

# Taxation of Resident Welfare Associations (RWAs)

Direct and Indirect Tax Perspective

Webinar for ICAI Hyderabad Chapter on 21/11/2020

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# Brief Intro - Resident Welfare Associations

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Apartment  
Owners  
Association

Co-operative  
Housing  
Societies

Housing  
Societies

Building  
Societies

Condominium

# RWA - Compliances under the Income Tax Act

# RWA - Compliances under the Income Tax Act

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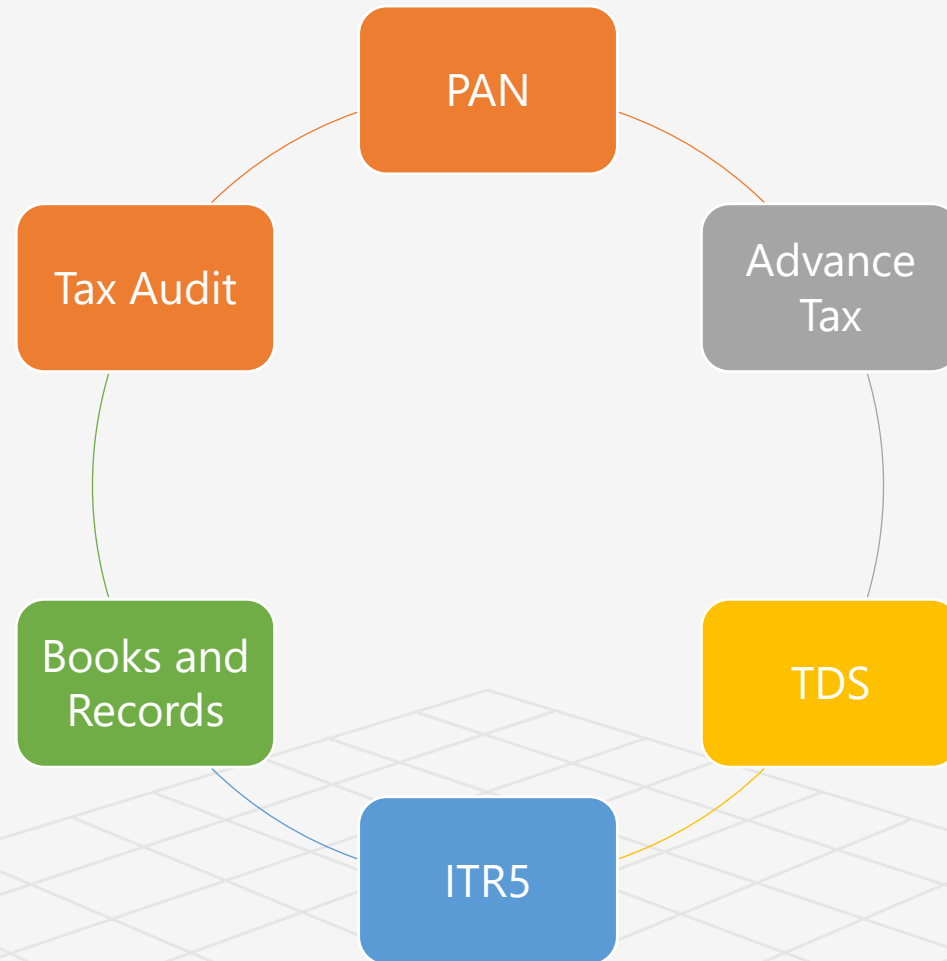
"Person" includes—

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) **an association of persons or a body of individuals**, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses;

Explanation: For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains.

# RWA - Compliances under the Income Tax Act

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# RWA - Compliances under GST Law

# RWA - Compliances under GST Law

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## **Supply – Definition:**

7. (1) 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;

## **2(17) “business” includes -**

(e) 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;

*As per the latest ruling by the Appellant Authority for Advance Ruling given to Nariman Point Housing Cooperative Society (CHS), held that the Supreme Court’s Order under Sales tax regime will not apply as the “supply” concept that exists under GST laws doesn’t exist in Sales Tax regime. The appellate bench held that under the GST Act, the term ‘supply’ and ‘business’ have a wide meaning and cover the activities of a CHS carried out for the benefit of its members. A profit motive is also immaterial under the GST Act, it stated.*

# RWA - Compliances under GST Law

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## Person - Definition

### Sec 2(84) "person" includes–

- (a) an individual;
- (b) a Hindu Undivided Family;
- (c) a company;
- (d) a firm;
- (e) a Limited Liability Partnership;
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 outside India;
- (h) any body corporate incorporated by or under the laws of a country
- (i) a co-operative society registered under any law relating to co-operative societies;
- (j) a local authority;
- (k) Central Government or a State Government;
- (l) society as defined under the Societies Registration Act, 1860 (21 of 1860);
- (m) trust; and
- (n) every artificial juridical person, not falling within any of the above;

# RWA - Compliances under GST Law

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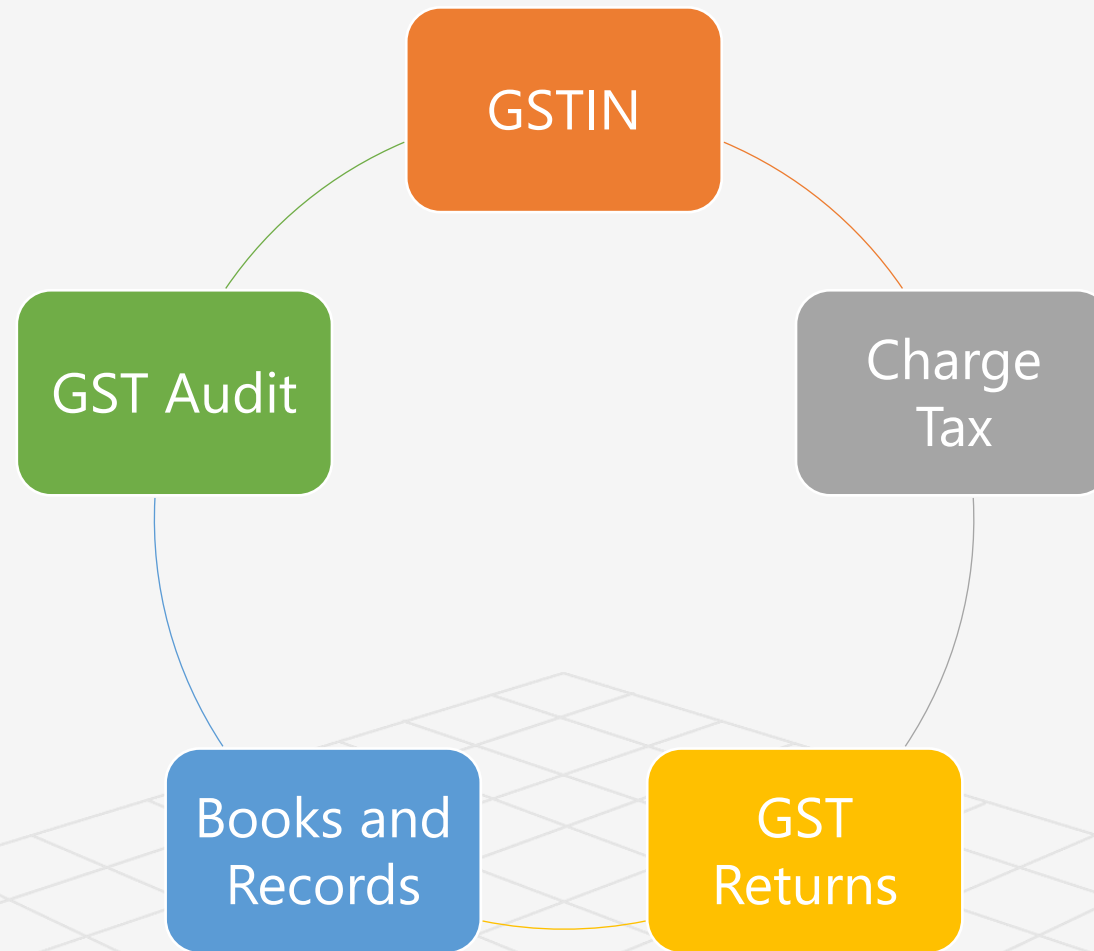
## **Position under erstwhile Service Tax Regime**

