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Goods and Services Tax

- **Recent updates in GST**
- **Impact of GST changes on real estate**

Presented by
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ACAE Lecture Meeting on 25 March 2019

Organised by

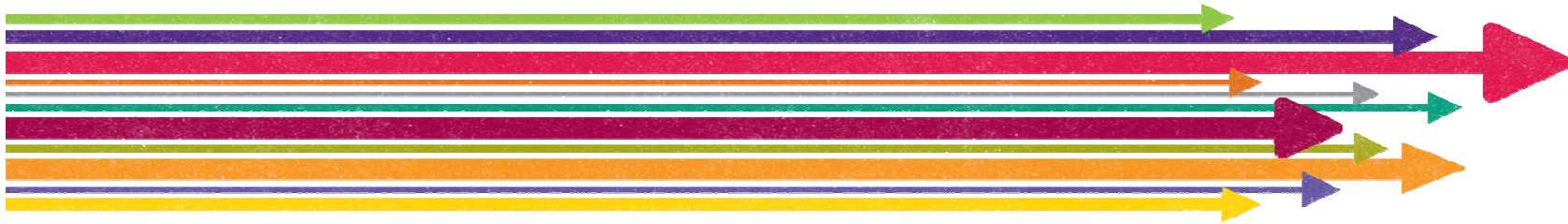
ACAE CHARTERED ACCOUNTANTS' STUDY CIRCLE – EIRC



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Recent updates in GST

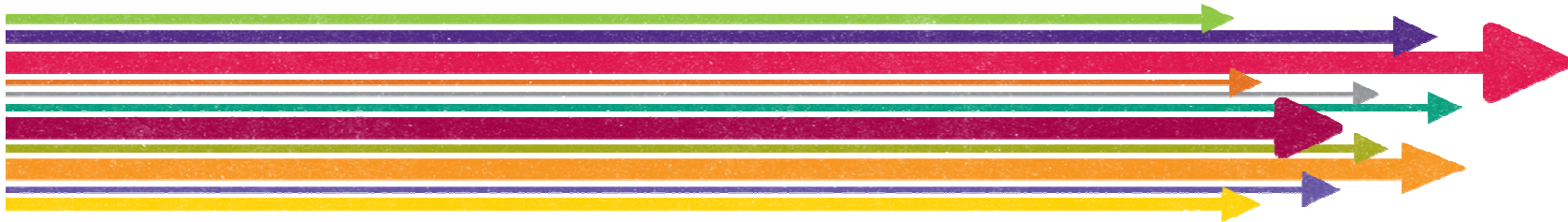




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Important Notifications and Orders



Time limit for availing ITC for F.Y 2017-18



CBIC has issued an Order No 2/2018 dated 31.12.2018 for extending time limit for availing ITC on invoices pertaining to F.Y 2017-18 till **time limit for filing return for March 2019 i.e., 20 April 2019**

Vide Order No 2/2018, following new Proviso to Section 16(4) has been inserted -

*“Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 **till the due date of furnishing of the return under the said section for the month of March,2019** in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017- 18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March,2019.”*

In sub-section (3) of section 37 of the said Act, after the existing proviso, the following proviso has been inserted —

“Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September, 2018 till the due date for furnishing the details under sub-section (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019.”.

Notifications under CGST Act

| Notification No | Update |
|--|--|
| Notification No. 2/2019-Central Tax dated 07.03.2019 | <p>The Central Government appointed 1st February, 2019, as the date on which the provisions of the Central Goods and Services Tax (Amendment) Act, 2018, except clause (b) of section 8, section 17, section 18, clause (a) of section 20, sub-clause (i) of clause (b) and sub-clause (i) of clause (c) of section 28, shall come into force.</p> <p>The amendment in IGST Act and UTGST Act were also made effective from 1st February 2019, by issuance of Notification under respective Act</p> |

Key changes in CGST Act has been discussed in the following slides

Registration under GST

- The threshold limit for registration has been increased from INR 10 lakh to INR 20 lakh in states of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand [**Proviso added to Section 22 of CGST Act**]
- The term 'multiple business verticals' has been removed from the provisions of registration and has been substituted by the term 'multiple places of business', and separate registration for each such place of business within the state or union territory shall be granted subject to the fulfilment of conditions specified therein. [**Proviso to Section 25(2) of CGST Act substituted**]
- A separate registration shall be required by a person having a special economic zone (SEZ) unit or being an SEZ developer from his/her other units located outside the SEZ in the same state or union territory. [**Proviso added to Section 25(1) of CGST Act**]
- Mandatory registration is required for those e-commerce operators who are required to collect tax at source under the relevant provisions of GST law [**Section 52 of CGST Act**]

Input tax credit – Section 16 and 17 of CGST Act

- Input tax credit has been restricted for **motor vehicles** for transportation of persons having a seating capacity of **not more than 13 persons** except when they are used for making further supply of motor vehicles, transportation of passengers or imparting training on driving such motor vehicles.
- Further, input tax credit shall not be available in respect of **vessels and aircraft** except when they are used for making further supply of such vessels or aircrafts, transportation of passengers, imparting training or navigating such vessels or imparting training on flying such aircraft.
- Input tax credit for services of **general insurance, servicing, repair and maintenance** relating to motor vehicles, vessels or aircrafts shall be available only where the motor vehicles, vessels and aircrafts are used for the above-mentioned purpose or received by a taxable person engaged in the manufacture of such motor vehicles, vessels or aircrafts or in the supply of general insurance services in respect of such motor vehicles, vessels or aircrafts.
- Input tax credit on employee-related welfare goods or services or both (eg food and beverages, outdoor catering, beauty treatments, health services, etc.) shall be available where such supply is used for making outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply. Input tax credit of services such as club memberships, health and fitness centres, travel benefits on vacation, etc. shall be available where the provision of such goods or services or both is obligatory for an employer to provide its employees under any law for the time being in force.
- An explanation has been inserted to provide that the 'value of exempt supply' shall not include the value of activities or transactions specified in Schedule III (other than the sale of land and building).

Cross-utilisation of ITC rationalised

- The credit of state tax/union territory tax can be utilized for payment of integrated tax only when the balance of input tax credit on account of central tax is not available for payment of integrated tax.
- A new **Section 49A** has been inserted to provide that the input tax credit on account of central tax and state tax/union territory tax can be utilized towards the payment of integrated tax, central tax and state tax/union territory tax only after the input tax credit available on account of integrated tax has been first utilized fully towards such payment.
- A new **Section 49B** has been inserted to allow the government, on the recommendation of the GST Council, to provide a specific order in which a registered person can utilize input tax credit, viz. integrated tax, central tax and state tax or union territory, for the settlement of the tax liability.

