

GST Update

Weekly Update
23.03.2019

- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 09.03.2019. It supplements the earlier GST Updates.
- No update was released for the week ended on 16.03.2019, since no circular/ notification was issued during that week.
- This presentation is based on CGST Act/Rules/ Notifications. Similar parallel provisions in State Laws may be referred to as required

- One CBIC press release on the 34th Meeting of the GST Council held on 19th March, 2019

GST on Real Estate Sector

- [http://www.cbic.gov.in/resources//htdocs-cbec/press-release/Press release 190319.pdf;jsessionid=9A5EE2919801A3B157C64D96C7EFA84E](http://www.cbic.gov.in/resources//htdocs-cbec/press-release/Press%20release%20190319.pdf;jsessionid=9A5EE2919801A3B157C64D96C7EFA84E)
- Press Release on the recommendation of the 34th Meeting of the GST Council on operational details on the earlier recommendations on real estate sector

- GST Rates for Real Estate Sector to be effective from 1st April, 2019
 - Affordable housing properties: Effective GST rate of 1% without ITC
 - Residential properties outside affordable segment: Effective GST rate of 5% without ITC
- **Definition of affordable housing:**
 - A residential house/flat of carpet area of up to 90 sqm in non-metropolitan cities/towns and 60 sqm in metropolitan cities having value up to Rs. 45 lacs (both for metropolitan and non-metropolitan cities).
 - Metropolitan Cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).

- **Option in respect of ongoing projects**
- One -time option(to be exercised once within a prescribed time frame) to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking have both started before 01.04.2019) and which have not been completed by 31.03.2019.

- New 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 1/3rd land abatement).

- New rate of 5% without input tax credit shall be applicable on construction of,-
 - 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 the new tax rates:**
- The new tax rates of 1% (on construction of affordable) and 5% (on other than affordable houses) shall be available subject to following conditions,-
 - a) Input tax credit shall not be available,
 - b) 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 the new tax rate**
- 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/ FSI and Long term lease for projects commencing after 01.04.2019**
- 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.

- **Treatment of TDR/ FSI and Long term lease for projects commencing after 01.04.2019**
- 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 JDA is also being shifted to the date of completion

- **Amendment to ITC rules**
- 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.



GST Portal Updates

New Functionality

- **Form GSTR-9, Annual Return for 2017-18 to be filed by normal taxpayer**
- Facility to file Annual Return by normal taxpayers in Form GSTR 9, for Financial Year 2017-18, is now available at GST Portal.
- The FAQs and Manual for Form GSTR-9 is available at link as given below
- User
Manual: https://tutorial.gst.gov.in/userguide/returns/index.htm#t=Manual_gstr9.htm
- FAQs: https://tutorial.gst.gov.in/userguide/returns/index.htm#t=FAQs_gstr9.htm
- APIs for Form GSTR 9 has been released for CBIC/Model I States for back office integration.

- **Form GSTR-9A, Annual Return for 2017-18 for composition taxpayer**
- Facility to file Annual Return by composition taxpayers in Form GSTR 9A ,for Financial Year 2017-18, is now available at GST Portal.
- • The FAQs and Manual for Form GSTR-9A is available at link as given below
- User Manual and FAQs are at -
: https://tutorial.gst.gov.in/userguide/returns/index.htm#t=Manual_gstr9a.htm
https://tutorial.gst.gov.in/userguide/returns/index.htm#t=FAQs_gstr9a.htm

New Functionality

- **Viewing & Downloading of month-wise Comparative Table on Liability Declared and Credit Claimed**
- Taxpayers have been provided with facility to
 - to view and download a report on tax liability as declared in their Form GSTR- 1 and as declared & paid in their return filed in Form GSTR 3B.
 - view information regarding data of Input tax credit (ITC) as claimed in their Form GSTR 3B and as accrued in Form GSTR 2A
 - to view the liability paid due to reverse charge as declared & paid in Form GSTR 3B and as accrued in Form GSTR 2A, due to uploading of such details by the supplier in Form GSTR-1.

New Functionality

- **Viewing & Downloading of month-wise Comparative Table on Liability Declared and Credit Claimed**
- Taxpayers have been provided with facility to
 - view and compare the liability related to exports & SEZ supplies as declared in their Form GSTR-3B during the month [as per table 3.1(b)] and liability as declared in their Form GSTR-1 (Zero rated supplies) as per table 6A, 6B, 9A, 9B & 9C of the Form GSTR 1.
 - This functionality has been provided in Returns dashboard on the GST Portal to taxpayers under the headings “Comparison of liability declared and ITC claimed”.

New Functionality

- **Revocation of cancellation of Registration**
- Facility for applying for revocation of suo-moto cancellation of registration for the persons registered as OIDAR /TDS /TCS/NRTP category has been enabled on GST Portal.
- *APIs for these functionalities have also been released for CBIC and Model I States.*



GST Legal Updates

Input Credit based on Fake Invoices – Rajasthan HC dismisses WP and imposes cost of Rs.1 Lakh on the Petitioner

Case of Bharat Raj Punj Vs Commissioner of CGST

Criminal Writ Petition No.76/2019

Facts

The Petitioner No.1 is the Managing Director of M/s Leel Electricals Limited, Petitioner No.2. The CGST Department conducted a raid on 17.01.2019, at the premises of the Petitioners' Company at Bhiwadi, Rajasthan. After recording of the statements of Officials of Company, they were arrested. As per the case of the Department, the Company had fraudulently availed input tax credit of Rs.40.53 crores by issuance of fictitious sale invoices and sister concerns of company and Petitioner-Company had fraudulently availed input tax credit of Rs.328 crores.

Input Credit based on Fake Invoices – Rajasthan HC dismisses WP and imposes cost of Rs.1 Lakh on the Petitioner

Decision of High Court

The High Court inter alia held

The case set up by the Department is that the Petitioner has claimed input tax credit on fake invoices, which fact is not controverted by the Petitioner. Hence, Department has all rights to take any action permissible by law.

The contention that the tax is to be first determined under Section 73 & 74 of the Act does not have any force for the very reason that in an offence committed under Section 132 of the Act determination of tax is not required and the Department can proceed straight away by issuing summons or if reasonable grounds are available by arresting the offender.

Since offence under Section 132 is made out and Senior Officials of Company are behind bars, Petitioner being Managing Director is responsible and Department has the right to proceed under Section 69 and 70 of the Act.

The HC did not find any merit in Writ Petition and hence dismissed it with cost of Rs.1,00,000/- only.

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