As per clause 28(c) of notification number 12/2012- Service Tax, dated the 17th March, 2012, exempted the services provided 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 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.

*Under the landmark case of Calcutta Club, Supreme Court held that the clubs are not entitled to charge, collect and pay service tax on any services made to its members. The rationale for the decision was that if there are no members, there is no club and vice-versa. In other words services provided by Clubs/Associations to members doesn't constitute business on the grounds of Principle of Mutuality and hence no tax can be leviable on them. State of West Bengal vs. Calcutta Club Limited[1] [TS-779-SC-2019-VAT]*

# RWA - Compliances under GST Law

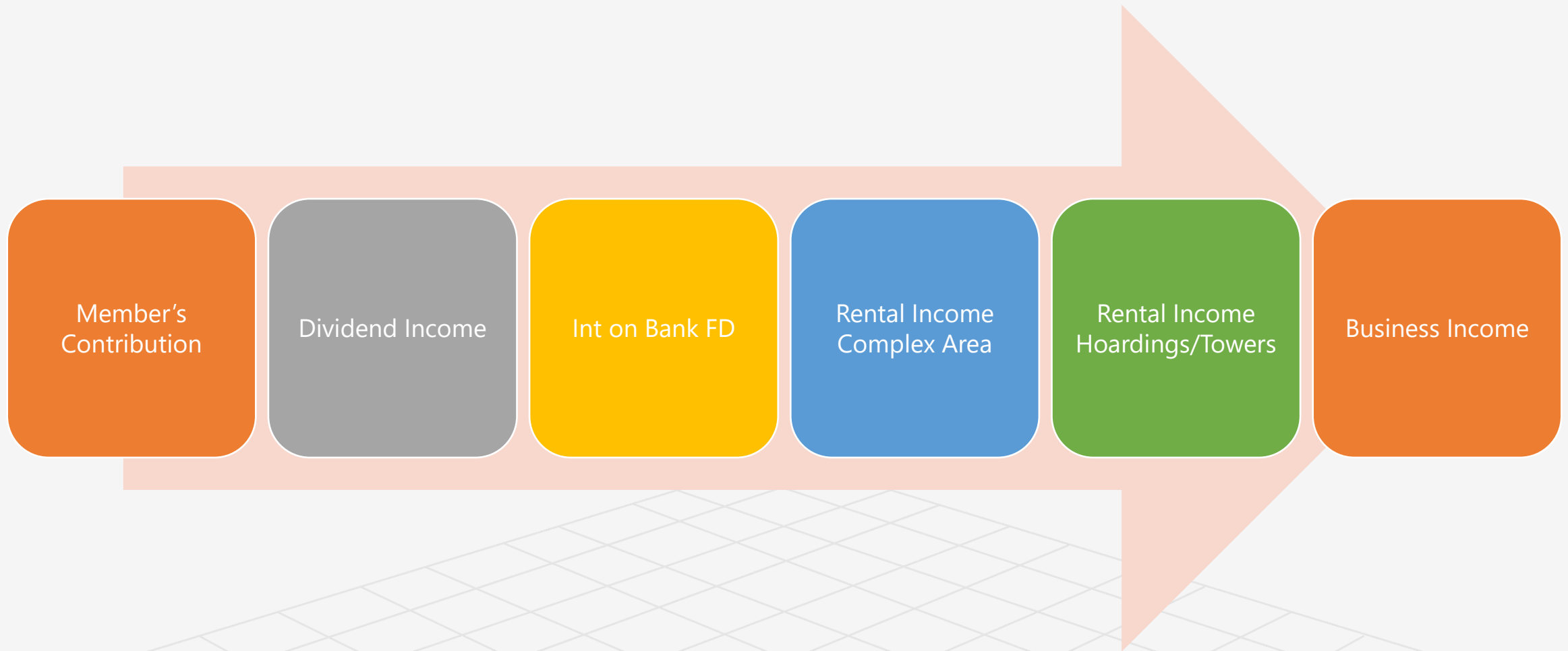
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# RWA - Sources and Taxability of Income

