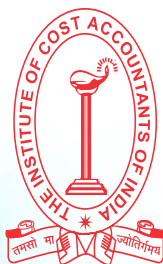


Taxation on Co-operative Sector



**THE INSTITUTE OF
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President's Message

A cooperative society is not a new concept. It prevails in all the countries; it is almost a universal concept. The cooperative society is active in all countries worldwide and is represented in all the sectors including agriculture, food, finance, healthcare etc. To protect the interest of weaker sections, the co-operative society is formed. It is a voluntary association of persons, whose motive is the welfare of the members.

Goods and Services Tax (GST) is an indirect tax levied on the supply of goods and services. This law has replaced many indirect tax laws that previously existed. GST is one indirect tax for the entire country.

It is to be noted, that when the aggregate turnover of a Cooperative Society in a financial year exceeds twenty lakh rupees as well as monthly maintenance charges or subscription received from its' members is more than Rs. 7500 per member per month, such Cooperative Societies become liable for Registration under GST as per Sec 22. (1) of CGST Act.

Again in direct tax the Societies are tax under different tax slabs, which is different from individual and corporate assesses. There are intricate details to these provisions which need a thorough understanding.

I congratulate CMA Niranjn Mishra, Chairman of Taxation Committee and other members of the Taxation Committee for their commitment and dedication in publishing this handbook. I would like to acknowledge the dedicated efforts of Tax Research Department for releasing this Handbook. I wish them all the Luck!!

With Warm Regards,

CMA Amit A. Apte

12th March, 2019



CHAIRMAN'S MESSAGE

To start off, I would like to acknowledge the outstanding contributions of Tax Research Department taking the opportunity in bringing out a Handbook on "Taxation on Co-operative Sector".

A cooperative (also known as co-operative, co-op, or coop) is "an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise". Cooperative businesses are typically more economically resilient than many other forms of enterprise. Cooperatives frequently have social goals which they aim to accomplish by investing a proportion of trading profits back into their communities.

In direct tax, a cooperative society u/s 44AA of Income Tax Act, is required to maintain books of accounts and other documents as may enable the Assessing Officer to compute its total income in accordance with the provisions of the Income Tax Act. Further, its accounts are required to be audited u/s 44AB notwithstanding the fact that its accounts are subjected to audit by the administrative department (Directorate of Cooperative Audit) as provided in the State Cooperative Laws. However, tax audit provisions are generally not applicable to societies which do not carry on any business. A co-operative society with a turnover of Rs. 20 lakhs and above as well as monthly maintenance charges or subscription received from its' members more than Rs. 7500 per member per month also needs to be GST compliant. These intricacies have to have a clear understanding and hence this handbook.

I would like to deeply admire congratulate Team – Tax Research for the commendable job by the entire Team. I am happy and would like to congratulate other members of the Taxation Committee and knowledge contributors of the Institute also for their efforts to bring this out. CMA Anil Sharma deserves a special mention here for his untiring efforts in bringing out this publication. My best wishes to Team TRD for its all future endeavours.

Thank You.

A handwritten signature in black ink, appearing to read "Niranjan Mishra". The signature is fluid and cursive, with a small flourish at the end.

CMA Niranjan Mishra

Chairman – Taxation Committee

14th March, 2019

PREFACE

The Cooperative Societies can be defined as an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise". In India, the cooperative sector has been assigned an important role in the development of many sectors.

India is an agricultural country and laid the foundation of World's biggest cooperative movement in the world. The need for profitability is balanced by the needs of the members and the wider interest of the community, the Cooperative Movement was started by the weaker sections of society for protecting its members from the clutches of profit hungry businessmen.

The important objectives of the development of the cooperative sector are prevention of concentration of economic power, wider dispersal of ownership of productive resources, active involvement of people in development programs, liquidation of poverty and unemployment etc.

Needs of weaker section are served by different forms of private and government organizations including partnership firms, co-operatives, companies and charitable trust. Government each year spends lakhs to crores of rupees on rural development. But co-operatives working in rural areas are playing noteworthy role in this.

In this handbook, we are giving a brief summary of impact of tax on the Cooperative Sector. Here, we would also like to thank and acknowledge the immense contributions of **CMA Anil Sharma** without whose hard work, toil and guidance the handbook could have never acquired its shape. The department is indebted to him for his contributions. CMA Niranjana Mishra, Chairman – Taxation Committee has been our guiding star. Thank you Sir.

