



**THE KOLHAPUR BRANCH OF
WIRC OF THE INSTITUTE OF
CHARTERED ACCOUNTANTS OF INDIA**



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CA Tushar Anturkar
Chairman

Chairman's Communication

Dear Members,

Dear Professional Colleagues,

We just finished voting for one of the most complicated electoral processes being conducted in our country which is the Elections for the Central and Regional Councils of our Institute. The voting was carried out in a very democratic manner all over the Country and our branch was no exception.

This year our Institute had arranged the elections in a very nice manner with option for members to change their polling centre according to their convenience. Members who were not residing at the branch of their membership could change their voting centre to any place of their choice. Because of this many of the members (about 30 to 35) of Kolhapur Branch changed their voting centres. As a result there was increase in the number of members voting for the elections.

The turnout at Kolhapur was outstanding with more than 350 members casting their precious votes. This was besides the members who voted at other centres. The results of the elections will be declared by the end of this month and we will have list of new torch bearers of our Institute who will lead our profession during the next 3 years.

President's Visit and Felicitations of Senior Chartered Accountants

Friends, in this month we had pleasure of the company of our Hon. President Shri Nihar Jambusariaji at the time of his visit on 12th Nov. 2021. It was indeed an honour of welcoming him to our branch and listening to his words of wisdom. He gave us insights of various activities being carried out by the Institute and efforts being taken at the Central Council Level for the betterment of our profession. He also gave few words of caution which we need to implement in our professional practice. It was a very nostalgic moment when we all viewed the slide show of photos of his previous visits to Kolhapur Branch and his journey to Presidentship. We also had the honour of having the company of the first lady Mrs. Jambusaria along with him. This was also accompanied by WIRC Chairman Shri Manish Gadiaji who also informed and updated us about various initiatives taken by WIRC for our profession.

Another important thing that graced the event was the presence of senior Chartered Accountants above 70 years and we had great honour of felicitating them and acknowledging their contribution to the profession as well as to the activities of our branch.

On this occasion we also inaugurated new name boards of our Branch at the hands of Hon. President. The name board of "ICAI BHAWAN" is also now installed on the front of the branch premises building with prominence.

I thank all the members for their support in organising the event and making it a grand success.

Career Counselling Program

We had organised a career counselling program for students of 11th and 12th Commerce of KLE's GI Bagewadi Independent PU College, Akkole Road, Nipani. It was a very informative session in which more than 75 students, teachers and parents participated. Our members CA Satish Dakare and CA Nilesh Bhalkar gave detailed information about the CA course and future career options. CA Sushant Gundale, Vice Chairman and WICASA Chairman also guided on studies and examination tips.

It was really a wonderful experience interacting with prospective students of CA course and resolving their doubts. The Principal, teachers and parents appreciated the presentation given by the faculties and also expressed their desire to conduct more such sessions for other colleges of their institution.

We will be joining WIRC for one of the mega career counselling event on 19th December, 2021 to spread awareness and information about career opportunities for Chartered Accountants.

Tax Audit Seminar

As the season of tax audits is approaching the seminar on tax audits received an overwhelming response and more than 100 members attended the session. CA Sanjay Vhanbatte explained the intricacies of various new provisions in his usual and lucid language and knowledgeable manner.

Upcoming Activities

We are planning for some technical sessions of professional interest in the coming month. Also, our get-together is overdue and the same is also being planned depending upon the new lockdown restrictions. Some sports events are also being planned details of which will be shared through messages on our groups and emails.

Many new members have joined the profession who passed out at the July 2021 attempt. It is essential that we welcome them to the profession by acknowledging their hardwork and encouraging them. A felicitation program is being arranged for these newly qualified Chartered Accountants.

Friends, the coming two months are going to be more stressful as many deadlines like IT returns, GST Annual Returns, Tax Audits, Trust and Company Audits, etc. are lined up. Let us plan well in advance for managing the time in such a manner that we are able to achieve the tasks on hand comfortably and well in time. It is of utmost importance that we give proper attention to our health in such taxing times. Do takeout appropriate time for exercise so that we keep good health.

Wish you all a very happy and comfortable audit and return filing season.

Stay Safe and Take Care.

