

TAX FLASH NEWS

14 May 2019



Updates for the real estate sector

Earlier on the recommendation of the GST council, Central Board of Indirect Taxes and Customs (CBIC) had issued notifications to reduce the rate of GST applicable on construction services provided for the residential segment by the builder/promoter/developer (developer).

As a one-time option for all residential on-going projects, the notification had provided an option to the developer to either opt to pay tax at the new rates (i.e. concessional rate of GST, with a condition that tax credit shall not be available) or to continue with the earlier rate of GST along with input tax credit. The application for choosing the option were required to be filed on or before 10 May 2019, however the date has now being extend to 20 May 2019¹.

Further with an objective to clarify doubts arisen after the introduction of the new rate of GST, CBIC issued FAQ's² to provide a general guidelines.

Summary of the provisions and the relevant FAQs have been summarised as under -

1. Rate of GST

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 1per 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. The benefit of reduce rate is not available for pure commercial projects.

Some of the key FAQ's on applicability of rate of GST is as under –

- The option to opt for old rate of GST is not available for construction of residential projects commencing on or after 1 April 2019. Such projects shall compulsorily attract GST at 1 per cent/5 per cent without tax credit (FAQ no. 4 and 23)

- One-third abatement prescribed towards value of land, has to be mandatorily followed. Actual value of land are to be ignored (FAQ no. 36)

2. On-going projects

For projects to qualify as an on-going project, it is required to satisfy all the notified prescribed conditions viz.

- Commencement certificate (CC)/certificate that construction of the project has started has been issued by on or before 31 March 2019
- Completion certificate has not been issued or first occupation of the project has not taken place on or before 31 March 2019
- Apartment being constructed under the project has been partly or fully booked on or before 31 March 2019

Key FAQs concerning the conditions to qualify as an on-going projects are summarised as under –

- For the purpose of issuance of certificate by an architect, a chartered engineer or a licensed surveyor towards commencement of construction before 31 March 2019, the construction activity shall deemed to have been commenced when the earth work for site preparation for the projects has been completed and evacuation for foundation has started on or before 31 March 2019 (FAQ no 7)
- Option to opt for either new rate of GST or continue with the old rate, shall also apply to on-going residential projects constructed under various specified housing schemes of central or state government. However,

¹ Notification no. 10/2019 – Central Tax (Rate) dated 10 May 2019

² F. No. 354/32/2019-TRU dated 7 May 2019

if such project does not satisfy the conditions prescribed for on-going projects, then such project shall be required to mandatorily levy new rate of GST (FAQ no. 25 and 26)

- Each projects registered with RERA will be required to independently satisfy the conditions prescribed for on-going projects (FAQ no. 30)
- One time option to opt for new rate shall be available for each project separately. Accordingly, the developer may exercise different options for different on-going projects (FAQ no. 24)
- In case of redevelopment or slum rehabilitation projects, condition of at least one instalment to be received prior to 1 April 2019, shall be deemed to have been satisfied, if the consideration for apartments is received, in the form of transfer of development rights, by the developers from the original inhabitant in case of redevelopment or by the government in case of slum rehabilitation project. (FAQ no. 35)
- Projects where construction has commenced on or before 31 March 2019, but booking in the project has not been commenced, such projects shall not be treated as an on-going projects (FAQ no. 40)
- Similarly where occupation certificate has been issued for part of the project and not for the entire project by 31 March 2019, first occupation of the project shall not be considered to have been taken place on or before 31 March 2019 (FAQ no. 29)
- Where multiple completion certificates has been issued for a registered project e.g. single registered projects having multiple blocks, the completion certificate shall be deemed to have been issued when it has been issued for the entire project (FAQ no. 33)
- For cases where multiple commencement certificate are issued by competent authority for a single registered project, the same shall be treated as an ongoing project even when CC has been issued for part of the project on or before 31 March 2019 (FAQ no. 34)

3. Purchases from unregistered dealers

Developer covered by the new rate of GST 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 concerning the above condition is as under

