

MAY, 2019

TAX Bulletin



VOLUME - 40



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

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MISSION STATEMENT

"The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting."

VISION STATEMENT

"The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally."

Objectives of Taxation Committee:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders.

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FROM TAX RESEARCH DEPARTMENT

The Department in its Endeavour to serve its stakeholders better has commenced the 4th Batch GST Course on 4th May 2019. The classes are both under online and offline mode. The course has been gladly and cordially accepted by the candidates. The course is being conducted in full capacity.

The other direct tax courses already commenced by the department being Certificate course on Returns Filing and Filling and Certificate Course on TDS are going great guns. The courses are knowledge driven and include the practical aspects which would help the candidates to get a greater insight in regards the subjects.

The classes for the Advanced course on GST are also undergoing. The candidates, experts, members and non-members enrolled for this course are benefitting a lot from this course. The practical and theoretical knowledge has increased the horizon of the candidates in relation to the intricacies of GST.

The department has started a first batch crash course with ASC Degree College, Bengaluru on GST earlier this month. The crash course will be helpful for the students

of the college to get an understanding on GST.

In the regular activities the 38th & 39th Tax Bulletins have also been published. Updates on regular happenings in the entire taxation gamut in the country are being uploaded under “Top Stories” section in the Taxation Portal.

We are grateful to our Resource Persons, mentors and experts to help us in accomplishing our activities. The department is indebted to the resource contributors and mentors who have provided their invaluable inputs for the betterment of the department.

We would continue to serve our members, students and all the stakeholders with more knowledge and learning.

Thank You

Regards
Tax Research Department
17th May 2019

TEAM - TAX RESEARCH DEPARTMENT

CMA Rajat Kumar Basu	-	Additional Director - Tax Research
CA Neelesh Jain	-	Deputy Director - Tax Research
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SPECIAL ACKNOWLEDGEMENT

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CONTENTS

ARTICLES

INDIRECT TAX

01	GST AUDIT REPORT IN FORM GSTR 9C - INTRODUCTION AND FILING PROCESS	
	CMA Rohit Kumar Singh	Page - 1
02	NOTE ON NEW GST RATE FOR REAL ESTATE	
	CA Saurabh Tibrewal	Page - 4

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

Indirect Tax	Page - 8
Direct Tax	Page - 11

PRESS RELEASE

Indirect Tax	Page - 13
Direct Tax	Page - 21

JUDGEMENTS

Indirect Tax	Page - 23
Direct Tax	Page - 26

TAX COMPLIANCE CALENDAR AT A GLANCE

Indirect Tax	Page - 29
Direct Tax	Page - 29

Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original. Please send the articles to

trd@icmai.in /trd.ad1@icmai.in

GST AUDIT REPORT IN FORM GSTR 9C – INTRODUCTION AND FILING PROCESS

CMA Rohit Kumar Singh

Founder of Tax Marvel Consulting Advisors LLP

Recently on 14th April 2019, GSTN opened the filing window for GST Audit Report in Form GSTR 9C. We have examined the various aspects for filing of GSTR 9C and studied the off-line template released by GSTN for filing of FORM GSTR 9C. We are enclosing a detailed note on preparation and filing aspect of Audit Report in Form GSTR 9C.

The same is summarized in below table for ease of understanding:

A. Key aspects in filing GST Audit Report – FORM GSTR 9C for the FY 2017-18

1. **Complete filing of all pending returns** – GSTR 1 and GSTR 3B from July 2017 to March 2018 (Reach out to GSTN help desk for any technical glitch in filing)
2. **File Annual Return in Form GSTR 9** – Annual Return in Form GSTR 9 for is to be filed before filing GST Audit Report in Form GSTR 9C
3. **Keep the figures for Annual Return handy (keep soft copy or print out)** – Since the Audit report requires details of annual return to be provided in GSTR 9C, keeping the same ready shall come handy
4. **Scan and keep copy of Profit & Loss (or Income and Expenditure Statement) and Balance Sheet** – Scan the reports in PDF or JPEG format (Max size of each file 5 MB)
5. **Re-check all details before filing** – Remember, Audit Report once filed cannot be amended. Hence it is advisable to cross check all figures before proceeding to file Audit report

B. System Requirements for preparing and filing GST Audit Report:

1. Operating System – MS Windows 7 or above
2. Microsoft Excel 2007 and above

C. Pre-requirement for filing Form GSTR 9C:

Before you proceed to file GST Audit Report, below details, data or requirement is to be prepared and handed over to Auditor for conclusion of Audit –

1. **Bifurcate the books of accounts for each GSTIN** - If you operate in multiple locations having more than one GST Registration, books of accounts is to be prepared for each GSTIN – Outward supplies, ITC, Payment, Expenses, etc
2. **Invoice-wise outward supply Statement** - Reconcile outward supply turnover of books and returns
3. **ITC details (GSTR 2A, Books of Accounts and GSTR 3B)** - Reconcile Input Tax Credit availed as per returns and those appearing in books and those auto-populated in GSTR 2A
4. **Expense head wise ITC details** – Prepare statement containing basic value, ITC and Eligible ITC for the list of expenses provided in the audit report. This is to be prepared for each GSTIN
5. **Details of all payments made under each rate of tax** – Under Forward Charge and Reverse Charge
6. **Reasons for Differences** – Identify any difference in Annual return and Books of Accounts for Total Turnover, Taxable Turnover and ITC and prepare reasons for same to be handed over to Auditor
7. **Pay the Recommended Liability** – In case of any liability suggested by Auditor and accepted by the entity, please pay the same by using the form DRC 03. Facility to pay the same before filing Audit Report is also available in the login
8. The link to download the detailed FAQ and User Manual is <https://www.gst.gov.in/download/gstr9c>

