

# GST NEWSLETTER APRIL 2019

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## ARTICLES

- **GST and Real Estate – A major shift in Tax Compliance**

The nuances of the GST council's decision to lower GST rates for Residential property was finally revealed in a series of notifications on 29th March, 2019. The initial announcement was met with scepticism by the Real Estate industry and with cheers by the home buyers but finally the reactions were varied. These are the following highlights of the Notifications:

### 1. What do the notifications cover?

In brief, they cover the following:

- The rate to be charged for new projects
- The rate to be charged for ongoing projects
- The treatment and calculation methodology of Input Tax Credit along with reversal
- The applicability of Reverse Charge Mechanism
- The impact of the changes on Development Rights

### 2. What are the rates for new projects?

The GST council has decided on effective rates of 1% for new affordable housing projects or 5% for all other new projects. However, the rates notified are 1.5% and 7.5% which are applicable only on 2/3rd of the total value of the residential property. This is due to the fact that 1/3rd of the value will be considered as land value which is exempt from GST, hence leaving the GST to be calculated on only 2/3rd value.

Here's an example to understand this better: If a residential property is sold for Rs. 75 lacs, then the applicable GST will be Rs. 3,75,000 at 7.5% calculated on Rs. 50 lacs (75 lacs \* 2/3). The remaining 25 lacs will be considered as land value which is exempt with no GST chargeable on it.

If 5% GST rate was applied on Rs. 75 lacs then the GST would still be Rs. 3,75,000. The same applies to affordable housing schemes. Hence, the GST rates are 1% or 5% effectively.

### **3. What are the rates for ongoing projects?**

The GST council has suggested either 1% / 5% or 8% / 12% and given the option to select the rates to the Real Estate developers. The new rate of 1% / 5% is by default i.e. if no selection is made by 10th May 2019 then 1% / 5% shall be applicable. If the Real Estate developer intends to continue with the old rates then they can opt for the scheme in Form CMP-02.

### **4. What happens to the Input Tax Credit accumulated in Credit ledger as on 31st March 2019?**

This question relates to three different instances:

- a. Ongoing projects with new rates (1% / 5%): The fate of the ITC as on 31st March 2019 depends on the option selected by the Real Estate developer. If the new rates are chosen then the ITC shall become in-eligible from 1st April 2019 onwards. Further, the developer is required to calculate the ITC in-eligible by way of formulas as notified. In case the ITC claimed is more than the ITC the developer is eligible for, then the differential will be paid back by the developer by cash. In case the ITC claimed is less than the ITC the developer is eligible for, then the differential can be claimed against the Output GST from 1st April 2019, but this is the only ITC available for claim and not any other ITC incurred after 1st April 2019.
- b. Ongoing projects with old rates (8% / 12%): In this case the ITC will continue to be claimed and reversed under rule 42/43 as before. But the ITC will be subject to reversal based on the carpet area of the apartments under construction and apartments already constructed. These calculations need to be made carefully.
- c. New projects: In this case the ITC will not be eligible from the beginning and if any ITC is claimed at all then such ITC will be reversed during April 2019.

### **5. What are the additions to Reverse Charge Mechanism made exclusively for Real Estate developers?**

RCM, till date, was most commonly applied on Advocate's fees and Goods Transport Agency.

But for Real Estate developers' additions have been made which may bring in additional RCM liability. However, these additions are applicable only for new projects or ongoing projects which have not opted for new rates. From 1st April, 2019 onwards, promoters will have to ensure that 80% of their inputs are purchased from Registered Suppliers.

In case of any shortfall in a financial year then to the extent of the shortfall the promoter will pay GST at 18% on RCM. But in case of Cement and Capital goods, the RCM will be paid at the respective rates as notified in Notification no. 01/2017. The other major addition is on development rights where the promoter will pay GST on RCM on development rights related to apartments which have not been sold as on the date of completion / first occupation. It's important to note that this is applicable on residential apartments only and not on the commercial aspect of residential apartments.

