

Goods and Service Tax



Day 10



By

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Day 10 Session I **Work Contract**



Work Contract

Service Tax Vs GST

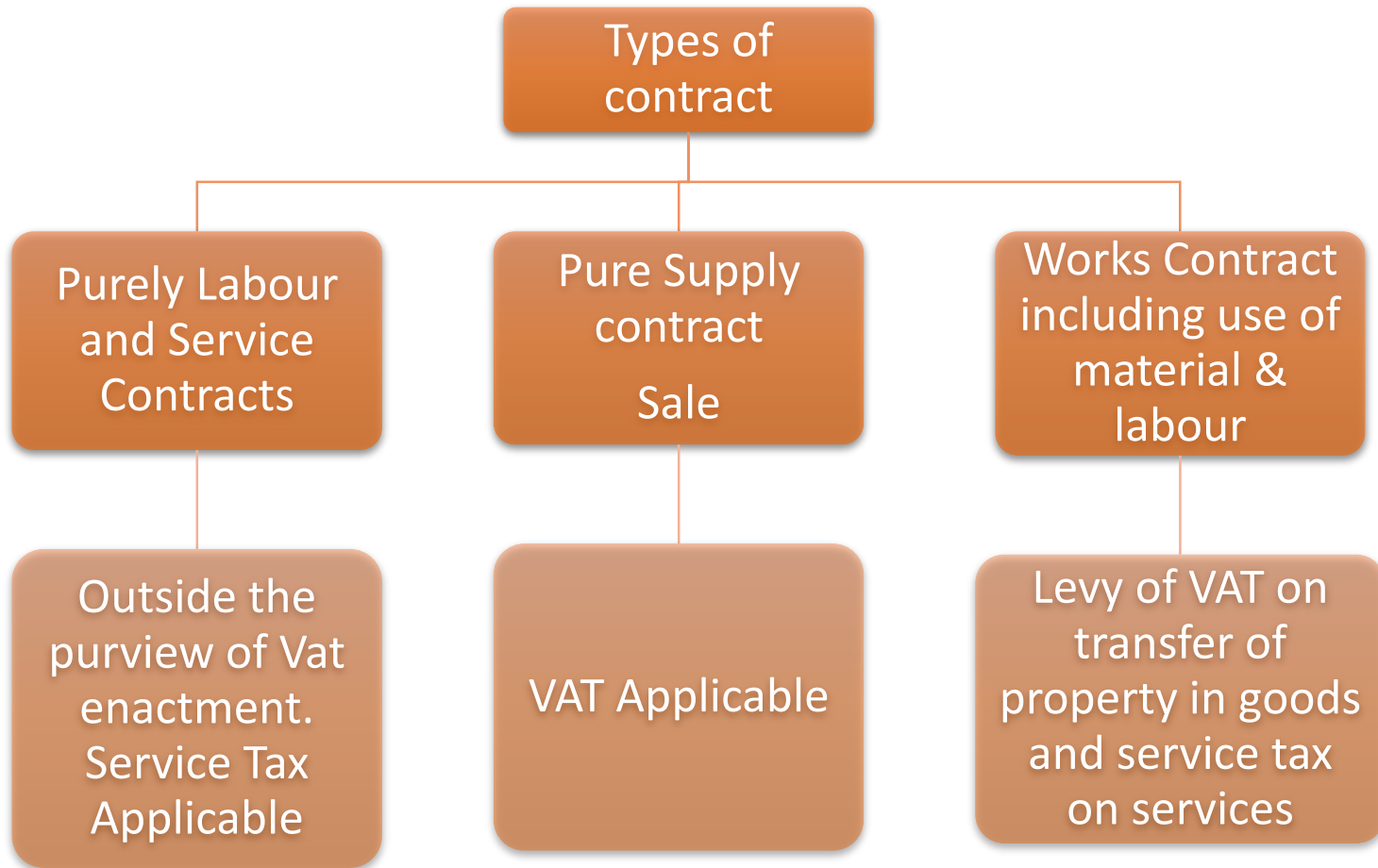
OLD LAW

- "works contract" means
- a contract wherein
- transfer of property in goods
 - involved in the execution of such contract
 - is leviable to tax as sale of goods and
- such contract is for the purpose of carrying out
 - construction, erection,
 - commissioning, installation,
 - completion, fitting out,
 - repair, maintenance, renovation, alteration of
 - any **movable** or immovable property or
 - for carrying out any other similar activity or a part thereof
 - in relation to such property

