Lakshmikumaran
& Sridharan
attorneys

L&S Update

an e-update to clients from
Lakshmikumaran & **Sridharan**

GST Update No. 16 of 2019
19th March 2019

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GST Council's 34th Meeting on 19-3-2019 – GST on under-construction houses & new projects – Highlights of recommendations

Earlier recommendation of the GST Council (33rd Meeting)

- The GST Council in its 33rd meeting had recommended following rates:

Nature of Property	Rate	Condition
Residential properties outside affordable segment	5%	ITC shall not be eligible
Affordable Housing Properties	1%	ITC shall not be eligible

- The new rates shall come into **effect from 1st April, 2019.**

34th Meeting of GST Council held on 19-3-2019 Highlights of recommendations (as per press release)

- The GST Council discussed operational details for implementation of the recommendations made by it in the 33rd meeting in respect of new rate of tax for under construction and new residential projects :

Project	Rate
On going projects** which have not been completed by 31.03.2019 ***On going project is the one where construction and actual booking have both started before 01.04.2019***	One-time option to pay tax at old rates – 8/ 12% with ITC. If option not exercised within the prescribed time limit, new rate shall apply.
New projects	New rates shall apply

Interpretation of On-going Project

A Project consists of 3 phases. Phase 1 has been launched. It consists of Tower A, Tower B and Tower C. Construction of Tower A in Phase I has been started and few units have been booked prior to 01.04.2019.

Tower B and Tower C are not launched yet. Further, physical construction has not been started.

Open Issues

- Whether the promoter has option to pay tax at old rates for only Tower A or even for Tower B and Tower C?
- What is the meaning of the phrase "construction has been started"?
- What is to be regarded as "completion of project"?

New GST Rates for Affordable Housing Project

- Rate of tax is **1%** without input tax credit (ITC) on construction of affordable houses -

  (a) All houses which meet the definition of affordable houses as decided by GST Council (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) which have opted for new scheme.

New GST Rates for Non-Affordable Housing Project

- Rate of tax is 5% without input tax credit on construction of -

  (a) all houses other than affordable houses in new projects.

  (b) 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.

  (c) all houses other than affordable houses in ongoing projects whether booked prior to or after 01.04.2019 where developer has opted for new scheme. In case of houses booked prior to 01.04.2019, new rate shall be available on instalments payable on or after 01.04.2019.

Conditions for new tax rates

- ITC shall not be available.

- 80% input & input services [other than capital goods, TDR/ JDA, FSI, long term lease (premiums)] shall be purchased from registered persons. If purchases from such persons is below 80%, tax shall be paid by the builder @ 18% on reverse charge basis (other than capital goods and cement).

- Tax on cement purchased from unregistered person shall be paid @ 28% under RCM. Tax on capital goods purchased from unregistered person shall be paid at applicable rates under RCM.

Open Issues

- Whether financing costs will be covered within the meaning of input services for 80% slab?
- Whether RCM applicable on purchase of cement from unregistered person in case where more than 80% input and input services are purchased from registered dealer?
- Whether capital goods are under the RCM condition or not?

Exemption on TDR/ FSI and long term lease for residential projects commencing after 01.04.2019

Conditional exemption

- The exemption is subject to the condition that constructed flats should be sold before issuance of completion certificate. **Thus, exemption is applicable only in respect of flats sold before completion certificate.**

- Exemption shall be withdrawn where flats are sold after issuance of completion certificate. 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).

- Tax to be paid on
  - **1% of value (of unsold flats) in case of affordable houses**
  - **5% of value (of unsold flats) in case of non-affordable houses**

- Due date for payment will be date of issue of completion certificate.

Exemption on TDR/ FSI and long term lease for residential projects commencing after 01.04.2019

Open Issues

- Whether exemption available in respect of ongoing projects where developer has opted for new rate scheme?
- Whether exemption available in respect of projects with mixed use i.e. both residential and commercial units?

ITC Transition for ongoing projects opting for new tax rate

- ITC for the entire project (as per the approved formula) shall be arrived based on the ITC taken for percentage completion of construction as on 1.4.2019 for the entire project. Thereafter, ITC eligibility shall be determined based on percentage booking and percentage invoicing.

Open Issue

- Meaning of "ITC taken for percentage completion of construction as on 01.04.2019 for the entire project" needs clarification.

NEW DELHI
5 Link Road, Jangpura Extension,
Opp. Jangpura Metro Station,
New Delhi 110014
Phone : +91-11-4129 9800

B-6/10, Safdarjung Enclave
New Delhi - 110 029
Phone : +91-11-4129 9900
E-mail : lsdel@lakshmisri.com

MUMBAI
2nd floor, B&C Wing,
Cnergy IT Park,
Appa Saheb Marathe Marg, (Near Century Bazar)
Prabhadevi, Mumbai - 400025.
Phone : +91-22-2439 2500
E-mail : lsbom@lakshmisri.com

CHENNAI
2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

BENGALURU
4th floor, World Trade Center
Brigade Gateway Campus
26/1, Dr. Rajkumar Road,
Malleswaram West,
Bangalore-560 055.
Ph: +91-80-4933 1800
E-mail : lsblr@lakshmisri.com

HYDERABAD
'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church, Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail : lshyd@lakshmisri.com

AHMEDABAD
B-334, SAKAR-VII,
Nehru Bridge Corner,
Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

PUNE
607-609, Nucleus, 1 Church Road,
Camp, Pune – 411 001
Phone : +91-20-6680 1900
E-mail : lspune@lakshmisri.com

KOLKATA
2ND Floor, Kanak Building
41, Chowringhee Road,
Kolkatta-700071
Phone : +91-33-4005 5570
E-mail : lskolkata@lakshmisri.com

CHANDIGARH
1st Floor, SCO No. 59,
Sector 26,
Chandigarh - 160026
Phone : +91-172-492 1700
E-mail : lschd@lakshmisri.com

GURGAON
OS2 & OS3, 5th Floor, Corporate Office Tower, AMBIENCE Island, Sector 25-A,
Gurgaon - 122001
Phone : +91-124-477 1300
E-mail :lsgurgaon@lakshmisri.com

ALLAHABAD
3/1A/3, (opposite Auto Sales), Colvin Road, (Lohia Marg),
Allahabad -211001 (U.P.)
Phone no. : (0532) – 2421037, 2420359
Email: lsallahabad@lakshmisri.com

www.lakshmisri.com www.gst.lakshmisri.com