

# TAX FLASH NEWS

17 May 2019

## FAQs part II on the real estate sector

In continuation to the earlier FAQs, Central Board of Indirect Taxes and Customs (CBIC) has now released, part II of the FAQs<sup>1</sup> for the real estate sector.

Some of the key FAQs are been summarised as under –

### 1. Rate of GST on residential segment

For all on-going residential projects, one-time option has been provided to the developer to either opt to pay tax at new rates i.e. effective tax rate 1 per cent/5 per cent without tax credit or to continue with the earlier rate i.e. effective rate 8 per cent/12 per cent with facility to avail tax credit.

However, in addition to on-going projects who have opted for a new rate of GST, all projects commencing on or after 1 April 2019, shall be liable to charge GST at the effective rate of 1 per cent/5 per cent.

#### Key FAQs on the above is as under:

- The option to choose the rate of GST, shall be available to both the landowner-promoter and developer-promoter for the stock of apartment available with the respective promoters of on-going projects. However, the FAQ has suggested that the landlord and developer should exercise identical options (Sr. No 1)

- In case of area sharing arrangement, landowner-promoter shall be eligible to claim input tax credit of the tax charged to him by the developer-promoter on construction of apartments. However, the landowner shall not be entitled to avail credit on any other services or goods used (Sr. no. 2)
- Cases where apartments are given to the land owner by the developer against consideration received in the form of TDR, the provision mandating payment to supplier within 180 days shall not apply for the purpose of claiming ITC (Sr. no. 24)
- The application to exercise the option will be required to be made for each of the ongoing projects (Sr. no. 22)

### 2. Purchases from unregistered dealers

Developer covered by the new rate of GST, for residential segment, are required to mandatorily procure at least 80 per cent of its procurement towards inputs and input services (other than development rights) from a registered dealer. In case of any shortfall, the developer shall be liable to pay tax under reverse charge mechanism (RCM).

#### Key FAQs on the above provision is as under

- For computing the 80 per cent procurement from a registered vendor, the promoters are required to apportion and account for procurements for residential and commercial portion on the basis of the ratio of the carpet area of the residential and commercial apartments in a project (Sr. no. 5)

<sup>1</sup> F. No. 354/32/2019-TRU, dated 14 May 2019

- For the purpose of computing the 80 per cent criteria
  - services by an employee to an employer in the course of or in relation to employment shall not be considered (Sr. no. 15)
  - Value of exempted goods/services shall form part of the value of supplies from unregistered persons (Sr. no. 18)
  - Purchase of land, transaction by way of grant of development rights, long-term lease, FSI, etc., shall not form part of the value (Sr. no. 19)
- The 80 per cent criteria shall not be applicable for an ongoing projects where the developer has opted to pay GST at the old rate i.e. 8 per cent/12 per cent (effective rate) (Sr. no. 17)
- For all RREP projects including ongoing project, where the promoter had opted for new rate of GST and which underwent transition of ITC consequent to change in rate of tax on 1 April 2019, common tax credit attributable to exempt supplies shall not be required to be calculated finally on the completion or first occupation of such projects. (Sr. no. 21)

### 3. Input tax credit

The new rate of GST applicable to the residential segment is subject to the condition that the input tax charged on goods and services used in supplying such construction services has not been taken.

#### Key FAQs on the above provision is as under

- GST at the new rate shall be discharged only in cash. Tax credit if any, can be used for discharging any other services (Sr. no. 13)

### 4. Other FAQs

- Identification of whether an apartment qualifies as a commercial or residential apartment would depend upon how the same has been declared before the RERA authority (Sr. no. 3)

