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Issue 9

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THE MONTHLY ROUND-UP

UPDATES ON GST

**CENTRAL TAX
BANGALORE**

For Internal Circulation Only

EDITOR'S NOTE

As we bring the curtains down on the financial year 2018-19, I take the opportunity to express my gratitude to all the officers and staff for their active co-operation in revenue mobilization and in recovery of arrears during the FY 2018-19.

The Principal Chief Commissioner has appreciated the best efforts, dedication and hard work put in by all the officers in achieving the targets both in revenue collections and in recovery of arrears. Let us keep up the enthusiasm and continue to work to better our efficiency and performance.

The month of March saw a huge change in the Real Estate Sector with seven notifications issued specifying the rates and procedures for opting for the new rates and reversal of credits by the Real Estate Sector. The GST Portal has also brought in a number of new functionalities especially in the realm of filing returns. The Annual returns for 2017-18 for normal taxpayers and compositions taxpayers are available on the Portal. The GSTN has also commenced webinars educating the Trade in the procedure for filing the Annual Returns.

The proposed new return formats Normal, Sahaj and Sugam are also available on the Portal for getting familiar with the upcoming return filing formats.

As always this issue details the changes in law and the clarifications issued by the Board in the month of March 2019. We hope this enriches your knowledge base. Please do share your comments and feedback on gstcell-blr@gov.in.



Amitesh Bharat Singh
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1. Exemption from registration:

Notification No. 10/2019-Central Tax & Notification No. 2/2019- Union Territory Tax both dated 07.03.2019 exempts the following category of persons, from obtaining registration with effect from 1st April 2019, namely,-

Any person, who is engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed forty lakh rupees, except, -

(a) Persons required to take compulsory registration under section 24 of the said Act;

(b) Persons engaged in making supplies of the following goods, viz,

(i) Ice cream and other edible ice, whether or not containing cocoa,

(ii) Pan Masala and

(iii) Tobacco and Tobacco manufactured substitutes.

(c) Persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; and

(d) Persons exercising option of voluntary registration under sub-section (3) of section 25, or such registered persons who intend to continue with their registration under the said Act.

2. Return filing due dates: Annexure-1

3. Eligibility limit for opting for composition scheme enhanced:

Notification No. 14/2019 – CT dated 07.03.2019 specifies that, with effect from 1st April 2019, an eligible registered person, whose aggregate turnover in the preceding financial year did not exceed Rs 1.5 crores, may opt to pay tax under the Composition scheme.

However, in the case of eligible registered persons in the States of (i) Arunachal Pradesh, (ii) Manipur, (iii) Meghalaya, (iv) Mizoram, (v) Nagaland, (vi) Sikkim, (vii) Tripura, (viii) Uttarakhand, the eligibility limit for pay tax under the Composition Scheme is an aggregate turnover in the preceding financial year of Rs 75 lakhs.

Manufacturers of the following goods are not eligible to pay tax under the Composition Scheme:

(i) Ice cream and other edible ice, whether or not containing cocoa,

(ii) Pan Masala and

(iii) Tobacco and Tobacco manufactured substitutes.

4. Amendment to the CGST Rules:

Notification No 16/2019 CT dated 29.03.2019 makes the following amendments and insertions in the CGST Rules:

4.1. In the proviso to Rule 41 which states that the transfer of credit in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme, an explanation has been inserted to clarify that "value of

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assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.

4.2. In Rule 42, which deals with the manner of determination of input tax credit attributable for business purposes and for effecting taxable supplies, and its reversal, when the inputs and input services are commonly used for both business and non-business purposes and for taxable and exempt supplies, the following changes have been made.

a) The value of the factor T4 shall, in the case of real estate sector, be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.

b) The values of T1, T2, T3 and T4 shall be declared by the registered person even at the summary level in Form GSTR 3B.

c) In the formula $D1 = (E + F) \times C2$ - to calculate the ITC attributable to exempt supplies - the value of 'E/F' for a tax period in respect of the real estate sector, shall be calculated for each project separately, taking value of E and F as under:

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier. This will also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