- The threshold limit of 80 per cent prescribed for procurement shall not include supply of following
 - Value of services by way of grant of development rights, long term lease of land, floor space index (FSI)
 - Value of electricity
 - High speed diesel, motor spirit and natural gas (FAQ no. 8)
- Rate of GST to be applied in case of shortfall in procurement of 80 per cent from registered dealer is as under

Particulars	Rate of GST
Cement	28%
Other input / input services	18%

(FAQ no. 9)

4. Transfer of various development rights viz. TDR, FSI (including additional FSI) upfront amount payable for long-term lease

Supply in the nature of transfer of various development rights made on or after 1 April 2019, are to be treated as exempt supplies. The said exemption is available only for construction of residential apartments.

Correspondingly, developer shall be liable to pay GST under reverse charge mechanism on receipt of such development rights.

Key FAQs released on the above is summarised as under –

- GST on supply of TDR and floor space index shall be paid by developer (FAQ no. 12)

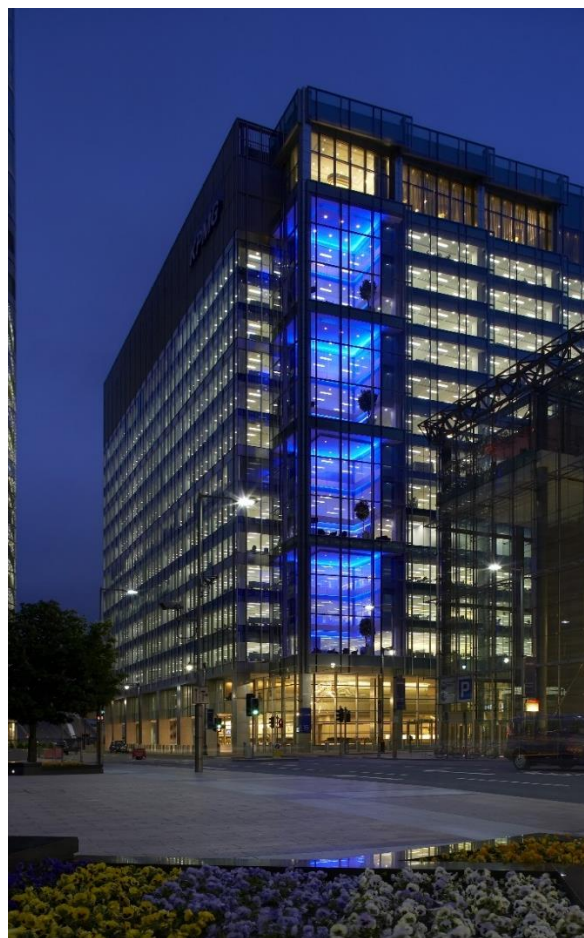
- Time of supply for FSI received on or after 1 April 2019 shall be as under:

Particulars	Time of supply (TOS)
Where consideration is in the form of construction of commercial or residential apartment	TOS shall be the date of issuance of completion certificate
Where monetary consideration is paid by promoter	TOS shall be the date of issuance of completion certificate if such FSI is relatable to construction of residential apartment. However, in FSI relates to construction of commercial apartment, TOS shall arise immediately.

(FAQ no. 14)

- Activity of transfer of development right by an individual (i.e. person not engaged in the business of land relating activities) land owner shall also be treated as supply of service (FAQ no. 39)
- Exemption granted for transfer of various development rights and corresponding applicability of payment of tax by promoters under reverse charge mechanism, is effective for transfers made on or after 1 April 2019. The same shall not apply for transfer made prior to 1 April 2019 even if the consideration has been made on or after 1 April 2019 (FAQ no. 38)
- Promoters who have opted for new rate of GST for on-going project, TDR which are purchased on or after 1 April 2019 and used in such on-going project, rate of GST to be applied shall be the new rate i.e. 1 per cent or 5 per cent without ITC (FAQ no. 31)

- GST under reverse charge mechanism shall be applicable even when the development rights are being transferred by a person other than the landlord i.e. developer to another developer or promoter or to any other person (FAQ no. 28)



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