D. Guide for filing GST Audit Report (Summary) -

The Offline excel utility to file GSTR 9C has following Tabs -

1. **Open GSTR-9C JSON file downloaded from GST Portal:** To open Form GSTR-9C details (uploaded earlier) file - downloaded from GST portal into the Offline Tool. Upon successful import of file, the details would be populated to respective tables of Excel workbook.
 2. **Open GSTR-9C JSON Error File Downloaded from GST Portal:** To open file downloaded from GST portal from the 'Processed with error' link. Upon successful import of the file details 'processed with error' records would be populated to respective tables of Excel workbook. The GST portal errors would be marked as red and can be shown in hover at red marked field.
 3. **Generate JSON File to Upload GSTR-9C details on GST Portal:** To generate JSON file for upload of Form GSTR-9C details prepared offline on GST portal. The error file will also require to be signed by auditor again.
 4. **Generate Preview PDF file to view Draft GSTR-9C form:** To preview in PDF format, Form GSTR-9C details as prepared offline on GST portal.
 5. **Validate Sheet:** To Validate the data entered in respective worksheet of this offline Tool. Successful validation is notified to Taxpayer via pop-up while on failure of validation the cells that fail validation would be marked in Red.
- E. High Level Process flow for GSTR 9C preparation using off - line template -**
- a. Validate the details filled in various tables using 'validate' button at the top of every sheet. The validation error if any is to be rectified before proceeding
 - b. Generate JSON using 'Generate JSON File to Upload' option
 - c. Upload the generated JSON on GST Portal. Preview the details uploaded and File return on the GST portal. Check the tables in the GSTR 9C on screen
 - d. Open saved version (Yes/No) :- Select 'No' option for not viewing

the saved data (if you select No then date in the file shall get erased) and if you select 'Yes' then saved data will be available in the respective worksheets.

F. Step-wise procedure to file GST Audit Report - Form GSTR 9C -

Auditor to complete below steps:

1. Down the latest version of GSTR-9C Offline Tool from the GST portal <https://www.gst.gov.in/download/returns>
2. Open the GSTR-9C Excel based Offline Tool and navigate to worksheet named 'Home' in the excel template
3. For opening the Offline tool with the previous data which you entered, Click "Yes" when the dialogue box prompts "Open Saved Version?". Else clicking "No" will clear all values in all the sheets.
4. Enter taxpayer's GSTIN in home sheet. Entered GSTIN would be validated only for correct structure.
5. Select the applicable Financial Year from the drop-down (mandatory field).
6. Enter details as applicable in various worksheets. The worksheet for which no details need to be declared can be left blank.
7. Click Validate Sheet to check the status of validation. In case of validation errors - please check for cells that have failed validation and correct errors as per help text.
8. Click on 'Generate JSON File to Upload ' to generate JSON file and sign using DSC (Digital Signature Certificate). Dialogue box prompt to sign using DSC on the utility
9. Auditor shall pass this signed GSTR 9C JSON file to taxpayer for upload.

Taxpayer to complete this step onwards

1. Login to GST Portal and select '**Returns Dashboard**'.
2. Select applicable Financial Year and Tax-period.
3. Click on Prepare Offline.
4. Upload the JSON prepared using offline Tool using upload option.
5. The uploaded JSON file would be validated and processed.
6. In case of validation failure of one or more details in the uploaded JSON; an

error file (returns_<Date>_R9C_<GSTIN> error Report. json) would be generated with status of uploaded JSON file as 'Processed with Error'.

7. Taxpayer shall share this error file to auditor to correct the error and re-sign the same.
8. Auditor to open the error file in offline tool using 'Open GSTR-9C JSON Error file downloaded from GST Portal'. All records along with errors to be populated in respective worksheets with errors description in column 'GST Portal Validation error(s)' for the records which have error. Post correction of errors, sign the statement using DSC and generate the JSON file and send it to the taxpayer to upload the same in GST portal.
9. Post successful upload of data on GST portal; Taxpayer to Preview the form and file GSTR-9C

NOTE: Please ensure HTML file name 'wsweb' and 'GSTR_9C_Offline_Utility' should be in same folder to generate the JSON.

G. Additional details to be considered while filing GST Audit Report in Form GSTR 9C –

1. Follow instruction in 'GSTR-9C offline tool' to add details and generate JSON file for upload.
2. Clicking on "DOWNLOAD GSTR-9C TABLES DERIVED FROM GSTR-9 (PDF)" to fill the GSTR-9 related figure in GSTR-9C offline tool. This is only for reference for preparing the Reconciliation Statement (GSTR-9C) by Auditor.
3. Facility to preview draft (PDF) can be used to check the details filled up in the GSTR-9C.
4. GSTR-9C shall be prepared in Offline Tool and required to be digitally signed by a Chartered Accountant or a Cost Accountant.
5. Verify that documents uploaded are duly signed by Chartered Accountant/Cost Accountant and are not tampered.
6. Click on 'Prepare Offline' to initiate upload of Form GSTR-9C (signed JSON file shared by Auditor) and click on 'Upload' tab to upload JSON file with the help of instruction available there.