Insertions to schedule III of the CGST Act



Activities not to be treated as supply of goods or supply of services:

- The term 'transactions' has been inserted after the word 'activities'
- Supply of goods from a place in a non-taxable territory to another place in a non-taxable territory without such goods entering into a taxable territory
- Supply of goods in the course of high seas sale
- Sale of warehoused goods to any person before clearance for home consumption.

Other misc. amendments



Scope of the term 'supply'

For any activity to qualify as 'supply' under the GST Act, mere inclusion in Schedule II (activities to be treated as supply of goods or supply of services) is not sufficient, as the said activity has to qualify as 'supply' at the first place as per the relevant provisions under GST and thereafter the same can get further classified as supply of goods or services under Schedule II

Composition scheme

The threshold limit for the composite suppliers has been increased from Rs. 1 Cr. to Rs. 1.5 Crs..

Also, the supplier of services can also opt for the composition scheme. A person opting for such scheme may supply services (other than restaurant services) of value not exceeding 10% of the turnover in a state/union territory in the preceding financial year or Rs. 5 lakh, whichever is higher.

Credit note/debit note in respect of multiple invoices

A registered person can issue a consolidated credit note/debit note in respect of multiple invoices issued in a **financial year**.

Notifications under CGST Act

Notification No 3/2019 – Central Tax dated 29.01.2019 has been issued providing for amendment to the CGST Rules. Key changes in the Rules has been discussed herein below -

| Rule | Update |
|------|--|
| 11 | Rule 11 of CGST Rules has been amended to provide for procedure for obtaining separate registration for multiple places of business within a state or a union territory |
| 21A | <p>New Rule 21A has been inserted to provide for suspension of registration</p> <ul style="list-style-type: none">• Registration would be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later, pending the completion of proceeding for cancellation• The registered person, whose registration has been suspended, shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under Section 39• Suspension shall be deemed to be revoked upon completion of the proceeding by the proper office |

Notifications under CGST Act [contd....]

| Rule | Update |
|------|---|
| 41A | <p>New Rule 41A has been inserted to provide for mechanism for transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory</p> <ul style="list-style-type: none">• The registered person, who intends to transfer, either wholly or partly, the unutilized ITC lying in his electronic credit ledger shall furnish within a period of 30 days from obtaining such separate registrations, the details in Form GST ITC-02A electronically on common portal,• The ITC shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration |
| 53 | <p>Rule 53 has been amended to provide for the particulars to be included in debit note and credit note referred to in Section 34.</p> |

Notifications under CGST Act [cont...]

| Notification No | Update |
|---|---|
| Notification No. 2/2019-Central Tax (Rate) dated 07.03.2019 | <p>Composition Scheme notified for the service providers, where service provider to pay GST @ 6%, subject to fulfilment of the following conditions –</p> <ul style="list-style-type: none">(a) Supplies are made by registered person -<ul style="list-style-type: none">(i) Whose aggregate turnover in the preceding F.Y was fifty lakh rupees or below;(ii) who is not eligible to pay tax under section 10(1) of the said Act;(iii) who is not engaged in making any supply which is not leviable to GST;(iv) who is not engaged in making any inter-state outward supply;(v) who is neither a casual taxable person nor a non-resident taxable person;(vi) who is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52; and(vii) who is not engaged in making supplies of the specified goods (like pan masala, tobacco, Ice cream and other edible ice, whether or not containing cocoa etc,) |

Notifications under CGST Act

| Notification No | Update |
|---|---|
| <p>Notification No. 2/2019-Central Tax (Rate)</p> <p>dated 07.03.2019</p> | <p>(b) Scheme will apply for all the supplies made by the registered person having same PAN number;</p> <p>(c) Registered person shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax;</p> <p>(d) registered person shall issue, instead of tax invoice, a bill of supply</p> <p>(e) mention the following words at the top of the bill of supply, namely:- 'taxable person paying tax in terms of notification No. 2/2019-Central Tax (Rate), dated 07.03.2019, not eligible to collect tax on supplies'</p> <p>(f) Registered person opting to pay GST at the rate of 6% shall be liable to pay GST at the rate of 6% on all outward supplies specified in column (1) notwithstanding any other notification issued under Section 9(1) or under Section 11 of said Act</p> <p>(g) shall be liable to pay GST on inward supplies on which he is liable to pay tax under Section 9(3) and 9(4) of CGST Act at the applicable rates</p> <p>This notification shall come into force on the 1st day of April, 2019</p> |

Notifications under CGST Act

| Notification No | Update |
|---|---|
| Notification No. 10/2019-Central Tax dated 07.03.2019 | <p>Exemption has been provided from obtaining registration to the following category of persons –</p> <ul style="list-style-type: none">• Any person, who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed forty lakh rupees, except, -<ul style="list-style-type: none">✓ persons required to take compulsory registration under section 24 of the said Act;✓ persons engaged in making supplies of the specified goods (like pan masala, tobacco, Ice cream and other edible ice, whether or not containing cocoa etc.);✓ persons engaged in making intra-state supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; and✓ persons exercising option under the provisions of sub-section (3) of section 25, or such registered persons who intend to continue with their registration under the said Act. <p>This notification shall come into force on the 1st day of April, 2019</p> |

Notifications under CGST Act

| Notification No | Update |
|---|---|
| Notification No. 11/2019-Central Tax dated 07.03.2019 | Provides that registered persons having aggregate turnover of up to Rs.1.5 Crs in the preceding financial year or the current financial year, as the class of registered persons, shall file quarterly GSTR -1 for the April 2019 to June 2019 and due date for filing the same would be 31st July 2019 |
| Notification No. 12/2019-Central Tax dated 07.03.2019 | Provides that registered persons having aggregate turnover of more than Rs.1.5 Crs. rupees in the preceding financial year or the current financial year, as the class of registered persons, who shall file monthly GSTR -1 for the April 2019 to June 2019 by 11th of the next month |
| Notification No. 13/2019-Central Tax dated 07.03.2019 | <p>Prescribes that the monthly return in GSTR 3B for the period from April 2019 to June 2019 should be filed by 20th of the next month</p> <p>Every registered person furnishing the return in FORM GSTR-3B of the said rules shall, subject to the provisions of section 49 of the said Act, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the said Act by debiting the electronic cash ledger or electronic credit ledger, as the case may be, not later than the last date, as specified in the first paragraph, on which he is required to furnish the said return.</p> |

