Office of the Commissioner,

Kerala Goods and Services Taxes Department,

Tax Tower, Thiruvananthapuram

C1-24614/16/CT E-office11137/17 **Dated 18th July 2017**

ADVISORY - 3
Sub:- GST- Works Contract – information – reg.

The department has received request from various quarters with respect to the works contract and related issues. In order to have uniformity in understanding this advisory is issued for generating awareness regarding the sector.

1. In VAT scenario, works contract was taxable at 14.5% on transfer value of materials incorporated in the work except on declared goods which was taxable at 5% after deducting the labour charges for those contractors who were paying tax on the basis of their books of accounts.

2. With respect to dealers who have opted for compounding under Section 8(a) of KVAT Act , the rate structure was as stated below:

Dealers having CST registration (other than certain works like interior decoration, electrical, refrigeration etc.)	7% of the whole contract amount
Any works contractor not being a dealers registered	4% of the whole

under CST Act, and who was not an importer	contract amount
A works contractor who undertakes works of Govt. of Kerala, Water Authority or Local Authorities (not having CST registration)	4% of the whole contract amount
Works contractor (having CST registration and / or who imports any goods from other State) who undertakes works of Govt. of Kerala, Water Authority or Local Authorities.	5% of the whole contract amount

3. **In GST scenario, works contract will be treated as services. No compounding facility is available for works contract as in VAT regime. All supply related to works contract are taxable @ 18%.**

   Eg. Interior work, supply and installation of air conditioner, construction of bridge, etc.

4. All supply related to construction of a complex, building, civil structure or a part thereof, intended for sale to a buyer, wholly or partly (the value of land is deemed to be one-third of the total amount charged for such supplies) is taxable @18% with no refund of accumulated ITC.

5. In GST regime there will be no claim of exemption towards sub-contract or labour charges. The Principal contractor will be liable to pay tax on entire supply made after 01-07-2017 and the principal contractor can avail input tax credit on the tax paid.

6. The transitional provision under GST is mentioned in Section 139 to 142. No ITC is eligible under SGST Act on the closing stock of materials purchased from outside the State and from dealers who have compounded under KVAT ACT but Excise duty component are eligible for credit under CGST ACT.

7. The compounded as well as non-compounded works contractors under VAT regime are eligible for availing ITC on stock of goods held on 30-06-2017. Works contractors who had opted compounding scheme during pre-GST period will be eligible for ITC on the stock of materials purchased from 01-07-2016 onwards and declared in the returns filed and for non compounded dealers from 01-04-2017 as per the conditions prescribed in the law.

I. NON-COMPOUNDED WORKS CONTRACTORS:

(a) Private Contractors

i. The non-compounded works contractors have already claimed refund of excess ITC as on 31-03-2017. The input tax credit available in the first quarter return filed for 2017-18 can be claimed as ITC in SGST as mentioned in Trade Advisory – 1.

ii. For the carry forward of this excess input tax credit under the GST Law, the dealers have to file Form 'GST TRAN-1' on or before 30th September, 2017 (within 90 days) from the day of roll out of GST. However it is advisable to file details well within time.

iii. GST TRAN-1 is a declaration form to be filed in the GSTN portal.

iv. For the proper carry forward of input tax credit the dealer have to comply the following:

1. File all the returns under the existing law in time.
2. Upload closing stock and annual return for the year relating to 2016-17.
3. Ensure that all purchase and sales are correctly uploaded along with returns for the first quarter of 2017-18.
4. Unavailed portion of purchase tax paid u/s.6(2) by regular TIN dealers can be carried forward.

5. Statutory forms for claiming exemption/concession against F Forms/C Forms shall be filed within the prescribed time, failing which the amount of carry forward of excess credit will be reduced to that extent.

6. Unavailed portion of input tax credit on capital goods for which instalments were granted by the assessing authorities will also be eligible for carry forward.

7. With regard to un-utilized advance tax paid, it can be claimed by way of refund.

8. In order to prove the quantum of work completed as on 30-06-2017 and to claim payment of tax under VAT rate, they have to file audited statement of accounts by the Chartered Accountants for the first quarter of 2017-18 showing the details of closing work in progress and also item wise stock details.

9. Supply to SEZ will be treated as an interstate supply and IGST has to be paid first and refund has to be claimed.

10. For builders the following project – wise details have to be furnished as on 30th June, 2017.

a. the details of total number of flats in a project;
b. the number of flats on which advance has been received;
c. the number of flats on which advance has not been received;
d. the number of flats remaining unsold, completed or not;
e. the number of flats capitalized.

