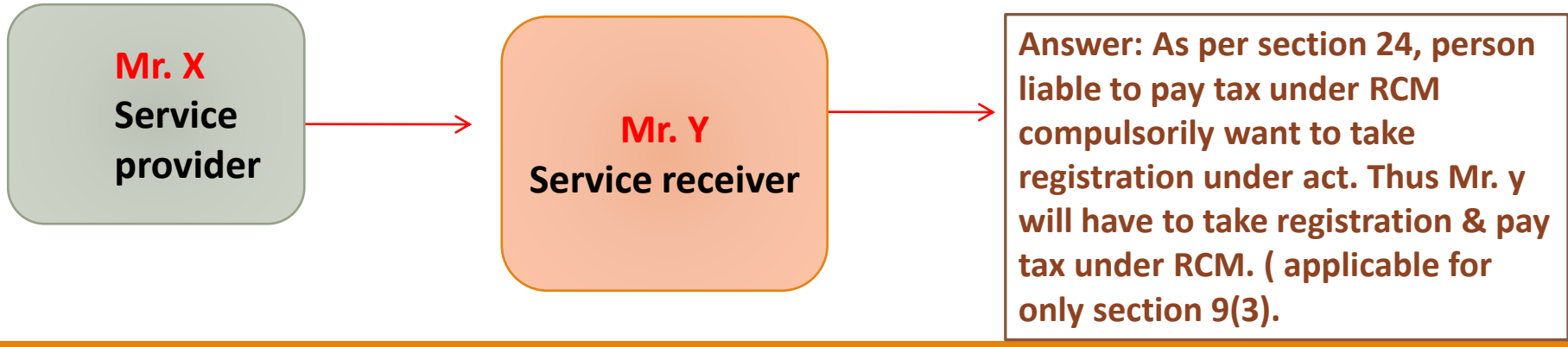


Reverse Charge Mechanism

Q No ITC can be availed for one opting for composition scheme. So whether the person liable to pay tax under RCM can avail ITC of tax paid under RCM at higher rates?



Q When turnover of both recipient and the supplier are below threshold limit to obtain registration, what will happen in case recipient receives some goods or services which are liable to be taxed under Reverse Charge Mechanism? ?



Redevelopment of Housing Society

In the recent past there are two major reasons observed for the rapid surge in the number of redevelopment projects across India:

(i) Increase in Land Prices;

(ii) Need for replacement of old buildings.

Further the applicability of RERA on projects under redevelopment has made the compliance more complex and challenging. This of course, is in addition to the complexities of GST which are highlighted in this presentation.

Let us now consider different types of redevelopment that a Housing Society undertakes.

Redevelopment of Housing Society

The redevelopment in case of housing society is to be viewed in detail.

Generally, in every housing society, land is owned by a society and by virtue being member, every such member is entitled to his share by way of an apartment.

However, where a society engages a promoter (builder/developer) for undertaking such re-construction, various types of arrangements are resorted to which gives rise to multiple types of transactions.

Broadly, these fall under :

A: SELF REDEVELOPMENT SCHEME

B: BUILDER/DEVELOPER PROMOTED SCHEME

Different types of Joint development Agreements (JDA)

(i) Society transfers development rights to developer.

(ii) Society has revenue sharing arrangement with developer.

(iii) Society has area sharing arrangement where society sells its share either before completion or after completion.

(iv) Society retains entire right of development and only asks developer to construct new building.

In all these types, different GST implications shall arise considering the New Scheme of levy of GST w.e.f. 01.04.2019. One may refer to FAQs on Real Estate Sector dated 07.05.2019 and 14.05.2019 for more clarity in this regard.

