

GST on Co-operative Housing Societies

INTRODUCTION

Co-operative Housing Societies are entities registered under the co-operative laws of the respective States.

According to Section 2(16) of the Maharashtra Co-operative Society Act, 1960, “housing society” means a society, the object of which is to provide its members with open plots for housing, dwelling houses or flats; or if open plots, the dwelling houses or flats are already acquired, to provide its members common amenities and services.

Simply put these are a collective body of persons, who stay in a residential society. As a collective body, they would be supplying certain services to its members, be it collecting statutory dues from its members and remitting to statutory authorities, maintenance of the building, security etc.

Co-operative Housing Societies – whether amenable to levy of GST

A Society is akin to a club, which is composed of its members. So, can a service provided by a Housing Society

to its members be treated as service provided by one person to another. The answer is yes. The following extracts of the GST law will make the position clear.

As per Section 9 of CGST Act, 2017, levy of GST is on supply of goods and services. As per Section 7 expression “supply” includes—

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

The definition of “*person*” in Section 2(84) (i) of the CGST Act, 2017 specifically includes a co-operative society registered under any law relating to co-operative societies. Thus a registered co-operative society is a person within the meaning of the term in the CGST Act.

The next question which arises is whether the activity of the society can be said to be in the course or furtherance of business. The definition of business as per section 2(17) of the CGST Act, 2017 is as under

“business” includes—

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) services provided by a race club by way of totalisator or a licence to book maker in such club ; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

Thus, as per section 2(17)(e) of the CGST Act, 2017 provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members is deemed to be a business. The activities of the housing society would thus attract the levy of GST and the housing society would be required to register and comply with the GST Law.

Compliance requirements for housing societies under GST

If the turnover of housing society is above 20 lakhs, it needs to take registration under GST in terms of Section 22 of the CGST Act, 2017. However, taking registration does not mean that the housing society has to compulsorily charge GST in the monthly maintenance bills raised on its members. Notification No.12/2017 -Central Tax (Rate) dated 28.06.2017 at sr.no.77 provides for the following exemption to housing societies:

Service by an unincorporated body or a non- profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –

- (a) as a trade union;
- (b) for the provision of carrying out any activity which is exempt from the levy of Goods and service Tax; or
- (c) up to an amount of seven thousand five hundred rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex

In view of the provision contained at (c) above, a society may be registered under GST, however if the monthly contribution received from members is less than Rs. 7,500/- (and the amount is for the purpose of sourcing of goods and services from a third person for the common use of its members), no

GST is to be charged by the housing society on the monthly bill raised by the society. However, GST would be applicable if the monthly contribution exceeds Rs.7,500/-.

Certain statutory dues such as property tax, electricity charges etc. form part of the monthly maintenance bill raised by the society on its members. The question would arise whether such charges should be included while computing the monthly limit of Rs.7,500/- in terms of clause (c) of sr.no.77 of notification 12/2017 -Central Tax (Rate) dated 28.06.2017 as amended vide noificaion no. 2/2018- Cenral Tax (Rate), dated 25.01.2018. As per clause (b) of the above exemption, exemption is available to housing societies for provision of carrying out any activity which is exempt from the levy of Goods and Services Tax assuming that a housing society is a non-profit registered entity; and property tax and electricity is exempt from the levy of GST. Thus, charges, collected by the society on account of property tax, electricity charges and other statutory levies would be excluded while calculating the limit of Rs.7,500/-.

Further, the question would then arise that if the monthly bill is say Rs. 9,000/- (and the same is on account of services for common use of its members), will GST be applicable on Rs. 9,000/- or Rs. 1,500/- which is in excess of Rs. 7500/-. In such cases, exemption is available up to an amount of Rs. 7,500/- and GST would be applicable on the entire amount of Rs, 9000/- and not on [Rs. 9000 – Rs. 7500] = Rs. 1500/-.

