

Study Circle Meeting on Works Contract Under GST

Bangalore Branch of
SIRC of ICAI

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CA Venugopal Gella
Venu and Vinay
Chartered Accountants

AGENDA

- Basic Provisions & Definitions
- GST Rates for Works Contracts
- Changes in Rates
- Time of Supply
- Reverse charge Mechanism for Government Services
- Exemption
- Input Tax Credit
- Tax Planning
- Accounts & Records

Basic Provision

Works Contract – Sec 2(119)

“Works Contract” means

- a contract for building,
- construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of **any immovable property**
- wherein **transfer of property in goods** (whether as goods or in some other form) is involved in the execution of such contract

Unlike VAT and Service Tax Regime, Works Contract is restricted to Immovable Property, whereas in the earlier regime it was for both Movable and Immovable Property.

Immovable Property

The immovable property has **not been defined** under the GST Law.

- Section 3 (26) of the General Clause Act, 1897
 - “**immovable property**” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.”
- Section 2 (6) of the Registration Act, 1908
 - “**Immovable Property**” includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass;”
- Section 3 of the Transfer of Property Act
 - “**immoveable property**” does not include standing timber, growing crops or grass;”
Under the interpretation clause it is also interpreted for “attached to the earth” means—
 - (a) rooted in the earth, as in the case of trees and shrubs;
 - (b) imbedded in the earth, as in the case of walls or buildings; or
 - (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

Nature of Supply

- 2(30) “composite supply” means
 - a supply made by a taxable person to a recipient
 - consisting of two or more taxable supplies of goods or services or both, or
 - any combination thereof, which are naturally bundled and
 - supplied in conjunction with each other in the ordinary course of business,
 - one of which is a principal supply
- Para 6 (a) of **Schedule II** to the CGST Act, 2017,
 - works contracts as defined in section 2(119) of the CGST Act, 2017 shall be treated as a **supply of services**.

Works Contract Services VS Pure Labour contract services

Labour and other services without any supply of goods

Overview of Works Contract

9954 – Construction Services

- 99541 – Construction services of buildings
- 99542 – General construction services of civil engineering works
- 99543 – site preparation services
- 99544 – assembly and erection of pre-fabricated constructions
- 99545 – special trade construction services
- 99546 – installation services
- 99547 – building completion and finishing services

When do we raise the invoice

Continuous Supply of Service – Sec 2(33)

“Continuous supply of services” means

- a supply of services which is provided, or
- agreed to be provided,
- continuously or on **recurrent basis**,
- under a **contract**,
- for a **period exceeding three months** with periodic payment obligations and
- includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify

Invoice – Sec 31(5)

- In case of continuous supply of services,
 - where the **due date of payment** is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;
 - where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service **receives the payment**;
 - where the payment is linked to the **completion of an event**, the invoice shall be issued on or before the date of completion of that event.

Credit Note – Sec 34

- Issued when:
 - **Tax Invoice** has been issued **and**
 - taxable value or tax charged **exceed** from what is payable **or**
 - where the goods supplied are **returned** by the recipient **or**
 - where goods or services or both supplied are found to be **deficient**
- **Time Limit:** Last Date for taking the benefit
 - *September Month GSTR-3B*
 - *Actual Date of filing of Annual return*
whichever is earlier.
- **Benefit not Available:**
 - If the incidence of tax and interest on such supply has been passed on to any other person

Understanding Time Limit

Sec 34
CN

Which ever is earlier

GSTR-3B
Sep Month

Filing Date
of AR

Debit Note

- Issued when:
 - One or more **Tax Invoices** have been issued **and**
 - taxable value or tax charged in that tax invoice is **found to be less** than the taxable value or tax payable in respect of such supply **or**
- Time Limit: No time limit
- Debit Note include a supplementary invoice

Summary

Section	Rule	Document	Description
31(2)	46	Tax Invoice	when payment become due/ on completion of event
31(3)(d)	50	Receipt Voucher	where advance is received
31(3)(e)	51	Refund Voucher	Where advance is refunded
34	53 (1A)	Credit/ Debit Notes	