F= aggregate carpet area of the apartments in the project;

d) The aggregate value of exempt supplies and the total turnover shall exclude the amount of duty or tax levied under entry 84 or 92A of List 1 of the Seventh Schedule to the Constitution.

e) The amount of common credit as denoted by the factor C3 shall be computed separately for CGST/SGST/IGST and declared in the Form GSTR 3B or in the Form DRC 03.

f) In the case of the real estate sector, the calculation of the ITC attributable for business purposes and for taxable supplies, as per the formula $C3 = C2 - (D1 + D2)$, shall be calculated finally, for each ongoing project or project which commences on or after 1st April, 2019, which did not undergo or did not require transition of input tax credit consequent to change of rates of tax on 1st April, 2019 for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier. This exercise should be done before the due date for furnishing the return for the month of September following the financial year in which the completion certificate is issued or first occupation takes place of the project.

g) Where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined provisionally, such excess shall be reversed by the registered

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person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation of the project takes place and the said person shall be liable to pay interest for the period starting from the first day of April of the succeeding financial year till the date of payment.

h) Where the aggregate of the amounts determined provisionally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

i) In the case of construction of commercial projects (other than residential projects), the aggregate amount of common credit on commercial portion in the project (C3aggregate_comm) shall be calculated as under:

j) $C3_{\text{aggregate_comm}} = [\text{aggregate of amounts of } C3 \text{ determined under sub- rule (1) for the tax periods starting from 1st July, 2017 to 31st March, 2019,} \times (AC / AT)] + [\text{aggregate of amounts of } C3 \text{ determined under sub- rule (1) for the tax periods starting from 1st April, 2019 to the date of completion or first occupation of the project, whichever is earlier.}]$

AC = total carpet area of the commercial apartments in the project

AT = total carpet area of all apartments in the project

k) The amount of final eligible common credit on commercial portion in the project (C3final_comm) shall be calculated as under $C3_{\text{final_comm}} = C3_{\text{aggregate_comm}} \times (E / F)$

Where, -

E = total carpet area of commercial apartments which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

F = AC

l) Where the aggregate amount exceeds the final amount, such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest.

m) Where the final amount exceeds the aggregate amount, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

n) Input tax determined under sub- rule (1) shall not be required to be calculated finally on completion or first occupation of an RREP which underwent transition of input tax credit consequent to change of rates of tax on 1st April, 2019.

o) Where any input or input service is used for more than one project, input tax credit with respect to

such input or input service shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out.

4.3 In Rule 43, which deals with the manner of determination of input tax credit attributable to Capital goods used for business purposes and for effecting taxable supplies, and its reversal, when the capital goods are commonly used for both business and non-business purposes and for taxable and exempt supplies, the following changes have been made:

a) The amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-2 and FORM GSTR-3B and shall not be credited to his electronic credit ledger

b) The amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies shall be indicated in FORM GSTR-2 and FORM GSTR-3B and shall be credited to the electronic credit ledger. In the case of the real estate sector, this shall be zero during the construction phase because capital goods will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.

c) The amount of common capital goods credit attributable towards exempted supplies, is denoted as 'Te', and calculated as- $Te = (E \div F) \times Tr$ where for the real estate sector, the value of 'E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier. This will also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

F= aggregate carpet area of the apartments in the project

d) The aggregate value of exempt supplies and the total turnover shall exclude the amount of duty or tax levied under entry 84 or 92A of List 1 of the Seventh Schedule to the Constitution.

e) The amount of common capital goods credit as denoted by the factor Te shall be computed separately for CGST/SGST/IGST and declared in the Form GSTR 3B.

f) In the case of the real estate sector, the calculation of the common capital goods credit attributable towards exempt supplies (Tefinal), shall be calculated finally, for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, for each project separately, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, as under:

$T_{efinal} = [(E_1 + E_2 + E_3) / F] \times T_{cfinal}$

Where,-

E1= aggregate carpet area of the apartments, construction of which is exempt from tax.

