



## NITYA'S INSIGHT | Issue 16 |

Update on 34<sup>th</sup> GST Council Meeting dated  
March 19, 2019

March 25, 2019

## IMPLEMENTATION OF NEW TAX RATES IN THE REAL ESTATE SECTOR

The GST Council in its 34<sup>th</sup> Meeting held on March 19, 2019, discussed the *modus operandi* for implementation of lower GST rate of 1 percent on Affordable houses and 5 percent on houses other than Affordable houses ('Other houses') for ongoing and new projects.

'Affordable houses' shall mean:

- Houses with land area up to 60 square meters (non-metro cities) / 90 square meters (metro cities) and value up to ₹45 lakhs; and
- Projects under the existing central and state housing schemes that are presently taxable at 8 percent

'Ongoing Projects' have been defined to mean buildings where construction has started as well as booking has been done before April 1, 2019.

The key decisions of the Council Meeting are as follows:

### **1. Rate of tax**

With effect from April 1, 2019, the applicable rate of GST in the real estate sector will be as follows:

Particulars	Rate of GST	Conditions
Ongoing projects not completed by March 31, 2019	12 percent / 8 percent with ITC	Where promoter opts for old rate scheme within prescribed time
<ul style="list-style-type: none"><li>• Construction of new Affordable houses as defined above</li><li>• Ongoing projects for Affordable houses where promoter have not opted for old rate scheme</li></ul>	1 percent	<ul style="list-style-type: none"><li>- ITC has not been availed</li><li>- 80 percent of inputs and input services [other than capital goods, TDR/ JDA, FSI, long term lease (premiums)] are procured from registered persons</li></ul>
<ul style="list-style-type: none"><li>• Construction of new houses (other than Affordable houses as defined above)</li><li>• Ongoing projects for other houses where promoter have not opted for old rate scheme</li><li>• Commercial apartments like shops, offices etc. in a residential real estate project where area of commercial apartments does not exceed 15 percent of total carpet area</li></ul>	5 percent	

### **NITYA Comments:**

- *The continuity of old scheme of taxation for Ongoing projects is welcome.*
- *The qualifying criterion of ₹45 lakhs value cap for a house to be 'affordable' is meagre considering the present prices of residential properties in metro cities. As per news items, the States of Maharashtra and*

Punjab have raised concerns on such ceiling limits. This issue has been sent for re-consideration to the Group of Ministers.

- The applicability of reduced tax on commercial spaces like shops, offices etc. in real estate projects to the extent of 15 percent of carpet area, is unwarranted. If the objective is to reduce the tax burden on residential properties, its benefit should not be extended to non-residential properties.

## 2. RCM liability on builder in certain cases

The following procurements **from unregistered persons** will attract GST on reverse charge basis:

Particulars	Rate of GST
Purchase of capital goods	Applicable rate of GST
Cement	28 percent
Other inputs and input services	18 percent

**NITYA Comments:** The condition of mandatory procurement of 80 percent inputs and input services from registered taxpayers and applicability of tax on reverse charge mechanism (if not procured), is onerous and likely to invite disputes.

## 3. Transitional ITC on Ongoing Projects

Particulars	Proposed model
Ongoing projects under new scheme	ITC shall be transitioned as per the prescribed formula. The formula will allow the credit on pro-rata basis based on proportion of flats booked and invoices raised for such flats.
Mixed projects i.e. residential projects with commercial area attracting GST of 12 percent with ITC	ITC shall be available on pro-rata basis in proportion to carpet area of the commercial portion.

**NITYA Comments:** The whole scheme of taxation for the real estate sector is against two fundamental principles of GST viz. seamless flow of credit and ease of tax compliances. It is also doubtful if these new rates will bring any benefit to the consumers at large or it will only increase the cost of doing business at builder's end.

The issue of taxation and credit aspects relating to sub-contractors is yet to be clarified. Further, looking at an overall complex taxation scenario and in light of recent news reports of lapsing of ITC lying with builders, the new ITC provisions are not expected to be any simpler. The proposals are bound to make taxation complicated as well as likely to invite multifarious litigation.

#### 4. GST Treatment of TDR / FSI and long-term lease for projects commencing after April 1, 2019

Exemption	Constructed houses sold before issuance of completion certificate on which GST has been paid
GST payable on TDR / FSI and long-term lease	Constructed houses sold after issuance of completion certificate on which GST has not been paid
Liability of tax	Builder on reverse charge basis
Time of supply	Date of issuance of completion certificate
Valuation of supply	Based on flats sold after issuance of completion certificate. Value shall be limited to: In case of Affordable houses: 1 percent of value of unsold flats In case of other houses: 5 percent of value of unsold flats
Time of supply of constructed houses given to land owner under JDA	Date of completion

The official notifications vis-à-vis change in rate and transitional ITC provisions will be issued by the Government in a short span of time.

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