



**The Institute of Chartered Accountants of India  
Eastern India Regional Council**

# 3 Days Workshop on

# GST

**Day I**

**Thursday  
12th March**

**5.30pm to 8.30 pm**

***New Returns under GST - CA Shivani Shah  
E Invoicing - CA Gagan Kedia***

**Day II**

**Friday  
13th March**

**5.30pm to 8.30 pm**

***Issues with ITC Reconciliation - CA Subham Khaitan  
Litigation under GST - CA Anshuma Rustagi***

**Day III**

**Saturday  
14th March**

**5.30pm to 8.30 pm**

***Offences and Penalties - CA Jay Agarwal  
GST issues in Real Estate Transactions - CA Vikash Parakh***

# Front Inside



**CA Atul Kumar Gupta**  
*President, ICAI*



**CA Nihar Niranjana Jambusaria**  
*Vice President, ICAI*



**CA Nitesh Kumar More**  
*Chairman, EIRC*



**CA Sunil Kumar Sahoo**  
*Vice Chairman, EIRC*



**CA Ravi Kumar Patwa**  
*Secretary, EIRC*



**CA Debayan Patra**  
*Treasurer, EIRC*



**CA Hari Ram Agarwal**  
*Member, EIRC*



**CA Sumit Binani**  
*Member & Immediate Past  
Chairman, EIRC*



**CA (Dr.) Debashis Mitra**  
*Council Member, ICAI*



**CA Sushil Kumar Goyal**  
*Council Member, ICAI*



**CA Ranjeet Kumar Agarwal**  
*Council Member, ICAI*



**The Institute of Chartered Accountants of India**

**Date:** Thursday 12th to Saturday 14th March 2020

**Time:** 5:30 pm to 8:30 pm

**Venue:** R Singhi Hall, EIRC Premises, 7 Russell Street, Kolkata - 700071

**PROGRAMME**

<b>Topics</b>		<b>Dignitary / Speaker</b>
<b>3 DAYS WORKSHOP ON GST (WITH BACKGROUND MATERIAL)</b>		
<b>Day I –</b>		
	<b>New Returns under GST</b>	<b>CA Shivani Shah</b>
	<b>E – Invoicing</b>	<b>CA Gagan Kedia</b>
<b>Day II –</b>		
	<b>Issues with ITC Reconciliation</b>	<b>CA Subham Khaitan</b>
	<b>Litigation under GST – Notices being issued by the Dept.</b>	<b>CA Anshuma Rustagi</b>
<b>Day III –</b>		
	<b>Offences and Penalties</b>	<b>CA Jay Agarwal</b>
	<b>GST Issues in Real Estate Transactions</b>	<b>CA Vikash Parakh</b>

# ABOUT THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA AND ITS EASTERN INDIA REGIONAL COUNCIL



ICAI is a statutory body established by an Act of Parliament, for regulating the profession of Chartered Accountancy in our country. The institute, functions under the aegis of the MCA, Government of India. The ICAI is the 2nd largest professional body of CAs in the world. Since 1949, the profession has grown by leaps and bounds with around 3,00,000 members and 8,00,000 students as of now. The EIRC of ICAI was constituted in the year 1952 with its jurisdiction on 10 States and 1 Union Territory. Today it has 13 branch-es, 23 study circles, 7 CPE chapters and 8 study groups. It caters to over 25,000 members and about 90,000 students as on date





## FROM THE DESK OF THE CHAIRMAN



**CA Nitesh Kumar More**  
Chairman - EIRC, ICAI

*Dear Professional Colleagues*

It gives me immense pleasure to welcome the participants to this Three Day workshop on GST on 12<sup>th</sup> to 14<sup>th</sup> March 2020 being organised by the EIRC of ICAI.

In today's global business world, a broad spectrum of economic and regulatory changes are taking us to new levels of strategic and tactical complexity, creating commensurate pressure on enterprises. In this environment, it is necessary for the professionals to constantly update their knowledge and skills to meet the expectations of the stakeholders. Keeping this in mind, it has become necessary for Chartered Accountants to update their knowledge about various aspects and provisions of different laws. As a corollary, the members also need to be armed with updated knowledge and skill sets.

I am appreciative of the thought and care that has gone in selection of topics, which are very contemporary in nature and will appeal to all the participants. I wish that the workshop would be helpful to the participants to update their knowledge skills and enable them to serve the profession with sound integrity and thereby contribute to the society.

With this message, I'd like to wish all the participants, thoughtful and rewarding sessions in the workshop.

**CA. Nitesh Kumar More**  
Chairman, EIRC

Date: 4th March, 2020  
Place: Kolkata



## PROFILE

### SHIVANI SHAH



Shivani Shah, a fellow member of the ICAI, qualified in the year 2005. An ex – PwC employee, she is currently she is in self-practice under ‘Shivani Shah & Associates’ specializing into Indirect Taxation.

An erudite commentator, she has given lectures at various seminars/conferences/workshops relating to GST, Service Tax and VAT. She is the national faculty for Indirect Taxation for the ICAI and is extensively associated with NACEN for training of CBEC officials.

She regularly contributes articles on matters relating to taxes for various journals like Monthly newsletter of EIRC, ICAI, Excise Law Times, various websites etc.

Currently she is the Chairperson for the GST Committee for ACAE, Member of the Indirect Tax Committee for Bengal Chambers of Commerce & Industry for 2019-20. Also she is currently the empanelled member of the Indirect Tax Committee of the Bengal Chambers of Commerce & Industry, Direct Tax Professional Association and also the co-opted member of the Indirect Tax committee for the EIRC, ICAI. a member of the Indirect Tax Study Group of EIRC, ICAI. Past and present co-chairperson for the Ladies Wing at ACAE, she was also the past co-opted member of the Womens’ Committee, EIRC, ICAI.

## PROFILE

### GAGAN KEDIA



**A Tax Analyst, Management Consultant and Corporate Trainer**, offering over 8 years of experience in the field of indirect tax consultancy, litigation management and due diligence support.

#### Past Experience

- o Has **worked with Deloitte Haskins & Sells** catering to Tax Advisory & Litigation needs of Global Retail Conglomerates and I.T. giants.
- o Passionate about his profession, Gagan has been a very **active member** of the training teams in Deloitte at a **pan India level**. He has also **conducted** various trainings with big corporate houses in the area of Taxation & Accounting.

#### Current Empanelment’s

- o **Co-Opted member of the IDTC of EIRC** (Eastern India Regional Council) **of The ICAI** (The Institute of Chartered Accountants of India) for the year 2017-18 & 2018-19.
- o **Core Member of the GST Study Group - Kolkata** under Indirect Tax Committee of ICAI **dealing in** – GST Research, Representations to Governments, Publication of Books, etc.
- o **Inducted as a Faculty** under the **IDTC of ICAI** for GST trainings in the certificate course being organised by the Institute.
- o Visiting faculty for GST Trainings with:
  - ♦ Central & State GST Officers;
  - ♦ MSME Technology Development Centre, Agra
  - ♦ Professional Associations under aegis of professional institutes like CA, CS and CMA.
  - ♦ Public & private sector undertakings as Corporate Trainer

#### Current Occupation

He is the **Managing Partner** of the Firm M/s. MRG KEDIA & Co., looking after **advisory & litigations** in the field of Indirect Taxes.



## PROFILE

### CA SHUBHAM KHAITAN



CA Shubham Khaitan is a young and dynamic Chartered Accountant with a very strong academic background. He is currently a partner of S. Khaitan & Associates, a reputed middle sized CA Firm in Kolkata since 28 years. He looks after the Tax and Regulatory Department of the firm.

He has been selected as a registered Faculty in the Faculty Development Program conducted by the Indirect Tax Committee, The Institute of Chartered Accountants of India in July 2016. He is also a part of the elite Study Group for research on GST which has been established by the Indirect Taxes Committee to the book 'Background Material on GST' published by the Institute of Chartered Accountants of India. From the Kolkata Study Group, his topic 'Input Tax Credit' under the Model GST law has been sent to the Indirect Tax Committee, ICAI for preparation of Nationalised PPT on GST by ICAI. He is also a member of the team selected for the revision of the 'EIRC Members' Referencer on Indirect Taxes for the year 2016-17.

He has also been nominated for the National Council on Indirect Taxes for Association for the year 2017. He is also a member of the Indirect Tax Committee constituted by Direct Taxes Professional Association (DTPA). He is also a member of the editorial board of 'The Views' journal in Kolkata.

He is speaking in seminars and group discussions on topics relating to GST in branches of The Institute of Chartered Accountants of India, Company Secretaries and Cost Accountants of India apart from universities like Burdwan University and associations like Association of Corporate Advisors and Executives (ACAE), West Bengal Paper Traders' Association, Direct Taxes Professional Association (DTPA), Howrah Study Circle, Views Exchange Study Circle, EICASA etc.

He is also a contributor to various articles relating to Indirect Taxes in the professional and industrial forum like Taxguru, Tax India Online, Views Journal, ACAE Journal, DTPA Journal, VIPCA Journal, GST India Expert, GST Sahayata etc.

## PROFILE

### ANSHUMA RUSTAGI



**ANSHUMA RUSTAGI** is a Member of the Institute of Chartered Accountants of India and holds a diploma in Information Systems Audit.

She is co-author of a book on VAT titled "**Value Added Tax in West Bengal - A Ready Reckoner**".

She has been a rankholder throughout her academic career and was awarded the **Nripati Nivanani Memorial Prize** and **Madan Memorial Medal** and Merit Based Scholarship by the Institute of Chartered Accountants of India (ICAI) for C.A. Intermediate Examination Results.

She **ranked Second in Calcutta University** in B.Com (H) Examination and was invited by the Department of Education (Government of India) to witness the Republic Day Parade, 1998 from the Prime Minister's Box for Meritorious Results in Secondary (Class X) Examination.

She has been a part of team for **extensive research on tax provisions and case laws** for the following books authored by Mr. B.P. Aganval, FCA Tax Audit - Law, Practice and Procedures Business and Corporate Tax Planning - A Handbook.

**She has also been selected and invited to present Papers in Regional and National C.A. Student Conferences on various issues.**

After having worked with Hindustan Lever Limited as a management trainee, she is now in practice since last 10 years and contributes articles regularly to various professional publications.

She is a speaker in various professional study circles and seminars organized by Chambers of Commerce.

## PROFILE

### CA JAY AGARWAL



#### Past Experience :

- o He has over 6 years of experience in the field of GST, Service Tax and International Taxation. He is passionate about his profession. Jay Has been a very **active member** of the training teams at a pan India level. He has also **conducted** various trainings with big corporate houses in the area of Taxation & Accounting. He is a Kolkata native but has travelled extensively for various roles in his career.
- o **He is also a selected faculty member of the Indirect Tax Committee of CA Institute for GST Trainings.**
- o **He is also an active member of the various Study Group** of the Institute of Chartered Accountants of India- Indirect Taxes **dealing in** – GST Research, Representations to Governments, Publication of Books, etc.