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E2= aggregate carpet area of the apartments, supply of which is partly exempt and partly taxable, consequent to change of rates of tax on 1st April, 2019, which shall be calculated as under, -

$$E2 = [\text{Carpet area of such apartments}] \times [V1 / (V1+V2)], -$$

Where,-

V1 is the total value of supply of such apartments which was exempt from tax; and

V2 is the total value of supply of such apartments which was taxable

E3 = aggregate carpet area of the apartments, construction of which is not exempt from tax, but have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F= aggregate carpet area of the apartments in the project;

Tcfinal = aggregate of Afinal in respect of all capital goods used in the project, Afinal= A x (number of months for which capital goods is used for the project/ 60). Part of the month shall be treated as one full month.

g) where value of Tefinal exceeds the aggregate of amounts of Te determined for each tax period, such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest.

h) Where aggregate of amounts of Te determined for each tax period under sub-rule (1) exceeds Tefinal, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

i) The amount Tefinal and Tcfinal shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

j) Where any capital goods are used for more than one project, input tax credit with respect to such capital goods shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out.

k) Where any capital goods used for the project have their useful life remaining on the completion of the project, input tax credit attributable to the remaining life shall be availed in the project in which the capital goods is further used.

4.4. The terms "apartment", "project", Real Estate project (REP)", "Residential Real Estate project (RREP)", "promoter", "residential apartment", "commercial apartment", "carpet area", "real Estate Regulatory Authority" and "ongoing project" have all be defined in the Explanation inserted to Rule 42 and 43.

4.6 Procedure for assessment as per Rule 100 has been changed with effect from 1st April 2019, as follows:

- a) Summary of the assessment order for non-filers in ASMT-13 has to be uploaded in Form DRC-07
- b) A summary of the notice for assessment, issued to unregistered persons under ASMT-14 is to be uploaded in Form DRC-01.
- c) The order of assessment passed for unregistered person in Form ASMT-15 is to be uploaded in Form DRC-07.
- d) The summary assessment order in ASMT-16 shall be uploaded in Form DRC-07

4.7. The provisions for Demand and Recovery under Rule 142 has been changed with effect from 1st April 2019 to make it applicable for notices issued under notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130.

4.8. The forms DRC-01, DRC-02, DRC-07, DRC-08, ASMT-13, ASMT-15, ASMT-16, and Form GST CPD-02 were substituted.

5. Composition scheme for supplier of services:

The benefit of a composition scheme for suppliers of service has been introduced vide Notification No 02/2019 CT(R)/UT(R) dated 07.03.2019 with effect from 1st April 2019 and amended vide Notification No 09/2019 CT(R)/UT(R) dated 29.03.2019. As per the said Notification, tax of 3% CGST shall be paid on the first supplies of goods or service or both made by a registered person after 1st April 2019, upto an aggregate turnover of Rs 50 lakhs in a financial year.

The phrase "first supplies of goods or services or both" shall, for the purposes of determining eligibility of a person to pay tax under this notification, include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the said Act but for the purpose of determination of tax payable under this notification shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.

In computing aggregate turnover in order to determine eligibility of a registered person to pay central tax at the rate of three percent under this notification, value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

The conditions for availing the benefit of this Notification is that:

- i) the aggregate turnover of the registered person in the preceding financial year was fifty lakh rupees or below;
- ii) The registered person is not eligible to pay tax under sub-section (1) of section 10 of the said Act;
- iii) The registered person is not engaged in making any supply which is not leviable to tax under the said Act;
- iv) The registered person is not engaged in making any inter-State outward supply;
- v) The registered person is neither a casual taxable person nor a non-resident taxable person;
- vi) The registered person is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52; and
- vii) Where more than one registered persons are having the same Permanent Account Number, supplies by all such registered persons is paid at the rate specified in this notification.
- viii) The registered person shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.
- ix) The registered person shall issue, instead of tax invoice, a bill of supply and shall mention 'taxable person paying tax in terms of notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, not eligible to collect tax on supplies'. The provisions of Section 31(3)(c) applies to persons paying tax under this Notification.
- x) The registered person opting to pay central tax at the rate of three percent under this notification shall be liable to pay central tax at the rate of three percent on all outward supplies notwithstanding any other notification issued under sub-section (1) of section 9 or under section 11 of said Act.
- xi) The registered person opting to pay central tax at the rate of three percent under this notification shall be liable to pay central tax on inward supplies on which he is liable to pay tax under RCM provisions.
- xii) Where any registered person who has availed of ITC opts to pay tax under this notification, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the ITC on inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as if the supply made

under this notification attracts the provisions of section 18(4) of the said Act and after payment of such amount, the balance of ITC, if any, lying in his electronic credit ledger shall lapse.

xiii) The CGST Rules applicable to the regular composition scheme will apply mutus mutanda to a registered person opting to pay tax under this Notification.

