Lakshmikumaran & Sridharan attorneys

L&S Update

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

GST Update No. 17 of 2019
1st April 2019

Real Estate Sector – Changes in rates

Notification No. 11/2017-Central Tax (Rate) as amended by Notification No. 3/ 2019-Central Tax (Rate) dated 29th March 2019

New Projects on or after 01.04.2019

S. No.	Category	Eff. GST Rate	Condition
1	Commercial Projects	12%	With ITC
2	Residential Projects I. Non-affordable II. Affordable	 5% 1%	No ITC (Note 2)
3	**Mixed Projects (commercial and residential apartments)**		
	Commercial apartments < 15% (RREP) i. Commercial ii. Non-affordable Residential iii. Affordable Residential	 5% 5% 1%	 No ITC (Note 2)
	Commercial apartments >15% (REP) I. Commercial II. Non-affordable Residential III. Affordable Residential	 12% 5% 1%	 Proportionate ITC (Note 2)

Lakshmikumaran & Sridharan attorneys

Ongoing Projects (Option not exercised for old rates)

S. No.	Category	Effective GST Rate	Condition
1	Commercial Projects	12%	With ITC
2	Residential Projects I. Non-affordable II. Affordable	 5% 1%	 No ITC (Note 2)
3	**<u>Mixed Projects (commercial and residential apartments)</u>**		
	Commercial apartments < 15% (RREP) i. Commercial ii. Non-affordable Residential iii. Affordable Residential	 5% 5% 1%	 No ITC (Note 2)
	Commercial apartments >15% (REP) I. Commercial II. Non-affordable Residential III. Affordable Residential	 12% 5% 1%	 Proportionate ITC (Note 2)

Ongoing Projects
(Option exercised for old rates)

S. No.	Category	Eff. GST Rate	Condition
1	**Commercial Projects**	12%	With ITC
2	**Residential Projects** I. Non-affordable II. Affordable	 12% 8%	 With ITC (Note 1)
3	**<u>Mixed Projects (commercial and residential apartments)</u>**		
	Commercial apartments < 15% (RREP) i. Commercial ii. Non-affordable Residential iii. Affordable Residential	 12% 12% 8%	 With ITC (Note 1)
	Commercial apartments >15% (REP) I. Commercial II. Non-affordable Residential III. Affordable Residential	 12% 12% 8%	 With ITC (Note 1)

Lakshmikumaran & Sridharan attorneys

Relevant Definitions

❖ **Affordable Residential Apartment shall mean**

✓ a residential apartment in a project which commences on or after 01st April, 2019 or in an ongoing project where option has not been exercised, for which the gross amount charged is not more than 45 lakhs rupees having
  - Carpet area of upto 90 sqm in non-metropolitan cities/towns
  - Carpet area of upto 60 sqm in metropolitan cities

✓ an apartment being constructed in an ongoing project under any of the schemes specified in S.No. 3(iv)(b), 3(iv)(c), 3(iv)(d), 3(iv)(da), 3(iv)(db), 3(v)(b), 3(v)(c), 3(v)(d), 3(v)(da) and 3(vi)(c), where option has not been exercised.

❖ **Ongoing Projects:**

- commencement certificate is issued on or before 31st March, 2019,
- where commencement certificate not required, certified by any of the specified authorities that construction of the project has started on or before the 31st March, 2019
- completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;
- Apartments, partly or wholly, booked on or before the 31st March, 2019

Explanation.*- construction of a project shall be considered to have started on or before the 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019.*

Lakshmikumaran & Sridharan attorneys

Relevant Definitions

❖ **Apartment booked on or before 31st March, 2019**

I. part of supply of construction of which has time of supply on or before the 31st March, 2019; **and**

II. at least one instalment has been credited to the bank account of the registered person on or before the 31st March, 2019; **and**

III. an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the 31st March, 2019.

Lakshmikumaran & Sridharan attorneys

Note 1:

- One time option in the given form is exercised to pay tax @ 12/ 8% effective GST rate by 10th May 2019 (**project wise option**).

- If option is not exercised as above then, option to pay tax at the effective GST rates of 5%/ 1% shall be deemed to have been exercised.

- Invoices issued for supply of the service during the period from 1st April 2019 to 10th May 2019 before exercising the option shall be in accordance with the option to be exercised.

Lakshmikumaran & Sridharan attorneys

Note 2:

GST @ 1% or 5% shall be paid in cash that is, by debiting the electronic cash ledger only.

- ❖ No ITC on goods and services used in construction except as prescribed by the formula.

- ❖ An amount equivalent to ITC attributable to construction in a project, whose time of supply is on or after 01.04.2019, as prescribed by the formula in Notification shall be paid by way of electronic cash ledger or electronic credit ledger.

- ❖ 80% inputs and input services shall be received from registered suppliers during the financial year (or part of the financial year till the date of issuance of completion certificate or first occupation of the project, whichever is earlier). In case it falls short then, tax shall be paid by the developer under RCM.

Note 2 (contd.):

- The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and calculate tax payments on the shortfall at the end of the financial year.

- Tax on cement received from unregistered person shall be paid in the month in which cement is received.

- Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B.

Lakshmikumaran & Sridharan attorneys

Open Issues

- Whether the promoter has option to pay tax on old rates for only Tower A or even for Tower B and Tower C?
- Valuation and tax rate for area developed and given to landowner against the transfer of development rights (area sharing model)?
- Where to utilize the credit availed as per the prescribed formula?

Lakshmikumaran & Sridharan attorneys

New Insertion in Rate Notification

S. No.	Category	Eff. GST Rate	Condition
1	Composite supply of works contract as defined in clause (119) of section 2 for affordable residential apartments on which GST @1%	12%	Note 3

Note 3: Conditions:

- Carpet area of the affordable residential apartments as specified in the entry in column (3) relating to this item, is not less than 50% of the total carpet area of all the apartments in the project; and

- Value of the apartments shall be the value of similar apartments booked nearest to the date of signing of the contract for supply of the service specified which shall not exceed Rs. 45 lakhs; and

- Promoter shall be liable to pay the differential rate of tax in case conditions not met.

New Insertion in Rate Notification

S. No.	Category	GST Rate
1	**<u>S. No. 39 in NN 11/2017</u>** Any services other than services by way of grant of development rights, long term lease of land or FSI by an unregistered person to a promoter for construction of a project on which tax is payable by the recipient of the services under Section 9(4).	18%
2	**<u>S. No. 452Q in Schedule III of NN 1/2017</u>** Any goods other than capital goods and cement by an unregistered person to a promoter for construction of the project on which tax is payable by the promoter as recipient of goods under Section 9(4).	18%

Note:

The above entries have been inserted in light of the conditions for new rates where RCM liability is attracted in case of procurement from registered person is less than 80% of value of goods and services.

Lakshmikumaran & Sridharan attorneys

Computation of eligible Input Tax Credit

- Annexure I and Annexure II to Notification No. 3/2019-Central Tax (Rate) provide manner of computation of ITC attributable to construction of
  - residential portion in REP and
  - residential and commercial portion in RREP

- Annexures provide that computation of eligible ITC shall be done project wise.

- Calculation of ITC shall be done before the due date for furnishing of the return for the month of September following the end of financial year 2018-19.

Lakshmikumaran & Sridharan attorneys

Other aspects

- Annexure II prescribes similar formula with some changes for computation of credit attributable to commercial and residential portion in case of REP.

- Annexures I and II also prescribe formula for computation of eligible credit where percentage completion as on 31st March, 2019 is zero but invoicing has been done having time of supply before 31st March, 2019, and no input services or inputs have been received as on 31st March, 2019.

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