

IMPLEMENTATION OF NEW TAX RATES IN THE REAL ESTATE SECTOR

1. Rate of tax

With effect from April 1, 2019, the applicable rate of GST in the real estate sector will be as follows:

Particulars	Effective Rate of GST for promoters	Conditions
<ul style="list-style-type: none"> Construction of an apartment in an ongoing project under specified affordable housing schemes, <u>where promoter has opted for old rate</u> (Specified schemes have been listed in Annexure-1) 	8 percent with ITC	Taxpayer shall file the prescribed form, declaring availment of option to pay taxes under old rate scheme by May 10, 2019
<ul style="list-style-type: none"> Construction of residential apartments (other than affordable houses in specified schemes) in an ongoing project, <u>where promoter has opted for old rate</u> 	12 percent with ITC	
<ul style="list-style-type: none"> Construction of commercial apartments in a Real Estate Project ('REP'), where area of commercial apartments exceeds 15 percent of total carpet area (<i>whether ongoing or new</i>) 	12 percent with ITC	--
<ul style="list-style-type: none"> Construction of affordable residential apartments as per specific schemes in an ongoing Residential Real Estate Project ('RREP') or REP, <u>where promoter has not opted for old rate</u> Construction of new affordable residential apartments in RREP or REP 	1 percent without ITC	<ul style="list-style-type: none"> - ITC has not been availed - 80 percent of inputs and input services [other than capital goods, TDR/ JDA, FSI, long term lease (premiums), electricity, high speed diesel, motor spirit, natural gas] are procured from registered persons
<ul style="list-style-type: none"> Construction of residential apartments (other than affordable houses) in an ongoing RREP or REP, <u>where promoter has not opted for old rate</u> Construction of new residential apartments (other than affordable houses) in a RREP or REP Construction of commercial apartments in a RREP, where area of commercial apartments does not exceed 15 percent of total carpet area 	5 percent without ITC	
<ul style="list-style-type: none"> Supply of works contract service in relation to affordable residential apartments in a new project or an ongoing project, <u>where promoter has not opted for old rate scheme</u> (the purpose is to reduce tax incidence at input stage on sub-contractor's service for affordable housing projects) 	12 percent	

Notes:

- 1) Concessional rate of tax shall be paid in cash only.
- 2) For new projects, there is no option to pay taxes at higher rates and avail ITC. Charging new concessional rates and foregoing ITC is mandatory.
- 3) Credit shall be available to landowners procuring construction service in exchange of development rights, provided the landowners pay tax at the time of final sale.
- 4) The taxpayers making transition to concessional rate will have to compute transitional credit basis the detailed formulae given in the Notification, considering the carpet area of residential and commercial apartments in a project, invoicing done (time of supply has occurred) till March 31, 2019 and percentage completion of the project. The formulae require project wise details of input tax credit from July 1, 2017 till March 31, 2019.
- 5) In addition to the complex formulae, following additional conditions are also imposed on a taxpayer:
 - Where percentage invoicing prior to April 1, 2019 is greater than percentage completion, and the difference is more than 25 percent, value of percentage invoicing shall be deemed to be percentage completion plus 25 percent
 - Where value of invoices issued prior to April 1, 2019 is greater than consideration actually received, and the difference is more than 25 percent, value of invoices shall be deemed to be consideration received plus 25 percent
 - Where value of procurement of inputs and input services prior to April 1, 2019 is greater than value of actual consumption in percentage completion as on March 31, 2019, and the difference is more than 25 percent, eligible ITC may be computed basis the actual consumption

2. Amendment in Rule 42 and 43 (specific to construction services)

- Several amendments have been made in Rule 42 and 43 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') for constructions services.
- **Order No.4/2019-Central Tax dated March 29, 2019** has been issued empowering reversal of credit on carpet area basis in case of construction services. Corresponding changes have been introduced in Rule 42 and 42 of the CGST Rules.
- All the calculations shall be made for **each project**, separately. Inputs, input services and capital goods common for multiple projects shall be assigned to each project on reasonable basis.
- While making calculations for the tax period, value of exempt supplies will include aggregate carpet area of those apartments which are **identified by the promoter** to be sold after issuance of completion certificate.
- The **true up** of all intermediary reversals of a project will be done **at the time of issuance of completion certificate or first occupation of the project**, whichever is earlier. This shall be done before the due

date of furnishing of the return for the month of September, following the end of financial year in which such completion certificate is issued or first occupation takes place.

- True up for RREP where credits have been transited as per prescribed formula, shall not be required to be done.
- The '**amount of credits exclusively relatable to taxable supplies**' shall be '**zero**', as all the goods and services will be used commonly for construction of apartments which may be booked on or before the issuance of completion certificate or first occupation of the project, whichever is earlier, or booked afterwards.

[Refer: Notification No. 16/2019-Central Tax dated March 29, 2019]

3. RCM liability

The Government has notified the following category of goods and services, on which **promoter** shall be liable to pay GST on reverse charge basis:

Goods / Services	Condition	Rate of tax
Transfer of development rights (TDR) or Floor Space Index (FSI) (including additional FSI) for construction of a project	-	Applicable rate of tax
Long term lease of land (30 years or more) against consideration in the form of premium, salami, cost, price, development charges etc. ('upfront amount') and / or periodic rent for construction of a project	-	Applicable rate of tax
Goods / services [other than capital goods, TDR/ JDA, FSI, long term lease (premiums), electricity, high speed diesel, motor spirit, natural gas] <i>Applicable where, and to the extent, procurement of goods and services from a registered person in a financial year or part of financial year (where completion certificate has been issued) falls below 80 percent</i>	When procured from an unregistered person	18 percent <i>(Other than cement)</i>
Cement		28 percent
Capital goods		Applicable rate of tax

Notes:

- 1) Reverse charge shall be applicable to new projects and ongoing projects wherein new rates are opted.
- 2) Tax liability under reverse charge on inputs and input services (other than cement) **will be added in the output tax liability of month of June**, following the end of financial year in which the procurements were made. Whereas, tax liability under reverse charge on Cement will be paid in the **month in which Cement is received**.
- 3) Reverse charge is applicable on procurement of cement from unregistered person, irrespective of percentage of procurement from unregistered persons.
- 4) For computation of value of 80 percent, tax paid under reverse charge on procurement of inputs and input services (including cement) from unregistered persons will be considered.

