TEAM HIREGANGE

Practical Guide on new scheme of taxation for Real Estate under GST (including 130 FAQs)

(Hosted on 10.4.2019)

PREFACE

The transactions in the real estate sector have their own peculiarities and thereby one has always felt the need for having a separate set of provisions that would be more specific to this sector rather than the general provisions that would be applicable to any other sector. This need was felt right from the sales tax (later VAT) as well as in service tax regime.

However, with the series of changes that have been made effective from 1st April, 2019 it can be seen that the step in this direction has been taken although it may not be in line with the GST principles.

This book has attempted to analyse the various changes that have been made to the existing provisions and the new provisions that have been introduced along with the impact. Further, the discussion of the legal provisions has been summarised by way of illustrations followed by the open issues that require further deliberation and decision making. Also a model has been provided that can be used by the industry to costs involved in continuing with the existing scheme *vis-a-vis* the new scheme, in order to facilitate the decision making regarding the option to chose for the rate of tax in case of ongoing projects.

We have made an attempt to express our views on various issues based on our past indirect tax experience. The law is still in a nascent stage more clarity would emerge as our understanding deepens. Now that this booklet is placed in your hands, we request you to kindly give your valuable feedback, which would improve the quality of this booklet and make it more enriching to the readers in future editions. (Feedback can be sent to: sudhir@hiregange.com, roopa@hiregange.com or ashish@hiregange.com)

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EXECUTIVE SUMMARY OF NEW SCHEME OF TAXATION

i. GST is applicable at the effective rate of 5% for non – affordable housing and 1% in case of affordable housing. Affordable Residential Apartment means residential apartments with carpet area not exceeding 60 sqm in metropolitan cities or 90 sqm in other places for which gross consideration does not exceeds Rs. 45 lakhs.

ii. Input Tax shall not be eligible and the available ITC (accumulated net of reversal or from other business in the same registration) also cannot be used for payment of such GST liability. Further, the ITC on the purchases needs to be disclosed in Form GSTR- 3B as ineligible credit. This scheme would be optional for the existing projects and mandatory for the new projects commencing from 1st April, 2019.

iii. In case the developer wishes to continue with the existing scheme, he has to opt for the same by filing the prescribed form on or before 10th May 2019. However the invoice that needs to be issued from 1st April 2019 onwards has to contain the rate as per the option exercised.

iv. A project shall mean a Residential Real Estate Project (RREP) in which carpet area of commercial premise is not more than 15%, as per RERA. In case the carpet area of commercial premise in a residential project is not more than 15% of the total carpet area of the project, then it shall be treated as residential project and eligible for concessional GST rate of 5% on the commercial premise also. The total input tax availed for the project (including the transitional credit) needs to be restricted to residential flats sold where the time of supply is prior to 31st March 2019. In case the ITC has been availed in excess of the above calculation, then such excess amount needs to be paid in cash. For this, assessee has an option to seek instalments not exceeding 24 months with applicable interest. In case the ITC has been availed less than the above calculation, then such ITC can be availed and used for other GST liabilities. [Other on-going projects]

v. There is a further condition for opting for such scheme that 80% of the inputs and input services shall be received by the registered suppliers only (includes tax paid under reverse charge mechanism). In case of any shortfall GST needs to be paid at the 18% under reverse charge by the builder by 30th June of the next financial year for a particular financial year. However, all purchases of cement from unregistered persons shall be liable under reverse charge basis to be paid monthly at the rate of 28% and in case of all capital goods purchased from un-registered persons, would be liable under reverse charge at the applicable rate of tax.

vi. Project-wise account of inward supplies needs to be maintained for supplies from registered suppliers and unregistered suppliers. Such details are to be electronically submitted in the portal before 30th of June of subsequent year in the prescribed form. [For multiple projects this may again be a challenge for smaller builders]

vii. With respect to JDA (relating residential real estate projects i.e. including projects where the commercial area is less than 15% of the total project area) entered prior to 1st April, 2019, Developer needs to pay GST on the built-up area handed over to Landowner (value shall be equal to the flats sold [registered] by developer to their customer nearest to joint development agreement) at the rate of 7.5% with 1/3rd deduction (effective rate 5%) for flats in case of non-affordable housing and 1.5% with 1/3rd deduction (effective rate 1%) for flats in case of affordable housing, at the time of obtaining completion certificate.

viii. The above liability would arise on the date of issuance of completion certificate or first occupation, whichever is earlier. GST so charged shall be eligible as ITC in the hands of the Land owner in case the same flats are sold prior to issuance of completion certificate. Further, the GST w.r.t. the development rights given to the Developer for such JDAs would be exempt to the extent of the units sold by the Developer from his share prior to completion certificate or first occupation, whichever is earlier, and to the extent of the units remaining unsold as on such date, the Developer would be liable under reverse charge mechanism.

ix. The JDA (relating other projects) entered on or after 1st April, 2019 would also be liable under reverse charge mechanism to the extent of the unsold inventory on project completion and such liability would arise on project completion only. Thereby, attempting to ease cash flows for this sector.

x. Further, the existing ITC provisions have been amended to ensure that the ongoing projects would be required to reverse credit availed during the project execution to the extent of the units sold after completion certificate or first occupation, whichever is earlier.

Note: It is very important for invoicing from 1st April 2019 that the option of continuing under the earlier scheme or going for the new scheme is decided. Once decided whether intimation to be given by 10th May 2019 is also very important.

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1. ANALYSIS OF NEW SCHEME OF TAXATION FOR REAL ESTATE

GST on real estate has been a contentious issue especially with real estate sector in India facing a challenging time over the last few years. Several representations were made to the Government for further simplification and reduction of rates, especially for residential real estate sector, in the hope that the same would bolster demand.

The Government also has been contemplating revising the tax structure under GST for the real estate sector, more so for the residential sector, as the incidence of tax on the end customer is perceived to be very high coupled with the fact that it becomes very difficult in this industry to track compliance with the provisions of anti-profiteering. Further, it was stated that the scheme would address the slow-down in this sector and boost the residential segment.

In this regard the GST Council had made certain recommendations in its 33rd and 34th meeting, after which a series of notifications have been issued on 29.03.2019 which would be effective from 01.04.2019. Below is a summary of the new scheme that is applicable from 01.04.2019 with the impact for the assessees.

Applicability of the new scheme

As per the new scheme introduced by way of the Central Tax rate notifications No. 3/2019, 4/2019, 5/2019, 6/2019, 7/2019 & 8/2019, all dated 29.03.2019, and similar notifications under the Integrated GST and State GST laws, the following are the **apartments** that would be eligible for the new rates**:**

- Apartments constructed by a promoter in a project that are **intended for sale** to a buyer, wholly or partly, where any part of the consideration is received prior to issuance of completion certificate (**CC**), where required by the competent authority, or first occupation, whichever is earlier (hereinafter referred to as the **cut-off date**), which commences on or after 01.04.2019, or
- Apartments constructed by a promoter in a project that are are **intended for sale** to a buyer, wholly or partly, where any part of the consideration is received prior to issuance of completion certificate (**CC**), where required by the competent authority, or first occupation, whichever is earlier (hereinafter referred to as the **cut-off date**), which is an ongoing project

in respect of which the promoter has **not exercised** the option of paying tax at the rates applicable prior to 01.04.2019(i.e. 12%)

The rate of GST would be as follows:

S. No.	Type of apartment	Project	Rate of tax*	Effective Rate
1	Affordable residential	RREP or REP	1.5%	1%
2	Residential other than above	RREP or REP	7.5%	5%
3	Commercial	RREP (REP <15% of commercial)	7.5%	5%
4	Commercial	REP (REP <15% of commercial)	18%	12%

* - With 1/3rd deduction for value of land, the effective rate of tax would be 1%, 5%, 5% and 12%, respectively.

RREP - Residential Real Estate Project

REP - Real Estate Project

To summarise from the above it is clear that for all the projects, which are starting on or after 1st April 2019, the promoter has to **mandatorily pay tax as per new scheme of taxation**. For the ongoing projects, option is available for promoter to choose either the new scheme or continue at the as per the old scheme.

The following would be the meaning of the terms used under the new scheme of taxation:

a. **Promoter** as per explanation 4(xvii) of notification No. 3/2019 *ibid,* the definition would be as per section 2(zk) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as **'RERA'**) which defines the term promoter as:

*a. a person who **constructs or causes to be constructed** an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

b. a person who develops the land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

c. any development authority or any other public body in respect of allottees of—

- *Buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*

- *Plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*

d. *An apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*

e. *Any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or*

f. *Such other person who constructs any building or apartment for sale to the general public.*

Explanation—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sell apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;"

Comment: From the reading of the above provision, it is clear that the person who does the construction and also the person who causes the construction would be considered as promoter. Further the explanation also makes it clear that the person selling the apartment and the person constructing the apartments are both considered as promoter and hence the landowner who sells the apartment but would not do the construction, could also be considered as promoter for the purpose of RERA and also this new scheme of taxation. From the reading another question that arises is whether the contractor doing the construction for the developer can also be considered as promoter and thereby 7.5% of tax can be paid instead of 18% would be discussed in open issues portion of this booklet.

b. **Apartment:-** As per paragraph 4 (xiv) of notification No. 3/2019 *ibid*, "apartment" shall have the same meaning as assigned to it section 2(e) of RERA wherein it is defined as follows:-

"*whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any*

business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified"

Comment: As per above, any self-contained unit would be an apartment and that self-contained unit could be flat or row houses or a villa and such unit would be considered as apartments for the new taxation scheme. Further even commercial unit would be considered as an apartment, thereby the new scheme of taxation would apply even to commercial projects such as office spaces, shopping malls, shops etc. in the RREP (less than 15% commercial apartments in real estate project).

c. **Project:-** As per paragraph 4 (xv) of notification No. 3/2019 *ibid*, "Project" shall mean a Real Estate Project (REP) or Residential Real Estate Project (RREP).

d. Real Estate Project (REP) as per explanation 4(xviii) of notification No. 3/2019 *ibid,* the definition would be as per section 2(zn) of the RERA which defines the term REP as:

- *The development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or*
- *The development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and*
- *Also includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.*

Comment: Thereby all real estate projects including the development of plots would be considered as REP. However, on examination of the rates it can be seen that the new rates would be applicable only w.r.t. the construction of the apartments. Hence, the development of plots and other transaction in plots would not be covered by this new scheme and would continue to be governed by the rates as applicable prior to 01.04.2019 only.

e. Residential Real Estate Project (RREP) as per explanation 4(xix) of notification No. 3/2019 *ibid,* the definition would be a *REP in which the **carpet area** of the commercial apartments in **not more than 15% of the total carpet area** of all the apartments in the REP.*

Thereby, the following projects would be considered as RREP.

a. Projects with only residential apartments

b. Projects with residential apartments and commercial apartments where the carpet area of the commercial apartments is not more than 15% of the total carpet area of the project.

Comment: In case the commercial area is more than 15% of the total carpet area, then the project would not be a RREP and hence the new scheme of taxation for such commercial area would not apply. However the residential area of such project would be still be eligible for the new scheme of taxation.

f. **Carpet area** as per explanation 4(xxvi) of notification No. 3/2019 *ibid,* the definition would be as per section 2(k) of the RERA which defines the term carpet area as:

- *The net usable floor area of an apartment, **excluding** the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but*
- ***Includes** the area covered by the internal partition walls of the apartment.*

Explanation.— For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;

g. **Affordable residential apartment** has been defined to extend the scope to include apartments having carpet area of 60 sqm/90 sqm and where consideration does not exceed Rs. 45 lakhs. The definition is as per explanation 4(xvi) of notification No. 3/2019 *ibid,* shall mean:

a. A residential apartment in a project which **commences** on or after 01.04.2019, or in an **ongoing project:**

- In respect of which the promoter has **not exercised the option** to pay tax on construction of apartments at the rates as applicable on such services prior to 01.04.2019,
- Having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities, and
- For which the gross amount charged is not more than Rs.45 lakhs.

For the purpose of this clause, -

i. Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR)

with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard;

ii. Gross amount shall be the sum total of; -

- Consideration charged for the services under affordable residential apartments by a promoter in RREP or in ongoing project @ the rate of 1.5%.
- Amount charged for the transfer of land or undivided share of land, as the case may be including by way of lease or sub lease; and
- Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.;

b. An apartment being constructed in an ongoing project, in respect of which the promoter has not exercised option to pay tax on construction of apartments at the rates applicable prior to 01.04.2019, under any of the schemes mentioned below (services as contained in certain entries in sub clause (iv), (v) and (vi) of S. No. 3 of the rate notification No. 11/2017 – CGST Rate)

- Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana.
- "In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban).
- "Beneficiary led individual house construction / enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana.
- "Economically Weaker Section (EWS) houses" constructed under the Affordable Housing in partnership by State or Union Territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban).
- "Houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MlG-1)/ Middle Income Group-2 (MlG-2)" under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban).
- A single residential unit otherwise than as a part of a residential complex;
- Low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;

- Low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under-
    1) The "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;
    2) Any housing scheme of a State Government;
- Low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017.
- Works contract service provided to the Central Government, State Government, Union Territory, [a local authority, a Governmental Authority or a Government Entity] by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Act.

Comment: From the above it can be seen that the apartments having carpet area of 60 sqm/90 sqm would be considered as affordable houses if sold for not more than Rs. 45 lakhs. In addition to this the apartments sold, which are part of the schemes mentioned above, irrespective of the sale consideration and in some cases the area involved, would also fall under the same category. In this regard, if the promoter opts for the:

a. New scheme for the project having such apartments, the effective rate of tax would be 1%, or
b. Existing scheme for the projects as contained in S. No. 3 of notification No. 11/2017 *ibid*, then the effective tax liability would be @ 8%.

h. Ongoing project:

Notification No.3/2019 *ibid* defines ongoing project as a project which meets **all the following** conditions, namely-

(a) commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued before 01.04.2019, and it is certified by any of the following that construction of the project has started before 01.04.2019:-

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.

(b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub clause (a) above that construction of the project has started before 01.04.2019;

(c) completion certificate has not been issued or first occupation of the project has not taken place before 01.042019;

(d) apartments being constructed under the project have been, partly or wholly, **booked on or before the 31st March, 2019**.

Explanation- For the purpose of sub- clause (a) and (b) above, construction of a project shall be considered to have started before 01.04.2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started before the 01.04.2019.

i. Apartment booked on or before the 31st March, 2019

Notification No.3/2019 *ibid* defines an apartment booked on or before the 31st March, 2019 as an apartment which meets **all the following three conditions**, namely-

(a) part of supply of construction of which has time of supply on or before the 31st March, 2019 and

(b) at least one instalment has been credited to the bank account of the registered person on or before the 31st March, 2019 and

(c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the 31st March, 2019;

j. **Commencement certificate:-** As per paragraph 4 (xxi) of notification No. 3/2019 *ibid*, means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan.

Comment: In case there is no commencement certificate issued by the local authority the approval of plan would be considered as commencement certificate.

k. **Development works: -**As per paragraph 4 (xxii) of notification No. 3/2019 *ibid*, means the external development works and internal development works on immovable property.

l. **External development works: -**As per paragraph 4 (xxiii) of notification No. 3/2019 *ibid*, includes roads and road systems landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws.

m. **Internal development works:-**As per paragraph 4 (xxiv) of notification No. 3/2019 *ibid*, means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as educational health and other public amenities or any other work in a project for its benefit, as per sanctioned plans.

n. **Competent authority:-**As per paragraph 4 (xxv) of notification No. 3/2019 *ibid*, the term "competent authority" as mentioned in definition of "commencement certificate" and "residential apartment" , means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property.

o. **Real estate regulatory authority: -:-** As per paragraph 4 (xxviii) of notification No. 3/2019 *ibid* means the Authority established under sub- section (1) of section 20 (1) of the RERA, 2016 (No. 16 of 2016) by the Central Government or State Government.

p. **Residential apartment**:- As per paragraph 4 (xxix) of notification No. 3/2019 *ibid*, is defined as an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority.

q. **Commercial apartment: -**As per paragraph 4 (xxx) of notification No. 3/2019 *ibid*, shall mean an apartment other than a residential apartment.

r. **Floor Space Index:- :-** As per paragraph 4 (xxxi) of notification No. 3/2019 *ibid*, shall mean the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built;

Conditions to be fulfilled for opting for the new scheme

The following conditions shall be fulfilled for persons opting for the new GST rate of 1% or 5% (effective), as applicable:

1. The liability has to be paid by way of debit to Electronic Cash ledger only. Thereby, even if any credit balance in the credit ledger exists, the same cannot be used to pay the said liability.
2. Total input tax availed for the project (including the transitional credit) needs to be restricted in the manner prescribed in Annexure I and Annexure II of notification No. 3/2019 *ibid* (to the extent of the apartments booked and installments due prior to 31st March 2019 explained in the next section). If as per such computation, it seems that excess ITC is availed, such excess ITC has to be paid either by way of electronic cash/ credit ledger.
3. W.r.t the construction service provided by the Developer to the Landowner, the Developer has to pay GST under forward charge and the Landowner shall be eligible to take input tax credit (ITC) of the same, subject to the condition that:
   a. The flats are sold independently by the Landowner to the customer before the cut-off date, **and**
   b. The tax charged on such sale should not be less than the tax charged by the Developer.
4. In case of procurement of cement for the project from unregistered persons up to cut-off date, GST shall be paid under reverse charge mechanism (**RCM**) by the promoter at applicable rates i.e. 28% presently, in the month in which such cement is received. [Notification No. 3/2019 read with notification No. 7/2019 *ibid*]
5. In case of capital goods procured from unregistered persons, GST shall be paid by the promoter under RCM at the applicable rates. [Notification No. 7/2019 *ibid*]
6. 80% of the value of the inputs and inputs services shall be received from registered suppliers. This needs to be checked for each project separately and for each financial year (**FY**). However, in the FY in which the cut-off date occurs the said limit would have to be checked only for part of the FY up to the cut-off date. [Notification No. 3/2019 read with notification No. 7/2019 *ibid*]. However, for the purpose of this calculation the following service supplies shall not be taken into account

- Grant of development rights
- Long terms lease of land (against upfront payment in the form of premium, salami, development charges, etc.)
- FSI (including additional FSI)
- Electricity,
- High speed diesel
- Motor spirit
- Natural gas

7. In case of shortfall, GST needs to be paid at 18% under RCM by the promoter by 30th June of the next financial year and the details shall be submitted in the form as prescribed by such date.
8. The developer shall maintain project wise records for account of inward supplies and report the ITC not availed in Form GSTR- 3B as ineligible credit.

From the above it can be seen that though the rate of tax has been reduced the costs would increase due to:

a. ITC becomes a cost i.e. transitional reversal as per Annexure I & Annexure II *ibid* and future taxes which would be ineligible credit being a minimum of 80% of input services and inputs, and 100% on capital goods.
b. Additional compliance cost by way of maintaining separate procurement/consumption records for each project even though being under the same GSTIN, RCM compliances, filing of information at the FY end or completion of project relating to the compliance with the condition of atleast 80% procurement from registered vendors, etc.

Conditions to be fulfilled for continuing with the rates as applicable prior to 01.04.2019

In case the promoter does not wish to opt for the new effective rates of 1% or 5%, as applicable, w.r.t. the ongoing projects, the following conditions shall be fulfilled:

a. The option of paying under the rates as applicable prior to 01.04.2019 shall be exercised by 10.05.2019 in the Form given in Annexure IV of notification No. 3/2019 *ibid*. If not opted within the time prescribed, then the new effective rates of 1% or 5%, as applicable, would be deemed to have been opted for.
b. The invoices issued from 01.04.2019 to the date of exercising such option shall be issued as per the option finally exercised.

Hence, even though the promoter has time to file the decision regarding the option chosen, until 10.05.2019, the same has to be decided and given effect to in the invoices issued from 01.04.2019. Thereby, immediate analysis and decision making is the need of the hour w.r.t. the ongoing projects.

Rate of tax for construction services provided by the sub-contractor to the developer

The construction services provided by the Developer to the Landowner or by a sub-contractor to the Builder would be liable as per the rates below:

Service	Rate	Conditions
Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of **affordable** residential apartments in respect of a project that • Commences from 01.04.2019, or • An ongoing project or, where the promoter opts to pay taxes under the **new scheme**	12%	• Carpet area of the affordable residential apartment is not less than 50% of the total carpet area of all the apartments in the project. • To determine whether or not an apartment is an affordable residential apartment at the time of supply of such service, value of similar apartments booked nearest to the date of signing of the contract for supply of such service shall be adopted. • Finally, if as per the actual carpet area and the value of supply of the said apartments sold, only less than 50% of the apartments satisfy the definition of affordable residential apartments, this rate of tax would not be applicable. • The liability to pay the differential tax i.e. 18% - 12% would be on the promoter under RCM.
Construction services other than for affordable residential apartments	18%	-

2. REVERSAL OF INPUT TAX CREDIT

Reversal of ITC in case of opting for new scheme

Consequent to the changes in rates of tax coupled with the condition of ITC ineligibility, there is a need for reversal of ITC in cases where the promoter opts to pay GST **at the new effective rate** of 1% or 5%, as applicable, to the extent of the ITC attributable to the supplies whose time of supply (ToS) occurs after 01.04.2019, in terms of section 13(2) read with section 31(5) of the Act. This has to be identified and reversed before the due date of Sep '19 return.