Best Regards,
CA Tushar Anturkar
Chairman



KOLHAPUR BRANCH OF WIRC OF ICAI

Managing Committee



CA TUSHAR ANTURKAR
CHAIRMAN



CA SUSHANT GUNDALE
VICE CHAIRMAN
WICASA CHAIRMAN



CA CHETAN OSWAL
SECRETARY



CA AMIT SHINDE
TREASURER



CA ANIL CHIKODI
IMMEDIATE PAST CHAIRMAN

Editorial Team

CA Girish Kulkarni
CA Dipesh Gundesha
CA Gangadhar Haldikar

CA Sanjay Vhanbatte
CA Ajinkya Jagoje
CA Subhash Pangaonkar

CA Nitin Hargude
CA Rajat Powar
CA Vaijayanta Chaugule



Kolhapur Branch of WIRC of ICAI

Details of Programme Held in the Month of November, 2021

	Date		Programme Name	Topic	Students/ Members	Speakers name	Venue	CPE Hours
	From	To						
1	12-11-2021	12-11-2021	President's Meet and Felicitation of Senior Chartered Accountants above 70 years	President's Meet and Felicitation of Senior Chartered Accountants above 70 years	Members	CA Nihar Jambusaria CA Manish Gadia	ICAI Bhawan, Kolhapur	-
2	25-11-2021	25-11-2021	Seminar on Issues in Tax Audit	Issues in Tax Audit	Members	CA Sanjay Vhanbatte	ICAI Bhawan, Kolhapur	2 Hrs
3	29-11-2021	29-11-2021	Career Counseling Program	Career Counseling CA Profession	Students	CA Satish Dakare CA Tushar Anturkar CA Nilesh Bhalkar CA Sushant Gundale	KLE,s G.I. Bagewadi Independent College, Akkole Road, Nipani	-





Income Tax Update

Circulars and Notifications

(Compiled by CA. Ajinkya Jagoje)
(Email - ajinkya.jagoje@abmlp.com)

■ CIRCULAR NO. 20 OF 2021 [F. NO. 30142/56/2021-TPL], DATED 25-11-2021

GUIDELINES UNDER SUB-SECTION (4) OF SECTION 194-O, SUB-SECTION (3) OF SECTION 194Q AND SUB-SECTION (1-I) OF SECTION 206C OF THE INCOME-TAX ACT, 1961

To further remove the difficulties Board has issued this Circular

● Issue: E-auction services carried out through electronic portal -

In an e-auction, the e-auctioneer involved in conducting the e-auction through its portal is responsible only for the price discovery for the sale/purchase of goods or services and the result of the auction report is submitted to the client. In such a scenario, it has been represented that provisions of section 194-O of the Act does not apply as the transaction of sale/purchase itself is not taking place through the electronic portal.

Para 5.1.3 - In order to remove difficulty, it is clarified that the provisions of section 194-O of the Act shall not apply in relation to e-auction activities carried out by e-auctioneers if all the facts listed above are satisfied. Further, it is clarified that the buyer and seller would still be liable to deduct/collect tax as per the provisions of section 194Q and 206C (1H) of the Act, as the case may be.

● Issue: Adjustment of various state levies and taxes other than GST -

Goods which are not within the purview of GST, such as petroleum products, various levies like VAT. Excise duty, sales tax etc. are charged. While the treatment of GST component has been clarified in the circular no. 13 of 2021, the same is silent on other non-GST levies which have otherwise been subsumed and replaced by GST.

Para 5.2.3 - In this regard, it is hereby clarified that such taxes will not be included provided they are shown separately in Invoice. How in case of advances the tax will be deducted on Gross basis.

● Issue: Applicability of section 194Q of the Act in cases where exemption has been provided under section 206C(1A) of the Act

section 206C(1A) of the Act provides, no tax is to be collected in case of a buyer, furnishes to the person responsible for collecting tax. a declaration to the effect that the goods are to be utilized for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes. (form 27)

Para 5.3.3- It is hereby clarified that in such cases, the provisions of section 194Q of the Act will apply and the buyer shall be liable to deduct tax under the said section if the conditions specified therein are fulfilled.

● Issue: Applicability of the provisions of section 194Q in case of department of Government not being a public sector undertaking or corporation.

Para 5.4.4 In connection with above, it is further clarified that any other person, such as a Public sector Undertaking or corporation established under Central or State Act or any other such body, authority or entity, shall be required to comply with the provisions of section 194Q and tax shall be deducted accordingly.



■ PRESS RELEASE

India and USA agree on a transitional approach on Equalisation Levy 2020

On October 8, 2021, India and United States joined 134 other members of the OECD/G20 Inclusive Framework (including Austria, France, Italy, Spain, and the United Kingdom) in reaching agreement on the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalization of the Economy.

India and United States have agreed that the same terms that apply under the October 21 Joint Statement shall apply between the United States and India with respect to India's charge of 2% equalisation levy on e-commerce supply of services and the United States' trade action regarding the said Equalisation Levy. However, the interim period that will be applicable will be from 1st April 2022 till implementation of Pillar One or 31st March 2024, whichever is earlier.

The final terms of the Agreement shall be finalised by 1st February 2022.