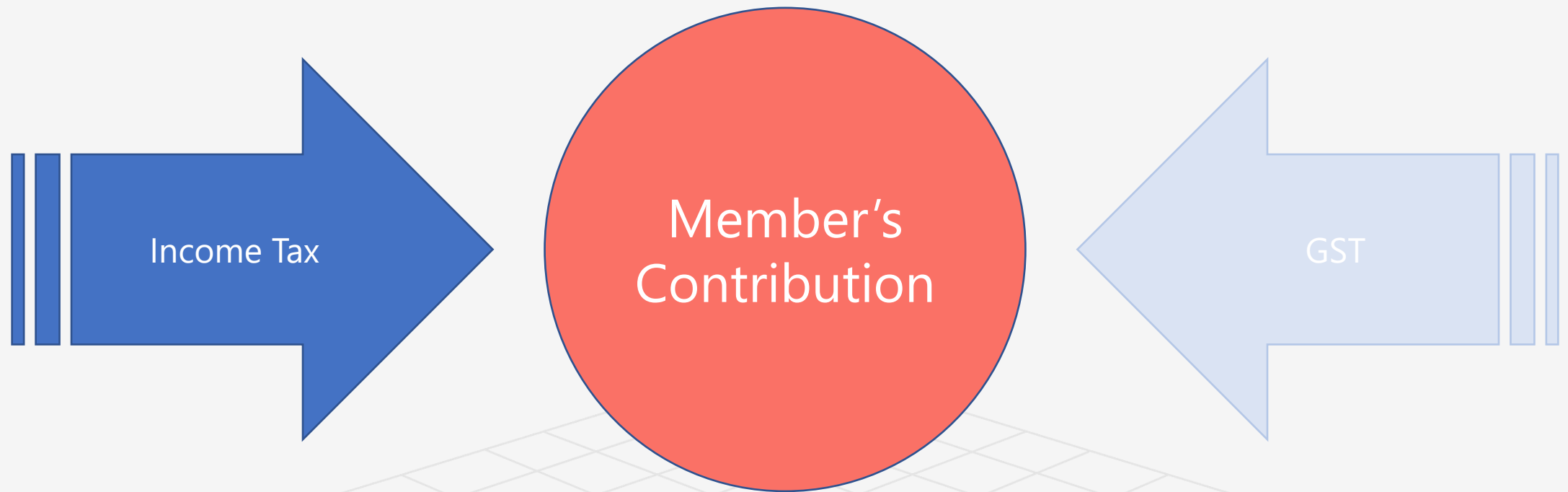
# RWA - Sources of Income

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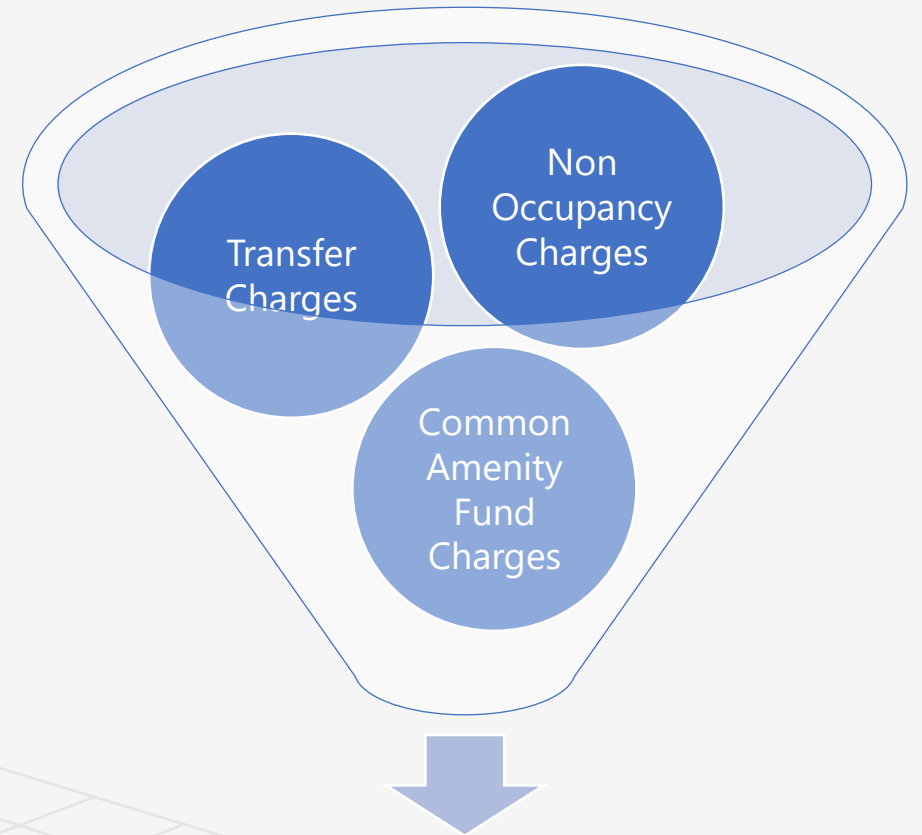
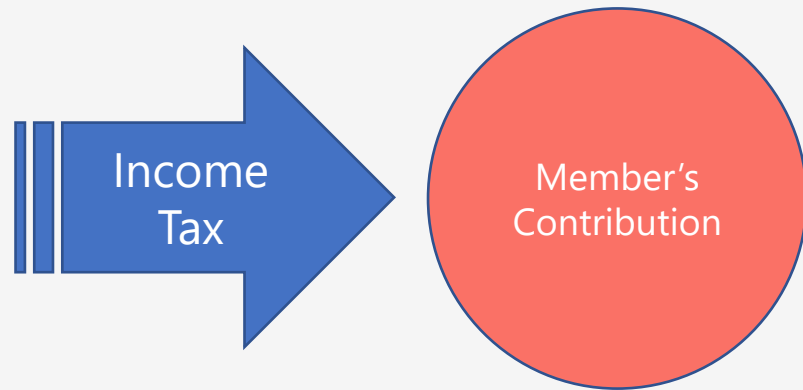
# RWA - Taxability of Income

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# RWA - Taxability of Income

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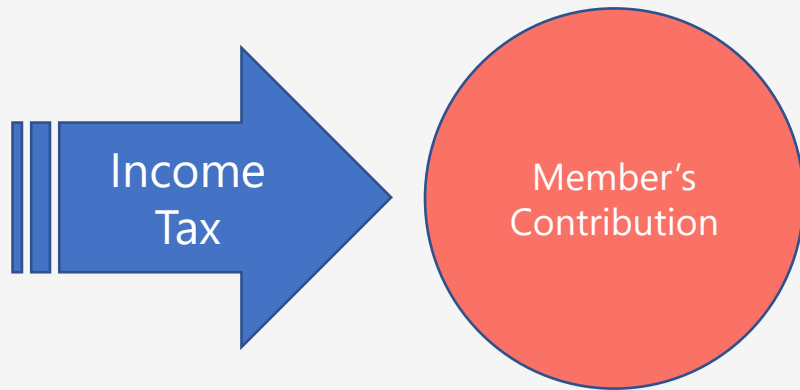


ITO, Mumbai Vs Venkatesh Premises Cooperative Societies Ltd  
(SC Ruling dt 12-03-2018)

Doctrine of Mutuality Applicable?