Further, in case of the promoters of the ongoing projects who opt to pay tax at the rates applicable prior to 01.04.2019, there was lack of clarity regarding to the need for reversal of credit at the end of the project to the extent of the apartments sold after the cut-off date (i.e. post obtaining completion certificate or after its first occupancy). There have been amendments made to the rules to incorporate the provisions for requiring such reversals which would have to be followed for the credit availed from 01.7.2017 (including transition credit) till the cut-off date for such promoters.

The computations for the above reversal, as applicable, are critical for the promoter in deciding whether or not to opt for the new scheme. Hence, first this computation shall be done and the quantum of reversal shall be ascertained to identify the impact on the tax cost in case of opting for the new scheme.

Before getting into the mechanism for reversal it is important to note that a removal of difficulty Order No. 04/2019-Central Tax, F. No. 354/32/2019-TRU, dated 29.03.2019 has been issued which provides that w.r.t. the construction of complex services as defined in para 5(b) of Schedule II to the Act, the area of construction can be considered as the basis for determining the area attributable to the taxable and exempt supplies. Prior to the issuance of this order the only basis for attributing ITC to the taxable and exempt supplies was the value of such supply.

Reversal of ITC for persons opting for the new scheme (As per Annexure I and Annexure II of notification 3/2019 *ibid)* in REP / RREP

The following are the terms used with their meanings

i. **Tx** = ITC on inputs and input services attributable to construction of residential and commercial portion, where ToS is on or after 01.04.2019

ii. **T** = Total ITC availed from 01.07.2017 to 31.03.2019 including transition credit (whether or not utilised)

iii. **Te** = ITC attributable to construction of commercial and residential portion, where ToS is on or before 31.03.2019 and Te shall be calculated as below:

iv. **Tc** = ITC attributable to construction of commercial portion in the REP

v. **Tr** = ITC attributable to construction of commercial portion in the REP where ToS is after 31.03.2019.

vi. **F1** = carpet area of residential apartment / Total carpet area of residential and commercial apartment

vii. **F2** = Total carpet area of residential apartment booked before 01.04.2019 / Total carpet area of residential apartment

viii. **F3** = Value of supply for residential apartment booked before 01.04.2019 where ToS is before 01.04.2019 / Total value of supply for such apartments

ix. **F4** = 1 / % completion of construction as on 31.03.2019

A. Where % of completion is not zero or where there is inventory in stock

Tx = T – Te

Where,

Te = Tc + Tr

Tc = T * carpet area of commercial apartments in project / total carpet area of commercial and residential apartments

Tr = T*F1*F2*F3*F4

In case the figures of ITC attributable exclusively to the commercial portion (T1) and ITC attributable exclusively to the residential portion of the project (T2) are available then the above formula can be applied for the remaining common credit (T3) including the ITC attributable to the residential apartments.

i.e. Tr = (T3+T2) *F1*F2*F3*F4

Other points

a. The amount of Tx and Te shall be computed separately for CGST/SGST/IGST.
b. If Tx is positive, ie., Te<T, then shall pay an amount equal to the difference between Te and T by debit in the electronic credit ledger or cash ledger and disclose in Form GST ITC -03. For this assesses have an option to seek extension of time for paying such excess ITC availed in instalments, in terms of section 80 of the CGST Act, 2017, not exceeding 24 months by filing an application in Form DRC-20. This would attract interest at the rate of 18% in terms of section 50 of the said Act and in case of default in payment of any one instalment on its due date, the entire balance outstanding on such date would become due and payable without any further notice being served and can be recovered as per the provisions of the said Act.
c. If Tx is negative, Te>T, then ITC can be on the goods or services received on or after 01.04.2019 for construction of the residential portion to the extent of such difference.
d. Until the above calculation is completed and ascertained, Tc can be ascertained and used for paying tax liability w.r.t. the commercial apartments in the project.
e. Where the % of completion is zero but ITC has been availed on goods and services for the project prior to 01.04.2019, Tr shall be calculated as discussed above except that in F4 the % of completion shall be as certified by an by an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972) or a chartered engineer registered with the Institution of Engineers (India), which can be achieved with the input services received and inputs in stock as on 31.03.2019.

B. Where % of completion is zero as on 31.03.2019 but invoicing has been done having time of supply before 31.03.2019, and no input services or inputs have been received as on 31st March, 2019

Where

Tn = Tax paid on such inputs and input services on which ITC is available under the CGST Act, received in 2019-20 for construction of REP

Te = Tc + Tr

Tc = Tn * carpet area commercial apartments in the project / total carpet area of commercial and residential apartments in the project

Tr = Tn * F1 * F2 * F3

Other points

a. ITC can be on the goods or services received on or after 01.04.2019 for construction of the residential portion to the extent of amount of Te.
b. Te shall be computed for CGST, SGST and IGST.

Common points for consideration for the above 2 computations

a. Where % of invoicing > % of completion, and % of invoicing - % of completion > 25 %; then
   % of invoicing = % of completion + 25 %
b. Where the value of invoices issued prior to 01.04.2019 > the consideration actually received prior to 01.04.2019 by more than 25% of consideration actually received;
   Value of such invoices for the purpose of determination of % invoicing = actual consideration received + 25 % of the actual consideration received; and
c. Where, the value of procurement of inputs and input services prior to 01.04.2019 > the value of actual consumption of the inputs and input services used in the % of construction completed prior to 01.04.2019 by more than 25 % of value of actual consumption of inputs and input services, the jurisdictional commissioner or any other officer authorized in this regard may fix the Te based on actual per unit consumption of inputs and input services based on the documents duly certified by a chartered accountant or cost accountant submitted by the promoter in this regard, applying the accepted principles of accounting.

Reversal of ITC if continuing with existing rates

Reversal of ITC by a promoter continuing to pay tax as per rates applicable prior to 01.04.2019 in terms of rule 42 (Inputs and input services) & 43 (capital goods) [effective from 01.04.2019] Notification No.16/2017 Central Tax (rate) dated 29.01.2019

A. Reversal relating to input and input services

The following are a few points to be noted before proceeding for the computation:

- ITC on inputs and input services used for real estate (residential or commercial) projects should be considered as **common credit** in the tax period in which the credit is eligible, where tax is paid at the rate of 18% or 12% (with deduction for 1/3rd on value towards deemed value of land), as applicable.

- W.r.t. common credit, the amount of eligible credit shall be calculated on the basis of the carpet area and not on the basis of sale value. Such calculation shall be done for each project separately.
- Where any input or input service is used for more than one project, reasonable basis to be adopted to identify input or input service attributable for each project and then compliance with rule 42 to be done.
- Such computation shall be done on a monthly basis and then re-computed finally **on completion of project** (i.e. by due of September return following the FY in which CC is issued or first occupation, whichever is earlier) **and not annually.** However, such final computation is not required to be done for RREP which underwent transition of ITC due to the introduction of **new rates** i.e. 1.5% or 7.5% (with deduction for 1/3rd on value towards deemed value of land), as applicable) i.e. this has to be done for the following projects
    a. Ongoing project which have opted for the new scheme of tax.
    b. New projects which did not require to do any reversal of ITC as per Annexure I and Annexure II *ibid* as there was no ITC availed prior to 01.04.2019
- Further, the final computation shall be done for ITC availed from 01.07.2017 or date of beginning of the project, whichever is later till the cut-off date.

i. Mode of computation of the eligible common credit - Monthly:

Credit attributable towards exempt supply **D1= C2 *E/F**

Where

C2 = Common credit (input and input services)

E = Aggregate carpet area of the apartments, construction of which is

a. exempt

b. Not exempt but identified to be sold after cut-off date.

'E' would include

c. In the tax period during which cut-off date occurs, the carpet area of all apartments that remain un-booked.

d. Carpet area of apartments that opt for the new rates

F = Aggregate carpet area of the apartment in the project

ii. Final computation of eligible ITC

The above shall finally be calculated (for all ongoing projects and new projects which did not undergo ITC transition due to introduction of new rate) by due of September return following the FY in which the cut-off date occurs by applying the above formula where 'E' would be:

Aggregate carpet area of the apartments, construction of which is

a. exempt and
b. Not exempt but remain un-booked after cut-off date

On the final computation done as above, the final adjustment (excess/short) needs to be carried out in Form GSTR-3B or through Form GST DRC-03 in the month not later than the month of September following the end of financial year in which the cut-off date occurs, as follows

a. **Excess ITC availed**: Such excess need to be reversed along with interest @18% from 1st of April of such financial year till the date of reversal.
b. **Short ITC availed:** Same can be claimed as credit in the return filed not later than September following the FY in which the cut-off date occurs.

Final computations of eligible ITC in respect of commercial portion for projects other than RREP i.e. where carpet area of commercial apartments > 15% of project carpet area, which underwent ITC transition due to introduction of new rates

This reversal is required in respect of the **ongoing projects** where the carpet area of the commercial apartments is more than 15% of the total project carpet area. Though the residential apartments in these projects are eligible for the new rates without ITC, the commercial apartments would be liable to GST at the rates as applicable prior to 01.04.2019 with ITC being eligible. Hence the requirement to identify the eligible ITC at the project completion as was done for the ongoing projects discussed above. The computation shall be done as below:

C3 (Agg) = (Aggregate of monthly C3 determined for the period 01.07.02017 to 31.03.2019) * AC/AT **(+)** (Aggregate of monthly C3 determined for the period 01.04.2019 to the cut-off date)

Where, **C3 (Agg)** = Aggregate common credit on commercial portion in the project

AC = Total carpet area of commercial apartments in the project

AT = Total carpet area of all apartments in the project

The final eligible credit would be C3 (Agg)* E/F

Where,

E= total carpet area of commercial apartments which have not been booked till the cut-off date.

F=AC=Total carpet area of commercial projects in the apartment.

On the final computation done as above, the final adjustment (excess/short) needs to be carried out in Form GSTR-3B or through Form GST DRC-03 in the month not later than the month of September following the end of financial year in which the cut-off date occurs, as follows

a. **Excess ITC availed**: Such excess need to be reversed along with interest @18% from 1st of April of such financial year till the date of reversal.

b. Short ITC availed: Same can be claimed as credit in the return filed not later than September following the FY in which the cut-off date occurs.

B. Reversal of input tax credit in term of rule 43 (Capital goods)

The following are a few points to be noted before proceeding for the computation:

- ITC on capital goods used for real estate (residential or commercial) projects should be considered as **common credit** in the tax period in which the credit is eligible, where tax is paid at the rate of 18% or 12% (with deduction for 1/3rd on value towards deemed value of land), as applicable.
- W.r.t. common credit, the amount of eligible credit shall be calculated on the basis of the carpet area and not on the basis of sale value. Such calculation shall be done for each project separately.
- Where any capital good is used for more than one project, reasonable basis to be adopted to identify input or input service attributable for each project and then compliance with rule 43 to be done.
- Such computation shall be done on a monthly basis and then re-computed finally **on completion of project** (i.e. by due of September return following the FY in which cut-off date occurs).
- Further, the final computation shall be done for ITC availed from 01.07.2017 or date of beginning of the project, whichever is later till the cut-off date.
- Existing capital goods used in new project- ITC attributable to remaining useful life can be availed in new project.

i. Mode of computation of the eligible common credit - Monthly:

Credit attributable towards exempt supply **D1= C2 *E/F**

Where

C2 = Common credit (capital goods)

E = Aggregate carpet area of the apartments, construction of which is

a. exempt

b. Not exempt but identified to be sold after cut-off date.

'E' would include

c. In the tax period during which cut-off date occurs, the carpet area of all apartments that remain un-booked.

d. Carpet area of apartments that opt for the new rates

F = Aggregate carpet area of the apartment in the project

ii. **Final computation of eligible ITC**

Te (final) = [(E1 + E2 + E3)/F]*Tc (final)

Where

Te (final) = common credit attributable to exempt supplies

E1 = Total carpet area of apartments which is exempt from tax

E2 = Total carpet area of apartments where sold before 31.03.2019 and opted for new rates.

i.e. E2 = Carpet area of such apartments * V1/ (V1+V2)

V1= Instalments where Time of supply is on or after 01.04.2019

V2= Installments where Time of supply is before 01.04.2019

E3 = Aggregate carpet area of apartments which is not booked before cut-off date.

F = Aggregate carpet area of apartments in the project.

Tc (final) = aggregate of credit of all capital goods attributable to the project.

Tc (final) = aggregate of A (final) in respect of all CG used in the project

A(final) = A* (no. of months CG used in project/60)

On the final computation done as above, the final adjustment (excess/short) needs to be carried out in Form GSTR-3B or through Form GST DRC-03 in the month not later than the month of September following the end of financial year in which the cut-off date occurs, as follows

a. **Excess ITC availed**: Such excess need to be reversed along with interest @18% from 1st of April of such financial year till the date of reversal.

b. **Short ITC availed:** Same can be claimed as credit in the return filed not later than September following the FY in which the cut-off date occurs.

The following can be noted from the above amendments in the provisions of rule 42 and 43 of the Rules:

- There is now clarity w.r.t. the eligibility of credit relating to the real estate projects whereby the final ITC entitlement has to be calculated for the entire project on the basis of the units sold before and after cut-off date, which earlier was supposed to be done only for a FY and not for the entire project as a whole.
- Further, the ITC eligibility would be on the basis of the carpet area of the apartments (the common areas, etc. are not be considered) and not the revenue generated there-from.
- Such ITC eligibility would have to be computed project-wise. Hence it could pose difficulty to ascertain project-wise details in case of ongoing projects if such details were not maintained earlier. In such case reasonable basis can be adopted to apportion the same for each project.
- Though the said rule is effective from 01.04.2019, it has to be applied for ITC availed even earlier, w.r.t. projects where cut-off has not occurred before 01.04.2019. However, for projects where cut-off date has occurred before 01.04.2019, provisions of rule 42 as existed prior to 01.04.2019 would only apply.
- The interest on excess ITC availed, which is ascertained after final computation is to be paid whether or not the same is utilised i.e. even mere availment of excess ITC would attract interest. Though the interest is to be calculated only from April following the FY in which the cut-off date occurs.

3. TAXABILITY OF JOINT DEVELOPMENT AGREEMENTS, TDR, FSI AND LONG TERM LEASE

In a typical Joint Development Agreement there would be a barter of two transaction, transfer of the land/ development right by the landowner to developer and transfer of construction service/units to by developer to the land owner, each being a non-monetary consideration for each other. Thereby taxability is vested on both the transaction. The taxability for both the transaction has been discussed as under:

Transaction of transfer of construction service/units by Developer to Landowner

In this case construction service is provided by the developer to landowner, which is liable for GST and the rate of tax is as under:

- Joint Development Agreement entered on or after 01.04.2019, for the construction services `provided by the Developer to the Landowner, the Developer would be liable to pay GST at the rate of
  a. 1.5% w.r.t. construction relating to affordable residential apartments with 1/3rd deduction of value for the land in case the consideration includes land.
  b. 7.5% w.r.t. construction relating to other residential apartments with 1/3rd deduction of value for the land in case the consideration includes land.
  c. 18% w.r.t. construction relating to commercial apartments with 1/3rd deduction of value for the land in case the consideration includes land.
- Joint Development Agreement entered before 31.03.2019, for the construction service for the construction services provided by the Developer to the Landowner, the Developer would be liable to pay GST at the rate of
  a. 18% for any construction either affordable, or other project or commercial with 1/3rd deduction of value for the land in case the consideration includes land

Valuation of transfer of construction service/units by Developer to Landowner

- Joint Development Agreement entered on or after 01.04.2019, the value of construction service in respect of such apartments shall be deemed to be equal to the total amount charged for similar apartments in the project from the independent buyers nearest to the date of Joint Development

Agreement. However, since this value includes the value of land as well, 1/3rd deduction shall be eligible from such value of construction.

- Joint Development Agreement before 31.03.2019, the value has to be determined in terms of Rule 27 of the Central Goods and Service Tax Rules, 2017 read with section 15 of the Central Goods and Service Tax Act, 2017, which needs to be determined in the following order
  a. be the open market value of such construction service supply;
  b. if the open market value is not available under clause (a), the value of land and the amount paid by landowner to developer (if any) needs to be considered, if such value is known at the time of supply;
  c. if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality of the construction provided by the developer;
  d. if the value is not determinable under clause (a) or clause (b) or clause (c), then 110% of cost of construction needs to be adopted in terms of rule 30 of the said Rules.

Time of supply (ToS) of transfer of construction service/units by Developer to Landowner

- Joint Development Agreement entered on or after 01.04.2019, the time of supply i.e. the point of payment of tax would arise as on the date of obtaining the completion certificate or on the first occupation. **(**Notification No.06/2019 *ibid)*
- Joint Development Agreements enter before 31.03.2019 shall be at the time when the said developer transfers possession or the right in the constructed complex by entering into a conveyance deed or similar instrument (for example allotment letter) **(**Notification No.04/2018 *ibid)*

  Comment: Notification 04/2018 refers to transfer of procession, which shall be on the completion of the project at the end, and also make reference to transfer of right in the constructed complex, which accrues to the landowner on the area allocation (which may be in Joint development agreement or supplementary agreement), thereby the confusion still exist as to whether the GST needs to be paid on the completion or on allocation, which is has no clarity, in the opinion of the author, to err on the revenue it would be better to consider the allocation date rather than procession on completion of the project

Transaction of transfer of land/development rights by landowner to Developer

In this case development rights provided by the developer to landowner, which is liable for GST and the rate of tax is as under:

- Joint Development Agreement entered on or after 01.04.2019, for the development service provided by the landowner to developer would be exempted to the extent for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. Further promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be at the rate of 1% in case of affordable housing and 5% in case of projects other than affordable housing.
- Joint Development Agreement entered before 31.03.2019, for the development rights transferred by the landowner to developer, landowner would be liable to pay GST at the rate of 18%
- For all Joint Development Agreement entered either before or after 01.04.2019 for transfer of the development rights in case of commercial projects by the landowner to developer, landowner needs to be pay GST at 18% on value as per sec 15.

Valuation of transfer of Development rights by Landowner to developer

- Joint Development Agreement entered on or after 01.04.2019, the value of portion of residential un-booked on the date of issuance of completion certificate or first occupation, as the case may be, shall be deemed to be equal to the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate or first occupation, as the case may be on which the GST needs to be paid by the developer under RCM
- Joint Development Agreement before 31.03.2019, the value has to be determined in terms of Rule 27 of the Central Goods and Service Tax Rules, 2017 read with section 15 of the Central Goods and Service Tax Act, 2017, which needs to be determined in the following order
  e. be the open market value of such development rights supply;
  f. if the open market value is not available under clause (a), the value of land development right and the amount paid by developer to landowner (if any) needs to be considered, if such value is known at the time of supply;

g. if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality of the development rights provided by the landowner;

h. if the value is not determinable under clause (a) or clause (b) or clause (c), then 110% cost development rights needs to be adopted in terms of rule 30 of the said Rules.

Time of supply (ToS) of transfer of development rights by Landowner to developer

- Joint Development Agreement entered on or after 01.04.2019, the time of supply i.e. the point of payment of tax would arise as on the date of obtaining the completion certificate or on the first occupation. **(**Notification No.06/2019 *ibid)*
- Joint Development Agreements enter before 31.03.2019 shall be at the time when the said developer transfers possession or the right in the constructed complex by entering into a conveyance deed or similar instrument (for example allotment letter) **(**Notification No.04/2018 *ibid)*

  Comment: Notification 04/2018 refers to transfer of procession, which shall be on the completion of the project at the end, and also make reference to transfer of right in the constructed complex, which accrues to the landowner on the area allocation (which may be in Joint development agreement or supplementary agreement), thereby the confusion still exist as to whether the GST needs to be paid on the completion or on allocation, which is has no clarity, in the opinion of the author, to err on the revenue it would be better to consider the allocation date rather than procession on completion of the project

The above concepts of law can be understood better by the following 2 illustrations

4. ILLUSTRATIONS

Illustration 1:

X Ltd (hereinafter referred to as 'Developer') and Y ltd (hereinafter referred to as the 'Landowner')

- JDA entered on 01.01.2018.
- 200 apartments i.e. 175 residential and 25 commercial. These would be constructed as 2 separate towers.
- The supplementary agreement was entered on 31.07.2018 where demarcation was done as below:
    - **Tower 1**: 75 residential and 25 commercial apartments for the Developer
    - **Tower 2**: 100 residential apartments for the Landowner
- The Developer has opted to pay GST on the instalments to be received from 01.04.2019 at the rate of 5% for the commercial and the residential units.
- Construction of Tower 2 has not yet started i.e. and separate registration under RERA has been obtained for each tower.
- For the construction of Tower 2 the Developer would be procuring the following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], during a financial year.

