34th GST Council Meetings Updates

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CHARTERED ACCOUNTANTS

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34th GST Council Meeting Updates

The Council in today's meeting discussed the operational details for implementation of the recommendations made by the council in its 33rd meeting for lower effective GST rate of 1% in case of affordable houses and 5% on construction of houses other than affordable house. The council decided the modalities of the transition for Real Estate Sector.

The summary of the aforesaid Press Release has been given for easy understanding:

GST Council Meet on GST rates for Real Estate Sector:

- **Option in respect of ongoing projects**
  - The promoters shall be given a one -time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects
  - Ongoing Projects means- buildings where construction and actual booking have both started before 01.04.2019, but which have not been completed by 31.03.2019.
  - The option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit, new rates shall apply.

- **New Tax Rates**
  - **Applicability** – New rates will be applicable to new projects or ongoing projects which have exercised the above option to pay tax in the new regime are as follows.
  - **Rate of 1% without Input Tax Credit (ITC) on construction of affordable houses shall be available for:**
    a. all houses which meet the definition of affordable houses as decided by GSTC (area 60 sqm in non- metros / 90 sqm in metros and value upto RS. 45 lakhs), and
    b. affordable houses being constructed in ongoing projects under the existing central and state housing

schemes presently eligible for concessional rate of 8% GST (after 1/3 land abatement)

- **Rate of 5% without Input Tax Credit (ITC) shall be applicable on:**
    a. All houses other than affordable houses in ongoing projects whether booked prior to or after 01.04.2019. In case of houses booked prior to 01.04.2019, new rate shall be available on instalments payable on or after 01.04.2019.
    b. All houses other than affordable houses in new projects.
    c. Commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

➢ Conditions for New Rates

- New tax rates of 1% (on construction of affordable) and 5% (on other than affordable houses) shall be available subject to following conditions,-
- Input tax credit shall not be available,
- 80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease (premiums)) shall be purchased from registered persons.
- On shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis. However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.

➢ Transition for ongoing Projects opting for new Tax Rates

- ITC for Ongoing projects: Ongoing projects (buildings where construction and booking both had started before 01.04.2019) and have not been completed by 31.03.2019 opting for new tax rates shall transition the ITC as per the prescribed method.

- The transition formula approved by the GST Council, for residential projects, extrapolates ITC taken for percentage completion of construction as on 01.04.2019 to arrive at ITC for the entire project. Then based on percentage booking of flats and percentage invoicing, ITC eligibility is determined. Thus, transition would thus be on pro-rata basis based on a simple formula such that credit in proportion to booking of the flat and invoicing done for the booked flat is available subject to a few safeguards
- For a mixed project transition shall also allow ITC on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects (on which tax will be payable @ 12% with ITC even after 1.4.2019) to the total carpet area of the project.

➢ **Treatment of TDR (Transferable Development Rights) / FSI (Floor Space Index) and Long term lease for projects commencing after 01.04.2019**

- The following treatment shall apply to TDR/ FSI and Long term lease for projects commencing after 01.04.2019 and these decisions are expected to address the problem of cash flow in the sector.
- Supply of TDR, FSI, long term lease (premium) of land BY a landowner TO a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.
- Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property.

- The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under the reverse charge mechanism (RCM).
- The date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate.
- The liability of builder to pay tax on construction of houses given to land owner in a Joint Development Agreement (JDA) is also being shifted to the date of completion.

Amendment in ITC Rule

- ITC rules shall be amended to bring greater clarity on monthly and final determination of ITC and reversal thereof in real estate projects.
- The change would clearly provide procedure for availing input tax credit in relation to commercial units as such units would continue to be eligible for input tax credit in a mixed project.

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