

GST NEWSLETTER

APRIL 2019 ISSUE



Preface:

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This issue deals with the notifications issued on 29th March 2019 concerning the real-estate sector and governing the taxability of transfer of development rights on reverse charge basis and also clarifies the exemptions available on the same for residential units. These notifications also gives shape to determination of new rate of tax of 1% & 5% applicable on new projects & existing ongoing projects and reversal of input tax credit as applicable in certain circumstances.

Also certain other important notifications like insertion of new Rule 88A has been discussed in detail.

1. Taxability of Joint Development Agreement or Long-term lease premium (30 yrs or more):

A joint development agreement is an agreement under which the landowner agrees to transfer development rights to a real estate developer against a consideration in the form of area share or revenue share or both. The rate of GST applicable on development rights is **18%**

GST on service of TDR on or after 1st April 2019 shall be exempt only to the extent of the carpet area of residential units.

The exemption shall be derived as follows:

$$\text{GST payable on TDR or FSI or both for construction of the project} \times \frac{\text{Carpet area of the residential apartments in the project}}{\text{Total carpet area of the residential and commercial apartments in the project}}$$

However, this exemption on residential units shall be limited to the carpet area of flats which have been booked before obtaining completion certificate.

For the flats which have been booked after obtaining completion certificate, GST shall be payable on **reverse charge basis** by the promoter. This shall be calculated as follows:

$$\text{GST payable on TDR or FSI or both for construction of the residential apartments in the project but for the exemption contained herein} \times \frac{\text{Carpet area of the residential apartments in the project which remain un-booked on the date of issuance of completion certificate or first occupation (Refer Note Below)}}{\text{Total carpet area of the residential apartments in the project}}$$

However, such tax payable on residential units sold after completion shall not exceed 1% of the value in case of affordable residential apartments and 5% of the value in case of residential apartments other than affordable residential apartments remaining un-booked on the date of issuance of completion certificate or first occupation.

Note:

“An apartment booked on or before the date of issuance of completion certificate or first occupation of the project” shall mean an apartment which meets **all the following three conditions**, namely –

- (a) Part of supply of construction of the apartment service has time of supply on or before the said date; and
- (b) Consideration equal to at least one installment has been credited to the bank account of the registered person on or before the said date; and

- (c) An allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.

Let us understand the above with the help of an example:

Particulars	Amount (In Rs.)
Value of development right	100
GST Payable @ 18%	18
Carpet area (Residential)	6,000 sq.ft
Carpet area (Commercial)	4,000 sq.ft
Total Carpet Area	10,000 sq.ft
Exemption of GST for Residential Units($18 \times 6,000 / 10,000$)	10.8
GST payable on commercial units ($18 \times 4,000 / 10,000$) under reverse charge basis by the developer	7.2

It is to be noted that GST shall be payable on TDR under reverse charge basis by the promoter (builder) on residential units which are booked after obtaining completion certificate. The computation shall be as follows:

Particulars	Amount
Exemption of GST for residential Units	10.8
Carpet Area booked before obtaining Completion Certificate	4,000
Carpet Area booked after obtaining Completion Certificate	2,000
Total Carpet Area	6,000
GST payable on residential units under reverse charge basis ($10.8 \times 2,000 / 6,000$)	3.6

However, the tax payable under reverse charge basis for residential units shall not exceed:

- 1% of value in case of affordable housing.
- 5% of value in case of non-affordable housing.

Particulars	Amount
GST payable on residential units under RCM	3.6
Value of non-affordable housing of units booked after obtaining CC	30
5 % of the above value (5%*30)	1.5
RCM Payable on residential flats booked after obtaining CC (Lower of 3.6 & 1.5)	1.5

Hence, GST payable under **RCM basis** shall be:

Particulars	Amount
On Residential Units under RCM by promoter	1.5
On Commercial Units under RCM by promoter	7.2

Value of supply:

- Value of supply of service by way of transfer of development rights or FSI by a person to the promoter against consideration in the form of residential or commercial apartments shall be deemed to be equal to the value of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred to the promoter.
- Value of portion of residential or commercial apartments remaining un-booked on the date of issuance of completion certificate or first occupation, as the case may be, shall be deemed to be equal to the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate or first occupation, as the case may be.