Sl. No.	**Input goods and services**	**% of input goods & services received during the financial year**	**Whether inputs procured from registered supplier? (Y/ N)**
1	**Sand**	**10**	**N**
2	**Cement**	**15**	**N**
3	Steel	15	Y
4	Bricks	10	Y
5	Flooring tiles	10	Y
6	Paints	5	Y
7	Architect/ designing/ CAD drawing etc.	10	Y

8	**Aluminium windows**	**15**	**N**
9	**Ply, commercial wood**	**10**	**N**

- Further facts relating to the **Developer** are as below:

S. No.	Particulars	Formula	Amount	UOQ
C1	No. of apartments		100	Units
C2	No. of residential apartments		75	units
C3	Carpet area of the residential apartment		70	Sq. m
C4	Total carpet area of the residential apartments	C2 * C3	5250	Sq. m
C5	Value of each residential apartment		0.6	crore
C6	Total value of the residential apartments	C2 * C5	45	crore
C7	No. of commercial apartments in the project		25	Units
C8	Carpet area each of the commercial apartment		30	Sqm
C9	Total carpet area of the commercial apartments	C7 * C8	750	sqm
C10	Total carpet area in the share of the Developer (Resi + Com)	C4 + C9	6000	sqm
C11	% of completion as on 31.03.2019 [as declared to RERA or determined by chartered engineer]		20%	
C12	No of residential apartments booked before transition		40	units
C13	Total carpet area of the residential apartments booked before transition	C12 * C3	2800	sqm
C14	Value of booked residential apartments	C5 * C12	24	crore

C15	% of invoicing of booked residential apartments on or before 31.03.2019		20%	
C16	Total value of supply of residential apartments having ToS prior to transition	C14 * C15	4.8	crore
C17	ITC availed by Developer for the project including transitional credit claimed		Rs. 3.75	crore

Queries:

1. **What is the liability under GST with respect to JDA entered?**

   In the instant case, as JDA and SA have been entered prior to 01.04.2019, notification No. 6/19 & 4/19 *ibid* would not be applicable and the provisions as existed prior to 01.04.2019 would have to be followed i.e. the ToS has to be determined as per notification No. 4/2018-Central Tax (Rate) dated 25.01.2018, which would be the date of SA.

2. **Whether both Tower-1 (attributable to Developer) and Tower-2 (attributable to Landowner) can be considered as on-going projects for the purpose of the new scheme of rates. If not, what are the implications?**

   Notification No.3/2019- Central Tax (Rate) dated 29.03.2019 defines ongoing project as a project which meets all the following conditions, namely-

   1. Commencement certificate issued - on/ before 31.03.2019
   2. Construction has started – on/before 31.03.2019
   3. Completion certificate not issued on / before 31.03.2019
   4. Booking (even partly) - on/ before 31.03.2019

   In the instant case, each tower can be considered as a separate project in terms of the definition of REP under RERA. Thereby, different tax treatment can be applied for each tower.

   With respect to Tower-1, as all the conditions enumerated above for ongoing projects are satisfied, such tower is an on-going project. Thereby, Developer has an option to pay GST at the existing rates or new rates.

With respect to Tower-2, as construction has not started, condition 2 mentioned above is not satisfied and thus such tower would be a new project. Thereby, Landowner has to pay GST at the new rate i.e. @5% mandatorily.

3. **What is the amount of ITC that is required to be reversed if the Developer opts to pay GST@5% w.r.t. the instalments received from 01.04.2019?**

This project is an RREP as the total carpet area of the commercial apartments is less than 15% of the total towers' carpet area. Hence, the ITC to be reversed in terms of Annexure II to notification 3/2019 *ibid* due to transition by the Developer from the existing rates to the new rate w.e.f. 01.04.2017 is as below:

S. No	Description	Formula	Value	UOQ
S1	ITC to be reversed on transition, Tx= T- Te			
S2	Eligible ITC (Te)= Tr (as only residential units are sold prior to 01.04.2019)			
S3	T= Total ITC availed as on 31.03.2019	C17	3.75	crore
S4	Tr= T x F1 x F2 x F3 x F4			
S5	F1	C4/C10=5250+750/6000	1	
S6	F2	C13 / C4=2800/6000	0.533	
S7	F3	C16 / C14= 4.8/24	0.2	
S8	F4	1/ C11	5	
S9	Te= T x F1 x F2 x F3 x F4	S3 * S5 * S6 * S7 * S8	1.75	Crore
S11	ITC to be reversed on transition, Tx= T- Te	S3-S9	2	Crore

4. **What would be the liability on the Developer under RCM w.r.t. the construction undertaken for Tower 2 belonging to the Landowner?**

Since, the Developer has procured only 50% of goods and services from registered persons which falls short of threshold limit of 80%, the Developer would be liable to pay GST on cement at the applicable rate on reverse charge basis in the month of receipt of cement. After payment of GST on

cement, the remaining shortfall would be 15 % of procurement on which the Developer shall pay tax GST @ 18 %

Illustration 2: X Ltd and Y Ltd have entered into a Joint Development Agreement (JDA) after 01.04.2019 for construction of 100 apartments wherein 40 apartments are allocated to Landowner and 60 apartments are allocated to Developer.

- The carpet area of each apartments would be 2000 sq ft.
- Out of the 60 apartments, developer sells 50 apartments prior to the cut-off date
- Landowner sells all apartments before cut-off date
- The value of apartments sold to independent buyers nearest to the date of JDA is Rs. 1 Crore.
- The value of apartments sold to independent buyers nearest to the cut-off date is Rs. 1.5 Crore

5. What is the liability under GST w.r.t. the above JDA entered?

a. With respect to the construction services provided by Developer to Landowner, GST @5% shall be discharged as per notification 3/2019 *ibid* on Rs. 1 crore * 40 apartments * 5% = Rs. 2 crores

b. With respect to development rights transferred by Landowner to Developer, GST is not applicable to the extent of 50 apartments which are sold prior to cut-off date, as the same is exempted vide notification No.4/2019 *ibid*.

c. However, w.r.t. 10 flats un-sold after cut off date, the Developer would be liable to pay GST under RCM in terms of notification No.4/2019 *ibid.* The liability would be lower of the following:

   i. (GST payable on development rights for all 100 apartments)* Carpet area of apartments which remain un-booked as on the cut off date /Total carpet area of the apartments.

   = (1 crore*100*5%) * (10*2000)/(100*2000)= **Rs. 50,00,000.**

   ii. Value of un-booked apartments as on cut-off date * 5%

   = 1.5 crore * 10 apartments* 5% = **Rs. 75,00,000/-**

   Thereby, liability would be Rs. 50,00,000/-

d. Further, the date on which Developer is required to pay under RCM is the cut off date.

5. Frequently Asked Questions

5.1 Transition Provisions

1. What is the meaning of the term "project" in on-going projects?

- Project would mean
    1. A real estate project (REP) or
    2. A residential real estate project (RREP)

2. What is meaning of 'project', if there are multiple towers being constructed, would these be considered separately or would form part of the same project?

- Project means REP and RREP.
- RERA registration would have to be obtained for each project.
- Where multiple towers being constructed have single RERA project registration number it would be considered as a single project.
- Where each tower has a RERA project registration number, each tower would be considered as a separate project.

3. What is "real estate project" (REP)?

- Real estate project (REP) means undertaking the following for the purpose of selling all or some of the apartments or plots or building:
    (a) the development of a building or a building consisting of apartments, or
    (b) converting an existing building or a part thereof into apartments, or
    (c) the development of land into plots or apartment.
- The development/ conversion includes development/ conversion of common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto. [clause 2(zn) of the Real Estate (Regulation and Development) Act, 2016]

4. What is "residential real estate project" (RREP)?

- RREP is a REP in which the carpet area of the commercial apartments is less than 15% of the total carpet area of all the apartments in the REP.

5. What is difference between REP and RREP?

- RREP is a residential project in which the carpet area of the commercial apartments is less than 15% of the total carpet area of all the apartments.
- REP is a project where there is no commercial space.

6. What constitutes an apartment? Whether office blocks as commonly understood for the commercial purpose would constitute apartment?

- An apartment whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, **means a separate and self-contained part of any immovable property**, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified. [clause 2(e) of the Real Estate (Regulation and Development) Act, 2016]
- The definition of apartment as above is wide enough to cover the office blocks to be used as commercial purpose.

7. What is an "on-going project"?

- A project which satisfies all the **three conditions** would be termed as "On-going project":
  i. **The project should have been started** on or before 31st March 2019 (cut-off date), to be satisfied as follows;
     1. **Where commencement certificate is to be issued:** Commencement Certificate should have been issued before the cut-off date and it should be certified by an architect, chartered engineer or a licensed surveyor that the **construction has been started** before the cut-off date Issue of the commencement certificate by the Competent authority where required
     2. **Where commencement certificate is not to be issued:** It should be certified by an architect, chartered engineer or a licensed surveyor that **construction has been started** before commencement date
  ii. **Completion certificate or first occupation** of the project should not have taken place before cut-off date.
  iii. Apartments being constructed under the project have been, partly or wholly, should have been **booked on or before the cut-off date.**

8. What constitutes start of the project on or before 31st March 2019 in context of "on-going project"?

- A project would be considered to have started on or before the 31st March, 2019 if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March 2019.

9. What is an apartment booked on or before the 31st March 2019?

- An apartment booked on or before the 31st March, 2019 means an apartment which satisfies all the three conditions:
  a. the time of supply of part of the construction is on or before 31st March, 2019
  b. at least one instalment has been credited to the bank account on or before the 31st March, 2019 and
  c. 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.

10. What is meant by an affordable residential apartment?

- **Affordable residential apartment:** Affordable residential apartment shall mean,
  (a) **Residential apartments commenced on or after 1st April, 2019:**A residential apartment in a REP which commences on or after 1st April, 2019:
    - having carpet area not exceeding 60 square meter in metropolitan cities or 90 square meter in cities or towns other than metropolitan cities and
    - for which the gross amount charged is not more than Rs. 45 lakhs.
  (b) **Ongoing projects:** Ongoing projects eligible for current concessional rate of 8% GST (after 1/3rd land abatement) under State/Central housing scheme.

11.What is the effective rate of tax for the residential apartments in the new scheme of tax?

- The rate of tax for the residential apartments in the new scheme of taxation would be as follows:
  i. Effective rate of GST of 1% (CGST 0.5% & SGST 0.5%) with restriction on utilizing the eligible input tax credit, for affordable residential apartments [(area 60 sqm in metros / 90 sqm in non-metros and value upto Rs. 45 lakhs) in RREP/REP.

ii. Effective rate of GST of 5 % (CGST 2.5% & SGST 2.5%) with restriction on utilizing the eligible input tax credit, for other than affordable residential apartments in REP/RREP.

12. Which are two different affordable residential apartments in an on-going project?

- The two different affordable residential apartments in an on-going project are as follows;
  - **Threshold based category:** All residential apartments which satisfy following:
    - Carpet area not exceeding 60 sqm in metropolitan cities or not exceeding 90 sqm in non-metropolitan cities and
    - The gross amount charged for the residential apartment is not more than 45 Lakhs.
  - **Specified Category:** Apartments being constructed under the projects on which the developer was paying taxes at the rate of 8% (After 1/3rd land deduction) under State/Central housing schemes**. The monetary limit of Rs 45 Lakhs is not applicable for these projects.**

13. What are the cities which are considered as Metropolitan cities for the purpose of new scheme?

- The metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) for the purposes of this scheme.

14. Whether all the apartments in a project has to satisfy the condition of affordable housing in order to avail the concessional effective rate of 1% on the affordable residential apartment?

- No. It is not mandatory for all the apartments in the project to satisfy the affordable residential apartment definition to avail the concessional effective rate of 1%.
- The residential apartment in any project which satisfies the conditions of the affordable residential apartment definition would be eligible for the concessional rate of tax at 1%.

15. What constitutes gross amount charged in Rs. 45 Lakhs?

- Gross amount would be total of:
  1. The consideration charged for the construction of affordable residential apartment.
  2. Amount charged for the transfer of land or undivided share of land, including by way of lease or sub-lease and
  3. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges.

16. Is it mandatory for an on-going residential project to pay taxes at the concessional effective rate of 1% and 5% GST?

- No. The promoter could exercise one-time option of paying taxes at the rate of 12% [Effective rate 8% if value of Land included] and 18% [Effective rate 12% if value of Land included] without restrictions on utilizing ITC.
- Where the promoter does not opt for the payment of taxes at the rate 12% and 18% before 10th May 2019, it is deemed that he has opted for concessional rate and would be required to pay taxes at the effective rate of 1% and 5% [Value of Land included].

17. Is it mandatory for an on-going commercial project to pay taxes at the concessional effective rate of 1% and 5%GST?

  - **Pure commercial projects:** The on-going pure commercial project would not be covered under new scheme of taxation and hence need to continue payment of tax at 18% with 1/3rd deduction for the land.
  - **Commercial buildings in RREP:** On –going commercial project in a RREP which does not exceed 15% of the total carpet area of all the apartments in the REP promoter would be having an option to pay at the existing rate.

18. Whether the on-going projects continue to pay taxes at the old rates without intimating the department?

- No. The on-going projects which wants to continue to pay taxes at the old rates have to be intimated to the department compulsorily in form as given in Annexure IV to Notification no. 03/2019 – CT (Rate) along with the declaration.

19. What is the process of opting the concessional rate of GST for the on-going projects by the promoter?

- There is no specific procedure for opting for concessional rate for on-going projects. If the registered promoter do **not exercise one-time option** in the form to pay taxes at the rate of 12% or 18% before 10th May 2019 is deemed to have opted for concessional rate of tax.

20. What are the restrictions for issuing invoice before opting for 12%/18% tax rates option in case of on-going projects?

- The invoices issued before exercising the option for the period 1st April to 10th May 2019, has to be in accordance with the option of 12%/18%, which is exercised by the promoter

21. What are the conditions that the promoter has to satisfy to continue paying taxes at the rate of 12% and 18% in case of on-going residential projects?

- The following are the conditions to exercise the option to continue paying taxes at the rate of 12% [Effective 8%] and 18% [Effective 12%]:
  1. Exercise one time option by 10th May 2019 and send the form to addressing to the jurisdictional Commissioner.
  2. Failure to exercise would lead to deemed acceptance of payment of tax at the effective rate of 1% or 5% with restriction on ITC.

22. What are the details to be given in the form which is addressed to the jurisdictional Commissioner for opting to pay taxes at old rate i.e 12% and 18%?

- **The following details should be given:**
  1. GSTIN
  2. RERA registration Number of the Project
  3. Name of the project, if any
  4. The location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the longitude and latitude of the end points of the project
  5. The number, type and the carpet area of apartments for booking or sale in the project
  6. Date of receipt of commencement certificate

23. When the promoter has not exercised the option to pay taxes at 12% or 18% with ITC, what is the rate of tax on supply of service of on-going service by way of construction of affordable residential real estate project / apartment (RREP)?

- The effective rate of tax for the supply of construction of **affordable** residential real estate project / apartment (**RREP**) is 1% subject to conditions.

24. When the promoter has not exercised the option to pay taxes at 12% or 18% with ITC, what is the rate of tax on supply of on-going service by way of construction of non-affordable residential real estate project / apartment (RREP)?

- The effective rate of tax for the supply of construction of other than **affordable** residential real estate project / apartment (**RREP**) is 5% subject to conditions.

25. Considering that the promoter has not exercised the option to pay taxes at 12% or 18% with ITC, what is the rate of tax on supply of on-going service by way of construction of commercial apartments in on-going RREP?

- The effective rate of tax for the supply of **construction of commercial apartments in on-going RREP** is 5% subject to conditions.

26. Considering that the promoter has not exercised the option to pay taxes at 12% or 18% with ITC, what is the rate of tax on supply of on-going service by way of construction of affordable residential apartment under REP?

- The effective rate of tax for the supply of construction of **affordable** residential real estate project / apartment (**REP**) is 1% subject to conditions.

27.Considering that the promoter has not exercised the option to pay taxes at 12% or 18% with ITC, what is the rate of tax on supply of on-going service by way of construction of non-affordable residential apartment under REP?

- The effective rate of tax for the supply of construction of **other than affordable** residential real estate project / apartment (**REP**) is 5% subject to conditions.

28.On which on-going non-affordable housing projects could the promoter opt to pay taxes under the existing rate of 18% without any restriction on utilizing ITC?

- The promoter could exercise the option to pay taxes at the rate of 18% [Effective 12%] in the following projects, without restriction on utilisation of ITC:
    1. Commercial apartments (shops, offices, godowns etc.) by a promoter in a REP other than RREP.
    2. Residential apartments, other than affordable residential apartments.

29. What are the obligations and conditions attached to payment of concessional rate of GST at the effective rate of 1% and 5% in case of on-going projects?

- **The conditions are as under:**
  1. **Payment of taxes only by cash** i.e. only by debiting the electronic cash ledger.
  2. **Input tax credit cannot be availed** on the goods and services used except on the following:
     a. **In case of REP**: as stated in the annexure I to notification 03/2019 – CT (Rate). Refer chapter Input tax credit for the detailed discussion.
     b. **In case of RREP**: as stated in the annexure II to notification 03/2019 – CT (Rate). Refer chapter Input tax credit for the detailed discussion.
  3. **Re-calibration of the** ITC related to the construction in a project for which the time of supply is on or after 1st April, 2019. Refer chapter on Input tax credit, for determining the manner of payment of taxes.
  4. **On transfer of the development rights or FSI to a promoter**:
     a. The developer would pay tax on supply of construction services to the landowner.
     b. Landowner would be eligible to take credit of taxes paid by him to the developer for paying the taxes on supply of the apartment to his buyers before issuance of completion certificate or first occupation, whichever is earlier which are sold by the landowner independently.
  5. 80% of the value of the input and input services, other than few exceptions should have been received from registered supplier only. However, inputs and input services on which tax is paid under reverse charge (e.g., legal services, sponsorship, GTA, etc.) are deemed as purchased from registered persons only.
  6. **On shortfall of 80%**, the developer would pay tax 18% under reverse charge at the end of the financial year and submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year.
  7. Promoter would be liable to pay taxes under RCM on procurement of cement at the applicable rate of tax in the month in which cement is received by the developer.
  8. The promoter should **maintain project wise account** of inward supplies from registered and unregistered supplier
  9. The **tax liability on the shortfall of inward supplies from unregistered person would be added to his output tax liability** in the month not later than the month of June following the end of the financial year to a registered person.

10. ITC not availed would be reported every month by reporting the same as ineligible credit in **Form GSTR-3B.**

30. Which of the inward supplies on which 80% procurement threshold cannot be applied for the purpose of paying tax under reverse charge by builder?

- Exception to the rule of procurement of more than 80% of the value of the input and input services, from registered supplier are:
  a. Grant of development rights,
  b. Long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI),
  c. electricity,
  d. high speed diesel,
  e. motor spirit,
  f. natural gas
- Inward Supplies of specified services which are covered under reverse charge mechanism such as services of an advocate or firm of advocates, GTA[transport of goods by road where transporter issues consignment note), import of services from outside India, sponsorship service, services by director [other than WTD] shall be considered as if such services are received from registered persons for computing above 80% threshold.

31.What are "project which commence on or after 1st April, 2019"?

- The project**, other than an ongoing project**, which commence on or after 1st April, 2019.

32. Whether the developer has to pay taxes under reverse charge basis on the on-going projects?

- Yes, where the promoter does not opt to pay the taxes at the old rates i.e. 12% and 18%, he would be deemed to have opted to pay the taxes at the effective rate of 1% and 5%.
- In such cases, the promoter would be liable to pay taxes under RCM for the following supplies:
  1. Input and Input Services falling short of 80% of the total procurement from registered persons.
  2. Cement and
  3. Capital Goods.

33. Whether the promoter is liable to pay taxes on all the Input and Input Services, other than Cement under reverse charge, for on-going projects?

- No. The procurement from the unregistered suppliers which falls short of the 80% of the total input and input services from registered persons [excluding the exceptions given earlier FAQ] used in the supply of the construction services would be liable to GST under RCM.

34. What is the value on which tax should be paid under RCM when only 75% of the inputs and input services are received from registered suppliers?

- When the value of inputs and input services received from registered suppliers falls short of the said threshold of 80%, tax should be paid by the promoter on the value of inputs and input services comprising such shortfall, i.e. 5% (80% - 75%) of the value, in the instant case.

35.What is the rate of tax on input and input services on which the developer is liable to pay taxes under reverse charge?

