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# Real Estate related Amendments Part-1

## Recent GST Amendments related to Real Estate sector – 'A Bird's Eye View'

### Preamble

GST Council, in its meetings held on 24th February 2019 and 19th March 2019, proposed far reaching amendments with avowed objective to boost up the growth of residential segment of Real Estate sector. Detailed minutes of aforesaid GST council meetings (33rd and 34th) are not yet in public domain. Following notifications are released on 29th March 2019 to operationalise new scheme of taxation for Real Estate sector:

Notifications	Amendments in brief
03/2019-CT (Rate)	Reduction in tax rates for sale of under construction flats/ units.
04/2019-CT (Rate)	Exemptions granted in respect of transfer of Development Rights / FSI and upfront premium payable on long term lease used for sale of under construction residential units.
05/2019-CT (Rate)	Reverse Charge Mechanism (RCM) prescribed for transfer of Development Rights / FSI and long term lease of land.
06/2019-CT (Rate)	Deferment of GST liability in joint development project in respect of: <ul style="list-style-type: none"> <li>• Construction services;</li> <li>• Transfer of Development rights, FSI or TDR;</li> <li>• Upfront premium paid for long term lease.</li> </ul>
07/2019-CT (Rate)	RCM is prescribed for procuring cement, capital goods and inputs / input services procured from unregistered person.
08/2019-CT (Rate)	Tax rate prescribed for Goods [other than capital goods and cement] liable to GST under RCM as per Notification No. 07/2019-CT (Rate).
16/2019-CT	Amendments in Rules 42 and 43 prescribing reversal of input tax credit (ITC) for unsold flats/ units.

This article gives 360° view of new taxation scheme for Real Estate Sector applicable w.e.f. 1st April 2019.

Readers are requested to read this article along with other articles dealing elaborately with various aspects of new scheme of taxation.

### Probable reasoning for revising Taxation Scheme

Comparative effective tax rates for sale of under construction flats/ units in pre and post GST regime:

Particulars	Pre-GST regime			GST Regime
	Service Tax	VAT	Total	
Sale of under-construction affordable residential flats	4.50% (with ITC of input services and capital goods)	1% (Without ITC)	5.50%	8% (With ITC of Input, input services & capital goods)
Sale of under-construction residential flats (other than affordable)	4.50% (with ITC of input services and capital goods)	1% (Without ITC)	5.50%	12% (With ITC of Input, input services & capital goods)
Sale of under construction commercial units	4.50% (with ITC of input services and capital goods)	1% (Without ITC)	5.50%	12% (With ITC of Input, input services & capital goods)

There was an apparent hike in tax incidence by 6.5% for home buyers. Government granted ITC to developers on the presumption that in GST regime, ITC benefits will be higher than increased tax rates and developers passing on such ITC benefits would result into cheaper houses in GST regime.

However, homebuyers were cribbing that developers were not passing on ITC benefits resulting into higher prices for housing in GST regime. This factor has become a politically sensitive issue for ruling party in election year. Moreover, ITC was always a disputed issue between Developers and tax authorities. The developers were also worried about adverse implications of anti-profiteering provisions. The Government, therefore, thought it fit to revamp taxation scheme for Real Estate sector.

### One time option for Developers

Generally, Real Estate Projects have long gestation periods. Sudden change of taxation

scheme from higher tax rate with ITC to lower rate without ITC would have been unfair for Real Estate sector as developers would have committed sales at agreed price after factoring ITC likely to be availed by him. Most of the developers would have huge accumulated ITC as on cut off date to be liquidated against future instalments due from customers.

Government, therefore, divided projects into two broad categories i.e. Ongoing Projects and New Projects (i.e., Projects other than Ongoing Projects) and allowed the developers to exercise one-time option for ONGOING PROJECTS to pay tax on residential apartments at:

- Existing GST rates: 8% (with ITC) or 12% (with ITC); or
- Concessional GST rates: 1% or 5% (without ITC)

The option is not available for projects **other than ongoing project** or projects commencing on or after 1st April 2019.

