

GST Update

Weekly Update
18.05.2019

- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 11.05.2019. It supplements the earlier GST Updates.
- This presentation is based on CGST Act/Rules/ Notifications. Similar parallel provisions in State Laws may be referred to as required

- One UT Tax Notifications issued
- One Press release on GST Practitioner examination issued by CBIC
- Part II of the FAQs on Real Estate issued by Tax Research Unit (TRU), Department of Revenue, Ministry of Finance

FAQs on Real Estate

- [http://www.cbic.gov.in/resources//htdocs-cbec/gst/FAQ\(II\)-Real-estate-sector-1405.pdf;jsessionid=C55B5CB701535A80B88C20D23FFF3A5B](http://www.cbic.gov.in/resources//htdocs-cbec/gst/FAQ(II)-Real-estate-sector-1405.pdf;jsessionid=C55B5CB701535A80B88C20D23FFF3A5B)
- Part II of the FAQs on Real Estate issued by Tax Research Unit (TRU), Department of Revenue, Ministry of Finance
- **Further 27 clarifications issued**
- Some of the important clarifications are as under:

- In case of an area sharing arrangement between a Landowner-Promoter and a Developer-Promoter, where the Project qualifies to be considered an “Ongoing Project”, whether an option of 1% or 5% (without ITC) vis-à-vis 8% or 12% (with ITC) as prescribed in Notification No. 3/2019 can be exercised by the Developer Promoter and Landowner Promoter independently?
- The legal and operational harmony necessitates that both the Landowner-Promoter and the Developer-Promoter exercise identical option for a project.

Part –II of FAQs on Real Estate (Contd)

- In case of an area sharing arrangement between a Landowner-Promoter and a Developer-Promoter in a New Project undertaken on or after 1/4/2019, the new effective rates of 1% and 5% without ITC are applicable to the apartments booked by the land owner promoter in an ongoing project as well as a new project which commences on or after 01- 04- 2019.
- The land owner promoter shall be entitled to ITC in respect of tax charged to him by the developer promoter on construction of such apartments.
- However, the land owner promoter shall not be entitled to avail ITC on any other services or goods used by him.

Part –II of FAQs on Real Estate (Contd)

- Whether non-saleable areas such as society office, club house, etc., are to be taken into consideration for determining 15% for deciding whether the project is RREP or not?
- Apartments shall be taken as commercial or residential apartments as declared to RERA authority.

- For the purpose of determining the threshold of Rs.45 lakhs in case of “affordable residential apartment”, whether the following charges generally recovered by the developer from the buyer shall be included? • Amenity Charges • Society formation charges • Advance maintenance • Legal Charges
- All the charges or amounts charged by the promoter from the buyer of the apartments shall form part of the gross amount charged.
- However the value shall not include stamp duty payable to the statutory authority, maintenance charges / deposits for maintenance of apartment or maintenance of common infrastructure.

Part –II of FAQs on Real Estate (Contd)

- In case of a Real Estate Project, comprising of Residential as well as Commercial portion (more than 15%), how is the minimum procurement limit of 80% to be tested, evaluated and complied with where the Project has single RERA Registration and a single GST Registration and it is not practically feasible to get separate registrations due to peculiar nature of building(s)?
- The promoter shall apportion and account for the procurements for residential and commercial portion on the basis of the ratio of the carpet area of the residential and commercial apartments in the project.

Part –II of FAQs on Real Estate (Contd)

- In an area sharing model, a promoter has to handover constructed flats/ apartments to the land owner who supplied TDR for the project.
- **The Value of TDR**, shall be equal to the amount charged by the promoter for similar apartments from the independent buyers booked on the date that is nearest to the date on which such development rights or FSI is transferred by the land owner to the promoter.

Part –II of FAQs on Real Estate (Contd)

- There is no exemption on TDR or FSI (Addl. FSI) for construction of commercial apartments. Therefore, GST shall be payable on TDR or FSI (including additional FSI) or both used in respect of
 - carpet area of commercial apartment and
 - un-booked residential apartments as on the date of issuance of Completion Certificate or first occupation of the project for the purpose of formula
- The GST on transfer of development rights or FSI (including additional FSI) is payable at the rate of 18% (9% + 9%) with ITC under Sl. No. 16, item (iii) of Notification No. 11/2017 - Central Tax (Rate) dated 28-06-2017 (heading 9972)

- **Whether the Input Tax Credit in relation to construction of units to be allotted to existing occupiers, in case of residential project opted for old rates or commercial projects, shall be allowed to the Developer?**
- Wherever tax is paid on construction of such apartments at the effective rates of GST of 8%/ 12% with ITC, the promoters shall be eligible for ITC, including ITC in relation to construction of units to be allotted to the existing occupiers even though there may not be a monetary consideration but the consideration is in the form of grant of TDR/FSI.