# RWA - Taxability of Income

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Bankipur Club Ltd (Supreme Court):

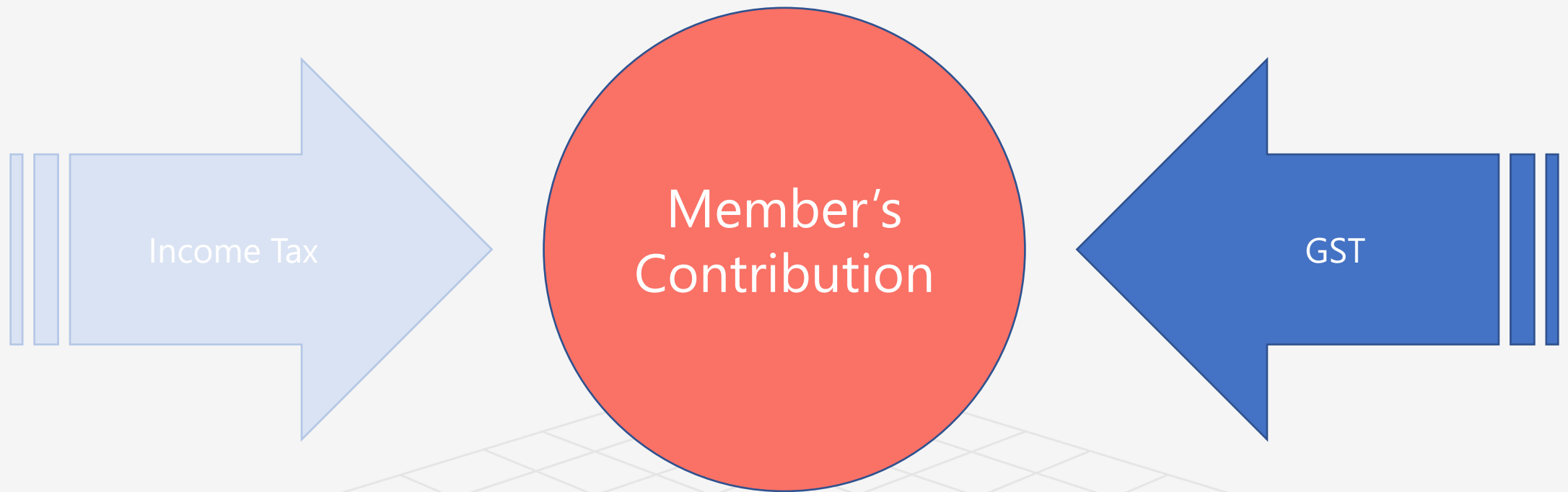
- a. complete Identity between contributors and participators
- b. treatment of excess funds must be in furtherance of the object of the club/society
- c. contributors should derive profits from contributions made by themselves which could only be expended or returned to themselves



Doctrine of Mutuality Applicable?

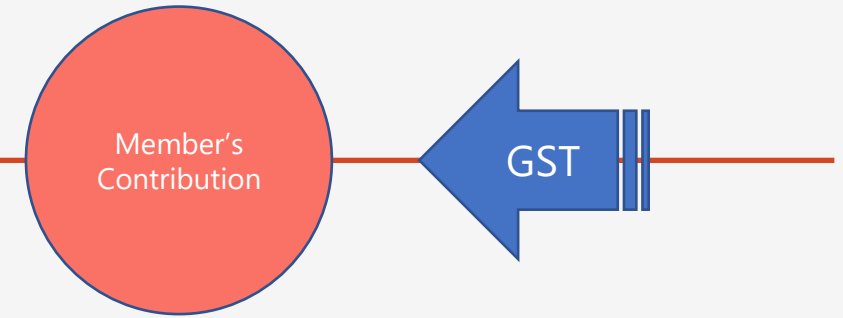
# RWA - Taxability of Income

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# RWA - Taxability of Income

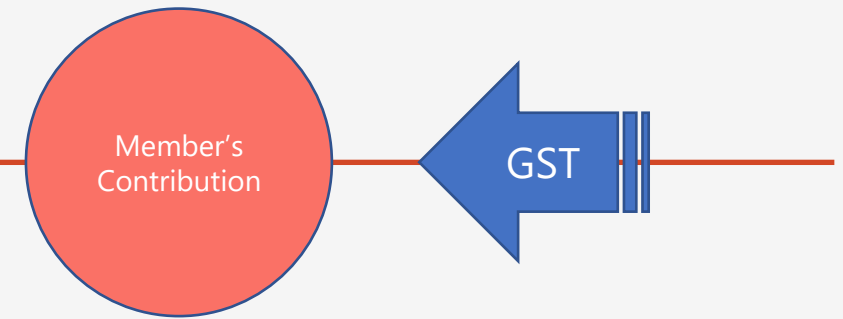
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- ✓ In simple terms, principle of mutuality means "No man can trade with himself; he cannot make, in what is its true sense or meaning, taxable profit by dealing with himself". Since in the Association/RWA, there would be complete identity between the contributors and beneficiaries, there cannot be any profit by dealing with oneself.
- ✓ Prior to GST, the Courts has opined that services provided by RWA to members doesn't constitute business on the grounds of Principle of Mutuality and hence no tax is leviable on the services provided the RWA to its members.
- ✓ During the GST era, the definition of business is very wide unless the Courts opine the mutuality is applicable – one would not like to take this view.

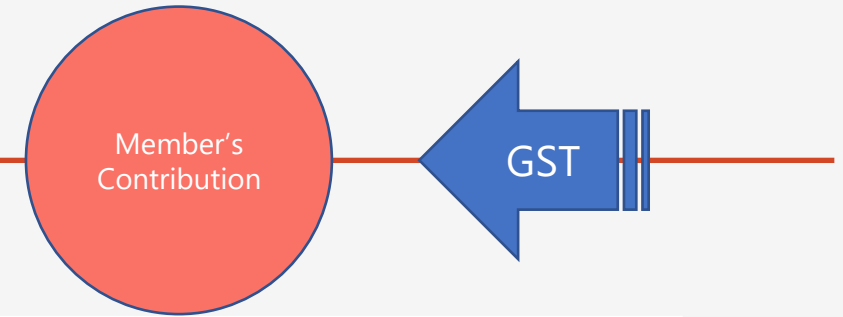
# RWA - Taxability of Income

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- ✓ As per Serial No. 77(c) of Notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017, Services by an unincorporated body or 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 up to an amount of Seven Thousand Five Hundred 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 exempt from Goods and Service Tax.
- ✓ As per Circular No. 109/28/2019- GST dated 22.07.2019, if aggregate turnover of an RWA does not exceed Rs.20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs. 7500/- per month per member. Further, the registration and charging of GST would not be required where the aggregate turnover exceeded Rs.20 lakh in a financial year, but the monthly maintenance charges were up to Rs.7,500 per member.