Developer has to file a Notified Form on or before 10th May 2019 with jurisdictional officer intimating the option selected by him.

In case of failure to exercise option within time frame, developer will be liable to discharge tax at 1% or 5% (without ITC) for instalments due on or after 1st April 2019.

### Tax implications of option to tax ongoing projects under old scheme

Tax implications for developer opting for old scheme in respect of ongoing project are as under:

- Accumulated ITC as on 31st March 2019 remains intact. Developer is not obliged to reverse accumulated ITC of project.
- Developer will be entitled to credit of inputs, input services and capital goods procured on or after 1st April, 2019.
- Developer can discharge his output tax liability from ITC balance (credit ledger) also.
- There will not be any obligation relating to procurement of 80% of input and input services from registered vendors.
- Developer will not be liable to pay GST under RCM on procurement of cement and capital goods from unregistered vendors.
- The applicable tax rates would be as under:

Particulars	Effective GST Rate
Sale of under-construction affordable residential apartments (including houses under Specified Schemes)	8% (with ITC)
Sale of under-construction residential apartments (other than affordable)	12% (with ITC)
Sale of under-construction Commercial Apartments	12% (with ITC)

### Tax implications under New Scheme

The new scheme would apply to ongoing projects for which option to go for old scheme is not exercised and also the projects commencing on or after 1-4-2019

Tax rates and mode of discharging liability under New Scheme are as under:

Particulars	Effective GST Rate	ITC availability	Mode of payment
Sale of under-construction affordable residential apartments (Including houses under Specified Schemes)	1%	No	Cash
Sale of under-construction residential apartments (other than affordable)	5%	No	Cash
Sale of under-construction commercial apartments in Residential Real Estate Project (RREP)	5%	No	Cash
Sale of under-construction commercial apartments in Real Estate Project (other than RREP)	12%	Yes	Cash / Credit
Sale of under-construction commercial apartments (in exclusive commercial project)	12%	Yes	Cash / Credit
Sale of completed flats / Units Post OC	Nil	No	NA

Developer opting for New Scheme has to comply with following conditions:

- Developer is **not entitled to ITC** in respect of construction services taxed at concessional GST rates.
- Developer is required to **reverse the ITC availed** from inception of project to the extent it relates to construction services to be taxed at 1% or 5%.
- Developer will have to procure 80% of supplies (other than cement and capital goods) from registered persons for each project. If such procurement is less than 80% in a financial year, the developer is obliged to pay GST under RCM at 18% on amount of shortfall.
- Any procurement of Cement and capital goods from unregistered person will be taxed under RCM at applicable rate.

### **Works contract service for affordable Residential Apartments**

Works contract service in respect of Affordable Residential Apartments (other than specified schemes) will be taxed at 12% subject to fulfilment of condition that carpet area of Affordable Residential Apartments in a project should be 50% or more than the total carpet area of the project.

In case it finally turns out that the carpet area of such affordable Residential Apartments booked or sold before or after completion was less than 50% of total carpet area of project, Recipient of Service (i.e. Developer) will be liable to pay GST under RCM for the differential amount of GST.

### **Important definitions**

- **"Project"** shall mean a Real Estate Project (REP) or Residential Real Estate Project (RREP).

- **"Real Estate Project"** is having same meaning as assigned u/s 2(zn) which defines REP as the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.

- **"Residential Real Estate Project (RREP)"** means a REP in which carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP.

- **"Carpet Area"** shall have same meaning as assigned u/s 2(k) of RERA which defines it as the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

- **"Apartment"** shall have same meaning as assigned u/s 2(e) of RERA which defines "Apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, as a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or

for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified.