Notifications under CGST Act

| Notification No | Update |
|---|---|
| Notification No. 14/2019-Central Tax dated 07.03.2019 | <p>The limit of aggregate turnover in the preceding financial year for availing composition scheme for goods has been increased to Rs. 1.5 crore.</p> <p>The aggregate turnover in the preceding financial year shall be Rs. 75 lakhs in any of the following States, namely: –</p> <ul style="list-style-type: none">(i) Arunachal Pradesh,(ii) Manipur,(iii) Meghalaya,(iv) Mizoram,(v) Nagaland,(vi) Sikkim,(vii) Tripura,(viii) Uttarakhand: <p>However, persons engaged in making supplies of the specified goods (like pan masala, tobacco, Ice cream and other edible ice, whether or not containing cocoa etc,) would not be eligible to opt for composition scheme</p> <p>This notification shall come into force on the 1st day of April, 2019.</p> |

Notifications under CGST Act

| Notification No | Update |
|--|---|
| Notification S.O. 1359(E). No. 1/2019, F. No. A.50050/99/2018- Ad.1C(CESTAT) dated 13th March , 2019 | In terms of Section 109 of CGST Act, the Central Government, on the recommendation of the Council has notified creation of the National Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) at New Delhi, |



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Recent Circulars



Clarification on valuation under GST

I - Tax deducted at source (TCS):

Whether TCS collected by the supplier on supply of goods or services or both shall be included in the valuation for the purpose of charging GST ?

CBIC has issued **corrigendum to Circular No.76/50/2018 dated 7 March 2019** providing an important clarification on the tax treatment of TCS under GST

| Sr. No | Issue Involved | Clarification/implications under GST |
|--------|--|---|
| 1 | Whether TCS collected by the supplier on supply of goods or services or both such as sale of scrap or sale of motor vehicles etc. shall be included in the valuation for the purpose of charging GST ? | <ul style="list-style-type: none">• Section 15(2) of CGST Act states that value of supply for goods or services shall include “any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the SGST Act, the UTGST Act and the GST (Compensation to States) Act, if charged separately by the supplier”• TCS is not a tax on goods but an interim levy on the possible ‘income’ arising from the sale of goods by the buyer and to be adjusted against the final income-tax liability of the buyer• Accordingly, the taxable value for the purposes of GST shall not include the TCS amount collected under the provisions of the Income Tax Act, 1961 |

Clarification on valuation under GST

II - Treatment of sales promotion schemes under GST:

Whether free samples, gifts, buy one and get one offer, discounts etc. shall be included in the valuation for the purpose of charging GST ?

CBIC has recently issued **Circular No. 92/11/2019 dated 7 March 2019** clarifying on the tax treatment of the following 'sales promotion schemes' under GST

| Sr. No | Sales Promotion Scheme | Clarification/implications under GST |
|--------|----------------------------|---|
| 1 | Free samples and gifts | <ul style="list-style-type: none">• Samples provided free of cost do not qualify as 'supply' under GST and are thereby not chargeable to tax (except where the activity falls within the ambit of Schedule-I of the CGST Act as supply even if made without consideration)• Input tax credit (ITC) shall not be available to the extent used in relation to such free samples/gifts |
| 2 | Buy one get one free offer | <ul style="list-style-type: none">• Taxability of such supply will depend upon whether the supply is a 'composite supply' or a 'mixed supply' and the rate of tax shall be determined accordingly• ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers |

Clarification on valuation under GST

II - Treatment of sales promotion schemes under GST (contd):

| Sr. No | Sales Promotion Scheme | Clarification/implications under GST |
|--------|---|--|
| 3 | Discounts including 'buy more, save more' offer | <ul style="list-style-type: none"> The discounts offered by suppliers shall be excluded to determine the value of supply provided that ITC attributable to such discount has been reversed by the recipient of supply ITC shall be available for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts |
| 4 | Secondary discounts | <ul style="list-style-type: none"> Secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply Financial/commercial credit notes can be issued by the supplier No impact on the availability or otherwise of ITC in the hands of supplier |

It is commonly observed that various FMCG and pharma companies introduce such sales promotion schemes to increase their sales/attract customers. The clarification by the CBIC on the tax treatment for such sales promotion schemes will hopefully end the prevailing confusion and will also help the companies mitigate litigation in the future

Clarification on valuation under GST

III – Treatment on interstate movement of goods for provision of service on own account by a service provider under GST:

Whether GST is payable on inter-state movement of goods for provision of service on own account by a service provider?

CBIC has issued **Circular No. 80/54/2018 dated 31 December 2018** providing clarification on inter-state movement of goods for provision of service on own account by a service provider

| Sr. No | Issue Involved | Clarification/implications under GST |
|--------|--|--|
| 1 | Whether GST is payable on inter-state movement of goods for provision of service on own account by a service provider? | <ul style="list-style-type: none">Any inter-state movement of goods for provision of service on own account by a service provider, where no transfer of title in such goods or transfer of goods to the distinct person by way of stock transfer is not involved, does not constitute a supply of such goods.Hence, any such movement on own account (not involving distinct person in terms of section 25), where such movement is not intended for further supply of such goods does not constitute a supply and would not be liable to GST. |

Clarification on reporting of inter-state sales

IV – Mentioning details of inter-State supplies made to unregistered persons in Table 3.2 of FORM GSTR-3B and Table 7B of FORM GSTR-1:

CBIC has issued **Circular No. 89/08/2019 dated 18 February 2019** providing clarification regarding mentioning of details of inter-state supplies made to unregistered persons in GSTR 3B and GSTR 1 return

| Sr. No | Issue Involved | Clarification/implications under GST |
|--------|---|--|
| 1 | <p>Non-mentioning of the said information result in-</p> <ul style="list-style-type: none">• Non-apportionment of the due amount of IGST to the state where such supply take place; and• A mis-match in the quantum of goods or services or both actually supplies in a state and the amount of integrated tax apportionment between the Centre and the state, and consequent non-compliance of sub-section (2) of section 17 of the integrated Goods and Services Tax Act, 2017 | <ul style="list-style-type: none">• Registered persons making inter-state supplies to unregistered persons shall report the details of such supplies along with the place of supply in Table 3.2 of FORM GSTR 3B and Table 7B of FORM GSTR 1 as mandate by the law. Contravention of any of the provisions of the Act or the rules made there under attracts penal action under the provision of section 125 of the CGST Act |

Clarification on mentioning PoS

V – Mentioning of Place of supply in case of invoices raised for inter-state supply

CBIC has issued **Circular No. 90/09/2019 dated 18 February 2019** providing clarification regarding compliance of Rule 46(n) of the CGST Rules while issuing invoices in case of inter- State supply

| Sr. No | Issue Involved | Clarification/implications under GST |
|--------|--|--|
| 1 | Compliance of Rule 46(n) of the CGST Rules while issuing invoices in case of inter-state supply. | <ul style="list-style-type: none">• All registered persons making supply of goods or services or both in the course of inter-state trade or commerce shall specify the place of supply along with the name of state in the tax invoice.• The provisions of Section 10 and 12 of the IGST Act may be referred to in order to determine the place of supply in case of supply of goods and services respectively.• Contravention of any of the provisions of the Act or the rules made there under attracts penal action under the provisions of section 122 or 125 of the CGST Act. |