### **6. Other important aspects to note:**

- a. Accounting project-wise is now mandated by law
- b. Strict distinction is to be made between projects which have < 15% commercial units and > 15% commercial units
- c. If the developer is constructing both affordable and non-affordable apartments, then he should ensure that sub-contractors are charging 12% GST on the affordable apartments subject to fulfilling certain conditions
- d. Finally, for construction of residences which are not meant for sale then there is no change in GST rates and no restriction on Input Tax Credit.

Conclusion:

In conclusion, the changes to the Real Estate sector will change the way of functioning of the industry itself in numerous ways. The Real Estate sector will have to revamp its functioning and accounting methods if not already being followed. It's of extreme importance for every Real Estate developer to make a decision to opt for either the old or the new rates. This decision requires expert knowledge in GST laws as various factors need to be taken into consideration since the opportunity to opt-out is provided only once. Real Estate developers should use this opportunity to make a valid decision which will help them save tax and future litigation.

## Case laws:

### 1. Facts of the case: Kara Property Ventures LLP - Authority for Advance Ruling, Tamil Nadu.

The appellant is a real estate developer who constructs and sells apartments to customers. They have entered into two different agreements with the customers; one for construction services and one for sale of land share. They have approached the AAR with the claim that the agreement for construction services is to be valued at 2/3rd for taxable value and 1/3rd for land value as stated in notification no. 11/2017 – CT(R) dt. 28.06.2017. Hence, the GST will be chargeable only on 2/3rd of the construction services and the remaining 1/3rd and the separate proceeds for the land will be exempt.

#### Provisions of the law:

As per notification no. 11/2017 – CT(R) dt. 28.06.2017 under the head 9954 (i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after /s first occupation, whichever is earlier. (provisions of paragraph 2 of this notification shall apply for valuation of this service) Para 2. - In case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply. Explanation. - For the purposes of paragraph 2, "total amount" means the sum total of, - (a) consideration charged for aforesaid service; and (b) amount charged for transfer of land or undivided share of land, as the case may be.

#### Ruling:

The learned AAR held that as per the valuation rules in notification no. 11/2017 – CT(R) dt. 28.06.2017 the value of supply of services to measure GST levy is 2/3rd of - total value charged for construction service and amount charged for transfer of undivided share of land.

### 2. Facts of the case: Arihant Enterprises - Authority for Advance Ruling, Maharashtra

The appellant is an ice cream parlour owner who sells ice creams in retail outlets either in packs or as scoops in cones and cups. They also melt it into milkshakes or add fruit toppings at the request of the customers. Hence, they are only re-selling the ice cream received by them as per the customer's requirement and this is a sale of goods and not a composite supply of restaurant services. These are sold at agreed rates which do not exceed the MRP of the product.

#### Provisions of the law:

As per entry no. 1(a) of the Schedule II of the CGST Act, 2017 any transfer of the title in goods is a supply of goods.

#### Ruling:

The learned AAR held that the ice cream parlour is not in the nature of a restaurant where customers visit and order the food item they want which will then be prepared in the restaurant itself for their consumption either in the restaurant or outside. However, here the ice cream is sold in the same form as received without making any changes and at agreed rates not exceeding the MRP. Hence these are in the nature of goods and not composite restaurant services.

## NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF MARCH 2019

- Seven Central Tax Notification & Eight Central Tax (Rate) Notification.
- Six Integrated Tax (Rate) Notification.
- One Union Territory Tax Notification & Eight Union Territory Tax (Rate) Notification.
- One Compensation Cess Notification.
- Five Central Tax Circulars & Five Central Tax Order.

