

F. No. 354/32/2019-TRU
Government of India
Ministry of Finance
Department of Revenue
(Tax Research Unit)

Dated the 14th May, 2019, New Delhi

Subject: FAQs (Part II) on real estate- reg.

A number of issues have been raised regarding the new GST rate structure notified for real estate sector effective from 01-04-2019. A compilation of Frequently Asked Questions (FAQs) containing 41 questions was issued on 7th May, 2019. Part II of the FAQ is presented below. The answers to the FAQs have been given in simple language for guidance and easy understanding of all stakeholders in the real estate sector. They do not have force of law. In case of conflict, the gazette notifications, which have legal force, shall have precedence.

Sl. No.	Question	Answer
1.	In case of an area sharing arrangement between a Landowner-Promoter and a Developer-Promoter, where the Project qualifies to be considered an “Ongoing Project”, whether an option of 1% or 5% (without ITC) vis-à-vis 8% or 12% (with ITC) as prescribed in Notification No. 3/2019 can be exercised by the Developer-Promoter and Landowner-Promoter independently?	The legal and operational harmony necessitates that both the Landowner-Promoter and the Developer-Promoter exercise identical option for a project.
2.	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	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.

	<p>charged to him by the Developer-Promoter on such supply?</p> <p>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.)?</p>	
3.	<p>Residential Real Estate Project (RREP) shall mean a REP in which the carpet area of the commercial apartments is not more than 15% of the total carpet area of all the apartments in the REP (Clause xix). “Carpet area” shall have the same meaning as assigned to it in clause (k) of Section 2 of the RERA, 2016. Whether non-saleable areas such as society office, club house, etc., are to be taken into consideration for determining 15% for deciding whether the project is RREP or not?</p>	<p>The term “Residential Real Estate Project (RREP) has been defined in the notification to mean a 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 REP.</p> <p>Apartments shall be taken as commercial or residential apartments as declared to RERA authority.</p>
4.	<p>For the purpose of determining the threshold of Rs.45 lakhs in case of “affordable residential apartment”, whether the following charges generally recovered by the developer from the buyer shall be included?</p> <ul style="list-style-type: none"> • Amenity Charges • Society formation charges • Advance maintenance • Legal Charges 	<p>For the purpose of determining the threshold of the gross amount of Rs.45.00 lakh for affordable residential apartments, all the charges or amounts charged by the promoter from the buyer of the apartments shall form part of the gross amount charged. Clause xvi, sub-clause (a)(ii)(C) of paragraph 4 of notification No. 11/2017-CT(R) dated 28.06.2017, reproduced below, refers.</p> <p><i>“C. Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.”</i></p> <p>However the value shall not include stamp duty payable to the statutory authority, maintenance</p>

		charges / deposits for maintenance of apartment or maintenance of common infrastructure.
5.	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.
6.	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.
7.	<p>In the formula prescribed under first proviso to Entry 41A of the Notification 12/2017- CT (R), as amended by Notification 4/2019 CT (R), what rate shall be taken to determine the value to be ascribed to the “GST Payable on TDR or FSI or both for construction of the residential apartments in the project but for exemption contained therein” as no specific rate has been prescribed in Notification 11/2017 CT-Rate or any other notification?</p> <p>What is the rate applicable to output supply of TDR or FSI?</p> <p>Whether the quantum of TDR or</p>	<p>The GST on transfer of development rights or FSI (including additional FSI) is payable at the rate of 18% (9% + 9%) with ITC under Sl. No. 16, item (iii) of Notification No. 11/2017 - Central Tax (Rate) dated 28-06-2017 (heading 9972).</p> <p>There is no exemption on TDR or FSI (Addl. FSI) for construction of commercial apartments. Therefore, GST shall be payable on TDR or FSI (including additional FSI) or both used in respect of</p> <ul style="list-style-type: none"> (i) carpet area of commercial apartment and (ii) un-booked residential apartments as on the date of issuance of Completion Certificate or first occupation of the project for the purpose of formula.