7. Supporting documents like audited financial statements and other required documents, if any also needs to be uploaded by clicking on 'Initiate Filing' button along with the reconciliation statement (JSON file) on the portal.
8. You may make payment if you have any additional liability through GST DRC-03 link. (This is available in 'Initiate Filing' page)
9. 'Proceed to File' button shall be enabled only after successful uploading of Reconciliation statement (JSON file) and audited annual accounts.
10. Click on 'Proceed to File' and Click on 'File GSTR-9C' with DSC/EVC.
11. Neither amendment nor revision of GSTR-9C can be made after filing the same

Note - This is for information only. For exact details of changes, the notification/Circular may please be referred to, as and when they are issued.

NOTE ON NEW GST RATE FOR REAL ESTATE

CA Saurabh Tibrewal

Practicing Chartered Accountant

GST Council in the 34th meeting held on 19th March, 2019 has approved a transition plan for 5% rate on under-construction flats and 1% on affordable housing and has also increased the carpet area of flats under the affordable housing. Definition of the affordable housing has also been expanded for the purpose of availing of GST benefits. Reduction in the GST rates is only for the residential projects and not for commercial projects. However, projects upto 15% commercial space will be treated as the residential property.

The new tax rates shall be available, subject to the condition that ITC shall not be available and 80 % of inputs and input services should be purchased from registered persons. Any shortfall in purchases from the registered persons shall lead the builder to pay the applicable higher GST on Reverse Charge Mechanism basis.

Details have also been summarized in the table below:

<i>Particulars</i>	<i>Affordable Housing Segment</i>	<i>Other than Affordable Housing Segment</i>	<i>Commercial Segment</i>
Existing GST Rates	8%	12%	12%
Revised Rates wef from 1-April-19	1%	5%	No change
ITC Available on New GST Rates	No	No	Yes

Developers of the ongoing residential projects have also been given an onetime option to choose between the old tax rates with ITC and the new rates without ITC for under-construction residential projects so as to resolve any issues related to the input tax credit.

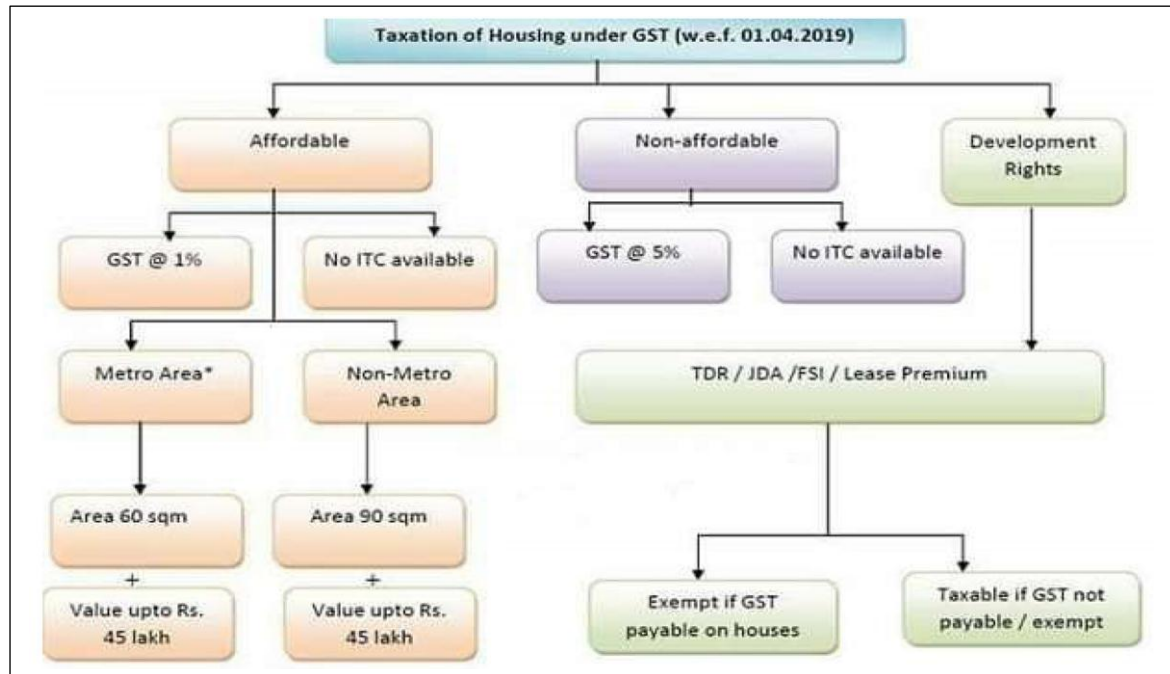
Comparing the prices of a residential house property before and after April 1, 2019.

