TAXATION
ON SALE AND PURCHASE OF PROPERTY

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REAL ESTATE SUMMIT 2017

CHAPTER-VI

BRIEF INTRODUCTION

- The increasing urbanization has proved beneficial to the Real Estate sector and it is expected that by 2030, the people living in the urban areas in India will increase from 43 Crores to approximately 60 Crores. This points towards the increased market size of Real Estate sector by 7 times, which makes it important to evaluate the tax structure of the said sector.

- The growth of economy and commercial transactions have increased demand for commercial space. Further, the requirements for education and healthcare services also include the increased demand of space for such services. The investments in India has rose with the inflows of Foreign Direct Investments and same has been a boon for the real estate sector as a whole especially when government has loosened the restriction on FDI and allowed even upto 100% FDI in some projects.

- With the Real Estate Regulation Act and Rules in place, the responsibility and accountability of Real Estate Agents have also increased which in turn attracts the buyers to make more investments in Real Estate.

- Earlier the tax in the Real Estate sector was charged by way of Service Tax, stamp duty and Registration charges. Now since July 2017 the Goods and Service tax has been brought with the concept of collective taxation wherein the indirect taxes will be charged at a single rate instead of charging different taxes for different purposes.

HISTORICAL BACKGROUND

- The Service Tax was applicable at the rate of 15% on the Real Estate Projects which were under construction. However, the abatement of 70% to 75% was given on the total value so as to reduce the value of land from the tax liability.

- Accordingly, the effective rate of Service Tax had worked out to be 3.75% and 4.5%. The inputs used for the construction were subject to the State Taxes separately such as VAT, etc.

- In addition to the above taxes, the buyer of the property was also required to pay the stamp duty, registration charges etc.

- Thus, under construction properties were subject to Service tax @ 3.75% except apartments priced over 1 Crore or admeasuring more than 2000 Sq. Feet and in such cases the effective service tax was 4.5% due to the abatement of 70 % only in place of 75%.

GST ON REAL ESTATE CONSULTANT

- The real estate agent and consultants are required to pay GST @ 18 % as per Entry No. 16 in Notification No. 11/2017 of Department of Revenue dated 28/06/2017 on the real estate services rendered by the agent. Section 65(89) of Finance Act, 1994 as amended defines the Real Estate Consultant as under:

"Real estate consultant" means a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in relation to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate. (Section 65(89) of Finance Act, 1994 as amended)

TAXABLE EVENT & SCOPE OF SERVICE:

- Taxable service means any service provided to a client, by a real estate agent in relation to real estate. (Section 65 (105) (v) of Finance Act, 1994 as amended)

- Apart from the traditional services in respect of sale/purchase/leasing of real estate such concerns are, inter alia, providing services to real estate developers and promoters in respect of evaluation of a proposed real estate scheme/project by conducting techno-economic studies, providing feasibility reports and by even helping in marketing real estate projects. Such services shall also attract GST.

- Value of the taxable services shall be the gross amount charged by the service provider for such service rendered by him. (Section 67 of Finance Act, 1994 as amended)

GST IN REAL ESTATE

- The GST Law brought in 2017 has been enacted by Central Government and has been adopted by all the State Governments. This has achieved the dream of One Nation One tax. Though to the some extent, GST works out as One Tax One Nation, however, in reality GST has two parts. One is Central GST which is governed by Central Goods and Services Act, 2017. The second is State GST which is governed by State Goods and Services Act, 2017.

- In case of Gujarat, the State GST will be covered by The Gujarat Goods and Services Act, 2017.

SCHEME OF GST FOR REAL ESTATE

- The basic scheme of the taxation under GST for this sector is such whereby the tax amount is equally divided between Centre and State.

- In case of Real Estate, vide section 9(1) of Central Goods and Services Act, 2017 read with Entry No. 3 in Notification **No. 11/2017** of Department of Revenue dated 28/06/2017, total of 18% (9% for Centre and 9% for State) GST is imposed on under construction projects of real estate.