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Important AAR decision



AAR on valuation under GST

| Issue involved | Clarification/implications under GST |
|--|--|
| <p>Whether toll taxes received as reimbursement from clients is chargeable to GST or can be claimed as a deduction under Rule 33 from the value of supply, being expenditure incurred as a pure agent under the GST?</p> | <ul style="list-style-type: none">• Toll charges paid are not to be excluded from the value of supply under Rule 33 of GST Rules.• The service provider is not acting as a 'pure agent' of the Bank (i.e., service recipient) while paying toll charges, which are the cost of the service provided to the Banks so that his vehicles can access roads/bridges to provide security services to the recipient.• Such reimbursement would part of value of taxable supply and GST would be payable on such value. <p>Premier Vigilance & Security Pvt. Ltd. [2018 (18) G.S.T.L. 878 (A.A.R. - GST)]</p> |

AAR on applicability of GST

| Issue involved | Clarification/implications under GST |
|--|---|
| <p>Whether the applicant being the land owner is liable to pay GST on premises allotted to him, which he intends to distribute among his family members?</p> | <ul style="list-style-type: none">• The Applicant is a supplier of a taxable service by way of transfer of undivided share of land and hence is liable to register himself and discharge the tax accordingly. <p>Patrick Bernardinz D'SA [2019 (20) G.S.T.L. 181 (A.A.R. - GST)]</p> |

AAR on applicability of GST

| Issue involved | Clarification/implications under GST |
|--|---|
| <p>Whether the applicant is liable to pay GST on the value of building constructed and handed over to the land owner in terms of the Joint Development Agreement?</p> <p>If there is liability to pay GST on what value is the GST to be paid since there is no monetary consideration involved?</p> | <ul style="list-style-type: none"> • In the instant case the applicant, a registered person, is supplying the construction service of building/civil structure to supplier of the development rights (the land owner) against consideration in the form of transfer of development rights. • Notification No. 4/2018-Central Tax (Rate), dated 25.01.2018, at para (b), stipulates that the supplier of construction service, to the supplier of development rights, is liable to pay GST for the service provided to the land owner in terms of the Joint Development Agreement. • The applicant needs to pay tax towards the construction service provided to the land owner, on the value to be determined in terms of para 2 of the Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017 <p>Nforce Infrastructure India Pvt. Ltd [2019 (20) G.S.T.L. 184 (A.A.R. - GST)]</p> |

AAAR on applicability of GST

| Issue involved | Clarification/implications under GST |
|--|---|
| <p>Whether GST is applicable on issuance fee retained by Company on account of forfeiture of points?</p> | <ul style="list-style-type: none">• After expiry of their validity period, these reward/payment points are not “actionable claim”. Consequently, the action of forfeiture of rewards/payment who validity period has lapsed, does not mean that actionable claim been transferred, as after expiry of validity period, these reward/payback points are no longer covered under the definition of “actionable claim”.• Issuance fee retained by Loyalty program Company in the name of forfeiting reward/payback points to be added to value of services being provided by LSRPL to their partners as per clause (c) of sub-section (2) of Section 15 of CGST Act <p>Loyalty Solutions and Research Private Limited [2019-VIL-05-AAAR]</p> |

AAR on applicability of GST

| Issue involved | Clarification/implications under GST |
|---|--|
| <p>Is GST applicable on the compensation for alternate accommodation to be paid to me (the tenant of the old building) by the developer/ owner?</p> <p>Is GST applicable on the compensation for alternate accommodation/damages for delayed handover of possession of the new premises to be paid to me (the tenant of the old building) by the developer/owner?</p> | <ul style="list-style-type: none"> • The act of vacating premises for facilitating the developer implies that the applicant has agreed to do an act and such act, of vacating the premises, by the applicant, squarely falls under Clause 5(e) of the Schedule II mentioned above and therefore the amounts received by the applicant for having agreed to do such an act, would attract tax liability. • The receipt of amounts towards alternate accommodation or delayed possession of premises would be receipt of amounts for doing an act i.e. vacating the premises for redevelopment as well as tolerating the construction-cum-redevelopment work till possession of new redeveloped premises as per agreement and further for tolerating an act i.e. the act of not having completed the redevelopment work within 36 months. • In view thereof, the same would definitely be a 'supply' under the GST Act and therefore, there arises an occasion to levy tax under the GST Act on the impugned transactions <p>Zaver Shankarlal Bhanushali [2018 (14) G.S.T.L. 429 (A.A.R. - GST)]</p> |

AAAR on valuation under GST

| Issue involved | Clarification/implications under GST |
|--|--|
| <p>Whether any supply of goods and services from corporate office to the separately registered units would amount to supply of goods and services, even if made without consideration?</p> | <ul style="list-style-type: none">• Any supply of goods and services from corporate office to the separately registered units would amount to supply of goods and services, even if made without consideration.• Activities performed by employees at the corporate office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in other States as well i.e. distinct persons as per Section 25(4) of CGST Act, shall be treated as supply as per Entry 2 of Schedule-I ibid and valuation thereof to be done including all costs i.e. employees cost also.• The above ruling has been affirmed by the Appellate Authority for Advance Ruling. <p>Columbia Asia Hospitals Pvt. Ltd. [2018 –VIL-30-AAAR]</p> |

AAAR on valuation under GST

| Issue involved | Clarification/implications under GST |
|--|---|
| <p>Whether delay charges received for supply of goods or services or both by the supplier shall be included in the transaction value of supply for the purpose of GST?</p> | <ul style="list-style-type: none">• The Company transmits electricity to all the commercial and non-commercial consumers and recovers charges for supply of electricity along with other non-tariff charges. Any payment received after the due date mentioned in bills is subject to delay payment charges to be recover from the customer.• The delayed payment charges cannot be treated as separate service and same shall be included in the value of initial supply to which such charges related for the purpose of GST.• The delay charges recover by the supplier shall be included in the value of supply for the purpose of GST. However the same will be subject to the taxability to initial main supply. <p>M/s TP Ajmer Distribution Limited [2019-VIL-27-AAAR]</p> |