Tax Research Department
The Institute of Cost Accountants of India
14th March, 2019

ACKNOWLEDGEMENTS

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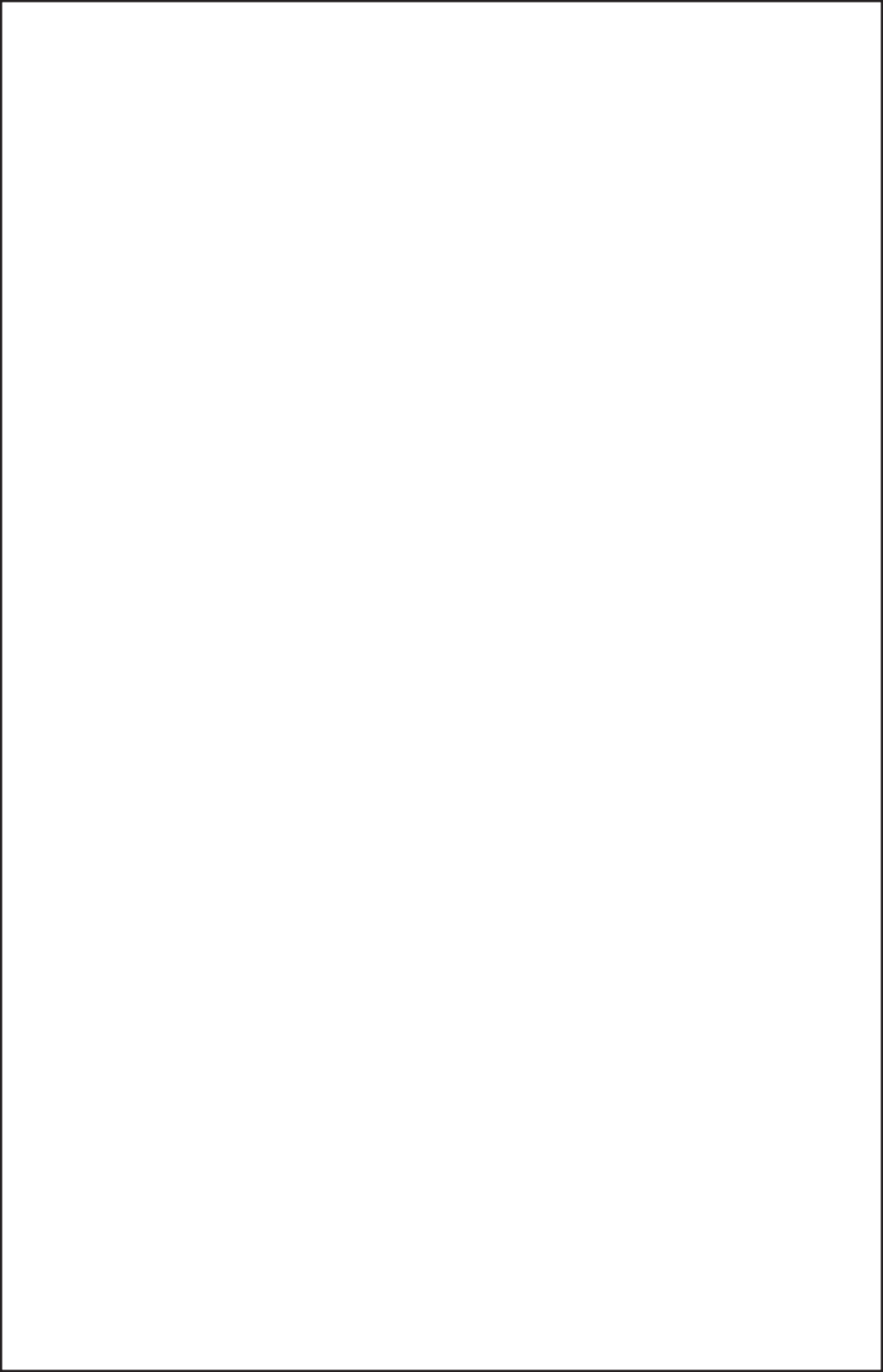
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Contents

Introduction	01-07
GST and Co-operative Sector (Relevant Provisions and Notifications)	08-13
Taxation on Co-operative Society	14-22
Detailed analysis of GST on Housing Society with FAQs	23-28
Case Laws	29-34





1 Chapter

Introduction

Co-operative Sector- Meaning and importance of co-operation

“Literally, Co-operation means working together. To be more appropriate, we may define Co-operation as acting together to accomplish the common goal through Co-operative principles”. Likewise, Co-operative society may be defined as an organisation of individuals with small means, formed for running in common of business, the profits being shared in accordance with the amount of labour or capital contributed by each Co-operation facilitates mass voluntary participation in an organised way to enlist the support of millions of small farmers, artisans, craftsmen, cottage and small- scale enterprises

The Co-operative form of organisation thus is an effective medium for bringing about the socio-economic transformation of the hitherto neglected sectors. Where the masses flock, Co-operatives facilitate material advancement through united action which in turn fosters self-reliance. The Co-operative movement is acclaimed in all plan documents as the means of transferring the rural society.

What is a cooperative sector?

A cooperative (also known as co-operative, co-op, or coop) is “an autonomous association of persons united



voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise”.

Cooperative sector industries are owned and managed by a group of people. Generally the members are the producers of raw materials. Examples of such industries are handloom, food processing and dairy products. Amul is an Example of Cooperative sector society.

