S&A
SETH & ASSOCIATES
CHARTERED ACCOUNTANTS

Real Estate

TAXATION ISSUES IN THE INDUSTRY

DHRUV SETH
Co-Founder Partner,
Seth & Associates
Chartered Accountants

DHRUV@SETHSPRO.COM | 9935522611 | WWW.SETHSPRO.COM

JOINT DEVELOPMENT AGREEMENTS

Types

Pure JDA	Joint Venture	Partnership	Development Company
Both parties are obligated to do their parts in their respective legal entities with a common goal. No resources are pooled apart from land	Parties enter into an agreement and form a Joint venture account to develop the land and enjoy the fruits in a common and pre-defined manner. They are basically togther just for this project as an event. Treated as AOP	Parties enter into a formal partnership with the deed defining the exact role and responsibilities. Land introduced as capital by land owner	Land may remain with the land owner but to enjoy the profits and distribute responsibilities a company is formed between the owner and the developer. Helps in saving the stamp duty.

JOINT DEVELOPMENT AGREEMENTS

SETH & ASSOCIATES
CHARTERED ACCOUNTANTS

Revenue share

GST	Income Tax	RERA	Accounting
The developer pays on the entire amount collected at the applicable rates. No liability on the land owner	• Deduct 10% TDS under Sec 194(IC) by the developer • Depending upon agreement terms Capital Gains for land owner.	Compliances by the developer and no implications for the Land owners	Amount paid by the developer to be treated as land cost in his books and accordingly percentage completion method to apply.

JOINT DEVELOPMENT AGREEMENTS

SETH & ASSOCIATES
CHARTERED ACCOUNTANTS

Area share

GST	Income Tax	RERA	Accounting
The developer to charge GST to the land owner for the constructed area transferred. ITC available to landowner to set off with final liability	• The developer to be taxed under the business head. • Taxation of land owner can be tricky with it either being taxed under capital gains or if he trades then under business head.	Both may need to be registered seperately.	Both need to maintain their own books of accounts depending on the taxability of the event. The developer would book the entire construction cost as his own.

JOINT DEVELOPMENT AGREEMENTS

SETH & ASSOCIATES
CHARTERED ACCOUNTANTS

Joint Venture

GST	Income Tax	RERA	Accounting
The JV entity would be liable to pay GST on the project and not individually for the other parties	Taxed at the highest rate of the prevailing rate. No partner's salary or interest on capital is allowed.	JV would need to register under the law as a single entity	Common books of accounts to be made by the AOP just like a partnership firm.

JOINT DEVELOPMENT AGREEMENTS

SETH & ASSOCIATES
CHARTERED ACCOUNTANTS

Partnership Firms

GST	Income Tax	RERA	Accounting
The partnership firm complies with all the laws and there is no liability on partners	Firm to pay tax. New provisions of Sec 45(4) and 9B need to be kept in mind for exit.	Firm would need to register under the law as a single entity	Common books of accounts to be made.

IMPORTANT THINGS - GST

SETH & ASSOCIATES
CHARTERED ACCOUNTANTS

- Ensure you have 80% purchases from registered dealers
- Ensure 100% Cement and Capital goods are from registered dealers.
- The completion certificate is a must and not from an architect. Can be partial too.
- Ensure separate accounts/cost centers for each project.
- Compliance with reverse charges such as payment to directors and lawyers is often missed.
- Reverse charge in case of services from the Government like license fees, inspection, and testing above Rs 5,000.

IMPORTANT THINGS - GST

SETH & ASSOCIATES
CHARTERED ACCOUNTANTS

- Plots with basic development would be exempt.
- FSI / TDR for pure **residential projects** is exempted AND when the entire project is sold before the completion certificate.
- Single independent units are not subject to GST unless part of a larger complex.
- 12% GST rate for contractors developing affordable segments.
- If "Legal" occupancy can be demonstrated then GST liability can be mitigated for unsold inventory.

IMPORTANT THINGS - GST

SETH & ASSOCIATES
CHARTERED ACCOUNTANTS

- Club to be taxed at 18% rest all PLC, EDC, etc. at the normal rate of 5% or 1%
- JDA in terms of Plotting - The developer would need to tax the land owner as a contractor
- The exchange of flats by the land owner would be taxable
- The timing of the deposit of tax is as per the agreement to sell and not based on receipt.
- General Anti Avoidance Rules applicability on all transactions.

FUTURE STRUCTURING

SETH & ASSOCIATES
CHARTERED ACCOUNTANTS

- Segregate accounting or legal entities between taxable and non-taxable supplies.
- If operating in a partnership firm take cognizance of Sec 45(4) and 9B of the Income Tax Act.
- Buybacks would be a more tax-efficient route than dividends for the distribution of profits in a company.
- ITC availability for rental commercial properties should soon get settled by the Hon’ble SC.
- Fractional ownership or “Syndication” model may start becoming a reality.