	FSI (including additional FSI) or both shall be taken only in respect of un-booked apartments as on the date of issuance of Completion Certificate or first occupation of the project for the purpose of formula?	
8.	In case of Redevelopment, Slum Rehabilitation or similar arrangements, the Developer will be constructing two types of units i.e. one which is allotted to existing occupiers for no monetary consideration and second which is sold in the market to outside buyer. Price at which the unit is being sold to the outsider is determined in a manner to factor cost of construction of both type of units so that the unit to existing occupiers may be allotted free of monetary consideration. It may be clarified whether the Input Tax Credit in relation to construction of units to be allotted to existing occupiers, in case of residential project opted for old rates or commercial projects, shall be allowed to the Developer.	<p>The apartments given to the original inhabitants or the slum dwellers in redevelopment project or slum rehabilitation project are given by the promoter against consideration received by them in the form of TDR/ FSI/ monetary consideration from the original inhabitants in case of redevelopment projects and from the Government in case of slum rehabilitation projects. The supply of service by way of construction of such apartments against construction wholly or partly in the form of TDR/FSI is a taxable supply subject to GST.</p> <p>Wherever tax is paid on construction of such apartments at the effective rates of GST of 8%/ 12% with ITC, the promoters shall be eligible for ITC, including ITC in relation to construction of units to be allotted to the existing occupiers even though there may not be a monetary consideration but the consideration is in the form of grant of TDR/FSI.</p>
9.	<p>In case of redevelopment or slum rehabilitation project, (new or an existing project) whether the constructed units supplied to existing occupiers by the developer free of monetary consideration are taxable?</p> <p>In case of ongoing project in respect of which the promoter has opted for new rates of 1% / 5%, it may be clarified whether</p>	<p>Yes, units supplied free of cost also attract GST as their consideration is not money but TDR/ FSI or rights relatable to land on which construction takes place.</p> <p>In such an ongoing project, the units sold in open market would be eligible for GST rate of 1% (without ITC), if such units are covered under Credit Linked Subsidy Scheme, as provided in the definition of “affordable residential apartments” given in notification no 11/ 2017- CTR dated 28.06.2017 as amended by notification No. 3/2019- CTR dated 29.03.2019 .</p>

	<p>the units being supplied free of monetary consideration to existing dwellers will fall within the definition of affordable housing when certain units being sold in the open market are eligible for concessional rates under the category of Credit Linked Subsidy Scheme i.e. sub-item (da) of item (iv) of Sl. No. 3 of notification No. 11/2017- CTR?</p>	<p>The apartments being constructed in such ongoing project, for existing slum dwellers/ occupiers shall be eligible for 1% rate if they meet the definition of affordable residential apartment, as under-</p> <p>(a) They have carpet area of less than 60 sqm in specified metropolitan cities or 90 sqm in places other than the specified metropolitan cities and the gross amount charged for similar apartments from independent buyers is not more than rupees 45 lakhs. (Please refer to para 2A of notification No. 11/2017- CTR dated 28.06.2019 as amended vide notification No. 3/2019- CTR dated 29.03.2019), or</p> <p>(b) They are being constructed under any of the schemes specified in sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of the said notification.</p>
10.	<p>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.</p>	<p>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.</p>
11.	<p>The affordable residential apartment should not have a carpet area exceeding 60 sqm in metropolitan cities and 90 sqm in other places. Will the internal walls of the apartment, balcony or verandah be included 60/90 sq meter?</p>	<p>"Carpet area" is defined in clause (k) of section 2 of the RERA, 2016 and the same has been adopted in the notification.</p>
12.	<p>If an un-registered person transfers development right to a developer-promoter, then it is apparently not covered by the fourth proviso applicable to</p>	<p>Promoter shall be liable to pay GST on TDR transferred by any person whether registered or not on RCM basis.</p>

	clause (i) to clause (id) of serial 3 of Notification No. 11/2017 (as amended). Will the promoter be liable to pay GST on TDR received from an unregistered land owner?	
13.	Whether the ITC availed as per the second proviso applicable to clause (i) to clause (id) of serial 3 of Notification No. 11/2017 (as amended) can be adjusted against the output liability of 5% / 1%?	No. GST on services of construction of an apartment by a promoter at the rate of 1% / 5% is to be discharged in cash only. ITC, if any, may be used for discharging any other supply of service.
14.	If a developer-promoter opts to pay tax for the ongoing project of affordable residential apartment at the new rate, can he use the ITC available to him under the second proviso applicable to clause (i) to clause (id) of serial 3 of Notification No. 11/2017 (as amended) for payment of tax at 1%/5%?	Reply as in Q. No. 13 above.
15.	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% .
16.	A buyer has booked an apartment prior to 1st April, 2019 and paid part consideration to the developer. The developer decides to opt for the new scheme for this ongoing project. Will the buyer be required to pay	No. For the past payments made before the transition date (01.04.2019), no additional GST is required to be paid.