#### Current Occupation :

He is the **Managing Partner** of the Firm M/s Agarwal Jay & CO., a dedicated team of seasoned and talented professionals comprising group of Chartered Accountants, Company Secretary. We incepted in the year 2012 under the leadership of CA Jay Agarwal and stand tall due to sheer hard work, timely deliverance, thorough knowledge, cordial relationship with clients and work for their satisfaction. Currently we are **looking after** advisory, Compliance and litigations in the field of Service Tax & GST for clients in varied types of industries such as construction, restaurant chains, Edible Oil Industry, engineering consultancy, export houses, entertainment, public services, Government Owned Construction organisations, etc.

## PROFILE

### VIKASH PARAKH



CA Vikash Parakh is a practising Chartered Accountant. He did his graduation from St. Xavier's College, Calcutta and has been in practice since 2002. He has also obtained DISA and DIRM qualifications from the Institute of Chartered Accountants of India.

With post-qualification experience of over 17 years in the areas of audit, law and taxation, he specializes in Service Tax & GST matters, Internal Audits, SOP & ERP Implementation and Real Estate Structuring & Project Management.

He is associated with several professional associations and business chambers. He is the Immediate Past President of DTPA, an association of professionals with more than 1700 members. He is the Co-Chairman of Direct Tax Committee of Bharat Chamber of Commerce. He is a member of the Kolkata Study Group on GST and has been selected as a faculty on GST by ICAI.

He has delivered presentations at various forums and has contributed several articles for various journals and magazines of professional associations. Apart from the print media, his several articles are available on his blog site [cavikashparakh.blogspot.in](http://cavikashparakh.blogspot.in).





## ARTICLE



**CA SHIVANI SHAH**  
*shivinishah83@gmail.com*

# NEW RETURNS UNDER GST – WEF 2020/04/01

With an aim to simplify the GST return filing system, in the 31<sup>st</sup> GST Council Meeting it was decided that a new return system would be implemented. The Central Board of Indirect Taxes thereafter released the format of the new return forms. It is expected that the new returns will be effective from 01.04.2020.

### **Existing Scheme of Returns:**

Liability – GSTR 1 – Report Liability – invoice level liability gets declared

ITC – GSTR 2A – Information on ITC – the suppliers GSTR 1 invoices gets populated into GSTR 2A of the recipient. The recipient can avail and utilize this ITC for tax payment

Cash – Cash Ledger – Cash Availability – the taxpayer creates a challan on the portal and deposits cash. The cash thus deposited gets populated into the electronic cash ledger of the tax payer

Payment - GSTR 3B – the taxpayer self declares its liability along with ITC and pays his tax by utilizing cash and ITC

### **New Scheme of Returns:**

Liability – ANX 1 – Report Liability – invoice level liability gets declared and uploaded on portal

ITC – ANX 2 – Information on ITC – the suppliers ANX 1 invoices gets auto populated into the ANX 2 of the recipient. The recipient can accept or reject or keep the invoices pending. The accepted invoices make the final ITC

Cash – Cash Ledger – Cash Availability - the taxpayer creates a challan on the portal and deposits cash. The cash thus deposited gets populated into the electronic cash ledger of the tax payer

Payment – RET/PMT 08 – through RET 1/2/3 the taxpayer pays the auto populated liability

(from ANX 1) by utilizing the cash and ITC (auto populated through ANX 2)

### The structure of the new returns:

Form GST ANX-1: Annexure of Outward Supplies

Form GST ANX-2: Annexure of Inward Supplies

Form GST RET 1: Main Return (monthly/quarterly)

Form GST ANX-1A: Outward Supplies Amendment form

Form GST RET-1A/2A/3A: Main Return Amendment form

Form GST PMT-08: Payment of self-assessed tax

### Basic Overview of the new returns:

Particulars	For Large Tax Payers	For Small Tax Payers		
Aggregate Turnover of preceding FY	More than 5 CR with some exceptions (Refer Annexure 1)	Up to 5 CR		
Types of Return	Normal Return (RET-01)	Normal Return (RET -01) (Optional)	Sahaj Return (RET-02)	Sugam Return (RET- 03)
Frequency of Return filing	Monthly	Quarterly		
Supplier has to choose return form according to buyer criteria mentioned in this row	Any (B to B/ B To C/ Both)	Any (B to B/ B To C/ Both)	B To C	B To B + B To C
Due dates of Payment and Return	20th of next month	20th of next month	20th of next month (Form GST PMT-08)	
Name of amendment forms	GST ANX-1A and GST RET 1A	GST ANX-1A AND GST RET 1A	GST ANX-1A AND GST RET 2A	GST ANX-1A and GST RET 3A
Reporting of HSN Level Data in GST return	HSN code at 6 digit level for goods and services	Optional facility to report HSN level data		
Annexures of main return	GST ANX-1 (Outward supplies) and GST ANX -2 (Inward supplies)			

#### ANX 1:

- Supplier can upload the documents (Invoices/ credit notes/ debit notes) on real time basis till 10<sup>th</sup> of following month.

For e.g. If supplier is filing April month return, he can upload invoices of April month on real time basis till 10<sup>th</sup> May

- If supplier uploads invoices of April month after 10<sup>th</sup> of subsequent month, GST portal will consider April month invoices in the return of May month.
- GST portal restricts supplier to upload documents on the GST portal during following period of every month/ quarter
  - Monthly Return – 18 to 20
  - Quarterly Return – 23 to 25

- Recipient can also view documents on near to real time basis
- Tax amount shall be computed by the system based on the taxable value and tax rate. The tax amount will not be editable
- Place of supply is required to be reported mandatorily for all supplies
- Applicable tax rate can be selected from the drop down menu

#### ANX 2:

- Supplier can upload the documents (Invoices/ credit notes/ debit notes) on real time basis till 10<sup>th</sup> of following month.

For e.g. If supplier is filing April month return, he can upload invoices of April month on real time basis till 10<sup>th</sup> May



- If supplier uploads invoices of April month after 10<sup>th</sup> of subsequent month, GST portal will consider April month invoices in the return of May month.
- GST portal restricts supplier to upload documents on the GST portal during following period of every month/ quarter
  - o Monthly Return – 18 to 20
  - o Quarterly Return – 23 to 25
- Recipient can also view documents on near to real time basis
- Tax amount shall be computed by the system based on the taxable value and tax rate. The tax amount will not be editable
- Place of supply is required to be reported mandatorily for all supplies
- Applicable tax rate can be selected from the drop down menu

#### **RET 01:**

- After uploading details in FORM GST ANX-1 and taking actions on the documents auto-populated in FORM GST ANX-2, the tax payer shall file the main return FORM GST RET-01.
- Information declared through FORM GST ANX-1 and FORM GST ANX-2 shall be auto-populated in the main return GST RET-01.
- GST RET 1 return form includes details of all types of supplies, ITC claimed, tax and interest.
- GST RET 1 will take place of the GSTR 3B and ANX 1 will take place of GSTR 1 return, both (GSTR-3B and GSTR-1) which are being filed under the current system.
- Facility to file NIL return through SMS will also be available if no supplies have been made or received

- Following types of suppliers are exempt from filing monthly returns
  1. Composition dealer
  2. Input service distributor
  3. Non-resident registered person
  4. Persons liable to deduct TDS
  5. Persons liable to collect TCS

#### **Authors View**

As per the Council's decision the new GSTR is going to be in place from 01.04.2020. Obviously, the idea behind the design of the new GSTR is to incorporate the letter and spirit of GSTR-1, GSTR-2 & GSTR-3. This basically translates into input-output invoice matching before ITC is claimed, which seems to be a great idea. This would also pave way of controlling the menace of fake invoicing cases. However, there may be practical issues which will be a deterrent for a smooth implementation of the new return format. ANX-1 is fine as one needs to upload all outward supplies invoices like GSTR-1. The real challenge is ANX-2 where matching of inward invoices with suppliers' outward invoices is to be done between a certain designated time frame and ITC is to be taken only if suppliers upload their invoices. If they fail to do so, the recipient's ITC gets stuck. Given the short window provided to do follow up with suppliers, huge amount of ITC is likely to be blocked in this model. And this is bound to create havoc with the ITC again which has already suffered a great deal under Rules 36(4) & 86A and even Rule 138E in relation to restrictions on generation of e-Way Bill.

However, considering that 01.04.2020 is just round the corner, it is advisable that the trade and industry better start working on the new return format and get acquainted with the same at the earliest.

**GAGAN KEDIA**

FCA, CS, Cert.IDT (ICAI), B.COM(H)

**ARTICLE**

## E – INVOICING UNDER GST – W.E.F. 01ST APRIL-2020

**E- Invoicing** (also called **Electronic invoicing**) is a form of electronic billing. E-invoicing methods are used by trading partners, such as customers and their suppliers, to present and monitor transactional documents between one another and ensure the terms of their trading agreements are being met.

### a) **APPLICABILITY:**

- o From **01.04.2020**, it is **MANDATORY** for those whose Turnover in a FY exceeds Rs. 100 Crores.
- o This method is applicable to **B2B transactions** (i.e. between Registered supplier and Registered buyer) and **EXPORTs** where an identification number namely '**Invoice Reference Number**' (IRN) shall be generated *against every invoice* by the '**Invoice Registration Portal**' (IRP) that shall be transferred from IRP to **GST portal** and **e-way bill portal** in *REAL time*.
- o This method is also applicable to **B2G transactions** for specific entities (i.e. between Registered supplier and Government).

### b) **IMPORTANCE:**

It will eliminate the method of *manual data entry* while filing **ANX-1** or **GSTR-1** as well as generation of **Part-A** of **e – way bill**.

### c) **CONDITIONS:**

- o *Supplier* must be a *registered person* whose *Turnover* in a FY. must *exceed* Rs. 100 Crores.



- o Buyer must receive an e – invoice in order to claim Input Tax Credit. [RULE 48(5) of CGST Rules]

**d) REDUCED COMPLIANCE:**

- o This method shall reduce compliance as reporting of invoice details to GSTN will lead to **auto creation** of **ANX-1** of the seller and **ANX-2** of the buyer, as well as **Part-A of E-Way Bill**. Thus, it will lead to **ease in filling of Sales Data**. The Author feels that since E-Invoicing is mandatory only in case of B2B, Exports & B2G Sales,

only the B2C sale details shall be required to be filled in ANX-1.