<i>Particulars</i>	<i>On or Before 31/03/2019</i>		<i>On or after 01/04/2019</i>	
	<i>Residential Buyers (Other than Affordable Housing Scheme)</i>	<i>Residential Buyers (Affordable Housing Scheme)</i>	<i>Residential Buyers (Other than Affordable Housing Scheme)</i>	<i>Residential Buyers (Affordable Housing Scheme)</i>
Effective rate of GST	12%	8%	5%	1%
Whether ITC is available?	Yes	Yes	No	No
Cost of Land (A)	25.00	25.00	25.00	25.00
Cost of Construction (B)	14.40	14.40	14.40	14.40
GST on Inputs (at the rate of 18%) (C)	2.60	2.60	2.60	2.60
ITC Available (D)	(2.60)	(2.60)	-	-
Total Cost to Builder (E = A+B+C-D)	39.40	39.40	42.00	42.00
Profit Margin (cost plus 2% mark-up) (F)	0.79	0.79	0.84	0.84
Sale Price of Flat	40.19	40.19	42.83	42.84

(G = E+F)				
GST on sale price of flat (H = G * Effective Rate)	4.82	3.22	2.14	0.43
Net cost to buyer (G+H)	45.01	43.41	44.97	43.27

Though the rate of GST has been reduced substantially, but the net benefit to the customer is insignificant.

The modality of new tax rate:



The modality for transition:

	<i>Ongoing Residential Projects</i>	<i>Affordable Housing</i>	<i>Other than Affordable Housing</i>
Transition option	Continue to pay tax at the old rates where the effective rate on affordable and other than affordable housing segment was 8% and 12%, respectively, and input tax credit was also available		
	<ul style="list-style-type: none"> • constructions have started before 1st April, 2019; and • actual bookings have started before 1st April, 2019; and 		

	<ul style="list-style-type: none"> the project has not been completed by 31st March, 2019 		
New rate applicable on	all the new projects along with the ongoing projects which have not exercised the above option	<p>New GST rate shall apply on following:</p> <p>New Projects - All houses which meet the definition of affordable houses having an area of not more than 60 sqm and 90 sqm in non-metros and metros, respectively, and the value of the house should also not be more than Rs. 45 lakhs.</p> <p>Ongoing Projects - Affordable houses being constructed under the existing Central and State housing schemes where the existing concessional rate of 8% GST is applicable.</p>	<p>New GST rate shall apply on following:</p> <p>New Projects - All houses other than the affordable houses in the new projects.</p> <p>Ongoing Projects - All houses other than the affordable houses in ongoing projects whether booked prior to or after 1st April, 2019. In case of the house is booked prior to 1st April, 2019, new rates shall be applicable only on instalments payable on or after 1st April, 2019. (Note-1 and 2)</p>
Input tax credit	If opting for new rate no credit available	Input tax credit shall not be available	Input tax credit shall not be available

Note-1: Ongoing projects where the construction and booking both have started before 1st April, 2019 and have opted for new tax rates shall transition the input tax credit (ITC) as per the prescribed method. ITC for the entire project shall be arrived at by extrapolating the ITC taken on basis of the percentage of completion as on 1st April, 2019. Eligibility of ITC shall be determined on basis of the percentage of booking of flats and invoicing done. Therefore, on *pro-rata* basis the ITC credit shall be allowed, *i.e.*, credit in proportion to booking of the flat and invoicing done for the booked flat.

Note-2: New rate of 5% shall also be applicable on commercial apartments such as shops, offices, etc, which are constructed in the resident real estate projects provided the carpet area of commercial apartments is not more than 15% of total carpet area of all the apartments.

Commercial Projects

On Commercial projects, whether ongoing or new, GST rates have not been changed.

Rate - GST rate shall remain at 12%

ITC - Input tax credit shall be available

Applicability - All new or ongoing projects which consist of 100% commercial apartments such as shops, offices, etc

Mixed Use Projects

Mixed use projects are those projects which consist of residential houses as well as commercial properties and the carpet area of the commercial projects is more than 15% of the total carpet area of all the apartments.

Rate - GST rate shall remain at 12% for the commercial apartments and for housing sector GST rates as defined in the relevant sections mentioned above.

ITC - Input tax credit shall be available only for commercial segment. For a mixed used project, Input Tax Credit shall be available on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects to the total carpet area of the project. On the commercial portion in the ongoing projects tax shall be payable at 12% along with the benefit of ITC even after 1st April, 2019.

Condition for Applicability of New GST Rates

Builders need to purchase 80% of inputs and input services from the registered persons. Input and input services do not include purchase of capital goods, JDA (Joint Development Agreements)/TDR (Transferable Development Rights), FSI, long-term lease (premiums).

If there is a shortfall in meeting in the above condition of 80% purchase of input and input services from the registered persons than the builder shall be liable to pay tax at 18% on reverse charge mechanism (RCM) basis. However, builders need to pay tax on cement purchased from unregistered persons at 28% under RCM and on capital goods under RCM at applicable rates.

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

GOODS AND SERVICES TAX

CENTRAL TAX

Notification No. 23/2019 – Central Tax

Date – 11.05.2019

Seeks to extend the due date for furnishing FORM GSTR-1 for taxpayers having aggregate turnover more than Rs. 1.5 crores for the month of April, 2019 for registered persons in specified districts of Odisha till 10.06.2019

CBIC has extended the due date for filling GSTR – 1 for the month of April, 2019 for registered persons having principal place of business in the districts of Angul, Balasore, Bhadrak, Cuttack, Dhenkanal, Ganjam, Jagatsinghpur, Jajpur, Kendrapara, Keonjhar, Khordha, Mayurbhanj, Nayagarh and Puri in the State of Odisha up to 10th June, 2019.

