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TAX ALERT

Recent Changes for Real Estate Sector

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Tax Alert: Recent Changes for Real Estate Sector

Pursuant to the decisions taken by the Goods and Services Tax (“GST”) Council in its 34th meeting, Central Board of Indirect Tax and Customs (“CBIC”) notified various changes applicable to the real estate sector, which are summarized below.

1. *Housing*

A. For apartments in a real estate project, the concessional rates with effect from April 01, 2019 are tabulated below:

Sr. No.	Description	Effective Rate
1.	Construction of affordable residential apartment (“ARA”)* in a real estate project (“REP”)** and residential REP (“RREP”)***	1%
2.	Construction of residential apartments other than ARA in a REP and RREP	5%
3.	Construction of commercial apartments in a RREP	5%

*ARA- a) Residential apartment having carpet area not exceeding 60 sq. m. in metropolitan cities or 90 sq. m. in other cities/town and for which the gross amount charged is not more than INR 45 lakhs.

b) Residential apartments in an ongoing project under government schemes such as Housing for All (urban) Mission/ Pradhan Mantri Awas Yojna, etc.

** REP - the development of a building or land/ conversion of an existing building into apartments.

***RREP- REP in which the carpet area of commercial apartments is not more than 15% of the total carpet area (“TCA”) of all the apartments in REP.

B. In order to avail the abovementioned concessional rates, following conditions must be fulfilled cumulatively:

a) GST is paid only by debiting the electronic cash ledger

b) The registered person debits an amount pertaining to input tax credit (“ITC”) from the electronic credit/cash ledger at the time of transition. The amount to be debited is computed by subtracting the value of eligible ITC attributable to construction of residential and commercial apartments, where the time of supply was before April 01, 2019, from the total ITC availed on inputs and input services used in construction during the period July 01, 2017 to March 31, 2019 (including transitional credit). However, where the difference is negative, the registered person may avail the ITC pertaining to goods and services received on or after April 01, 2019, for which it was not otherwise eligible, to the extent of difference.

c) 80% of the value of inputs or input services used in construction services should be procured either from registered suppliers or be those on which GST is payable under reverse charge basis (“RCM”). The said value does not include the value of supply of transfer of development rights (“TDR”), floor space index (“FSI”), long term lease of land (against upfront payment) (“LT Lease”) (collectively termed as “Land Rights”), high speed diesel, natural gas and electricity. In case of non-fulfilment of the said condition during a financial year (or part of financial year till the date of issuance of completion certificate or first occupancy (“Non-GST Event”)), the promoter is required to pay GST at an effective rate of 18% on RCM on the shortfall

d) The promoter is liable to discharge GST under RCM on cement or capital goods procured from an unregistered person, at the applicable rates.

C. For projects commenced prior to April 01, 2019, an option to pay GST at the earlier effective rate of GST, i.e. 8% and 12%, as the case may be, is available. However, the option must be exercised by May 10, 2019.

2. Works Contract

A. For composite supply of works contract, the concessional rates with effect from April 01, 2019 are tabulated below:

Sr. No.	Description	Effective Rate
1.	Composite supply of works contract by way of erection, commissioning, installation, etc. of specified ARA for which the promoter has opted for the concessional rate, subject to the condition that the carpet area of ARA is not less than 50% of TCA of all the apartments in the project.	12%

- B. In cases where the carpet area of ARA is less than 50% of TCA of all the apartments in the project, the recipient of the composite supply of works contract services, i.e. promoter (who has opted for the concessional rate for items mentioned at 1.A.) would be liable to discharge the differential GST under RCM.

3. *Land Rights*

- A. For supply of Land Rights after March 31, 2019 for construction of residential apartments, the concessional rates are tabulated below:

S. No.	Effective Rate
1.	Nil for proportionate value of the Land Rights attributable to the residential apartments booked prior to the date of Non-GST Event.
2.	1% for ARA for proportionate value of the Land Rights attributable to the apartments booked after Non-GST Event.
3.	5% for residential apartments other than ARA, for proportionate value of the Land Rights attributable to the apartments booked after Non-GST Event.

- B. The landowner-promoter is allowed to avail ITC, where the consideration paid to it for the supply of FSI or TDR is wholly or partly in form of construction of apartments (which have concessional rate for items mentioned at 1.A.). In order to avail the same, the following conditions must be fulfilled cumulatively:

- a) payment of GST by the developer-promoter;
- b) further supply such apartments prior to Non-GST Event on payment of GST which is not less than GST charged to him by the developer-promoter for construction of such apartments.

- C. Moreover, the liability to pay GST would arise on the promoter on the date of Non-GST Event under RCM for the following:

S. No.	Description	Nature of Consideration
1.	Procurement of TDR or FSI after March 31, 2019 for construction of residential apartments	monetary consideration or in form of construction services
2.	Procurement of TDR or FSI after March 31, 2019 for construction of commercial apartments	consideration paid in form of construction services
3.	Procurement of LT Lease after March 31, 2019 for construction of residential apartments under RCM	monetary consideration

- D. The liability to pay GST for supply of construction services where the consideration is paid in form of TDR or FSI, would also arise on the promoter on the date of Non-GST Event.

Our View

By making the new tax rates optional for residential projects under construction, the government has sought to address concerns as well as potential disputes on various computational and transitional issues like loss of ITC, pricing, etc., which were bound to arise owing to the changes. However, it remains to be seen whether the time provided for opting for the transition is adequate.

A review of the fine print of the recent notifications raises a host of concerns such as applicability of GST on TDR and FSI rights, compliance with anti-profiteering provisions, utilization of the balance ITC in their electronic credit ledger and feasibility of procurement of input or input services based on the conditions and manner of computation. Needless to state that the real estate sector appears to be headed for contentious times.

In the interim, it is imperative that the builders/developers undertake the exercise of computing the commensurate reduction by undertaking a proper cost analysis which takes into account the reduced cost on procurements, reduction in availability of ITC, etc.; reducing the price of apartments in a project where applicable as well as publicizing the reduction offered; while evaluating the impact of aforementioned issues to their projects.

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