Part –II of FAQs on Real Estate (Contd)

- **What shall be the rate of GST applicable on projects in respect of which OC has been issued prior to 01.04.2019, but the balance demands are pending? Such projects are neither projects which commence on or after 01.04.2019 nor ongoing projects.**
- Time of supply of the service by way of construction of apartments in such projects falls prior to 01.04.2019 and accordingly the rates as existed prior to 01.04.2019 would apply to such balance demands.

Part –II of FAQs on Real Estate (Contd)

- Whether the ITC availed as per the second proviso applicable to clause (i) to clause (id) of serial 3 of Notification No. 11/2017 (as amended) can be adjusted against the output liability of 5% / 1%?
- No. GST on services of construction of an apartment by a promoter at the rate of 1%/ 5% is to be discharged in cash only.
- ITC, if any, may be used for discharging any other supply of service.

Part –II of FAQs on Real Estate (Contd)

- Expenditure such as salaries, wages, etc are not supplies under GST [Sl. 1 of Schedule III]. Whether such services will be included under input services for considering 80% criteria?
- Services by an employee to the employer in the course of or in relation to his employment are neither a goods nor a service as per clause 1 of the Schedule III of CGST Act, 2017. Therefore, salaries and wages paid by promoter to his employees will not be relevant for the minimum purchase requirement of 80% .

Part –II of FAQs on Real Estate (Contd)

- **Whether the inward supplies of exempted goods / services shall be included in the value of supplies from unregistered persons while calculating 80% threshold?**
- Yes. Inward supplies of exempted goods / services shall be included in the value of supplies from unregistered persons while calculating 80% threshold.

Part –II of FAQs on Real Estate (Contd)

- **Whether the amended rule 42 shall apply to all RREPs including ongoing projects?**
- In case of an ongoing RREP, in respect of which promoter opts for the new rates of 1% / 5% and which underwent transition of ITC consequent to change of rates of tax on 01.04.2019, ITC determined under sub- rule (1) of rule 42 shall not be required to be calculated finally on the completion or first occupation of the RREP.

- **Notification No. 03/2019-Union Territory Tax dated 16th May, 2019**
- New AAR appointed for Union territory of Andaman and Nicobar Islands.
 - Ms. Nidhi Sarohe, Joint Commissioner (Union territory Goods and Services Tax)
- New AAR appointed for Deputy Commissioner (Union territory Goods and Services Tax)
 - Shri Nilesh Nishikant Gurav, Deputy Commissioner (Union territory Goods and Services Tax)

Appellate authority for Advance Rulings

- **Notification No. 04/2019-Union Territory Tax dated 16th May, 2019**
- Appellate authority for Advance Rulings appointed in five UTs-
 - Andaman and Nicobar Islands,
 - Chandigarh
 - Daman and Diu
 - Dadra and Nagar Haveli
 - Lakshdweep

GST Practitioner Examination

- <http://www.cbic.gov.in/resources//htdocs-cbec/press-release/Press-Release-cum-Schedule-Eng.pdf>
- The GSTPs enrolled on the GST Network under sub-rule (2) of Rule 83 and covered by clause (b) of sub-rule (1) of Rule 83, i.e. those meeting the eligibility criteria of having enrolled as Sales Tax Practitioners or Tax Return Preparer under the existing law for a period not less than five years, are required to pass the said examination before 31.12.2019 in terms of Notification no. 03/2019-Central Tax dated 29.01.2019. Two such examinations for such GSTPs have already been conducted on 31.10.2018 and 17.12.2018

- The next two examinations in year 2019, for GSTPs falling under STPEL/TRPEL categories, shall be conducted on **14.06.2019 and 12.12.2019** (from 1100 hrs to 1330 hrs) at designated examination centers, all across India.
- Such candidates are hereby informed that the examination scheduled to be held on 12.12.2019 will be their **last chance to appear and pass the said examination**, failing which they shall not be given another opportunity/chance.

Any ISSUES/ queries?



- <https://cbec-gst.gov.in/>
- [CBEC MITRA HELPDESK](#)
 - 1800 1200 232
 - cbecmitra.helpdesk@icegate.gov.in
- GSTN Help Desk
 - <https://selfservice.gstsystem.in/> - Grievance redressal portal
 - Help Desk Number: 0120-4888999

Any ISSUES/ queries?

- Twitter Handles
- For General Questions
- https://twitter.com/askGST_GoI
- For technology related issues
- <https://twitter.com/askGSTech>
- NACIN twitter
- https://twitter.com/NACIN_OFFICIAL

THANK YOU