■ NOTIFICATION G.S.R. 831(E) [NO. 132/2021/F.NO.370142/55/2021-TPL], DATED 23-11-2021

SUBSTITUTION OF FORM NO. 52A

Statement to be furnished to the Assessing Officer under section 285B of the Income-tax Act, 1961, in respect of production of a cinematograph film- the same shall be in FORM NO. 52A





High Court Tribunal Cases

High Court Decision

- **Kartik Vijaysinh Sonavane v. Deputy Commissioner of Income-tax [2021] 132 taxmann.com 293 (Gujarat)**

Issue: Whether Department can deny to employee-assessee the credit of TDS deducted by employer even if the employer has not deposited the TDS deducted and has not issued Form 16 for the same?

HELD: Hon'ble High Court, held -

- Relying upon past decisions of Bombay, Gujarat and Gauhati High Courts on the subject, held that it is clear from provisions of section 205 of the Act which gets triggered on mere deduction of TDS and nothing more is required.
- A perusal of Section 205 of the Income-tax Act clarifies the position where it provides that where tax is deductible at source, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income. What is noticeable in this provision is that its applicability is not dependent upon the credit for tax deducted being given under Section 199 of the Income-tax Act. What is necessary for applicability of this provision is that the amount has been deducted from the income. In case where the amount has been deducted but not paid to the Central Government that eventuality is taken care of by Section 201 of the Income-tax Act.
- The credit of the tax shall be given to the petitioner and if in the interregnum any recovery or adjustment is made by the respondent, the petitioner shall be entitled to the refund of the same, with the statutory interest, within eight (8) weeks from the date of receipt of copy of this order.

Tribunal Decision

- **Artemis Education & Research Foundation vs. Commissioner of Income-tax (Exemptions) [2021] 132 taxmann.com 277 (Delhi - Trib.)**

Issue: Whether registration under section 12AA to assessee-trust, established for medical research, on ground that medical research to be carried out in hospital of settler company would convert charitable activities into commercial activities, could be declined?

HELD:

- The assessee-trust was not only established for medical research rather for various other charitable aims and objects viz. establishing professional colleges, hospitals, health promotion facilities like health club, nature club facilities, yoga and meditation facilities, entertaining facilities and community centre/religious centers. It had filed an application seeking registration under section 12AA.
- The aims and objects having charitable nature, need to be seen for purpose of according approval under section 12A and cannot be throttled merely by relying upon selective aims and objects by making observation that there was a possibility that researches being carried out by assessee within premises of settler company would in turn further enhance commercial potential of hospital, thus, declining registration under section 12A on such ground that medical research to be carried out in hospital of settler company would convert the charitable activities into commercial activities was mere surmises, and not sustainable in law.



■ **Board of Control for Cricket in India. v. Principal Commissioner of Income-tax [2021] 132 taxmann.com 132 (Mumbai - Trib.)**

Issue: whether conducting Indian Premier League tournament (IPL) by BCCI would tantamount to carrying commercial activity and denying registration under section 12AA?

HELD:

- Operational model of Indian Premier League tournament (IPL) was more entertaining, more economically viable, provided greater economic opportunities to all those associated with that tournament, and mobilized greater financial resources for popularising cricket, as long as purpose for which all funds at disposal of assessee-trust, BCCI, including additional funds generated from IPL, were employed for promoting cricket, activities of assessee could not be said to be of commercial nature
- Merely because a sports tournament is structured in such a manner to make it more popular, resulting in more sponsorships and greater mobilization of resources, the basic character of the activity of popularizing cricket is not lost.
- Improvising the rules of the game, adding entertainment value to it and making it economically attractive could be viewed as radical and innovative ideas to popularise a game.

■ **Shivnarayan Nemani Shares & Stock Brokers (P.) Ltd. v. Deputy Commissioner of Income-tax [2021] 132 taxmann.com 242 (Mumbai - Trib.)**

Issue: Which Year to be adopted for the purpose of calculating the Indexed cost of acquisition' for computing the Long Term Capital Gain on sale of equity shares of BSE Ltd (acquired upon conversion of BSE Card into shares of BSE Ltd) whether the year in which BSE card was originally acquired or year of allotment of BSE equity shares ?

HELD:

- Relying upon Third Member decision in the case of Techno Shares & Stock Ltd. v. ACIT [IT Appeal No. 5938 (Mum.) of 2012, dated 30-8-2019] - which reads -

35. As regards the period of holding of shares of BSE Ltd., I find that as per clause (ha) inserted in Explanation 1 to Section 2(42A) of the Act by the Finance Act, 2003, period for which the person was a member of the recognised stock exchange in India immediately prior to such demutualisation or corporatisation shall also be included in period of holding of shares. In terms of the clear and unambiguous language of the section, I hold that the period of holding of shares of BSE Ltd. shall be reckoned from the date of original membership of BSE and not from date of allotment of shares in BSE Ltd.