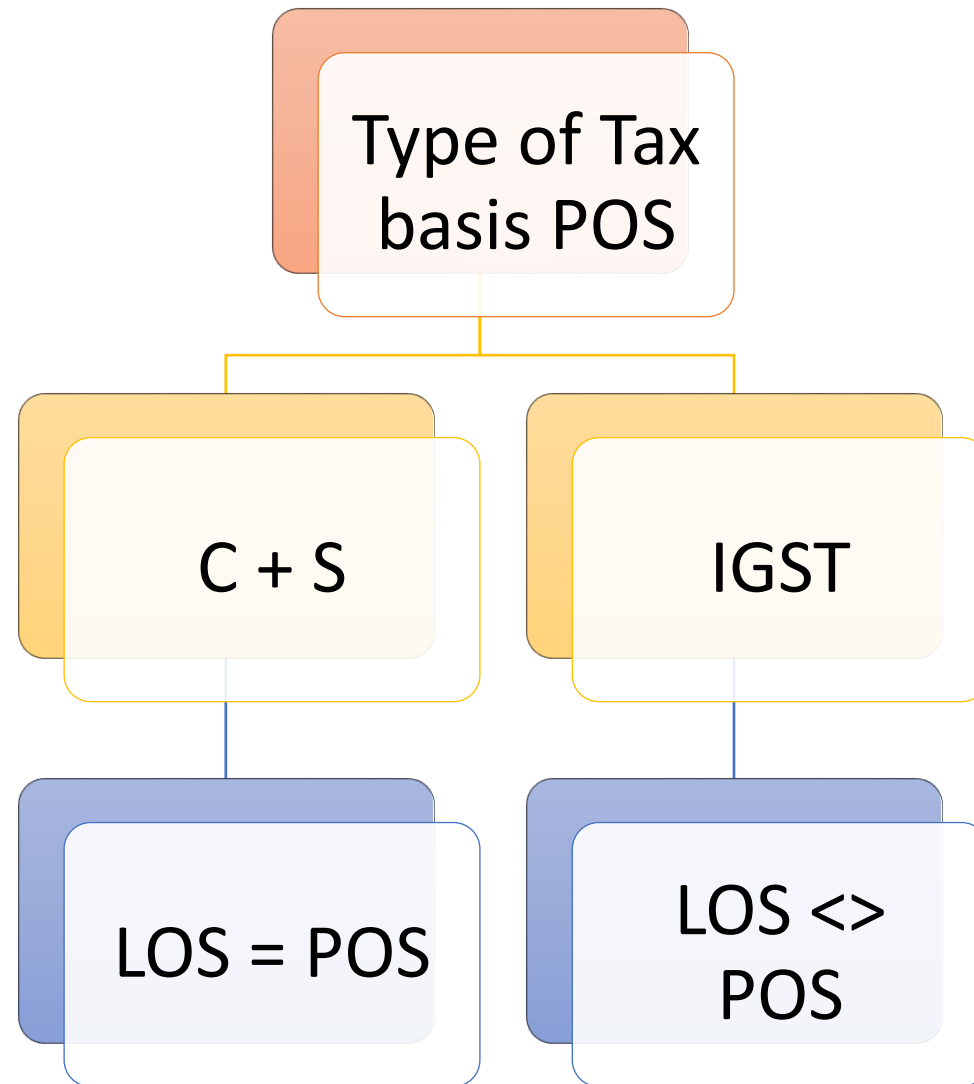
Note:

1. Project wise details
2. Demand Register

Type of Tax

C+S / I

General Rule



Place of Supply

Section 12(3)(a)

- **directly** in relation to an **immovable property**, **including** services provided by *architects, interior decorators, surveyors, engineers and other related experts or estate agents*, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work shall be the **location** at which the **immovable property** or boat or vessel, as the case may be, is **located or intended to be located**