- **Inputs, except cement**: 18%
- **Cement:** Applicable rate of tax in accordance with Notification no. 01/2017 – CT (Rate).
- **Input Services:** 18% on supply of services other than services by way of grant of:
  1. Development rights
  2. Long term lease of land or FSI.

36.Whether the promoter has to pay taxes on cement on procurement from registered and unregistered persons?

- Procurement of cement from the unregistered suppliers which falls short of the 80% of the total input and input services from registered persons in terms of notification no. 07/2019 – CT (Rate).
- However, in notification no. 03/2019 – CT (Rate) it is stated as notwithstanding the shortfall of 80% from unregistered persons, cement where procured from the unregistered persons, taxes have to be paid by the developer under reverse charge at the applicable rate of tax.
- There seems to be a contradiction in the wordings and illustration given in notification no 03/2019 – CT (Rate) and notification no. 07/2019 – CT (Rate) in this regard.
- Taking conservative view, advisable to pay GST on procurement of cement from the unregistered suppliers irrespective of whether it is 80% or less.

37.Whether the promoter has to pay taxes on all capital goods procured from registered and unregistered persons?

- The developer who procures capital goods for the construction of the project on which the concessional effective rate of tax at the rate of 1% or 5% is applicable, would be liable to pay taxes at the rate applicable rate of tax, irrespective of the purchase of capital goods from registered or unregistered persons.

38.How to compute percentage of completion for ongoing projects as on 31-03-2019?

- **If RERA is applicable**: Percentage of completion would be same as declared to real estate authority (in terms of sec 4 and 11 of RERA Act).
- **If RERA is not applicable**: It is the value determined and certified by chartered engineer.

39.Whether ITC has to be reversed in accordance with annexure I and II for projects which commences after 1st April 2019?

- Transition ITC has to be reversed only on the on-going projects and not on the projects which commences after 1st April 2019 as for such new projects credit cannot be availed and no question of reversal either .

40.What are the advantages of availing the concessional rate of taxation for an on-going project?

- Advantage of this scheme could be as under:
  a) Reduction in tax impact on the flat/houses where there is high land value.
  b) Reduces the tax compliance burden in terms of builder not required to maintain input tax credit records, matching of the 2A with the vendor filing, proportionate reversal of credit.

41.What are the advantages of continuing paying taxes at the normal rate of tax for an on-going project?

- Advantage of paying taxes at the regular rate of tax are as under:
  a. Reduction in tax impact on the flat/houses where the value of land is on lower side
  b. The developer could avail and utilize eligible input tax credit on the inward supplies
  c. The developer need not pay taxes under RCM on the following:
     i. Input and input services which is falling short of 80% of the total procurements from the registered persons.
     ii. Cement

iii. Capital goods

42. Whether the selling price needs to be revised for charging the new GST rate in case of on-going projects?

- The changes in taxation of real estate sector are 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.

43. Whether the sale price needs to be revised in case the selling price was agreed prior to introduction of GST and the time of supply for such service is after 1st of April 2019?

- Yes, where the developer has not exercised the option to pay taxes at the rate of 12% or 18% and where the selling price is agreed prior to introduction of GST the agreed price needs to be revised, if in such price, the input taxes such as service tax paid on input service, the cost of central excise paid on capital goods or value added tax paid on inputs were not considered as cost, whereas the GST paid on the same now becomes cost under the new scheme.

44. Whether Landlord and the builder can avail different options for discharging output GST for on-going project?

- Yes Landlord and the builder may avail different options[concessional tax rate vs 12%/18%] for discharging output GST for on-going project.

45. In a joint development agreement, whether the Landlord be eligible to avail input tax credit on the construction services which are taxable at the effective of rate of 1% and 5% in an on-going project?

- The landlord would be eligible to avail the input tax credit of the GST charged by the promoter on landowner's share of apartments, **where the landlord supplies the apartments to his buyers before issuance of the completion certificate or first occupation,** whichever is earlier, and pays output GST on the same.
- Further the ITC would be eligible only when the output GST is a higher amount on ongoing projects. Example: Output GST is Rs. 1 Lakh and ITC available for set off is Rs 50000.

46.In a joint development agreement, whether the Landlord be eligible to avail input tax credit on the construction services which are taxable at the effective rate of 1% and 5% in an on-going project, even when the apartments of Landlord share are sold by him post issuance of completion certificate or first occupation?

- Where the landowner's share of apartments are not sold before the issuance of the completion certificate or first occupation, the landlord would not be eligible to take the ITC.

47.What are various criteria to be considered while selecting option for the ongoing project? How would these criterions affect the decision making?

- Un-utilized ITC, land value, LL & customers' acceptance, ratio of registered and unregistered procurements, reversal of ITC, payment of outward GST by e-cash ledger.
- Cost benefit analysis
- LL's status on sale of flats – before or after OC as ITC would be restricted project wise.
- Existence of other (commercial) projects against which transition ITC would be available for utilization

48.There are various projects undergoing under single registration. Whether scheme has to be chosen separately for each of the project or for all the projects under same GSTIN?

- The scheme has to be chosen based on projects and not GSTIN wise. Form as given in annexure IV to notification no. 03/2019 – CT (Rate) would have to be given for each project where the developer chooses to pay taxes under the existing scheme of taxation.

49.Whether the new scheme would be applicable to the contractor who has been awarded contracts by the builder?

- The rate of tax for the services provided by sub-contractor to the builder has been changed in case of projects having affordable residential apartments.
- The sub-contractor would be liable to charge GST @ 12%, provided the 50% or more of the project's carpet area is for affordable residential apartments.
- Other contractors would be liable to GST @ 18% on the supplies made by them to builder and would not be covered under the new scheme of 1% or 5%.

50. Referring to question above, if in first instance, the sub-contractor at the instance of the builder charges GST @ 12%, and later on it turns out that the carpet area of affordable residential apartments is less than 50% of the total carpet area of the project, then what are the implications thereon?

- If it so turns out that the carpet area of affordable residential apartments is less than 50%, then the builder would be liable to discharge GST @ differential rate under RCM viz. 6%.

51. If a promoter decides to continue under the old scheme of taxation, what would be the compliance requirement for the ongoing project?

- File the form as given in annexure IV to notification no. 03/2019 – CT (Rate) on or before 10th May 2019.
- Where invoice is issued between 1st April to 10th May 2019, it has to be issued in accordance with the option which would be exercised.
- Reverse ITC in terms of Rule 42 & 43 monthly project wise and finally after receiving OC for the entire project.

52. Project was started in Jan 2018. The builder has availed the credit on input, input services and capital goods and utilised against output liability on advance received from customer. The Occupation certificate is expected to be received in May 2019. Whether there is any requirement of ITC reversal. Presuming 30% of the area remains unsold on the date of OC?

- Based on the assumption that he has opted for the concessional rate of tax, the builder has to reverse the input tax credit availed in terms of Annexure I – REP & Annexure II – RREP as the case may be. There would be no need to reverse the credit separately at the time of receipt of OC.

- On the other hand, if the builder continues to remain under the existing scheme, the proportionate ITC has to be reversed monthly followed by reversal of ITC for the entire project based on carpet area sold pre and post OC.

53. Government has issued removal of difficulty order for the application of Section 17 (2) read with Rule 42 for the real estate project w.e.f. 1.4.2019. Does this mean that there is no need of reversal of credit under Rule 42 as percentage of carpet areas in respect if projects commenced before 31st March 2019?

- There was no enabling provision in the law to provide for the reversal of credit based on the area of construction. The removal of difficulty order has enabled the provision in the law based on which new rules have been issued.
- Removal of difficulty order appears to have extended the power of government to adduce that Rule 42 reversals could be undertaken based on the area of construction of complex, building etc.
- Removal of difficulty order read with Rule 42 appears to have extended the duration of the final reversals from financial year to the completion of the project. However, the said reversal as per the rule which is effective from 01.04.2019 would be required for all ongoing projects as well i.e. those projects which have not received the CC or first occupation has not happened.
- Relying on the decision of CESTAT in case of Alembic Limited, it could be said that ITC availed prior to amendment in Rule 42 would not be liable to be reversed in terms of the area basis reversal criterion for the project which have been completed on or before 31.3.2019
- Though, w.r.t. to projects that have been completed prior to 01.04.2019, the said reversal would have to be done on the basis of the rule 42 as existed prior to 01.04.2019 i.e. on the basis of the revenue.

54. What are the factors, which determines opting for existing scheme of taxation for the ongoing projects?

- The progress of construction and the input tax credit availed, in case the project is in advance stage and already quite large amount of credit has been availed, which needs to be reversed and would become a cost to builder in case the new taxation scheme is opted.
- If the builder is not in a position to recover the additional cost as above, then continuing under the existing scheme would be better, since the GST can be collected at the existing rate.

- In case the majority of the booking is completed with a commitment to pay GST at 12% then the existing scheme to be opted.

5.2 Levy, Tax Rates and Exemption

55. Whether sale of land is taxable under GST? What is the impact of recent amendments in this regard?

- Schedule III of CGST Act sets out the transactions which are neither supply of goods nor supply of services. The said schedule- entry 5 sets out that sale of land is not a supply of goods or services and excluded from GST levy.
- The recent amendments have not changed the above position

56. Whether sale of completed building is taxable under GST? What is the impact of recent amendment in this regard?

- Schedule III of CGST Act sets out the transactions which are neither supply of goods nor supply of services. The said schedule entry 5 sets out that sale of completed buildings, wherein the entire consideration for the sale of such buildings is received after the issuance of completion certificate by a competent authority or after its first occupation, whichever is earlier, would be treated as sale of building which is not taxable under GST.
- The recent amendments have not changed the above position

57. When is a sale of building taxable under GST?

- Schedule II of CGST Act sets out activities which are treated as supply of goods or supply of services. Therein entry 5(b) states that construction of complex, building, civil structure or a part thereof where a part or the entire consideration is received after issuance of completion certificate, where required by the competent authority or after its first occupation is treated as supply of service**.**
- Therefore, the consideration towards the under-construction property is supply of service and is liable to GST.

58. What are the concessional rates of tax applicable to the construction services as per the notification no. 03/2019- CT(R)?

- The affordable residential apartments are taxable at the rate of 1.5% in any project and the non-affordable residential apartments and commercial apartments in residential real estate projects are taxable at the rate of 7.5% from 01st April 2019.
- Where the construction service includes the sale of land or undivided share of land, one-third deduction [relating to the sale of land] would be available and therefore, the entire consideration would be taxable at the rate of 1% [1.5% X 2/3] in the case of affordable residential apartments and 5% [7.5% X 2/3] in the case of the non-affordable residential apartments and commercial apartments in residential real estate projects.

Type of project	**Type of apartment**	**Concessional rate of tax**
Residential Real Estate Project	Affordable residential apartment	1% [1.5%*2/3]
	Non-affordable residential apartment	5% [7.5%*2/3]
	Commercial apartment	5% [7.5%*2/3]
Real Estate Project	Affordable residential apartment	1% [1.5%*2/3]
	Non-affordable residential apartment	5% [7.5%*2/3]
	Commercial apartment	No concessional rate

59. 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.

60. Why are the concessional rates of tax of 1% or 5% prescribed for the construction services?

- In order to achieve the objective of "Housing for All by 2022" and in order to address slowdown in the sector and low off-take of under-construction houses, the Government issued notifications on 29th March 2019 providing certain concessions in relation to the real estate projects primarily focusing on residential apartments.

61. Whether the concessional rate of tax is optional?

- The option to pay GST at concessional rate of tax is available only in the case of **ongoing projects** wherein the promoters could opt for paying GST at the concessional rates of tax or continue paying taxes at the old rates.
- For the **new projects commencing post April 2019**, which are eligible for the concessional rates of tax, the promoter is mandatorily required to pay taxes at concessional rates of tax and not the normal rates of tax.

62. In case of on-going projects, by when the option to pay tax at old rates could be exercised?

- The promoters could exercise the one-time option of paying taxes at old rates by 10th May 2019 in form given in annexure IV to notification no. 03/2019-CT(R).
- If the option is not exercised by 10th May 2019 then, it would be deemed that the promoter would be paying tax at the new rates without ITC, even in case of on-going projects.
- The invoices issued during the period 01st April 2019 to 10th May 2019 should be in accordance with the option to be exercised.

63. What is the importance of classifying real estate projects into REPs and RREPs and the classification of apartments into residential and commercial apartments?

- The classification of real estate projects into REPs, RREPs and the classification of apartments into residential and non-residential apartments is necessary because the concessional rates of tax differ for different apartments and in different real estate projects.
- For example, a commercial apartment in RREP is taxable at the rate of 7.5% [Effectively 5%, provided value of land is included]. However, a commercial apartment in REP is taxable at the rate of 18% [Effectively 12%, provided value of land is included].

64. Whether a sub-contractor or any other person who is only providing construction services and is not involved in sale can claim the above concessional rates of tax?

- The concessional rate of tax is available only to a promoter. The term promoter would have the same meaning as contained in section 2(zk) of RERA, which means a,
    (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, **for the purpose of selling all or some** of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, for the **purpose of selling** to other persons all or some of the plots in the said project; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be **acting as the holder of a power of attorney** from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) person who constructs any building or apartment **for sale to the general public**.

- From the above it can be seen that a person who constructs for sale would be a promoter. It also includes a Developer who obtains the power of attorney from the landowner. Thereby, it can be said that a sub-contractor who only provides the construction services and is not involved in the sale would not be considered as a promoter and thereby would not be eligible for the concessional effective rate of 5% or 1%.

65. Whether the concessional rate of tax of 5% can be claimed for construction of all commercial apartments?

- The concessional rate of tax of 5% is available to construction services of commercial apartments being in an RREP i.e., a project wherein the carpet area of commercial apartment in the entire project does not exceed 15% of the total carpet of area of such RREP.
- In the case of commercial project located in REP [a project wherein the carpet area of commercial apartment in the entire project exceeds 15% of the total carpet of area of such REP] and wholly commercial project, the concessional rate of tax of 5% cannot be claimed.

66. What is meant by development rights?

- Land Development right is a right to carry out development or to develop the land or building or both (Girnar Traders v. State of Maharashtra (2011) 3 SCC 1). An owner of land, apart from being the owner of the physical property, also owns various rights associated with the property. A right to develop land in terms of the available jurisprudence is a benefit arising out of land and is embedded within the term 'land' itself.

67. Whether development rights are excluded from GST levy?

- There is a possible view that the development rights are not liable to GST for the following reasons:
    a. The sale of land and completed building is excluded from the scope of supply. The transfer of development rights is an immovable property as it is a benefit arising out of land. Therefore, transfer of development rights could not be included in the above exemption.
    b. GST is taxable on the supply of goods and services. Goods is defined as any movable property. Services are defined as anything other than goods. Since, the transfer of development rights is an immovable property, it may not be taxable under GST.
    c. Further under negative list-based taxation, the term "service" was defined to exclude transfer of title to immovable property. Similarly, in the author's view, transfer of development rights might also be excluded from tax net under GST.

  However, the intention of the Government appears to be to tax the transfer of development rights under reverse charge in hands of builder to the extent of the unsold apartments in the hands of the developer upon receipt of completion certificate or first occupation, whichever is earlier

68. What is the methodology of taxation of development rights [TDR] and floor space index [FSI] in relation to residential apartments taxable after 01st April 2019?

- **First instance Exemption:** Supply by way of transfer of TDR or FSI on or after 01st April 2019 for construction of residential apartments by the promoter in a project is exempted under GST. GST is to be paid by the promoter for the TDR or FSI procured in relation to unsold residential apartments which are taxable under GST.
- **Taxability upon completion:** The TDR or FSI to the extent attributable to residential apartments not booked or sold on the date of issuance of completion certificate or first occupancy would not be covered within the above exemption and become liable to GST.

- **Reverse charge mechanism:** The taxability of the TDR or FSI by any person to a promoter for construction of project by a promoter is shifted upon the promoter under RCM [notification no. 05/2019- Central Tax (Rate)]. Therefore, GST is to be paid by the promoter for the TDR or FSI procured in relation to commercial apartments and unsold residential apartments which are taxable under GST.

69. How to arrive at the value of exempted TDR or FSI where-ever the same are liable to be taxed?

$$\frac{\text{GST payable on TDR or FSI x Carpet area of the residential apartments in the project}}{\text{Total carpet area of the residential and commercial apartments in the project}}$$

70. How to pay GST on the TDR or FSI relating to residential apartments on which exemption was claimed but were unsold on the date of completion certificate or first occupancy?

GST on TDR or FSI relating to un-booked residential apartments= $TF * C_U \div C_T$

wherein,

TF= GST payable on TDR or FSI (including additional FSI) or both for construction of the residential apartments in the project but for the exemption contained herein;

C_U= carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation; and

$C_{T=}$Total carpet area of the residential apartments in the project.

71. Whether GST is applicable on the upfront payment for lease of land for more than 30 years, paid by developer to landowner from 01st April 2019?

- Upfront amount (premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long-term lease of land of 30 years, or more, on or after 01st April 2019, **for supply of construction services of residential apartments by a promoter in a project to a buyer is exempted under GST.**
- However, in the case of upfront amount payable in respect of service by way of granting of long-term lease of land of 30 years, or more, on or after 01st April 2019, for supply of construction services of non-residential or commercial apartments by a promoter in a project to a buyer is not exempted under GST.

- Further, if the residential apartments are unsold on the earlier of the date of issuance of completion certificate or the first occupancy, GST is leviable on the upfront amount paid or payable in respect of granting of long-term lease of land.

72. How to arrive at the value of exempted upfront amount for lease?

$$\frac{\text{GST payable on upfront amount x carpet area of residential apartments in the project}}{\text{Total carpet area of the residential and commercial apartments in the project}}$$

73. How to pay GST on the upfront amount relating to residential apartments on which exemption was claimed but were unsold on the date of completion certificate or first occupancy?

GST on the upfront amount relating to un-booked residential apartments= $UA * \frac{C_U}{C_T}$

wherein,

UA= GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the residential apartments in the project but for the exemption contained herein;

C_U= carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation; and

$C_{T=}$ Total carpet area of the residential apartments in the project.

74. Whether the exemption is available to periodic rents paid for long term lease of land of 30 years or more used for supplying construction services of residential apartments?

- The exemption is available only for the upfront amount paid for long term lease of land of 30 years or more used for supplying construction services of residential apartments and not for periodic rents paid for such lease. GST should be paid under RCM by the promoter.

5.3 Valuation

75. Whether GST has to be separately collected or the price charged should be inclusive of the GST?

Since this is not a composition scheme under section 10 of the CGST Act, 2017 the same can be charged and collected from buyer over and above the agreed selling price.

76. Mr. A (builder) sells a residential apartment to Mr. B (before obtaining CC) at Rs. 30 lakhs (excluding GST), including the value of land. Calculate the value of supply and GST payable?

Sl.No.	Particulars	Amount
1	Value of sale (excluding GST)	30,00,000
2	Less: Deemed value of land (1/3rd)	(10,00,000)
3	Value of taxable supply	20,00,000
4	CGST at 0.75% of 20 lakhs	15,000
5	SGST (at 0.75% of 20 lakhs)	15,000

77. Mr. C (builder) sells a residential apartment to Mr. D(before obtaining CC) at Rs. 40 lakhs (excluding GST). He charges an additional amount towards preferential location charges. Comment on GST rate if:

Case 1: Preferential charges constitute Rs. 2.75 lakhs

Case 2: Preferential charges constitute Rs.8 lakhs

- Gross consideration includes additional amount charged towards preferential location charges. Thus, we need to check if the total amount (including preferential charges) exceeds 45 lakhs or not in order to determine the GST rates.
- In case 1, the gross consideration lakhs comes to Rs.32.75 lakhs which is less than Rs.45 lakhs, thus GST would be leviable at 1.5% [after accounting for deduction of land].
- In case 2, the gross consideration comes to Rs.48 lakhs, which is higher than Rs.45 lakhs, thus GST would be payable at 7.5% [after accounting for deduction of land].

78. Mr. X (registered) transfers development right to Mr. Y (promoter) against consideration in the form of apartments. What would be the value of construction services provided by Mr. Y?

- **Value of supply by Mr. Y**: The value of construction service is equal to amount charged for similar apartments in the project less one-third deduction towards land.

- **Relevant Date:** The value needs to be checked on date nearest to the date **on which development rights are transferred to the promoter**.

79. In the above example, what would be the value of supply by way of transfer of development right by Mr. X?

- **Value of supply by Mr. X**: It is the value of similar apartments charged ***by the promoter*** from the independent buyers
- **Relevant Date:** The value of similar apartments needs to be checked on the date nearest to the date on which development rights are transferred to the promoter.

80. Mr. A transfers development rights to Mr. B (promoter) on 01-07-2019. He receives one fully furnished apartments for transferring development right on the land owned by him. The construction work is completed on 01-08-2020. What is the value of supply for Mr. A (for transfer of rights) and Mr. B (for construction services)

Additional information:

Value of a similar apartment on 05-07-2019 is Rs. 30 lakhs.