	any additional tax for such payment he has made prior to 31st march, 2019?	
17.	Whether the condition of receiving 80% of inputs and input services from the registered person shall be applicable if the developer opts to continue to pay tax at the old rates of 12%/8% in respect of an ongoing project?	No, if the developer opts to continue to pay tax at the old rates of 12%/8% in respect of an ongoing project, the condition of receiving 80% of inputs and input services from the registered person doesn't apply.
18.	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.
19.	Whether the purchase of Land from an unregistered person shall be required to be included in the value of Input and Input Services for the purpose of calculation of 80% threshold?	No. As per Schedule III, Entry No 5, of CGST Act, sale of land is not a supply. In addition, as per 5th proviso to entries at Sl. No. (i), (ia), (ib), (ic) and (id) against Serial No 3 in the Notification No.11 / 2017-CTR dated 28.06.2017 as amended by Notification No. 3 / 2019-CTR dated 30/03/2019, transactions by way of grant of development rights, long term lease, FSI etc. are not required to be included in the value of Input and Input Services for evaluation of criteria of 80% from registered persons.
20.	When a developer prefers the option of paying tax at 1%/ 5%, without ITC, for an ongoing project, whether the apartments which were not considered as affordable in the earlier scheme (though certain apartments in such project were considered as affordable in the earlier scheme) will be considered as affordable after 1st April, 2019, if such apartments fit the definition of affordable residential apartments as provided in notification No. 3/2019- CT(R) dated 29.03.2019?	Yes, in case of an ongoing project in respect of which the promoter has not opted to pay GST at the old rate, he shall pay tax at the effective rate of 1% without ITC on apartments which meet the new definition of affordable residential apartment.

21.	Whether the amended rule 42 shall apply to all RREPs including ongoing projects?	In case of an ongoing RREP, in respect of which promoter opts for the new rates of 1% / 5% and which underwent transition of ITC consequent to change of rates of tax on 01.04.2019, ITC determined under sub- rule (1) of rule 42 shall not be required to be calculated finally on the completion or first occupation of the RREP.
22.	Whether separate Form (Annexure IV) shall be filed by the Developer in respect of each of the Ongoing Projects?	<p>Yes.</p> <p>The promoter has to exercise the option for payment of tax at the old rates of 8% / 12% with ITC for each of the ongoing projects separately.</p>
23.	On what basis a Contractor / Sub-contractor executing a composite supply of works contract in terms of clause (va) i.e. 12% for affordable residential apartments, shall satisfy himself as regards condition of 50% of the total carpet area?	The contractor may charge tax on the works contract service provided by him to a promoter at the concessional rate of 12% under notification No. 11/2017- CTR dated 28.06.2019, S. No.3, entry (va) on the basis of a declaration by the promoter to the contractor that the project meets the conditions prescribed for concessional rate of GST on works contract service prescribed under the said entry.
24.	Whether the condition to make payment within 180 days by Land Owner – Promoter to Developer – Promoter as provided in second proviso to section 16 (2), shall be applicable for reversal of input tax credit ?	<p>The apartments given to the Land Owner – Promoter are given by the Developer – Promoter against consideration received by him in the form of TDR from the Land Owner – Promoter. Therefore, the payment by Land Owner – Promoter for service of construction of apartments received from the Developer – Promoter is made even before the service is provided.</p> <p>Therefore, Land Owner – Promoter shall not be required to reverse input tax credit of tax charged from him by the Developer – Promoter on the ground that he has not made payment for the service received from the Developer – Promoter.</p>
25.	Whether the exemption given by way of Entry 41A / 41B of Notification No. 12/2017-CTR shall be available in respect of development rights etc. transferred to a person other than promoter? Please clarify whether	The exemption is available only on TDR/ FSI transferred on or after 1 st April, 2019 for construction of residential apartments by a promoter in a real estate project.

	sub-clause (v) in clause (zk) in section 2 in RERA Act, 2016 covers a person who purchases TDR as developer?	
26.	How to determine value of construction services provided by the promoter to land owner in lieu of transfer of development rights, when land owner is not registered?	Value of construction services provided by the promoter to land owner in such cases shall be determined based on the total amount charged by the promoter for similar apartments in the project from independent buyers, other than the land owner, nearest to the date on which such development right etc. is transferred to the promoter, less the value of transfer of land, if any, as prescribed in paragraph 2 of Notification No. 11/2017-CT(R) dated 28.06.2017.
27.	In case of a project, where completion certificate has been received prior to 31-03-2019 but some part of the consideration in relation to the apartment is due after 31-03-2019, it appears that such project will not qualify as ongoing project. What will be the applicable tax rate on such amount received on or after 01.04.2019 – old rate or new rate?	Time of supply of service of construction of such apartments is prior to 01.04.2019 and the same shall be subject to tax at the old rates of 12%/8%.

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