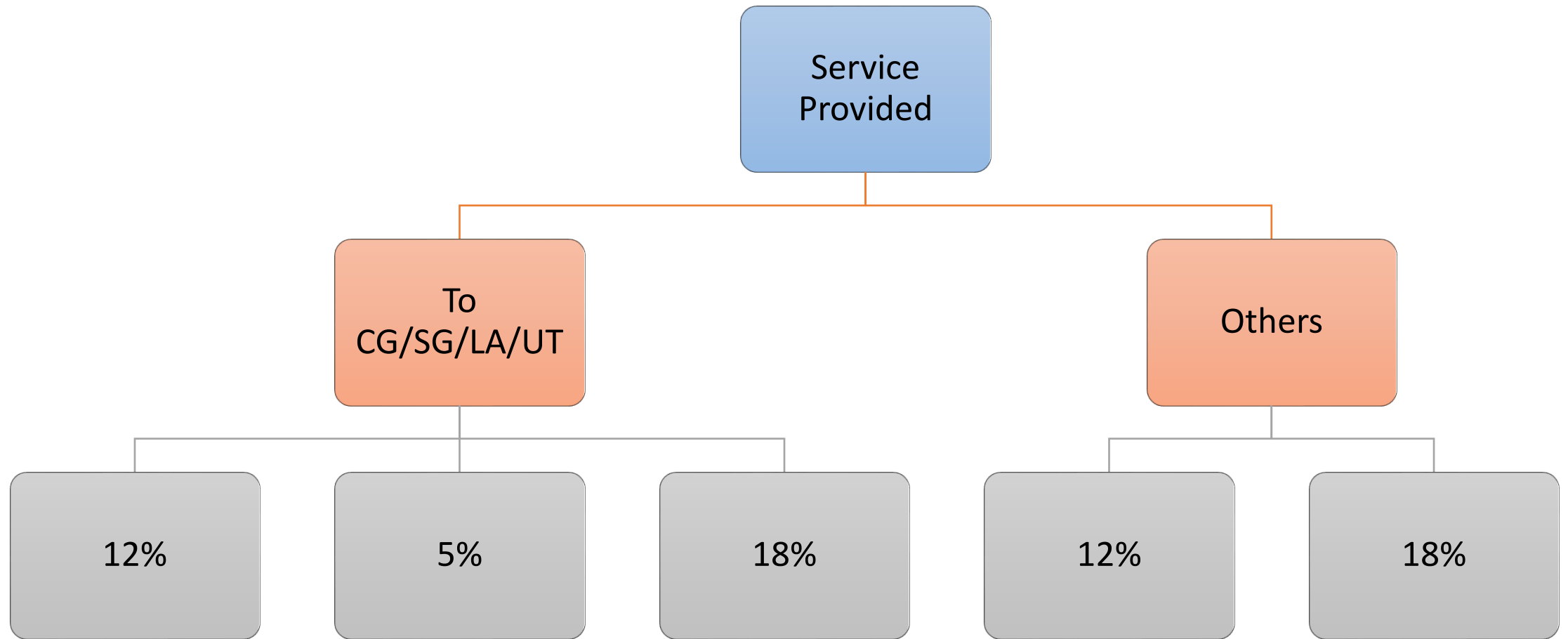
Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient

Section 13(4)

- The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, **shall be the place where the immovable property is located or intended to be located**

GST Rates on Works Contract Service

GST Rates on Works Contract Service



To Government

GST Rates

Entry	Nature of Service	Rate	Change
3(iii)	<p>Composite supply of works contract....., supplied to the CG / SG / UT / LA / GA / GE by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -</p> <p>a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);</p> <p>b) canal, dam or other irrigation works;</p> <p>c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal</p>	<p>CG/SG/UT/LA 12%</p> <p>GA / GE – 18%</p>	<p>With effect from 01/01/2022, categories of</p> <ul style="list-style-type: none"> • Governmental Authority and • Government Entity <p>has been picked out of 12% category and moved to 18% category,</p> <p>resulting into unwanted and unplanned revenue outflow of 6% of balance work in hand by the contractors</p>

GST Rates

Entry	Nature of Service	
3(vi)	Composite supply of works contract other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above provided to the CG/SG/UT/LA/GA/GE by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –	CG/SG/UT/LA 12%
	(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;	GA/GE – 12%
	(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or	
	(c) a residential complex meant predominantly for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017	

GST Rates

Entry	Nature of Service	Rate
3 (vii)	Composite supply of works contract, involving predominantly earth work (that is, constituting more than 75per cent. of the value of the works contract) provided to the CG/SG/UT/LA/ GA/GE	CG/SG/UT/LA 5% GA/GE 18%
3(ix)	Composite supply of works contract provided by a sub-contractor to the main contractor providing services specified in item (iii) or item (vi) above to the CG/SG/UT/LA/ GE/GA	CG/SG/UT/LA 12% GA/GE 18%
3(x)	Composite supply of works contract provided by a sub-contractor to the main contractor providing services specified in item (vii) above to CG/SG/UT/LA/ GE/GA	CG/SG/UT/LA 5% GA/GE 18%