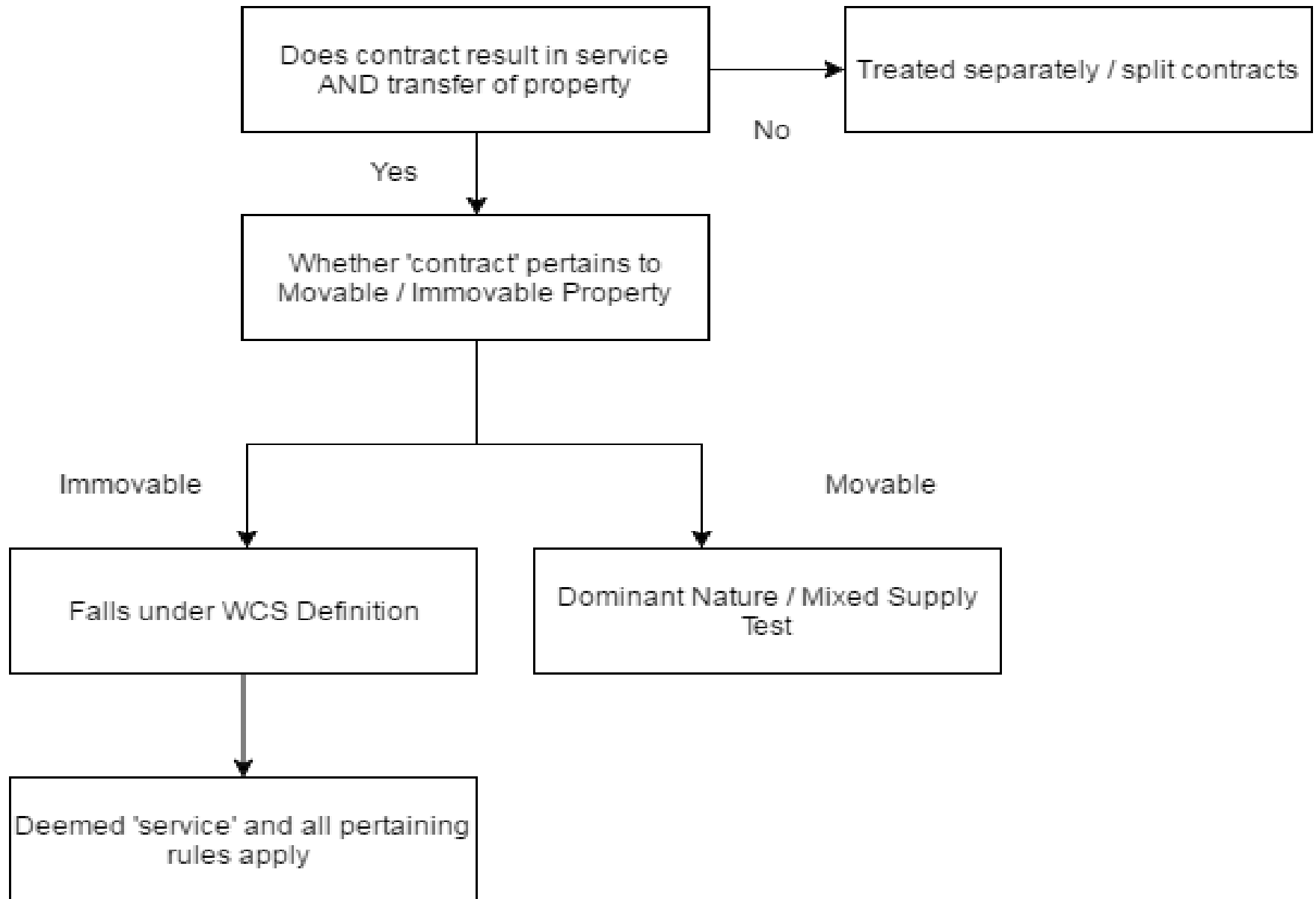
NEW LAW

- “works contract” means
- a contract for
 - building, construction, fabrication,
 - completion, erection,
 - installation, fitting out,
 - improvement, modification, repair, maintenance,
 - renovation, alteration or commissioning
- of any **immovable property**
- wherein transfer of property in goods
 - (whether as goods or in some other form)
 - is involved in the execution of such contract;

Old Law | Type of Contracts



TEST FLOW



Under New Regime

Composite Supply

- means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Principal Supply

- Means the supply of goods or services which constitutes the predominant element of a composite supply

Mixed Supply

- means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply
- **Government may**, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—
 - a supply of goods and not as a supply of services; or
 - a supply of services and not as a supply of goods.