6. Changes in GST rates for Real Estate Sector:

The following Notifications were issued in respect of the Real Estate Sector:

6.1. Notification Nos 03/2019 CT (R)/UT (R) and 03/2019 IT (R) dated 29.03.2019 prescribes the GST rates for the following services in the Real Estate Sector effective from 1st April 2019: (Annexure-2)

The above rates are subject to the conditions specified therein. Also Annexure-I (For REP Projects) and Annexure-II (For RREP Projects) are added to the Notification providing for the method of calculating the ITC attributable to construction of residential portion of REP projects and residential and commercial portion of RREP projects and procedure for reversal of input tax credit.

6.2. Notification Nos 04/2019 CT (R)/ UT (R) and 04/2019 IT (R) dated 29.03.2017 exempts the service by way of transfer of development rights (herein refer TDR) or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of residential apartments by a promoter in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. The amount of GST exemption available for construction of residential apartments in the project under this notification shall be calculated as under:

[GST payable on TDR or FSI (including additional FSI) or both for construction of the project] x
[carpet area of the residential apartments in the project ÷ Total carpet area of the residential and commercial apartments in the project]

Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of value of development rights, or FSI (including additional FSI), or both, as is attributable to the residential apartments, which remain unbooked on the date of issuance of completion certificate, or first occupation of the project.

The Notifications also exempts 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 in a project, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation.

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Provided that the promoter shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid for long term lease of land, as is attributable to the residential apartments, which remain un-booked on the date of issuance of completion certificate, or first occupation of the project.

6.3. Notification Nos 05/2019 CT (R)/ UT (R) and 05/2019 IT (R) dated 29.03.2019 specifies that in respect of the following services, the GST will be paid by the Promoter on RCM basis in terms of Section 9(3) of the CGST Act and Section 5(3) of the IGST Act:

(i) 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.

(ii) 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.

6.4. Notification Nos 06/2019 CT (R)/ UT (R) and 06/2019 IT (R) dated 29.03.2019 notifies that with effect from 1st April 2019, the time of supply in respect of the following class of registered persons shall arise on the date of issuance of completion certificate for the project, where required, by the competent authority or on its first occupation, whichever is earlier:

a) a promoter who receives development rights or Floor Space Index (FSI) (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;

b) a promoter, who receives long term lease of land on or after 1st April, 2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name)

The value on which the liability to pay tax by the above classes of registered persons is:

a) The consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);

b) The monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relating to construction of residential apartments in project;

c) The upfront amount (called as premium, salami, cost, price, development charges or by any other name) paid by him for long term lease of land relating to construction of residential apartments in the project; and

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d) The supply of construction service by him against consideration in the form of development rights or FSI(including additional FSI)

6.5. Notification Nos 07/2019 CT (R)/ UT (R) and 07/2019 IT (R) dated 29.03.2019 notifies with effect from 1st April 2019, the following services in the Real Estate Sector when supplied by an unregistered person, wherein the tax liability is to be paid on RCM basis under Section 9(4) of the CGST Act and Section 5(4) of the IGST Act, by the promoter as recipient of the supply:

- a) Supply of such goods and services or both [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)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table.
- b) Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table.
- c) Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, in notification No. 11/ 2017- Central Tax (Rate), dated 28th June, 2017.

6.6. Notification Nos 08/2019 CT (R)/ UT (R) and 09/2019 IT (R) dated 29.03.2019 inserts SL.No 452P of Schedule III of Notification No 01/2017 CT (R) dated 28.06.2017 and prescribes the CGST rate of 9% and IGST rate of 18% in respect of the following goods falling under any Chapter of the Customs Tariff:

Supply of any goods other than capital goods and cement falling under chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975, by an unregistered person to a promoter for construction of the project on which tax is payable by the promoter as recipient of goods under Section 9(4) of the CGST Act, as prescribed in notification No. 07 / 2019- CT (R), dated 29.03.2019.