EFFECTIVE RATE OF GST

- Although the GST rate applicable is 18%, however the abatement of 1/3rd of the total cost is given towards the value of the land and hence effectively the GST works out to be 12% for the under construction properties.

- Further, the developer will be buying all the inputs for construction and will be paying taxes for various inputs like cement, steel, bricks, tiles, fittings, etc. on which the GST ranges from 12% to 28%. The Developer will thus be entitled to get refund for the same.

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- The developer is expected to pass on the benefit of Input Tax Credit to the Customer as there is a mandate of Anti-Profiteering in the recently enacted law of Real Estate (Regulation and Development) Act, 2016.

- It may be pointed out that the already completed projects that is, sale of already constructed property will not be subject to GST as was the case earlier. Therefore, one way of reducing liability of GST is to buy constructed properties.

EXEMPTION & EXCLUSION

- The activity of actual construction of any building, carried out by builders/developers would not attract Service Tax levy, as it is not a service within the meaning of the term real estate agent or real estate consultant. (Ministry's F.No.B11/3/98-TRU dt.07.10.1998)

- Sale of property after obtaining completion certificate will not attract GST.

Therefore, although paying GST is mandatory, it can be avoided if:

(a) The builder has obtained a completion certificate from the issuing authority.

(b) The buyer has paid the entire consideration only after the building completion certificate had been obtained by the builder.

You can even get the completion certificate from an architect or chartered engineer or licensed surveyor. It is not necessary to go to a Government authority to get the completion certificate. You may rely on the notification issued by the Government of India (D.O.F.No.334/03/2010-TRU) which reads as follows:

Completion certificate issued by an architect or chartered engineer or licensed surveyor can be now taken to determine the GST liability which was earlier under Service Tax.

However, this exemption above is only from paying GST. You will have to pay Stamp Duty and registration charges upon registration of Sale documents.

GST ON UNDER CONSTRUCTION PROPERTY

- GST on under Construction Property is levied on the Services provided by Builders or Real Estate Developers or any other person, includes 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 and such Building Complexes, Civil Structure or part thereof are offered for sale but the Payment is received before the Issuance of Completion Certificate by a Competent Authority.

CERTAIN EXEMPTIONS REMOVED UNDER GST

- Vide Notification No. 20/2017 of Department of Revenue dated 22 August, 2017, in Entry No. 3 the certain exemptions given to low cost housing are removed and now all under-construction properties are subject to GST @ 12% (6% for Centre and 6% for State).

COMPUTATION OF GST ON UNDER CONSTRUCTION PROPERTY

- At the time of sale of property, the amount paid by the purchaser to the Builder is for value of Land and Construction Service provided by the Builder/Developer.

- Thus, the GST on the purchase or sale of property will be computed on the total value of land plus construction charges @ 18% as notified by the Department of Revenue under powers of Section 9 of Central Goods and Services Act, 2017. However, the said notification also makes it clear that if there is transfer of property/land then the value of land will be reduced from the total value and the same is presumed to be 1/3rd of the total value. Hence, the applicable rate will be on 2/3 rd value only which makes it 12%.

- Earlier the same was governed by the abatement scheme in Service Tax where the concept was the same as under GST, i.e. to not count the value of the land for computation of tax liability on construction services.

- GST @ 18% on 2/3rd value of the Total Purchase price is levied on under Construction Property. In other words, GST@ 12% (18% on 2/3rd value) is levied on the total price paid for the purchase of an under construction property.

COMPUTATION OF GST ON UNDER CONSTRUCTION PROPERTY				
Particulars	**Abatement Allowed**	**Taxable Component**	**Normal Rate of GST**	**Effective Rate of GST on Property**
Sale price	33.3%	66.67%	18%	12%

GST ON RENT PAYABLE

- The Govt while introducing the Central Goods and Services Act, 2017, in the explanation of Supply of Goods or Services under Schedule II, contained in Art. 5, has specifically mentioned that Renting of Immovable Property shall be treated as Supply of Services.