36. I thus agree with the view taken by the learned Judicial Member that the cost of shares will be original cost of the membership card in terms of Section 55(2)(ab) of the Act..

- For computing the capital gain, indexation is liable to be considered from the date of original membership of BSE and not from the date of allotment of shares in BSE Ltd.

■ **Visnagar Nagrik Shakari Bank Ltd v. Deputy Commissioner of Income-tax [2021] 131 taxmann.com 201 (Ahmedabad - Trib.)**

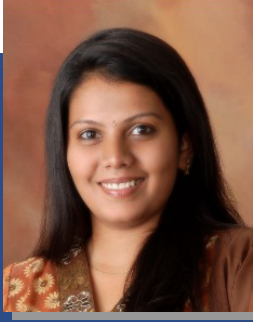
Issue: Whether interest income received by assessee-bank post liquidation can be treated as diverted at source by overriding title for payment of liabilities of DICGCI and same would not be taxable as income in hands of assessee?



HELD:

- Assessee, a co-operative bank under liquidation, had borrowed money from DICGCI (subsidiary of RBI) for making payment to depositors and as per understanding with DICGCI, assessee was liable to make payment to DICGCI against amount recovered by it.
- Thus, there remains no ambiguity to fact that assessee had no right in impugned amount of interest income as same had been diverted at source by overriding title for payment to DICGCI and thus, amount of interest though received by assessee, did not belong to it.

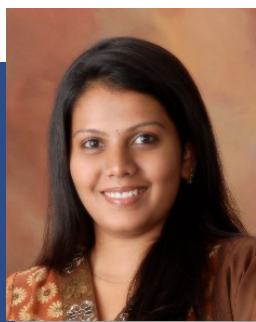




Due Dates for Dec 2021

Co-Authors: CA Vaijayanta Chaugule and Yash Kadam of Kunte & Chaugule

Sr.No	Particulars	Due Date
1	Due date for deposit of Tax deducted/collected for the month of November, 2021	07-12-2021
2	GSTR-8 (for the month of Nov, 2021)	10-12-2021
3	GSTR-7 (for the month of Nov, 2021)	10-12-2021
4	GSTR-1 (Nov, 2021) (who does not opt QRMP)	11-12-2021
5	IFF (Optional) (Nov,2021) (who opted QRMP)	13-12-2021
6	GSTR-6 (for the month of Nov, 2021)	13-12-2021
7	ROC Filing Form ADT-1 for Auditor Re-appointment	14-12-2021
8	ESI/PF for the month of Nov-21	15-12-2021
9	Advance tax of 3rd Instalment for FY2021-22	15-12-2021
10	TDS Certificate For The month of October	15-12-2021
11	Form no. 3BB	15-12-2021
12	GSTR-3B (for the month of Nov, 2021)	20-12-2021
13	GSTR-5 (for the month of Nov, 2021)	20-12-2021
14	GSTR-5A (for the month of Nov, 2021)	20-12-2021
15	ROC Filing Form 8(Annual Filling) For LLP	30-12-2021
16	Challan-cum-statement For The month of November	30-12-2021
17	Form No. 3CEAD	30-12-2021
18	GSTR-9 (for the FY 2020-21)	31-12-2021
19	GSTR-9C (for the FY 2020-21)	31-12-2021
20	Return of income for the assessment year 2021-22	31-12-2021
21	Professional Tax For the month of December	31-12-2021
22	ROC Filing Form AOC-4 for FY 2020-21	31-12-2021



Additional Guidelines for section 194-O, 206C(1H), 194Q of The Income Tax Act, 1961

Co-Authors: CA Vaijayanta Chaugule and CA Vaibhav Chaugule of Kunte & Chaugule

Section	Brief about Section
194-O	An e-commerce operator shall deduct income-tax at the rate of one per cent of the gross amount of sale of goods or provision of services or both, facilitated through its digital or electronic facility or platform.
206C(1H)	A seller receiving an amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year shall collect from the buyer, a sum equal to 0.1 per cent of the sale consideration exceeding fifty lakh rupees as income-tax.
194Q	It applies to any buyer who is responsible for paying any sum to any resident seller for purchase of any goods of the value or aggregate of value exceeding fifty lakh rupees in any previous year. The buyer, at the time of credit of such sum to the account of the seller or at the time of whichever is earlier, is required to deduct an amount equal to 0.1% of such sum exceeding fifty lakh rupees as income tax.

Sub-section (4) of section 194-O, sub-section (3) of section 194Q and sub-section (1-l) of section 206C of the Act empowers the Board (with the approval of the Central Government) to issue guidelines for the purpose of removing difficulties.