Time of supply:

The liability to pay central tax on the said portion of the development rights shall arise **on the date of completion or first occupation of the project, as the case may be, whichever is earlier.**

The above stated taxability of Joint Development Agreement and Long-term lease premium shall be applicable w.e.f 1st April 2019.

2. Taxability of transfer of residential units in consideration for development right:

a) Transfer of flats to landowner by developer:

- In this transaction, the land already belongs to the landowner and therefore, for the purpose of calculation of tax liability, the value of units constructed by developer for landowner shall not include land value.
- As land value is not included, the tax rate that should be charged by the developer shall be 1.50% and 7.50% for affordable and non-affordable residential units, respectively.

b) Transfer of flats by landowner to third parties:

- Landowner will pay 1%/5% GST on flats sold by him to third parties before issuance of completion certificate or first occupation, whichever is earlier.
- Landowner will be eligible to take credit of 1.50%/7.50% tax charged by developer to him subject to the condition that –
 - Tax liability of landowner is more than the tax charged to him by the developer and
 - Landowner should sell the units to third parties independently.

3. Tax rate of 12% on Composite supply of works contract:

A new entry has been inserted in Notification no.11/2017 dt 28.06.2017. On fulfillment of the given conditions, the rate of 12% shall be applicable on composite supply of works contract:

Conditions:

- Carpet area of the affordable residential apartments (Refer Note Below) is not less than 50% of the total carpet area of all the apartments in the project.
- This option can be availed for projects commencing on or after 1st April 2019. In case on ongoing projects, the promoter should not have opted for the option of paying tax @ 12% or 18%.
- The gross amount charged for the affordable residential apartments should be less than Rs. 45 Lakhs. Value of the apartments shall be the value of similar apartments booked nearest to the date of signing of the contract for supply of the service.

In case of non-compliance of the stated conditions, **the promoter shall be liable to pay such amount of tax on reverse charge basis as is equal to the difference between the tax payable on the service at the applicable rate but for the rate prescribed herein and the tax actually paid at the rate prescribed herein.**

Note:

The term “**affordable residential apartment**” shall mean, -

(a) a residential apartment in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option in the prescribed form to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which the gross amount charged is not more than forty five lakhs rupees.

For the purpose of this clause:

- i. Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard;
- ii. Gross amount shall be the sum total of; -
 - A. Consideration charged for the services specified at item (i) and (ic) in column (3) against Sl. no. 3 in the Table;
 - B. Amount charged for the transfer of land or undivided share of land, as the case may be including by way of lease or sub lease; and
 - C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.

4. Changes in rate of GST applicable on construction services and conditions on availment of ITC:

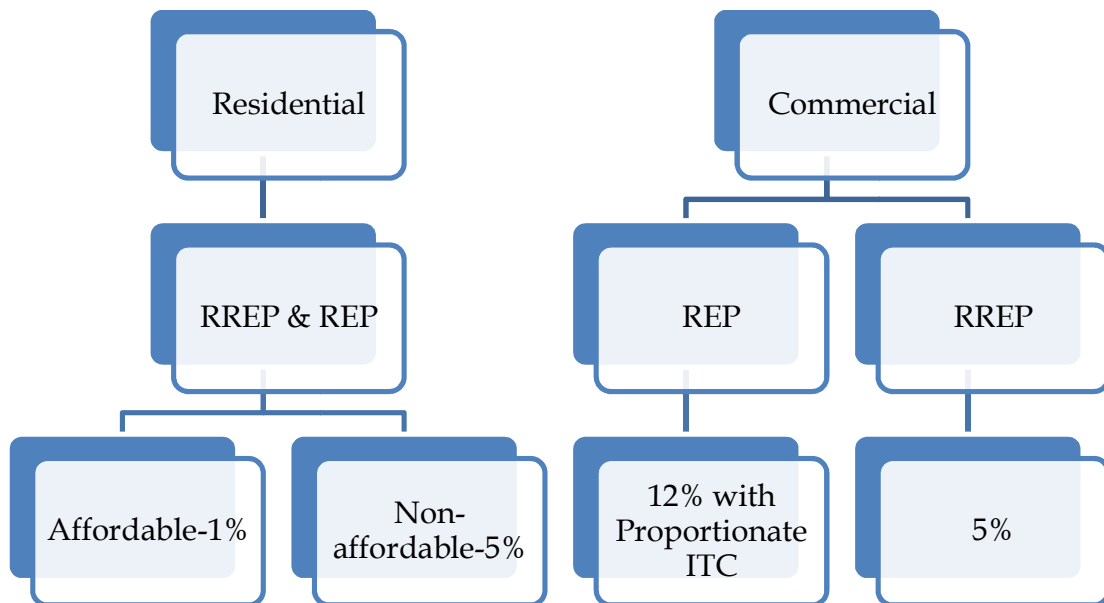
Real-estate projects have been classified into 2 categories:

- Residential Real-estate Projects (RREP): REP in which the carpet area of the commercial apartments is **not more than 15 %** of the total carpet area of all the apartments.
- Real-estate project (REP) : shall have the same meaning as assigned to it in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016)

Action points (for promoters):

- The new rates (1%/5%) are mandatory for new projects.
- Promoters can choose the option of paying taxes at existing rates for ongoing projects. However, such option is to be exercised on or before 10th May 2019.
- If no option is selected, then the project shall be taxable at new rates (1%/5%)
- If opting for new scheme then, proportionate project wise ITC reversal as per the prescribed method to be done before the due date for furnishing of the return for the month of September following the end of financial year 2018-19.
- The promoter has to pay tax at such rates opted, on installments received from 1st April to 10th May.

New projects (REP & RREP):



Conditions for paying tax at reduced rates of 1% and 5%:

- Tax @ 1%/5% shall be paid in cash by debiting the electronic cash ledger.
- ITC cannot be availed for units on which tax @ 1%/5% is paid.

- ITC not availed has to be reported in GSTR 3B separately.
- 80% of value of input and input services [other than TDR, long term lease, diesel, motor spirit) shall be received from registered supplier only. Excess in one year cannot be set-off against shortfall in the next financial year.
- If less than 80% of value of input and input service is procured from registered dealer then GST @ 18% on Reverse charge basis is to be paid by the developer on services and goods other than cement. However, such evaluation shall be done at the end of the financial year.
- RCM @ 28% shall be paid on cement purchases from unregistered supplier in month in which cement is received.
- If capital goods are procured from unregistered dealer then, RCM at applicable rates to be paid by the developer.
- Developer has to maintain project wise accounts including project wise records of inwards supplies received from registered and unregistered dealers in order to be able to arrive at the 80% threshold limit.
- Tax on such shortfall shall be paid by end of **30th June** of succeeding financial year.

On-going (REP & RREP):

The builder can choose from the following options for **On-going** projects:

- Pay tax @ 1%/5% on affordable or non-affordable residential units respectively without ITC. The promoter will have to reverse the balance in ITC account as on 31st March 2019, based on the methods given in the notification.
- Pay tax @ 8%/12% on affordable or non-affordable residential units respectively with ITC.

Steps to decide if the existing scheme is to be adopted:

1. Compute GST Payable at existing rates on the consideration receivable on the flats booked or remaining un-booked before obtaining completion certificate.
2. Compute the ITC availed on the project till date.
3. Compute the expected input tax credit till the completion of the project (after 1st April 2019).

4. Compute the net tax payable on the project i.e., **Step (1) - (2+3)**.
5. Compute the GST that is to be reversed on inputs pertaining to supplies post 1st April 2019.
6. The cost under new scheme shall be **Step 3+5**.
7. The cost under existing scheme shall be **Step 4**.

The old scheme can hence be adopted if the cost under existing scheme is less than the cost under new scheme.

Note:

The term “affordable residential apartment” shall mean, -

- (a) a residential apartment in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option in the prescribed form to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3, as the case may be, having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and for which the gross amount charged is not more than forty five lakhs rupees.

For the purpose of this clause:

- i. Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard;
- ii. Gross amount shall be the sum total of; -
 - A. Consideration charged for the services specified at item (i) and (ic) in column (3) against Sl. No. 3 in the Table;
 - B. Amount charged for the transfer of land or undivided share of land, as the case may be including by way of lease or sub lease; and
 - C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.