Type of Cooperative Societies

The main types of cooperative societies are given below:

1. Consumers cooperative societies:

Consumers' cooperatives are formed by the consumers to obtain their daily requirements at reasonable prices. Such a society buys goods directly from manufacturers and wholesalers to eliminate the profits of middlemen.

These societies protect lower and middle class people from the exploitation of profit hungry businessmen. The profits of the society are distributed among members in the ratio of purchases made by them during the year.

Consumer's cooperatives or cooperative stores are working mainly in urban areas in India. Super Bazar working under the control of Government is an example of consumers' cooperative society.

2. Producers cooperatives:

Producers or industrial cooperatives are voluntary associations of small producers and artisans who join hands to face competition and increase production. These societies are of two types.

(a) Industrial service cooperatives:

In this type, the producers work independently and sell their industrial output to the cooperative society. The



society undertakes to supply raw materials, tools and machinery to the members. The output of members is marketed by the society.

(b) Manufacturing cooperatives:

In this type, producer members are treated as employees of the society and are paid wages for their work. The society provides raw material and equipment to every member.

The members produce goods at a common place or in their houses. The society sells the output in the market and its profits are distributed among the members.

3. Marketing Cooperatives:

These are voluntary associations of independent producers who want to sell their output at remunerative prices. The output of different members is pooled and sold through a centralised agency to eliminate middlemen. The sale proceeds are distributed among the members in the ratio of their outputs.

As a central sales agency, the society may also perform important marketing functions such as processing, grading and packaging the output, advertising and exporting products, warehousing and transportation, etc.

Marketing societies are set up generally by farmers, artisans and small producers who find it difficult to face competition in the market and to perform necessary marketing functions individually. The National Agricultural Cooperative Marketing Federation (NAFED) is an example of marketing cooperative in India.

4. Cooperative Farming Societies:

These are voluntary associations of small farmers who join together to obtain the economies of large scale farming.



In India farmers are economically weak and their land-holdings are small.

In their individual capacity, they are unable to use modern tools, seeds, fertilizers, etc. They pool their lands and do farming collectively with the help of modern technology to maximum agricultural output.

5. Housing Cooperatives:

These societies are formed by low and middle income group people in urban areas to have a house of their own. Housing cooperatives are of different types. Some societies acquire land and give the plots to the members for constructing their own houses.

They also arrange loans from financial institutions and Government agencies. Other societies themselves construct houses and allot them to the members who make payment in instalments.

6. Credit Cooperatives:

These societies are formed by poor people to provide financial help and to develop the habit of savings among members. They help to protect members from exploitation of money lenders who charge exorbitant interest from borrowers.

Credit cooperatives are found in both urban and rural areas. In rural areas, agricultural credit societies provide loans to members mainly for agricultural activities. In urban areas, non-agricultural societies or urban banks offer credit facilities to the members for household needs.

In India, several national federations of cooperative societies have been formed. National Cooperative Consumers Federation, National Federation of Cooperative Sugar Factories, National Agricultural Cooperative Marketing Federation, National Cooperative Dairy Federation,



National Cooperative Housing Federation, All India State Cooperative Banks Federation is some examples.

Objectives of Cooperative Society

- To provide support and services to the members of the society and not to earn the profit
- To help each other mutually and not to have competition
- To practice fair and transparent business activities
- To deliver the quality goods and produce to the end customers

Advantages of Cooperative Society

- Membership of the co-operative society is open to all, who have a common object of providing service without expecting returns on it. The member can join and leave the society as per their wish.
- Capital Invested for the society is contributed by the member and various grant and subsidies are received from the government for smooth processing of business.
- A cooperative society is registered under Cooperative Societies Act, it is a separate legal entity where the liability of its member is limited. It can run the business under its name.
- Where the cooperative society earns more profit while conducting their business operation, it is distributed among the members based on their participation in business.

Disadvantages of Co-operative Society

- Co-operative society targets small and medium-size businesses.



- Due to lack of funds, it is difficult to promote the business operation and sales promotion
- Lack of management skills to control and monitor the members
- Management has to depend on Honesty, Integrity, and loyalty to the members

Registration of the Cooperative Society

- To form a society, minimum 10 Individuals shall be desirous of forming a society for mutual benefit.
- Once the group is formed, a provisional committee is established and they elect a chief promoter for the society.
- The name for the society is selected by the chief promoter and members mutually.
- An application has to be made to registration authority explaining the business operation to be conducted by the members. After submitting documents and confirming, the concerned authority issues a certificate of name approval.
- After name approval, the registration fees and the share capital amount has to be collected from prospective members.
- A separate bank account in the name of the society must be opened. Registration fees and share capital amount has to be deposited in that bank account. The bank will issue a certificate for it.
- Once the bank formalities are completed, the chief promoter has to apply for the registration process with all set of documents.
- The application for registration has to be made in



Form No. A, which needs to be consent of 90% of the members

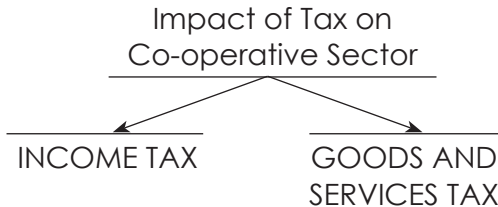
- Once the documents are submitted, the concerned authority will cross verify the documents and decide whether to issue a certificate or not?
- The register of application is maintained by the registrar of the particular ward to enter the details of the new forming society. An application has to be made in Form B.
- The Registrar issues a receipt for submission of application and provides the status of such application from time to time.
- If there is any discrepancy in the application, it must be sent for rectification.
- The registering authority after being satisfied will notify society registration in the official gazette and issue a registration certificate to its member.