Amendment in GST Rates

- Reduced GST Rate shall not be available when provided to GA/GE w.e.f 1st January, 2022
 - GST @ 18% is leviable from 1st January, 2022
 - Accordingly, condition *“Provided that where the services are supplied to a GE, they should have been procured by the said entity in relation to a work entrusted to it by the CG/SG/UT/LA as the case may be”* as stated in sl. no. 3(iii), (vi), (vii), (ix) & (x) has been removed
- N. No. 15/2021-CTR dated 18th November, 2021
 - There is no change in GST Rate for the services provided to other than CG/SG/UT/LA/GA/GE. GST Rate will be 18%.

Key Definitions

Government

Sec 2(53) of CGST Act, 'Government' means the Central Government.

- In the same manner, Section 2(53) of the State/ UT GST enactment(s) define 'Government' to mean Government of the respective State/UT.
- CG/SG/UT is not defined in the Act through FAQ clarifies as
 - **'Central Government'** means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President
 - **'State Government'** means the Governor or the officers subordinate to him who exercise the executive powers of the State vested in the Governor and in the name of the Governor

Local Authority

Local authority means:

- a “Panchayat” as defined in clause (d) of article 243 of the Constitution;
- a “Municipality” as defined in clause (e) of article 243P of the Constitution;
- a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund
- a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- a Development Board constituted under article 371 of the Constitution; or
- a Regional Council constituted under article 371A of the Constitution;

Government Authority/ Entity

- **Governmental Authority** means an authority or a board or any other body, -
 - set up by an Act of Parliament or a State Legislature; or
 - established by any Government, with 90 per cent. or more participation by way of equity or control, **to carry out any function entrusted to a Municipality under article 243 W of the Constitution or to a Panchayat under article 243 G of the Constitution**
- **Government Entity** means an authority or a board or any other body including a society, trust, corporation,-
 - set up by an Act of Parliament or State Legislature; or
 - 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.**

Earth Work

The term “Earth Work ” has not been defined under any GST provisions.

- **Webster** Dictionary defines Earth Work as an embankment or construction made of earth specially one used as a **field fortification**.
- **Collins** dictionary defines Earth Work as - **excavation** of earth as in engineering construction; a fortification made of earth.
- **Wikipedia** defines Earth Work as - Earth work are engineering works through the **processing of parts of earth surface** involving quantities of soil or unformed rocks.

With the above definitions, earthworks include

the removal, moving or adding of large quantities of soil or rock from a particular area to another. They are done in order to make an area of suitable height and level for a specific purpose.

Other Works Contract Services

GST Rates - 3(iv) – 12%

Nature of Service

Composite supply of works contract other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above supplied by way of **construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-**

- (a) a **road, bridge, tunnel**, or terminal for road transportation for use by general public;
- (b) a civil structure or any other original works pertaining to a scheme under **Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana**;
- (c) a civil structure or any other original works pertaining to the —In-situ **redevelopment of existing slums** using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban)
- (d) a civil structure or any other original works pertaining to the —Beneficiary led individual house construction / enhancement under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;
- (da) a civil structure or any other original works pertaining to the —**Economically Weaker Section (EWS)** houses constructed under the Affordable Housing in partnership by State or UT or LA or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban)

GST Rates - 3(iv) – 12%

Nature of Service

(db) a civil structure or any other original works pertaining to the —houses constructed or acquired under the **Credit Linked Subsidy Scheme** for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2) under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);

(e) a pollution control or effluent treatment plant, except located as a part of a factory; or

(f) a structure meant for **funeral, burial or cremation of deceased**

Provided that during the period beginning from the 14th June, 2021 and ending with the 30th September, 2021, the central tax on service of description as specified in clause (f), shall, irrespective of rate specified in column (4), be levied at the rate of 2.5 per cent.

(g) a building owned by an entity **registered under section 12AA** of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralized cooking or distribution, for **mid-day meals** under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.