Value of a similar apartment on 01-08-2020 is Rs. 45 lakhs.

- **Value of supply for transferor of development rights:** It is equal to the value of similar apartments charged by promoter from independent buyers on the date of transfer of development rights). Thus, the value of supply would be equal to Rs. 30 lakhs.
- **Value of supply of construction services by builder to landowner:** This would be value of apartment near to the date of completion certificate i.e. Rs. 45 lakhs.

Other cases

81. Whether the selling price needs to be revised for charging the new GST rate?

- In case the builder had not factored the GST paid on the inputs and input services as a cost, then the selling price needs to be revised and GST @ 5% needs to be charged on such revised price, otherwise Anti profiteering implications could arise for passing on the benefits/ loss on account of reduction in tax rate and increase of input tax costs.
- However in case the builder had considered GST paid on inputs and input services as cost, then there is no requirement to revise the price and GST @ 5% can be charged on the same price, provided the price was on ex-tax basis. A debit note may be issued for the upward revision of

prices. In case the price was cum-tax basis, in that prices might need to be re-calibrated to account for the decrease in output tax costs.

82. Whether stamp duty would be includible in the price for charging GST?

- No. In terms of section 15 of the CGST Act, 2017 the price paid or payable for the supply of service needs to be considered for charging GST. Stamp duty has to be paid ***by the buyer to the respective State Government*** and the same is not required to be charged by the builder on the customer and hence stamp duty not to be included for the purpose of valuation to charge GST at 5%.
- In case the promoter pays stamp duty on behalf of the buyer and then get it reimbursed the same from buyer on actual amount basis, an exclusion under pure agent for such re-imbursement can be claimed.

5.4 Input tax credit

83. Whether the developer paying tax at the effective rate of 1% or 5% on construction services provided by him, could avail ITC on input, input service and capital goods?

- The developer who is required to pay GST or has exercised the option to pay GST on residential projects at 1% or 5% is not entitled to avail ITC of taxes paid on inputs, input services and capital goods procured on or after 01st April 2019.

84. What would be the impact on ITC which has already been availed by the promoter before 1st April 2019 and then pays GST at concessional rates?

- REP: Reversal or availment of ITC as provided in Annexure 1 to Notification 03/2019-CT(R) should be computed.
- RREP: Reversal or availment of ITC as provided in Annexure 2 to Notification 03/2019-CT(R) should be computed.
- **Entire ITC availed** (whether utilized or not) during the period 1st July 2017 to 31st March 2019 needs to be considered for the purpose of computing eligible ITC as per Annexure 1 or Annexure 2 as the case maybe.
- Further **ITC availed as Transitional Credit** also needs to be considered for the above purpose
- This maybe for reason once the builder is covered in the concessional tax rate of 1%/5%, all conditions related thereto including reversal of the ITC [already availed in past] to extent prescribed to be followed.

85. Suppose a promoter has been undertaking ongoing project as well on another business of supply of consulting services under one GSTIN. Whether ITC availed with respect of other business is also required to be considered for the purpose of computing eligible ITC as provided in Annexure 1 or Annexure 2 as the case maybe?

- No, only the input tax credit availed with respect to ongoing project needs to be considered for the purpose of computing eligible ITC.

86. What is the impact on ITC availed in respect of residential project commenced by a firm prior to 1st April 2019 and completion certificate also issued in Dec 2018 prior to 1st April 2019? The said firm does not have any other construction projects thereafter.

- Reversal of credit would have to be done on the basis of revenue as per rule 42 as existed prior to 01.04.2019 as it is not an ongoing project.

87. Whether landowner would be eligible for any ITC under the new scheme of taxation for real estate sector?

- The tax charged by the developer to the landowner for providing development services to the landowner for his share of apartments could be availed as ITC by the landowner if the landowner further supplies such apartments to his buyers before issuance of CC/OC or first occupation, whichever is earlier.
- Further, he should pay tax on such supply which should not be less than the tax charged by the developer for construction of such apartments to the landowner. In other words, the landowner should have sold the apartments at higher value than the value on which promoter has paid tax.
- For e.g. If the developer charges GST of Rs.1 lakh to the landowner. The landowner should pay at least Rs.1 lakh as output GST on supply of such apartment to his buyer.
- However, it is to be noted that the scheme provides payment of taxes by the landowner (paying GST @ 5% or 1%) in cash only, added to the fact that the liability on the developer arises only upon project completion. Hence the credit can be availed by the developer only after project completion after which no GST liability would exist on the bookings done in terms of Schedule III to the Act. Thereby, it seems that even though the landowner is eligible for the credit, its utilisation is doubtful.

88. Whether tax paid under reverse charge on account of short fall of the threshold of 80% could be availed as ITC by the developer?

- A developer who is required to pay tax at the rate of 1% or 5% would not be entitled to avail any ITC on the development services received post April 2019.
- Therefore, the developer cannot avail ITC of tax paid under reverse charge and also forward charge on its procurements, which becomes a cost.

89. Where a promoter is engaged in the construction of two projects which are not eligible for concessional rate of tax, then can he utilise the ITC availed in respect of project 1 against the output tax liability of project 2?

- A promoter can avail ITC of inputs, input services and capital goods where he is not eligible for concessional rate of tax and such ITC can be utilised against the liability arising under another project.
- However, for the projects under the new rate of 1% or 5% GST needs to be paid only by e-cash ledger.

90. How would the ITC on inputs and input services be attributed to construction of residential portion in a REP which has TOS on or after 1st April 2019 for the purpose of reversing ITC (percentage completion is not 0%) and assuming that separate break up of inputs used for residential and commercial apartments is not available?

Illustration:

Percentage completion	50%
Total ITC on inputs and input services (utilized or not)	200 lakhs
Total carpet area	100 Sq. metres
Ratio of residential and commercial portion	90:10
Total carpet area of residential apartment booked before 1st April 2019	50 sq. metres.
Total value of supply of construction services of residential apartments booked before 1st April 2019	80 lakhs
Value of supply of construction services of residential apartments booked before 1st April 2019 of whose TOS has arisen before 1st April 2019	40 lakhs

Solution:

Tx = amount to be reversed or claimed as ITC.

T = Rs.200 lakhs

Tc = Rs.200 lakhs x 10/100 = Rs. 20 lakhs

Tr = Rs.200 lakhs x 90/100 x 50/90 x 40/80 x 0.5 = 100

Te = Tc + Tr = 20 + 100 = 120

Tx = 200 – 120 = 80

The registered person should pay Rs. 80 lakhs (T-Te) either by debiting the electronic credit ledger or by debiting electronic cash ledger because T > Te.

Where T<Te, then the registered person can avail ITC on goods or services received on or after 1st April 2019 to the extent of difference between Te and T.

91. What is the method for computing the value of Te for the purpose of comparison with Tx in order to derive at the eligible or ineligible ITC assuming that separate break up of inputs used for residential and commercial apartments is not available?

For the illustration given in question above, "Te" can alternatively be calculated as below:

T1 = ITC attributable exclusively to commercial portion = Rs.40 lakhs

T2 = ITC attributable exclusively to residential portion = Rs.60 lakhs

T = Rs.200 lakhs

T3 = T – (T1+T2) = Rs.100 lakhs

Tc = T3 x 10/100 = Rs.10 lakhs

Tr = (200-40) x 90/100 x 50/90 x 40/80 x 1/0.5 = Rs. 80 lakhs

Te = 10 + 40 + 80 = Rs.130 lakhs

In this case, the amount of ITC reversal required is of Rs.70 lakhs i.e., (T - Te)

92. How would the ITC on inputs and input services be attributed to construction of residential portion in a REP for the purpose of availing ITC, where the percentage completion is zero, which has TOS before 1st April 2019 but no input services or inputs have been received as on 31st March 2019?

Illustration:

Percentage completion	0%
Total carpet area	100 sq. metres
Ratio of residential and commercial portion	90:10
Total carpet area of residential apartment booked before 1st April 2019	50 sq. metres.
Total value of supply of construction services of residential apartments booked before 1st April 2019	80 lakhs
Value of supply of construction services of residential apartments booked before 1st April 2019 which has TOS before 1st April 2019	40 lakhs
Tax paid on inputs and input services received in 2019-20 on which ITC is available	Rs.150 lakhs

Solution:

Te =?

Tr = Rs.150 lakhs x 90/100 x 50/90 x 40/80 = Rs.37.5 lakhs

Tc = Rs.150 lakhs x 10/100 = Rs.15 lakhs

Te = 37.5 + 15 = Rs.52.5 lakhs

The registered person would be entitled to avail ITC on goods or services received on or after 1st April 2019 to the extent of Rs.52.5 lakhs.

93. How would the ITC on inputs and input services be attributed to construction of residential portion in a RREP which has TOS on or after 1st April 2019 for the purpose of reversing ITC (percentage completion is not 0%)?

Illustration:

Percentage completion	50%
Total ITC on inputs and input services (utilized or not) used in construction of RREP during July 2017 to March 2018 including transitional credits	Rs. 200 lakhs.
Total carpet area	100 sq. metres.
Ratio of residential and commercial portion	90:10
Total carpet area of residential and commercial apartment booked before 1st April 2019	70 sq. metres
Total value of supply of construction services of residential and commercial apartments booked before 1st April 2019	120 lakhs.
Value of supply of construction services of residential and commercial apartments booked before 1st April 2019 which has TOS before 1stApril 2019	80 lakhs.

Solution:

Tx = amount to be reversed or claimed as ITC.

T = Rs.200 lakhs

Te = Rs.200 lakhs x 100/100 x 70/100 x 80/120 x 1/0.5 = 100

Tx = T - Te = 200 – 186.67 = 13.33

The registered person should pay Rs. 13.33 lakhs either by debiting the electronic credit ledger or by debiting electronic cash ledger because T > Te.

Where T < Te, then the registered person can avail ITC on goods or services received on or after 1st April 2019 to the extent of difference between Te and T.

94. What are the aspects that should be ensured while computing ITC reversal?

- ITC reversal should be computed on monthly basis and project wise. If there are 10 projects running simultaneously then calculation for reversal should be done for each project separately.
- ITC reversal for inputs, input services and capital goods should then be calculated for the entire project till date of completion or first occupation of the project, whichever is earlier. Treatment for excess reversal or short reversal should be given.
- The period to be covered for the final reversal (entire project)is as follows:

Date of commencement of project	Date of issuance of completion certificate	Period to be covered
1st April 2016	31st July 2016	Project wise reversal not required now.
1st April 2016	1stJuly 2019	1st July 2017 to 1stJuly 2019
1st April 2018	1st July 2019	1st April 2018 to 1st July 2019

95. Whether calculation as provided in rule 42 should be done annually for each project?

- No, annual calculation is not required to be done for each project. However, after completion of the project, the calculation as provided in rule 42 should be done for the entire project from the date of commencement of project or 1st July 2017, whichever is later till the date of issuance of CC/OC or first occupancy, whichever is earlier.

96. When should the ITC eligibility of entire project be ascertained?

- The ITC eligibility of the entire project should be ascertained and ITC availment or reversal should be done before the due date for furnishing of the return for the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place.
- E.g. If completion certificate is issued on 15th December 2019, then the availment or reversal of ITC based on full project computation should be done before 30th September 2020.

97. Whether interest would be applicable on reversal of ITC based on final project wise calculation? If yes, what would be the period for which interest would be payable?

- Yes, interest at the rate of 18% should be paid on the amount of ITC reversed from 1st April of the next financial year in which the CC/OC is issued or first occupation takes place till the date of payment.
- E.g.: If completion certificate is issued on 15th December 2019 and the reversal of ITC is done on 20th July 2020. Then interest for the period 01st April 2019 to 20th June 2020 at the rate of 18%.

98. How should the difference between the consolidated monthly reversal and final project ITC reversal should be dealt with?

(a) If excess ITC was reversed, then such ITC should be claimed as credit before September of the next year in which CC/OC is issued or first occupation takes place, whichever is earlier.

(b) If ITC was reversed shortly, then differential ITC should be reversed before September of the following year in which OC/CC is issued or first occupation takes place, whichever is earlier along with interest at the rate of 18% from 1st April of next financial year till the date of payment.

99. How should the ITC be reversed?

- The ITC should be reversed either in FORM GSTR-3B or through FORM DRC-03.

100. How should the ITC be apportioned in relation to input, input service or capital goods are used for more than one project?

- Such ITC should be assigned to each project on a reasonable basis and credit pertaining to each project should be considered for the purpose of rule 42 computations for each such project [Rule 42 (6)].

101. How should the common ITC be apportioned in relation to input, input service or capital goods that are used for both REP/ RREP as well as other taxable business?

- There is nothing prescribed under the rules as to segregation of the inputs/ input services/ capital goods which are used commonly for both REP/RREP falling under concessional rates and other taxable business.
- Drawing reference from Rule 42 (6), it can be argued that such common credits should be assigned to each project and other taxable business on a reasonable basis.

102. In what ratio should the total ITC be apportioned between eligible and ineligible ITC related to construction services?

- The ITC in relation to construction services should be apportioned between eligible and ineligible portion in the ratio of carpet area of the apartments taxable under non-concessional rate of taxes as well concessional rate of taxes respectively.

103. Whether computation of ITC for reversal or availment could be done on totality i.e., can the formulae by applied on total ITC without bifurcating between IGST, CGST, SGST and UTGST?

- All the ITC related computations should be computed separately for IGST, CGST, SGST and UTGST.

If migrated to new scheme

104. Whether builder opting for new scheme is required to reverse all the credits in the transition phase?

- The builder opting for new scheme is required to reverse credit to the extent availed for the on-going projects, during the period 01st July 2017 to 31st March 2019 (including the ITC availed as transitional credit) based on the computation methodology notified in Annexure I and Annexure II of the Notification *ibid*.

105. 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 logics, the ITC are allowed/ not allowed as follows;
  - ITC of inward supplies exclusively used for commercial apartments is allowed
  - ITC of inward supplies exclusively used for residential apartments is not allowed
  - Common ITC is allowed to the extent of carpet area of commercial apartments, divided by total carpet area of the project

106. Where eligible credit is more than the credit availed as on 31st March and differential credit is availed by the builder after 31st March, 2019. How would such credit be utilised by the builder as there is no option of utilisation of credit for payment of tax @ 5%/1%.

- In case the builder is executing other projects taxable at non-concessional rates or carrying on other taxable business within the same GSTIN, he could use the ITC availed as per Annexure I and Annexure II could be utilized for paying off GST on account of non-concessional rates GST projects or other business within the same GSTIN.

107. Land owner has failed to sell some of the flats till the time of completion certificate. What would be impact on ITC for such flats?

- Flats Sold after OC – No tax
- ITC would be cost to the Landowner.

108. Whether there could be accumulation of credit in the hand of landowner?

- The TOS of landowner's share of apartments supplied by the builder would be the date of transfer of possession to the landowner.
- In the meanwhile, before obtaining possession, the landowner could have sold the apartments under construction (transaction 1) and since at such time, the TOS of supply by builder to landowner would not have arisen (transaction 2), the landowner would have no option but to discharge GST on transaction 1 in cash, since GST on transaction is yet to be levied, so as to claim ITC of the same.
- Subsequently, when the landowner would procure transaction 2, the builder would charge GST to him. This GST would be available as ITC to the landowner since he had sold under construction apartments before occupation.
- However, the ITC would become in-eligible to the landowner in as much as all the under construction flats would have already been sold, and the since construction has been completed, the subsequent flats would not leviable to GST at all.
- Accordingly, the ITC so available would be a dead asset for the landowner and in the absence of other on-going projects/ taxable business within his GSTIN.

5.5 Reverse Charge

109. Who is liable to pay GST on transfer of development rights or FSI by landowner to the builder for construction of a project?

- The builder is liable to pay GST on reverse charge basis on the supply of development rights/TDR/FSI transferred to him by any person, on or after 1st April 2019, for construction of a project.

- However, the supply of development rights or FSI, on or after 1st April 2019, for construction of residential apartments, when part consideration is received prior to issuance of completion certificate or first occupancy, whichever is earlier, is exempt and no GST is payable on the same. When the supply is exempt, there would be no liability to pay GST under reverse charge.

110. Whether the developer is liable to pay tax under RCM even in case of on-going projects for transfer of development rights and upfront amount for long term lease of land?

- The developer would be liable to pay tax under RCM only when the transfer of the development rights or FSI or upfront amount for long term lease is affected on or after 1st April 2019.
- In an on-going project, the development rights/ long term lease would have been given to the developer before commencement prior to April 2019.
- Accordingly, the developer is not liable to pay taxes under RCM on development rights or upfront amount for long term lease in case of on-going projects.

111. At what point of time, would the liability to pay tax under reverse charge arise on the shortfall of procurements as made above other than cement and capital goods?

- The builder shall maintain project wise account of inward supplies other than cement and capital goods from registered and unregistered suppliers and calculate tax payments on the shortfall at the end of every financial year or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier.
- The builder shall furnish the details of the same in the prescribed form electronically on the common portal) by end of the quarter following the financial year.
- The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.

112. A project commenced on 1st July 2018. The builder procured 65% of the inputs and input services from registered suppliers. Whether the condition of 80% procurement from registered suppliers, is also applicable to the ongoing projects?

- Where in an ongoing project, the builder does not exercise the one-time option to pay GST at the rate of 12% or 18% (i.e., under Notfn. No. 11/2017-CT(R) as amended by Notfn. No. 03/2019-CT(R))by filing the prescribed form by 10th May 2019 as specified above then, the condition of atleast 80% of the procurements of inputs and input services from registered suppliers would apply.
- In other words, in such case when only 65% of the inputs and input services are received from registered suppliers, then builder (recipient) is liable to pay GST on the shortfall of 15% of the value of inputs and input services at the rate of 18% under reverse charge.

113. Whether GST is to be paid by builder at the rate of 18% under reverse charge on cement purchased from unregistered suppliers?

- When cement is purchased from unregistered suppliers, GST would be payable under reverse charge, at the rates applicable to the supply of cement and not at the rate of 18%.

114. Whether GST has to be paid under reverse charge by builder when the cement is purchased from the registered suppliers?

- No, GST is not liable to be paid under reverse charge by builder, if cement is purchased from registered supplier.

115. What are the GST implications if the builder purchases capital goods from unregistered suppliers?

- When the builder receives capital goods from unregistered suppliers, in the projects which commence on or after 1st April 2019 or in an ongoing project for which the builder does not opt to pay tax at the rates of 12% or 18% (i.e., under entry no. 3(ie) and 3(if) in Noti. No. 11/2017-CT(R) as amended by Noti. No. 03/2019-CT(R)), then the builder is liable to pay GST at the rates applicable to supply of such capital goods, under reverse charge.

116. Landowner supplied TDR to the builder for construction of 100 residential apartments on 1st May 2019. The project received completion certificate on 20th August 2021, on which date 90 apartments remained un-booked. The project has not been occupied yet. Would there be any tax liability on the TDR's?

- The builder is liable to pay GST on reverse charge basis on such proportion of value of TDR as is attributable to the residential apartments which remained un-booked on the date of issuance of completion certificate or first occupancy, whichever is earlier.

- The builder would be liable to pay GST on supply of TDR and FSI attributable to 90 flats which remained unsold on 20th August 2021. The liability to pay GST on the same would arise on 20th August 2021.

117. Whether the builder has to pay GST under the reverse charge mechanism even when he pays 1% or 5% output GST under the new scheme?

- Yes, builder needs to pay GST as applicable under section 9(3) of the CGST Act, 2017 and 5(3) of the IGST Act, 2017. Payment of GST under this scheme at the rate of 1% or 5% would not take away the liability under reverse charge mechanism.

118. Where a contract for transfer of development right was executed in 2018 but actual transfer of development right has been made in the May 2019. Whether such TDR would be liable to GST presuming in cases where TDR has been given for the residential property purpose?

- The terms of contract would be the determining factor to understand whether the actual transfer of development rights are on or after 1st April 2019.
- Where the terms of the contract is stating that the development rights are transferred on or after 1st April, the developer would be liable to pay taxes under reverse charge on the apartments which are un-booked as on the date of issuance of completion certificate.

119. 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 determining the compliance to 80% threshold.
- However, it appears that the 80% threshold is on the assumption that "all per se taxable supplies" as applicable to a builder operating under normal scheme should be the constituent of the numerator and denominator.
- However, in the author's view the intention of the Government is not to tax indirectly the Schedule III items or the exempted supplies. Hence the author is of the view that these amounts shall not be included to compute the 80% threshold. However due to lack of clarity which should be clarified by the Government at the earliest.

120. If a person has imported inputs on which IGST has been paid. Whether such supplies could be covered in the limit of 80%?