AAAR on applicability of GST

| Issue involved | Clarification/implications under GST |
|---|---|
| <p>Whether the activity of supply of food or drinks or any articles for human consumption to the employees of the company, located in the Special Economic Zone is covered under the zero rated supply?</p> <p>Whether the said supply would be covered under the 'canteen services' and consequently, taxed at 5%?</p> | <ul style="list-style-type: none">• The supply made by the company to the employees of the unit located in SEZ cannot be construed as zero rated supply by any stretch of imagination, as the employees can neither be treated as SEZ developer nor as SEZ unit.• Authority held that services provided by the Company are not covered in the definition of the Restaurant Services but in the nature of 'outdoor catering services' and thereby are leviable to tax at 18%. <p>Merit Hospitality Services Private Limited [2018-VIL-22-AAAR]</p> |

AAR on applicability of GST

| Issue involved | Clarification/implications under GST |
|--|--|
| <p>What would be the GST rate applicable on providing food to student mess, training institutes?</p> <p>What would be the GST rate applicable on transport services provided to a training institute for carting food from one building to another for service/sale. The applicant entity charges them a separate transport charges?</p> | <ul style="list-style-type: none">• The activity of supply of food in office canteens, factory, hospital, college, industrial unit etc. on contractual basis excepting that supply is not event based or on specific occasions, constitute supply of service in terms of amended Notification No.13/2018-CT(Rate) dated 26.07.2018 and is taxable at the rate of 5% and the supplier is not eligible for the input tax credit as per the condition stipulated therein.• Where the applicant provides transport services to a training institute for carting food from one building to another for sale and the applicant charges a separate transport charges, the applicant needs to discharge GST on the gross amount at the rate of 18%. <p>Prism Hospitality Services Private Limited [2018-VIL-322-AAR]</p> |

AAR on applicable rate of GST

| Issue involved | Clarification/implications under GST |
|---|--|
| <p>What shall be the classification of service provided by the State of Haryana to M/s. United Mining Corporation in accordance with Notification No 11/2017-CT (Rate) dated 28.06.2017 read with annexure attached to it?</p> <p>Whether the said service can be classified under chapter number 9973 specifically under service code 997337 as "Licensing services for the right to use minerals including its exploration and evaluation" or as any other service under the said chapter?</p> <p>What shall be the rate of GST on given services provided by State of Haryana to M/s. United Mining Corporation for which royalty is being paid?</p> | <ul style="list-style-type: none"> • The services for the right to use minerals including its exploration and evaluation, as per Sr. No. 257 of the annexure appended to notification no. 11/2017-CT (Rate), dated 28.06.2017 is included in group 99733 under heading 9973. • The royalty/dead rent paid/payable to the Government by the applicant is consideration against the transfer of right to use minerals including its exploration and evaluation as per the lease granted by the Government to the applicant.. • It attracts the same rate of tax as on supply of the like goods involving transfer of title in goods • The recipient of services is liable to pay GST under RCM. <p>M/s United Mining Corporation [2019-VIL-44-AAR]</p> |

AAR on applicability of GST

| Issue involved | Clarification/implications under GST |
|--|--|
| <p>Whether the Bounce Charges collected by the Applicant from the customers, for the breach of the terms and conditions of the loan, should be treated as a supply under the GST regime?</p> | <ul style="list-style-type: none">• The exemption for financial transactions under GST laws is only in respect of the interest/discount earned or paid for loans, deposits or advances, if the transaction deviates from the above, the exemption is not available.• In the subject case, the amount of bounce charges cannot be said to be penalty imposed on by the applicant. It is recovered/ imposed only because the client has dishonored the cheques issued by them towards payment of EMI.• Dishonour of cheques is an act which results in delay of receipt of repayments to the applicant. This delay is an act done by their customers which is tolerated by the applicant as the agreement with the defaulting party will still be continued after such bounce charge. Thus, the recovery of bounce charges is made in view of toleration of the act of the client by the applicant and therefore construes as 'supply' and is therefore taxable under the GST Act. <p>Bajaj Finance</p> |

AAR on applicability of GST

| Issue involved | Clarification/implications under GST |
|---|---|
| <p>Whether Input Tax Credit is admissible in respect of GST paid for hotel stay in case of rent free hotel accommodation provided to General Manager and Managing Director of the Company?</p> <p>Whether recovery of Parents Health Insurance expenses from employee in respect of the insurance provided by the Applicant amounts to "supply of service" under Section 7 of the CGST Act?</p> <p>If the said recovery amounts to "supply", what will be the time of supply and value of the said supply?</p> <p>Whether the Applicant can claim input tax credit of GST charged by the insurance company?</p> | <ul style="list-style-type: none"> • Providing of residential accommodation in a Hotel is not in furtherance of applicant's business. The MD/GM could have been provided with any other residential accommodation and still would have performed their duties for the applicant. • The Hotel Accommodation is being used by the applicant as a residential premises of their MD/GM which is for the personal comfort and therefore, in view of the provisions of Section 17(5)(g) of the CGST Act, they are not eligible to claim the Input Tax Credit for the same. • The recovery of Parents Health Insurance expenses from employee does not amount to "supply of service" under the GST Laws • The applicant is creating this fiction of providing health insurance to their employees only to avail 100% ITC of payments made to the insurance companies. <p style="text-align: right;">Contd...</p> |

AAR on applicability of GST

| Issue involved | Clarification/implications under GST |
|----------------|--|
| | <ul style="list-style-type: none">• Since there is no supply of services there is no question of time and value of the supply.• The applicant cannot claim Input Tax Credit of GST paid to the insurance company <p>Posco India Pune Processing Center Private Limited [2019-VIL-25-AAR]</p> |

The ruling is in contradiction to the earlier AAR issued by **Kerala AAR** in case of M/S Caltech Polymers Pvt. Ltd. wherein it was held that

The activity of supply of food by the Company falls within the ambit of 'business' as transaction incidental and ancillary to the main business

Clause 6 of Schedule II to the GST law clearly prescribes such activity as a 'supply'

Amount recovered from employees is in the nature of 'consideration' for supply irrespective of the fact that this amount is without any profit margin

Accordingly, recovery of food expenses from the employees for the canteen services provided by the Company would be treated as taxable 'outward supply' under GST law.

As the two contradictory ruling have been issued for treating recoveries from employee liable to GST, it has opened a Pandora's box.