Criteria for eligibility of ITC on stock:

Category	Eligibility / Condition
The number of flats for which advance has been received	Entire ITC on the local purchases made through invoice from 01-04-2017 to

	30-06-2017.
The number of flats completed but no prospective buyer	No ITC
The number of flats capitalized.	No ITC
Eligibility of ITC in the case of semi finished Apartments. (In an Apartment consisting of 100 flats, only 60 flats are completed)	Eligible to avail 60% of ITC.

Illustration:-

AB Construction Co. is constructing an apartment with 100 flats for an estimated cost of Rs.100 crore. The project commenced 2 years back. The contractor had effected materials purchased against tax invoice for Rs.25 crore, from compounded dealers for Rs.5 crore and Rs.2 crore from unregistered dealers from 01-07-2016 to 30-06-2017. Portion of materials procured during the period was consumed and closing work in progress as on 30-06-2017 is Rs.60 crore. The materials remaining in stock is only Rs.5 crore including purchases from compounding Dealer of Rs 1 crore. Out of the stock of Rs 4 crore purchase of Rs 1 cr relates to prior to 31-3-2017. It is assumed that advance has been received for all 100 flats.

The contractor is a non compounding dealer in VAT regime –

a. The contractor is eligible to carry forward the balance ITC of the tax paid on Rs 3 crore for the closing stock of the materials.

Provided the Seller would have uploaded the supply in Returns and paid tax and the Purchaser would have tax invoice for the stock worth Rs 3 crore.

b. The closing work in progress of Rs 60 crore, no ITC is allowable since VAT is to be paid.

Applicability of Tax Rate on Payments:

In works contract, the taxable event is the actual incorporation of the material in the work, so the VAT rate is applicable to the extent of work finished upto 30-06-2017. Regarding advances received, if the amount received is in excess of the actual work completed, then VAT rate has to be limited to the proportion of completed work and for the balance works GST rate is applicable.

Work completion	Tax liability
Works completed during pre-GST period and payment fully received before 30.06.2017	VAT rate
Works completed during pre-GST period but payment received Partially before 30.06.2017	VAT rate
Work completed during pre-GST period and part payment received after 01.07.2017	VAT rate
Work completed during pre-GST period and full payment received after 1.07.2017	VAT rate
Works completed post GST period and entire payment received after 01-07-2017	GST rate
Part work completed during pre-GST period and part work completed post GST period.	VAT rate for completed works during pre-GST period irrespective of the Payment. Remaining works at GST rate.
Works executed in GST period and advance received during pre-GST period.	GST rate
Agreement executed during pre-GST period and works commenced in GST period. Payment not received.	GST rate
Works not yet started, but advance received before 01.07.17	GST rate

(b) Govt. Contractors:

1. Govt. contractors also have to follow the same procedure as stated above for claiming input tax credit on the excess credit available as on 30-06-2017.

2. As per Sec.142(11) for the works completed upto 30-06-2017, they can pay tax under the existing rate.

3. To prove the quantum of work completed upto 30-06-2017, they have to file audited statement of accounts by Chartered Accountants for the first quarter detailing the closing work in progress details along with item-wise stock details.

4. For the period upto 31-03-2017 since excess input tax credit is not allowed to be carry forward to the subsequent year excess input tax claims if any has to be claimed by way of refund.

Illustrations:

1. **Entire work completed on or before 30-6-2017 -full payment is pending as on 1.07.2017**

   In this scenario, entire work completed and full payment is pending – the tax should be remitted under VAT Law [Sec.142(11)(a) of CGST Act / Kerala GST Ordinance,2017. Which stipulates that notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act/Ordinance to the extent the tax was leviable on the said goods under the VAT Act of the State].

2. **Entire works completed on or before 30-6-2017 - part payment is pending as on 1-07-2017**

   Here also for the pending payment tax should be collected under VAT law [Sec.142(11)(a)].

3. **Entire works completed on or before 30-6-2017 - part payment received as on 1-07-2017**

In this scenario, for part payment received before 1-07-2017, tax should be collected under VAT at appropriate rates, and for part payment received after 30.6.17 also, VAT should be collected.

4. **Works awarded on or before 30.06.2017 and Advance received**

   For advance amount received before 01-07-2017, VAT shall be applicable for works completed upto 30.06.17 and for the rest, GST is applicable. VAT liability is restricted to the extent of work completed as on 30-06-2017. If the advance received is in excess of the closing work in progress as on 30-06-2017, then the excess amount received shall be taxable in GST.

5. **Works not yet started as on 01-07-2017**

   GST rate will be applicable.

6. **Works not yet started as on 1-07-2017, but advance received before 01-07-2017**

   GST rate will be applicable.

II. COMPOUNDED WORKS CONTRACTORS

Compounded works contractors are paying tax on the basis of contract receipts at the stipulated rates whether private or Government. On introduction of GST, works contract will be treated as service and there will not be any exemption on labour portion and also there is no compounding facility.