- In the light of the above, GST on Renting of Immovable Property is liable to be paid as per the rates in force which at present is 18%.

- However, vide notification No. 12/2017 dated 28/06/2017, Renting the immovable property for use of residential purpose is not taxed under GST. Hence, the taxability on rent payable under GST is now confined to renting of Immovable property for commercial purpose.

IMPACT OF GST ON PROPERTY PRICES

- The effect of GST on real estate can be taken as neutral in light of the fact that the rate has been increased to 18% but the provision of input tax credit makes it neutral towards the end as the construction projects are entitled to Input Tax Credit.

- The burden on the developers will decrease in case of Under construction projects, as they will be able to get the benefit of Input Tax Credit under GST Regime. Consequently, the prices quoted by them will decrease accordingly.

- On the other hand, price quoted by the developers for ready-to-move-in properties tend to increase as the GST is not applicable on the same and the benefit of Input Tax Credit will thus not be available to the developers. This will increase the tax burden on developers as the tax burden cannot be shifted to end consumers in absence of Input Tax Credit. Therefore, the prices quoted by them will more likely increase as a result.

- Another setback is that the government has not included stamp duty under the GST Rate, which infers that the stamp duty will still be payable in addition to GST. The same will increase the overall price of the property to be transferred.

IMPACT OF GST ON DEVELOPMENT OF REAL ESTATE

- The overall impact on the real estate industry is expected to be neutral as with increased tax rate under GST, the availability of Input Tax Credit will neutralize the effect of increased rate.

- It is further expected that the upheaval caused by demonetization will be subsumed under the benefits of GST regime. The prices which had gone up are likely to decrease in the light of Input Tax Credit availability.

EXEMPTION FOR SEZ

- Further, the supply of goods to a SEZ developer or a SEZ unit is categorized under “Zero Rated Supply” which would imply that the tax on such supply shall be eligible to be refunded. (Section 16 of Integrated Goods and Services Tax Act, 2017). The same will be beneficial for the growth of SEZs as the infrastructure costs are huge in SEZs and the same will be in a way exempted from tax liability.

GST VIS-À-VIS RERA

- The enactment of Real Estate Regulation and Development Act, 2016 has increased the transparency in the real estate transactions which will be beneficial for the classification under GST. The costs incurred and services provided shall be transparent and the same will help in the classification of services to be taxed under GST and the exact amount of cost incurred. Earlier the developers were taking advantage of this loophole which has now been taken care of in RERA, 2016. The increased transparency will also reduce the tax burden on consumers which will in turn result in development of Real Estate Sector.

TDS ON SALE OF PROPERTY

The Finance Bill 2013 has proposed that purchaser of an immovable property (other than rural agricultural land) worth Rs 50 lakh or more is required to pay tax deducted at source at the rate of 1% from the consideration payable to a resident transferor.

Who is responsible to deduct the TDS on sale of Property?

According to rules in respect of tax deducted at source, buyer of the property would have to deduct the TDS and deposit the same in Government treasury.

SHOULD EVERY BUYER MUST HAVE TAN ?

Buyer or Purchaser of the property is not required to procure Tax Deduction Account Number (TAN). The Buyer is required to quote his or her PAN and sellers PAN.

PAN of the seller is mandatory. The same may be acquired from the Seller before effecting the transaction.

HOW TO PAY TDS ON SALE OF PROPERTY

The Buyer of the property (deductor of tax) has to furnish information regarding the transaction online on the TIN website. After successfully providing details of transaction deductor can:

- Either make the payment online (through e-tax payment option) immediately;

- Or make the payment subsequently through e-tax payment option (net-banking account) or by visiting any of the authorized Bank branches. However, such bank branches will make e-payment without digitization of any challan. The bank will get the challan details from the online form filled on www.tin-nsdl.com

WHAT IS CAPITAL GAIN ON PROPERTY ??