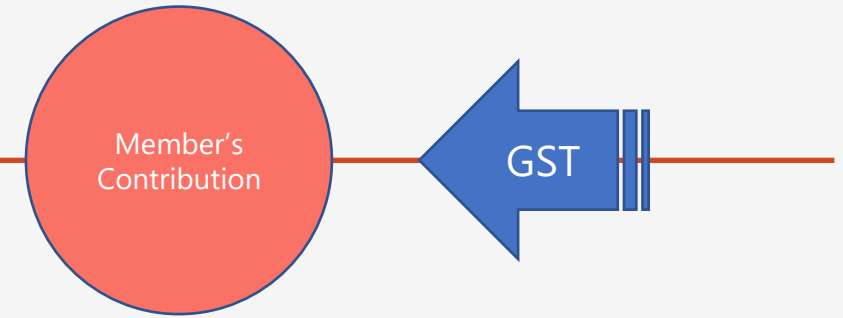
# RWA - Taxability of Income



Sl. No.	Is the aggregate turnover Rs.20 lakh or more in the financial year?	Are the maintenance charges per month per member more than Rs.7,500?	Is GST registration required?	Is GST chargeable for any goods/services supplied by the RWA?
1.	No	No	No	No
2.	Yes	No	No	No
3.	No	Yes	No	No
4.	Yes	Yes	Yes	Yes

# RWA - Taxability of Income

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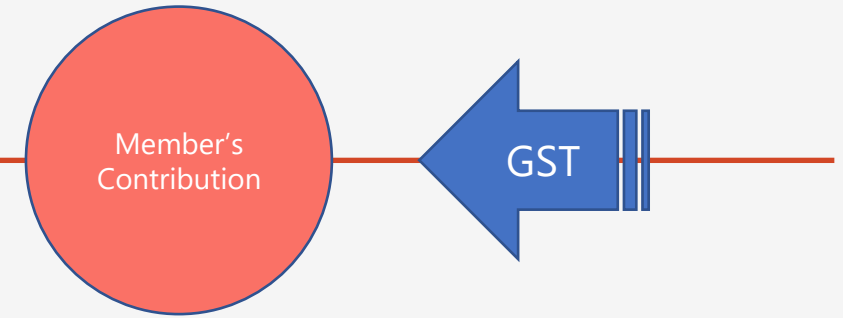


Water and electricity charges collected from members would subject to GST as under:

- ✓ Specific use of the members: The exemption of Rs 7500/- per month per member is only for commonly procured goods and services. Where, the water & electricity charges are collected and paid based on the metered usage of the members to the third-party vendors, by RWA, such charges could be excluded from the value of the supplies of RWA citing pure agent exemption, where all the conditions of pure agent are satisfied.
- ✓ Common use: Where water and electricity charges are collected from the members for the common use, it would be included in the exemption limit of Rs. 7500/- per member per month. Water charges for the common use of the members cannot be excluded from the exemption limit of Rs. 7500 for availing the specific exemption.

# RWA - Taxability of Income

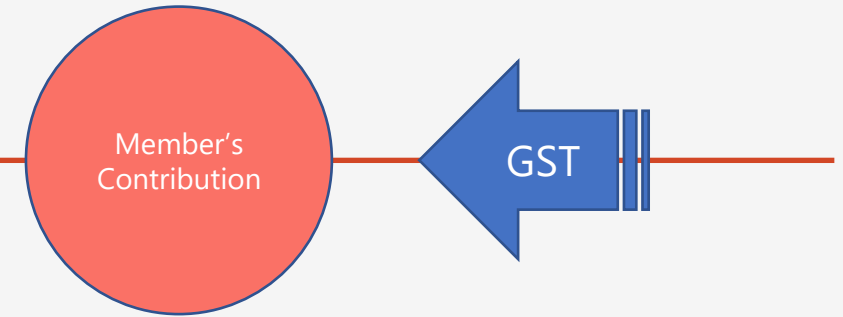
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Sinking Fund collected from members would subject to GST as under:

- ✓ Where the said funds are collected as deposit, GST would not be applicable. When such fund is not collected as deposit instead when it is collected as part of maintenance, then liable to GST subject to Rs 7500 pm per member.

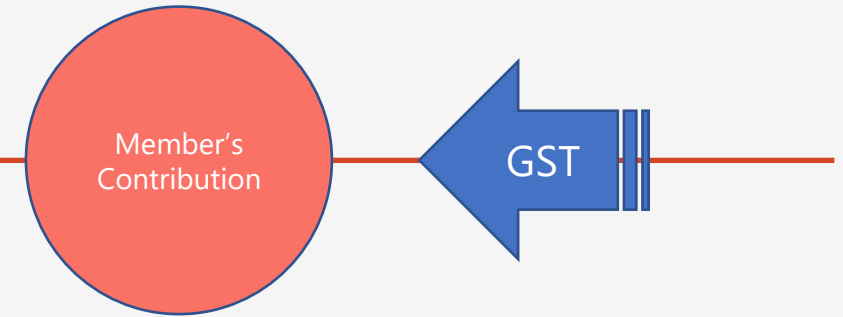
## RWA - FAQs vide F.No.332/04/2017-TRU



- ✓ 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 Municipal corporation from individual flat owners, then GST is not leviable.
- ✓ 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
- ✓ 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

# RWA - GST Case Laws

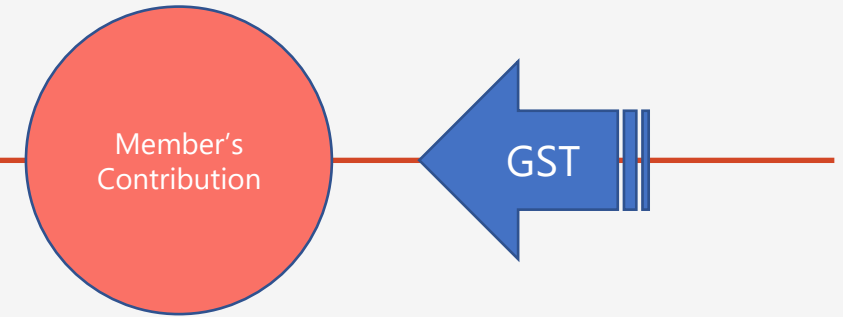
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- ✓ Electricity charges of common area collected from members: As per Advance Ruling given by Authority of Advance Ruling, Karnataka on M/s. Prestige South Ridge Apartment Owners' Association on 17.09.2019, held that the electricity charges of common area collected from members is not relating to supply of electricity to the members but is involved in providing the service of upkeep and maintenance of the common utilities of the apartments and for this the electricity consumed by them becomes an input.
- ✓ GST on Corpus fund/Sinking Fund: As per Advance Ruling given by Authority of Advance Ruling, Karnataka on M/s. Prestige South Ridge Apartment Owners' Association on 17.09.2019, held that the amounts collected towards corpus/ Sinking fund do not form part of consideration towards supply of services at the time of collection and hence is are not liable to GST, at the time of collection. However, the amounts so utilized for provision of service are liable to tax at the time of actual supply of service.