TRU vide F.No.332/04/2017-TRU released FAQs on levy of GST on supply of services to the Co-operative society and has clarified as under.

S.No	Question	Answer
1	<p>The society collects the following charges from the members on quarterly basis as follows:</p> <ol style="list-style-type: none"> 1. Property Tax-actual as per Municipal Corporation of Greater Mumbai (MCGM) 2. Water Tax- Municipal Corporation of Greater Mumbai (MCGM) 3. Non- Agricultural Tax- Maharashtra State Government 4. Electricity charges 5. Sinking Fund- mandatory under the Bye-laws of the Co-operative Societies 6. Repairs & maintenance fund 	<ol style="list-style-type: none"> 1. Services provided by the Central Government, State Government, Union territory or local authority to a person other than business entity, is exempted from GST. So, Property Tax, Water Tax, if collected by the RWA/ Co-operative Society on behalf of the MCGM from individual flat owners, then GST is not leviable. 2. Similarly, GST is not leviable on Non-Agricultural Tax, Electricity Charges etc, which are collected under other statutes from individual flat owners. However, if these charges are collected by the Society for generation of electricity by Society's generator or to provide drinking water facility or any

	<p>7. Car parking Charges</p> <p>8. Non Occupancy Charges</p> <p>9. Simple interest for late payment.</p> <p>From the tax/ charge as listed above, on which GST is not applicable.</p>	<p>other service, then such charges collected by the society are liable to GST.</p> <p>3. Sinking fund, repairs & maintenance fund, car parking charges, Non-occupancy charges or simple interest for late payment, attract GST, as these charges are collected by the RWA/ Co-operative Society for supply of services meant for its members.</p>
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As per Section 23 (1) of the CGST Act, 2017, the following persons shall not be liable to registration, namely:—

- (a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;
- (b) an agriculturist, to the extent of supply of produce out of cultivation of land.

Thus, if the turnover of the society is less than Rs.20 Lakh or even if the turnover is beyond Rs. 20 lakhs but the monthly contribution of individual members towards maintenance is less than Rs.7,500/- (such services being exempt) and the society is providing no other taxable

service to its members or outsiders, then the society (essentially exclusively providing wholly exempt services) need not take registration under GST.

Whether activities of Housing Societies would become more expensive under GST

No. In the press release dated 13.07.2017, it has been clarified as under

There are some press reports that services provided by a Housing Society [Resident Welfare Association (RWA)] will become expensive under GST. These are completely unsubstantiated.

It may be mentioned that supply of service by RWA (unincorporated body or a registered non-profit entity) to its own members by way of reimbursement of charges or share of contribution up to an amount of seven thousand five hundred rupees per month per member for providing services and goods for the common use of its members in a housing society or a residential complex are exempt from GST.

Further, if the aggregate turnover of such RWA is up to Rs.20 Lakh in a financial year, then such supplies would be exempted from GST even if charges per member are more than Rs. seven thousand five hundred.

RWA shall be required to pay GST on monthly subscription/contribution charged from its members if such subscription is more than Rs. 7,500 per member and the annual turnover of RWA by way of supplying of services and goods is also Rs. 20 lakhs or more. Under GST, the tax burden on RWAs will be

lower for the reason that they would now be entitled to ITC in respect of taxes paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services. ITC of Central Excise and VAT paid on goods and capital goods was not available in the pre-GST period and these were a cost to the RWA.

Thus, there is no change made to services provided by the Housing Society (RWA) to its members in the GST era.

Conclusion

In so far as tax implications on housing societies are concerned, the position prevailing under Service Tax is sought to be continued under GST. The tax burden under GST will be lower as the society would be entitled to take ITC which was hitherto not allowed under service tax. Moreover, the exemptions given ensure that there would be no tax burden on smaller societies where the monthly contribution of the individual members does not exceed Rs.7,500/-. In a nutshell GST will be a favourable tax regime for housing societies vis a vis service tax.