Redevelopment of Housing Society

This is classified as RREP (Residential Real Estate Project)-

1. Supply of Transfer of Development Rights/Floor Space Index (commonly known as TDR/ FSI) by the Society to a Developer;

2. Supply of Residential units by the Developer to the Society in lieu of supply of TDR/ FSI by the Society;

3. Sale of Residential units by the Developer to outsiders; AND

4. Sale of Commercial units by the Developer to outsiders.

Supply of TDR/FSI by the Society to Developer

Before 01/04/2019 Supply of Transfer of Development rights/FSI was levied @ 18 % and **payable by society** under forward charge and the liability would arise at the time of receipt of completion certificate or first occupancy, whichever is earlier.

However after 01/04/2019, vide **Notification No. 03/2019 CT(R) dated 29th march 2019 applicability of GST** in a Residential Real Estate Project **(RREP)** on supply of transfer of development rights/FSI by the society to a developer is described hereafter.

A “Residential Real Estate Project (RREP)” shall mean an REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet are a of all the apartments in the REP, where in REP means “Real Estate Project (REP)” as defined in clause (zn) of section 2 of the **Real Estate (Regulation and Development) Act, 2016** (16 of 2016).

Supply of TDR/FSI by the Society to Developer contd. . .

When the /Society provides Development Rights (TDR/ FSI) to a Developer, such a transaction is exempt from payment of GST on the condition that the flats constructed by utilization of such TDR/FSI are booked before receipt of completion certificate or first occupancy, whichever is earlier.

Thus, if there are any flats which remain un-booked on the date of receipt of completion certification or first occupancy, GST shall be payable at the rate of 18% on the value of TDR proportionate to the carpet are a of un-booked flats subject to maximum 1 % / 5% of the value of such un-booked flats.

The liability to pay GST shall arise at the time of receipt of completion certificate or first occupancy, which ever is earlier and payable by the Developer under Reverse Charge Mechanism(RCM).

The total taxable value of TDR/ FSI will be equal to the rate of the flats sold to independent buyers nearest to the date of development agreement.

The term ‘first occupation’ appearing in Sch. II Para 5(b) and in Notification No: 11/2017 means the first occupation of the project *in accordance with the laws, rules and regulations laid down by the Central Government, State Government or any other authority in this regard*.

Supply of Residential Units to the Society in lieu of TDR/FSI

This is a barter of supplies and here there is no consideration in the form of money. However, for the purposes of levy of GST, the value of services has to be quantified.

Therefore, the law provides that in such cases the value of construction service i.e. flats supplied to Society, shall be equal to the rate of the flats sold to independent buyers nearest to the date of development agreement.

GST shall be payable by the Developer at the effective rate of 1%/5%,at the time of receipt of completion certification or first occupancy, which ever is earlier.

Sale of Residential Units by the Developer

For Flats sold by the Developer, to other customers, before receipt of Completion Certificate, GST will be chargeable at the effective rate of 1%/5% (after taking in to consideration 1/3rd abatement in value towards cost of land) by the Developer.

For flats sold post receipt of Completion Certificate, the same shall be exempt from payment of GST. The Liability to charge and pay GST, arises at the time of receipt of every instalment/payment.(Refer Section 31(5)

Sale of Commercial Units by the Developer to outsiders

Any REP having commercial area up to 15 % of total carpet area of all the apartments in the REP is defined as RREP.

Therefore, the commercial units in the RREP GST is charge able at the concessional rate of 5% and payable at the time of receipt of every installment/payment.

(Refer Section 31(5)

Redevelopment of Housing Society

The promoter (builder/developer) constructs apartments with same or different carpet area for original owners of apartment and additionally may:

A. construct some additional apartments for sale to others

B. arrange for rental accommodation or rent payments for society members/original owners for stay during the period of re-construction

C. pay an additional amount to the original owners of flats in the society.

Under this model, the promoter (builder/developer) receives consideration for the construction service provided by him, from two categories of service receivers:

First category is the society/members of the society, who transfer development rights over the land (including the permission for additional number of apartments) to the promoter (builder/developer).

Second category of service receivers consist of buyers of apartments other than the society/members. Generally, they pay by cash.