2 Chapter

Taxation on Co-operative Society

A business can be formed under the organizational set up of a cooperative society just like it can be formed as a Company. There is a general belief that cooperative societies are exempted from the various compliances of direct or indirect taxation. In fact it is not so – rather to get the various tax reliefs, particularly for income tax, a cooperative society must set up a process for tax compliance, tax management and tax planning



Income Tax on Co-Operative Societies

Section 2(19) of the Income Tax Act, 1961, has defined a co-operative society as; "A society registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any state for the registration of Co-operative societies." This article strives to help the reader understand the basis of Co-Operative Society taxation and income tax return filing.



Section 81
Income Tax Deductions for Co-Operative Societies -
Section 80P

Sr. No.	Society engaged in business of Nature of Income	Amount deductible	Applicability & Conditions
1)	Providing credit facility to members	Entire profit from such business	<ul style="list-style-type: none"> <input type="checkbox"/> W.e.f. A.Y. 2007-08 deduction not available to co-operative bank. <input type="checkbox"/> Primary co-operative agricultural & rural development bank & chit funds can claim deduction. <input type="checkbox"/> Providing credit facility means providing loans & other credit facilities. Does not include selling goods on credit/hire purchase.
2)	Cottage Industry	Entire profit from such business	<p>For qualifying as cottage industry –</p> <ul style="list-style-type: none"> <input type="checkbox"/> Business is to be carried on in a small scale, with limited capital, workers & turnover. <input type="checkbox"/> Business is carried on by members of society (share holders) & their families. <input type="checkbox"/> Business must involve activity of manufacture, production or processing and not merely in trade. <input type="checkbox"/> It is not required to be registered under Factories Act.



Sr. No.	Society engaged in business of Nature of Income	Amount deductible	Applicability & Conditions
3)	Marketing of Agricultural Produce	Entire profit from such business	—
4)	Purchase of Agricultural Implements, seeds, livestock, other articles intended for agriculture	Entire profit from such business	<input type="checkbox"/> It is for the purpose of supplying them to its members.
5)	Processing Agricultural Produce of Members (without aid of power)	Entire profit from such business	—
6)	Primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members	Entire profit from such business	<input type="checkbox"/> Milk, oil seeds, fruits or vegetables are grown or raised by its members <input type="checkbox"/> Milk, oilseeds, fruits or vegetables are supplied to a federal co-op. society (engaged in similar business), Government or local authority, Government company or a statutory corporation (engaged in similar business)



Sr. No.	Society engaged in business of Nature of Income	Amount deductible	Applicability & Conditions
7)	Engaged in any other activity	Entire amount before the Profits and Gains exceeds ₹15000	
8)	Interest income/ Dividend income	Entire amount of such income	<input type="checkbox"/> Such income is received from investment in any other co-operative society
9)	Letting of godowns/ warehouses	Entire amount of income derived from such business	<input type="checkbox"/> Godowns/warehouses are let for storage, processing or facilitating the marketing of commodities
10)	Interest on securities u/s 18 & property income u/s 22	Entire amount of such income	<input type="checkbox"/> Benefit not available to housing society, urban consumers society, society carrying on transport business, society engaged in manufacturing operations with aid of power <input type="checkbox"/> Gross total income of such society does not exceed ₹ 20,000.



Income Tax Slabs or Rates | Co-operative Societies FY: 2018-2019

Total Income (Rs.)	Income Tax Slab/ Rate
Upto 10,000	10% of Total Income
10,001 to 20,000	Rs. 1,000 plus 20% of Total Income
Above 20,000	Rs. 3,000 plus 30% of Total Income

Notes:

Income Tax Rates for Co-operative Societies in each slab, as mentioned above, are inclusive of income tax liability upto previous slab(s). To arrive at total income tax liability, education cess and surcharge are to be applied, as under:

- i) Education cess/ secondary and higher education cess @ 3% in all cases; and
- ii) Surcharge @ 12% in cases where total income exceeds Rs. 1 crore, subject to provisions relating to marginal relief, if applicable.

Filing of return & due date & PAN/TAN

Since there is no threshold limit for taxability of income in case of a co-operative society, it implies that if a society has any taxable income, it has to file a return of income. Consequently, it is imperative to apply for PAN by each income earning Co-operative Society

Since accounts of all co-operative societies are subject to statutory audit provisions under respective governing laws, therefore due date for filing return of income under the Income-tax Act, 1961 is September 30.