In addition to guidelines issued by the Board vide **circular no. 17 of 2020 dated 29.09.2020** and **circular no. 13 of 2021 dated 30.06.2021**, the Board has issued following new guidelines vide **Circular No. 20/2021, Dated: 25-11-2021**:

1) E-auction services carried out through electronic portal:

The provisions of section 194-O of the Act shall not apply in relation to e-auction activities carried out by e-auctioneers if all the following facts are satisfied:

- The e-auctioneer conducts e-auction services for its clients in its electronic portal and is responsible for the price discovery only which is reported to the client.
- The price so discovered through e-auction process is not necessarily the price at which the transaction takes place and it is up to the discretion of the client to accept the price or to directly negotiate with the counter-party.
- The transaction of purchase/sale takes place directly between the buyer and the seller party outside the electronic portal maintained by the e-auctioneer and price discovery only acts as the starting point for negotiation and conclusion of purchase/sale.
- The e-auctioneer is not responsible for facilitating the purchase and sale of goods for which e-auction was conducted on its electronic portal except to the extent of price discovery.
- Payments for the transactions are carried out directly between the buyer and the seller outside the electronic portal and the e-auctioneer does not have any information about the quantum and the schedule of payment which is decided mutually by the client and the counterparty.
- For payment made to e-auctioneer for providing, e-auction services, the client deducts tax under the relevant provisions of the Act other than section 194-O of the Act.

Further, it is clarified that the buyer and seller would still be liable to deduct/ collect tax as per' the provisions of section 194Q and 206C (1H) of the Act as the case may be.



2) Adjustment of various state levies and taxes other than GST

a) In case of Goods on which GST is levied:

- As per Para 4.3.2 of circular no. 13 of 2021 dated 30.06.2021, if GST component is indicated separately in the invoice, Tax is to be deducted on the amount without including such GST.
- Further in case of advance payment, the tax is to be deducted on the whole amount as it is not possible to identify that payment with GST component of the amount to be invoiced in future.

b) In case of Goods which are not within the purview of GST

- For Goods such as petroleum products, various levies like VAT, Excise duty, sales tax etc. are charged.
- While the treatment of GST component has been clarified in the circular no. 13 of 2021, the same is silent on other non-GST levies which have otherwise been subsumed and replaced by GST.
- As per new guidelines vide Circular No. 20/2021, Dated: 25-11-2021:
 - If the component of VAT/Sales tax/Excise duty/CST has been **indicated separately** in the invoice, then tax is to be deducted **on the amount without including such VAT/Sales tax/Excise duty/CST**.
 - In case of advance payment, the tax is to be deducted on the **whole amount** as it is not possible to identify that payment with VAT/Sales tax/Excise duty/CST component of the amount to be invoiced in future.
 - Furthermore, in case of purchase returns, the clarification as provided in Para 4.3.3 of circular no. 13 of 2021 shall also apply to purchase return relating to non GST products liable to VAT/excise duty/sales tax/ CST etc. i.e. Before purchase return happens, the tax must have already been deducted under section 194Q of the Act on that purchase, against this purchase return the money is refunded by the seller, then this tax deducted may be adjusted against the next purchase against the same seller. No adjustment is required if the purchase return is replaced by the goods by the seller as in that case the purchase on which tax was deducted under section 194Q of the Act has been completed with goods replaced.

3) Applicability of section 194Q of the Act in cases where exemption has been provided under section 206C (1A) of the Act:

- The provisions of section 194Q of the Act does not apply in respect to those transactions where tax is collectible under section 206C [except sub-section (1H) thereof] of the Act.
- Sub-section (1A) of section 206C of the Act provides that notwithstanding anything contained in sub-section (1) of the said section, no tax is to be collected in case of a buyer, who is a resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration to the effect that the goods (as referred to in sub-section (1)) are to be utilized for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.
- Since by virtue of sub-section (1A) of section 206C of the Act, the tax is not required to be collected for goods covered under sub-section (1) of the said section, it is hereby clarified that in such cases, the provisions of section 194Q of the Act will apply and the buyer shall be liable to deduct tax under the said section if the conditions specified therein are Fulfilled.

4) Applicability of the provisions of section 194Q in case of department of Government not being a public sector undertaking or corporation:

- As per the provisions of section 194Q, tax is to be deducted by a person, being a buyer, whose total sales, gross receipts or turnover from business carried on by that person exceed ten crore rupees during the financial year immediately preceding the financial year in which the goods are purchased by such person.



