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GST Implications on Construction of Commercial Immovable Property & Input Tax Credit (ITC)

The Goods and Services Tax (GST) framework has transformed taxation in commercial real estate transactions in India. This article examines GST's impact on construction and sale of commercial properties, focusing on taxability, applicable rates, and Input Tax Credit (ITC) provisions. The article further explores tax computation methods, and ITC eligibility for property-related expenses, offering practical insights into regulatory compliance and cost-saving strategies. By comprehending these aspects, stakeholders

can make informed decisions, minimize unnecessary tax costs, and maximize financial benefits in commercial real estate transactions under the GST regime.

The introduction of the Goods and Services Tax (GST) has restructured the taxation system for the construction and sale of commercial properties in India. Understanding GST provisions is crucial for businesses, developers, and investors to comply with tax regulations while optimizing financial planning. GST applicability depends on factors such as the construction phase, the nature of the real estate project, and whether the property is sold, rented, or constructed for self-use.

Additionally, ITC plays a vital role in determining the overall tax cost, but its availability is subject to specific restrictions, particularly under Section 17(5)(d), which blocks ITC on immovable property constructed for own use or rental purposes.

This article provides an in-depth analysis of GST liability on the construction of commercial immovable property, the availability and applicability of ITC, and their practical implications for commercial real estate stakeholders, offering insights to help them navigate tax complexities effectively.

GST Liability on Construction of Commercial Immovable Property

GST rates on commercial real estate transactions depend on whether the property is under construction or completed. If a commercial

property is sold before obtaining the Completion Certificate (CC) or Occupancy Certificate (OC), GST is applicable. However, once the CC/OC is obtained, the sale is treated as an immovable property transaction, which is exempt from GST.

Tax Rates and Applicability

Particulars	GST Rate	Relevant Section / Notification	Remarks
Construction of commercial apartments [Shops, Godowns, Offices Etc.] in a Residential Real Estate Project (RREP)*, which commences on or after 01-04-2019 or in an ongoing project in respect of which the promoter has opted for new rates effective from 01-04-2019	5% (Without ITC)	Section 9 r/w Notification No. 03/2019-CT (Rate)	GST applies if sold before obtaining the Completion Certificate (CC).
Construction of commercial apartments [Shops, Godowns, Offices Etc.] in a Real Estate Project (REP) other than Residential Real Estate Project (RREP) or in an ongoing project in respect of which the promoter has opted for old rates.	12% (With ITC)	Notification No. 03/2019-Central Tax (Rate)	GST applies if sold before obtaining the Completion Certificate (CC).

Particulars	GST Rate	Relevant Section / Notification	Remarks
Sale of completed commercial property (after Occupancy Certificate/Completion Certificate)	Not taxable	Schedule III, Entry 5	Sale of immovable property is outside GST scope.
Renting of commercial property	18%	Section 7(1)(a) & Section 7(1A) r/w Schedule II, Entry 2	Renting of commercial property is treated as a supply of services.
Self-construction of commercial property for own use	Not taxable	Section 7 r/w Schedule III	No GST applies as there is no "supply". However, ITC is restricted under Section 17(5) (d).

[*RESIDENTIAL REAL ESTATE PROJECT: "Residential Real Estate Project" means a "Real Estate Project" in which the carpet area of the commercial apartments is not more than 15 percent of the total carpet area of all the apartments in the project]



“ If repair & maintenance expenses are treated as revenue expenses (i.e., recorded in the Profit & Loss account and not capitalized in the books), ITC is allowed under Section 16 of CGST Act. ”

GST on Sale of Commercial Immovable Property – Taxable Value Computation

GST applies only if the sale occurs before obtaining the completion certificate. The taxable value is based on the consideration amount, with land value deduction at a standard rate of $1/3^{\text{rd}}$ of the total sale price, as per Notification No. 11/2017-CT (Rate). Thus, GST is applied on $2/3^{\text{rd}}$ of the total sale value.

