



CA Naresh K Sheth & CA Harshit Soni

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"> • Construction services; • Transfer of Development rights, FSI or TDR; • Upfront premium paid for long term lease.
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% (without 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.