If the society has to deduct income tax it must obtain TAN number. The society is also bound by provisions of TAN and filing of return of TDS.



Tax Audit

Tax audit is compulsory if turnover of society (engaged in business) is more than ₹1 crore (w.e.f. A.Y. 2013-14) [₹60 lakhs for A.Ys. 2011-12 & 2012-13]. Tax Audit provisions is generally not applicable to societies which do not carry on any business. For example, housing societies in years of construction of building premises and redevelopments of their properties, provisions of section 44AB would not apply as there is no business activity.



3 Chapter

GST and Co-operative Sector

(Relevant Provisions & Notifications)

Section 7: Supply

For the purposes of this Act, the 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;
- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II. Notwithstanding anything contained in sub-section (1),–
 - (a) activities or transactions specified in Schedule III; or



- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- (a) a supply of goods and not as a supply of services; or
(b) a supply of services and not as a supply of goods.

So, services provided by societies to its members are subject to GST.

Section 22- Persons liable for registration

Every Supplier who makes taxable supply of goods or services or both if his aggregate turnover exceeds 20 lakhs shall be liable to be registered under the GST act.

However if a person located in special category states the turnover is reduced to 10 lakhs.

Section 23- Persons not liable for registration

The following persons shall not be liable to registration,

- (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.



The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

Notification No. 12/2017 (Central Tax Rate)
Date – 28.06.2017

Serial No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)
77	Heading 9995	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 five thousand 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	Nil



**Notification No. 2/2018(Central Tax Rate)
Date – 25.01.2018**

Notifications on GST Applicability on Maintenance charges paid in Apartments/RWA's

As per this Notification, Notification No. 12/2017 (Central Tax Rate dt. 28.06.2017) has been amended.

Amendment - Against serial number 77, in the entry in column (Description of Services), for the words "five thousand", the words "seven thousand five hundred" shall be substituted. The exemption ceiling was enhanced from Rs 5,000 per month per member to Rs 7,500.

So, services up to Rs. 7500/- per month per members are exempted irrespective to turnover. Once amount increases the limit of Rs. 7500/-, services of cooperative society will be taxable.

Whether Cooperative Society is liable for registration under GST?

When the aggregate turnover of a Cooperative Societies in a financial year exceeds ` 20 Lakhs, such Cooperative Societies become liable for Registration under GST as per Sec 22.(1) of CGST Act. That means when the collection of money maintenance charges as collected from members and other services provided to outsiders by society exceeds Rs 20 Lakhs per annum then the Society need to be Registered under GST. It means that if the aggregate turnover (total receipts) of the Housing Societies which generally includes society maintenance charges from its members, income receipts from advertisement board, receipts from mobile towers in premises, Share transfer fee from members, receipts from special purpose use of common area by member (marriage function etc) etc. Exceeds Rs. 20.00 lakh, registration is compulsory.



Housing Society is liable to register if total of all the receipts (including exempted receipts) exceeds Rs. 20 Lakh in a financial year. Thus Co-operative Housing Society or Residential Welfare Association who's Turnover (collection money) crosses Rs 20 Lakhs per annum become liable for Registration under GST and should charge GST (CGST + SGST) from its members.

Registration -

A co-operative society like any other businesses is liable to register if the aggregate turnover or collection is more than 20 lakhs in the preceding financial year. If the turnover does not exceed 20 lakhs the society may not get register. Society being a service provider cannot register under composition scheme

What are the main Document Required for Registration of Society in GST?

Society is liable to register if aggregate turnover exceeds Rs. 20.00 Lakh in a Financial Year. Following Important Documents are required for Registration:

- PAN Card of Society
- Bank Statement of Society
- Society Registration Certificate
- Authorization Letter
- Authorization person Address proof
- Authorized person Photograph
- Digital Signature Certificate of Authorized Person

Rate of Tax

The society is liable to collect tax at the rate of 18% if the aggregate turnover exceeds 20 lakhs

Input Tax Credit

Co-operative housing society is eligible to claim input tax



credit on taxes paid by it on purchase of capital goods or input services such as repair and maintenance. In pre-GST regime society was not liable to claim ITC on taxes paid by them. This would benefit the society in the form of reduction in cost. No ITC would be available where GST is not applicable on expenses like Electricity expenses, Stamp Duty, property taxes etc. For detail please ref Section 16 to 21 of CGST Act, 2017.

Reverse Charge Mechanism

Reverse Charge is a mechanism under which the recipient of supply is liable to pay GST. Co-operative societies are also covered under reverse charge mechanism. If the society avails any supply of goods or services from unregistered persons the society is liable to pay GST on such goods or services. Similarly if the society avails services which are compulsorily covered under RCM, the society is liable to pay GST on such services. The society can claim ITC on tax paid under RCM. Section 9(3) & (4) may be referred.