GST Rate & Calculation Formula

Particulars	GST Rate	Taxable Value	GST Calculation
Sale of Commercial Apartment in Residential Real Estate Project (RREP) (New Scheme)	7.5% (Without ITC)	$2/3^{\text{rd}}$ of Total Sale Value	$\text{GST} = (\text{Total Sale Value} \times 2/3) \times 7.5\%$
Sale of Commercial Apartment in Real Estate Project (REP) (Old Scheme)	18% (With ITC)	$2/3^{\text{rd}}$ of Total Sale Value	$\text{GST} = (\text{Total Sale Value} \times 2/3) \times 18\%$
Sale of completed commercial property (after CC/OC)	Not taxable	Not applicable	No GST applies

Example Calculation

- Total Sale Price of a Commercial Unit = ₹1,00,00,000
- Land Deduction ($1/3^{\text{rd}}$ of Total Price) = ₹33,33,333
- Taxable Value ($2/3^{\text{rd}}$ of Total Price) = ₹66,66,667

GST Payable

- If under 7.5% GST (RREP): ₹66,66,667 × 7.5% = ₹5,00,000. Thus, effective rate is 5% on Total Sale Value.
- If under 18% GST (REP): ₹66,66,667 × 18% = ₹12,00,000. Thus, effective rate is 12% on Total Sale Value.

GST & ITC on Self-Construction for Own Use

Scenario	GST Applicability	ITC Availability	Relevant Section	Remarks
Self-construction of a commercial property for own business use	✗ Not Applicable	✗ Not Available	Section 17(5)(d)	ITC is blocked for immovable property construction for own use.
Self-construction for renting out the property	✗ Not Applicable	✗ Not Available	Section 17(5)(d)	ITC is not available even if the property is used for taxable outward supply.
Construction by hiring a registered works contractor	✓ 18% GST on contractor's bill	✗ Not Available	Section 17(5)(c) & (d)	GST applies on contractor's bill, but ITC is blocked for own use.
Construction of plant & machinery (capital goods)	✓ 18% GST	✓ Available	Explanation to Section 17(5)(d)	ITC is allowed for plant & machinery as they are not considered immovable property.

ITC on Construction of Commercial Immovable Property

Particulars	ITC Availability	Relevant Section	Remarks
GST paid on construction of commercial property for own use	✗ Not Available	Section 17(5)(d)	ITC is blocked if the property is used for own business or rental purposes.
GST paid on construction for resale (before completion certificate)	✓ Available	Section 16 r/w Section 17(5)(d)	ITC can be claimed if the property is intended for sale before completion, and GST at 12% is charged on the sale.
GST paid on repairs, renovation, or maintenance (not capitalized)	✓ Available	Section 16	ITC can be claimed if booked as an expense in P&L and not capitalized.
GST paid on interior work, furniture & fittings	✓ Available	Section 16	ITC is allowed for movable furniture & fittings, as they are not classified as immovable property.

GST on Renting of Commercial Property

Particulars	GST Rate	Relevant Section	Remarks
Renting of commercial property	18%	Section 7(1)(a) & Schedule II, Entry 2	GST applies on rental income if already registered under GST or total turnover exceeds ₹20 lakh (₹10 lakh in special category states).
Renting of residential property for commercial use	18%	Section 7(1A) r/w Schedule II	GST applies if a residential unit is rented for business purposes.
Renting of residential property to a GST-registered person	18% (RCM)	Notification No. 05/2022-CT (Rate)	GST is paid by the tenant under Reverse Charge Mechanism (RCM).