Under New Regime

Schedule II

Section 7

Following composite supplies shall be treated as a supply of services, namely:—

- (a) works contract as defined in clause (119) of section 2;
- (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

Treatment by Contract Type

Labour contracts in relation to a building or structure

Existing Law

- Work contract - No
- labour Contracts do not fall in the definition of works contract.
- It is necessary that there should be transfer of property in goods involved in the execution of such contract which is leviable to tax as sale of goods.
- Pure labour contracts are therefore not works contracts and would be leviable to service tax like any other service and on full value.

New Regime

- More or less the same treatment
- Labour contracts to be treated as 'service contract' and rules pertaining to place of supply of service and time of supply of service to apply
- This is assuming there is no transfer of property / goods
- Rate would be the headline / alternate rate prescribed for service

Treatment by Contract Type

Contract for repair or maintenance of motor vehicles

Existing Law

- Work Contract - Yes
- Only if property in goods is transferred in the course of execution of such a contract.
- Service tax has to be paid in the service portion of such a contract.

New Regime

- Since the definition of 'works contract' is restricted – any WCS apart from those dealing with immovable property shall be 'service'
- The GST law introduced the concept of 'Composite Supply'
- Where service is 'dominant' in nature- the contract shall be classified as 'service'
- Will it be beneficial to 'split' contracts in such a case?

Treatment by Contract Type

Contracts for construction of a pipe line or conduit

Existing Law

- Work Contract - Yes
- As pipeline or conduits are structures on land contracts for construction of such structure would be covered under works contract.

New Regime

- The first pertinent question is the movable / immovable test – in the immediate case ‘immovable’
- Since immovable falls under definition of ‘WCS’ – deemed service – and rate / place of supply / time of supply to be determined accordingly
- The economic justification of abatement does not exist– all input credits eligible (goods / services)

Treatment by Contract Type

Contracts for erection, commissioning or installation of Plant, machinery, equipment or structures, whether prefabricated or otherwise

Existing Law

- Work Contract - Yes
- If transfer of property in goods is involved in such a contract.

New Regime

- The first pertinent question is the movable / immovable test – in the immediate case ‘immovable’
- Since immovable falls under definition of ‘WCS’ – deemed service – and rate / place of supply / time of supply to be determined accordingly
- The economic justification of abatement does not exist– all input credits eligible (goods / services)

Treatment by Contract Type

Contracts for painting of a building, repair of a building, renovation of a building, wall tiling, flooring

Existing Law

- Work Contract - Yes
- if such contracts involve provision of materials as well.

New Regime

- Definition defines **building**, construction, fabrication, completion, erection, installation, **fitting out**, **improvement**, modification, **repair**, maintenance, renovation, alteration or commissioning of any immovable property
- Since building is immovable – this shall be ‘WCS’

Work Contract - Valuation

- General Rule : [Transaction Value](#)
- Free Material Supplied by Service Recipient

Free Supply by Recipient	Taxable under GST / ITC to reversed
In the hand of Work Contract Service Provider	ITC allowed if “Supply” No ITC if only ITC reversed.

- Value of Work contract: [Consideration Plus Material Value \(Rule 27 Chapter IV\)](#)

Section 17 (5)(c)

- Notwithstanding anything contained in
 - section 16(1) and 18(1),
 - input tax credit **shall not be available** in respect of the following, namely:—
- Works contract services
 - when supplied for
 - construction of an immovable property
 - (other than plant and machinery)
 - **EXCEPT**
 - where it is an input service
 - for further supply of works contract service;

An Example:

If the builder has a project in which there are 1000 flats. However due to market conditions or for any other reason he is able to sell only 800 flats till the time he receives the completion certificate.

In this case, he will have to reverse the credit taken on the balance 200 units as upon receipt of completion certificate, these flats would become building and would be covered under entry no 5 of schedule III of the CGST Act, 2017.

In this scenario, he *may be* liable to pay interest on such reversal of credits for the period starting from the date of completion certificate till the date of actual reversal at the prescribed rates.

