GST- Limited Overview - Real Estate Sector

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Limited Coverage

- Highlights of the new scheme of taxation
- Impact – Transition – New Vs Ongoing
- Some Common Issues

New Real Estate Scheme

- Recommended following rates for construction of :
  - ✓ Affordable houses – 1% [Rs. 45 Lakhs+60/90 sqmts]
  - ✓ Charges for maintenance/other expenses-documentation charges/stamp duty-Composite Supply?
  - ✓ Other houses/ commercial apartments such as shops, offices etc (<15%) – 5%
  - ✓ Unit wise for each apt or not? Some affordable some not?
- Applicability – Effective from 01st April, 2019.

New Scheme Conditions

- ITC shall not be available - Liability has to be paid by way of debit to Electronic Cash ledger only
- Change in Rate of tax – TOS: Milestone, Date of receipt, Invoice/ demand note (timing of any 2 will decide)
- ITC Already availed restricted – Annexures I & II [Refer material]
- 80% of inputs and input services shall be purchased from registered persons
- Capital goods, TDR/ JDA (If done prior to 1.4.19), FSI, long term lease (premiums), Exempt as per Schedule III (salaries) not to be considered

New Scheme Conditions

- On all the purchases for Cement - 28% – On monthly basis

  Whether to be separate or only related to rate? [Clarity needed]

- Project wise records to be maintained – GSTR-3B disclosure

Since Construction of apartment- Plotted development as per earlier ONLY

Methods of Fixing Price of Flat- Option?

- Cheque Vs Cash – Agra – ?
- Own Land – what would be saleable till completion
- Joint Development/ venture - %age 40 – 70% for LL. Valuation difference
- Commercial + Residential
- Multiple projects
- When projects started/ %age of completion as on 1st April 19
- Builder- developer or outsourced model

Option of New scheme

- One time option in the given form is exercised to pay tax @ 12/8% effective GST rate by 10th May 2019(**project wise option)**
- If option is not exercised as above then, option to pay tax at the effective GST rates of 5%/1% shall be deemed to have been exercised;
- Whether the promoter has option to pay tax on old rates for only Tower A or even for Tower B and Tower C? [Govt to clarify]

Rates as prescribed by the Notification

Sl.No	Description	Eff. New Rate	Eff. Old Rate
1	Construction of **affordable** Residential Apartment by a promoter	1%	8%
2	Construction of **Other than affordable** Residential Apartment	5%	12%
3	Construction of commercial portion (< 15%) in RREP	5%	12%
4	Construction of commercial portion (> 15%) in REP	12%	12%
5	Ongoing projects who are not opting for the new scheme	12%	12%

Ongoing Project Meaning

- Commencement Certificate (plan sanction?) before 31.3.19
- Architect/ Chartered Engg – Earth work completed + excavation for foundation commenced
- 1st Occupation/ Completion cert. Not received (partial OC)
- Booking before 31.3.19 (1 milestone credited to RERA designated? - bank)
- Sale agreement/ allotment letter.

Credia – Advisory- Can it work?

- Recommends continue under old rate for ongoing projects & collect 12%.
- Is it legal when option there to go for 5% after reversal of ITC? Would RERA have an Issue? Answer would be negative.
- Will it be known to all buyers? Will buyers agree to pay 7% more? Most likely not- what option do they have then?

Developers can continue in old scheme and collect 5% but pay 12% after utilising ITC if it is an economic advantage.

Affordable Housing – Eff. Rate – 1%

- Post 1st April- no need of any approval for GST purpose other than sft (60/90 sqm) and Rs.45 L. NO choice for those starting after 1st April. As per RERA- no price revision possible.
- Ongoing - Option to continue with 8 % with ITC preferable:

➢ if small project,

➢ advanced stage,

➢ balance ITC more,

➢ all inclusive price,

➢ accounting strength (reversal – logical but difficult) and

➢ unregistered suppliers more.

Other Housing – Eff. Rate – 5%

- 7% impact as 12% gets reduced to 5%
- No choice for those starting after 1st April.
- Ongoing - Option to continue with 12 % with ITC preferable:

➢ if small project,

➢ advanced stage,

➢ balance ITC more,

➢ all inclusive price,

➢ accounting strength (reversal – logical but difficult) and

➢ unregistered suppliers more.