7. Clarifications regarding Sales promotion schemes under GST: Circular No 92/2019 dated 07.03.2019.

There are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products. Some of these schemes have been examined and clarification on the aspects of taxability, valuation, availability or otherwise of ITC, in the hands of the supplier are detailed hereunder:

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A. Free samples and gifts:

It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration. The expression "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Therefore, the goods or services or both which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I of the said Act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the said Act.

Further, Section 17(5)(h) of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Thus, it is clarified that ITC shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC.

B. Buy one get one free offer:

Sometimes, companies announce offers like 'Buy One, Get One free" For example, "buy one soap and get one soap free" or "Get one tooth brush free along with the purchase of tooth paste". As per Section 7(1)(a) of the said Act, the goods or services which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I of the said Act). It may appear at first glance that in case of offers like „Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act.

It is also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

C. Discounts including 'Buy more, save more' offers:

Sometimes, the supplier offers staggered discount to his customers (increase in discount rate with increase in purchase volume). For example- Get 10 % discount for purchases above Rs. 5000/-, 20% discount for purchases above Rs. 10,000/- and 30% discount for purchases above Rs. 20,000/-. Such discounts are shown on the invoice itself.

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Some suppliers also offer periodic / year ending discounts to their stockists, etc. For example- Get additional discount of 1% if you purchase 10000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply has been effected and generally at the year end. In commercial parlance, such discounts are colloquially referred to as "volume discounts". Such discounts are passed on by the supplier through credit notes.

It is clarified that discounts offered by the suppliers to customers (including staggered discount under "Buy more, save more" scheme and post supply / volume discounts established before or at the time of supply) shall be excluded to determine the value of supply provided they satisfy the parameters laid down in Section 15 (3) of the said Act, including the reversal of ITC by the recipient of the supply as is attributable to the discount on the basis of document (s) issued by the supplier. It is further clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.

D. Secondary Discounts

These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10000 packets of biscuits to M/s B at Rs. 10/- per packet. Afterwards M/s A re-values it at Rs. 9/- per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/- per packet. It is hereby clarified that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in Section 15(3)(b) of the said Act are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.

It is further clarified that such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in Section 15(3)(b) of the said Act are not satisfied.

There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

8. Nature of Supply of Priority Sector Lending Certificates (PSLC) – Circular No 93/2019 dated 08.03.2019.

It is clarified that nature of supply of PSLC between banks may be treated as a supply of goods in the course of inter-State trade or commerce. Accordingly, IGST shall be payable on the supply of PSLC traded over e-Kuber portal of RBI for both periods i.e 01.07.2017 to 27.05.2018 and from 28.05.2018 onwards. However, where the bank liable to pay GST has already paid CGST/SGST or CGST/UTGST as the case may be, such banks for payment already made, shall not be required to pay IGST towards such supply.

9. Clarification on refund related issues – Circular No 94/2019 dated 28.03.2019.

Annexure-2

10. Verification of applications for grant of new registrations – Circular No 95/2019 dated 28.03.2019.

Recently, a large number of registrations have been cancelled by the proper officer on account of noncompliance of the statutory provisions. In this regard, instances have come to notice that such persons, who continue to carry on business and therefore are required to have registration under GST, are not applying for revocation of cancellation of registration as specified in section 30 of the CGST Act. Instead, such persons are applying for fresh registration. Such new applications might have been made as such person may not have furnished requisite returns and not paid tax for the tax periods covered under the old/cancelled registration. Hence, to avoid payment of the tax liabilities, such persons may be using the route of applying for fresh registration.