Notification No. 24/2019 – Central Tax

Date – 11.05.2019

Seeks to extend the due date for furnishing FORM GSTR-3B for the month of for the month of April, 2019 for registered persons in specified districts of Odisha till 20.06.2019

CBIC has extended the due date for filling FORM GSTR-3B for the month of April, 2019 for registered persons having principal place of business in the districts of Angul, Balasore, Bhadrak, Cuttack, Dhenkanal, Ganjam, Jagatsinghpur, Jajpur, Kendrapara, Keonjhar, Khordha, Mayurbhanj, Nayagarh and Puri in the State of Odisha up to 20th June, 2019.

CENTRAL TAX (RATE)

Notification No. 10/2019 – Central Tax (Rate)

Date –10.05.2019

To amend notification No. 11/ 2017- Central Tax (Rate) so as to extend the last date for exercising the option by promoters to pay tax at the old rates of 12%/ 8% with ITC

CBIC has made amendments in the Notification No.11/2017- Central Tax (Rate), dated the 28th June, 2017.

Amendment-

- (i) In the Table, against serial number 3, in items (ie) and (if), in the entries in column (5), for the figures and letters “10th”, wherever they occur, the figures and letters “20th” shall be substituted.
- (ii) In Annexure IV, for the figures and letters “10th”, at both the places where they occur, the figures and letters “20th” shall be substituted.

INTEGRATED TAX (RATE)

Notification No. 9/2019 – Integrated Tax (Rate)

Date –10.05.2019

To amend notification No. 8/ 2017- Integrated Tax (Rate) so as to extend the last date for exercising the option by promoters to pay tax at the old rates of 12%/ 8% with ITC

CBIC has made amendments in the Notification No. 8/2017- Integrated Tax (Rate), dated the 28th June, 2017.

Amendments

- (i) In the Table, against serial number 3, in items (ie) and (if), in the entries in column (5), for the figures and letters “10th”, wherever they occur, the figures and letters “20th” shall be substituted.
- (ii) In Annexure IV, for the figures and letters “10th”, at both the places where they occur, the figures and letters “20th” shall be substituted.

UNION TERRITORY TAX (RATE)

Notification No. 10/2019 – Union Territory Tax (Rate)

Date –10.05.2019

Seeks to amend notification No. 11/ 2017- Union Territory Tax (Rate) so as to extend the last date for exercising the option by promoters to pay tax at the old rates of 12%/ 8% with ITC

CBIC has made amendments in the Notification No.11/2017- Union Territory Tax (Rate), dated the 28th June, 2017.

Amendments

- (i) In the Table, against serial number 3, in items (ie) and (if), in the entries in column (5), for the figures and letters “10th”, wherever they occur, the figures and letters “20th” shall be substituted.
- (ii) In Annexure IV, for the figures and letters “10th”, at both the places where they occur, the figures and letters “20th” shall be substituted.

CUSTOMS – NON TARIFF

Notification No. 35/2019 – Customs (N.T)

Date –02.05.2019

Exchange Rates Notification No.35/2019 - Custom (NT) dated 02.05.2019

CBIC has determined the rate of exchange of conversion of foreign currencies into Indian currency or vice versa, relating to imported and export goods.

It has been effected from 3.05.2019

SCHEDULE-I

Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
	(For Imported Goods)	(For Exported Goods)
Australian Dollar	50.05	47.85
Bahraini Dinar	190.75	178.85
Canadian Dollar	52.75	50.85
Chinese Yuan	10.50	10.15
Danish Kroner	10.65	10.25
EURO	79.50	76.55

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-nt2019/csnt35-2019.pdf;jsessionid=35E3283583E7E7EFC8B7BA4600052C318>

CUSTOMS – ANTI DUMPING DUTY

Notification No. 20/2019 – Anti Dumping Duty Date –03.05.2019

Seeks to impose anti-dumping duty on "Saccharin", originating in or exported from Indonesia, in pursuance with anti-dumping investigation final findings issued by the DGTR.

In case of import of 'Saccharin' originating in or exported from Indonesia and imported into India, the designated authority in its final findings vide Notification No. 6/13/2018- DGAD, dated the 29th March, 2019 has come to the conclusion that-

"The product under consideration has been exported to India from subject country below their normal values and consequently, the domestic industry has suffered material injury. Material injury has been caused by the dumped imports of subject goods from the subject country during the Period of Investigation (POI)."

Then the designated authority has recommended the imposition of definitive anti-dumping duty on Saccharin in order to remove injury to the domestic industry.

Now the Central Government, after considering the aforesaid final findings of the designated authority, has imposed an anti-dumping duty on Saccharin.

Heading/ Subheading	Description of goods	Country of Origin/Export	Producer	Exporter	Amount (USD/MT)
29251100	Saccharin in all its forms	Indonesia	Any	Any	1633.17

The anti-dumping duty imposed shall be effective for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be payable in Indian currency.

Notification No. 21/2019 – Anti Dumping Duty Date –09.05.2019

Seeks to amend notification No. 23/2013-Customs(ADD), dated the 10th October, 2013 to extend the anti-dumping duty on ductile iron pipes originating in, or exported from China PR till 23rd June, 2019.

In case of Ductile iron pipes, originating in, or exported from China PR and imported into India, the designated authority in its final findings vide Notification No. 15/1006/2012-DGAD, dated the 4th September, 2013, has recommended continuation of anti-dumping duty on the imports of Ductile iron pipes.