# RWA - GST Case Laws

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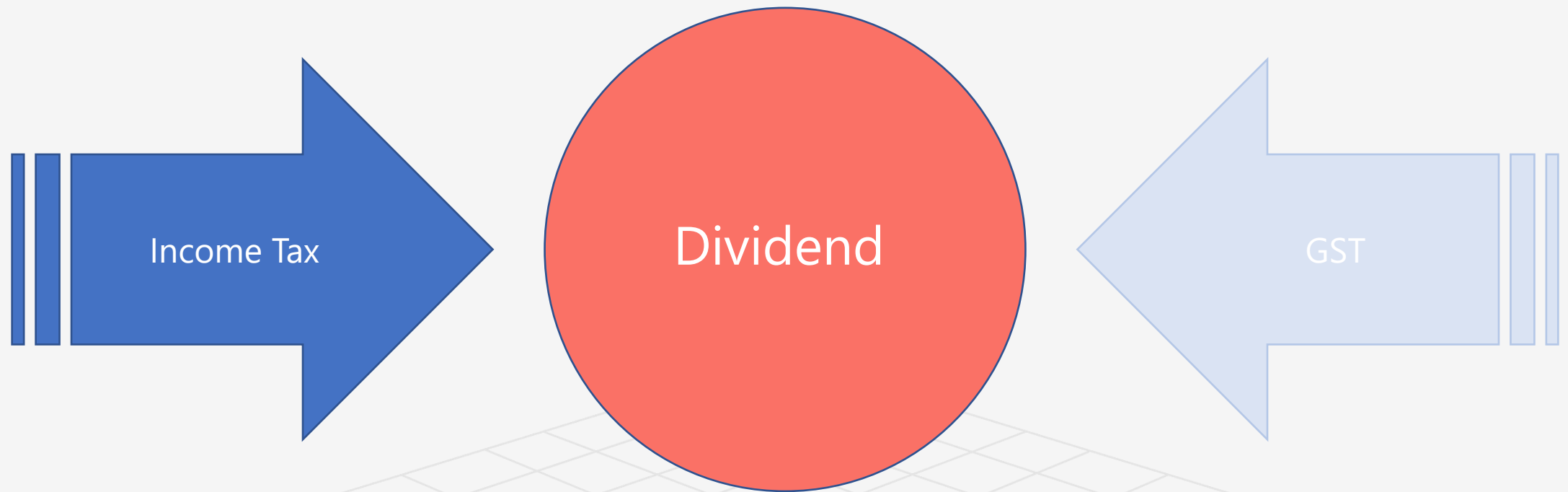


✓ 2019 (11) TMI 155 - AUTHORITY FOR ADVANCE RULING, KARNATAKA, IN RE: M/S. VAISHNAVI SPLENDOUR HOME OWNERS WELFARE ASSOCIATION

Held: Amount collected towards corpus / specific fund is towards the future supply of service and accordingly gets applied as consideration towards supply of services only at the time of actual supply of services. Therefore the amounts collected towards Corpus Fund do not form part of consideration towards supply of services at the time of collection and hence is not liable to GST, at the time of collection. However the amounts so utilized for provision of service are liable to tax at the time of actual supply of service.