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to make Second Amendment (2019) to CGST Rules.	16/2019-Central Tax, dt. 29-03-2019
2.	Notification to extend the due date for furnishing of FORM GST ITC-04 for the period July 2017 to March 2019 till 30th June 2019 issued.	15/2019-Central Tax, dt. 28-03-2019
3.	Seeks to supersede notification No. 08/2017 - Central Tax dated 27.06.2017 in order to extend the limit of threshold of aggregate turnover for availing Composition Scheme u/s 10 of the CGST Act, 2017 to Rs. 1.5 crores.	14/2019-Central Tax, dt. 07-03-2019
4.	Seeks to prescribe the due dates for furnishing of FORM GSTR-3B for the months of April, May and June, 2019	13/2019-Central Tax, dt. 07-03-2019
5.	Seeks to prescribe the due dates for furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover of more than Rs. 1.5 crores for the months of April, May and June, 2019.	12/2019-Central Tax, dt. 07-03-2019
6.	Seeks to prescribe the due dates for furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover upto Rs. 1.5 crores for the months of April, May and June, 2019.	11/2019-Central Tax ,dt. 07-03-2019
7.	To give exemption from registration for any person engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed Rs 40 lakhs.	10/2019-Central Tax, dt. 07-03-2019
8.	Seeks to amend notification No. 02/2019- Central Tax (Rate) so as to provide for application of Composition rules to persons opting to pay tax under notification no. 2/2019- Central Tax (Rate).	09/2019-Central Tax (Rate), dt. 29-03-2019
9.	Seeks to amend notification No. 1/2017- Central Tax (Rate) so as to notify CGST rate of certain goods as recommended by Goods and Services Tax Council for real estate sector.	08/2019-Central Tax (Rate), dt. 29-03-2019
10.	Seeks to notify certain services to be taxed under RCM under section 9(4) of CGST Act as recommended by Goods and Services Tax Council for real estate sector.	07/2019-Central Tax (Rate), dt. 29-03-2019
11.	Seeks to notify certain class of persons by exercising powers conferred under section 148 of CGST Act, 2017.	06/2019-Central Tax (Rate), dt. 29-03-2019



<b>12.</b>	Seeks to amend notification No. 13/2017- Central Tax (Rate) so as to specify services to be taxed under Reverse Charge Mechanism (RCM) as recommended by Goods and Services Tax Council for real estate sector.	05/2019-Central Tax (Rate), dt. 29-03-2019
<b>13.</b>	Seeks to amend notification No. 12/2017- Central Tax (Rate) so as to exempt certain services as recommended by Goods and Services Tax Council for real estate sector.	04/2019-Central Tax (Rate), dt. 29-03-2019
<b>14.</b>	Seeks to amend notification No. 11/2017- Central Tax (Rate) so as to notify CGST rates of various services as recommended by Goods and Services Tax Council for real estate sector.	03/2019-Central Tax (Rate), dt. 29-03-2019
<b>15.</b>	To give composition scheme for supplier of services with a tax rate of 6% having annual turnover in preceding year upto Rs 50 lakhs.	02/2019-Central Tax (Rate), dt. 07-03-2019
<b>16.</b>	Seeks to amend notification No. 1/2017- Integrated Tax (Rate) so as to notify IGST rate of certain goods as recommended by Goods and Services Tax Council for real estate sector.	08/2019-Integrated Tax (Rate), dt. 29-03-2019
<b>17.</b>	Seeks to notify certain services to be taxed under RCM under section 5(4) of IGST Act as recommended by Goods and Services Tax Council for real estate sector.	07/2019-Integrated Tax (Rate), dt. 29-03-2019
<b>18.</b>	Seeks to notify certain class of persons by exercising powers conferred under section 148 of CGST Act, 2017.	06/2019-Integrated Tax (Rate), dt. 29-03-2019
<b>19.</b>	Seeks to amend notification No. 10/2017- Integrated Tax (Rate) so as to specify services to be taxed under Reverse Charge Mechanism (RCM) as recommended by Goods and Services Tax Council for real estate sector.	05/2019-Integrated Tax (Rate), dt. 29-03-2019
<b>20.</b>	Seeks to amend notification No. 9/2017- Integrated Tax (Rate) so as to exempt certain services as recommended by Goods and Services Tax Council for real estate sector.	04/2019-Integrated Tax (Rate), dt. 29-03-2019
<b>21.</b>	Seeks to amend notification No. 8/2017- Integrated Tax (Rate) so as to notify IGST rates of various services as recommended by Goods and Services Tax Council for real estate sector.	03/2019-Integrated Tax (Rate), dt. 29-03-2019
<b>22.</b>	To give exemption from registration for any person engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed Rs 40 lakhs.	02/2019-Union Territory Tax, dt. 07-03-2019
<b>23.</b>	Seeks to amend notification No. 02/2019- Union Territory Tax (Rate) so as to provide for application of Composition rules to persons opting to pay tax under notification no. 2/2019- Union Territory Tax (Rate).	09/2019-Union Territory tax(rate), dt. 29-03-2019
<b>24.</b>	Seeks to amend notification No. 1/2017- Union Territory Tax (Rate) so as to notify UTGST rate of certain goods as recommended by Goods and Services Tax Council for real estate sector.	08/2019-Union Territory tax(rate), dt. 29-03-2019
<b>25.</b>	Seeks to notify certain services to be taxed under RCM under section 7(4) of UTGST Act as recommended by Goods and Services Tax Council for real estate sector.	07/2019-Union Territory tax(rate), dt. 29-03-2019