- o This will ensure that the Assessee **does not spend time** in summarizing the invoice information **again and again** for the same requirements.
- o This will also ensure **elimination of data entry errors** when data is fed from Invoice to e – way bill and Form ANX – 1.
- e) **PORTAL:** There are **10 portals** for the purpose of generating IRN (Invoice Reference Number) –

These can be linked with existing business software through API access as well.

www.einvoice1.gst.gov.in	www.einvoice2.gst.gov.in	www.einvoice3.gst.gov.in	www.einvoice4.gst.gov.in
www.einvoice5.gst.gov.in	www.einvoice6.gst.gov.in	www.einvoice7.gst.gov.in	www.einvoice8.gst.gov.in
www.einvoice9.gst.gov.in	www.einvoice10.gst.gov.in		

**f) DEPARTMENT IMPACT:**

This method requires disclosure of Invoices issued, subsequent cancellation or amendments made in return forms OR invoices cancelled OR credit notes issued. This helps GST department to identify the **genuineness** of Invoices issued and also to identify **Fake invoices**.

- g) Following **details** are required in an E – Invoice –
  - o **Supplier** – Name, GSTIN and Address.
  - o **Buyer** – Name, GSTIN and Address along with address of **Delivery**.
  - o Invoice Type, number and Date along with amount, Tax and quantity.

**h) MYTHS v/s MYTH BUSTERS:**

SI No.	MYTHS	MYTH BUSTERS
1.	Now invoices shall be issued through GST portal.	No. One can continue to issue invoices the way he/she has been doing it. Only an Invoice Reference Number (IRN) needs to be generated now through any of the 10 (IRP's) mentioned above.
2.	Generation of Invoice Reference Number (IRN) is a time taking process.	No. Generating of IRN is not a time taking process. IRP shall assign an IRN in sub 100 milliseconds.
3.	In order to issue an e-invoice one must have a billing software, ERP or accounting software.	<b>EIGHT</b> billing and accounting software have been provided free of cost by GSTN to taxpayers having turnover upto 1.5 Crores. These can be used for issuing e-invoices.
4.	E-invoicing will add one more GST compliance	It will reduce compliance as reporting of invoice details to GSTN will lead to <b>auto creation</b> of <b>ANX-1</b> of the seller and <b>ANX-2</b> of the buyer, as well as <b>Part-A of E-Way Bill</b> .
5.	The IRN generated by the IRP would be the Invoice number.	No. The <b>Invoice number</b> shall be the one which has been entered in the invoice, while IRN will be just a reference number.
6.	Major changes are required in the billing software, ERP or accounting software to become e-invoice compliant.	<b>No</b> major change would be required at the end of Assessee; however, the software providers are required to introduce some small changes at the back end.



**i) FREQUENTLY ASKED QUESTIONS:**

- Q) Would the **supplier** be allowed to **issue** his **own invoice** and if yes, will the invoice number and IRN be required to be mentioned?
- A) Yes, the supplier will issue his own system's invoice, in the standard e-invoice scheme that has been published. Invoice number is a mandatory item under GST and also for e-invoice. IRN can be provided after the e-invoice has been successfully reported to the IRP. E-Invoice will be valid only if it has IRN.
- Q) Whether **e-invoices** generated through GST system can be **partially/fully cancelled**?
- A) E-Invoice cannot be partially cancelled. It has to be fully cancelled. The e-invoice mechanism enables invoices to be cancelled. This will have to be reported to IRN within 24 hours. Any cancellation after 24 hours cannot be possible on IRN, however one can manually cancel the same on GST portal before filing the returns.
- Q) How would **amendments** be allowed in e-invoice?
- A) Amendments to the e-invoice are allowed on GST portal as per provisions of GST law. All the amendments to the e-invoice will be done on GST portal only.

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## ARTICLE



CA Shubham Khaitan

# ISSUES IN ITC RECONCILIATION

## Introduction

Rule 36(4) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) has been inserted vide notification No. 49/2019-Central Tax, dated 09.10.2019. The said sub-rule provides **restriction in availment of input tax credit (ITC)** in respect of **invoices** or debit notes, the details of which have **not been uploaded** by the suppliers under sub-section (1) of section 37 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act). As per the said restriction, the **maximum available input tax credit** was provided as **120% of the eligible input tax credit** as per Form GSTR 2A.

Further Notification no. 75/2019-CT dated 26<sup>th</sup> December 2019 further amended Rule 36(4) of the of the CGST Rules, 2017 to restrict availment of ITC from 20% to 10% of eligible credits available in respect of invoices or debit notes the details of which have been uploaded by the suppliers. Thereby, currently the **maximum available input tax credit** would be **110% of the eligible input tax credit** as per Form GSTR 2A. The said restriction is said to be applicable on credits taken on all invoices from 1<sup>st</sup> January 2020.

The following has been clarified about the mechanism of such restriction of input tax credit vide Circular no. 123/42/2019-GST dated 11<sup>th</sup> November 2019:

**Q. What are the invoices/ debit notes on which the restriction under rule 36(4) of the CGST Rules shall apply?**

**Ans:** The restriction of availment of ITC is imposed only in respect of those invoices / debit notes, details of which are required to be uploaded by the suppliers under sub-section (1) of section 37 and which have not been uploaded. Therefore, taxpayers **may avail full ITC in respect of**

**IGST paid on import, documents issued under RCM, credit received from ISD etc.** which are outside the ambit of sub-section (1) of section 37, provided that eligibility conditions for availment of ITC are met in respect of the same. The restriction of 36(4) will be applicable only on the invoices / debit notes on which credit is availed after 09.10.2019.

**Q. Whether the said restriction is to be calculated supplier wise or on consolidated basis?**

**Ans:** The restriction imposed is **not supplier wise**. The credit available under sub-rule (4) of rule 36 is linked to **total eligible credit from all suppliers against all supplies** whose details have been uploaded by the suppliers. Further, the calculation would be based on **only those invoices** which are otherwise **eligible for ITC**. Accordingly, those invoices on which ITC is not available under any of the provision (say under sub-section (5) of section 17) would not be considered for calculating 20 percent (now 10% percent) of the eligible credit available.

**Q. FORM GSTR-2A being a dynamic document, what would be the amount of input tax credit that is admissible to the taxpayers for a particular tax period in respect of invoices / debit notes whose details have not been uploaded by the suppliers?**

**Ans:** The amount of input tax credit in respect of the invoices / debit notes whose details have not been uploaded by the suppliers shall not exceed

20 of the eligible input tax credit available (now 10%) to the recipient in respect of invoices or debit notes the details of which have been uploaded by the suppliers under subsection (1) of section 37 **as on the due date of filing of the returns in FORM GSTR-1 of the suppliers for the said tax period**. The taxpayer may have to ascertain the same from his auto populated FORM GSTR 2A as available on the due date of filing of FORM GSTR-1 under sub-section (1) of section 37.

**Q. How much ITC a registered tax payer can avail in his FORM GSTR-3B in a month in case the details of some of the invoices have not been uploaded by the suppliers under subsection (1) of section 37?**

**Ans:** Sub-rule (4) of rule 36 prescribes that the ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 percent (10% percent) of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37. The eligible ITC that can be availed is explained by way of illustrations, in a tabulated form, below.

In the illustrations, say a taxpayer "R" receives 100 invoices (for inward supply of goods or services) involving ITC of Rs. 10 lakhs, from various suppliers during the month of Oct, 2019 and has to claim ITC in his FORM GSTR-3B of October, to be filed by 20<sup>th</sup> Nov, 2019.

	<b>Details of suppliers' invoices for which recipient is eligible to take ITC</b>	<b>20% of eligible credit where invoices are uploaded</b>	<b>Eligible ITC to be taken in GSTR-3B to be filed by 20<sup>th</sup> Nov.</b>
<b>Case 1</b>	Suppliers have furnished in <b>FORM GSTR-1</b> 80 invoices involving ITC of Rs. 6 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs.1,20,000/-	Rs. 6,00,000 (i.e. amount of eligible ITC available, as per details uploaded by the suppliers) + Rs.1,20,000 (i.e. 20% of amount of eligible ITC available, as per details uploaded by the suppliers) = Rs. 7,20,000/-



	<b>Details of suppliers' invoices for which recipient is eligible to take ITC</b>	<b>20% of eligible credit where invoices are uploaded</b>	<b>Eligible ITC to be taken in GSTR-3B to be filed by 20<sup>th</sup> Nov.</b>
<b>Case 2</b>	Suppliers have furnished in <b>FORM GSTR-1</b> 80 invoices involving ITC of Rs. 7 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs. 1,40,000/-	Rs 7,00,000 + Rs. 1,40,000 = Rs. 8,40,000/-
<b>Case 3</b>	Suppliers have furnished in <b>FORM GSTR-1</b> 75 invoices having ITC of Rs. 9.5 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs. 1,90,000/-	Rs. 9,50,000/- + Rs. 1,90,000/- = Rs. 11,40,000 The additional amount of ITC availed shall be limited to ensure that the total ITC availed does not exceed the total eligible ITC i.e. Rs. 10,00,000

The Balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are uploaded by the suppliers. He **can claim proportionate ITC as and when details of some invoices are uploaded by the suppliers provided that credit** on invoices, the details of which are not uploaded (under sub-section(1) of section 37) **remains under 20 percent (now 10% percent) of the eligible input tax credit** the details of which are uploaded

by suppliers. Full ITC of balance amount may be availed, in present illustration by "R", in case total ITC pertaining to invoices the details of which have been uploaded reaches Rs. 8.3 lakhs (Rs 10 lakhs/1.20). In other words, **taxpayer may avail full ITC in respect of a tax period**, as and **when the invoices are uploaded** by the suppliers to the extent **Eligible ITC/1.2**. The same is explained for Case No. 1 and 2 of the illustrations provided at SL No.3 above as under:

<b>Case 1</b>	"R" may avail balance ITC of Rs. 2.8 lakhs in case suppliers upload details of some of the invoices for the tax period involving ITC of Rs. 2.3 lakhs out of invoices involving ITC of Rs. 4 lakhs details of which had not been uploaded by the suppliers. [Rs. 6 lakhs + Rs. 2.3 lakhs = Rs. 8.3 lakhs]
<b>Case 2</b>	"R" may avail balance ITC of Rs. 1.6 lakhs in case suppliers upload details of some of the invoices involving ITC of Rs. 1.3 lakhs out of outstanding invoices involving Rs. 3 lakhs. [Rs. 7 lakhs + Rs. 1.3 lakhs = Rs. 8.3 lakhs]

Assuming that in the above illustration, the period involved is January 2020 and not October 2019. In the said case, the restriction of 10% should be applicable instead of 20%. Everything else remaining the same, the said case taking January 2020 has been discussed below:

	<b>Details of suppliers' invoices for which recipient is eligible to take ITC</b>	<b>10% of eligible credit where invoices are uploaded</b>	<b>Eligible ITC to be taken in GSTR-3B to be filed by 20<sup>th</sup> Feb.</b>
<b>Case 1</b>	Suppliers have furnished in <b>FORM GSTR-1</b> 80 invoices involving ITC of Rs. 6 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs.60,000/-	Rs. 6,00,000 (i.e. amount of eligible ITC available, as per details uploaded by the suppliers) + Rs. 60,000 (i.e. 10% of amount of eligible ITC available, as per details uploaded by the suppliers) = Rs. 6,60,000/-

	<b>Details of suppliers' invoices for which recipient is eligible to take ITC</b>	<b>10% of eligible credit where invoices are uploaded</b>	<b>Eligible ITC to be taken in GSTR-3B to be filed by 20<sup>th</sup> Feb.</b>
<b>Case 2</b>	Suppliers have furnished in <b>FORM GSTR-1</b> 80 invoices involving ITC of Rs. 7 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs. 70,000/-	Rs 7,00,000 + Rs. 70,000 = Rs. 7,70,000/-
<b>Case 3</b>	Suppliers have furnished in <b>FORM GSTR-1</b> 75 invoices having ITC of Rs. 9.5 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs. 95,000/-	Rs. 950,000/- + Rs. 95,000/- = Rs. 10,45,000 The total ITC available for the period in the books is Rs. 10,00,000. Thereby, the said ITC will be restricted to Rs. 10,00,000.

The Balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are uploaded by the suppliers. He **can claim proportionate ITC as and when details of some invoices are uploaded by the suppliers provided that credit** on invoices, the details of which are not uploaded (under sub-section(1) of section 37) **remains under 10 percent of the eligible input tax credit**, the details of which are uploaded by suppliers. Full

ITC of balance amount may be availed, in present illustration by "R", in case total ITC pertaining to invoices the details of which have been uploaded reaches Rs, 9.09 lakhs (Rs 10 lakhs/1.10). In other words, **taxpayer may avail full ITC in respect of a tax period**, as and **when the invoices are uploaded** by the suppliers to the extent **Eligible ITC/1.1**. The same is explained for Case No. 1 and 2 of the illustrations provided at SL No.3 above as under:

<b>Case 1</b>	"R" may avail balance ITC of Rs. 3.4 lakhs in case suppliers upload details of some of the invoices for the tax period involving ITC of Rs. 3.09 lakhs out of invoices involving ITC of Rs. 4 lakhs details of which had not been uploaded by the suppliers. [Rs. 6 lakhs + Rs. 3.09 lakhs = Rs. 9.09 lakhs]
<b>Case 2</b>	"R" may avail balance ITC of Rs. 2.3 lakhs in case suppliers upload details of some of the invoices involving ITC of Rs. 2.09 lakhs out of outstanding invoices involving Rs. 3 lakhs. [Rs. 7 lakhs + Rs. 2.09 lakhs = Rs. 9.09 lakhs]

### **Standard Operating Procedures (SOP) to be followed in case of non-filers of returns**

In order to curb revenue leakage, the government has actively started taking various measures. From proposing to **restrict availment of eligible ITC from 20% to 10%** of the amount reflected in GSTR-2A to expanding the scope of **blocking of e-way bill** by covering non-filing of GSTR-3B along with GSTR-1 for two consecutive returns.

The government had also issued **Circular 129/48/2019-GST dt: 24.12.2019**, which lays down the SOP to be followed by the department in case of non-filing of GST returns viz GSTR-3B, GSTR-4/GSTR CMP 08 etc.

The following are the steps that will be followed by the department:

- 1) Registered person will get a **system generated message 3 days before the due date** reminding them to file their returns by the due date.
- 2) In case the registered person does not file the return within the due date, **a mail/message will be sent immediately after the due date** to the effect that the registered person has not furnished the return.
- 3) **5 days after the due date** of furnishing the return, a **notice in FORM GSTR-3A** shall be issued electronically to such registered person





who fails to furnish their return, **requiring him to furnish such return within 15 days** from the issuance of such notice.

- 4) If the registered taxpayer **does not file the return within 15 days**, the proper officer shall pass a **best judgement assessment order** in **FORM GST ASMT-13** and upload a summary indicating the **amount of tax, interest and penalty** in **FORM GST DRC-07**.
- 5) In case the **defaulting taxpayer furnishes the return within 30 days** from passing of order in **FORM GST ASMT-13**, the said **assessment order** shall be **deemed to have been withdrawn**. However, if the said return **remains unfurnished 30 days**, then proper officer may initiate **recovery proceedings**.

The circular also gives powers to the proper officer **in deserving cases**, based on the facts of the case, to resort to **provisional attachment of property before issuance of FORM GST ASMT-13** in order to protect the revenue.

Further, the proper officer can also **cancel registration** in cases where the return has not been furnished for the period 3 consecutive tax periods (in case of quarterly return filers) or 6 consecutive tax periods (in case of monthly return filers)

#### **Certain Issues and our Suggestion**

**Issue:** GSTR 2A has been stated to be downloaded as on 11th of each month for the purpose of reconciliation between GSTR 2A and 3B. Let us

the assume the month of October 2019. There are three category of taxpayers –

- o Category A - one who uploads his return after the due date of 11th
- o Category B - one who uploads the invoice of October in the month of November
- o Category C - one who does not upload the invoices of the recipient

If there is any shortfall of Input tax credit due to the 20%/10% barrier getting breached and if the same is carried forward to the next month (let us say November), then in the month of November the reconciliation of October is to be done as well. However, there is no mechanism to track as to which invoices are newly being shown in GSTR 2A of October as Category A supplier filed his return after the due date of 11th. Further, if the supplier is showing the invoice of October in the month of November, then it cannot be added to GSTR 2A of October as GSTR 3B of October would have been filed. Further, if the credit was available in books in October, uploading of the same invoice in the month of November would not be of much avail.

**Suggestion:** It is suggested that GSTR 2A and GSTR 3B should be deferred till the new return filing mechanism is in place. The new return filing mechanism would have adequate infrastructure to show the input tax credit in the correct month as per Form GST ANX-2. The current GSTR 2A does not fulfill the said requirements.

Alternatively, GSTR 2A should be made and be provided on the same lines as Form GST ANX-2.



CA ANSHUMA RUSTAGI

## ANSHUMA RUSTAGI

It has been more than 2 years since the implementation of GST as a “one nation, one tax” in India. The sole indirect tax which sought to encompass all forms of indirect taxes within its ambit and aimed at reducing disputes is now fraught with issues.

Though the GST Law itself seemed to be much more simplified than its predecessors, the implementation of the same was quite shoddy. The GSTN seemed unable to cope up with the requirement laid down by the acts and the rules. The input credit setoff mechanism was changed a multiple times. Late fees on delayed filing of returns removed, reinstated and removed multiple times. The applicability of interest on delayed filing of returns is subject matter of constant debate and there are numerous viewpoints not only on the applicability of the same but also the amount on which the interest should be levied. Registered taxpayers have been subject to investigation and verification without stating valid reasons for initiating such actions. Taxpayers have been receiving emails from the revenue department demanding random amounts as tax and interest and on various accounts with a copy marked to 300 other taxpayers!

Keeping in mind that the GST law itself is still in its nascent stage and there are almost no legal precedents, this paper seeks to discuss certain legal issues which taxpayers are facing on a regular basis.

### 1. Interest on Late filing of GST Return

Section 50(1) of the CGST Act, 2017 reads as under:

*SECTION 50. Interest on delayed payment of tax. — (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his*



own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.”

Notices are being received from the department requiring payment of the interest on gross tax dues **on account of delayed filing of GSTR – 3B.**

**Firstly, many of these notices are prima facie technically not valid as they are issued without a DIN. Further,** Section 73 and 74 of the CGST Act, requires the tax payer to show cause as to why the tax along with interest u/s 50 as determined by the officer should not be paid. Said provisions also provides that the tax payer can pay the tax and/or interest on the basis of his own ascertainment and in such circumstances the officer may issue the show cause notice for the amount falling short.

Therefore, an interest recovery notice without adequate opportunity to show cause is prima facie not valid.

Further, As per the verdict of the Hon’ble Gujarat High Court in the case of AAP & Co. Chartered Accountants v/s Union of India [R/Special Civil Application No. 18962 of 2018 dated June 24, 2019], it was held that GSTR 3B was not a return in lieu of GSTR 3 specified u/s 39 of CGST Act, 2017. Therefore, interest cannot be demanded on delay filing of GSTR 3B.

Further, even if interest is to be paid, the same should be paid on net basis i.e., output tax liability – input tax credit. GST Council has already acknowledged the issue in their 31st meeting and recommended to impose interest only on the net amount paid by way of cash. In “point number 8” council have principally approved the following matter:

*“Amendment of Section 50 of the CGST Act to provide that the interest should be charged only on the **net tax liability** of the tax payer, after taking into account the admissible Input Tax Credit, i.e. interest would be leviable only on the amount payable through the electronic cash ledger.*

A proviso has been introduced (yet to be notified) to the said sub-section which reads as

under:

*“Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.”* The amendment though not notified gives indication to the intent of the legislature and should for all purposes form basis for payment of interest on net liability.

## **2. Demand to reverse input tax credit under section 16(4)**

Letters are being received from the department intimating liability under section 73(5) read with rule 142 (1A) on account of provisions of section 16(4) of the CGST Act, 2017 failing which show cause maybe issued under section 73(1) of the Act. The advisory for inadmissibility of Input tax credit issued by the department is on the strength of a condition / restriction laid under sub section 4 of Section 16 of the CGST Act, 2017 that any registered person shall not be entitled to take any credit in respect of any invoice or a debit note, if the said registered person has filed the GSTR 3B return in respect of the tax periods July 2017 to March 2018 after 30.04.2019 and/ or the tax periods April 2018 to March 2019 after 20.10.2019 respectively.

The section 73(5) makes provision for voluntary payment by the tax payer. Rule 142(2) prescribes Form DRC – 03 for voluntary payment by the taxpayers under section 73(5).

Rule 142(1A) has been inserted w.e.f. 9.10.2019 requiring the tax officer to inform the tax payer for the determined amount regarding tax, interest & penalty before serving the show cause notice under section 73(1) or 74(1).

Section 16(4) prescribes the time limit within which input tax credit can be **taken**. The time limit under Section 16(4) is to be the earlier of the following two dates:-

(a) Due date of furnishing return under

Section 39 for the month of September after end of the financial year to which the invoice pertains; or

- (b) Date of furnishing of the relevant annual return;

The restriction under section 16(4) is regarding taking of the credit and not availment of the same in the GST Return. Also, GSTR 3B is not a valid return as held by the Gujarat High Court in case of **AAP and Company Vs UOI [TS-490-HC-2019(GUJ)-NT]**. Therefore, there should not be any reason for disallowance of credit under section 16(4).

### 3. Blocking of credit

Rule 86A has been inserted w.e.f. 1.1.2020, where the Commissioner or officer authorised by him may block a portion of input tax credit from the electronic credit ledger to the extent they have reasons to believe – to be recorded in writing that

- the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document
  - o issued by a registered person who has been found non-existent or
  - o not to be conducting any business from any place for which registration has been obtained; or

- o without receipt of goods or services or both; or
- o in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

- the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained;
- the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36.