- Inputs and input services on which tax is paid under reverse charge in terms of 9(3) of CGST Act or 5(3) of IGST Act would deemed to have been procured from registered person.
- Import of goods has not been specifically mentioned in the above provisions however considering the intention that the tax should be paid on inward supply, we are of the view that the import of goods on which tax has been paid at the time of import should not be considered as purchased from unregistered person and accordingly there should not be any liability under RCM on the same.

121. Whether exempted supplies received from unregistered persons would get covered in the limit of 80%? What if such exempted supplies are received from unregistered persons?

- It appears that the 80% threshold is based on the assumption that in normal course "80% of inward supplies would constitute taxable supplies, while 20% would constitute exempt/ non-taxable supplies, for a builder executing a project.
- This is also strengthened by the fact, that the builder is required to discharge GST under RCM only to the extent of shortfall from 80%.
- Therefore it could be said that the exempted inward supplies be a constituent for the 80% threshold.

122. If some capital goods are purchased by the builder from unregistered persons, whether there would be any liability under reverse charge mechanism on such purchases?

- Yes, GST should be paid under RCM If capital goods are purchased from unregistered persons. The limit of 80% is not applicable on capital goods.

123. Expenses incurred by the employee of the Company which are subsequently claimed as reimbursement from the Company. Whether such expenses would be included in the limit of 80%?

- Where the expenses are incurred by the employees on behalf of the company and valid documentation to establish that the tax has been paid on such expenses, these should be covered within the limit of 80%.

5.6 Time of Supply

124. What would be the time of supply for TDR or FSI received by builder on or after 1st April, 2019 for construction of a project?

- A builder who receives development rights/Floor Space Index (FSI) against consideration for construction service of residential apartments in the project or in any other form including in cash, the liability to pay tax would arise on earlier of the following dates:
  a. date of issuance of completion certificate or
  b. date of its first occupation.

125. What would be the time of supply for upfront amount for long term lease of land on or after 1st April, 2019?

- A builder, who receives land on long term lease [30 years or more] on or after 1st April, 2019 for construction of residential apartments in a project against consideration payable, in the form of upfront amount, the liability to pay tax would be earlier of the following (unless exempted):
  a. the date of issuance of completion certificate or
  b. on its first occupation

126. What would be the time of supply at which the builder is liable to pay tax under reverse charge when less than 80% of the value of input and input services used in supplying the service is received by him from registered suppliers?

- The builder shall maintain project wise account of inward supplies from registered and unregistered suppliers and calculate tax payments on the shortfall at the end of the financial year.
- The tax liability on the shortfall of inward supplies from unregistered person so determined would be added to his output tax liability in the month not later than the month of June following the end of the financial year.

127. When shall GST be paid on the cement supplied by unregistered persons to the builder?

- GST on cement received from unregistered persons should be paid in the month in which cement is received, and not at the end of the financial year.

128. What would be the time of supply in case the builder purchases the capital goods from unregistered suppliers?

- The builder would be liable to pay tax under RCM at the rates applicable to the supply of capital goods. The time of supply would be earliest of the following:
  a. The date of receipt of goods
  b. The date of payment
  c. The date immediately following 30 days from the date of issue of invoice or any other document, by the supplier

129. What would be the time of supply for advance received from flat buyers on or after 1st April 2019?

- The time of supply for advance received for supply of construction services to flat buyers would be the date on which such advance is received. The promoter (supplier) is required to issue a receipt voucher, evidencing the receipt of such payment and pay GST on the same by 20th of the following month in GSTR-3B.

130. Whether the time of supply for construction services provided to landowner by developer would change if the developer is not opting to pay taxes at the rate of 12% and 18%?

- In terms of notification no. 6/2019 Integrated Tax (Rate) dated 29.03.2019, TOS for construction services provided to landowner by developer would be the date of issuance of completion certificate or its first occupation, whichever is earlier for the projects on which development rights and long term lease of land is given on or after 1st April 2019 .
- However, in case of projects on which development rights and long term lease of land is given before 1st April 2019, the time of supply would be the time when the developer, builder, construction company transfers possession or the right in the constructed complex, building or civil structure, to the landlord by entering into a conveyance deed or similar instrument (for example allotment letter) in terms of notification no. 04/2018 – CT (Rate).

6. OPEN ISSUES

Introduction:

Though the new scheme intended to simplify and reduce the compliance burden for the real estate sector, the scheme ended up leaving cumbersome procedures for ongoing projects, in respect of calculations to be made for arriving at the ITC eligibility/ reversal thereof, and payment of taxes under RCM in respect of purchases made from unregistered dealers. Further, there are some grey areas which requires the department clarification in the initial stage of this new scheme of taxation otherwise differential interpretation of notification may leads to interest and penalties at later stage.

The following are some of the queries or areas where the clarification of department was required.

1. **Joint Development Agreement (JDA) entered on or before 31.03.2019 and the supplementary agreement entered on or after 01.04.2019. Whether exemption on development rights would be applicable in terms of notification No.12/2017 - Central Tax (Rate) dated 28.06.2017 as amended from time to time?**
   - In terms of entry 41A of the notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 as amended from time to time, Service by way of transfer of development rights (TDR) or Floor Space Index (FSI) (including additional FSI) **on or after 01.04.2019** for **construction of residential apartments** by a promoter in a project **would be exempted** provided that the entire consideration on sale of flats from the customers has been received, before issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.
   - In the instant case as the JDA was entered prior to 01.04.2019, the above said exemption would not be applicable as the rights arising from the JDA has already been transferred to the developer on or before 31.03.2019.Thereby, such liability needs to be discharged by the land owner on the date of supplementary agreement in terms of notification No.04/2018 - Central Tax (Rate) dated 25.01.2018.
   - However while discharging such liability whether the new rate of tax would be applicable needs clarification.

2. **Joint Development Agreement (JDA) entered on or before 31.03.2019 and the supplementary agreement entered on or after 01.04.2019. For construction services provided by the Developer,**

whether ToS to pay such GST liability shall be in terms of notification No. 04/2018 *ibid* or as per notification No. 06/2019 – Central Tax (Rate) dated 29.03.2019?

- The Time of supply in terms of notification No. 06/2019 *ibid* would apply for the Developer who receives development rights **on or after 01.04.2019** for construction of a project against consideration payable or paid by him, wholly or partly, **in the form of construction service** of commercial or residential apartments in the project shall be the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier.
- In the instant case the JDA was entered prior to 01.04.2019, whereas the supplementary agreement after 01.04.2019, the notification 06/2019 refers to rights transferred after 01.04.2019, now in this case whether the rights transferred on entering into JDA (Development Agreement with General Power of Attorney) or the same gets crystallises on entering into supplementary agreement for area allocation? Is an issue that needs to be resolved.

3. **Whether the outward tax liability arising under new scheme of taxation can be discharged by utilizing the ITC or should be paid by the electronic cash ledger only?**
   - The outward tax liability should be discharged by debiting the electronic cash ledger only as it is one of the mandatory conditions for the new scheme of taxation. However, with respect to the construction services provided to the landowner, the landowner is eligible to claim ITC on such construction services, provided that the tax charged by him on sale of flats is not less than the amount of tax charged by the developer.
   - However, there is no clarity provided under the notification, whether such ITC can be used for paying outward tax liability on the sale of the flats to the customers which are taxable @1%/5% or such ITC can be utilised only for discharging the other outward tax liabilities.

4. **In case of ongoing projects opting for new scheme, whether landowner share of flats should be considered as taxable for the purpose of proportionate ITC reversal as on 31.03.2019**
   - In terms of notification no.03/2019 Central Tax (Rate) dated 29.03.2019, credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP. Further, the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the **input tax credit attributable to**

construction in a project, time of supply of which is on or after 1st April, 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP.

- From the above, we can say that, in case if time of supply of services relating to landowners share was on or before 31.03.2019, the same need to be considered for the purpose of proportionate ITC reversal, considering services towards landowner share as taxable services. Another view which could be possible here is that the ITC reversal as on 31.03.2019 has to be calculated considering the developers share only, as this would be the developer's share of revenue which could be taxable/exempted. Since different views are possible for this scenario, necessary clarification needs to be given by department to avoid disputes.

5. **Whether the landowner is eligible to avail full credit of tax charged by developer even some part of their share was retained by such landowner?**
   - In terms of notification No.3/2019 Central Tax (Rate) dated 29.03.2019, landowner shall be eligible for credit of taxes charged by the developer towards the supply of construction of apartments, provided the landowner further supplies such apartments to their buyers before issuance of completion certificate or first occupation, whichever is earlier, and pays tax on the same **which is not less than the amount of tax charged** from him on construction of such apartments by the developer.
   - From the above, it can be seen that the landowner would be eligible for credit only if they sell flats which are liable to GST. In case if sales are made after CC/OC, or landowner hold certain portion towards self-consumption, credit may not be eligible towards such portion as no taxes has been collected on it. Thereby, suitable clarification from department should be required on reversal of ITC in case if the landowner retain or sold certain flats after CC/OC, in order to avoid dispute.

6. **Whether the development rights attributable to commercial apartments in a Residential Real Estate Project (RREP) would be taxable**
   - In terms of entry 41A of the notification No. 12/2017 *ibid*, service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) **on or after 01.04.2019** for **construction of residential apartments** by a promoter in a project **would be exempted.**

- From the above, it can be seen that the exemption was provided only for the development rights towards the construction of the residential apartments. RREP would consist of residential and commercial where commercial portion was not more than 15% of total carpet area of all the apartments. In such case, exemption of development rights was restricted to residential area only which can be calculated as below.
- Development rights attributable to residential area = GST payable on TDR or FSI X Total carpet area of residential/ Total carpet area of residential and commercial area.
- Further, in terms of entry 5B of the notification No. 13/2017 Central Tax (Rate) dated 28.06.2017 developer would be liable to pay GST under RCM for the development rights attributable to commercial apartments in the project.

7. If the commercial space in the residential apartment is not sold to the customer, but transferred to the association and the cost is apportioned in the residential apartments, whether the development rights w.r.t commercial space would be taxable?

- If the TDR are for the construction of the residential apartments and such apartments are sold by the promoter before issuance of completion certificate or first occupation, whichever is earlier, then in terms of entry 41A of the notification No. 12/2017 ***ibid***, GST would not be applicable on transfer of such development rights.
- In the instant case, as the commercial space is not sold, and the cost of the same is apportioned in the residential apartments sold to the customer, RCM would not be applicable on the development rights attributable to the commercial space. However, the same view is not coming from the exemption notification.

8. Whether the proportionate reversal of exemption towards development rights need to be seen from developer share after CC/OC sales only or need to include landowners after CC/OC sales

- In terms of notification No.04/2019 Central Tax (Rate) dated 29.02.2019, Developer shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, which should be lower of the following

i. GST payable on TDR or FSI (including additional FSI) or both for construction of the residential apartments in the project x (carpet area of the un- booked residential apartments as CC/OC) ÷Total carpet area of the residential apartments in the project

ii. 1%/ 5% on the value of un-sold residential apartments.

- From the above, it can be seen that reversal of such proportionate exemption was done based on the entire project area which includes **both developer and landowner share**.
- However, logically the development rights is received only to the extent of the developer share and hence it should be total carpet area of the developer share and not on the landowner share.

9. Whether exempted procurements, salaries, etc. need to be considered in the calculation of 80% registered purchases?

- One of the conditions in the new scheme of taxation is that 80% of the **inputs and input services** should be received from the registered suppliers only. If there is any shortfall, developer would be liable to pay GST under RCM on such shortfall. The term **service** was defined in a wider manner in section 2(102) of the CGST Act, 2017 as anything other than goods, except with few exclusions.
- Thereby, services which are exempt and services of employee would fall within the purview of input services. If we go by that interpretation, in case of short fall there may be changes that GST would be applicable on services which are exempted or services which is a neither a supply of goods nor a supply of services (salaries) Hence, a suitable clarification need to be provided specifying the items which need to be included for the purpose of computing 80% criteria, in order to avoid dispute.

10. Whether GST under RCM is applicable on the total cements purchased from the unregistered procurements or only to the extent of shortfall?

- As per entry No.2 of the notification No. 07/2019 – Central Tax (Rate) dated 29.03.2019, cement which **constitute the shortfall** from the minimum value of goods or services or both required to be purchased by the promoter for construction of a project, in a financial year (or part of the financial year till the date of issuance of CC or first occupation, whichever is earlier) from the unregistered supplier shall be paid at the applicable rate.

- However, as per notification No. 03/2019 *ibid* a view which would arises is that the promoter would be liable to pay GST under RCM for the cement procured from the every unregistered supplier, even if the total value of inputs and input services procured from the registered supplier is 80% or more. Further, the same was specified in the illustration 1 notification No. 03/2019 *ibid.*
- Thus, there is confusion in relation to the payment of GST under RCM for the cement procured from unregistered supplier by the promoter. A suitable clarification should be provided by the department at the earliest in order to avoid disputes.

11. Whether excess procurement from registered persons (>80%) in year 1 can be set off against the shortfall in the year 2?

- Notification No. 03/2019 *ibid,* provides that 80% of the inputs and inputs services shall be received from the registered supplier, in case of shortfall in a **financial year**, GST needs to be paid at the 18% under reverse charge by the developer by 30th June of the next financial year and the details shall be submitted in the form as prescribed.
- From the above, it can be seen that % of registered procurements should be computed on yearly basis. However, there is no clarity provided in the notification on whether excess purchase in year 1 can be set off against the shortfall in the year 2. In our view, the same should be allowed which would be beneficial to the developer as they can target on purchases from registered persons based on project wise, instead of financial year wise.

12. What would be the rate of GST for the construction services provided to landowner under new scheme?

- In terms of notification No.3/2019 *ibid,* promoter would be liable to pay GST on construction of apartments which are intended for sale on or before CC or OC would be as follows

S. No	Description	Effective rate
1	Affordable residential apartments	1%
2	Residential apartments other than affordable residential apartments	5%
3	Commercial apartments in RREP	5%
4	Other commercial apartments	12%

- However, there is no clarity provided in the notification that whether the same rate of tax would be applicable for the construction services provided by developer to landowner.
- Note 2A to the notification No.3/2019 *ibid* provides that the **value** for the said services would be the total amount charged for similar flats in the projects from the independent buyer nearest to the date on which development rights are transferred (i.e. date of JDA) to the developer. Since the deemed value on which GST is payable is in the nature of sale of flats, the same rate could be applied for the services provided by the developer to landowner also. However, suitable clarification should be provided in this regard.

13. 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?

- Notification No.3/2019- Integrated Tax (Rate) dated 29.03.2019 defines ongoing project as a project which meets all the following conditions, namely-
  - commencement certificate issued - on/ before 31.03.2019
  - Construction has started – on/before 31.03.2019
  - Completion certificate not issued on / before 31.03.2019
  - Booking - on/ before 31.03.2019
- The above said notification does not provide any clarity regarding whether each tower should be treated as a separate project or not. In the instant case, since a single permission is obtained for all the 3 towers, the same shall be treated as construction of a single project. However, the problem would arises in case, if tower-1 has completed in all aspects and obtained CC, whether tower-2 and 3 which are not yet started should be treated as ongoing or new projects is a question which needs to be clarified by the department.
- However, 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.

14. Since Hyderabad is considered as Metropolitan cities, what would be the areas which are covered within the jurisdiction of Hyderabad considering as metropolitan city?

- Notification no.03/2019 ibid, specifies Metropolitan cities where the area for affordable housing was restricted to 60 q.mts are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard;
- Unlike Delhi, where it has clearly specified the coverage of area towards arriving the applicability of affordable housing scheme, notification does not specifies any such boundaries for Hyderabad.
- Further, as per **Greater Hyderabad Municipal Corporation (GHMC)** which is the civic body that oversees Hyderabad, which covers 4 districts – Hyderabad district, Medchal district, Ranga Reddy district and Sangareddy district. Whereas, as per **Hyderabad Metropolitan Development Authority (HMDA)**, which is constituted to develop Hyderabad Metropolitan Region is spread over the districts of Hyderabad, Medchal, Ranga Reddy, Sangareddy, Medak, Siddipet and Yadadri Bhuvanagiri. Different laws under the state acts covers different regions for their administration. Therefore, necessary clarification needs to be provided specifying the area coverage for Hyderabad in order to avoid dispute.

7. DECISION MAKING UNDER GST

Introduction

Prior to new scheme of taxation for real estate, **GST on construction service for Residential (and Commercial) properties** was **effectively at 12%** (post deduction of 1/3rd towards the value of land). Further, a concessional GST rate of 8% (post deduction of 1/3rd towards the value of land), applicable **for affordable houses** constructed under the three components of the *Housing for All (Urban) Mission / Pradhan Mantri Awas Yojana (Urban)*, namely:

i. ln-situ redevelopment of existing slums using land as a resource component;

ii. Affordable Housing in partnership; and

iii. Beneficiary led individual house construction/enhancement

Full benefit of credit for input side GST incurred was available to developers/builders.

With effective From 01.04.2019, GST to be levied at **effective GST rate of 5%** (7.5% GST rate minus 1/3rd land deduction) for "***Residential Real Estate Project*** *(RREP)*" outside affordable segment. **Effective GST rate of 1%** (1.5% GST rate minus 1/3rd land deduction) for "***affordable residential apartments***" as defined

Construction of **commercial properties to continue at effective GST rate of 12%** (18% rate minus 1/3rd land deduction).

Benefit of input tax credit unavailable going forward and highly restricted credit benefit available for ongoing projects.

<u>Ongoing projects</u>

For ongoing projects, the Developer/Landowner has two options i.e., to pay the tax at the existing rates or opt for the new scheme of taxation. Before analyzing which option would be beneficial, let us first understand what does the term ongoing project means;

Notification No.3/2019- Integrated Tax (Rate) dated 29.03.2019 defines ongoing project as a project which meets all the following conditions, namely-

- Commencement certificate **issued** - on/ before 31.03.2019
- Construction has started – on/before 31.03.2019
- Completion certificate **not issued** on / before 31.03.2019
- **Booking*** - on/ before 31.03.2019

The commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March, 2019, and it is certified by any of the following that construction of the project has started on or before 31st March, 2019:-

- an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
- a chartered engineer registered with the Institution of Engineers (India); or
- a licensed surveyor of the respective local body of the city or town or village or development or planning authority.

Where the commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified in sub clause (a) above that construction of the project has started on or before the 31st March, 2019;

Explanation: - The construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019

Further, booking means an **apartment booked – Conditions**

- part of supply of construction - ToS
- at least 1 instalment has been credited to the bank account
- Document evidencing booking issued.
- Therefore, if any project is not an ongoing project, it would be a new project. Thereby, liable to GST @5% mandatorily.

Further, it is to be noted that this new scheme of rates is applicable only in cases where construction services are provided along with transfer of land. For pure construction services, existing rate of 18% would apply.

Thus, as there are two options available for ongoing projects we would proceed to understand the best option to the Developer. Further, this decision would have a large impact on the cost structure and future sales of Developer. Therefore, before taking a decision, critical analysis of all factors shall be done.

Best option for Developer in case of ongoing projects:

As discussed in earlier sections, the promoter/Developer has two options for ongoing projects i.e. to continue with the existing scheme of 8% or 12% as the case may be else to opt for 1% or 5% as the case may be without availing ITC.

The following shall be the impact if one opts for the 1%/5% scheme

- Developer needs to reverse the credit pertaining to un-booked flat and installments not due pertaining to booked flats as on 31st of March 2019, which becomes a cost.
- Developer would be out of pocket in case the above cost cannot be collected by the customers in terms of increase in selling price.
- Developer for the projects covered under RERA may not be able to revise the price for the booked flats in view of the restriction laid therein
- To the extent developer is unable to recover the inputs cost by the customer existing or prospective that would be the additional cost or decrease in profit for the developer.

The following shall be the impact if one opts for the 8%/12% scheme

- No commercial impact in case the developer would be able to collect 12% of GST from customers.
- To compete with other developers and to affect the same, the developer is would not be able to collected GST at 12% any amount short collected shall become cost. Say in case only 5% is collected instead of 12% then the 7% is decrease in profit to the developer.
- No RCM for short fall in 80% of purchase of input and input service by registered dealer and additional liability

The following are the steps to decide whether old scheme would be beneficial or the new scheme for Developer:

Steps	Action	Denotation
1	GST paid @12% on the consideration already received on the flats booked.	A
2	Compute the amount of GST @12% payable for the balance consideration to be received out of the flats booked.	B
3	Compute the GST payable on the estimated sale value of the projects	C

	(un-booked and expecting to book prior to obtaining completion certificate) at 12%	
4	Compute the ITC availed on the project including transitional credit	D
5	Compute the estimated ITC to be paid on input, input service and capital goods till the end of the project.	E
6	Compute the net tax payable on the project	F= A+B+C-D-E
7	Total GSTA that can be collected from the customer (Assuming few customers may pay 12% and few only 5%) for the project (including the tax collected prior to 31st March 2019)	G
8	Total cost to Developer	H=G-(A+B+C)

In case, the Developer opts for 5%.

