

EY Tax Alert

CBIC notifies reduced rates for real estate sector and transition related modalities

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Executive summary

Central Board of Indirect taxes and Customs (CBIC) has issued notifications relating to reduction in GST rates for real estate projects and transition related modalities. Certain amendments in Central Goods and Services Tax (CGST) Rules have also been notified.¹

The key amendments are as follows:

- ▶ With effect from 1 April 2019, the tax rate for construction of affordable residential apartments will be 1.5% without input tax credit (ITC) and for construction of other residential apartments, 7.5% without ITC. The effective rate of tax after deduction on account of value of land in both cases shall be 1% and 5%, respectively.
- ▶ For ongoing projects, the promoter shall, by 10 May 2019, exercise the one-time option to pay tax at the reduced rate or continue with the earlier rate.
- ▶ An exemption has been granted in respect of services by way of transfer of development rights, floor space index and long-term lease for construction of residential apartment with effect from 1 April 2019.
- ▶ If the procurement of inputs and input services from unregistered persons exceed 20%, the promoter shall be liable to pay GST under reverse charge on such shortfall.
- ▶ The apportionment of ITC is required to be done separately for each real estate project. Further, the apportionment will be based on carpet area of the apartments.

ITC on account of integrated tax (IGST), may be utilized towards the payment of Central tax and State tax, in any order (after the same is fully utilized towards the payment of IGST).

¹ Notification Nos. 3/2019 to 9/ 2019 - Central tax (Rate) dated 29 March 2019 and Notification No. 16 - Central tax dated 29 March 2019

Background

- ▶ The GST Council in its 33rd meeting had recommended reduction in the GST rates for real estate sector, which are effective from 1 April 2019.
- ▶ In its 34th meeting held on 19 March 2019, the GST Council approved transition modalities for implementing lower tax rates for residential properties.
- ▶ Notification in relation to the said recommendations are issued by CBIC on 29 March 2019.
- ▶ Other notifications have also been issued which, inter alia, deal with input tax credit (ITC) reversal for persons opting to pay tax at concessional rate of 6%, order of utilization of integrated tax credit and transfer of ITC in case of demerger.

Notifications relating to real estate projects

Meaning of certain terms

- ▶ An apartment booked on or before 31 March 2019 shall mean an apartment which meets all the following three conditions, namely -
 - a) part of supply of construction service has time of supply on or before 31 March 2019;
 - b) at least one instalment has been credited to the bank account of the registered person on or before 31 March 2019;
 - c) allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before 31 March 2019.
- ▶ 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 service has time of supply on or before the said date;
 - b) consideration equal to at least one instalment has been credited to the bank account of the registered person on or before the said date;
 - 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
- ▶ The terms 'apartment', 'promoter', 'Real Estate Project', 'carpet area' have the same meaning as assigned to it in Real Estate (Regulation and Development) Act, 2016.
- ▶ Residential Real Estate Project (RREP) means a Real Estate Project (REP) in which the carpet area of the

commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP.

- ▶ Affordable residential apartment means -
 - a) residential apartment in project which commences on or after 1 April 2019 or an ongoing project in respect of which promoter has not exercised option to pay tax at effective rate of 8%/ 12%, as the case may be, for which the gross amount charged is not more than INR 45 lakh and carpet area is as follows:

Type of cities	Cities covered	Carpet Area
Metropolitan cities	Bengaluru, Chennai, Delhi National Capital Region (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai	Up to 60 sqm
Non-Metropolitan cities	Other than above	Up to 90 sqm

Gross amount shall be the sum total of:

- a) Consideration charged for the construction services
 - 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.
- b) Projects under the existing Central and State housing schemes which were earlier eligible for effective concessional tax rate of 8% and the promoter has not opted to pay tax at effective rate of 8%/ 12%, as the case may be.
- ▶ Ongoing project shall mean a project which meets all the following conditions, namely-
 - a) Where commencement certificate in respect of the project is required to be issued by the competent authority, it has been issued on or before 31 March 2019 and it is certified by any of specified authorities that construction of the project has started on or before 31 March 2019;
 - b) where commencement certificate in respect of the project is not required to be issued by the competent authority, it is certified by any of the specified authorities that construction of the project has started on or before the 31 March 2019
 - c) completion certificate has not been issued or first occupation of the project has not taken place on or before 31 March 2019
 - d) apartments being constructed under the project

have been partly or wholly, booked on or before 31 March 2019

Reduced tax rates for real estate projects²

- ▶ The reduced tax rates for real estate projects which are effective from 1 April 2019, are as follows:

Description of service	GST rate	Effective rate
Construction of affordable residential apartments in RREP or REP, which commence on or after 1 April 2019 or in an ongoing RREP or REP in respect of which the promoter has not opted to pay tax at the effective rate of 8%/ 12%	1.5%	1%
Construction of residential apartments other than affordable residential apartments in RREP or REP, which commence on or after 1 April 2019 or in an ongoing RREP or REP in respect of which the promoter has not opted to pay tax at the effective rate 8%/ 12%	7.5%	5%
Construction of commercial apartment by a promoter in RREP, which commences on or after 1 April 2019 or in an ongoing RREP in respect of which the promoter has not opted to pay tax at the effective rate of 8%/ 12%	7.5%	5%
Construction of an apartment in an ongoing project under any of specified schemes, where the promoter does not opt to pay tax at reduced rates.	12%	8%
Construction of a complex, building, civil structure or a part thereof, including: (i) commercial apartments other than covered above; and (ii) residential apartments in an ongoing project, other than affordable residential apartments, where the promoter does not opt to pay tax at reduced rates.	18%	12%

- ▶ In case of supply of service involving transfer of property in land, the value of supply shall be equivalent to the total amount charged less the value of land, and the value of land shall be deemed to be one third of the total amount charged.

- ▶ Further, supply of works contract service, not covered

above, for affordable residential apartments in a project which commences on or after 1 April 2019 or in an ongoing project in respect of which promoter has not exercised option to pay tax at the effective rate of 8%/ 12%, shall be taxed @ 12%.

- ▶ The carpet area of the affordable residential apartment shall not be less than 50% of the total carpet area of the project.
- ▶ Further, for the purpose of determining whether the residential apartments are affordable residential apartments, value of the apartments shall be deemed to be the value of similar apartments booked nearest to the date of signing of the works contract service.
- ▶ If the criteria of 50% is not met, the promoter shall be liable to pay tax on reverse charge basis at an amount equal to the difference between the tax payable on the service at the applicable rate and tax actually paid.

Option for ongoing projects²

- ▶ The promoters shall exercise the one-time option by 10 May 2019, to pay tax at the reduced rate or continue with earlier tax rate. Form³ has been prescribed in this regard.
- ▶ If the option is not exercised within the prescribed time limit and manner, reduced GST rates without ITC shall be deemed to have been exercised.
- ▶ For supply of services during the period 1 April 2019 to 10 May 2019, tax invoices issued should be in accordance with the option to be exercised.

Payment of tax and ITC²

- ▶ In case of projects commencing on or after 1 April 2019 and ongoing projects where the promoter has exercised the option to pay tax at reduced rate, the following conditions shall apply:
 - ▶ GST shall be paid in cash, by debiting the electronic cash ledger of the promoter.
 - ▶ The benefit of ITC shall not be available, except to the extent of ITC computed as per the prescribed mechanism. The ITC not available shall be reported as ineligible credit in GSTR-3B.
 - ▶ In case of ongoing projects, the registered person shall also be required to reverse the ITC attributable to construction, the time of supply of which is on or after 1 April 2019. The reversal of ITC shall be done by way of debit to electronic cash ledger or electronic credit ledger.

The amount of ITC to be reversed shall be calculated in the manner prescribed.