It is hereby instructed that the proper officer may exercise due caution while processing the application for registration submitted by the taxpayers, where the tax payer is seeking another registration within the State although he has an existing registration within the said State or his earlier registration has been cancelled. It is clarified that not applying for revocation of cancellation of registration along with the continuance of the conditions specified in Section 29(2)(b/c) of the CGST Act shall be deemed to be a "deficiency". The proper officer may compare the information pertaining to earlier registrations with the information contained in the present application, the grounds on which the earlier registration(s) were cancelled and the current status of the statutory violations for which the earlier registration(s) were cancelled. The data may be verified on common portal by fetching the details of registration taken on the PAN mentioned in the new application vis-a-vis cancellation of registration obtained on same PAN. The information regarding the status of other registrations granted on the same PAN is displayed on the common portal to both the applicant and the proper officer. Further, if required, information submitted by applicant in S. No. 21 of FORM GST REG-01 regarding details of proprietor, all partner/Karta/Managing Directors and whole time Director/Members of Managing Committee of Associations/Board of Trustees etc. may be analysed vis-à-vis any cancelled registration having same details.

While considering the application for registration, the proper officer shall ascertain if the earlier registration was cancelled on account of violation of the provisions of Section 29(2)(b/c) of the CGST Act and whether the applicant has applied for revocation of cancellation of registration. If proper officer finds that application for revocation of cancellation of registration has not been filed and the conditions specified in Section 29(2)(b/c) of the CGST Act are still continuing, then, the same may be considered as a ground for rejection of application for.

11. Clarification in respect of transfer of input tax credit in case of death of sole proprietor – Circular No 96/2019 dated 28.03.2019

Doubts have been raised whether Section 18(3) of the CGST Act provides for transfer of ITC which remains unutilized to the transferee in case of death of the sole proprietor.

LEGAL UPDATES

2. It is clarified that transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor.
3. In case of death of sole proprietor if the business is continued by any person being transferee or successor, the ITC which remains un-utilized in the electronic credit ledger is allowed to be transferred to the transferee as per provisions and in the manner stated below –
 - a. Registration liability of the transferee / successor: The transferee or the successor, shall be liable to be registered with effect from the date of such transfer or succession, where a business is transferred to another person for any reasons including death of the proprietor. While filing application in FORM GST REG-01 electronically in the common portal the applicant is required to mention the reason to obtain registration as "death of the proprietor".
 - b. Cancellation of registration on account of death of the proprietor: The legal heirs in case of death of sole proprietor of a business, may file application for cancellation of registration in FORM GST REG-16 electronically on common portal on account of transfer of business for any reason including death of the proprietor. In FORM GST REG-16, reason for cancellation is required to be mentioned as "death of sole proprietor". The GSTIN of transferee to whom the business has been transferred is also required to be mentioned to link the GSTIN of the transferor with the GSTIN of transferee.
 - c. Transfer of ITC and liability: In case of death of sole proprietor, if the business is continued by any person being transferee or successor of business, it shall be construed as transfer of business. The transferee / successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.
 - d. Manner of transfer of credit: In case of transfer of business on account of death of sole proprietor, the transferee / successor shall file FORM GST ITC-02 in respect of the registration which is required to be cancelled on account of death of the sole proprietor. FORM GST ITC-02 is required to be filed by the transferee/successor before filing the application for cancellation of such registration. Upon acceptance by the transferee / successor, the un-utilized input tax credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledge.

CASE LAW UPDATES

1) Kerala State Screening Committee & DGAP vs M/s Velbon Vitrified Tiles Ltd, Gujarat

In the case of Kerala State Screening Committee & DGAP vs M/s Velbon Vitrified Tiles Ltd, Gujarat, reported in 2019-TIOL-14-NAA-GST, allegation is that respondent had indulged in profiteering by not passing on the benefit of reduction in the rate of tax granted, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017. - two invoices have been placed reliance upon, one issued on 24.10.2017 i.e. in the pre-GST rate reduction period and one thereafter, dated 15.12.2017; that the GST rate on the product 'Ceramic Vitrified tiles' nano series PRE-1 (HSN Code 6907 2100) was reduced to 18% from the then existing rate of 28% w.e.f. 15.11.2017 – DGAP was asked to investigate the case and the DGAP, in its report stated that there was no increase in the per unit taxable amount (excluding GST) of the product as compared to the pre-GST rate i.e. the base price per box excluding GST remained constant at Rs.232.50 and, therefore, the provisions of s.171(1) of the CGST Act, 2017 relating to profiteering had not been contravened.

