



25 March 2019

Circular No.166/GST No.24/2018-19

**To: Members of the Committee
All Members**

**Re: Analysis of Recommendations of 34th GST Council
Meeting on Real Estate Sector**

Dear Sir,

The GST Council in its 34th Council Meeting held on 19th March, 2019 has made several recommendations in order to bring clarity to the new rate regime in respect of real estate sector, proposed to be made effective w.e.f 1st April, 2019. and the recommendations are given below. The changes will be effective only after relevant notifications are issued.

Ongoing Residential Projects (Buildings where construction and actual booking both started before 1st April, 2019) :

- Ongoing projects will be given one time option to continue to pay tax on old rates i.e. 12% or 8% (for affordable housing) with ITC
- The above option can be exercised one time and within prescribed time frame.
- New rates will be applicable if option not exercised within prescribed time.
New Rates
- Mandatorily applicable (no option given) to all New projects (i.e. projects where construction or actual booking starts on or after 1st April, 2019)
- Applicable to Ongoing projects, which have not exercised option to pay tax at old rates.

The New Rates and relevant restrictions/conditions are as follows :

1% Tax (without ITC) – Affordable Housing

- Applicable for affordable houses Flats with Carpet Area upto 60 sqm in metro cities (Bengaluru, Chennai, Delhi NCR, Hyderabad, Kolkata, Mumbai MMR) or 90 sqm. in non-metro cities/towns, and with value uptoRs.45 lakhs for both cases);
- Affordable houses being constructed in ongoing projects under existing central and state housing schemes eligible for 8% GST (i.e. Housing Project using at least 50% of FAR for units with carpet area upto 60 sqm)
- 5% Tax rate (without ITC)
- Applicable on all houses other than affordable houses
- Applicable on Commercial units such as shops, offices in residential real estate projects in which carpet area of units is not more than 15% of total carpet area of all the units.

If any project has just started, and the builder wishes to opt for older rates with ITC, then construction and at least one booking should be done before 1st April, 2019

Every project should be reviewed with respect to ITC availed and utilized till date and balance ITC which is being carried forward. Along with the same, the ITC expected to be utilized in case the old rates are continued, needs to be worked out.

Project wise ITC to be ascertained for computing the eligibility in case of ongoing projects where new rate determined. Allocation of common credit to projects could be a challenge.

ITC Conditions for new tax rate of 1% or 5%

- 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 by builder from registered persons.
- In case of any shortfall of 80% purchase from registered persons, tax shall be paid by builder @ 18% on RCM basis. However tax on Cement purchased from unregistered person shall be paid @ 28% under RCM and Capital Goods under RCM at applicable rates.

Transition for Ongoing Projects (Opting for new tax rate)

New rate shall be applicable on installments payable on or after 01-04- 2019 in case of those flats booked prior to 01-04-2019

- For Residential projects, ITC of total project will be arrived at by extrapolating the ITC availed till 31.3.2019, based on percentage of completion till that date. Then based on the flats booked and invoicing done till 31.3.2019 under old rates, eligible ITC will be determined.
- Transition will be on pro-rata basis based on formula such that ITC in proportion to booking of flat and invoicing done for booked flat is available.
- For Mixed projects, transition will again be on pro-rata basis in proportion to carpet area of commercial portion in the ongoing projects (on which tax is to be payable on old rate even after 1.4.2019) to the total carpet area of the project.

The ITC availed and to be availed vis-à-vis eligible as per the aforesaid mechanism should be computed for each project while determining whether to opt for old rates or new rates for installments due and payable on or after 1.4.2019. Especially, in case of booked flats, no change in consideration is normally possible, and any ITC reversal might have to be borne by the builder as its project cost.

Treatment of Transferable Development Right (TDR)/ FSI and Long Term Lease premium for projects commencing after 01-04-2019.

Supply of TDR/ FSI, long term lease of land by landowner to developer shall be exempted provided that the constructed flats are sold before issuance of completion certificate and tax is paid on them.

- Exemption shall be withdrawn in case of flats sold after issue of completion certificate.
- 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.
- The liability to pay tax on TDR/ FSI and long term lease premium, if applicable shall be paid by the builder under Reverse charge mechanism.
- The date on which the builder shall be liable to pay tax under RCM basis, if any in case of flats sold after issue of completion certificate, will be the date of issue of completion certificate.
- The liability of builder to pay tax, if any on construction of houses given to land owner under JDA (i.e. Area Sharing arrangements) is also being shifted to date of issue of completion certificate.

ITC Reversal in Real Estate Projects

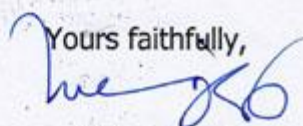
- ITC Rules shall be amended to clarify and provide the procedure for determination of ITC and reversal in real estate projects.

WAY FORWARD

It may kindly be noted that all ongoing projects will have to be analysed in the light of above-mentioned recommendations considering the ITC eligibility, project completion status, units booked, and such other factors, to determine the option to be exercised for such projects.

Further, for all new projects on or after 1.4.2019, the type of JDA arrangement, planning for residential cum commercial projects, estimation of project cost considering ITC and GST payable on RCM by developer, needs to be considered, in order to arrive at the project cost and sale price.

Thanking you,

Yours faithfully,

(M. C. Das)
Dy. Director General