² Notification No. 03/2019-Central Tax (Rate) dated 29 March 2019

³ As per Annexure IV of the Notification No. 03/2019 - Central Tax (Rate), dated 29 March 2019

Procurements from registered persons²

- ▶ In case the promoter is paying tax at reduced rate, he shall be required to procure 80% of value of inputs and input services from registered persons. For this purpose, inputs and inputs service will not include:
 - Transferable development rights (TDR),
 - Floor space index (FSI),
 - Long term lease (premium),
 - Electricity, high speed diesel, motor spirit, natural gas
- ▶ Inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been procured from registered person.
- ▶ If the procurements from unregistered person exceed 20%, promoter shall be liable to pay GST under reverse charge on such shortfall at the following rates:⁴
 - In case of cement - 28%
 - Other inputs and input services - 18%⁵
- ▶ It is pertinent to note tax needs to be paid mandatorily on procurement of cement from unregistered dealer.

Scenario 1:

Procurement	Percentage of inputs and input services	Procurement from registered dealer?
Cement	15	No
Other than cement	85	Yes

The promoter has procured at least 80% of inputs and input services from registered persons. However, he has procured cement from an unregistered supplier. Hence, the promoter will be required to pay GST on cement @ 28% under reverse charge.

Scenario 2:

Procurements	Percentage of inputs and input services	Procurement from registered dealer?
Cement	15	No
Other than cement	60	Yes
Other than cement	25	No

The promoter has procured 60% of inputs and input services from registered persons. Thus, value of goods and services procured from registered supplier falls short of limit of 80%. To fulfill his tax liability on the shortfall of 20%, the promoter need to first pay GST on cement @ 28% under reverse charge. After payment of GST on cement, on the remaining shortfall of 5% [i.e. 80% less (60% + 15%)] the promoter shall pay tax @ 18% under reverse charge.

- ▶ The promoter shall maintain project wise account of inward supplies from registered and unregistered

supplier and calculate tax payment on such shortfall at the end of the financial year.

- ▶ Further, the account shall be submitted in the prescribed form, electronically, on the common portal by end of the quarter following the financial year.
- ▶ The tax liability on the excess inward supplies from unregistered person so determined shall be added to the output tax liability of the promoter in the month not later than the month of June following the end of the financial year.
- ▶ However, tax on procurement of cement from unregistered person shall be paid in the month in which cement is received.
- ▶ In case of any capital goods procured from unregistered persons, tax liability has to be discharged by promoter under reverse charge, at the applicable rates.

Tax treatment with respect to TDR, FSI and Long term Lease⁶

- ▶ Following supplies made on or after 1 April 2019, for construction of residential apartments are exempt:
 - ▶ Service by way of transfer of TDR or FSI
 - ▶ Service by way of granting of long term lease of thirty years or more, against a consideration in the form of upfront amount (lease premium).
- ▶ The amount of exemption shall be calculated as under:

GST payable on TDR/ FSI/ lease premium x Carpet area of the residential apartments in the project / Total carpet area of the residential and commercial apartments in the project

For this purpose, the value of supply of TDR/ FSI by a person to 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 TDR or FSI is transferred to the promoter.

- ▶ In respect of residential apartments which remain un-booked on the date of issuance of completion certificate or first occupation of the project, the promoter shall be liable to pay tax at the applicable rate under reverse charge. The amount of tax payable will be calculated as follows:

Amount of exemption claimed x Carpet area of un-booked residential apartments / Total carpet area of the residential apartments in the project

- ▶ However, the tax payable, as calculated above, shall not exceed -

⁴ Notification No. 07/2019- Central Tax (Rate) dated 29 March 2019

⁵ Notification No. 08/2019- Central Tax (Rate) dated 29 March 2019

⁶ Notification No. 04/2019- Central Tax (Rate) dated 29 March 2019

- ▶ 1% of value in case of affordable residential apartments remaining “un-booked”
- ▶ 5% of value in case of other than affordable residential apartments remaining “un-booked”.

For this purpose, the 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.