Considering the DGAP report, the NAA held that is clear that the base price of the product per box was Rs.232.50 prior to 15.11.2017 and had remained the same even after GST rate reduction w.e.f 15.11.2017, therefore, the benefit of rate reduction appears to have been passed on - authority agrees with the report of the DGAP and accordingly holds that the allegation of profiteering is not sustainable

GST PORTAL UPDATES

Proposed New Return Formats:

The proposed new return documents- All three types were released on the GST Portal in March 2019 to enable various stakeholders in adapting their systems to make them compatible with the proposed return format and business processes

The new forms would begin on pilot basis from 1st April, 2019 and would be mandated across the country from July, 2019

The new return formats are named normal, Sahaj and Sugam

The taxpayers opting to file quarterly return (Turnover up to Rs. 5 crore) can choose to file any of the quarterly return namely – Sahaj, Sugam or Quarterly (Normal).

Normal Return - FORM GST RET-1 (Shall be able to declare all types of outward supplies, inward supplies and take credit on missing invoices)

- Monthly Normal
- Quarterly Normal

Sahaj Return – FORM GST RET-2 (Quarterly)

- Outward supply under B2C category and inward supplies attracting reverse charge only

Sugam Return – FORM GST RET-3 (Quarterly)

- Outward supply under B2C and B2B category and inward supplies attracting reverse charge only
- Shall not take credit on missing invoices and shall not be allowed to make any other type of inward or outward supplies

Annual Return:

Facility to file Annual Return by normal taxpayers in Form GSTR 9, 9A (by Composition taxpayers) for Financial Year 2017-18, is now available at GST Portal.

The FAQs and Manual for Form GSTR-9 & 9A is available on the portal.

APIs for Form GSTR 9 has been released for CBIC/Model I States for back office integration

Viewing & Downloading of month-wise Comparative Table on Liability Declared and Credit Claimed

A new functionality has been provided in Returns dashboard on the GST Portal to taxpayers under the headings "Comparison of liability declared and ITC claimed.

In this functionality, taxpayers have been provided with facility to view and download a report on tax liability as declared in their Form GSTR- 1 and as declared & paid in their return filed in Form GSTR 3B.

They can also view information regarding data of Input tax credit (ITC) as claimed in their Form GSTR 3B and as accrued in Form GSTR 2A

They will also be able to view the liability paid due to reverse charge as declared & paid in Form GSTR 3B and as accrued in Form GSTR 2A, due to uploading of such details by the supplier in Form GSTR-1.

GST PORTAL UPDATES

In addition, they can view and compare the liability related to exports & SEZ supplies as declared in their Form GSTR-3B during the month [as per table 3.1(b)] and liability as declared in their Form GSTR-1 (Zero rated supplies) as per table 6A, 6B, 9A, 9B & 9C of the Form GSTR 1.

Revocation of cancellation of Registration

Facility for applying for revocation of suo-moto cancellation of registration for the persons registered as OIDAR /TDS /TCS/NRTP category has been enabled on GST Portal. APIs for these functionalities have also been released for CBIC and Model I States.

CBIC UPDATES

Decisions taken by the GST Council in the 34th meeting held on 19th March, 2019 regarding GST rate on real estate sector

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 council decided the modalities of the transition as follows.

Option in respect of ongoing projects:

2. The promoters shall be 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 have not been completed by 31.03.2019.

3. The option shall be exercised once within a prescribed time frame and where the option is not exercised within the prescribed time limit, new rates shall apply.

New tax rates:

4. The new tax rates which shall be applicable to new projects or ongoing projects which have exercised the above option to pay tax in the new regime are as follows.

(i) New rate of 1% without input tax credit (ITC) on construction of affordable houses shall be available for,

(a) all houses which meet the definition of affordable houses as decided by GSTC (area 60 sqm in metros / 90 sqm in non-metros and value upto RS. 45 lakhs), and

(b) affordable houses being constructed in ongoing projects under the existing central and state housing schemes presently eligible for concessional rate of 8% GST (after 1/3rd land abatement).

