

GST NEWSLETTER

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**GST Newsletter:
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ARTICLE

Procuring 80% supplies from Registered Dealers by Real Estate Developers

A year ago, on 29th March 2019, the Central Board of Indirect Taxes (CBIC) introduced Notification No. 03/2019-Central Tax (Rate) applicable from 01st April, 2019 bringing in a major reform in the Real Estate and Construction industry.

The notification was specifically aimed at the residential real estate developers, builders and buyers and intended to reduce the rate and complexities of GST. Considering that residential apartments are mostly Business to Customer (B2C) transactions, the notifications intention is to curb Input Tax Credit (ITC) mis-utilization by outright denial to the builder and keeping rate of GST on residential apartments at 5% effective rate (7.5% actual rate). However, the well-intended notification also brought in a condition that's required to be fulfilled by every builder collecting and paying 5% GST - 80% of input goods and services are

Conditions laid down in the notification:

1. Applicable for builders commencing a project on or after 01st April 2019 or builders who have opted for new rates for projects which have commenced on or before 31st March 2019.
2. The GST liability has to be discharged only by cash
3. At least 80% of the input goods and services (100% in case of cement) have to be procured from suppliers who are registered under GST.

Procurement of Input goods and services:

1. As per the notification, the promoter has to ensure that at least 80% of the total value of input goods and services (100% in case of cements) procured by them for providing the construction service are from registered suppliers.
2. The input goods and services will exclude the following:
 - a. services by way of grant of development rights,
 - b. long term lease of land (against upfront payment in the form of premium, salami, development charges etc.)
 - c. FSI (including additional FSI)
 - d. electricity
 - e. high speed diesel, motor spirit, natural gas
 - f. any expenses which do not constitute as a supply of service under GST law (such as salary).
3. In case, where the builder is unable to meet the 80% criterion, then the shortfall has to be paid by the builder themselves under Reverse Charge Mechanism (RCM). Hence, in an instance where the builder has only procured 75% of the input goods and services from registered suppliers, then he is required to pay the remaining 5% value of input goods and services under RCM.
4. However, in case of cement (concrete, ready-mix concrete, cement blocks and bricks etc) then the builder has to procure the entire input from registered suppliers. Any procurement from an un-registered supplier will result in the value of cement purchase to be liable to GST under RCM.

Period in which the RCM Liability is to be paid:

1. In case of inputs other than cement, the builder should check for the shortfall below 80% at the end of the financial year. If there is a shortfall, then the builder is required to pay the GST on such shortfall under RCM before the end of June of the subsequent financial year and by cash. The rate of GST applicable is 18% and no ITC will be available for claim on the RCM.
2. In case of cements, the builder is required to pay GST under RCM in the month in which they have procured the cement from the unregistered supplier. The rate of GST applicable is as notified and no ITC will be available for claim on the RCM.
3. In case of failure to pay the GST under RCM then the builder can make the payment of GST under RCM along with interest as per Section 50(1) of the CGST / KGST Act, 2017.
4. The GST and interest payment may be made in GSTR 3B before the September month due date of subsequent financial year or in DRC-03 after September month due date of subsequent financial year.

Impact of this provision and need for appropriate planning:

1. The major impact of the limit imposed on input procurement is on the identification of suppliers who are registered and un-registered. The impact is high for builders procuring mostly from suppliers who are un-registered as arrangements have to be made for compliance of this provision. This may be achieved either by increasing the procurements from registered suppliers or shifting to registered suppliers. Of course, certain builders may also choose to instruct their un-registered suppliers to take voluntary registration under GST.
2. Next, though the notification provides time till June for identifying shortfall of procurement, it's appropriate to carry out the identification on a monthly or quarterly basis. This is important as input goods and services include not just Trading account expenses but also Profit and Loss account expenses and the builder needs to include expenses such as printing and stationery as well.

3. By identifying these shortfalls periodically, the builder will have requisite information to make an informed judgment on whether to increase or decrease procurements from un-registered suppliers. This is crucial as incurring expenditure more or less than the required 80% is a loss to the builder.

Type of ITC to be considered:

Common ITC: A major issue that builders will face is when they have projects under construction on which they have opted for old rates and new projects which attract new rates. In these cases, the builder has to identify common ITC incurred for both projects and accordingly apportion them in the ratio of the carpet area of apartments under new rates and the total carpet area of the entire project. For the purpose of the 80% limit Common ITC value shall also be considered.