Books of Accounts: Society is liable to prepare and maintain proper books of accounts. It would also be liable to audit if the aggregate turnover exceeds the threshold limit of audit

Invoices: Society is required to change the invoice format of monthly/quarterly/yearly bills invoiced to the members. Society should mention the GSTIN No, the tax collected and so on in the invoice issued by it

Compliance: to be followed by the society under GST law Returns Society are also liable to file monthly returns i.e. GSTR-1, GSTR-2, GSTR-3



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 Government4. Electricity charges5. Sinking Fund- mandatory under the Bye-laws of the Co-operative Societies6. Repairs & maintenance fund7. Car parking Charges8. Non Occupancy Charges9. Simple interest for late payment. <p>From the tax/ charge as listed above, on which GST is not applicable.</p>	<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 other service, then such charges collected by the society are liable to GST.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.



S. No.	Question	Answer
2.	As per guidelines on maintenance charges upto Rs. 7500/- no GST is applicable. Maintenance charges means only maintenance or collection of all charges	This is applicable to only the reimbursements of charges or share of up to an amount of ₹7,500 per month per member for sourcing of goods or services from a third person for the common use of its members. Here, charges mean the individual contributions made by members of the society to avail services or goods by the society from a third party for common use. [*Entry 77(c) of notification no 12/2017 Central Tax (Rate) dated 28.6.2017 refers]
3.	Monthly maintenance (all above charges) are below ₹7500/-but yearly total collection exceeds Rs. 20 lakhs limit whether GST is applicable	Reimbursement of charges or share of contribution up to an amount of Rs. 7500/- per month per member for sourcing of goods or services from a third person for the common use is not liable to GST. However, if the Cooperative society/ RWAs provide specific services of its own to its members or to any third party (e.g. use of community hall for social function by a non-member) cumulatively exceeds the threshold limit as per GST, then GST is leviable on such supply of services subject to threshold limit of Rs. 20 lakh.



S. No.	Question	Answer
	Total collection exceeds Rs. 20 lakhs limit whether GST is applicable	Monthly charges of Rs. 7500/- per member for sourcing of goods or services <u>from a third person for the common use is not liable to GST</u> . However, if the Co- operative society/ RWAs provide specific services of its own to its members or to any third party (e.g. use of community hall for social function by a non-member) cumulatively exceeds the threshold limit as per GST, then GST is leviable on such supply of services.
4.	At present we are following quarterly billing- whether we should change to monthly billing in view of the monthly return to be filed under GST Rules.	It is individual business decision.



4 Chapter

Detailed Analysis of GST on Housing Society with FAQs

GST is applicable to housing society?

Yes. GST is applicable to housing society

Housing society is not engaged in any business activities hence GST should not be applicable?

No. Under section 2 (17) of GST act the term "Business" had been defined which says Business includes - 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. Hence GST is applicable to housing society

Is there any limit or exemption available?

Tax payers having aggregate turnover in financial year up to 20 lakhs are exempt from tax. This is common exemption available to all tax payer.

How to calculate Aggregate turnover?

Aggregate turnover means the aggregate value of all taxable and non-taxable supplies, exempt supplies and



exports of goods and/or services Example of taxable supply are service charge, Non-occupancy charges, Interest on delay payment, Sinking fund, Parking charges, Transfer fee Example of exempt or non taxable supply are Bank interest, FD interest, Water charges.

Let's see below scenarios –

PARTICULARS	CASE 1	CASE 2	CASE 3	CASE 4	CASE 5
Total Service Charge	600000	800000	900000	1200000	200000
Total Sinking Fund	300000	400000	500000	600000	100000
Total Non-Occupancy Charges	100000	100000	100000	100000	100000
Total Transfer fee	150000	20000	0	60000	50000
Total Interest on delayed payment	80000	200000	400000	150000	75000
Total Non-member Income	0	600000	5000	20000	400000
Total Bank Interest	800000	10000	60000	45000	200000
Total Turnover	2030000	2130000	1965000	2175000	1125000
Contribution exceeds Rs.5000 per month	Yes	No	Yes	Yes	No
Liable to Register	Yes	Yes	No	Yes	No



Service Tax Exemptions to be continued in GST as decided by GST Council

Sl. No.	Services
24.	Services of life insurance business provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds to members of the Army, Navy and Air Force, respectively, under the Group Insurance Schemes of the Central Government
25.	Services provided by an incubatee up to a total turnover of fifty lakh rupees in a financial year subject to the following conditions, namely:- (a) the total turnover had not exceeded fifty lakh rupees during the preceding financial year; and (b) a period of three years has not been elapsed from the date of entering into an agreement as an incubatee;
26.	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 GST; or (c) up to an amount of five thousand 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;

Is there any other exemption available to society?

Yes. Apart from above common exemption there is below exemption provided under schedule of GST to housing society

If society is collecting contribution less than Rs.5000 then they are not liable to tax

How to calculate Rs.7,500 limit?