- Thus, for a person to be considered as a buyer for the purposes of section 194Q of the Act, following conditions are required to be fulfilled:
 - a) Such person shall be carrying out a business/ commercial activity,
 - b) The total sales, gross receipts or turnover from such business/ commercial activity shall be more than 10 crore during the financial year immediately preceding the Financial year in which goods are being purchased by such person.
- In case of any Department of the Government which is **not carrying out any business or commercial activity**, the primary requirement for being considered as a 'buyer' will not be fulfilled.
- Accordingly, such an organization will not be considered as 'buyer' for the purposes of section 194Q of the Act and will **not be liable** to deduct tax on the goods so purchased by them.
- However, if the said department is **carrying on a business/commercial activity**, the provision of section 194Q of the Act shall apply subject to the fulfillment of other conditions.
- It is further clarified that any other person, such as a Public sector Undertaking or corporation established under Central or State Act or any other such body, authority or entity, shall be required to comply with the provisions of section 194Q and tax shall be deducted accordingly.
- It is also clarified that for the purposes of section 194Q, Central Government or State Government shall not be considered as 'seller' and no tax is to be deducted by the buyer, in cases where any Department of Central or State Government are seller of goods.





GST Notifications

(Compiled by CA. Gangadhar V Haldikar)

● GST updates - Notifications

1. Tenure of the Anti-Profiteering Authority is extended by One Year. Earlier the Authority shall cease to exist after the expiry of four years from the date on which the Chairman enters upon his office now it has been extended by additional one year and **the authority will cease to exist after expiry of Five Years** from the date on which the Chairman enters upon his office.

The provision is effective from 30th Day of November, 2021. (However notification is issued as on 1st December 2021)

Notification No.37/2021 - Central Tax dated 1st December 2021.

2. Changes in GST rate of works Contracts Services with effect from 1st January, 2021:

Specified Works Contract services supplied to Governmental Authority or a Government Entity will not be eligible for concessional rate of GST i.e 12%. Such Specified works contract services supplied to Governmental Authority or a Government Entity will be taxable at 18% with effect from 1st January 2021.

Where,

“Governmental Authority” means an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with 90per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.

“Government Entity” means an authority or a board or any other body including a society, trust, corporation,

i) set up by an Act of Parliament or State Legislature; or

ii) established by any Government,

with 90per cent. or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.]

3. Exemptions in case of few services supplied to “Governmental Authority” or “Government Entity” withdrawn with effect form 1st January 2021 -

Exemption for following services supplied to “Governmental Authority” or “Government Entity” withdrawn with effect form 1st January, 2021

a) Pure services (excluding works contract service or other composite supplies involving supply of any goods) by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

b) Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.



4. With effect from 1st January, 2021, GST shall be paid by electronic commerce operator on supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.





Taxability of Plotted Development of Land in GST: Yaksha's Quiz

Girish Kamalakant Kulkarni
[C.A., LL.B. Gen]

Introduction: With various pronouncements of advance rulings declaring sale of plotted land to be chargeable to tax under GST, without much discussing about the rationale or further emanating aspects such as Time of Supply, Valuation etc., the tax payers are stupefied about the taxability of the transaction of plotted development. The questions revolving around the popular area are enigma such as Yaksha's Quiz from Hindu Epic, Mahabharata. In this article we will be discussing the various important aspects about taxability of 'Sale of Plotted Land in context with various provisions of GST Law. Please note that the article has limited applicability for transactions of land development and need not be conflated with various arrangements for construction of residential or commercial structures including complexes. So let's discuss various important questions pertaining to the Taxability of Plotted Development of Land.



1. Whether Sale of plotted land is Taxable under GST?

Sale of plot of land is by nature the transaction of sale of land after making it marketable and sellable in commercial market.

Normally when a huge tract of land is to be developed, expenditure has to be incurred for leveling of the land obtaining approvals preparation of roads compound walls drainage lines power connection etc., all these are commercially identified as development services. Schedule III to CGST Act covers the entry 'Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building' as neither supply of goods nor supply of services. Merely by making



alterations to the physical form of land e.g. leveling, fencing etc. the nature of the land does not change to any other goods/ service, it would still be considered as Land.

In the landmark judgment of **Anant Mills Vs. State of Gujarat AIR 1975 SC 1234**, the court while expanding the net of the word Land, stated that, ‘the word land includes not only the face of the earth but everything under or over it and has its legal signification on an indefinite extent upward and downward.

Importantly, 101st amendment to the Constitution of India has not amended Entry 49 which is Tax on Land & Buildings whereas there have been several amendments in the Constitution to effectively facilitate the implementation of GST e.g. introduction of Article 246A etc., so many entries were amended e.g. Entry 84 of Excise was confined to only six products now, Entry of ‘Entry Tax’ was abolished. This amply clarifies that there was no intention as of now to bring transactions involving land under the purview of GST. Also it is established constitutional principle that power to levy Stamp Duty and Registration is with State and hence it cannot be subject matter of tax under article 246A, there cannot be encroachment in the area of exclusive state domain entries such as ‘Immovable Property’ or ‘Duty on Electricity’. Alternatively also ‘Aspect Theory’ which is approved and upheld by Apex Court and various High courts, cannot be applied here for obvious reasons of no valuation mechanism being present to eliminate the domains which are having power to tax the said entries and hence levy fails as clarified by the **Apex Court in B, C. Srinivasa Setty's case [1981] 128 ITR 294 (SC)**