Steps	**Action**	**Denotation**
1.	Compute the GST that needs to be reversed in case of opting for new scheme of 5% (i.e. credit pertaining to input, input service and capital goods pertaining to flats un-booked as on 31st of March 2019 and to the extent of the time of supply (installments due or receipt of money, whichever is earlier) falling after 1st April 2019)	A1
2.	Compute the estimated ITC to be paid on input, input service and capital goods till the end of the project.	B1
3.	Arrive at cost to be increase for the existing customer and also new sales	C1 = A1+B1
4.	Revised price that can be collected by customer (estimation)	D1
5.	Cost to Developer	E1 (C1-D1)
4.	Decide	If H < E1, then Continue Old Scheme

The above table can be better understood with the following example:

Illustration: *X Ltd (hereinafter referred to as* ***'Developer'****) has entered into a* ***Joint Development agreement (JDA) on 01.08.2018*** *with Y ltd (hereinafter referred to as the* ***'Landowner')*** *to construct a residential apartment. Project comprises of 1,50,000 sq ft carpet area and the carpet are of each flat is 1500 sq. ft. The sharing ratio between the Developer and Landowner is 50:50. Further supplementary agreement was entered on 01.01.2019 where demarcation of 100 flats was done between the Landowner and the Developer.*

- *90% of the project was completed up to 31.03.2019*
- *Developer sold (booked) 30 flats for 5000 per sq. ft. Further, 90% invoicing was done up to 31.03.2019, payment for the same was received from the customer and the tax on the same was paid.*
- *ITC availed by Developer for the project including transitional credit claimed - Rs. 3.75 crore.*
- *Estimated ITC to be availed on the future procurements – 25 lakhs*
- *Completion certificate is not received on or before 31.03.2019.*

Steps	Action	Amount
1	GST paid @12% on the consideration already received on the flats booked(A)=(1500*30*5000*90%)*12%	2.43Cr
2	GST @12% payable for the balance consideration to be received out of the flats booked (B) = (1500*30*5000*10%)*12%.	0.27 Cr
3	Compute the GST payable on the estimated sale value of the projects (un-booked and expecting to book prior to obtaining completion certificate) at 12%(C)= (1500*20*5000)*12%	1.8Cr
4	Compute the ITC availed on the project including transitional credit (D)	3.75Cr
5	Compute the estimated ITC to be paid on input, input service and capital goods till the end of the project (E).	0.25Cr
6	Compute the net tax payable on the project(F)= A+B+C-D-E	0.5Cr
7	Assuming customer has remitted only 5%. Balance 7% would be cost to Developer(G)= (1500*30*5000*10%)*5%+(1500*20*5000)*5%	0.8625
8.	Total cost to Developer (H)= (B)+(C)-G	1.2075

If Developer opts for new scheme:

Steps	Action	Amount
1.	Compute the GST that needs to be reversed in case of opting for new scheme of 5% (i.e. credit pertaining to input, input service and capital goods pertaining to flats un-booked as on 31st of March 2019 and to the extent of the time of supply (installments due or receipt of money, whichever is earlier) falling after 1st April 2019) A1 (ITC eligible or reversal) =3.75Cr – (3.75Cr* 60%*90%*1.11)(refer working note-1)	1.50225
2.	Compute the estimated ITC to be paid on input, input service and capital goods till the end of the project (B1)	0.25
3.	Arrive at cost under the new project(C1) =A1+B1	1.75225
4.	Decide = If H < C1 = Continue Old Scheme Here, 1.2075< 1.75225. Thus, old scheme would be beneficial.	

Working Note -1:

ITC to be reversed (Tx) = T-Te

Tx= ITC attributable to construction where ToS is on or after 01.04.2019

T= Total ITC availed as on 31.03.2019

Te= ITC attributable to construction where ToS is on or before 31.03.2019

Te=T* (% of flats booked on or before 31.03.2019)* (% of invoicing (as per ToS) on or before 31.03.2019) * 1 / % of completion of construction as on 31.03.2019.

Te= 3.75 Cr* 30/50*90%*1.11= 2.24775 Cr

Continuing the above illustration, we would proceed to analyse the best option to Y Ltd:

- *Out of 50 flats allotted to Landowner, 90% of construction is completed. It sold 10 flats for Rs. 5000 per sq. ft prior to 01.04.2019. 90% invoicing is done and payment for the same was received from the customer and the tax on the same was paid.*
- *ITC availed by the Landowner on the construction services provided by the Developer - Rs. 1 crore*
- *Completion certificate is not received on or before 31.03.2019.*

Steps	Action	Amount
1	GST paid @12% on the consideration already received on the flats booked(A)=(1500*10*5000*90%)*12%	0.81 Cr
2	GST @12% payable for the balance consideration to be received out of the flats booked (B) = (1500*10*5000*10%)*12%.	0.09 Cr
3	Compute the GST payable on the estimated sale value of the projects (un-booked and expecting to book prior to obtaining completion certificate) at 12%(C)= (1500*40*5000)*12%	3.60 Cr
4	ITC charged by Developer (D)	1.00 Cr
6	Compute the net tax payable on the project(E)= A+B+C-D	3.50 Cr
7	Assuming customer has remitted only 5%. Balance 7% would be cost to Landowner(F)= (1500*10*5000*10%)*7%+ (1500*40*5000)*7% 525000	2.1525 Cr
8.	Total cost to Developer (G)= E+F	5.6525 Cr

If Landowner opts for new scheme:

Steps	Action	Amount
1.	Compute the GST that needs to be reversed in case of opting for new scheme of 5% (i.e. credit pertaining to input, input service and capital goods pertaining to flats un-booked as on 31st of March 2019 and to the extent of the time of supply (installments due or receipt of money, whichever is earlier) falling after 1st April 2019) A1 (ITC eligible or reversal) = 1Cr – (1Cr* 20%*90%*1.11)	0.1998
2.	Total cost under the new project(B1=A1)	0.1998
3.	Decide = If G < B1 = Continue Old Scheme Here, 5.6526 > 0.1998. Thus, new scheme would be beneficial.	

Complications in case 5% is opted for on-going projects (Developer):

1. ITC would be a cost to Developer as thus cost data is required to be re-worked which may lead to change in price per sq. ft. Customer may not agree to such increased price.
2. Project wise data w.r.t. inputs and input services shall be constructed or identified.
3. If customer does not agree to remit 7% GST, then the same would have to be shown as discounts in invoice and books.
4. ITC availment or reversal shall be calculated for each project.
5. Procurements from registered persons shall be computed and if they are less than 80% of total procurements, then GST under RCM has to be paid on shortfall. This may lead to blockage of working capital.

Pros of opting new scheme by Landowner:

1. As Landowner would be availing ITC of GST charged by the Developer, the computations of 80% of registered purchases and the applicability of RCM in case of shortfall would not apply to Landowner. As the 100% procurements would be from the registered person only.

Points to remember before decision making:

1. If in a JDA, Time of supply is 01.03.2019 but neither the Developer nor the Landowner has discharged the liability and, if they discharge after the introduction of new scheme, then Developer/Landowner would be eligible to claim ITC of GST charged by the other party but such ITC cannot be utilised against the output tax liability relating to sale of flats to customers, if both the Landowner/ Developer opt to pay GST @ 5% on the on-going projects. However, such ITC can be utilised to pay any other outward tax liabilities.
2. If the project is almost completed i.e. more than 80% or approx, then it would be suggested that the Developer could pay GST under existing scheme as majority of inputs or input services would have been procured and ITC on such procurements would have been availed in his electronic credit ledger. However, if the project is in initial stages of construction where major part of inputs or input services are not procured then, it would be recommended to opt for new scheme.
3. For the Landowner, as the ITC would be mostly only the construction services provided by the Developer, opting for the new scheme would be beneficial.

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9. RELEVANT PROVISIONS OF ACTS & RULES

9.1 THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

CHAPTER III

LEVY AND COLLECTION OF TAX

7. Scope of supply - *(1) For the purposes of this Act, the expression "supply" includes—*
(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
(b) import of services for a consideration whether or not in the course or furtherance of business;
(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.
(2) Notwithstanding anything contained in sub-section (1),—
(a) activities or transactions specified in Schedule III; or
(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.
(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—
(a) a supply of goods and not as a supply of services; or
(b) a supply of services and not as a supply of goods.

8. Tax liability on composite and mixed supplies - *The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—*
(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

9. Levy and collection *- (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*
(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

10. Composition levy - *(1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding,—*
(a) one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,
(b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and
(c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers, subject to such conditions and restrictions as may be prescribed: Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council.
(2) The registered person shall be eligible to opt under sub-section (1), if:—
(a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;
(b) he is not engaged in making any supply of goods which are not leviable to tax under this Act;
(c) he is not engaged in making any inter-State outward supplies of goods;
(d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council: Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.
(3) The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).
(4) A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.
(5) If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.

11. Power to grant exemption tax - *(1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both*
of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be. Explanation.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both

CHAPTER - IV
TIME AND VALUE OF SUPPLY

13. Time of supply of services *- (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.*

(2) The time of supply of services shall be the earliest of the following dates, namely:—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount. Explanation.—For the purposes of clauses (a) and (b)—

(i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

(3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:—

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (a) or clause (b), the time of supply shall be the date of entry in the books of account of the recipient of supply:
Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier. (4) In case of supply of vouchers by a supplier, the time of supply shall be—
(a) the date of issue of voucher, if the supply is identifiable at that point; or (b) the date of redemption of voucher, in all other cases.
(5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—
(a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
(b) in any other case, be the date on which the tax is paid.
(6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

14. Change in rate of tax in respect of goods or services - *Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely:—*
(a) in case the goods or services or both have been supplied before the change in rate of tax,—
(i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or
(ii) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or
(iii) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;
(b) in case the goods or services or both have been supplied after the change in rate of tax,—
(i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or
(ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or
(iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:
Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.
Explanation.—For the purposes of this section, "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

15. Value of taxable supply - *(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or*

both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. (2) The value of supply shall include––

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.––For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given––

(a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply has been effected, if—

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

***Explanation**.—For the purposes of this Act,––*

(a) persons shall be deemed to be "related persons" if––

(i) such persons are officers or directors of one another's businesses;

(ii) such persons are legally recognised partners in business;

(iii) such persons are employer and employee;

(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(v) one of them directly or indirectly controls the other;

(vi) both of them are directly or indirectly controlled by a third person;

(vii) together they directly or indirectly control a third person; or

(viii) they are members of the same family; (b) the term "person" also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

CHAPTER-V
INPUT TAX CREDIT

16. Eligibility and Conditions for taking input tax credit - *(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation.—*For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;*

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39: Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment: Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed: Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

17. Apportionment of credit and blocked credits – *(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.*

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause

(b) of paragraph 5 of Schedule II, sale of building.

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse: Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year: Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) motor vehicles and other conveyances except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre;

(iii) rent-a-cab, life insurance and health insurance except where—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) (B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and (i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation.—For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) land, building or any other civil structures;

(ii) Telecommunication towers; and (iii) pipelines laid outside the factory premises.

SCHEDULE-I

Section 7

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. *Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.*
2. *Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business: Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.*
3. *Supply of goods—*
   (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
   (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. *Import of services by a person1 from a related person or from any of his other establishments outside India, in the course or furtherance of business.*

Schedule- II

Section 7

ACTIVITIES OR TRANSACTIONS 1TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

1. *Transfer*

(a) any transfer of the title in goods is a supply of goods;

(b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;

(c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

2. ***Land and Building***

(a) any lease, tenancy, easement, licence to occupy land is a supply of services; (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. ***Treatment or process*** *Any treatment or process which is applied to another person's goods is a supply of services.*

4. ***Transfer of business assets***

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. ***Supply of services*** *The following shall be treated as supply of service, namely:—*

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation - For the purposes of this clause—

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

6. ***Composite supply*** *The following composite supplies shall be treated as a supply of services, namely:—*

   (a) works contract as defined in clause (119) of section 2; and

   (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

7. ***Supply of Goods***

   The following shall be treated as supply of goods, namely:— Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

SCHEDULE-III

Section 7

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. *Services by an employee to the employer in the course of or in relation to his employment.*
2. *Services by any court or Tribunal established under any law for the time being in force. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;*

   (b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

3. *Services of funeral, burial, crematorium or mortuary including transportation of the deceased.*
4. *Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.*
5. *Actionable claims, other than lottery, betting and gambling*
6. *Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.*
7. *(a) Supply of warehoused goods to any person before clearance for home consumption; (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.*

*Explanation 1 - For the purposes of paragraph 2, the term **"Court"** includes District Court, High Court and Supreme Court.*

Explanation 2.—For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.

9.2 THE INTEGRATED GOODS AND SERVICES TAX ACT, 2017

CHAPTER -III

LEVY AND COLLECTION OF TAX

5 Levy and collection - (1). *Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person: Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.*

(2). *The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.*

(3). *The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*

(4).*The integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*

(5). *The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services: Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax: Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.*

6. Power to grant exemption from tax - *(1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.*

(2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an Explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such Explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

9.3 Central Goods and Services Tax Rules, 2017

CHAPTER-IV

DETERMINATION OF VALUE OF SUPPLY

27. Value of supply of goods or services where the consideration is not wholly in money*.-Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,-*

(a) be the open market value of such supply;

(b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

(c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

(d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

Illustration: (1) Where a new phone is supplied for twenty thousand rupees along with the exchange of an old phone and if the price of the new phone without exchange is twenty four thousand rupees, the open market value of the new phone is twenty four thousand rupees.

(2) Where a laptop is supplied for forty thousand rupees along with the barter of a printer that is manufactured by the recipient and the value of the printer known at the time of supply is four thousand rupees but the open market value of the laptop is not known, the value of the supply of the laptop is forty four thousand rupees.

CHAPTER –V
INPUT TAX CREDIT

42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof.*-(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-*

(a) the total input tax involved on inputs and input services in a tax period, be denoted as 'T';

(b) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as 'T1';

(c) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as 'T2';

(d) the amount of input tax, out of 'T', in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as 'T3';

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as 'C1' and calculated asC1 = T- (T1+T2+T3);

(f) the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as 'T4';

[Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of T4 shall be zero during the construction phase because inputs and input services would be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.]

(g) 'T1', 'T2', 'T3' and 'T4' shall be determined and declared by the registered person at the invoice level in FORM GSTR-2 [and at summary level in FORM GSTR-3B]

(h) input tax credit left after attribution of input tax credit under clause [(f)] 38 shall be called common credit, be denoted as 'C2' and calculated as

C2 = C1- T4;

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as 'D1' and calculated as

D1= (E÷F) × C2

where,

'E' is the aggregate value of exempt supplies during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period:

[Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of 'E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:-

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F= aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of 'E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended.]

[Provided further]40 that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A]41 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D2', and shall be equal to five per cent. of C2; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C3',
where,-

C3 = C2 - (D1+D2);

(l) the amount 'C3', 'D1' and 'D2' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03;]

(m) the amount equal to aggregate of 'D1' and 'D2' shall be [reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03:]
Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in 'T1' and 'T2' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T4'.

(2) [Except in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax credit]44 determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and-

(a) where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be [reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03]45 in the month not later than the month of September following the end of the financial year to which such credit relates

and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(c) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

[(3) In case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for each ongoing project or project which commences on or after 1st April, 2019, which did not undergo or did not require transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1stJuly, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the manner prescribed in the said sub-rule, with the modification that value of E/F shall be calculated taking value of E and F as under:

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:
F= aggregate carpet area of the apartments in the project;
and,-

(a) where the aggregate of the amounts calculated finally in respect of 'D1' and
'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation of the project takes place and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(4) In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for commercial portion in each project, other than residential real estate project (RREP), which underwent transition of input tax credit consequent to change of rates of tax on the 1st April, 2019 in accordance with notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the following manner.
(a) The aggregate amount of common credit on commercial portion in the project (C3aggregate_comm) shall be calculated as under,

C3aggregate_comm =[aggregate of amounts of C3 determined under sub- rule (1) for the tax periods starting from 1st July, 2017 to 31st March, 2019, x (AC / AT)] + [aggregate of amounts of C3 determined under sub- rule (1)for the tax periods starting from 1st April, 2019 to the date of completion or first occupation of the project, whichever is earlier]

Where, -
AC = total carpet area of the commercial apartments in the project
AT = total carpet area of all apartments in the project

(b) The amount of final eligible common credit on commercial portion in the project (C3final_comm) shall be calculated as under

C3final_comm =C3aggregate_comm x (E/ F)

Where, -
E = total carpet area of commercial apartments which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.
F = AC = total carpet area of the commercial apartments in the project
(c) where, C3aggregate_comm exceeds C3final_comm, such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment;

(d) where, C3final_comm exceeds C3aggregate_comm, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(5) Input tax determined under sub- rule (1) shall not be required to be calculated finally on completion or first occupation of an RREP which underwent transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017,

(6) Where any input or input service are used for more than one project, input tax credit with respect to such input or input service shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (3)

43. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases.*-(1) Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-*

(a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-2 [and FORM GSTR-3B] 47 and shall not be credited to his electronic credit ledger;

(b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies shall be indicated in FORM GSTR-2 [and FORM GSTR-3B] 48 and shall be credited to the electronic credit ledger;

[Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the said Act, the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies, shall be zero during the construction phase because capital goods would be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.]

(c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', shall be credited to the electronic credit ledger and the useful life of such goods shall be taken as five years from the date of the invoice for such goods:

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, the value of 'A' shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof and the amount 'A' shall be credited to the electronic credit ledger;

Explanation.- An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause.

(d) the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c), to be denoted as 'Tc', shall be the common credit in respect of capital goods for a tax period:

Provided that where any capital goods earlier covered under clause (b) is subsequently covered under clause (c), the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof shall be added to the aggregate value 'Tc';

(e) the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'Tm' and calculated as-

$T_m = T_c \div 60$

(f) the amount of input tax credit, at the beginning of a tax period, on all common capital goods whose useful life remains during the tax period, be denoted as 'Tr' and shall be the aggregate of 'Tm' for all such capital goods;

(g) the amount of common credit attributable towards exempted supplies, be denoted as 'Te', and calculated as-

$T_e = (E \div F) \times T_r$

where,

'E' is the aggregate value of exempt supplies, made, during the tax period, and 'F' is the total turnover [in the State] of the registered person during the tax period:

[Provided that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the value of 'E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F= aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

Explanation 2: Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR No. 690 (E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of 'E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated the 28th June, 2017 vide GSR No. 690 (E) dated 28th June, 2017, as amended.]

Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation.- For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 [and entry 92A]53 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the

said Schedule; (h) the amount Te along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

(h) the amount T_e along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit. [(i) The amount Te shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR3B.]

[(2) In case of supply of services covered by clause (b) of paragraph 5 of schedule II of the Act, the amount of common credit attributable towards exempted supplies (Te^{final}) shall be calculated finally for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, for each project separately, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, as under: Te^{final}= [(E1 + E2 + E3) /F] x Tc^{final},

Where,-

E1= aggregate carpet area of the apartments, construction of which is exempt from tax

E2= aggregate carpet area of the apartments, supply of which is partly exempt and partly taxable, consequent to change of rates of tax on 1st April, 2019, which shall be calculated as under-,

E2= [Carpet area of such apartments] x [V1/ (V1+V2)],-

Where,-

V1 is the total value of supply of such apartments which was exempt from tax; and

V2 is the total value of supply of such apartments which was taxable

E3 = aggregate carpet area of the apartments, construction of which is not exempt from tax, but have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F= aggregate carpet area of the apartments in the project;

Tc^{final} = aggregate of A^{final} in respect of all capital goods used in the project and Afinal for each capital goods shall be calculated as under,

A^{final}= A x (number of months for which capital goods is used for the project/ 60) and,-

(a) where value of Te^{final} exceeds the aggregate of amounts of Te determined for each tax period under sub-rule (1), such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where aggregate of amounts of Te determined for each tax period under sub-rule (1) exceeds Te^{final}, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

Explanation. - For the purpose of calculation of Tc^{final}, part of the month shall be treated as one complete month. (3) The amount Te^{final} and Tc^{final} shall be computed separately for input tax credit of

central tax, State tax, Union territory tax and integrated tax. (4) Where any capital goods are used for more than one project, input tax credit with respect to such capital goods shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (2). (5) Where any capital goods used for the project have their useful life remaining on the completion of the project, input tax credit attributable to the remaining life shall be availed in the project in which the capital goods is further used;

Explanation 1: -For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -

(a) the value of supply of services specified in the notification of the Government of India in the Ministry of Finance, Department of Revenue No. 42/2017-Integrated Tax (Rate), dated the 27th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1338(E) dated the 27th October, 2017; (b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and (c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

Explanation 2: For the purposes of rule 42 and this rule,-

(i) the term "apartment" shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(ii) the term "project" shall mean a real estate project or a residential real estate project;

(iii) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(iv) the term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;

(v) the term "promoter" shall have the same meaning as assigned to it in in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(vi) "Residential apartment" shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;

(vii) "Commercial apartment" shall mean an apartment other than a residential apartment;

(viii) the term "competent authority" as mentioned in definition of "residential apartment", means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

(ix) the term "Real Estate Regulatory Authority" shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016) by the Central Government or State Government;

(x) the term "carpet area" shall have the same meaning assigned to it in in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(xi) "an apartment booked on or before the date of issuance of completion certificate or first occupation of the project" shall mean an apartment which meets all the following three conditions, namely-

(a) part of supply of construction of the apartment service has time of supply on or before the said date; and

(b) consideration equal to at least one installment has been credited to the bank account of the registered person on or before the said date; and

(c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.