(ii) New rate of 5% without input tax credit shall be applicable on construction of,-

a. all houses other than affordable houses in ongoing projects whether booked prior to or after 01.04.2019. In case of houses booked prior to 01.04.2019, new rate shall be available on instalments payable on or after 01.04.2019.

b. all houses other than affordable houses in new projects.

c. commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

Conditions for the new tax rates:

5. The new tax rates of 1% (on construction of affordable) and 5% (on other than affordable houses) shall be available subject to following conditions,-

a. Input tax credit shall not be available,

b. 80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease (premiums)) shall be purchased from registered persons. On shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on RCM basis. However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.

CBIC UPDATES

Transition for ongoing projects opting for the new tax rate:

6.1 Ongoing projects (buildings where construction and booking both had started before 01.04.2019) and have not been completed by 31.03.2019 opting for new tax rates shall transition the ITC as per the prescribed method.

6.2 The transition formula approved by the GST Council, for residential projects (refer to para 4(ii)) extrapolates ITC taken for percentage completion of construction as on 01.04.2019 to arrive at ITC for the entire project. Then based on percentage booking of flats and percentage invoicing, ITC eligibility is determined. Thus, transition would thus be on pro-rata basis based on a simple formula such that credit in proportion to booking of the flat and invoicing done for the booked flat is available subject to a few safeguards.

6.3 For a mixed project transition shall also allow ITC on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects (on which tax will be payable @ 12% with ITC even after 1.4.2019) to the total carpet area of the project.

Treatment of TDR/ FSI and Long term lease for projects commencing after 01.04.2019

7. The following treatment shall apply to TDR/ FSI and Long term lease for projects commencing after 01.04.2019.

7.1 Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer shall be exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them. Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property.

7.2 The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under the reverse charge mechanism (RCM).

7.3 The date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate.

7.4 The liability of builder to pay tax on construction of houses given to land owner in a JDA is also being shifted to the date of completion. Decisions from para 7.1 to 7.4 are expected to address the problem of cash flow in the sector.

Amendment to ITC rules:

8. ITC rules shall be amended to bring greater clarity on monthly and final determination of ITC and reversal thereof in real estate projects. The change would clearly provide procedure for availing input tax credit in relation to commercial units as such units would continue to be eligible for input tax credit in a mixed project.

9. The decisions of the GST Council have been presented in this note in simple language for easy understanding. The same would be given effect to through Gazette notifications/ circulars which alone shall have force of law.

ANNEXURES

Annexure-1

Sl.No	Name of return	Category of taxpayers	Period of return	Due date	Notification No
1	GSTR 1	Registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year	April to June 2019	31 st July 2019	11/2019 CT dated 07.03.2019
2	GSTR 1	Registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year	April, May and June 2019	11 th of the following month.	12/2019 CT dated 07.03.2019
3	GSTR 3B	All registered taxpayers	April, May and June 2019	20 th of the following month	13/2019 CT dated 07.03.2019
4	ITC 04	Taxpayers who despatch goods to a job worker or received from a job worker	July 2017 to March 2019	30 th June 2019	15/2019 CT dated 28.03.2019

Annexure-2

Description	Rate of CGST	Rate of IGST
(i) Construction of affordable residential apartments by a promoter in a Residential Real Estate Project (RREP) which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ia) or (if) below , intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the	0.75	1.5

ANNEXURES

competent authority or after its first occupation, whichever is earlier		
(ja) Construction of residential apartments other than affordable residential apartments by a promoter in an RREP which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (je) or (if) below, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.	3.75	7.5
(jb) Construction of commercial apartments (shops, offices, godowns etc.) by a promoter in an RREP which commences on or after 1st April, 2019 or in an ongoing RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (je) or (if) below, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.	3.75	7.5
(jc) Construction of affordable residential apartments by a promoter in a Real Estate Project (REP) other than RREP, which commences on after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (je) or (if) below, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.	0.75	1.5
(jd) Construction of residential apartments other than affordable residential apartments by a promoter in a REP other than a RREP which commences on or after 1st April, 2019 or in an ongoing REP other than RREP in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (je) or (if) below, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion	3.75	7.5

ANNEXURES

certificate, where required, by the competent authority or after its first occupation, whichever is earlier.		
(ie) Construction of an apartment in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), subitem (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);	6	12

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