Capital asset ITC: The notification refers to 'inputs and input services' which are procured in order to provide construction services. As per Section 2(59), inputs are goods other than capital goods and as per Section 2(60) input services are services. Hence, it can be interpreted that capital goods used by the builder should not be considered for the purpose of calculating the 80% limit.

RCM ITC: Expenses where GST is liable to be paid under RCM may be interpreted as supply from registered persons for calculating the 80% limit. This is due to the fact that such expenses are liable to GST but are just paid under reverse charge instead of forward charge.

Imports ITC: If IGST is paid against import of capital goods then it may not come under the 80% limit as they are specifically incurred against capital goods. However, if IGST is paid against imports of input goods or services, then it should be considered for calculating the 80% limit.

CONCLUSION:

The notification no. 03/2019 brought a change in taxation of the real estate sector the impact of which was definite and marked. It simplified the process of GST for real estate sector to some extent but also introduced a few complications. But taxpayers and business can easily deal with such complications with proper guidance and also plan accordingly to ensure compliances are done accurately and within time.

ARTICLE

Things to do before 31st March, 2020

With the Financial Year 2019-20 coming to an end, there are some matters in GST that need to be looked into before closing the books of accounts. They are:

Rule 42 calculations:

1. As per Rule 42 of the CGST / KGST Rules, 2017, every registered person, who makes taxable and exempt supplies is required to reverse input tax credit every month in proportion to the exempt sales to total sales of that month.
2. However, Rule 42 requires that taxpayers carry out the proportionate reversal again for the entire financial year. If the reversal results in additional amount to be reversed, then such amount shall be reversed from their GSTR 3B. If the reversal results in lower amount to be reversed, then such amount shall be reclaimed in their GSTR 3B.
3. As per Rule 42(2), this annual re-working of proportionate ITC to be reversed at the end of the financial year shall be carried out and given effect before filing the due date of September in the next financial year.
4. However, it's recommended that taxpayers carry out the reversal before filing March month GSTR 3B as this ensures that the tax amount to be reversed or reclaimed will be identified immediately and the changes, if any, can be incorporated in the same financial year books of accounts and GST returns.

GSTR 2A Reconciliations:

1. Till October 8th 2019, ITC could be claimed by taxpayers provisionally based on the accounting carried out by them. From October 9th 2019, taxpayers can claim ITC based on its availability in GSTR 2A.
2. Hence, from October 9th onwards, ITC can be availed in GSTR 3B only if the same is available in GSTR 2A of the registered person. If the ITC is not available in GSTR 2A, then the same can be claimed subsequently as and when the supplier uploads the invoice. This meant that taxpayers had to periodically reconcile GSTR 2A.
3. This scenario means that taxpayers would have accounted ITC in the books but the same would not have been claimed in GSTR 3B. This would make reconciliations between books and returns difficult.
4. Hence, taxpayers should carry out the reconciliation between GSTR 2A and books before March 2020 and intimate those suppliers who have not uploaded the invoices. However, the same reconciliation can be carried out by September 2020 as well, but changes in books of accounts cannot be affected.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF FEBRUARY 2020

- **Three Central Tax Notification.**
- **One Integrated Tax (Rate) Notification.**
- **One Central Tax Order.**

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Notification issued to prescribe due dates for filing of return in FORM GSTR-3B in a staggered manner.	07/2020-Central Tax ,dt. 03-02-2020
2.	Seeks to extend the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for the period from 01.07.2017 to 31.03.2018.	06/2020-Central Tax ,dt. 03-02-2020
3.	Seeks to amend notification No. 1/2017- Central Tax (Rate) dated 28.06.2017 so as to notify rate of GST on supply of lottery.	01/2020-Central Tax (Rate) ,dt. 21-02-2020
4.	Seeks to amend notification No. 1/2017- Integrated Tax (Rate) dated 28.06.2017 so as to notify rate of GST on supply of lottery.	01/2020-Integrated Tax (Rate) ,dt. 21-02-2020
5.	Seeks to amend notification No. 1/2017- Union Territory Tax (Rate) dated 28.06.2017 so as to notify rate of GST on supply of lottery.	01/2020-Union Territory tax(rate), dt. 21-02-2020
6.	Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117(1A) of the Central Goods and Service Tax Rules, 2017 in certain cases	Order-01/2020-Central Tax, dt. 07-02-2020

Disclaimer:

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