Category	Eligibility / Condition
The number of flats for which advance has been received	Entire ITC on the local purchases made through invoice from 01-07-2016 to 30-

	06-2017.
The number of flats completed but no prospective buyer	No ITC
The number of flats capitalized.	No ITC
Eligibility of ITC in the case of semi finished Apartments. (In an Apartment consisting of 100 flats, only 60 flats are completed)	Eligible to avail 60% of ITC.

a. **Private works contractors**

1. Contractors paying tax under compounding scheme are also eligible for input tax credit on the closing stock, if it is supported by bills.
2. They have to file all returns including annual return upto 31-03-2017 and the first quarter return for the period from April to June 2017.
3. Separate project-wise accounts have to be filed.
4. Audited statement of accounts by Chartered Accountants with respect to closing work in progress along with closing stock details has to be furnished for the first quarter.
5. The number of flats in each project has to be furnished and also the details of flats on which advance has not been received.
6. The details of unsold flats or on which no advance has been received has also to be furnished.
7. For carrying forward the excess input tax credit to the electronic credit ledger on introduction of GST as in the case of normal dealers, they will also have to file Form TRAN-1, mentioning the amount of tax or duty, eligible to claim as credit.
8. Taking into consideration, the number of unsold flats, the proportionate input tax credit has to be deducted while filing Form TRAN-1.

9. There is no exemption on sub-contracts on introduction of GST and the supply by sub-contractor to the principal contractor will be treated as supply with eligibility of input tax credit.

Illustration:

AB Construction Co. is constructing an apartment with 100 flats for an estimated cost of Rs.100 crore. The project commenced 2 years back. The contractor had effected materials purchases against tax invoice for Rs. 25 crore, from compounded dealers Rs.5 crore and Rs.2 crore from unregistered dealers from 01-07-2016 to 30-06-2017. Portion of materials procured during the period was consumed and closing work in progress as on 30-06-2017 is Rs.60 crore. The material remaining in stock is only Rs. 5 crore including purchases from compounding Dealer of Rs. 1 crore. Out of the stock of Rs 4 crore purchase of Rs 1 cr relates to prior to 31-3-2017. It is assumed that advance has been received for all 100 flats.

The contractor is a compounding dealer in VAT regime –

a. The contractor is eligible to carry forward the balance ITC of the tax paid on Rs 4 crore for the closing stock of the materials.

Provided the Seller would have uploaded the sales in Returns and paid tax and the Purchaser would have tax invoice for the stock worth Rs 4 crore.

b. For the closing work in progress of Rs 60 crore no ITC is allowable since VAT is to be paid.

b. For Govt. contractors

1. They have to file all the returns upto 31-03-2017, for the first quarter of 2017-18 also returns has to be filed along with audited statement of

accounts so as to prove the genuineness of closing work in progress and closing stock.

2. For the closing work in progress, upto 30-06-2017, they can pay tax at the VAT rates.
3. If the details are not furnished along with audited statement of accounts, they will have to pay tax at 18% on the closing work on progress.
4. In order to carry forward the excess input tax credit available as on 30-06-2017 supporting documents has to be filed.
5. For carry forward of ITC, they will also have to file form TRAN-1, mentioning the amount of tax or duty, eligible to claim as credit.

TDS liability on payments:

Work completion	Tax liability
Works completed during pre-GST period and payment fully received before 30-06-2017	VAT rate
Works completed during pre-GST period but payment received Partially before 30-06-2017	VAT rate
Work completed during pre-GST period and part payment received after 01-07-2017	VAT rate
Work completed during pre-GST period and full payment received after 1-07-2017	VAT rate
Works completed post GST period and entire payment received after 01-07-2017	GST rate
Part work completed during pre-GST period and part work completed post GST period.	VAT rate for completed works during pre-GST period irrespective of the Payment. Remaining works at GST rate.
Works executed in GST period and advance received during pre-GST period.	GST rate
Agreement executed during pre-GST period	GST rate

and works commenced in GST period. Payment not received.	
Works not yet started, but advance received before 01-07-17	GST rate

It is our endeavor to build capacity of all stakeholders and facilitate GST roll out in the state. As per the quarries from the trade and other bodies, Department shall take efforts to publish series of issue specific advisories.

All Dealers/ Contractors/ Professionals are advised to go through the laws for their statutory compliances. This advisory is only for awareness and not for any legal interpretation of laws.

COMMISSIONER

Copy to –

Copy to all Heads of the Departments

Copy to all Managing Directors of State Constructions Companies

Copy to all Trade bodies and organization for information

All Dy Commissioners for information. They are instructed to discuss in Trade awareness meeting.

ITMC – to upload in Web site

PR – GST Cell – to give a press release

C Section for record

GST Cell for record