(xii) The term "ongoing project" shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;

(xiii) The term "project which commences on or after 1st April, 2019" shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;

10. Relevant entries of the rate notifications

10.1 Notification no. 11/2017-Central Tax (Rate) dated 28.06.2017

Chapter/Section/ Heading	Description of service	Rate	Condition
Heading	*[79][(i) Construction of affordable*	*0.75*	*Provided that the central tax at the*

9954 *(Construction services)*	*residential apartments by a promoter in a Residential Real Estate Project (herein after referred to as RREP) which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)*		*rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only;* *Provided also that credit of input tax charged on goods and services used in supplying the service hasnot been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;* *Provided also that the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable to construction in a project, time of supply of which is on or after 1st April, 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;* *Provided also that where a registered person (landowner- promoter) who transfers development right or FSI (including additional FSI) to a promoter (developer- promoter) against consideration, wholly or partly, in the form of construction of apartments, -* *(i) the developer- promoter shall pay tax on supply of construction of apartments to the landowner-promoter, and* *(ii) such landowner – promoter shall be eligible for credit of taxes charged from him by the developer promoter towards the supply of construction of apartments by developer-promoter to him, provided the landowner- promoter further*
	(ia) Construction of residential apartments other than affordable residential apartments by a promoter in an RREP which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received	*3.75*	

	after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)		*supplies such apartments to his buyers before issuance of completion certificate or first occupation, whichever is earlier,and pays tax on the same which is not less than the amount of tax charged from him on construction of such apartments by the developer-promoter.*
	(ib) Construction of commercial apartments (shops, offices, godowns etc.) by a promoter in an RREP which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	*3.75*	*Explanation. -* *(i) "developer- promoter" is a promoter who constructs or converts a building into apartments or develops a plot for sale,* *(ii) "landowner- promoter" is a promoter who transfers the land or development rights or FSI to a developer- promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently.* *Provided also that eighty percent of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only;* *Provided also that inputs and input services on which tax is paid on reverse charge basis shall be deemed*
	(ic) Construction of affordable residential apartments by a	*0.75*	

	*promoter **in a Real Estate Project (herein after referred to as REP) other than RREP,** which commences on or after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)*		*to have been purchased from registered person;* *Provided also that where value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) falls short of the said threshold of 80 per cent., tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of eighteen percent on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017) shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both;* *Provided also that notwithstanding anything contained herein above, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rates on reverse charge basis and all the provisions of the Central Goods and Services Tax Act, 2017 (12 of 2017),shall apply to him as if he is the person liable for paying the tax in relation to such supply of cement;* *(Please refer to the illustrations in annexure III)* *Explanation. -* *1. The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial*
	*(id) Construction of residential apartments other than affordable residential apartments by a promoter **in a REP other than a RREP** which commences on or after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the*	*3.75*	

	rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)		*year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.* *2. Notwithstanding anything contained in Explanation 1 above, tax on cement received from unregistered person shall be paid in the month in which cement is received.* *3. Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2)].*
	(ie) Construction of an apartment in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), subitem (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item. (Provisions of paragraph 2 of this notification shall apply for	*6*	*Provided that in case of ongoing project, the registered person shall exercise one time option in the Form at Annexure IV to pay central tax on construction of apartments in a project at the rates as specified for item (ie) or (if), as the case may be, by the 10th of May, 2019;* *Provided also that where the option is not exercised in Form at annexure IV by the 10th of May, 2019, option to pay tax at the rates as applicable to item (i) or (ia) or (ib) or (ic) or (id) above, as the case may be, shall be deemed to have been exercised;* *Provided also that invoices for supply*

	valuation of this service)		*of the service can be issued during the period from 1st April 2019 to 10th May 2019 before exercising the option, but such invoices shall be in accordance with the option to be exercised.;**]***
	(if) Construction of a complex, building, civil structure or a part thereof, including,- *(i) commercial apartments (shops, offices, godowns etc.) by a promoter **in a REP other than RREP**,* *(ii) residential apartments in an ongoing project, other than affordable residential apartments, in respect of which the promoter has exercised option to pay central tax on construction of apartments at the rates as specified for this item in the manner prescribed herein,* *but excluding supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) above intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.* *Explanation. -For the removal of*		

	doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry. (Provisions of paragraph 2 of this notification shall apply for valuation of this service		
	[1]*[(iii) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the* [12]*[Central Government, State Government, Union territory, a local authority, a Governmental Authority or a Government Entity] by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, -* • *a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity*	6	[14]*[Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be].*

	specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); • *canal, dam or other irrigation works;* *pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal.*		
	(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 [81]***[****other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above****],* *supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-* *(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;* *(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or*	6	

	Rajiv Awaas Yojana; *[38][(c) a civil structure or any other original works pertaining to the "In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);]* *(d) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction / enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;* *[39][(da) a civil structure or any other original works pertaining to the "Economically Weaker Section (EWS) houses" constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);* *(db) a civil structure or any other original works pertaining to the "houses constructed or acquired*		

	under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MlG-1)/ Middle Income Group-2 (MlG-2)" under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);] *(e) a pollution control or effluent treatment plant, except located as a part of a factory; or* *(f) a structure meant for funeral, burial or cremation of deceased.* *[39][(g) a building owned by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralised cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.]*		
	(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017 [82]**[**other	6	

	than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above**]**, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,- (a) railways, [40][including] monorail and metro; (b) a single residential unit otherwise than as a part of a residential complex; (c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India; (d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under- (1) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;		

	(2) any housing scheme of a State Government; [39][(da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March,2017;] (e) post harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or (f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.		
	[83][(va) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia),	*6*	*Provided that carpet area of the affordable residential apartments as specified in the entry in column (3) relating to this item, is not less than 50 per cent. of the total carpet area of*

	(ib), (ic), (id), (ie) and (if) above, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of affordable residential apartments covered by sub- clause (a) of clause (xvi) of paragraph 4 below, in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if), as the case may be, in the manner prescribed therein,		*all the apartments in the project;* *Provided also that for the purpose of determining whether the apartments at the time of supply of the service are affordable residential apartments covered by sub- clause (a) of clause (xvi) of paragraph 4 below or not, value of the apartments shall be the value of similar apartments booked nearest to the date of signing of the contract for supply of the service specified in the entry in column (3) relating to this item;* *Provided also that in case it finally turns out that the carpet area of the affordable residential apartments booked or sold before or after completion, for which gross amount actually charged was forty five lakhs rupees or less and the actual carpet area was within the limits prescribed in sub- clause (a) of clause (xvi) of paragraph 4 below, was less than 50 per cent. of the total carpet area of all the apartments in the project, the recipient of the service, that is, the promoter shall be liable to pay such amount of tax on reverse charge basis as is equal to the difference between the tax payable on the service at the applicable rate but for the rate prescribed herein and the tax actually*

			*paid at the rate prescribed herein**]***
	*[11][(vi) [36][Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, [84][**]other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above**]** provided] to the Central Government, State Government, Union Territory, [13][a local authority, a Governmental Authority or a Government Entity] by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –* *(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;* *(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or* *(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of*	*6*	*[14][Provided that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be]*

	the Schedule III of the Central Goods and Services Tax Act, 2017. [59]***[****Explanation. - For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.****]***		
	[85]***[****(xii) Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above.* *Explanation. - For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id), (ie) and (if) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry***]**	9	

10.2 Notification No.12/2017-Central Tax (Rate) dated 28.06.2017

Sections or Chapter or heading	Description of service	Rate	Conditions

Heading 9972	*Service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.* *The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under:* *[GST payable on TDR or FSI (including additional FSI) or both for construction of the project]* ***x*** *(carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project)*	*Nil*	*Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner -* *[GST payable on TDR or FSI (including additional FSI) or both for construction of the residential apartments in the project but for the exemption contained herein] x (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project)* *Provided further that tax payable in terms of the first proviso hereinabove shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 per cent. of the value in case of residential apartments*

			other than affordable residential apartments remaining un- booked on the date of issuance of completion certificate or first occupation *The liability to pay central tax on the said portion of the development rights or FSI, or both, calculated as above, shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier.*
Heading 9972	*Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 01.04.2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.* *The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under:* *[GST payable on upfront amount (called*	*Nil*	*Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, as is attributable to the residential apartments, which remain un- booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner -* *[GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction*

	as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] ***x*** *(carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project).*		*of the residential apartments in the project but for the exemption contained herein]* ***x*** *(carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project);* *Provided further that the tax payable in terms of the first proviso shall not exceed 0.5 per cent. of the value in case of affordable residential apartments and 2.5 per cent. of the value in case of residential apartments other than affordable residential apartments remaining un- booked on the date of issuance of completion certificate or first occupation.* *The liability to pay central tax on the said proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case may be.****]***

10.3 Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017

Sl.No.	Category of supply of services	Supplier of service	Recipient of service
5B	*Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.*	*Any person*	*Promoter.*
5C	*Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.*	*Any person*	*Promoter.**]***

10.4 Notification No. 07/2019-Central Tax (Rate) dated 29.03.2019

Sl. No.	Category of supply of goods and services	Recipient of goods and services
1	*Supply of such goods and services or both [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3*	*Promoter.*

	in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	
2	*Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975)which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.*	*Promoter.*
3	*Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975)supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.*	*Promoter*

10.5 Notification no. 08/2017-Integrated Tax (Rate) dated 28.06.2017

Chapter /Sections/heading	**Description of service**	**Rate**	**Conditions**
Heading 9954 *(Construction services)*	*[84][(i) Construction of affordable residential apartments by a promoter in a Residential Real Estate Project*	*1.5*	*Provided that the integrated tax at the rate specified in column (4) shall be paid in cash, that is, by debiting*

	(herein after referred to as RREP) which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay integrated tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service) .		*the electronic cash ledger only; Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP; Provided also that the registered person shall pay, by debit in the electronic credit ledger or electronic cash ledger, an amount equivalent to the input tax credit attributable to construction in a project, time of supply of which is on or after 1st April, 2019, which shall be calculated in the manner as prescribed in the Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP; Provided also that where a registered person (landowner-promoter) who transfers development right or FSI (including additional FSI) to a promoter (developer- promoter) against consideration, wholly or partly, in the form of construction of apartments, - (i) the developer- promoter shall pay tax on supply of construction of apartments to the landowner-*
	ia) Construction of residential apartments other than affordable residential apartments by a promoter in an RREP which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay integrated tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer,	*7.5*	

	wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. *(Provisions of paragraph 2 of this notification shall apply for valuation of this service)*		*promoter, and* *(ii) such landowner – promoter shall be eligible for credit of taxes charged from him by the developer promoter towards the supply of construction of apartments by developer- promoter to him, provided the landowner- promoter further supplies such apartments to his buyers before issuance of completion certificate or first occupation, whichever is earlier, and pays tax on the same which is not less than the amount of tax charged from him on construction of such apartments by the developer- promoter.* **Explanation. -** *(i) "developer- promoter" is a promoter who constructs or converts a building into apartments or develops a plot for sale,* *(ii) "landowner- promoter" is a promoter who transfers the land or development rights or FSI to a developer- promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently.*

	(ib) Construction of commercial apartments (shops, offices, godowns etc.) by a promoter in an RREP which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay integrated tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. *(Provisions of paragraph 2 of this notification shall apply for valuation of this service)*		*Provided also that eighty percent of value of input and input services, [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only;* *Provided also that inputs and input services on which tax is paid on reverse charge basis shall be deemed to have been purchased from registered person;* *Provided also that where value of input and input services received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier) falls short of the said threshold of 80 per cent., tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of eighteen percent on reverse*

	(ic) Construction of affordable residential apartments by a promoter **in a Real Estate Project (herein after referred to as REP) other than RREP,***which commences on or after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay integrated tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer,*	*7.5*	*charge basis and all the provisions of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) shall apply to him as if he is the person liable for paying the tax in relation to the supply of such goods or services or both;* *Provided also that notwithstanding anything contained herein above, where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement at the applicable rates on reverse charge basis and all the provisions of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), shall apply to him as if he is the person liable for paying the tax in relation to such supply of cement; (Please refer to the illustrations in annexure III)* *Explanation. -* *1. The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter*

	wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service). *(id) Construction of residential apartments other than affordable residential apartments by a promoter in a REP other than a RREP which commences on or after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay integrated tax on construction of apartments at the rates as specified for item (ie) or (if) below, as the case may be, in the manner prescribed therein, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation*		*following the financial year. The tax liability on the shortfall of inward supplies from unregistered person so determined shall be added to his output tax liability in the month not later than the month of June following the end of the financial year.* *2. Notwithstanding anything contained in Explanation 1 above, tax on cement received from unregistered person shall be paid in the month in which cement is received.* *3. Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2).*

	of this service)		

		1.5 *7.5*	

	(ie) Construction of an apartment in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the Table, in respect of which the promoter hasexercised option to pay integrated tax on construction of apartments at the rates as specified for this item. (Provisions of paragraph 2 of this notification shall apply for valuation of this service).	*12*	

	(if) Construction of a complex, building, civil structure or a part thereof, including,- *(i) commercial apartments (shops, offices, godowns etc.) by a promoter in a REP other than RREP,* *(ii) residential apartments in an ongoing project, other than affordable residential apartments, in respect of which the promoter has exercised option to pay integrated tax on construction of apartments at the rates as specified for this item in the manner prescribed herein,* *but excluding supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) above intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.* *Explanation. -For the removal of doubt, it is hereby clarified that,*		

	supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) in column (3) shall attract integrated tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry. *(Provisions of paragraph 2 of this notification shall apply for valuation of this service*	*18*	
	(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, [86]*[other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above***]** *supplied by way of construction***,** *erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-* *(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;* *(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv*	*12*	

	Awaas Yojana; [43]*[(c) a civil structure or any other original works pertaining to the "In-situ redevelopment of existing slums using land as a resource, under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);]* *(d) a civil structure or any other original works pertaining to the "Beneficiary led individual house construction / enhancement" under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;* [44]*[(da) a civil structure or any other original works pertaining to the "Economically Weaker Section (EWS) houses" constructed under the Affordable Housing in partnership by State or Union Territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);* *(db) a civil structure or any other original works pertaining to the "houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group*		

	(LIG)/ Middle Income Group-1 (MlG-1)/ Middle Income Group-2 (MlG-2)" under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);] *(e) a pollution control or effluent treatment plant, except located as a part of a factory; or* *(f) a structure meant for funeral, burial or cremation of deceased.* [44]*[(g) a building owned by an entity registered under section 12AA of the Income Tax Act, 1961 (43 of 1961), which is used for carrying out the activities of providing, centralised cooking or distribution, for mid-day meals under the mid-day meal scheme sponsored by the Central Government, State Government, Union territory or local authorities.]*		
	(v) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, [87]**[***other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above***]** *supplied by way of construction, erection, commissioning, or installation of original works pertaining to,-* *(a) railways,* [45]*[including]*	*12*	

	monorail and metro; *(b) a single residential unit otherwise than as a part of a residential complex;* *(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;* *(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under-* *(1) the "Affordable Housing in Partnership" component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;* *(2) any housing scheme of a State Government;* [44]*[(da) low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project*		

	which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009-INF, dated the 30th March, 2017;] *(e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or* *(f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages.*		
	[88]**[(***va) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of affordable residential apartments covered by sub- clause (a) of clause (xvi) of paragraph 4*	*12*	*Provided that carpet area of the affordable residential apartments as specified in the entry in column (3) relating to this item, is not less than 50 per cent. of the total carpet area of all the apartments in the project;* *Provided also that for the purpose of determining whether the apartments at the time of supply of the service are affordable residential apartments covered by sub- clause (a) of clause (xvi) of*

	below, in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option to pay integrated tax on construction of apartments at the rates as specified for item (ie) or (if), as the case may be, in the manner prescribed therein,		*paragraph 4 below or not, value of the apartments shall be the value of similar apartments booked nearest to the date of signing of the contract for supply of the service specified in the entry in column (3) relating to this item;* *Provided also that in case it finally turns out that the carpet area of the affordable residential apartments booked or sold before or after completion, for which gross amount actually charged was forty five lakhs rupees or less and the actual carpet area was within the limits prescribed in sub- clause (a) of clause (xvi) of paragraph 4 below, was less than 50 per cent. of the total carpet area of all the apartments in the project, the recipient of the service, that is, the promoter shall be liable to pay such amount of tax on reverse charge basis as is equal to the difference between the tax payable on the service at the applicable rate but for the rate prescribed herein and the tax actually paid at the rate prescribed herein***]***
	[16]*[(vi)* [37]*[Composite supply of works*	*12*	[19]*[Provided that where the services*

	contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, [89]*[other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above] provided] to the Central Government, State Government, Union Territory,* [18]*[a local authority, a Governmental Authority or a Government Entity] by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of –* *(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;* *(b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or* *(c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act,*		*are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be].*

	2017.] [64]**[***Explanation. - For the purposes of this item, the term 'business' shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.***]**		
	[89]**[***(xii) Construction services other than (i), (ia), (ib), (ic), (id), (ie), (if), (iii), (iv), (v), (va), (vi), (vii), (viii), (ix), (x) and (xi) above.* **Explanation. -** *For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id), (ie) and (if) in column (3) shall attract integrated tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry.***]**	*18*	

10.6 Notification No.09/2017-Integrated Tax (Rate) dated 28.06.2017

Chapter/Section/ Heading	Description of service	Rate	Condition
Heading 9972	*Service by way of transfer of development rights (herein refer TDR)*	*Nil*	*Provided that the promoter shall be liable to pay tax at the applicable*

	or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. *The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under:* *[GST payable on TDR or FSI (including additional FSI) or both for construction of the project] x (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project)*		*rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner -* *[GST payable on TDR or FSI (including additional FSI) or both for construction of the residential apartments in the project but for the exemption contained herein] x (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project)* *Provided further that tax payable in terms of the first proviso hereinabove shall not exceed 1 per cent. of the value in case of affordable residential apartments and 5 per cent. of the value in case of residential apartments other than affordable residential apartments*

			remaining un- booked on the date of issuance of completion certificate or first occupation *The liability to pay integrated tax on the said portion of the development rights or FSI, or both, calculated as above, shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier.*
Heading 9972	*Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 01.04.2019, for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.* *The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under:* *[GST payable on upfront amount*	*Nil*	*Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, as is attributable to the residential apartments, which remain un- booked on the date of issuance of completion certificate, or first occupation of the project, as the case may be, in the following manner -* *[GST payable on upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the residential apartments in the project but for the exemption*

	(called as premium, salami, cost, price, development charges or by any other name) payable for long term lease of land for construction of the project] x (carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project).		*contained herein] x (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation ÷ Total carpet area of the residential apartments in the project);* *Provided further that the tax payable in terms of the first proviso shall not exceed 1 per cent. of the value in case of affordable residential apartments and 5 per cent. of the value in case of residential apartments other than affordable residential apartments remaining un- booked on the date of issuance of completion certificate or first occupation.* *The liability to pay integrated tax on the said proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, calculated as above, shall arise on the date of issue of completion certificate or first occupation of the project, as the case may be.*

10.7 Notification No. 10/2017-Integrated Tax(Rate) dated 28.06.2017

Sl.No.	Category of supply of services	Supplier of service	Recipient of service
6B	*Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.*	*Any person*	*Promoter.*
6C	*Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of a project by a promoter.*	*Any person*	*Promoter.**]***

10.8 Notification No. 07/2019-Integrated Tax (Rate) dated 29.03.2019

Sl.No.	Category of supply of goods and services	Recipient of goods and services
1	*Supply of such goods and services or both [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 8/ 2017- Integrated Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial No. (3), published in Gazette of India vide G.S.R. No. 683 (E), dated 28th June, 2017, as amended.*	*Promoter.*
2	*Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) which constitute the shortfall from the minimum value of goods or*	*Promoter.*

	services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 8/ 2017- Integrated Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial No. (3), published in Gazette of India vide G.S.R. No. 683 (E), dated 28th June, 2017, as amended.	
3	*Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, in notification No. 8/ 2017- Integrated Tax (Rate), dated 28th June, 2017, published in Gazette of India vide G.S.R. No. 683, dated 28th June, 2017, as amended.*	*Promoter.*