- The threshold to qualify as 'affordable residential apartment' i.e. gross amount charged is not more than INR45 lakh, the gross amount shall include all charges charged by the promoter from the buyer. However the same shall not include stamp duty, maintenance charges, deposits for maintenance (Sr. no. 4)
- Value of TDR in case of area sharing model shall be equal to 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 is transferred by the land owner to the promoter (Sr. no. 6)
- GST on TDR/FSI (including additional FSI) shall be payable at 18 per cent with tax credit (Sr. no. 7)
- Exemption on supply of TDR or FSI (including additional FSI) shall not be applicable in case of
  - Carpet area of commercial apartment
  - Un-booked residential apartments as on the date of issuance of completion certificate or first occupation of the project
 (Sr. no. 7)
- Projects with respect to which occupation certificate has been received prior to 1 April 2019 but the balance amount is pending to be received, the promoter shall be required to levy GST at the old rate as the time of supply in such cases has been triggered prior to 1 April 2019 (Sr. no. 10 and 27)

### Our comments

Clarifications by way of FAQs on many teething issues faced by the real estate sector after the introduction of the reduced rate of GST, is a welcome move. The FAQs would act as a guide to the sector in understanding the applicability of the provisions on the various facets of the transaction involved in a real estate project.

[home.kpmg/in](http://home.kpmg/in)

#### Ahmedabad

Commerce House V, 9th Floor,  
902, Near Vodafone House,  
Corporate Road,  
Pralhad Nagar,  
Ahmedabad – 380 051.  
Tel: +91 79 4040 2200

#### Bengaluru

Maruthi Info-Tech Centre  
11-12/1, Inner Ring Road  
Koramangala,  
Bengaluru – 560 071.  
Tel: +91 80 3980 6000

#### Chandigarh

SCO 22-23 (1st Floor),  
Sector 8C, Madhya Marg,  
Chandigarh – 160 009.  
Tel: +91 172 664 4000

#### Chennai

KRM Towers, Ground Floor,  
1, 2 & 3 Floor, Harrington Road,  
Chetpet, Chennai – 600 031.  
Tel: +91 44 3914 5000

#### Gurugram

Building No.10, 8th Floor,  
DLF Cyber City, Phase II,  
Gurugram, Haryana – 122 002.  
Tel: +91 124 307 4000

#### Hyderabad

Salarpuria Knowledge City,  
6th Floor, Unit 3, Phase III,  
Sy No. 83/1, Plot No 2,  
Serilingampally Mandal,  
Ranga Reddy District,  
Hyderabad – 500 081.  
Tel: +91 40 6111 6000

#### Jaipur

Regus Radiant Centre Pvt Ltd.,  
Level 6, Jaipur Centre Mall,  
B2 By pass Tonk Road,  
Jaipur – 302 018.  
Tel: +91 141 - 7103224

#### Kochi

Syama Business Centre,  
3rd Floor, NH By Pass Road,  
Vytilla, Kochi – 682 019.  
Tel: +91 484 302 5600

#### Kolkata

Unit No. 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata – 700 091.  
Tel: +91 33 4403 4000

#### Mumbai

1st Floor, Lodha Excelus,  
Apollo Mills,  
N. M. Joshi Marg,  
Mahalaxmi,  
Mumbai – 400 011.  
Tel: +91 22 3989 6000

#### Noida

Unit No. 501, 5th Floor,  
Advant Navis Business Park,  
Tower-A, Plot# 7, Sector 142,  
Expressway Noida,  
Gautam Budh Nagar,  
Noida – 201 305.  
Tel: +91 0120 386 8000

#### Pune

9th floor, Business Plaza,  
Westin Hotel Campus, 36/3-B,  
Koregaon Park Annex,  
Mundhwa Road, Ghorpadi,  
Pune – 411 001.  
Tel: +91 20 6747 7000

#### Vadodara

Ocean Building, 303, 3rd Floor,  
Beside Center Square Mall,  
Opp. Vadodara Central Mall,  
Dr. Vikram Sarabhai Marg,  
Vadodara – 390 023.  
Tel: +91 265 619 4200

#### Vijayawada

Door No. 54-15-18E,  
Sai Odyssey,  
Gurunanak Nagar Road, NH 5,  
Opp. Executive Club, Vijayawada,  
Krishna District,  
Andhra Pradesh – 520 008.  
Tel: +91 0866 669 1000

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2019 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

This document is meant for e-communication only