Now, in pursuance of the order of the Hon'ble High Court of Gujarat dated the 3rd May, 2019, the Central Government has made amendments in the Notification No. 23/2013, Customs (ADD), dated the 10th October, 2013.

Amendments –

In the said notification, in paragraph 3, for the figures, letters and words "9th May 2019", the figures, letters and words "23rd June 2019" shall be substituted.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-add2019/csadd21-2019.pdf>

DIRECT TAX

Notification No. 38 /2019/F.No. 370142/4/2019-TPL

Date - 3rd May, 2019

In the notification of the Government of India, Ministry of Finance, Department of Revenue (Central Board of Direct taxes), published on the 12th April, 2019, vide G.S.R. 304(E), in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), at page 9, in row 22, in column 2, for "Aggregate of deductible amount under Chapter VI-A [10(a)+10(b)+10(c)+10(d)+10(e)+10(f)+10(g)+10(h)+10(i)+10(j)+10(l)]" read "Aggregate of deductible amount under Chapter VI-A [10(d)+10(e)+10(f)+10(g)+10(h)+10(i)+10(j)+10(l)]".

Notification No. 09/2019

Date – 6th May, 2019

Procedure, format and standards for issuance of certificate for tax deducted at source in Part B of Form No. 16 in accordance with the provisions of section 203 of the Income-tax Act, 1961 read with the Rule 31 of the Income-tax Rules, 1962 through TRACES

Section 203 of the Income-tax Act .1961 read with the Rule 31 of the Income-tax Rules 1962 stipulates furnishing of certificate of tax deduction at source (TDS) by the deductor to the deductee specifying therein the prescribed particulars such as amount of TDS, valid permanent account number (PAN) of the deductee, tax deduction and collection account number (TAN) of the deductor, etc. The relevant form for TDS certificate in case of deduction under section 192 of Chapter XVII-B of the Act is Form No. 16 which is to be issued annually.

TDS Certificate in Form No 16 has two parts viz. Part A and Part B (Annexure).

Part A contains details of tax deduction and deposit and Part B (Annexure) contains details of income.

Vide Central Board of Direct Taxes Notification No. 36/2019 dated 12.04.2019, 'Part B (Annexure) of Form 16' and 'Annexure II of Form no. 24Q' in Appendix II to the Income tax Rules, 1962 have been amended.

In exercise of the powers delegated by the Central Board of Direct Taxes, under sub-rule (6A) of Rule 31 of the Income-tax Rules, 1962, the Principal Director General of Income-tax (Systems) hereby specifies the procedure, formats and standards for the purposes of generation and download of certificates from "TDS Reconciliation Analysis and Correction Enabling System" or (<https://www.tdscpc.gov.in>), as below:

ISSUE OF PART B OF FORM NO. 16 FOR DEDUCTION OF TAX AT SOURCE MADE ON OR AFTER 1st day of April, 2018:

All deductors (including Government deductors who deposit TDS in the Central Government Account through book entry) shall be able to issue the TDS certificate in Part B of Form No. 16 (by generation and download through TRACES Portal) in respect of all sums deducted on or after the 1st day of April, 2018 under the provisions of section 192 of Chapter XVII-B provided that the relevant TDS statement for the fourth quarter i.e. Form 24Q is furnished along with duly filled in Annexure II of Form 24Q as substituted vide Central Board of Direct Taxes Notification No. 36/2019 dated 12.04.2019. To ensure generation of accurate TDS certificate in Part B of Form No. 16, the deductor(s) need to report correct data in Annexure II of Form 24Q. The TRACES generated Form No. 16 shall have a unique TDS certificate number.

AUTHENTICATION OF TDS CERTIFICATE IN FORM NO. 16:

The deductor, issuing the TDS certificate in Form No. 16 by downloading it from the TRACES Portal, shall, before issuing to the deductee authenticate the correctness of contents mentioned therein and

verify the same either by using manual signature or by using digital signature in accordance with sub-rule (6) of Rule 31.

Part B (Annexure)' of Form No. 16 item nos. 2(f) and 10(k)

The item nos. 2(t) and 10(k) in Part B (Annexure) of Form 16 required to be filled-in by the deductor manually shall be made available at the bottom of the TRACES generated Form 16 (Part B) and the deductor shall duly fill details, where available, in item numbers 2(t) and 10(k) before furnishing of Part B (Annexure) to the employee. The deductors who opt to authenticate Part B of Form No. 16 manually will be provided with the download of the Part B of Form No. 16 along with these item nos. 2(t) and 10(k) appearing at the bottom of the Form. The deductor shall duly fill details, where applicable, in item numbers 2(t) and 10(k) before furnishing of Part B (Annexure) to the employee. The deductors who opt to authenticate Part B of Form No. 16 using Digital Signature Certificate (DSC) will be provided with the download of Part B of Form No. 16 without item nos. 2(t) and 10(k) and therefore these details shall be required to be prepared by the employer and issued to the employee, where applicable, before furnishing of Part B to the employee.

Sub rule (3) of Rule 31 of the Income tax Rules, 1962 prescribes the time limit for issuance of Form 16 by the deductor to the employee. Currently, Form 16 should be issued by 15th June of the Financial Year immediately following the financial year in which income was paid and tax deducted.