AAR on eligibility to avail ITC

| Issue involved | Clarification/implications under GST |
|--|--|
| <p>Whether the Applicant can avail the Input Tax Credit of the full GST charged on the supply of invoice or a proportionate reversal of the same is required in case of post purchase discount given by the supplier of the goods or services?</p> | <ul style="list-style-type: none">• In the instant case, the value of supply is the full undiscounted value indicated in the tax invoice and the recipient/Applicant only makes payment to the extent of invoice value less the discount thrown up by the software.• As per proviso to Section 16, the recipient is entitled to avail the credit of input tax on the payment made by him alone and if any amount is not paid as per the value of supply and the recipient has availed full input tax credit, the same would be added to his output tax liability.• Therefore, the Applicant can avail Input Tax Credit only to the extent of the invoice value less the discounts and if he has availed input tax credit on the full amount, he is required to reverse the difference amount equal to the discount, to avoid adding to his output liability. <p>M/s MRF Limited [2019-VIL-71-AAR]</p> |



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Important Court Decisions



Reimbursement of Electricity charges

| Facts and issue involved | Decision |
|---|---|
| <p>The petitioner entered into an agreement with DPSC Ltd which provides for electric supply through an 11KV substation installed at the commercial premises. The licensee raises a single consolidated electricity bill upon the petitioner.</p> <p>The petitioner has installed sub- meters for the respective occupiers. Based on the readings of such sub-meters, the petitioner raises bills upon such occupiers.</p> <p>Whether supply of electricity by the petitioner to the occupiers of commercial complex, is a service exigible to tax under the Finance Act, 1994?</p> <p>Srijan Realty (P) Ltd vs. CST [2019-VIL-112-CAL-ST]</p> | <ul style="list-style-type: none">• The petitioner cannot be said to be indulging in trading of goods or in transmission or distribution of electricity within the meaning of the Electricity Act, 2003.• The activity of the petitioner sought to be made exigible to tax does not come within exclusions contained in Section 65B(44).• The transaction of the petitioner obtaining high tension electric supply converting it to low-tension supply, and supplying it to the occupants, raising bills on such occupants and realizing the electricity consumption charges from such occupants, is a service which the petitioner renders and such an activity is exigible to Service Tax under the 1994 Act.• The Ruling will have impact on similar transactions under GST regime also. |

Power to conduct service tax audit

| Facts and issue involved | Decision |
|--|--|
| <p>The petitioner was issued several notice for conducting service tax audit under the provisions of Chapter V of the Finance Act, 1994 ('1994 Act'), subsequent to the coming into effect of the Central Goods and Services Tax Act, 2017.</p> <p>The writ petition was filed challenging the notice on the ground that the notice was issued without jurisdiction.</p> <p>M/s Gitanjali Vacationville Private Limited & Anr. Vs. The Union of India & Anr [2019-VIL-17-CAL]</p> | <ul style="list-style-type: none">• The provisions of Chapter V of the 1994 Act stands omitted by Section 173 of the CGST Act save as otherwise provided under the CGST Act.• If any provision of the CGST Act allows the applicability of the Chapter V of the 1994 Act, then notwithstanding the omission under Section 173 the same continues to apply.• On conjoint reading of Sections 173 and 174 of the CGST Act it appears that, an enquiry / investigation or even a legal proceeding under the 1994 Act is permissible notwithstanding the coming into effect of the CGST Act.• The authorities are proposing to undertake an audit for the period when service tax was applicable. The authorities are entitled to do so. In such circumstances, prayer for any interim order was not granted. |

Form C for goods outside GST

| Facts and issue involved | Decision |
|---|---|
| <p>The writ petition was filed challenging the department refusal to issue 'C' Forms in respect of the inter-state sales of natural gas.</p> <p>Carpo Power Limited vs. State of Haryana and Others [2018-VIL-154-P&H]</p> | <ul style="list-style-type: none">• The provisions of Section 8 of the CST Act, Rule 12 of CST (R&T) Rules and declaration Form C have not undergone any amendment after the implementation of the GST laws.• There cannot be any occasion to restrict the usage of 'C' Form only for the purposes of re-sale of the six items mentioned in the amended definition of 'goods' in Section 2 (d) of the CST Act.• The purchase of the said goods for purposes of re-sale, use in the manufacture or processing of goods for sale, in the tele-communications network or mining or in generation or distribution of electricity or any other form of power would qualify the purchaser for registration under Section 7(2) of the CST Act. |

Form C for goods outside GST [contd...]

| Facts and issue involved | Decision |
|--------------------------|---|
| | <ul style="list-style-type: none">• It is held that the respondents are liable to issue 'C' Forms in respect of the natural gas purchased by the petitioner from the Oil Companies in Gujarat and used in the generation or distribution of electricity at its power plants in Haryana• The above decision was affirmed by Hon'ble Supreme Court |



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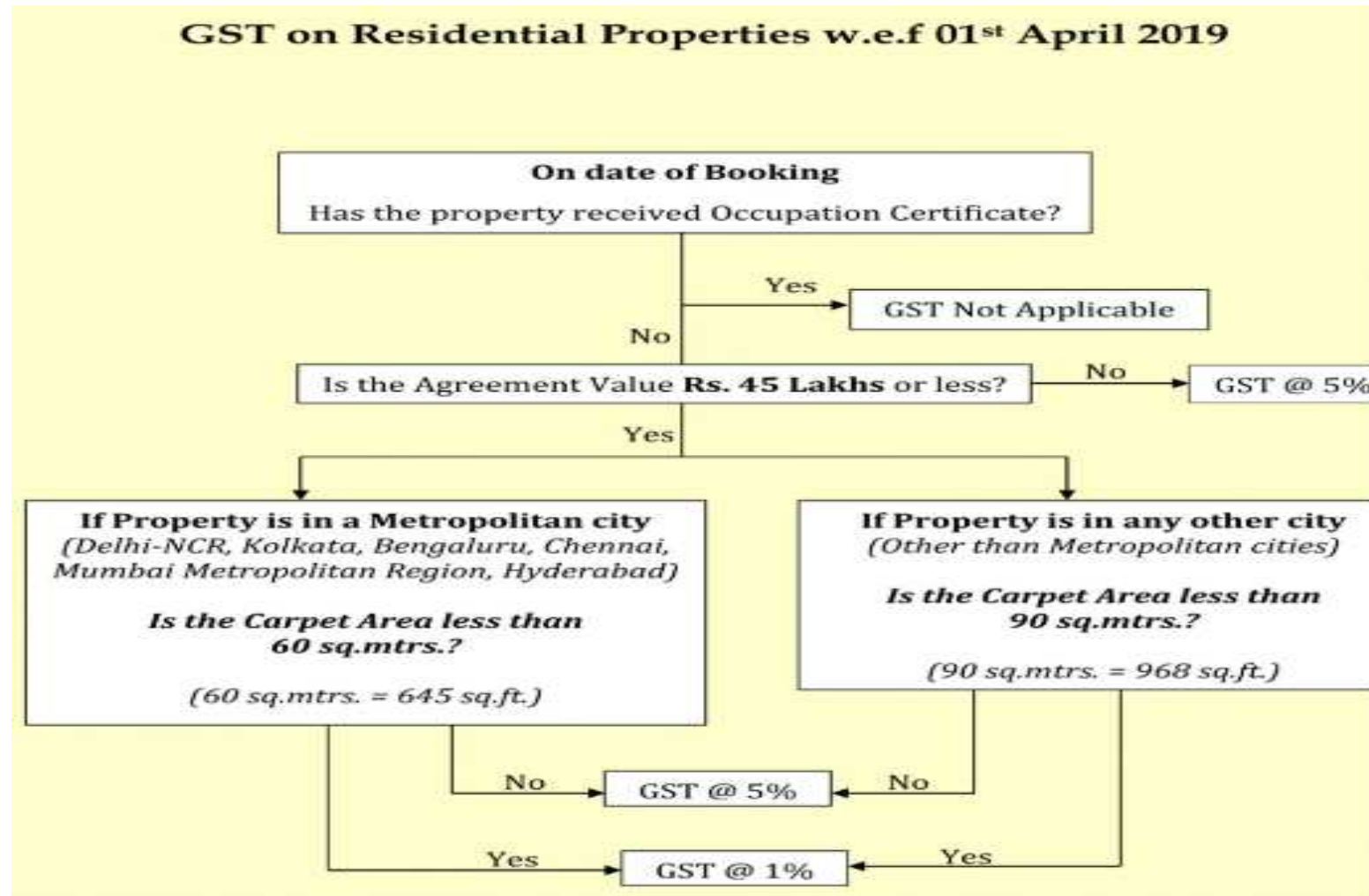
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Impact of GST changes on real estate sector