Rs.7,500 limit includes service/Maintenance charge, Electricity charges, and Insurance contribution, Sinking Fund, Repair Fund, Non-Occupancy Charges, Late fee etc. Following contribution are excluded in calculation of Rs.5000 limit –

Deposits

Donations

Contribution collected as pure agent

In every billing cycle raised, society should check whether to levy GST or not. Let take few example –



PARTICULARS	CASE 1	CASE 2	CASE 3	CASE 4	CASE 5	CASE 6
Service charge	4000	6000	4000	4000	6000	6000
Sinking fund	1000	2000	1000	1000	2000	2000
Late fee	200	200	200	200	200	200
Non occupancy charges	400	600	400	400	600	600
Transfer fee	0	0	25000	0	25000	0
Water Charges	0	0	0	10000	0	15000
Deposits	0	0	0	0	50000	50000
TOTAL	5600	8800	30600	15600	83800	28800
Exempt	0	0	0	10000	50000	20000
Liabe	5600	8800	30600	5600	33800	21800

If society turnover exceeds 20 lakhs but it does not collect contribution from member above Rs.7500 then whether society is liable to comply with GST?

No. Society is not liable to comply with GST as there is specific exemption of Rs.7,500 applicable to them explained above and if society is not collecting taxable rental income. There are no such provision in GST act which says tax payer should comply with act for exempted services. Voluntary registration or compliance can be opted.

If society turnover does not exceeds 20 lakhs but it collect contribution from member above Rs.7,500 then whether society is liable to comply with GST?

No. Society is not liable to comply with GST as there is common exemption of Rs.20 lakhs applicable to them explained above. Voluntary registration or compliance can be opted. Restructuring of contribution amount to be collected from member is always preferable.

If society turnover exceeds 20 lakhs but it collect contribution from member above Rs.7,500 then whether



society is liable to comply with GST?

Yes. Society should register himself under GST act and comply with payment, return filing.

Visit this URL- <https://gst.gov.in/> to know more about registration. Restructuring of contribution amount to be collected from member is to be made by society to get out of purview of this compliance.

If society turnover exceeds 20 lakhs but it does not collect contribution from member above Rs.7,500 but collecting rental income from non-member then whether society is liable to comply with GST?

If society is collecting rental income, advertisement from non-member then society should charge GST on such income and Pay GST to govt.

If monthly contribution is Rs.8500 then whether GST is to be charged on Rs.8500 or Rs.1000?

GST is charged on Rs.8500 and not Rs.1000. There is no slab for levy of GST.

What is GST rate applicable here?

18% GST rate is applicable to housing society and SAC code is 00440245 (Maintenance and Repair Services).

Society should revise its bill format if liable for GST?

Yes. As per GST act there certain items to be included in Invoice format under which society should raise invoice. GST tax is payable on billing basis, i.e. even if a member does not pay the bill amount, Tax will have to be paid by the society. GST tax liability will be reduced from GST tax paid to service provider like security vendor, Housing keeping vendor etc. Net GST tax liability is to be paid.



Society is providing exempt services and taxable services then are we allowed to get entire credit of GST paid to our vendor?

No. You can refer <http://www.cbec.gov.in/resources//htdocs-cbec/gst/draft-model-gst-law-25-11-2016.pdf>. Page no 34, point 17(2) which clarify our query that society can get credit only of taxable services. Input credit for exempted services are not allowed to utilize. If part of the Service/goods is used for exemption goods/services and part for taxable, in that case, the credit will be given proportionately.

Eligible input credit = (total input credit / total turnover) value of taxable services*

Whether Reverse charge mechanism is applicable to housing society or not?

Yes. It is applicable in case of advocate's payments. Then society need to pay GST on such services to govt. and claim input credit. If services is received from unregistered person then also it is responsibility of registered person to pay GST to govt. Invoice of such services should contain GST applicable under reverse charge mechanism.



5 Chapter

Case Laws

Society imparting Training to Students to get Placements eligible for Income Tax Exemption

Process cum product development center vs. CIT, DELHI

CASE NO. – 3403./DEL/2017

DATE -4.02.2019

Fact of the Case

In the present case the society engaged for skill training to the students in manufacturing of sports goods.

Assessee society is engaged in conducting various short duration training programs of computer training, Web Designing, audit CAD, training in Computer Accounting System (TCAS), Tally 9, Leg guards & Gloves (STST) Hand Gloves Manufacturing, cricket bat manufacturing, batting gloves manufacturing, football manufacturing, Cricket ball manufacturing & leather workshop, training in R/P workshop, wood workshop etc.

The Assessing Officer denied the exemption under section 10(23C)(iiib) of the Income-tax Act, 1961 to the assessee on the ground that the assessee society is not running an institution to provide systematic education.

Being aggrieved with the decision of the assessing officer



the assessee appealed to the Tribunal.

Decision of the Case

The Tribunal noted that the assessee society, substantially financed by the Government of India, is engaged only in imparting research based education/ skill training to the students in manufacturing of sports goods and leisure equipments without any profit motive.