GST Rates - 3(v) – 12%

Nature of Service

Composite supply of works contract other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above supplied by way of **construction, erection, commissioning, or installation of original works pertaining to,-**

(a) railways, including monorail and metro;

(b) a single residential unit otherwise than as a part of a residential complex;

(c) low-cost houses up to a carpet area of 60 square meters per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

GST Rates - 3(v) – 12%

Nature of Service

(d) **low cost houses** up to a carpet area of 60 square meters per house in a housing project approved by the competent authority under-

- (1) the —Affordable Housing in Partnership component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;
- (2) any housing scheme of a State Government;

(da) low-cost houses up to a carpet area of 60 square meters per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017;

(e) **post-harvest storage infrastructure** for agricultural produce including a cold storage for such purposes; or

(f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.

GST Rates

Entry	Nature of Service	Rate
3(v)	Composite supply of works contract, other than.....above, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of affordable residential apartments covered by sub- clause (a) of clause (xvi) of paragraph 4 below, in a project which commences on or after 1st April, 2019 , or in an ongoing project in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if), as the case may be, in the manner prescribed therein	12%
3(viii)	Composite supply of works contract and associated services, in respect of offshore works contract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles from the nearest point of the appropriate base line	12%
3(xii)	Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above.	18%

Sub Contracting Rates

(ix) - Composite supply of works contract as defined in clause (119) of section 2

- provided by a **sub-contractor to the main contractor** providing services specified in item (iii) or item (vi) above
- to the Central Government, State Government, Union territory or a local authority
- Rate - 6%

Summary

Serial No.	CG/SG/UT/LA	GE/GA	Others
3(iii)	12%	18%	18%
3(iv)	12%	12%	12%
3(v)	12%	12%	12%
3(vi)	12%	18%	18%
3(vii)	5%	18%	18%
3(viii)	12%	12%	12%
3(ix)	12%	18%	18%
3(x)	5%	18%	18%
Any others	18%	18%	18%

Too much confusion...?

Any Simplified Rate

47th GST Council Recommendation

Serial No.	Service Description	Existing Rate	Proposed Rate
3(iii) 3(ix)	Works contract supplied to Central and State Government, Local Authorities for historical monuments , canals, pipelines, plant for water supply, educational institutions, hospitals etc., & sub-contractor thereof	12%	18%
3(iv)(a) 3(iv)(e) 3(iv)(f) 3(v)(a) 3(ix)	Works contract for roads, bridges, railways, metro, effluent treatment plant, crematorium etc. (to any person)	12%	18%
3(vii) 3(x)	Works contract supplied to Central and State Government, Union territories and Local authorities involving predominantly earthwork and sub-contract thereof	5%	12%

Handling change in Tax Rates

Time of Supply – 13(2)

- Earliest of the following dates:—
 - Date of issue of invoice;
 - the date of provision of service, if the invoice is not issued within the period prescribed under 5 section 31; or
 - the date of receipt of payment

Time of Supply with respect to Rate Changes – S14

Supply is completed before the change in rate of tax

Invoice issued before date of change in tax rate	Payment received before date of change in tax rate	Time of supply	Applicable rate of tax
No	No	earliest of the date of invoice or payment	New rate of tax
Yes	No	Date of issue of invoice	Old tax rate
No	Yes	Date of receipt of payment	Old tax rate

Time of Supply with respect to Rate Changes

- Supply is completed after the change in rate of tax

Invoice issued before date of change in tax rate of change in tax rate	Payment received before date of change in tax rate	Time of supply	Applicable rate of tax
Yes	Yes	earliest of the date of invoice or payment	Old rate of tax
Yes	No	Date of receipt of payment	New rate of tax
No	Yes	Date of issue of invoice	New rate of tax

Issues

Likely issues

1. Accounting and reporting basis receipt of money
2. TDS Reported by government basis RA Bill
3. Not reported transactions
 - ✓ Report Now with payment of interest
 - ✓ Report now with higher rate of taxes
4. Collection of differential taxes in case of all inclusive contracts / Tenders
5. Documentation for lower rate of taxes
6. Treatment of mobilisation advances

RCM

Government Service

❖ Supplier:

- Central Government,
- State Government,
- Union territory or
- Local authority

❖ Recipient: Business Entity

❖ Scope of Service: All Services excluding

- Services by the Department of Posts (speed post, express parcel post, life insurance, and agency services) provided to a person other than Govt.
- Services in relation to an aircraft or a vessel
- Transport of goods or passengers.