Proposed Rate on Residential Properties

- GST council in their 33rd meeting cleared the **proposal** to lower GST rates for real estate. Mechanism of the proposal is explained using the following flow chart:



Definition of Affordable housing



| Metropolitan Cities | Non-metropolitan Cities |
|--|--|
| <p>A residential house/flat of carpet area</p> <ul style="list-style-type: none">• Upto 60 sqm &• Having value upto Rs.45 Lacs | <p>A residential house/flat of carpet area</p> <ul style="list-style-type: none">• Upto 90 sqm &• Having value upto Rs. 45 Lacs |
| <p>Metropolitan Cities -</p> <ul style="list-style-type: none">• Bengaluru;• Chennai;• Delhi NCR(limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad);• Hyderabad;• Kolkata &;• Mumbai (whole of MMR). | <p>All the cities/town except town and cities specified as metropolitan cities in GST council meeting.</p> |

Based on Press Release issued after GST Council Meeting. Refer Gazette notifications/circulars, which alone shall have force of law, for exact provisions

Transfer of Development Right



Before 1 April 2019

Notification No. 4/2018 – Central Tax (Rate) dated 25.01.2018 has notified the time of supply in case of development rights where consideration is received by way of built-up area.

The supplier of development right is required to pay GST at the time when the developer transfer possession or the right in the constructed complex by entering into a conveyance deed or similar instrument.

Based on above Notification it appears that GST is applicable on TDR.

On or after 1 April 2019

For projects commencing after **01.04.2019**, supply of TDR, by a landowner to a developer will be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.

Exemption of TDR shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.

GST to be paid under RCM by the builder / developer

The date on which builder shall be liable to pay GST on TDR of land in respect of flats sold after completion certificate will be date of issue of completion certificate

Based on Press Release issued after GST Council Meeting. Refer Gazette notifications/circulars, which alone shall have force of law, for exact provisions

Long term lease (premium)



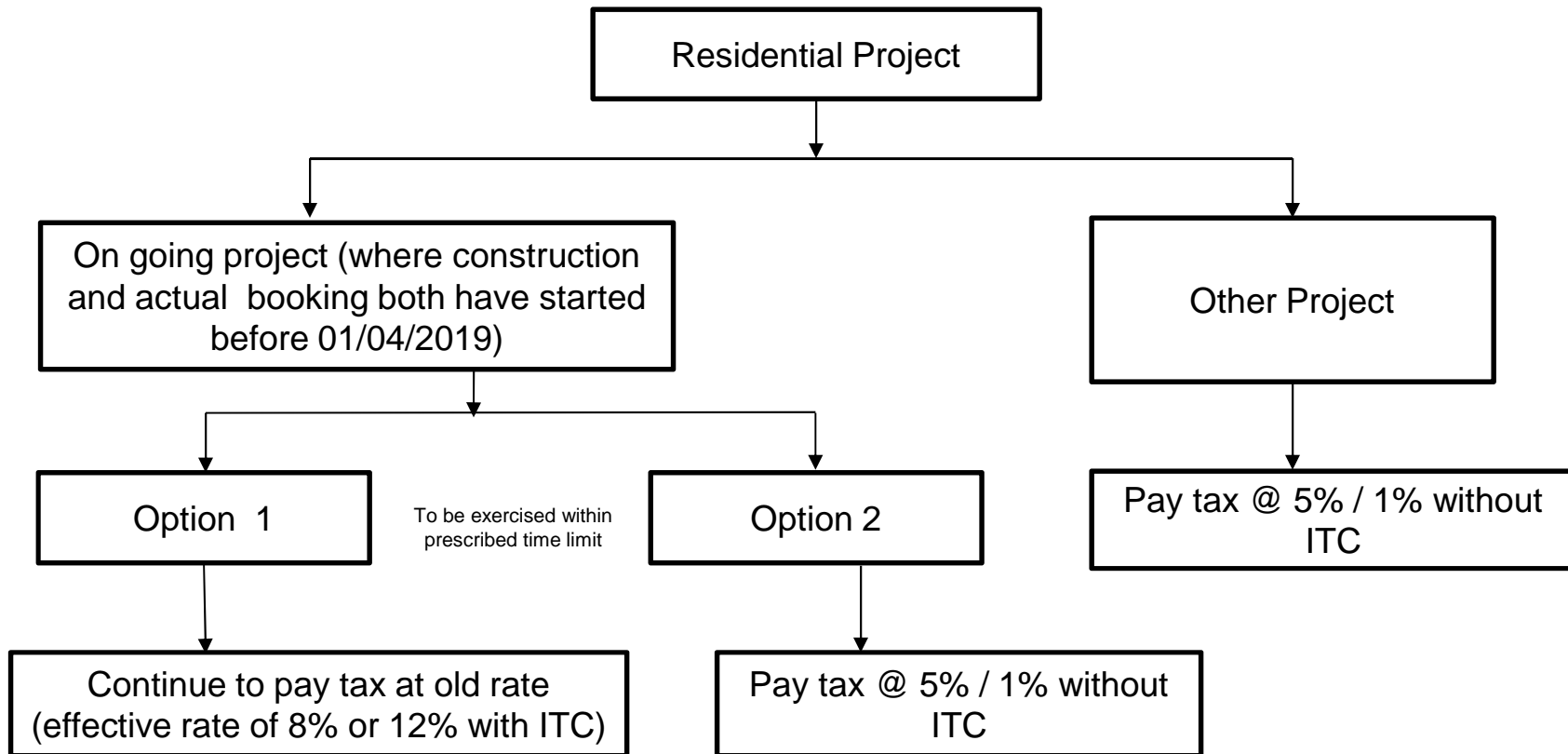
| Before 1 April 2019 | On or after 1 April 2019 |
|--|--|
| <p>GST on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of long term lease of 30 years or more of industrial plots or plots for development of infrastructure for financial business, provided by –</p> <ul style="list-style-type: none">• State Government Industrial Development Corporations or Undertakings; or• any other entity having 50 percent or more ownership of Central Government, State Government, Union Territory <p>to the industrial units or the developers in any industrial or financial business area.</p> <p>All other lease transactions are taxable.</p> <p>GST @ 18% is payable</p> | <p>In addition to aforesaid exemption, for projects commencing after, 01.04.2019, supply of long term lease, by a landowner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.</p> <p>Exemption of long term lease shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.</p> <p>GST to be paid under RCM by the builder / developer</p> <p>The date on which builder shall be liable to pay GST on long term lease of land in respect of flats sold after completion certificate will be date of issue of completion certificate</p> |

