

L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

1 JULY 2022

INDIRECT TAX

Real Estate Update

47th GST council Meeting

UPDATE NO. 27 OF 2022



Lakshmikumaran
& Sridharan
attorneys

exceeding expectations
SINCE 1985

TAXABILITY OF PREFERENTIAL LOCATION CHARGES [PLC]

- GST Council has clarified that allowing choice of location of a plot is part of supply of long-term lease of plot of land. Hence, PLC shall form part of consideration charged for long-term lease of land.
- This is a benevolent clarification stating PLC is not an independent supply but inextricably linked with the supply of long-term lease of plot. Accordingly, PLC charged towards lease of plot shall be subject to same rate of GST as applicable on lease of plot.
- This clarification seems to be issued in the light of ongoing disputes raised before the authorities since the department is demanding 18% GST on PLC as an independent supply.
- This clarification may be applied for the taxability of PLC charged by the developer for sale of units pre or post OC / CC, sale of plots etc.



Open Issues:

- Whether the supplier / recipient can claim refund of differential GST paid on PLC charges?

TAXABILITY OF SALE OF PLOTS

- GST Council has clarified that sale of land after levelling, laying down of drainage lines etc. is a transaction of sale of land covered under Schedule III of the CGST Act and hence, does not attract GST.
- This is a welcome clarification providing major relief to the real estate sector. It will put ongoing disputes caused by several rulings issued by the Authorities of Advance Rulings holding that sale of developed plot is not akin to sale of land to get excluded from the levy of GST pursuant to para 5 of Schedule III of the CGST Act.
- This clarification is in line with the judgement of the Hon'ble Gujarat High Court in the case of *Munjaal Mansihbhai Bhatt v. U.O.I.* wherein the Court held that sale of land includes sale of developed plots.

- However, the bare text of the clarification is awaited to comment whether it intends to cover only the sale of plots post development activities or development of plots on behalf of the customer also.
- Further, it would be interesting to see whether the clarification will have impact on the plot sellers who charge separate amount for development activities treating it to be a separate service.



Open Issues:

- Whether the supplier/ recipient can claim refund of GST paid on sale of plots prior to issuance of the subject clarification?
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LOCATIONS

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