ITC Eligibility for Repairs & Renovation

If repair & maintenance expenses are treated as revenue expenses (i.e., recorded in the Profit & Loss account and not capitalized in the books), ITC is allowed under Section 16 of CGST Act. Some examples include:

Nature of Expense	ITC Eligibility	Remarks
Painting & Polishing	✓ Available	If treated as repair and not as part of new construction. (Also, if not capitalized)
Plumbing & Sanitary Repairs	✓ Available	ITC allowed for repair & maintenance, but not for new installations.
Electrical Repairs (Wiring, Switches, Fixtures, etc.)	✓ Available	Repairs allowed, but new installations may be capitalized.
False Ceiling Repairs	✓ Available	If done as part of regular maintenance.
Air Conditioning System Repair & Servicing	✓ Available	ITC is available unless capitalized.
Carpentry Repairs (Doors, Windows, Furniture, etc.)	✓ Available	For maintenance, not for new construction.
Flooring Repairs (Tiles, Marble, Woodwork, etc.)	✓ Available	ITC allowed for repairs but not for full replacement.
Lift & Elevator Maintenance	✓ Available	Repair services allowed, but new installation is capitalized.
Structural Strengthening & Waterproofing	✓ Available	If classified as repair & not a capital asset.
Roof & Wall Repairs	✓ Available	Allowed if booked as maintenance expense.
Security Systems & Fire Safety Equipment Servicing	✓ Available	ITC available for maintenance contracts.

ITC on Construction of immovable property for Own Use or Rental – Not Eligible

Section 17(5)(d) of the CGST Act, 2017 – Blocked ITC on Construction of Immovable Property

As per Section 17(5)(d) of the CGST Act,

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:- (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account, including when such goods

or services or both are used in the course or furtherance of business.

Explanation:

For the purposes of clauses (c) and (d), the term “construction” includes:

Re-construction, Renovation, Additions or alterations, and Repairs, to the extent of capitalization in the books of accounts.

Key Takeaways:

ITC is blocked if the construction expense is capitalized in the books.

This restriction applies even if the property is used for business or rental purposes.

Exception: ITC is allowed for plant & machinery.



Nature of Expense	ITC Eligibility	Remarks
New Building Construction (Commercial/ Residential)	✗ Not Available	ITC blocked under Section 17(5)(d).
Structural Work (Columns, Beams, Foundation, RCC, etc.)	✗ Not Available	Treated as construction of immovable property.
Installation of New Plumbing & Sanitary Systems	✗ Not Available	ITC blocked if capitalized.
New Electrical Installations (Main Panels, Transformers, etc.)	✗ Not Available	ITC blocked if part of new construction.
Entire Flooring Replacement	✗ Not Available	ITC blocked if capitalized as part of building cost.
New Lift & Elevator Installation	✗ Not Available	Treated as part of immovable property.
Major Structural Renovation (Wall Demolition & Reconstruction)	✗ Not Available	ITC blocked if treated as capital asset.
New Roofing Work	✗ Not Available	ITC blocked if capitalized.
Construction of New Office Interiors (Cabins, Counters, Partitions, etc.)	✗ Not Available	ITC blocked if forming part of immovable property.

Key Takeaways & Conclusion

- ITC is available on various repair and maintenance expenses if they are not capitalized and are treated as revenue expenditures in the books of accounts. This includes painting, plumbing, electrical repairs, air conditioning servicing, carpentry, flooring repairs, lift maintenance, waterproofing, structural strengthening, roof/wall repairs, and fire safety system servicing. However, ITC is not available for new installations or capitalized expenses, as per Section 17(5) of the CGST Act, 2017.
- GST at 12% applies to construction services. However, as per Section 17(5)(c) of the CGST Act, Input Tax Credit (ITC) on works contract services is generally restricted. ITC shall be available only if the recipient uses such services for further supply of works contract services or if the property is sold before obtaining the completion certificate.

“ ITC is available on various repair and maintenance expenses if they are not capitalized and are treated as revenue expenditures in the books of accounts. ”



- ITC on inputs and input services are blocked for self-construction or rental immovable property purposes under Section 17(5)(d).
- Businesses must plan GST strategies effectively to minimize tax costs and ensure compliance.

The GST framework for commercial real estate requires careful tax liability assessment and ITC claims management. Strategic planning helps stakeholders optimize tax outflows while ensuring adherence to regulatory mandates, ultimately fostering a cost-effective and compliant real estate investment environment.

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