However, there are genuine cases in which the department is blocking credit on various pretexts and not ready to unblock the same even after representation. The rule does not mention the time limit within which the credit has to be unblocked. There is no provision for show cause also, before denying utilisation of input tax credit. This is a power given to the officers without adequate recourse and leads to unnecessary harassment and blockage of working capital for the tax payer.

There are numerous other litigious issues which are arising and will continue to arise under the new GST Law. Hopefully, the same will be addressed by the exchequer in a fair manner and without causing unnecessary and frivolous harassment to the taxpayer.



## ARTICLE



CA Jay Agarwal

# OFFENCES AND PENALTIES UNDER GST

## Scope of Penal Provisions under GST

There are 21 types of activities listed as offences under section 122 in GST Act and attract penalties on the same depending on the seriousness and weight of offence. Some of the offences may even attract prosecution in terms of provisions laid under section 132 of the Act.

The term offence has not been defined in the act but section 3(38) of the General Clauses Act defines «Offence» as it shall mean any act or omission made punishable by any law for the time being in force»

Further section 122 of the CGST Act, 2017 is made applicable to IGST vide Section 20 of the IGST Act, 2017 and UTGST vide Section 21 of the UTGST Act, 2017.

Penalties imposed may be classified under 3 parts as under :-

- (i) **Part I** states penalty for committing any one of the 21 offences by a **taxable person** can attract penalty of Rs. ten thousand or amount of tax involved whichever is higher.
- (ii) **Part II** covers situations of offences committed **registered persons** resulting in any tax which has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised either due to willful misstatement or fraud or suppression of facts to evade tax which will attract penalty equal to tax involved subject to a minimum of ten thousand rupees. In case where offence is occurred not due to willful misstatement or fraud or suppression of facts penalty will get reduced to 10% of tax involved subject to a minimum of ten thousand rupees.
- (iii) **Part III** deals with offences done by **any person** where the person who aids or abets any of the offences specified in clauses (i) to



(xxi) of sub section (i) of section 122 or is not directly involved in any evasion in any manner but may be a party to evasion or if he does not attend summons or produce documents. Penalty in such a case would be upto twenty five thousand rupees.

The provisions clearly indicate that not only the dealers but '**any person**' who is engaged in such contravening activities shall be liable to penalty.

The provisions also clarify that a penalty may be imposed in case a non-registered person fails to appear on summons issued to him for recording of evidences. Such provisions of imposition of penalty on persons who are engaged in offensive activities or aid in offensive activities shall certainly help achieving higher compliance.

### Directions for imposing Penalty

a) No penalty for minor breach which are committed unknowingly or without any malicious intention but which may appear as fraud or an attempt to evade tax. Therefore, to save innocent persons from hassles of penalties or associated processes, the GST law has laid down some guidelines:

If the error in taxes is Rs. 5,000 or less, then the breach should be considered minor and no penalty should be imposed.

Further, an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an **error is apparent on the face of record**.

- b) Penalty to be commensurate with severity of breach depending upon facts and circumstances of the case.
- c) Opportunity of being heard to be provided before imposing penalty.
- d) The tax authority shall ensure provision of an explanation to the persons upon whom the penalty is imposed the nature of breach and the laws, regulations or procedural requirements to be informed and the applicable law, regulation or procedure under which the amount of penalty for the breach has been prescribed.
- e) Upon Voluntary Disclosures the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying

a penalty for that person and may lower the penalty.

- f) The above provisions are not applicable when law specifies fixed penalty.

### Detention, seizure and release of goods and conveyances in transit.

Where a person is found transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—

- (a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is **less, where the owner of the goods comes forward for payment of such tax and penalty;**
- (b) on payment of the applicable tax and penalty **equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon** and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, **where the owner of the goods does not come forward for payment of such tax and penalty;**
- (c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

### Synopsis of Procedure for Interception, Detention , Release and Confiscation

- Authorization of officers to conduct interception & inspection of conveyances & goods
- Interception of conveyance, verification of



- documents & inspection of goods
- Production of documents related to goods & conveyance for verification
  - If no discrepancies noticed, the conveyance shall be allowed to move
  - If fails to produce required documents or officer intends to undertake inspection – detention
  - Record statement of person in charge of conveyance (FORM GST MOV-01)
  - Issue an order for physical verification/ inspection of the conveyance, goods (FORM GST MOV-02)
  - Within 24hrs of issuing MOV-02, upload a report in Part-A of EWB-03 on waybill portal
  - Complete inspection proceedings within 3 days from the date of issue of order of physical verification in MOV-02
  - Beyond 3 days, obtain written permission from concerned authorities in MOV-03 & serve the same on person in charge of conveyance
  - After physical verification, prepare a report MOV- 04 & serve a copy of report on person in charge
  - Upload final report of inspection in Part-B of EWB-03(within 3 days of physical verification)
  - If no discrepancies are found, issue release order in MOV-05
  - If discrepancies found, detain vehicle under Section 129 by issuing order of detention in MOV-06
  - After detention, issue notice in MOV-07 specifying tax & penalty payable.
  - Where person in charge/owner comes forward to pay tax & penalty, release the goods & conveyance by an order in MOV-05.
  - Upload final orders in MOV-09 on common portal
  - Tax & penalty accrued from above proceedings shall be added in electronic liability register
  - Payments made shall be credited to electronic liability register by debiting electronic cash ledger or electronic credit ledger (Section 49)
  - Goods & conveyance can also be released after obtaining a bond in MOV-08 along with a security in the form of bank guarantee equal to the amount of tax & penalty payable
  - If objections filed, consider such objections and pass a speaking order in MOV-09, quantifying the tax and penalty payable
  - If tax & penalty not paid within 7 days from the date of the issue of the order of detention in MOV-06, action under Section 130 initiated by serving a notice in MOV-10, proposing confiscation of the goods and conveyance and imposition of penalty
  - Order of confiscation shall be passed in MOV-11, after taking into considering objections & served on the person concerned
  - Provide an opportunity of being heard before passing confiscation order.
  - Once confiscation order passed, the title of such goods shall stand transferred to the State Government
  - In the said order, a suitable time not exceeding 3 months shall be offered to make the payment of tax, penalty and fine imposed in lieu of confiscation and get the goods released
  - Upload confiscation order on common portal and demand shall be added in the electronic liability register
  - Once confiscation order passed in MOV-11, the final order in MOV-09 passed earlier with respect to the said goods shall be withdrawn
  - If payment is not made within time as specified in MOV-11, auction the goods and/ or conveyance by a public auction and remit the sale proceeds to the account of the State Government.
  - Suitable modifications in time allowed for the service of notice or order for auction or disposal shall be done in case of perishable and/or hazardous goods.

Purpose	Form Name
Statement of owner, driver or person in charge of the vehicle	GST MOV-01
Order for physical verification and inspection of goods, conveyance or documents	GST MOV-02
Order for extension of time beyond 3 days for inspection	GST MOV-03
Physical verification report	GST MOV-04
Release order	GST MOV-05
Order of detention	GST MOV-06
Notice specifying tax and penalty amount	GST MOV-07
Bond for provisional release of goods/ conveyance	GST MOV-08
Order of demand of tax and penalty	GST MOV-09
Notice for the confiscation of goods	GST MOV-10
Order of confiscation of goods and conveyance and demand of tax, fine and penalty	GST MOV-11

It is also important to note that in cases where a conveyance carrying twenty-five consignments is intercepted and the person-in-charge of such conveyance produces valid e-way bills and/or other relevant documents in respect of twenty consignments, but is unable to produce the same with respect to the remaining five consignments, **detention/confiscation can be made only with respect to the five consignments and the conveyance in respect of which the violation of the Act or the rules made thereunder has been established by the proper officer.**

**Circular No. 64/38/2018-GST** prescribes for reduced penalty to the tune of **Rs. 500/- each under section 125 of the CGST Act and the respective State GST Act should be imposed (Rs.1000/- under the IGST Act) in FORM GST DRC-07 for every consignment** where a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the

CGST Act may not be initiated, inter alia, in the following situations:

- Spelling mistakes** in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;
- Error in the pin-code** but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;
- Error in the address** of the consignee to the extent that the locality and other details of the consignee are correct;
- Error in one or two digits of the document number** mentioned in the e-way bill;
- Error in 4 or 6 digit level of **HSN** where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;
- Error in one or two digits/characters of the **vehicle number**.

## Prosecution

In terms of Section 132 whoever commits any of the offences laid there under then he shall be punishable with a penalty as under the following:

Amount of Tax Evaded / Situation	Punishment
1. Between Rs.100 lakh and Rs. 200 lakh	Upto 1 year imprisonment + fine
2. Between Rs.200 lakh and Rs.500 lakh	Upto 3 years imprisonment + fine
3. More than Rs. 500 lakh	Upto 5 years imprisonment + fine
4. commits or abets the commission of an offence under clause (f) or (g) or clause (j)	Upto 6 Months or with or without fine



Section 132 (2) provides where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

Every Person convicted of an offence liable for prosecution in terms of section 132 shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

### Compounding of Offences

Compounding of an offence means payment of a sum of money in monetary terms instead of undergoing prosecution. Application for compounding of an offence can be either before or after institution of the prosecution proceedings in terms of provisions laid under section 138 of the

act.

However compounding of offences is not permissible to the following offences:

- (i) A person who has compounded once in respect of supply value exceeding Rs. One Crore.
- (ii) A person who is convicted by a Court under this Act.
- (iii) Prescribed class of persons,
- (iv) A person has been permitted once to compound offences in terms of section 132.
- (v) **A person who has been accused of committing an offence under this act and is also an offence under any other law for the time being in force.**
- (vi) A person who has been accused of committing an offence in section 132(1) (g) or (j) or (k).

### Issue –Scope of levying Penalty

#### Relevant Judgments

Sl. No.	Case	Citation	Judgment date
1.	<b>J.K. COTTON SPINNING &amp; WEAVING MILLS &amp; ANOTHER</b> Versus UNION OF INDIA AND OTHERS 1987 (32) E.L.T 234 (S.C.)		30.10.1987
<b>Ratio:</b> No prosecution to be launched for past alleged breaches done due to retrospective amendments done in the act.			
Sl. No.	Case	Citation	Judgment date
2.	BISWANATH BHATTACHARYA Vs Union of India & Others	[2014] 1 S.C.R. 885	21.01.2014
<b>Ratio:</b> Article 20 contains one of the most basic guarantees to the subjects of the Republic of India. The Article in so far as is relevant for our purpose stipulates two things:-			
<ul style="list-style-type: none"> <li>• That no person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence; and</li> <li>• That no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence</li> </ul>			
Sl. No.	Case	Citation	Judgment date
3.	STANDARD CHARTERED BANK Vs DIRECTORATE OF ENFORCEMENT	2006 (197) E.L.T. 18 (S.C.)	24.06.2006
<b>Ratio:</b> It has stated that an offence to be “a breach of law, rules, duty, propriety, etiquette, an illegal act, a transgression, sin, wrong, misdemeanour, misdeed, fault.” Thus, an offence only means the commission of an act contrary to or forbidden by law. It is not confined to the commission of a crime alone. It is an act committed against law or omitted where the law requires it and punishable by it. An offence is the transgression of a law; a breach of the laws established for the protection of the public as distinguished from an infringement of mere private rights; a punishable violation of law, a crime, the doing that which a penal law forbids to be done or omitting to do what it commands.			