Notification No. 39/2019/F.No.200/53/2015-ITA.I

Date - 10th May, 2019

The Central Government has specified that any income arising to the foreign company namely, M/s. Rolls Royce Defense Services, Inc., 2001 South Tibbs Avenue, Indianapolis, Indiana 46206, United State of America, by way of royalty or fees for technical services received in pursuance of the Mission Ready Management Solutions Agreement (MRMS) No. CABS/FPO/2013-0014/LGS dated the 24th February, 2014, entered into between M/s Rolls-Royce Defense Services, Inc. and Centre for Air borne Systems, Defence Research and Development Organisation, Ministry of Defence, to the extent of USD 27,36,276.11, shall not be included in computing the total income of the said foreign company.

PRESS RELEASE

INDIRECT TAX

Date – 7th May 2019

FAQs 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) 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						
	What are the rates of GST applicable on construction of residential apartments?	<p>With effect from 01-04-2019, effective rate of GST applicable on construction of residential apartments by promoters in a real estate project are as under:</p> <table border="1"> <thead> <tr> <th><i>Description</i></th> <th><i>Effective rate of GST (after deduction of value of land)</i></th> </tr> </thead> <tbody> <tr> <td>Construction of affordable residential apartments</td> <td>1% without ITC on total consideration.</td> </tr> <tr> <td>Construction of residential apartments other than affordable residential apartments</td> <td>5% without ITC on total consideration.</td> </tr> </tbody> </table> <p>The above rates are effective from 01-04-2019 and are applicable to construction of residential apartments in a project which commences on or after 01-04-2019 as well as in on-going projects. However, in case of on-going project, the promoter has an option to pay GST at the old rates, i.e. at the effective rate of 8% on affordable residential apartments and effective rate of 12% on other than affordable residential apartments and, consequently, to avail permissible credit of inputs taxes; in such cases the promoter is also expected to pass the benefit of the credit availed by him to the buyers.</p>	<i>Description</i>	<i>Effective rate of GST (after deduction of value of land)</i>	Construction of affordable residential apartments	1% without ITC on total consideration.	Construction of residential apartments other than affordable residential apartments	5% without ITC on total consideration.
<i>Description</i>	<i>Effective rate of GST (after deduction of value of land)</i>							
Construction of affordable residential apartments	1% without ITC on total consideration.							
Construction of residential apartments other than affordable residential apartments	5% without ITC on total consideration.							
	What is an affordable residential apartment?	<p>Affordable residential apartment is a residential apartment in a project which commences on or after 01-04-2019, or in an ongoing project in respect of which the promoter has opted for new rate of 1% (effective from 01-04-2019) having carpet area up to 60 square meter in metropolitan cities and 90 square meter in cities or towns other than metropolitan cities and the gross amount charged for which, by the builder is not more than forty five lakhs rupees. [Cities or towns in the notification shall include all areas other than metropolitan city as defined, such as villages.]</p> <p>In an ongoing project in respect of which the promoter has opted for new rates, the term also includes apartments being constructed under the specified housing schemes of Central or State Governments.</p> <p>[Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their geographical limits prescribed by Government.]</p>						
	What is an on-going project?	<p>A project which meets the following conditions shall be considered as an ongoing project.</p> <p>(a) Commencement certificate for the project, where required, has been issued by the competent authority on or before 31st March, 2019, and it is certified by a registered architect, chartered engineer or a licensed surveyor that construction of the project has started (i.e.</p>						