Section 140(3)

A registered person,

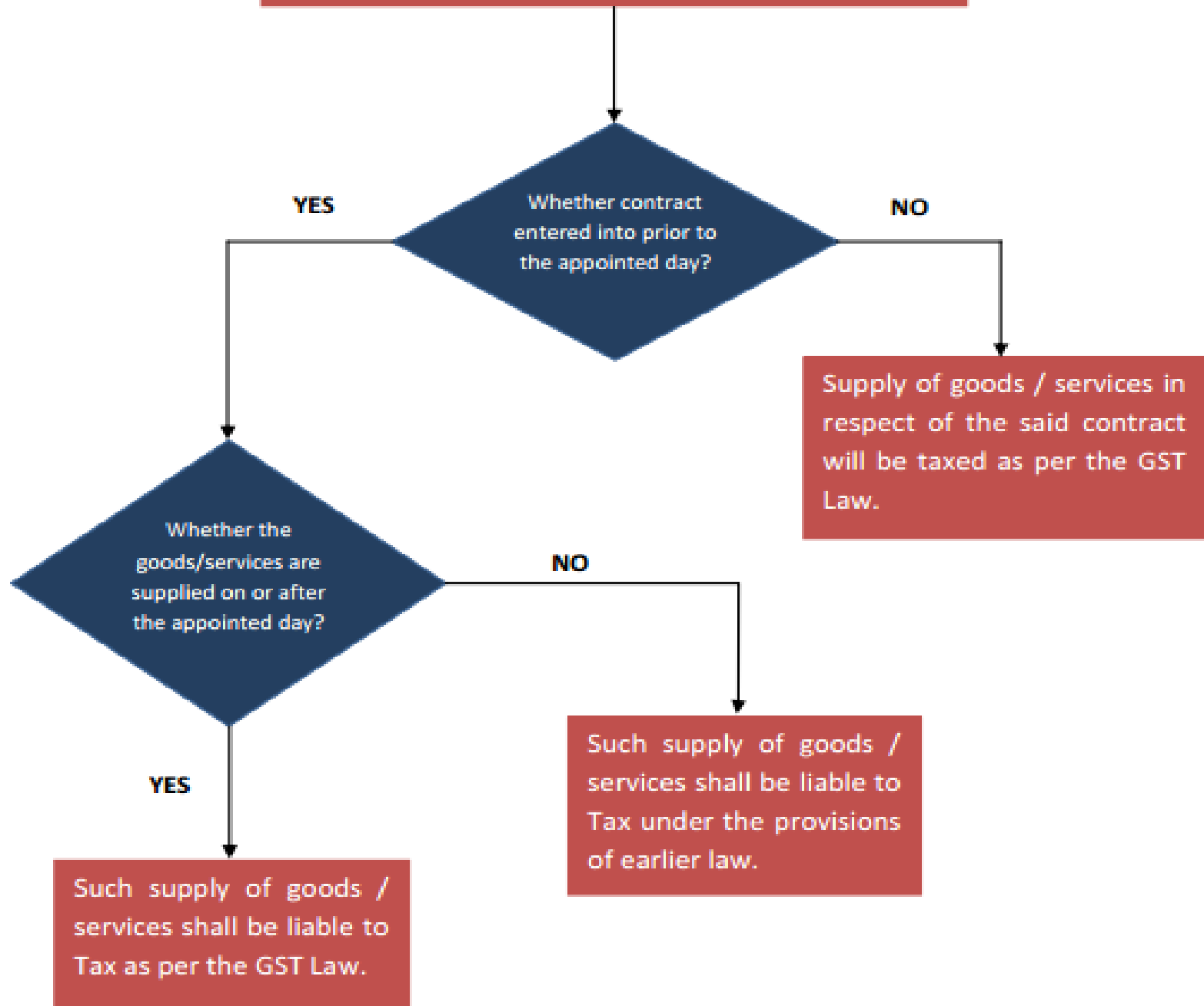
- who was not liable to be registered under the existing law, or
- who was engaged in
 - the manufacture of exempted goods or
 - provision of exempted services, or
- who was providing works contract service and
 - was availing of the benefit of Notification No. 26/2012,—Service Tax, dated the 20th June, 2012 or
- a first stage dealer or
- a second stage dealer or
- a registered importer or
- a depot of a manufacturer,

Section 140(3)

shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:—

1. such inputs or goods are used or intended to be used for making taxable supplies under this Act;
2. the said registered person is eligible for input tax credit on such inputs under this Act;
3. the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
4. such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
5. the supplier of services is not eligible for any abatement under this Act:

In case of long term construction or works contracts



Rule 56(14) Accounts and Records

Every registered person executing works contract shall keep separate accounts for each works contract showing:

- The **names and addresses of the persons** on whose behalf the works contract is executed;
- Description, **value and quantity (wherever applicable) of goods or services received** for the execution of works contract;
- Description, **value and quantity (wherever applicable) of goods or services utilized** in the execution of each works contract;
- The details of **payment received in respect of each works contract**; and
- The **names and addresses of suppliers** from whom he has received goods or services.



Question *n* Answer Session



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Thank You

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