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## ARTICLE

# NEW GST REGIME IN REAL ESTATE

GST Council in the 34th meeting held on 19th March, 2019 at New Delhi 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 promoters were 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 (buildings where construction and actual booking have both started before 01.04.2019) which were not completed by 31.03.2019. Where the option was not exercised within the prescribed time limit, new rates shall apply.

The CBIC issued notifications to implement the above changes. The Notifications stipulate the details in respect of transition for ongoing projects opting for the new rate, treatment of TDR/ FSI and Long Term lease for Projects and ITC rules for final determination of ITC and reversal of ITC in real estate projects. A summary of the applicability of current provisions of Goods and Service Tax (GST) on Real Estate construction/development transactions has been presented in this write up.

### Important Terms

- **Residential Real Estate Project (RREP)** shall mean a Real Estate Project (REP) in which
  - the carpet area of the commercial apartments is **not more than 15 per cent. of the total carpet area** of all the apartments in the Real Estate Project (REP).
- **Affordable Residential Apartment**
  - ✓ Means a residential apartment (in New or Ongoing Project)
    - o having carpet area not exceeding





**60 square meter** in **metropolitan cities** or

- o having carpet area not exceeding **90 square meter** in cities or towns other than metropolitan cities

**and**

- o for which the gross amount charged is not more than **Rs. 45 Lakhs.**
- ✓ Means an apartment (in Ongoing projects) in any existing specified scheme with lower rate applicability of 8%, not opting to pay at existing rates.

**Metropolitan cities** are Bengaluru, Chennai, Delhi NCR, Hyderabad, Kolkata and Mumbai (whole of MMR)

➤ **Ongoing project** means the projects meeting **all** of the following criteria:

- Commencement certificate in respect of the project has been issued on or before 31st March, 2019 and Certificate from specified professional to be obtained.
- Where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by specified authorities that construction of the project has started on or before the 31st March, 2019
- Apartments being constructed under the project have been, partly or wholly, booked 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

#### **New Tax Rates**

<b>Description of Service</b>	<b>Applicability</b>	<b>GST Rate</b>	<b>Effective Rate</b>
Construction of Affordable Residential Apartment	i) New Projects commencing on or after 01-04-2019 ii) Ongoing projects as on 01-04-2019 not opting to pay tax at existing rates	1.5%	<b>1%</b>  ** after deduction of value of land (one-third)
i) Construction of Residential apartments other than affordable residential apartments		7.5%	<b>5%</b>  ** after deduction of value of land (one-third)
ii) Construction of Commercial Apartments (shops, offices, godowns etc.) by a promoter under Residential Real Estate Project (RREP)			

#### **Conditions for Paying tax at New Rate:**

- Tax will be paid by debiting electronic cash ledger only.
- No Input tax Credit shall be available except during transition (if available)
- A special mechanism is provided for calculation of eligible Input Tax Credit availed from 01-07-2017 till 31-03-2019 for ongoing projects. Any shortfall to be availed and excess to be reversed/paid within 30<sup>th</sup> Sep 2019
- Any ineligible input tax credit is required to be reversed or paid by cash.
- 80% of value of input and input services (other than long term lease, services by way of grant of developmental right, electricity, fuel) should be procured from registered supplier only
- Input and input services on which tax is paid under reverse charge mechanism to be treated as purchase from registered supplier.
- Tax will be paid under reverse charge mechanism @ 18% by the promoter in case

## GST WORKSHOP

of any shortfall in purchase from 80% by a registered supplier.

- Tax is to be paid on RCM basis by the promoter at the applicable rate as and when cement is purchased from an unregistered supplier.
- Promoter is required to maintain project wise inward supplies from registered and

unregistered persons.

- Tax payment on shortfall as calculated at the end of the financial year shall be submitted by 30<sup>th</sup> June of the following financial year.
- Input Tax credit not availed shall be reported as ineligible credit separately.

**Illustration 1:** A promoter has procured following goods and services [other than capital goods and services by way of grant of development rights, long term lease of land or FSI] for construction of a residential real estate project during a financial year

Sl. No.	Name of input goods and services	Percentage of input goods and services received during the financial year	Whether inputs received from registered supplier? (Y/ N)
1	Sand	10	Y
2	Cement	15	N
3	Steel	20	Y
4	Bricks	15	Y
5	Flooring tiles	10	Y
6	Paints	5	Y
7	Architect/ designing/ CAD drawing etc.	10	Y
8	Aluminium windows, Ply, commercial wood	15	Y

In this example, the promoter has procured 80 per cent. of goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.)

or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], from a GST registered person. However, he has procured cement from an unregistered supplier. Hence the promoter has to pay GST on cement at the applicable rates on reverse charge basis.

**Illustration 2:** A promoter has procured following goods and services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], for construction of a residential real estate project during a financial year.

Sl. No.	Name of input goods and services	Percentage of input goods and services received during the financial year	Whether inputs received from registered supplier? (Y/ N)
1	Sand	10	N
2	Cement	15	N
3	Steel	15	Y
4	Bricks	10	Y
5	Flooring tiles	10	Y
6	Paints	5	Y
7	Architect/ designing/ CAD drawing etc.	10	Y
8	Aluminium windows	15	N
9	Ply, commercial wood	10	N



In this example, the promoter has procured 50 per cent. of goods and services from a GST registered person. However, he has procured sand, cement and aluminum windows, ply and commercial wood etc. from an unregistered supplier. Thus, value of goods and services procured from registered suppliers during a financial year falls short of threshold limit of 80 per cent. To fulfill his tax liability on the shortfall of 30 per cent. from mandatory purchase, the promoter has to pay GST on cement at the applicable rate on reverse charge basis. After payment of GST on cement, on the

remaining shortfall of 15 per cent., the promoter shall pay tax @ 18 per cent. under RCM.

• **Area Sharing arrangements**

- ✓ Construction of **landowner's** allocation by Promoter shall be taxable
- ✓ Registered Landowner will be eligible for credit of tax paid to developer provided tax is payable by such landowner on sale of his allocation. However that tax paid by landowner should not be less than the tax charged by promoter.

However, where a registered person transfers development right or FSI to a promoter against consideration, wholly or partly, in the form of construction of apartments, the value of construction service in respect of such apartments shall be deemed to be equal to the Total Amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development right or FSI, nearest to the date on which such development right or FSI is transferred to the promoter, less the value of transfer of land, if any

**Rates (for Ongoing projects option to pay at existing rates)**

Description of Service	Applicability	GST Rate	Effective Rate
Construction of an apartment in an ongoing project under any of the specified scheme (Existing affordable housing schemes)	i) Ongoing projects opting to continue under existing rate.	12%	8%** ** after deduction of value of land (one-third)
Construction of a complex, building, civil structure or a part thereof. (i) Commercial apartment not under RREP (ii) Residential apartments in an ongoing projects (other than affordable apartments) – opting to pay tax at existing rates		18%	12%** ** after deduction of value of land (one-third)

**Conditions for opting for existing rates:**

- One time option was to be exercised in Annexure IV Form to continue to pay tax at old rates of 18% and 12%.
  - Option was to be exercised before 20<sup>th</sup> May 2019
  - If option is not exercised it will be deemed that tax will be paid at new rates.

## Works Contract Services for affordable housing

Description of Service	Applicability	Rate (per cent.)	Conditions
Composite supply of works contract supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration.	Works Contract Services for Affordable residential apartments  a) New projects after 01-04-2019  b) Ongoing projects not opting for existing rates	12%	i) Carpet area of the affordable residential apartment is not less than 50% of total carpet area of all the apartments in the project.  ii) Value of affordable apartment should be taken as value of similar apartment booked nearest to the date of signing of the contract for supply of service to check whether the apartment fall into the affordable category or not.  iii) Finally if it turns out that the carpet area of the affordable residential apartments was less than 50%, then the promoter will be liable to pay differential tax on works contract under reverse charge mechanism.

### ITC Eligibility for Real Estate Projects

- The amount of ITC attributable to taxable and exempt supplies is to be computed finally for the entire period from the commencement of project (or 1 July 2017, whichever is later) till the date of issuance of completion certificate or first occupation of the project, whichever is earlier. The apportionment has to be done based on carpet area of apartments which remained unsold.
- Computation has to be done separately for each project.
- In case of ongoing projects (not opting to pay tax at existing rates) ITC attributable to apartments having time of supply on or after 1<sup>st</sup>April, 2019 was to be calculated as prescribed and was required to be furnished on or before due date of filing of return of Sep 2019. Any excess/shortfall in ITC claimed will be reversed/paid or availed as the case may be.

### ➤ Calculation of eligible ITC to be done prescribed below:

#### Illustration 1:

Sl. No	Details of a REP (Res + Com)			
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		75	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	C2 * C3	5250	sqm
5	value of each residential apartment		0.60	crore
6	Total value of the residential apartments	C2 * C5	45.00	crore
7	No. of commercial apartments in the project		25	units
8	Carpet area of the commercial apartment		30	sqm
9	Total carpet area of the commercial apartments	C7 * C8	750	sqm
10	Total carpet area of the project (Resi + Com)	C4 + C9	6000	sqm
11	Percentage completion as on 31.03.2019 [as declared to RERA or determined by chartered engineer]		20%	
12	No of residential apartments booked before transition		40	units



Sl. No	Details of a REP (Res + Com)			
13	Total carpet area of the residential apartments booked before transition	$C12 * C3$	2800	sqm
14	Value of booked residential apartments	$C5 * C12$	24	crore
15	Percentage invoicing of booked residential apartments on or before 31.03.2019		20%	
16	Total value of supply of residential apartments having t.o.s. prior to transition	$C14 * C15$	4.8	crore
17	ITC to be reversed on transition, $T_x = T - T_e$			
18	Eligible ITC ( $T_e$ ) = $T_c + T_r$			
19	T (*see notes below)		1	crore
20	$T_c = T \times$ (carpet area of commercial apartments in the REP / total carpet area of commercial and residential apartments in the REP)	$C19 * (C9 / C10)$	0.125	crore
21	$T_r = T \times F1 \times F2 \times F3 \times F4$			
22	F1	$C4 / C10$	0.875	
23	F2	$C13 / C4$	0.533	
24	F3	$C16 / C14$	0.200	
25	F4	$1 / C11$	5	
26	$T_r = T \times F1 \times F2 \times F3 \times F4$	$C19 * C22 * C23 * C24 * C25$	0.467	crore
27	Eligible ITC ( $T_e$ ) = $T_c + T_r$	$C26 + C20$	0.592	crore
28	ITC to be reversed on transition, $T_x = T - T_e$	$C19 - C27$	0.408	crore