26.	Seeks to notify certain class of persons by exercising powers conferred under section 148 of CGST Act, 2017.	06/2019-Union Territory tax(rate), dt. 29-03-2019
27.	Seeks to amend notification No. 13/2017- Union Territory Tax (Rate) so as to specify services to be taxed under Reverse Charge Mechanism (RCM) as recommended by Goods and Services Tax Council for real estate sector.	05/2019-Union Territory tax(rate), dt. 29-03-2019
28.	Seeks to amend notification No. 12/2017- Union Territory Tax (Rate) so as to exempt certain services as recommended by Goods and Services Tax Council for real estate sector.	04/2019-Union Territory tax(rate), dt. 29-03-2019
29.	Seeks to amend notification No. 11/2017- Union Territory Tax (Rate) so as to notify UTGST rates of various services as recommended by Goods and Services Tax Council for real estate sector.	03/2019-Union Territory tax(rate), dt. 29-03-2019
30	To give composition scheme for supplier of services with a tax rate of 6% having annual turn over in preceding year upto Rs 50 lakhs	02/2019-Union Territory tax(rate), dt. 07-03-2019
31.	Seeks to clarify issues in respect of transfer of input tax credit in case of death of sole proprietor.	96/2019- Circular no, dt. 28-03-2019
32.	Seeks to clarify verification for grant of new registration.	95/2019- Circular no, dt. 28-03-2019
33.	Seeks to clarify certain refund related issues under GST.	94/2019- Circular no, dt. 28-03-2019
34.	Seeks to clarify nature of supply of Priority Sector Lending Certificates (PSLC) – regarding	93/2019- Circular no, dt. 08-03-2019
35.	Circular clarifying various doubts related to treatment of sales promotion scheme under GST	92/2019- Circular no, dt. 07-03-2019
36.	Appointment of common authority for the purpose of exercise of powers under sections 73,74, 75 and 76 of the CGST Act, 2017	Order No. 02/2019-GST, dt 12-03-2019
37.	To remove difficulty in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the CGST Act, 2017	Order No. 4/2019 - Central Tax dt. 29-03-2019
38.	To remove difficulty in implementation of Notification No. 2/2019- Central Tax (Rate)	Order No. 3/2019 - Central Tax dt. 08-03-2019
39.	To remove difficulty in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the CGST Act, 2017.	Order No. 3/2019 - Union Territories Tax dt. 29-03-2019
40.	To remove difficulty in implementation of Notification No. 2/2019- Union Territory Tax (Rate).	Order No. 2/2019 - Union Territories Tax dt. 08-03-2019

## DUE DATES OF GST FOR THE MONTH OF APRIL 2019

APRIL							2019
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	
	1	2	3	4	5	6	
7	8	9	<b>10</b> *GSTR-7 & GSTR-8	<b>11</b>	12	<b>13</b> *GSTR-1 *GSTR-6	
14	15	16	17	<b>18</b> *GSTR - 4	19	<b>20</b> *GSTR-3B/5/5A	
21	22	23	24	25	26	27	
28	29	<b>30</b> *GSTR - 1					

\* Monthly return for taxpayer with Annual turnover more than Rs.1.50 Crores or Taxpayer who has opted Monthly return option.

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