❖ GST Rate : 18%

❖ ITC: Available

Government Service

❖ Supplier:

- Central Government,
- State Government,
- Union territory or
- Local authority

❖ Recipient: Registered Person

❖ Scope of Service: Renting of Immovable Property

❖ GST Rate : 18%

❖ ITC: Available

Issues

- Royalty payments
- Licence Registrations & Renewals
- Permit Charges
- Deductions in bill / withhold of EMD under Liquidated Damages

Exemption

Construction Exemption – N. No. 12/2017

Entr y	Chapter	Description
3	Chapter 99	Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the CG/SG/UT/LA/GE/GA by way of any activity in relation to any function entrusted to a <ul style="list-style-type: none">• Panchayat under article 243G of the Constitution or• Municipality under article 243W of the Constitution
3A	Chapter 99	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 provided to the CG/SG/UT/LA/GE/GA by way of any activity in relation to any function entrusted to a <ul style="list-style-type: none">• Panchayat under article 243G of the Constitution• Municipality under article 243W of the Constitution.

Construction Exemption – N. No. 12/2017

Entry	Chapter	Description
10	Heading 9954	Services provided by way of pure labour contracts of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any other original works pertaining to the beneficiary-led individual house construction or enhancement under the Housing for All (Urban) Mission or Pradhan Mantri Awas Yojana
11	Heading 9954	Services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex
62	Heading 9991or Heading 9997	Union territory or local authority by way of tolerating non - performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Central Government, State Government, Union territory or local authority under such contract.

Restriction on Input Tax Credit

Sec 17(5)- Blocked Credits



Motor vehicles and conveyances, rent-a-cab



Food and beverages



Penalty u/s 74, 129 and 130



Non Resident taxable person



Goods lost, stolen, destroyed, written off etc.



Construction and works contract



Personal Consumption



Life insurance

ITC: Works Contract & Construction

Works contract services when supplied for **construction** of immovable property (**other than plant and machinery**)

Goods or services received for **construction** of immovable property (other than **plant and machinery**)

Except: where such supply is for further supply of works contract service

Construction includes re-construction, renovation, additions or alterations or repairs, to the extent of **capitalisation**, to the said immovable property

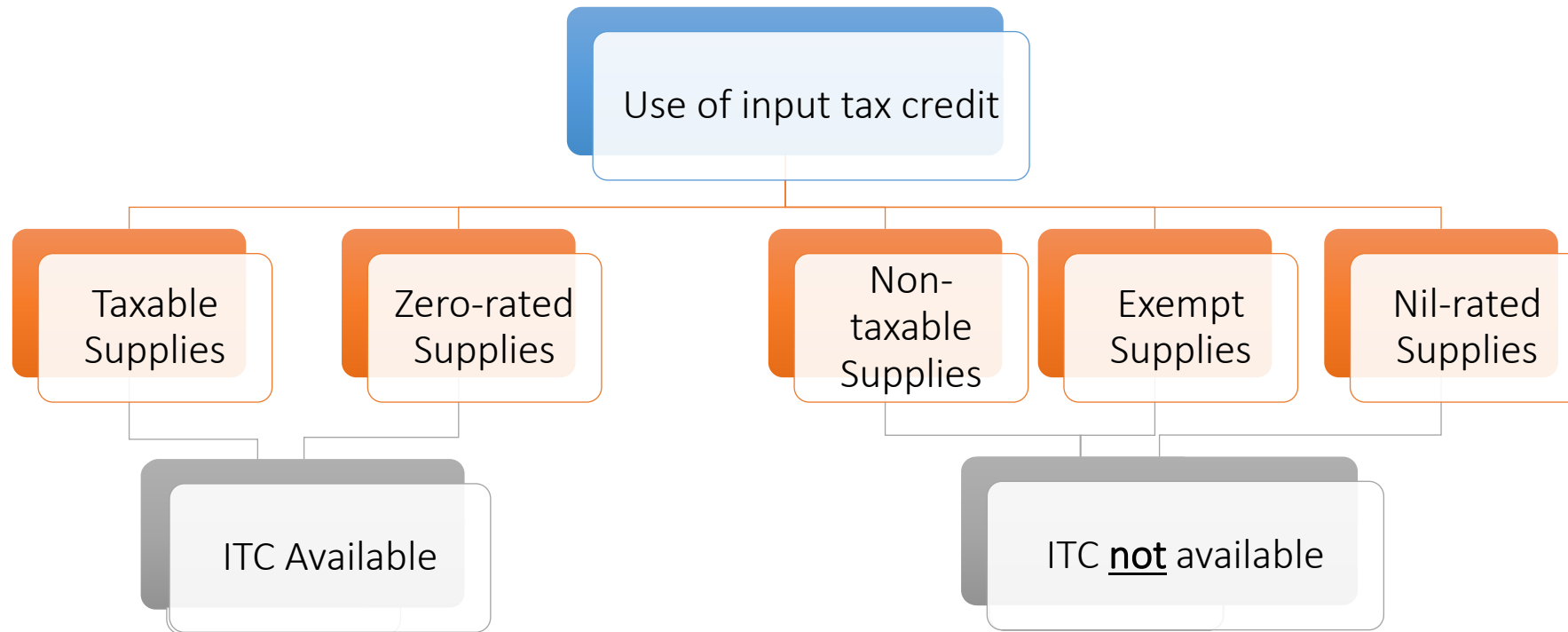
If it is treated as **revenue expenditure**, credit is allowable.