There are various asset classes such as equity, debt, gold and real estate in which you invest according to the time horizon of your financial goals and risk appetite. The gains from these investments are termed as capital gains and are taxed differently. Since any tax liability impacts your returns from the investment, it's important to have awareness on the net gains you will receive.

The capital gains from the equity, debt, gold and real estate asset classes are classified as long-term or short-term gains, based on the holding period of investment.

For example, in real estate, if you have held the asset for more than 3 years, it is treated as long term. Contrary to this, in equities investment for more than a year is treated as long term. Long-term capital gains are usually taxed at a lower rate than regular income, which is done to encourage entrepreneurship and also investment in the economy.

HOLDING PERIOD FOR LONG-TERM GAINS IN VARIOUS ASSET CLASSES AND THE APPLICABLE TAX RATE:

Asset	Min. holding period for Long Term Gains	Taxation *
Equity	1 year	Zero
Debt	1 year	Whichever is beneficial- 10% without indexation 20% with Indexation benefit
Real Estate	3 year	20% with indexation benefit
Gold	3 year Physical Gold, e-Gold	20% with indexation benefit
	1 year Gold ETF Gold MF	Whichever is beneficial- 10% without indexation 20% with Indexation benefit
Bonds/NCDS	1 year	10% without any indexation benefit

***Education Cess of 3% is applicable on all tax rates**

MAXIMUM BENEFITS OF LONG TERM CAPITAL GAIN

As can be inferred from the data, equities enjoy zero taxability on long-term capital gains while in real estate or physical gold investment you have to pay a flat rate. "Due to these variations, the post-tax returns from these asset classes can vary substantially. There are provisions in income tax to reduce long-term capital gains (LTCG) through indexation or save LTCG tax by investing the gain in other alternatives.

Thus, apart from reducing your tax liability through the indexation benefit, the tax on long-term capital gains can also be saved by investing these gains in specified securities for a certain period of time.

Indexation Benefit: Inflation constantly erodes the real value of money through the rise in prices. Due to this even if your investments have risen four times during a particular period, the purchasing power of money might have went down by, say, 50% from the time of your investment. "To reduce the impact of inflation on your investment, indexation benefit is provided in calculating long-term capital gains. Through this benefit you can adjust your capital gains from inflation by applying an appropriate factor from cost inflation index to the original units.

SHORT-TERM CAPITAL GAIN

Investment in any asset class, if held for a very short period, is taxed as short-term capital gains. Except equity, short-term gains from other assets are included in the investor's income and are taxed as per the slab rate.

The data below highlights the taxation structure in case of short-term capital gains:

Asset	Holding period for Short Term Gains	Tax Rate*
Equity	Less than 1 year	15%
Debt	Less than 1 year	Added to income
Gold	Physical/e-Gold- Below 3 year ETF/Gold MF - Below 1 year	Added to income
Real Estate	Below 3 year	Added to Income
Bonds/NCD	Less than 1 year	Added to Income

VAT ON PROPERTY- NOW COVERED IN GST

Value added tax was not levied per se on any transaction made with regards to any immovable property.

However VAT was levied on any “works contract” being entered upon with respect to the construction of an immovable property. Now the same is included in the single applicable rate of 18% on construction services.

CONCLUSION

- In absolute terms, the buyer of property is saddled with more tax under GST with purchase of under-construction properties as compared to past provisions for Service Tax. However, it is expected that the builders will pass on the benefit of Input Tax Credit to the buyers and thus, the additional burden of tax will get neutralized.

- It is clear, thus, that with complex capital gains tax structure, it's wise to first make yourself aware of the net returns, i.e. post-tax returns, you will earn, whenever you intend to make any investment. This will help you in analyzing the amount of wealth you will create after paying your tax liabilities.