Illustration 2:

Sl No	Details of a residential real estate project (RREP)			
	A	B	C	D
1	No. of apartments in the project		100	units
2	No. of residential apartments in the project		100	units
3	Carpet area of the residential apartment		70	sqm
4	Total carpet area of the residential apartments	$C2 * C3$	7000	sqm
5	value of each residential apartment		0.60	crore
6	Percentage completion as on 31.03.2019 [as declared to RERA or determined by chartered engineer]		20%	
7	No of apartments booked before transition		80	units
8	Total carpet area of the residential apartment booked before transition	$C3 * C7$	5600	sqm
9	Value of booked residential apartments	$C5 * C7$	48	crore
10	Percentage invoicing of booked residential apartments on or before 31.03.2019		20%	
11	Total value of supply of residential apartments having t.o.s. prior to transition	$C9 * C10$	9.6	crore
12	ITC to be reversed on transition, $T_x = T - T_e$			
13	Eligible ITC ( $T_e$ ) = $T \times F1 \times F2 \times F3 \times F4$			
14	T (*see notes below)		1	crore
15	F1		1	
16	F2	$C8 / C4$	0.8	
17	F3	$C11 / C9$	0.2	
18	F4	$1 / C6$	5	



SI No	Details of a residential real estate project (RREP)			
	A	B	C	D
19	Eligible ITC (Te)=T x F1 x F2 x F3 x F4)	C14 * C15 * C16 * C17 * C18	0.8	crore
20	ITC to be reversed on transition, Tx= T- Te	C14 - C19	0.2	crore

## SUPPLY OF SERVICES BY WAY OF TDR, FSI, LONG TERM LEASE OF LAND

	Service Provider	Service Recipient (RCM applicability)
Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.	Any person	Promoter.
Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/ or periodic rent for construction of a project by a promoter.	Any person	Promoter

## EXEMPTION

	Conditions
<ol style="list-style-type: none"> <li>1) Service by way of transfer of development rights(TDR) or FSI on or after 01-04-2019 for construction of residential apartment by a promoter pertaining to apartments sold before C/C</li> <li>2) 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 01.04.2019, for construction of residential apartments by a promoter</li> </ol>	<ul style="list-style-type: none"> <li>• Exemption not available in case where the entire consideration is received after issuance of completion certificate, where required or after its first occupation, whichever is earlier.</li> <li>• The promoter shall be liable to pay tax at the applicable rate, <b>on reverse charge basis</b> in case of apartments which remain unbooked on the date of issuance of completion certificate, or first occupation of the project</li> </ul>

- Tax payable by the promoter shall not exceed:
  - 1 per cent. of the value in case of affordable residential apartments and
  - 5 per cent. of the value in case of residential apartments other than affordable residential apartments
- Value of supply of service by way of transfer of development rights or FSI 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 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.

### Some important FAQs

**Issued by Tax Research Unit, Revenue Dept, Ministry of Finance**

**Q. What is the rate of GST applicable on transfer of development rights, FSI and long term lease of land?**

- Supply of TDR or FSI or long term lease of land used for the construction of residential apartments in a project that are booked



before issue of completion certificate or first occupation is exempt.

Supply of TDR or FSI or long term lease of land, on such value which is proportionate to construction of residential apartments that remain un-booked on the date of issue of completion certificate or first occupation, would attract GST at the rate of 18%, but the amount of tax shall be limited to 1% or 5% of value of apartment depending upon whether the residential apartments for which such TDR or FSI is used, in the affordable residential apartment category or in other than affordable residential apartment.

TDR or FSI or long term lease of land used for construction of commercial apartments shall attract GST of 18%.

The above shall be applicable to supply of TDR or FSI or long term lease of land used in the new projects where new rate of 1% or 5% is applicable.

**Q. Who is liable to pay GST on TDR and floor space index?**

- The promoter is liable to pay GST on TDR or floor space index supplied on or after 01-04-2019 on reverse charge basis.

**Q. At what point of time, the promoter should discharge its tax liability on TDR?**

• The liability to pay GST on development rights shall arise on the date of completion or first occupation of the project, whichever is earlier. Therefore, promoter shall be liable to pay tax on reverse charge basis, on supply of TDR on or after 01-04-2019, which is attributable to the residential apartments that remain un-booked on the date of issuance of completion certificate, or first occupation of the project.

**Q. At what point of time, the promoter should discharge its tax liability on FSI (including additional FSI)?**

- On FSI received on or after 1.4.2019, the promoter should discharge his tax liability on FSI as under:
  - (i) In case of supply of FSI wherein consideration is in form of construction of commercial or residential apartments, liability to pay tax shall arise on date of issuance of Completion Certificate.

- (ii) In case of supply of FSI wherein monetary consideration is paid by promoter, liability to pay tax shall arise on date of issuance of Completion Certificate only if such FSI is relatable to construction of residential apartments. However, liability to pay tax shall arise immediately if such FSI is relatable to construction of commercial apartments.

**Q. Someone booked a flat from XYZ Developers in June, 2018. As of 31-03-2019, he had paid 40 % of the value of the flat. What shall be the GST rate applicable on the remaining portion of value of the flat?**

- GST on the remaining portion of the value of flat payable to the promoter on or after 01-04-2019 as per the contract between the promoter and buyer shall be payable at effective rate of 1% or 5%, subject to the condition that the builder has not exercised the option to pay tax on construction of apartments at the old rates of 12% or 18%. If the XYZ developer exercises option to continue to pay tax at old effective rate of 8% or 12% by 10th May, 2019, then GST has to be paid @ 8% or 12% on remaining portion of the value of the flat; in such cases, the promoter would be entitled to permissible credit of input taxes and, as such, the price that he charges from the buyer should appropriately reflect this credit.

**Q. In respect of supply made in an ongoing Project covered by clauses (I e) and (if) of Entry 3 of Notification No. 3/2019, CT (R), an option is required to be exercised by the Promoter in Annexure IV by 10th May 2019. At the same time, it is permissible for him to issue invoices between 1st April 2019 to 9th May 2019 which shall, however, be in conformity with the option to be exercised. Whether it is permissible for the Promoter to revise the invoice as provided in Section 34 of CGST Act, 2017, including by way of issuance of Credit/Debit Notes so as to bring the transaction in conformity with the option exercised by the Promoter ultimately by 10th May 2019?**

- Where the GST rate at which tax has been charged in the invoices issued by the promoter

prior to 10th May, 2019 are not in accordance with the option required to be exercised by him on or before 10th May, 2019 to pay GST on construction of apartments in an ongoing project at either the new or old rates, the promoter may issue debit or credit notes in accordance with Section 34 of CGST Act, 2017.

**Q. How to compute adjustment of tax in a Credit Note to be issued u/s 34 by Real Estate Developer in case unit was booked prior to 1st April, 2019 on which GST was paid on part consideration received at the time of booking, but cancelled after 1st April, 2019?**

- Developer shall be able to issue a Credit Note to the buyer as per provisions of section 34 in case of change in price or cancellation of booking provided that the amount received in excess if any, consequent to issuance of Credit Note, is refunded to the Buyer by the Developer before September following the end of the financial year. Developer shall be able to take adjustment of tax paid in respect of the amount of such Credit Note. For example, a Developer who paid GST of Rs. 1,20,000 at the rate of 12% (effectively) in respect of a gross amount of booking of Rs. 10,00,000 before 1st April, 2019 shall be entitled to take adjustment of tax of Rs. 1,20,000 upon cancellation of the said booking on or after 1st April, 2019 against other liability of GST including liability arising at the rate of 5% / 1% provided that the entire amount received from the buyer is refunded by the Developer.

Further, in case apartments booked prior to 1.04.2019 on which GST has been paid till 31.03.2019 at the old rates of 8%/ 12% with ITC, are cancelled and rebooked at the new rates of 1% / 5% without ITC or sold after issuance of completion certificate, the credit taken in respect of such apartments for supply of service till 31.03.2019 on which tax was paid @ 8%/ 12% with ITC shall be required to be reversed.

**Q. Whether the option to pay tax at the applicable effective rate of 12% or 8% (with ITC) is available to the Promoter in respect of the New Project, which has been commenced on or after 1st April 2019?**

- No, there is no option to pay tax at the effective rate of 12% or 8% with ITC on construction of residential apartments in projects which commences on or after 01-04-2019.

**Q. From the plain reading of the provisions and the definitions of the various terms as defined in the Notification No. 3/2019- CT(R), it appears that the onetime option is required to be exercised for the entire REP or RREP. Does this mean that a Promoter can opt for old rates or new rates, as the case may be, for different projects being undertaken by him under the same entity?**

- Yes. The option to pay tax on construction of apartments in the ongoing projects at the effective old rates of 8% and 12% with ITC has to be exercised for each ongoing project separately. As per RERA, 2016, project wise registration is allowed. So, the promoter may exercise different options for different ongoing projects being undertaken by him.

**Q. What is the meaning of the term “first occupation” referred to in clauses (i) to (id) of Entry 3 of Notification No. 3/2019? Whether, in case of an ongoing project, where part occupation certificate has been received in respect of some of the premises comprised in the ongoing project, the Promoter is entitled to exercise the option of 1% / 5% (without ITC) or @ 8%/12% (with ITC) available in terms of Notification No. 3/2019 CT (R), in respect of the balance ongoing project?**

- The term “first occupation” appearing in Schedule II para 5 (b) and in notification No. 11/2017 – Central Tax (Rate) dated 29-03-2019 means the first occupation of the project in accordance with the laws, rules and regulations laid down by the Central Government, State Government or any other authority in this regard. Where occupation certificate has been issued for part (s) of the project but not for the entire project by 31-03-2019, the first occupation of the project shall not be considered to have taken place on or before 31-03-2019 and the project shall be considered ongoing project provided it satisfies the other requirements of the definition of the term ongoing project. Promoter shall be entitled to



exercise option to pay tax @ 1%/5% (without ITC) or @ 8%/12% (with ITC) on construction of apartments in such project.

**Q. (a) In case of a single building registered as 2 (two) separate projects under the provisions of RERA viz. 1st to 10th floor as one Project and 11th to 20th floor as another project, whether the Developer can consider the entire building as single ongoing project, since all the three conditions to be complied with for classifying a project as an ongoing project can be satisfied only if the entire building is considered as a single project?**

**(b) Furthermore, if different towers in a single layout are registered as separate projects under the provisions of RERA but where the approvals are common for all the towers, whether the Developer can consider entire layout as a single Ongoing project ?**

(a) Both the projects registered as separate projects under RERA, 2016 shall be treated as distinct projects for the purpose of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017 as amended by Notification No. 3/2019-Central Tax (Rate) dated 29-03-2019. Both the projects will have to independently satisfy the requirements of the definition of ongoing projects.