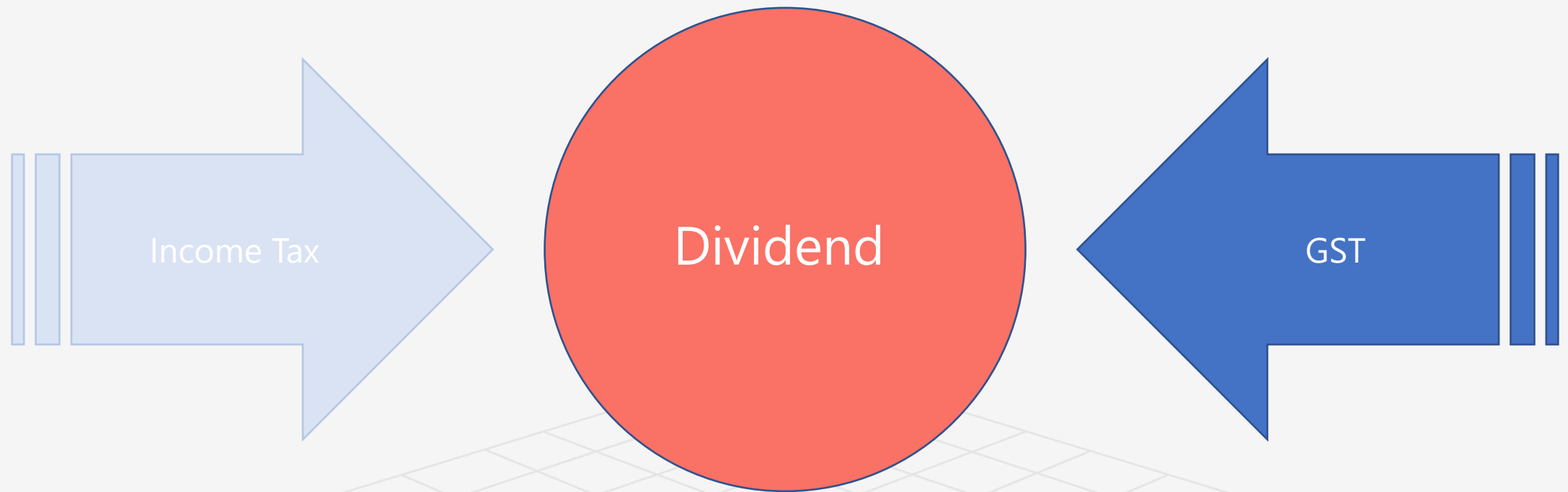
# RWA - Taxability of Income

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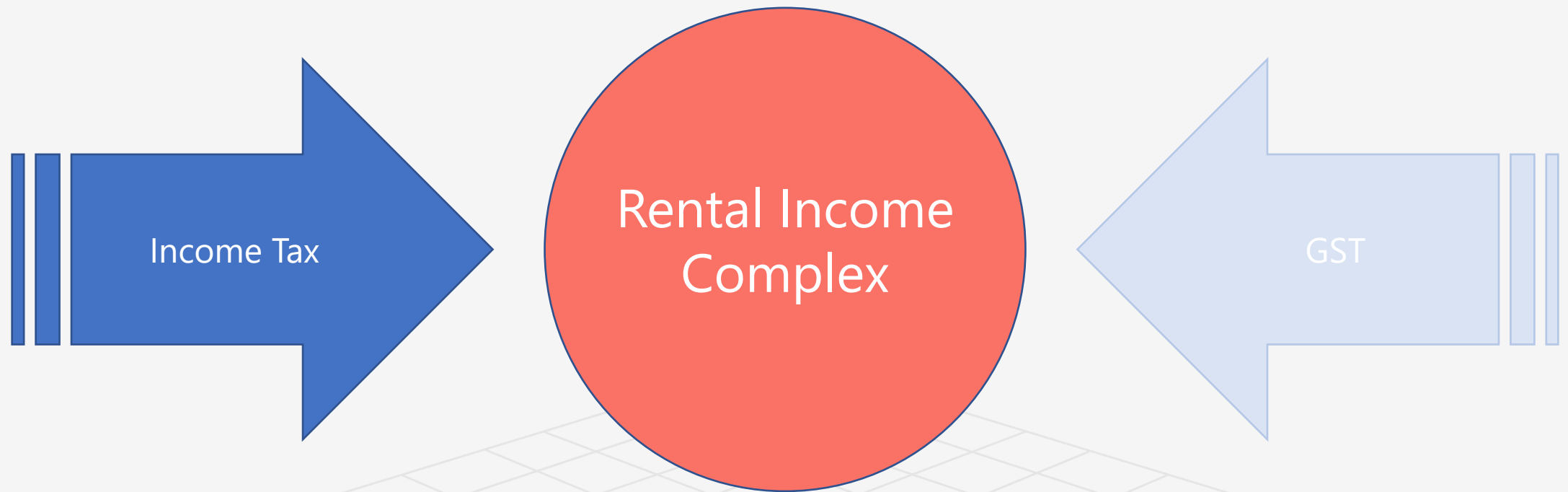
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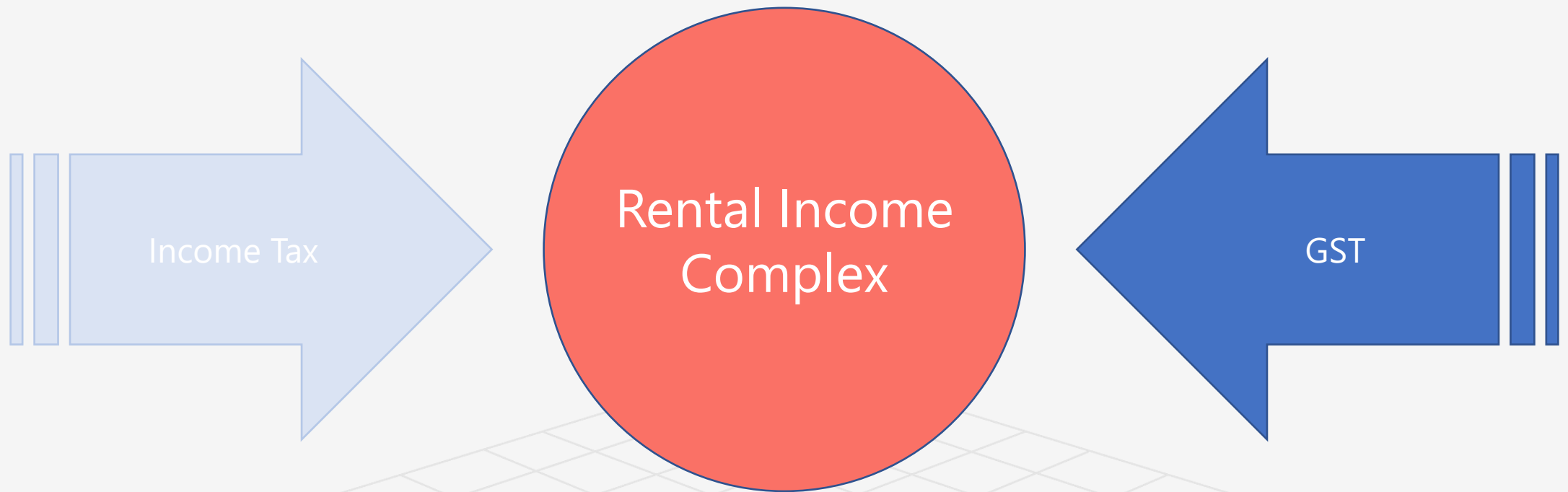
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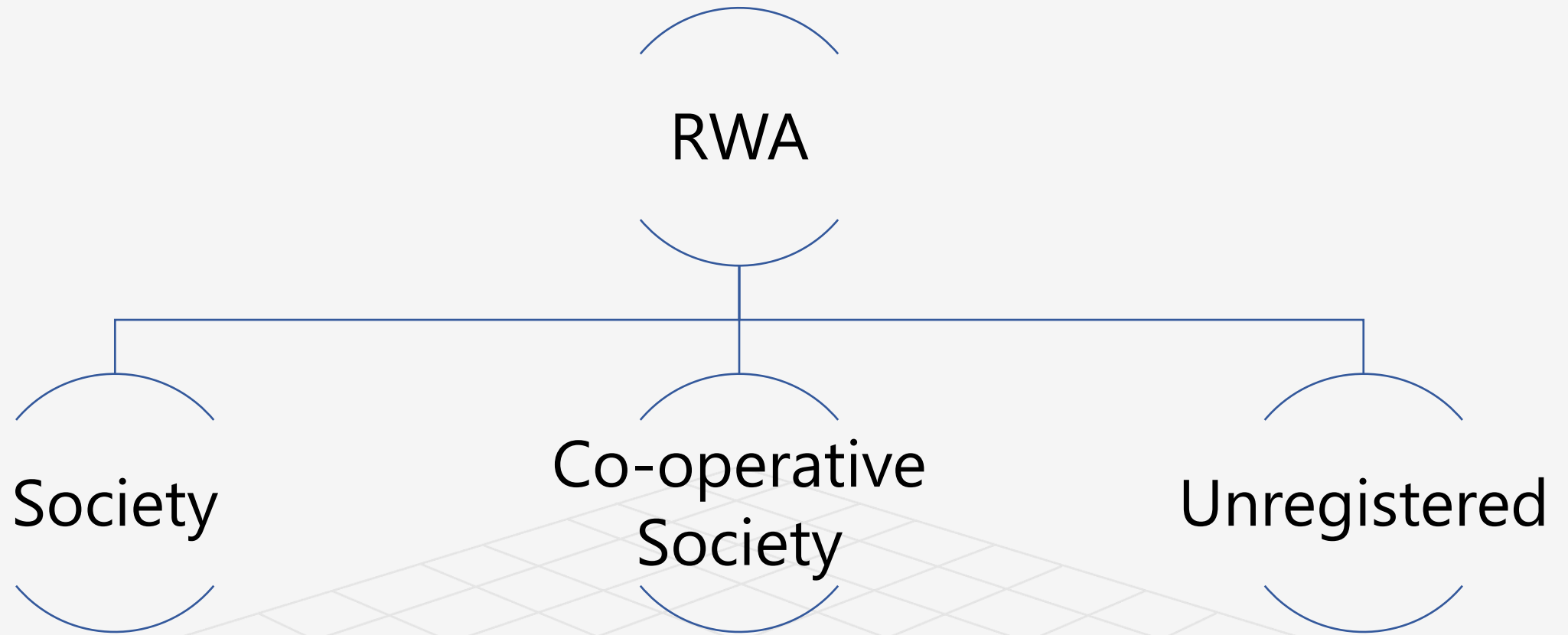
# RWA - Taxability of Income