Some Common Questions

- **A person is engaged in constructing and selling <u>single</u> residential unit for residential purpose. What would be GST implication?**
- There is exemption entry to provide for the services by way of pure labour contracts of construction, erection, commissioning, or installation of original works pertaining to a single residential unit otherwise than as a part of a residential complex.
- However, the exemption is not available for construction and sale of single residential unit.

What is applicability of the new scheme on the sale of plots (developed or in the stage of development)?

New scheme of taxation is applicable only on the sale of residential apartments or commercial apartments in RREP. The plots may not be said to be residential or commercial apartment and hence not covered under the new scheme. Sale of plots could be said to be sale of land accordingly not liable to GST. Alternatively development agreement only liable.

- **A project has been launched in the month of March 2019 but no booking has been received as on cut off date. What would be implication?**
- Three conditions:
- the time of supply of part of the construction is on or before 31st March, 2019
- at least one instalment has been credited to the bank account on or before the 31st March, 2019 and
- evidence of the apartment booking either in the form of allotment letter / sale agreement / any other similar document issued on or before the 31st March, 2019.
- Hence, the project would not be considered as ongoing project and the apartment. Consequently 5% mandatory

- **Whether the selling price needs to be revised for charging the new GST rate in case of on-going projects?**
- Ostensibly the changes in taxation were undertaken to reduce to the ultimate value of real estate services. Keeping in mind, the application of anti-profiteering clause, where the developer has not exercised the option to pay taxes at the rate of 12% or 18% and has not factored the ITC of GST paid on the inward supplies, then the selling price of apartments should necessarily go into revision.
- However, in case the developer had considered GST paid on inputs and input services as cost, then there might not be a requirement to revise the price provided the output GST is charged on exclusive basis. Where-ever the output GST is charged on inclusive basis, then prices may again need to be re-caliberated.

- **Suppose in a building which is RREP with both affordable residential apartments and non-affordable residential apartments, can the promoter opt to pay GST on all the apartments @ 5%?**
- No, the rate of tax as prescribed above are applicable “apartment wise”, and not “project wise” or “building wise”. All the apartments would have to be separately identified as to whether the same falls under affordable category or non-affordable category and then the applicable rate would have to be applied thereupon. Hence, there could be 2 rate of taxes for the different apartments in the same project.

- **Multiple projects taxable at 12%, 5%. There is an understanding that the credit records are required to be maintained project wise. In such cases, whether credit availed for one project can be utilized for the liability arising under another project.**
- There is requirement to identify the credit pertaining to each of the project separately. This is required for the purpose of computation of transitional credit to be reversed in case of project where 5% option is chosen and reversal of credit monthly/at the time of obtaining occupation certificate in respect of project where 12% option is continued.
- However, there is no restriction on the utilization of the credit of one project against the liability arising under the another project subject to condition that liability of projects under 5% scheme has to be paid in cash only.

- **How is eligible credit determined in case of project having both commercial as well as residential apartments (not being RREP)?**
- Rule 42 and 43 prescribes the method of reversal where a project has both commercial as well as residential apartments.
- In terms of the broad logic, the ITC allowed/ not allowed:
  - ITC of inward supplies exclusively used for commercial apartments is allowed (12% effective rate)
  - ITC of inward supplies exclusively used for residential apartments is not allowed (5% w/o ITC)
  - Common ITC is allowed to the extent of carpet area of commercial apartments, divided by total carpet area of the project

- **Whether amount paid as salary to the employees, depreciation etc. would be considered for the purpose of determining satisfaction to 80% criterion?**
- It has not been explicitly clarified as to which inward supplies would be considered as numerator/ denominator for 80% threshold.
- It appears that the 80% threshold is on only taxable supplies under normal scheme.
- The intention of the Government is not to tax indirectly the Schedule III items or the exempted supplies.
- Clarity needed by the Government at the earliest.

There are 3 towers where single permission is obtained for all 3 towers. Construction of tower-1 is completed whereas construction of other two towers has not yet started. Whether different schemes of rates can be applied for 3 towers?

- If separate permission is obtained for each tower as required by RERA then each tower would be treated as separate project.
- In such case, only tower-1 would be an on-going project if CC/OC has not obtained, whereas for construction of other two towers, should be considered as new projects

THANK YOU

For any clarification

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