(b) No. All the towers registered as different projects under RERA shall be treated as distinct projects. Only such towers registered as distinct projects for which commencement certificate has been issued on or before 31-03-2019, construction has started on or before 31-03-2019 and for which apartments have been booked on or before 31-03-2019 but completion certificate has not been issued or first occupation has not taken place by the said date shall be treated as ongoing projects.

**Q. What shall be the classification of and rate of tax applicable to works contract service provided by a contractor to a developer or promoter under the new dispensation effective from 01-04-2019 for (a) New project after 1.4.2019 and ongoing projects where option has been exercised for new rate and**

**(b) Ongoing projects where option has not been exercised for new rate?**

- The rate of tax applicable on the work contract service provided by a contractor to a promoter for construction of a real estate project shall be 12% or 18% depending upon whether such work contract service is provided for construction of affordable residential apartments or residential apartments other than affordable residential apartments. Rate of tax applicable on such work contract service provided by a contractor to a promoter on construction of commercial apartments shall be 18% (irrespective of option exercised by developer promoter). The relevant entries of the notification are at items (iv), (v), (v a) and (vi) against sl. no. 3 of the table in Notification No. 11/2017-Central Tax (rate) dated 28-06-2017 prescribing rate of 12% for works contract services of construction of affordable apartments/ apartments being constructed under schemes specified therein. In case of works contract services for construction of other apartments, rate of 18% as prescribed in item (xii) against sl. no. 3 of the table in Notification No. 11/2017-Central Tax (rate) dated 28-06-2017 shall be applicable.

**Q. It may be clarified whether exemption granted on transfer of development right or FSI for residential construction and reverse charge mechanism prescribed for payment of tax on TDR, FSI or long term lease (premium) in the new dispensation is applicable where development rights were transferred by way of an agreement executed prior to 1st April, 2019 but consideration, whether in cash or other form, flowed to the land owner, in full or part, on or after 1st April, 2019?**

- The new dispensation has been prescribed for real estate sector vide notifications issued on 29.03.2019. The same are effective prospectively from 01.04.2019. They shall apply only to development rights or FSI transferred on or after 01.04.2019. They shall not apply to development rights transferred by way of an agreement prior to 01.04.2019 even if the consideration for the same, in



cash or kind, is paid in part or full on or after 01.04.2019.

**Q. In certain projects, developers have started construction on or before 31-03-2019. However, bookings in the project have not started. One of the conditions prescribed for a project to qualify as an ongoing project is that apartments being constructed should have been partly or wholly booked. Whether such project where bookings have not started but construction has started, would be eligible for the new rates of 1% or 5% without ITC?**

- As per explanation in clause (xxviii) of para 4 of the notification No. 11/2017- CTR dated 28.06.2017, “project which commences on or after 01.04.2019” shall mean a project other than an ongoing project. A project, in which bookings for the apartments have not started, would not be covered under definition of “ongoing project”. The same would accordingly be treated as a project which commences on or after 01.04.2019 subject to the new rates of 1% or 5% without ITC, as the case may be.

**Q. In case of an area sharing arrangement between a Landowner-Promoter and a Developer-Promoter in a New Project undertaken on or after 1/4/2019, whether the new rate of 1% or 5% is applicable in case of the Landowner-Promoter who sells the under-construction premises before completion of the project?**

**Will the Landowner-Promoter be entitled to ITC in respect of tax charged to him by the Developer-Promoter on such supply?**

**Whether the Landowner Promoter shall be entitled to avail ITC on any other services or goods used by him in furtherance of his business (such as brokerage on sales etc.)?**

- The new effective rates of 1% and 5% without ITC are applicable to the apartments booked by the land owner promoter in an ongoing project as well as a new project which commences on or after 01.04.2019. The land owner promoter shall be entitled to ITC in respect of tax charged to him by the developer promoter on construction of such apartments.

However, the land owner promoter shall not be entitled to avail ITC on any other services or goods used by him.

**Q. In case of a Real Estate Project, comprising of Residential as well as Commercial portion (more than 15%), how is the minimum procurement limit of 80% to be tested, evaluated and complied with where the Project has single RERA Registration and a single GST Registration and it is not practically feasible to get separate registrations due to peculiar nature of building(s)?**

- The promoter shall apportion and account for the procurements for residential and commercial portion on the basis of the ratio of the carpet area of the residential and commercial apartments in the project.

**Q. In an area sharing model, a promoter has to handover constructed flats/ apartments to the land owner who supplied TDR for the project. Value of TDR at the time when the landowner transferred it to the promoter is not known. How would the promoter determine GST on TDR?**

- Value of TDR, shall be equal to the amount charged by the promoter for similar apartments from the independent buyers booked on the date that is nearest to the date on which such development rights or FSI is transferred by the land owner to the promoter.

**Q. What shall be the rate of GST applicable on projects in respect of which OC has been issued prior to 01.04.2019, but the balance demands are pending? Such projects are neither projects which commence on or after 01.04.2019 nor ongoing projects?**

- Time of supply of the service by way of construction of apartments in such projects falls prior to 01.04.2019 and accordingly the rates as existed prior to 01.04.2019 would apply to such balance demands.

**Q. The condition in Notification No. 3/2019 specifies that 80% of inputs and input services should be procured from registered person. What about expenditure such as salaries, wages, etc. These are not supplies under GST [Sl. 1 of Schedule III]. Now, my**





**question is, whether such services will be included under input services for considering 80% criteria?**

- Services by an employee to the employer in the course of or in relation to his employment are neither a goods nor a service as per clause 1 of the Schedule III of CGST Act, 2017. Therefore, salaries and wages paid by promoter to his employees will not be relevant for the minimum purchase requirement of 80% .

**Q. Whether the inward supplies of exempted goods / services shall be included in the value of supplies from unregistered persons**

**while calculating 80% threshold?**

- Yes. Inward supplies of exempted goods / services shall be included in the value of supplies from unregistered persons while calculating 80% threshold.

*This write up has been prepared on the basis of the prevalent legal position of various statutory provisions of Goods & Services Tax. Any unauthorised copying or extracting from this write up is strictly prohibited. We do not hold ourselves responsible for any errors that may have inadvertently occurred or for any view contrary to our opinion and we would not be responsible for any loss occurred, if any, to anyone owing to this writeup.*

# Back Inside

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## MOTTO

**Ya esa suptesu jagarti** kamam kamam Puruso nirmimanah |  
Tadeva sukram tad brahma tadevamrtamucyate |  
Tasminlokah sritah sarve tadu natyeti Kascan | etad vai tat ||

**य एष सुप्तेषु जागर्ति** कामं कामं पुरुषो निर्मिमाणः ।

तदेव शुक्रं तद् ब्रह्म तदेवामृतमुच्यते ।

तस्मिंल्लोकाः श्रिताः सर्वे तदु नात्येति कश्चन । एतद् वै तत् ॥

*(That person who is awake in those that sleep, shaping desire after desire, that, indeed, is the pure. That is Brahman, that, indeed, is called the immortal. In it all the worlds rest and no one ever goes beyond it. This, verily, is that, kamam kamam : desire after desire, really objects of desire. Even dream objects like objects of waking consciousness are due to the Supreme Person. Even dream consciousness is a proof of the existence of the self.)*

*No one ever goes beyond it : cf. Eckhart : 'On reaching God all progress ends.'*)

Source : Kathopanishad

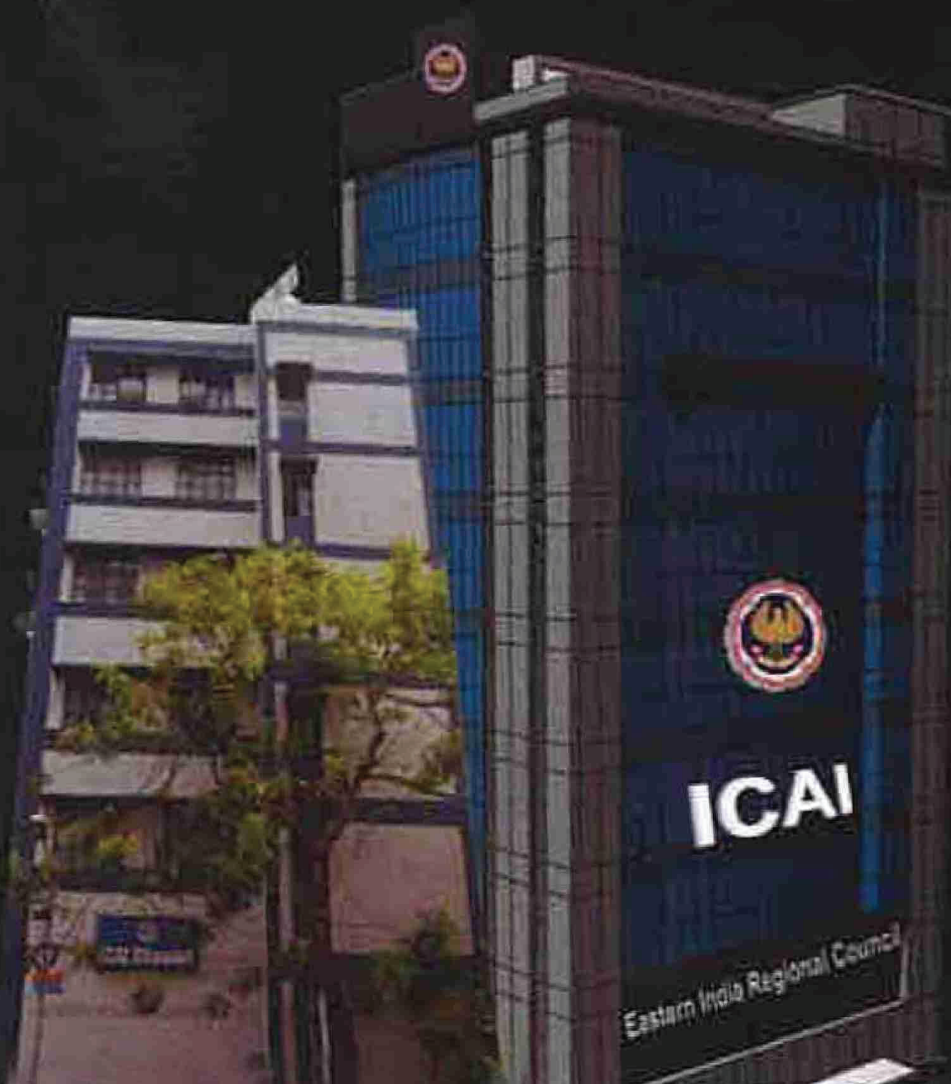
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