[Refer: Notification No. 3/2019-Integrated Tax (Rate) dated March 29, 2019, Notification No. 5/2019-Integrated Tax (Rate) dated March 29, 2019, Notification No. 7/2019-Integrated Tax (Rate) and Notification No. 8/2019-Integrated Tax (Rate), both dated March 29, 2019]

4. GST Treatment of TDR / FSI and long-term lease for projects commencing after April 1, 2019

4.1. Exemption

- GST is not payable on services by way of TDR / FSI and upfront amount on long-term lease for projects commencing after April 1, 2019 where consideration has been received prior to issuance of completion certificate or before date of first occupation, whichever is earlier.
- In case of a project comprising of both residential and commercial apartments, exemption available shall be computed pro-rata basis the carpet area of the residential apartments.

4.2. Taxability

- Exemption shall not be available on the apartments which remain un-booked on the date of issuance of completion certificate or before date of first occupation, whichever is earlier. The proportionate value on which tax shall be payable shall be calculated as follows:

$$\frac{\text{GST payable on TDR/ FSI or upfront lease amount} \times \text{Carpet area of un-booked residential apartments}}{\text{Total carpet area of residential and commercial apartments}}$$

- GST will be payable on reverse-charge basis in such cases (Refer Point 3.2 above), and time of supply shall be the date of issuance of completion certificate or date of first occupation, whichever is earlier.
- The value of tax in the above case shall be limited to:
 - In case of Affordable houses: 1 percent of value
 - In case of other houses: 5 percent of value
- Methodology to compute TDR/ FSI and un-booked apartments has also been prescribed.

[Refer: Notification No. 4/2019-Integrated Tax (Rate) dated March 29, 2019 and Notification No. 6/2019-Integrated Tax (Rate) dated March 29, 2019]

Other amendments in Rule 42 and 43 of the CGST Rules

- Both the Rules have been amended to provide bifurcation of input tax credits exclusive for taxable supplies, credits exclusive for exempt supplies, credits exclusive for non-business purposes etc. in FORM GSTR-3B.
- In pursuance to calculations made under Rule 42 and 43, credits attributable to exempt supplies and non-business purposes shall be **reversed** under FORM GSTR-3B or through FORM GST DRC-03, **instead of adding** to output tax liability.

ANNEXURES

Annexure-1 – List of specified schemes

- Scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awas 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 (MIG-1)/ Middle Income Group-2 (MIG-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-
 - The “Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;
 - 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
- 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, 2017

Annexure-2 – Key definitions

Term	Definition
Affordable residential apartment	<p>(a) a residential apartment 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 in the prescribed form to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against S.No.3 of the Relevant Notification, <i>(promoters opting for old rates)</i> as the case may be, 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 forty five lakhs rupees.</p> <p>For the purpose of this clause, -</p> <p>(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;</p> <p>(ii) Gross amount shall be the sum total of;</p> <p style="margin-left: 40px;">A. Consideration charged for the services specified at item (i) and (ic) in column (3) against sl. No. 3 in the Table;</p> <p style="margin-left: 40px;">B. 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</p> <p style="margin-left: 40px;">C. 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.</p> <p>(b) an apartment being constructed 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 above, 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) against serial number 3, as the case may be.</p>
Apartment	<p>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;</p>
An apartment booked on or before the date of issuance of completion certificate or first	<p>It shall mean an apartment which meets all the following three conditions, namely-</p> <p>(a) part of supply of construction of the apartment service has time of supply on or before the said date; and</p> <p>(b) consideration equal to at least one instalment has been credited to the bank account of the registered person on or before the said date; and</p>

occupation of the project	(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.
Floor space index (FSI)	It 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.
Carpet area	<p>It means 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.</p> <p><i>Explanation:</i> 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.</p>
Commencement certificate	It 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.
Commercial apartment	It shall mean an apartment other than a residential apartment.
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.
Development works	Means the external development works and internal development works on immovable property.
External development works	Includes roads and road systems landscaping, water supply, sewage 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.
Internal development works	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.
Project	Means the real estate project as defined in clause (zn).

<p>Promoter</p>	<p>Means,</p> <p>(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</p> <p>(ii) a person who develops 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</p> <p>(iii) any development authority or any other public body in respect of allottees of- (a) 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 (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</p> <p>(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</p> <p>(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</p> <p>(vi) such other person who constructs any building or apartment for sale to the general public.</p> <p>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 sells 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;</p>
<p>Residential apartment</p>	<p>It shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority.</p>
<p>Real Estate Regulatory Authority</p>	<p>It 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.</p>
<p>Real Estate Project (REP)</p>	<p>It means 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</p>

	some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;
Residential Real Estate Project (RREP)	It 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;
Ongoing project	<p>It shall mean a project which meets all the following conditions, namely-</p> <p>(a) 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:</p> <p>(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or</p> <p>(ii) a chartered engineer registered with the Institution of Engineers (India); or</p> <p>(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.</p> <p>(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 on or before the 31st March 2019;</p> <p>(c) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March 2019;</p> <p>(d) apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March 2019.</p> <p>Explanation: For the purpose of sub- clause (a) and (b) above, 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.</p>