In both the cases, GST is payable as in first case, the promoter receives consideration in the form of TDR and in other cases, by cash.

Revised Rates of GST on and from 01.04.2019

ITC has been abolished for residential segment and there is no option to pay GST at higher rate and claim ITC.

The revised scheme applies to residential and commercial premises which are covered under RERA.

The new scheme is compulsory for projects commenced on or after 01.04.2019 and in respect of ongoing projects as on 31.03.2019, the promoter has an option to shift to new scheme w.e.f. 01.04.2019 (without ITC) OR continue under old scheme. Surely, the promoters must have exercised the necessary option of their choice.

Revised Rates of GST on and from 01.04.2019

For affordable residential premises:

CGST 0.5% + SGST/UTGST 0.5% (Total 1%) or IGST 1% (without ITC)

For other residential premises:

CGST 2.5% + SGST/UTGST 2.5% (Total 5%) or IGST 5% (without ITC)

For commercial premises (shops, offices, godowns) in RREP

CGST 2.5% + SGST/UTGST 2.5% (Total 5%) or IGST 5% (without ITC)

For commercial premises (shops, offices, godowns) other than RREP

CGST 6% + SGST/UTGST 6% (Total 12%) or IGST 12% (without ITC)

These rates apply where supply of services involves transfer of land or undivided share of land and its charges are included in the amount charged to customer.

RCM for purchases from unregistered dealer

Promoter is required to procure all capital goods and at least 80% of inputs and input services from registered suppliers. If not, tax is payable by the promoter on the balance amount.

If there is shortfall in procurement from registered suppliers, i.e. if still requirement of procurement of 80% from registered suppliers is not achieved, GST @18% is payable on value to the extent of shortfall.

All cement must be purchased from registered supplier only. If not so done, promoter is required to pay GST @28% under RCM.

In the case of capital goods procured from unregistered supplier, the promoter is liable to pay GST under RCM.

The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and compute the tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by the end of the quarter following the financial year.

The tax liability on the shortfall of inward supplies from unregistered suppliers shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.

Cancellation of Premises

It is very common in Real Estate Projects that the customer cancels the flat booked by him. In such case, the society must have already paid GST @5% while receiving advance at the time of booking from the customer.

GST implications:

In case the entire amount so paid is refunded, there is no further GST liability.

In case some amount has been forfeited out of advance so received or has collected cancellation charges separately, such cancellation charges shall attract GST @5% . [Refer CBIC Circular No. 178/10/2022-GST dated 03.08.2022]

Finance (No. 2) Act, 2019

Interest payable only on the net amount paid through cash
(Provide Relief from the adverse decision of Megha Engineering)

Inter-fungibility permitted for Cash Ledgers

Composition Scheme extended to service providers

Interest on loans not to be treated as value of exempted supplies for composition, etc.

Empowerment to increase threshold for supply of goods to 40 lakhs

Aadhar Authentication made mandatory

Notification No. 49/2019

Notification No. 49/2019-Central Tax, dated 09.10.2019 inserted **sub- rule (4) in Rule 36** of the CGST Rules, which provides the documentary requirements and conditions for claiming input tax credit.

The newly inserted sub-rule (4) reads as under –

"**Input tax credit** to be availed by a registered person **in respect of invoices or debit notes**, the details of which have **not been uploaded by the suppliers under sub-section (1) of section 37**, shall **not exceed 20 percent of the eligible credit** available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37."

Conclusion

- Taxation of Co-operative Society and that too, even of Housing Societies is no longer a simple mechanism with increasing complexities of revenue acts.
- Even in the case of other co-operative societies, the application and compliance of tax poses challenges and at times, even professional accountants are also wandering in darkness.
- At the same time, professionals must gear up to update themselves so as to be able to stand up to the expectations of the service receiver, which in these cases are society members who are not at all well versed with increasing challenges faced.
- There is no end to learning and updation for a professional accountant.

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