Based on Press Release issued after GST Council Meeting. Refer Gazette notifications/circulars, which alone shall have force of law, for exact provisions

Advantage of proposed rates

- The buyer of house/consumer gets a fair price and affordable housing gets very attractive with GST @ 1%;
- Interest of the buyer/consumer gets protected; ITC benefit not being passed to them shall become a non-issue;
- Cash flow problem for the sector is addressed by the exemption of GST on development rights, long term lease(premium), FSI etc.;
- Unutilized ITC, which used to become cost at the end of the project gets removed and should lead to better pricing;
- Tax structure and tax compliance become simpler for builders;

Options available to the developer



Option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit ,new rate shall apply. Time line for exercising option is yet to be prescribed.

Based on Press Release issued after GST Council Meeting. Refer Gazette notifications/circulars, which alone shall have force of law, for exact provisions

New tax rate on residential house without ITC

| Affordable Housing | Other residential house |
|---|--|
| <p>GST of 1% without ITC on construction of affordable houses shall be available for: -</p> <p>a) All houses which meet the definition of affordable houses as decided by GSTC (area 90 sqm in non- metros / 60 sqm in metros and value upto RS. 45 lakhs),</p> <p>and</p> <p>(b) Affordable houses being constructed in ongoing projects under the existing central and state housing schemes presently eligible for concessional rate of 8% GST (after 1/3rd land abatement).</p> | <p>GST of 5% without ITC shall be applicable on construction of,-</p> <p>a) All houses other than affordable houses in ongoing projects whether booked prior to or after 01.04.2019. In case of houses booked prior to 01.04.2019, new rate shall be available on instalments payable on or after 01.04.2019</p> <p>b) All houses other than affordable houses in new projects.</p> <p>c) Commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.</p> |

Based on Press Release issued after GST Council Meeting. Refer Gazette notifications/circulars, which alone shall have force of law, for exact provisions

Condition for the new tax rates

GST rates of 1% (on construction of affordable housing) and 5% (on other than affordable houses) shall be available subject to following conditions,-

- **Input tax credit shall not be available,**
- **80% of inputs and input services** [other than capital goods, TDR/ JDA, FSI, long term lease (premiums)] shall be **purchased from registered persons.**

On shortfall of registered purchases from threshold of 80%, tax shall be paid by the builder @ 18% on RCM basis.

However, GST on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.


Based on Press Release issued after GST Council Meeting. Refer Gazette notifications/circulars, which alone shall have force of law, for exact provisions

Transition for ongoing projects opting for new rate

- Ongoing projects (buildings where construction and booking both had started before 01.04.2019) and have not been completed by 31.03.2019 opting for new tax rates shall transition the ITC as per the prescribed method.
- The transition formula, approved by the GST Council, for residential projects **extrapolates ITC taken for percentage completion of construction** as on 01.04.2019 to arrive at ITC for the entire project.
- Then based on percentage booking of flats and percentage invoicing, ITC eligibility is determined.
- Transition would thus be on pro-rata basis based on a simple formula such that credit in proportion to booking of the flat and invoicing done for the booked flat is available subject to a few safeguards.
- For a mixed project, transition shall also allow ITC on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects (on which tax will be payable @ 12% with ITC even after 1.4.2019) to the total carpet area of the project.

Based on Press Release issued after GST Council Meeting. Refer Gazette notifications/circulars, which alone shall have force of law, for exact provisions

Transition for ongoing projects opting for new rate



| Particulars | Amount (in INR) |
|---|-----------------|
| Total ITC availed for the project till 31.03.2019 | 1,00,000 |
| Percentage of Project completed till 31.03.2019 | 50% |
| Percentage of flats booked till 31.03.2019 | 40% |
| Percentage of invoices / demand letter issued | 80% |
| | |

| Particulars | Amount (in INR) |
|---|-----------------|
| Total estimated ITC for the project [Rs.1,00,000 /50*100] | 2,00,000 |
| Proportion of flat booking and invoicing [40% *80%] | 32% |
| Pro rata credit eligible | 64,000 |
| Credit to be reversed | 36,000 |

Based on Press Release issued after GST Council Meeting. Refer Gazette notifications/circulars, which alone shall have force of law, for exact provisions

Amendment to input tax credit rules



Press Release provides that –

- ITC rules shall be amended to bring greater clarity on monthly and final determination of ITC and reversal thereof in real estate projects
- Provide procedure for availing input tax credit in relation to commercial units as such units would continue to be eligible for input tax credit in a mixed project.

Based on Press Release issued after GST Council Meeting. Refer Gazette notifications/circulars, which alone shall have force of law, for exact provisions

Possible Challenges

- Impact on costing and pricing of projects for both sold and unsold portion. Cost likely to increase due to blockage of ITC.
- Challenges of resistance from buyer in case of upward revision in price of already sold units.
- Upward revision in prices may be subject to anti profiteering provisions.
- Computation of ITC reversal, likely to be subject matter of intense scrutiny by department.
- In cases of ongoing projects, where developer wishes to continue under existing scheme, the compliance burden likely to increase.
- Treatment of unutilized ITC balance, after reversal of ITC made for opting new scheme. May lead to working capital blockage, if refund is not allowed and other option not available to set off
- Reversal of ITC on a proportionate basis would entail significant computational issues for builders as each project would be in various stages of construction and have differing pre and post completion sale patterns.



Thank You!!