The Advance Ruling authorities of various states have taken contrary stands on the taxability of GST on sale of plotted development e.g. Gujarat AAR had earlier in case of **Shree Dipesh Anilkumar Naik [TS-401-AAR-2020-NT]** held that GST is applicable on sale of plot of land for which primary amenities such as, Drainage line, Waterline, Electricity line, Land levelling etc. are to be provided by the Applicant, as per the requirement of approved Plan Passing Authority (i.e. Jilla Panchayat). [Refer detailed discussion on this issue in video: <https://youtu.be/NxeRSQhincI>]

Whereas **Telangana AAR in case of TIF Integrated Industrial Parks Pvt. Ltd. [TS-537-AAR(TEL)-2021-GST]** held that if the Applicant sells the land after developing by way of erecting a civil structure or a building or a complex, then such supply is liable to tax under CGST/SGST Acts. However, AAR clarified that if land is sold without any development involving any civil structure or building or complex, such supply falls under paragraph 5 of Schedule III to Section 7(2) of CGST Act, 2017 and is exempt from tax.

Considering the limited applicability of Advance Ruling mechanism under GST very low reliance can be kept on any of these pronouncements further facts of each case may be entirely different while obliging to the contractual arrangements.

So eventually based on above points, it appears that there cannot be GST levy on Land whether plotted or not.

2. Whether development charges for development of plotted land are Taxable under GST?

If we closely observe the transaction of sale of developed plots of land, the development services are ancillary to the sale of land. In GST such a transaction would be considered as Composite supply where principle aspect would be ‘Land Sale’ and ‘Development Charges’ are considered as ancillary to the sale of land and hence it would take the form and color of ‘Land sale’ for the purpose of chargeability. Hence as the sale of land is not chargeable to tax similar to development charges are not chargeable to tax rather cannot be identified as a separate service to buyers.

The **Chennai Bench of Tribunal in case of Hallmark Infrastructure** held that Services tax cannot be levied on land development charges received in pursuant to the development of land when incurred before sale of land as the same are considered as services to self (Self Services) and there is no service provider-recipient



relationship. This is similar to something where for selling certain goods at a shop, the shop keeper arranges the same in the shop in such a manner that it attracts the customer may be he will incur some expenses for that e.g. decoration, display expenses, lighting arrangement, advertisement costs etc. These all are incurred in connection with sale of those goods and cannot be said to be provided to customer as a separate services. Similarly development of land into plots is critical and essential for the plots to be identified as marketable plots and not to be considered as separate service though it is collected separately from the customers or accounted separately..

One may also take an extreme stand that for composite supply to come in place, all the supplies forming part of the said composite supply should be taxable and land being 'neither supply of goods nor supply of services' would not become eligible to be treated as composite supply in case of plotted development. This theory is supported by many experts but to our knowledge, the interpretation of 'Composite supply' where the words used are 'one or more taxable supplies' also includes exempt supply (Exemption presumes taxability first) and hence 'no supply transactions (Schedule III)' along with other supplies as ancillary should also be getting eligible to be called as composite supply.

In case of ***Torrent Power Ltd. Vs. Union of India (2020) Hon. Gujarat High Court*** held that principal supply of electricity transmission and distribution (which is not primarily subject to GST Levy and hence not a taxable supply) cannot be effected without electric lines, plant and machinery and these services are Composite Supply. Hence same rationale of 'Composite Supply' will be applicable to transaction of plotted development.

3. Whether sale of plotted land by developer under power of attorney be taxable?

Considering the discussion in point number 1 above, sale of plotted land will be outside purview of GST, irrespective of the fact that whether the land owner sales the same or under a power of attorney the developer sales it. There may be complex arrangement between a land owner and developer to develop the land such as revenue sharing arrangement etc. in various ratios (e.g. Land owner 70% & land developer 30%). Ultimately it's nothing but sale of land i.e. plotted/ un-plotted, sale by owner, sale by developer under power of attorney would not make any difference to our knowledge and understanding.

4. Whether development rights for development of plotted land are Taxable under GST?

One may take a stand that when developer is developing the land the development rights are transferred from owner to developer and hence the same is taxable as **NN 4, 5 & 6/2019 CTR** also talks about development charges taxability its classification, Time of Supply & Value of Supply.