- ▶ Further, tax on services by way of transfer of TDR or FSI or long term lease (against consideration in the form of upfront amount and/ or periodic rent), shall be payable by the promoter under reverse charge mechanism.⁷
- ▶ The liability to pay tax on the portion of TDR/ FSI / lease premium, determined above, shall arise on the date of issuance of completion certificate for the project, where required, or on its first occupation, whichever is earlier:⁸

Supplies procured	Consideration
TDR/ FSI	Consideration in the form of construction service of commercial or residential apartments in the project
	Monetary consideration paid for TDR/ FSI relatable to construction of residential apartments in the project
Long term lease of land for construction of residential apartments in a project	Upfront amount (called as premium, salami, cost, price, development charges or by any other name)

- ▶ Similarly, the time of supply in respect of provision of construction service by promoter against consideration in the form of TDR or FSI shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.

ITC Reversal for Real Estate Projects⁹

- ▶ Rules for apportionment of ITC towards taxable and exempt supplies are amended to bring in specific provisions for real estate projects.
- ▶ The amount of ITC attributable to taxable and exempt supplies is to be computed finally for the entire period from the commencement of project (or 1 July 2017, whichever is later) till the date of issuance of completion certificate or first occupation of the project, whichever is

earlier. The apportionment has to be done based on carpet area of apartments which remained unsold.

- ▶ Computation has to be done separately for each project.
- ▶ Where any input, input service or capital goods are used for more than one project, ITC shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be done accordingly.

Other Notifications

Order of utilization of Integrated tax (IGST) credit⁹

- ▶ Section 49 of CGST Act requires that IGST credit shall be first utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of Central tax (CGST) and State tax (SGST) or Union territory tax (UTGST), as the case may be, in that order.
- ▶ Rule 88A has been inserted in CGST Rules to provide for order of utilisation of ITC which is different from the provisions contained in section 49.
- ▶ As per the said Rule, IGST credit shall be first utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of CGST and SGST or UTGST, as the case may be, in any order.
- ▶ It further provides that the credit of CGST and SGST /UTGST shall be utilized only after IGST credit has been fully utilized.

Transfer of ITC in case of demerger⁹

- ▶ For transfer of ITC in case of demerger, while apportioning the ITC in the ratio of assets, value of entire assets of business is to be considered, whether or not ITC has been availed thereon.

ITC reversal for persons opting to pay tax at concessional rate of 6%¹⁰

- ▶ Persons who have availed ITC and opt to pay tax at concessional rate of 6% [in terms of Notification No.2/2019 - Central Tax (Rate), dated 7 March 2019], shall pay an amount equivalent to credit of input tax, in respect of inputs held in stock and those contained in semi-finished or finished goods in stock and on capital goods, in the same manner as applicable to a person opting for Composition scheme under section 10 of CGST Act.
- ▶ The CGST Rules, 2017, as applicable to a person paying tax under Composition scheme, shall, *mutatis mutandis*, apply to a person paying tax at concessional rate of 6%.

⁷ Notification No. 05/2019- Central Tax (Rate) dated 29 March 2019

⁸ Notification No. 06/2019- Central Tax (Rate) dated 29 March 2019

⁹ Notification No. 16/2019- Central Tax dated 29 March 2019

¹⁰ Notification No. 09/2019- Central Tax (Rate) dated 29 March 2019

Comments

The government's move to notify separate rules for ITC apportionment in case of real estate projects, is likely to provide much needed clarity to the industry, particularly in case of ongoing projects.

Considering the deadline of 10 May 2019 for exercising the option on GST rate with or without ITC in case of ongoing projects, it may be important for industry to analyze the impact of transitioning provisions to decide the way forward. Engaging with government for seeking clarity on open issues will be critical.

Extending the ambit of GST exemption in respect of additional floor space index (FSI) for residential real estate projects is a welcome move. However, the type of transactions covered herein may need to be examined.

The impact of GST on transferable development rights (TDR), FSI and long-term lease in case of commercial projects continues to be an area of concern for the industry.

Allowing credit of IGST to be utilized against CGST and SGST liabilities in any order, will provide flexibility in utilization of credit, which in turn may facilitate taxpayer in avoiding credit blockage and increased cash outflow.

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