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L&S Update

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

GST Update No. 19 of 2019
1st April 2019

Taxability of development rights and leasehold rights - Notification No. 4/2019-Central Tax (Rate)

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Transfer of development rights and upfront amount for leasehold rights - Snapshot of exemption

S. No.	Category	Taxability	Condition
1	Residential Projects	Exemption	With Conditions
2	Mixed Projects (commercial and residential apartments)	Proportionate Exemption	With Conditions

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Transfer of Development Rights – Taxability & Exemption

- Exemption to transfer of development rights (TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of residential apartments by a promoter in a project, intended for sale before completion certificate subject to certain conditions.

- For projects having commercial areas, exemption shall be restricted to carpet area of residential project subject to certain conditions.

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Conditions for exemption on development rights

- GST to be paid by promoter under reverse charge mechanism on the value attributable to the residential apartments remaining un-booked as on date of issuance of completion certificate.

<u>Formula for calculation of GST under RCM:</u>

- GST shall be paid under RCM on the value lower of the following:
  - GST payable on TDR or FSI x (carpet area of the residential apartments in the project which remain un- booked on the date of issuance of completion certificate or first occupation÷ Total carpet area of the residential apartments in the project); or
  - 5% / 1% value of residential apartments remaining un-booked
- Time of supply shall be the issuance of completion certificate or first occupation.

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Leasehold rights – Taxability & exemption

- Similar exemption extended to upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease of thirty years, or more, on or after 1st April 2019 for construction of residential apartments

- Similar conditions imposed as discussed in respect of TDR/ FSI.

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Relevant Definitions

- **Value of supply of service by way of transfer of development rights** or FSI by a person to the promoter against consideration in the form of residential or commercial apartments shall be deemed to be equal to the value of similar apartments charged by the promoter from the independent buyers nearest to the date on which such development rights or FSI is transferred to the promoter

- **Value of portion of residential or commercial apartments remaining un-booked** on the date of issuance of completion certificate or first occupation, as the case may be, shall be deemed to be equal to the value of similar apartments charged by the promoter nearest to the date of issuance of completion certificate or first occupation, as the case may be.

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Open Issues

- Whether the development rights attributable to commercial apartments in a Residential Real Estate Project (RREP) will be taxable?
- Contract entered prior to 1st April 2019 but transfer of development rights undertakes post 1st April 2019 - Whether exemption available?
- Whether exemption available for annual lease rentals?
- Whether exemption available for leasehold rights given for less than thirty years but extendable for further time period?
- Valuation of development rights in case of revenue sharing model?

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