A very clear observation was made by ***Hon. Bombay High Court in the case of Chheda Housing Development Corporation Vs. Bibijan Shaikh Farid & ors.*** Stating that the development rights are nothing but benefits arising out of land and therefore immovable property, similar meaning can be construed from Transfer of Property Act, 1882 & General Clauses Act, 1897. Also similar ratio decidendi can be inferred from ***DLF Commercial Projects Corporation decided by Chandigadh CESTAT***

Also another thought process can be applied to some specific scenarios of development agreements especially when the land is an ancestral property and the owner or joint owners are getting it developed as they want to liquidate the assets they have received as inheritance. In such a scenario, which is commonly observed at many cases in practice, the activities performed by transferring the rights to develop the land into plotted area by landowners cannot be said to have performed in the course of furtherance of business. Hence cannot be perceived as supply as per the provisions of CGST Act, 2017. Similar stand was taken in one of the wealth tax matter in case of Devineni Avinash decided by Hon AP High Court.



To all above points one may cross argue & challenge by saying that the land and development rights as per above judgments may be considered as immovable property but in fact the Schedule III speaks about land and not immovable property as such. This stand may be correct as per some experts but to cross argue and respond to this one may say that, fundamentally using or considering Schedule III only, to be the exclusive domain for transactions on which GST not applicable, is not an appropriate way of interpreting the GST Law, it is just like a list emerging out of wisdom of parliament and state to compile a list of transaction to which GST cannot be made applicable. On the contrary let me put it this way that even if Land would not have been included that does not create a right in itself to tax GST on land so Schedule III is just guidance and exclusively says that it's not supply of goods or services in a way, one example is high seas sale which was not earlier considered in Schedule III, this did not mean that the same was taxable earlier but now by including the same, it is expressly kept out, another example could be Remuneration to Partner, though it is neither supply of goods not supply of services and still not covered by Schedule III.

So in a nutshell, if development rights are considered as immovable property, but merely because immovable property is not identified by schedule III as a separate entry and the word used is land and hence to be taxed is not logical at all.

5. Whether GST is payable on the portion of Revenue shared to Land Owners by the developer in agreed ratio?

For GST to charge there has to be a taxable supply. In this case identification of rendition of service is important. In the typical revenue sharing transaction, the land owner would make land available for development, the developer will make the land marketable and as the sale affects the revenue generated is shared between the two in the agreed ratio. Hence, to tax the portion of revenue which is received by the land owner is unreasonable as where is the rendition of the services in this case?

In **Marmagao Port Turst Vs. CCUs (2017) 48STR 69**, the Mumbai bench of the Tribunal has held that '*if the agreement is read as whole it is clearly comes out that the assessee and SWPL were jointly undertaking a common enterprise the revenue of which was shared between the two. It further says that there is no service rendered by the appellant and the money flow to the assessee from SWPL under the nomenclature of royalty is not consideration for rendition of service but in fact represents the appellants share of revenue arising out of the joint venture being carries on by the assessee and SWPL*'.

Applying similar precedential principles here, there is no service which is rendered / supplied. This is also supported by **Cricket Club of India Vs. Commissioner of ST (2015) 40 STR 973**, where Mumbai Bench of the tribunals states that, 'mere flow of money from one person to another cannot be considered as consideration agreed upon for any specific activity so as to constitute a service. Even for a time being it is considered that there is service element involved, there is no the mechanism to value the said service.

Interestingly, when share of something which was not chargeable to tax if further shared will logically also take the character of that non-chargeability. In **Apollo Hospitals Vs. CCE (2018) TIOL 2174**, the tribunal held that the portion of fees collected by the hospital and retained towards collection charges or facilitation fees is also in the nature of health care services and not liable to tax.

Hence share in revenue by venture/ developer with land owner, in Sale of plotted land which is not chargeable to tax, will also take color of the transaction of Sale of Land and become not taxable.



6. Can similar view be taken in case of area sharing arrangement for plotted development of land?

Also in area sharing, in case of plotted development of land, what developer actually receiving is not just the development right but also his share in area along with all the development rights, which effectively means the ownerships of the land owner is getting diluted to the extent of developers share in land, hence strictly in lieu of land ownership dilution he is getting plotted land for his share so there is exchange transaction both of which sides are not chargeable to tax as discussed in all above points. Even if we consider the same to be taxable for a moment, **there is no mechanism for valuation because NN 4/2018 CTR or NN 4/5/6 2019 CTR have a reference to construction area which is not the case in development plots** as there is no construction.

Conclusion:

As this is a very popular and commonly used business model arrangement across the country, the abstruseness around this area would not last long and the dubiety of taxability of this transaction would soon see some coherence from the courts of law. The views expressed though may be solely dependent on various principles of interpretation and would be more of an exemplar based on settled principles of earlier laws, it would be really interesting to see how this affair is dealt in by courts in times to come. Nevertheless such pricey transactions & not attracting tax would be apprehended by tax authorities for sure.



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