- **“Residential Apartment”** means an apartment intended for residential use as declared to Real Estate Regulatory Authority or to competent authority.
- **“Commercial Apartment”** means an apartment other than a residential apartment.
- **“Ongoing project”** would mean a project complying with all following conditions:
  - a) Commencement certificate is issued by the competent authority on or before 31st March, 2019; and
  - b) Any of the following authorities certifies that construction has started on or before 31st March, 2019; and
    - Registered Architect
    - Registered Chartered Engineer
    - Licensed surveyor of local body or development or planning authority
  - c) Completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019; and
  - d) Apartments have been, partly or wholly, booked on or before the 31st March, 2019.

Where commencement certificate is not required from competent authority, however, conditions stipulated above in (b), (c) and (d) are complied with, then such project is regarded as Ongoing Project.

- **“An apartment booked on or before 31st March, 2019”** shall mean an apartment which meets all the following three conditions:
  - a) part of supply of construction of which has time of supply on or before the 31st March, 2019;
  - b) at least one instalment has been credited to the bank account of the registered person on or before 31st March, 2019; 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 31st March, 2019.
- **“Commencement Certificate”** means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan.
- Construction shall be considered to have started on or before 31st March, 2019 if:
  - Earthwork for site preparation is completed; and
  - Excavation of foundation has started.

• **Affordable Residential Apartment**

Particulars		Conditions
A residential apartment – in a project commencing on or after 1st April 2019 or – in an ongoing project (for which developer opted New Scheme)	Metropolitan Cities*	House having carpet area up to 60 sq. mt. (approx. 644 sq. ft. – RERA Carpet); and having gross amount up to ₹ 45 lakh
	Non-metropolitan cities/towns	House having carpet area up to 90 sq. mt. (approx. 968 sq. ft. – RERA Carpet); and having gross amount up to ₹ 45 lakh
An apartment in an ongoing project	Covered under specified schemes [under Notification No. 11/2017-CT(R)] for which the developer has not exercised option to pay tax under old scheme.	

**Transition of ITC for ongoing projects (opting for New Scheme)**

Developer is obliged to reverse accumulated ITC as on 31st March, 2019 attributable to instalments due on or after 1st April, 2019 (to be taxed at concessional rate). Reversal is to be worked out project wise. Developer will compute such ITC (on input and input services) as per formula given in Annexure I and Annexure II in relation to construction of:

- Residential portion in REP (having time of supply on or after 1st April 2019); and
- Residential and commercial portion in RREP (having time of supply on or after 1st April 2019).

Readers are requested to refer article of CA Abhay Desai dealing with aforesaid this topic in great detail.

**Taxability of Development Rights, TDR / FSI and Long term lease (premium)**

- Exemptions are granted in respect of:
  - Supply of Development Rights, TDR or FSI on or after 1st April 2019 for construction of residential apartments sold before issuance of completion certificate or before its first occupation;
  - Upfront premium payable for long term lease of 30 years or more on or after 1st April 2019 provided it is used for construction of residential apartments which are sold before

issuance of completion certificate or before its first occupation.

- Developer will be liable to pay GST under RCM on value of aforesaid supplies attributable to residential apartments remaining unbooked as on date of completion certificate or first occupation of project.

Readers are requested to refer article of Advocate Harsh Shah dealing with this topic in great detail.

**Manner of ITC reversal under Rule 42**

Rule 42 provides for reversal of ITC attributable to exempt supplies. This rule is thoroughly amended and it provides for reversal of ITC in respect of unsold flats/ units on the date of completion of project. The developer will be obliged to reverse ITC for entire project period in proportion of aggregate carpet area of unsold apartments to the total area of apartments in the project.

Readers are requested to refer article of CA Pritam Mahure dealing with aforesaid topic in great detail.

**Conclusion**

Real Estate Sector is confused and clueless about impact of these changes. It is struggling to comprehend the amendments and assess its financial impact. The sector is anticipating huge loss and hike in prices of the apartments. Time will tell whether such amendments would yield desired results of boosting the growth of Real Estate sector or it will burden the sector which is already in turmoil.

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