The Delhi bench of the Income Tax Appellate Tribunal (ITAT) has held that a society engaged in providing education/ skill development training to the students to enable them to get placement is eligible for deduction under section 10(23C)(iiiab) of the Income Tax Act.

Club liable to pay GST on Subscriptions, Sponsorship Fees and Sale of Souvenirs: West Bengal AAR

The Association of Inner Wheel Clubs in India vs. West Bengal AAR

Case No. – 23/WBAAR/2018-19

Date – 26.11.2018

Fact of the Case

The Association of Inner Wheel Clubs in India is the applicant here.

It is affiliated to international inner wheel which is one of the largest women's service voluntarily organizations in the world activity in more than 103 countries.

The organization is involved in social welfare work for the financially backward class people. It also provides support to the people suffering from natural disaster or in war-torn regions from the accumulates funds through subscriptions, sponsorship fees, the sale of souvenirs etc.

Under such situation the applicant approached to AAR



seeking clarification on their liability to pay tax under the new GST regime.

Decision of the Case

The AAR explained that the activity undertaken by the Applicant do not conform entirely to the definition of the Charitable Activity under GST Act clause 2(r) of **Notification No 12/2017**.

Secondly, the applicant has also activities which involve providing space for advertisement, raising sponsorship etc. and such activities are to be treated as business transactions.

Such service may be classified as advertising services & sale of souvenirs is to be treated as supply of goods.

So, despite of involvement of some social welfare activities of the applicant , he is liable to pay GST due to the aforesaid reasons.

Society not liable to pay GST on Maintenance of Parks provided to Govt and Local Authorities:

M/s The Nursery Men Co-operative vs. AAR Karnataka

Case No. - Advance Ruling No. KAR ADRG 18 / 2018

Date – 06.08.2018

Fact of the Case

In the present case the applicant society is a wing of Horticulture Department of Government of Karnataka.

The applicant executes the works of deweeding of the land, leveling of land, landscaping & formation of parks in the lands belonging to government and government undertaking.

The applicant wants clarification regarding their tax liability



in connection with the performance of above mentioned activities in point (2) for government departments like BBMP, KSRTC etc through work contracts.

Decision of the Case

The authorities are silent on the activities which are in the nature of works contract and composite supplies since they are not covered under Entry No3 of the **Notification No 12/2017**. It is only the pure services in relation to urban amenities and facilities which are exempt from the levy of tax.

Moreover KSRTC and BBMP are also not covered under Entry No3 of the **Notification No 12/2017**

The authority also noted that provision of urban amenities and facilities such as parks, gardens, playgrounds are the activities covered under article 243W of the constitution and hence exempt.

Miscellaneous Receipts by Co-operative Societies from its Members

**INCOME TAX OFFICER, MUMBAI vs.
VENKATESH PREMISES COOPERATIVE SOCIETY LTD.**

Civil Appeal No.2706 OF 2018

Date of pronouncement – 12.03.2018

Fact of the Case:

A common question of law arises for consideration in this batch of appeals, whether certain receipts by cooperative societies, from its members i.e. non-occupancy charges, transfer charges, common amenity fund charges and certain other charges, are exempt from income tax based on the doctrine of mutuality.

The assessing officer held that receipt of non-occupancy charges by the society from its members, to the



extent that it was beyond 10% of the service charges/maintenance charges permissible under the notification dated 09.08.2001, stands excluded from the principle of mutuality and was taxable.

The Income Tax Appellate Tribunal held that the notification dated 09.08.2001 was applicable to cooperative housing societies only and did not apply to a premises society.

Learned senior counsel appearing on behalf of the Revenue in all the appeals, submitted that the receipts were exigible to tax no sooner that mutuality came to an end and the receipts had an element of profit, also generating a surplus, rendering commerciality to the nature of the activity.

The receipt of transfer fee before induction to membership under some of the byelaws shall not be liable to tax as the money was returned in the event that the person was not admitted to membership. The appropriation by the society took place only after admission to membership.

Non-occupancy charges were levied for the purpose of general maintenance of the premises of the Society and provision of other facilities and general amenities to the members.

Even if any amount was left over as surplus at the end of the financial year after meeting maintenance and other common charges, that would constitute surplus fund of the society to be used for the common benefit of members and to meet heavy repairs and other contingencies and will not partake the character of profit or commerciality so as to be exigible to tax.

Decision of the Case:

Transfer charges are payable by the outgoing member. If for convenience, part of it is paid by the transferee, it



would not partake the nature of profit or commerciality as the amount is appropriated only after the transferee is inducted as a member. In the event of non admission, the amount is returned.

Non-occupancy charges are levied by the society and is payable by a member who does not himself occupy the premises but lets it out to a third person. The charges are again utilised only for the common benefit of facilities and amenities to the members.

These charges are levied on the basis of resolutions passed by the society and in consonance with its byelaws. The receipts in the present cases have indisputably been used for mutual benefit towards maintenance of the premises, repairs, infrastructure and provision of common amenities.

In the result, all appeals preferred by the Revenue are dismissed.



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