Note:

“Ongoing project” shall mean project which meets all the following conditions, namely-

- (a) Commencement certificate issued on or before 31st March, 2019 and it is certified by any of the following that construction of the project has started on or before 31st March, 2019:-

- (i) an architect
 - (ii) a chartered engineer
 - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.
- a) Where commencement certificate is not required, it is certified by any of the authorities specified in sub clause (a) above that construction of the project has started on or before the 31st March, 2019
 - b) Completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;
 - c) Apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.

Construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019.

5. Other Updates:

a) Amendment of Order of Utilization of Input tax credit:

A new Section 49A was inserted by CGST Amendment Act, 2018 and the set off rules were amended with effect from 1st February 2019. The amended rules lead to cash flow concerns for the industry, in specific for those making interstate purchases and selling intra state. The section 49A is reiterated below for your reference:

“Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilized towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilized fully towards such payment”

Thus as per the above the IGST Credit should be set off fully before setting of CGST or SGST Credit.

Given below is an illustration on the effect of the amendment:

1. Output Liability:

IGST - 40,000
 CGST - 40,000
 SGST - 40,000

2. Balance in Electronic Credit Ledger:

IGST - 80,000

CGST - 40,000
SGST - 20,000

3. Position until 31.01.2019:

IGST Payable = 40,000 - 40,000 (IGST) = Nil
CGST Payable = 40,000 - 40,000 (CGST) = Nil
SGST Payable = 40,000 - 20,000 (SGST) - 20,000 (IGST) = Nil

ITC Carry Forward: IGST = 20,000

4. Position from 01.02.2019:

IGST Payable = 40,000 - 40,000 (IGST) = Nil
CGST Payable = 40,000 - 40,000 (IGST) = Nil
SGST Payable = 40,000 - 20,000 (SGST) = 20,000

ITC Carry forward: CGST = 40,000

Thus the insertion of above Section 49A lead to blockage of funds as illustrated above. However such set off mechanism was not given effect in the GST portal. Now partial relief has been given by insertion of Rule 88A vide Notification number 16/2019 - Central Tax dated 29th March 2019. The text of the Rule is produced below:

“Rule 88A. Order of utilization of input tax credit.- Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order: Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully”.

Now Input tax credit on account of IGST shall first be utilised towards payment of IGST, and the amount remaining, if any, may be utilised towards the payment of central tax and State tax or Union territory tax, as the case may be, in any order.

In the earlier illustration,

Position from 01.04.2019:

IGST Payable = 40,000 - 40,000 (IGST) = Nil
SGST Payable = 40,000 - 40,000 (IGST) = Nil
CGST Payable = 40,000 - 40,000 (CGST) = Nil

ITC Carry forward: SGST = 20,000

b) Manner of determination of input tax credit in respect of inputs or input services and reversal thereof -

For reversal, the existing Rule 42 (f) provides the following formulae -

$$D1 = (E+F) \times C2$$

Where,

D1 = Amount of ITC to reverse attributable to exempt supplies

E = Value of exempt supplies during tax period

F = Value of total supplies during tax period

C2 = (C1 (amount of ITC claimed) - T4 (ITC relating exclusively to taxable supply))

For the construction industry, amendment has been made to Rule 42(f) in connection to Schedule II, Para 5(b) (construction and sale of civil structure or part thereof to a buyer before issuance of completion certificate). The following are the explanations inserted for the components of above mentioned formulae:

“T4” - relates to ITC exclusively for taxable supply. Hence, ITC value of inputs and input services covered under Schedule II, Para 5(b) shall be valued at zero during the construction phase because such inputs and input services will be commonly used for construction booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier. Hence, this value of ITC will also be considered for ITC reversal.

Further, for construction industry, the value of supplies be calculated as follows-

“E” - Aggregate carpet area of the apartments, construction of which is exempt from tax + aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier.

“F” - Aggregate carpet area of the apartments in the project.

Disclaimer: This document is prepared by A. K. Lunawath & Associates solely for clients and other chartered accountants to provide updates on important amendments in GST. The information is exclusively for educational purposes, professional advice shall be taken before taking any decision based on this document.

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