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## RWA - Income Tax Rates

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# RWA - Income Tax Rates - Cooperative Society

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## Co-operative Society – Definition:

U/s 2(19) of the Income Tax Act 1961, 'cooperative society' means a cooperative society registered under the Cooperative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of the cooperative societies.

Taxable Income	Tax Rate
Upto Rs 10,000	10%
Rs. 10,000 to Rs. 20,000	20%
Above Rs. 20,000	30%

Plus Surcharge, wherever applicable and Health & Education Cess

# RWA - Income Tax Rates - Cooperative Society - Section 115BAD

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From AY 2021-22, resident co-operative societies have an option to opt for taxation under newly inserted section viz Sec 115BAD of the Income Tax Act.

Taxable Income	Tax Rate
Any income	22%
Plus Surcharge	10%
Plus Health & Education Cess	04%
Effective Rate	25.168%

# RWA - Income Tax Rates - Cooperative Society - Section 115BAD

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## Applicability

Resident Co-operative Society

Can be opted in any AY from AY 202122

Once opted, cannot be withdrawn

## Reduced Rate

Earlier, the highest Tax Rate was 34.944%

Now, 25.168%

Savings of 9.776%

## Restrictions on Deductions/Exemptions

Co-op Society has to forego various deductions and exemptions (Sec 10AA, 32(1)(ia), 33AB, 33ABA, 35(2AA), 35(1)(ii), 35(1)(ia), etc

Even Sec. 80P

Set off of brought forward business loss or unabsorbed depreciation (to the extent of deductions prohibited) is not allowed

## Benefits

To co-operative societies if funds are invested elsewhere

Not beneficial to RWAs if funds are kept in co-operative banks

# RWA - Income Tax Rates - Unregistered Society

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Taxable Income	Tax Rate
Any income	MMR or higher rate – Section 167B

Plus Surcharge, wherever applicable and Health & Education Cess

# RWA - Income Tax Rates - Unregistered Society

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**167B.** (1) Where the individual shares of the members of an association of persons or body of individuals (**other than a company or a co-operative society or a society registered** under the Societies Registration Act, 1860 (21 of 1860) or under any law corresponding to that Act in force in any part of India) in the whole or any part of the income of such association or body are indeterminate or unknown, tax shall be charged on the total income of the association or body at the maximum marginal rate :

**Provided** that, where the total income of any member of such association or body is chargeable to tax at a rate which is higher than the maximum marginal rate, tax shall be charged on the total income of the association or body at such higher rate.

(2) Where, in the case of an association of persons or body of individuals as aforesaid [not being a case falling under sub-section (1)],—

(i) the total income of any member thereof for the previous year (excluding his share from such association or body) exceeds the maximum amount which is not chargeable to tax in the case of that member under the Finance Act of the relevant year, tax shall be charged on the total income of the association or body at the maximum marginal rate;

(ii) any member or members thereof is or are chargeable to tax at a rate or rates which is or are higher than the maximum marginal rate, tax shall be charged on that portion or portions of the total income of the association or body which is or are relatable to the share or shares of such member or members at such higher rate or rates, as the case may be, and the balance of the total income of the association or body shall be taxed at the maximum marginal rate.

*Explanation.*—For the purposes of this section, the individual shares of the members of an association of persons or body of individuals in the whole or any part of the income of such association or body shall be deemed to be indeterminate or unknown if such shares (in relation to the whole or any part of such income) are indeterminate or unknown on the date of formation of such association or body or at any time thereafter.]

# RWA - Income Tax Rates - Society

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## RWA - Income Tax Calculation - Illustration

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Particulars	Cooperative Society	Unregistered Society
Maintenance Charges	30,00,000	30,00,000
Less: Exp	24,00,000	24,00,000
Net Surplus from maintenance receipts	6,00,000	6,00,000
Rental Income	1,00,000	1,00,000
Bank FD Int	9,00,000	9,00,000
Taxable Income	1,00,000	10,00,000
Tax Payable*	27,000	3,00,000

# RWA - RWA Related Few FAQs

## RWA - Few FAQs - Income Tax

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1

A co-operative society has exempt income and income from FD in a co-operative bank. Should this society file its tax return?



## RWA - Few FAQs - Income Tax

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80AC. Deduction not to be allowed unless return furnished - Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after—

- (i) the 1st day of April, 2006 but before the 1st day of April, 2018, any deduction is admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE;
- (ii) the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading "C.- Deductions in respect of certain incomes",

no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139.'

A. General

B. Deductions in  
respect of certain  
payments

Section  
80P

C. Deductions in  
respect of certain  
incomes

CA. Deductions in  
respect of other  
incomes

2

Can societies other than co-operative societies take the benefit of section 80P?



3

Is Interest charged  
on defaulting  
members Taxable?



4

Interest or dividends derived from investments with any other co-operative society?



## RWA - Few FAQs - GST

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1

Can Electricity and Water Charges be excluded for computing the limit of Rs 7500?



2

Are RWAs eligible to claim ITC on inputs, input services and/or Capital Goods?



## RWA - Few FAQs - GST

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3

If the maintenance charges are Rs 9000 per month, whether GST has to be collected on entire Rs 9000 or on the amount exceeding Rs 7500?



4

Is GST payable on the amounts received from members by RWA in the capacity of "Pure Agent"?



# Thank You!

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