Explanation.—“plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are **used for making outward supply of goods or services or both** and **includes** such foundation and structural supports but **excludes**— (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises

Partial usage

Taxable and Exempt Rule 42 n 43

ITC Available on the Basis of use



Note: Attribution of ITC to be made as per the manner prescribed in the ITC Rules

Motor Vehicles

ITC: Motor Vehicle, Vessels or Aircraft

Categories where **no ITC Available** subject to exceptions

- Motor vehicles for **transportation of persons** \leq seating capacity 13 persons including drivers [**Specified Motor Vehicle**]
- Vessel & Aircraft
- Services of general insurance, servicing, repaid & maintenance relating to motor vehicle, vessels or aircrafts
- Leasing, renting or hiring of motor vehicles, vessels or aircrafts

ITC: Motor Vehicle

- ITC on Specified Motor Vehicles for transportation of persons admissible when used for the making following taxable supplies
 - further supply of such motor vehicles; or
 - transportation of passengers; or
 - imparting training on driving such motor vehicles;
- **Sequitur to the above provision – ITC Available** in the following cases:
 - Motor Vehicle other than Specified Motor Vehicle i.e. having **seating capacity > 13 persons (including driver)**
 - Anything that is motor vehicle under sec 2(76) of CGST Act read with sec 2(28) of MV Act – **Blanket restriction of conveyance is general is removed**
 - Motor Vehicle for **transportation of goods** in all cases
 - **Special purpose design Vehicles**

ITC: Insurance, repair or maintenance

ITC on services of general insurance, servicing, repair and maintenance specifically in so far as they relate to motor vehicles, vessels or aircraft referred above is disallowed

Sequitur to the above provision – ITC Available in the following cases:

- Motor Vehicle/Aircraft/Vessels is used for the **prescribed purposes, or**
- Received by the person engaged in the **manufacture** of such motor vehicles, vessels or aircraft; or
- Received by the person engaged in the **supply of general insurance services** in respect of such motor vehicles, vessels or aircraft insured by him;

Accounts & Records

Accounts & Records

Every Registered Person shall maintain

- Inward and outward supply of goods or services or both; (Sale/Purchase)
- Stock of goods;
- Input tax credit availed;
- Output tax payable and paid;
- supplies attracting payment of tax on reverse charge
- Stock in respect of goods received and supplied by him
- Separate account of **advances received**, paid and adjustments made thereto.
- **Names and complete addresses of his suppliers and customers**
- The complete address of the premises where goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein

Additional Records for WCT

Every registered person executing works contract shall keep separate accounts for works contract showing—

- the names and addresses of the persons **on whose behalf** the works contract is executed;
- description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
- description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;
- the details of payment received in respect of each works contract; and
- the names and addresses of suppliers from whom he received goods or services

Thank You

For Clarifications, mail to
venu@vnv.ca



key Take aways

- Points to note
 - Multiple services Types multiple rates at differential point in time
 - Fewer Exemptions
 - Miss out on RCM Payments
 - Timely invoicing basis work completion
 - Proper Record keeping and documentation