	<p>earthwork for site preparation for the project has been completed and excavation for foundation has started) on or before 31st March, 2019.</p> <p>(b) Where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is to be certified by any of the authorities specified in (a) above that construction of the project has started on or before the 31st March, 2019.</p> <p>(c) Completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019.</p> <p>(d) Apartments of the project have been, partly or wholly, booked on or before 31st March, 2019.</p>						
Does a promoter or a builder has option to pay tax at old rates of 8% & 12% with ITC?	<p>Yes, but such an option is available in the case of an ongoing project. In case of such a project, the promoter or builder has option to pay GST at old effective rate of 8% and 12% with ITC.</p> <p>To continue with the old rates, the promoter/ builder has to exercise one time option in the prescribed form and submit the same manually to the jurisdictional Commissioner by the 10th of May, 2019.</p> <p>However, in case where a promoter or builder does not exercise option in the prescribed form, it shall be deemed that he has opted for new rates in respect of ongoing projects and accordingly new rate of GST i.e. 5% / 1% shall be applicable and all the provisions of new scheme including transitional provisions shall be applied.</p> <p>There is no such option available in case of projects which commence on or after 01.04.2019. Construction of residential apartments in projects commencing on or after 01.04.2019 shall compulsorily attract new rate of GST @ 1% or 5% without ITC.</p>						
What is the rate of GST applicable on construction of commercial apartments [shops, godowns, offices etc.] in a real estate project?	<p>With effect from 01-04-2019, effective rate of GST, after deduction of value of land or undivided share of land, on construction of commercial apartments [shops, godowns, offices etc.] by promoter in real estate project are as under</p> <table border="1"> <thead> <tr> <th>Description</th> <th>Effective rate of GST (after deduction of value of land)</th> </tr> </thead> <tbody> <tr> <td>Construction of commercial apartments in a Residential Real Estate Project (RREP), as explained in question no. 6 below, which commences on or after 01-04-2019 or in an ongoing project in respect of which the promoter has opted for new rates effective from 01-04-2019</td> <td>5% without ITC on total consideration</td> </tr> <tr> <td>Construction of commercial apartments in a Real Estate Project (REP) other than Residential Real Estate Project (RREP) or in an ongoing project in respect of which the promoter has opted for old rates</td> <td>12% with ITC on total consideration.</td> </tr> </tbody> </table>	Description	Effective rate of GST (after deduction of value of land)	Construction of commercial apartments in a Residential Real Estate Project (RREP), as explained in question no. 6 below, which commences on or after 01-04-2019 or in an ongoing project in respect of which the promoter has opted for new rates effective from 01-04-2019	5% without ITC on total consideration	Construction of commercial apartments in a Real Estate Project (REP) other than Residential Real Estate Project (RREP) or in an ongoing project in respect of which the promoter has opted for old rates	12% with ITC on total consideration.
Description	Effective rate of GST (after deduction of value of land)						
Construction of commercial apartments in a Residential Real Estate Project (RREP), as explained in question no. 6 below, which commences on or after 01-04-2019 or in an ongoing project in respect of which the promoter has opted for new rates effective from 01-04-2019	5% without ITC on total consideration						
Construction of commercial apartments in a Real Estate Project (REP) other than Residential Real Estate Project (RREP) or in an ongoing project in respect of which the promoter has opted for old rates	12% with ITC on total consideration.						
What is a Residential Real Estate Project?	A "Residential Real Estate Project" means a „Real Estate Project" 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 project.						
What is the criteria to be used by an architect, a chartered engineer or a licensed surveyor for certifying that construction of the project has started by 31st March, 2019	Construction of a project shall be considered to have been started on or before 31st March, 2019, if the earthwork for site preparation for the project has been completed, and excavation for foundation has started on or before the 31st March, 2019.						
Does a promoter/ builder have to purchase all goods and services from registered suppliers only?	A promoter shall purchase at least eighty percent. of the value of input and input services, from registered suppliers. For calculating this threshold, the value of services by way of grant of development rights, long term lease of land, floor space index, or the value of						

		electricity, high speed diesel, motor spirit and natural gas used in construction of residential apartments in a project shall be excluded.
	If value of purchases as prescribed above from registered supplier is less than 80%, what would be the applicable GST rate on such purchases?	Promoter has to pay GST @ 18% on reverse charge basis on all such inward supplies (to the extent short of 80% of inward supplies from registered supplier) except cement on which tax has to be paid (by the promoter on reverse charge basis) at the applicable rate, which at present is 28% (CGST 14% + SGST 14%)
	In case of new rate of 5% / 1%, whether the conditions of payment of tax through Cash Ledger, payment of tax under RCM subject to 80% limit, non-availing of Input Tax Credit, reversal of credit, maintenance of project wise account, reporting of ITC not availed in corresponding GSTR-3B etc. are required to be complied mandatorily by the Developer ?	Yes. All the specified conditions against clause (i) to (id) of Sl. No 3 of Notification No. 11/2017- CTR are mandatory.
	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.
	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.
	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.
	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.
	At what point of time, the promoter should discharge its tax liability on supply of long term lease.	On long term lease received on or after 1.4.2019, the promoter should discharge his tax liability on long term lease as under: In case of supply of long term lease of land for construction of commercial apartments, tax shall be paid by the promoter immediately. However, for construction of residential apartment, liability to pay tax on the upfront amount payable for long term lease shall arise on the date of issuance of Completion Certificate.
	Land development corporation of	The liability to pay tax on Long term lease of land (30 years or more)

<p>Orissa has provided land on long term lease for 99 years, for construction of a real estate project. As per the lease agreement, promoter has to pay an upfront amount of Rs. 10 Crore and annual/ monthly licence fee of 5 lakhs. Does the promoter has to pay GST on these amounts?</p>	<p>received against consideration in the form of upfront amount and periodic licence fee is on the promoter. The promoter has to discharge tax liability on the same on RCM basis. However, the upfront amount payable for the long term lease (known as premium, salami, cost, price, development charges etc.) is exempt to the extent it is used for construction of residential apartments that are booked before issuance of completion certificate or first occupation. Annual/ monthly rent or licence fee payable for long term lease is taxable under GST.</p>
<p>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?</p>	<p>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</p>
<p>I am a beneficiary of PMAYCLSS and carpet area of my house being constructed in an ongoing project is 150 sqm. Am I eligible for new rate of 1% on same?</p>	<p>You are eligible for new GST rate of 1%, subject to the condition that the developer-promoter with whom you have booked the house has not exercised option to pay tax on construction of apartments at the old rate of 8%.</p>
<p>I am planning to purchase an apartment in a newly launched project. The project has been launched after 31.03.2019 by XYZ Developers at Noida. Price of the apartment having carpet area of 80 sqm is 48 lakhs. What is the rate of GST applicable on construction of this apartment?</p>	<p>The tax rate applicable on construction of the apartments in a project that commences on or after 01.04.2019 would be 5%.</p>
<p>I have already paid tax of 12% (effective) on installments paid before 01.04.2019. I wish to get the benefit of new rate of 1% or 5%. Whether it is the builder or the buyer who has the option to pay tax at the new or old rates?</p>	<p>The buyer cannot exercise option to pay tax at the new or old rates. It is the builder, who has to exercise the option to pay tax on construction of apartments at the old rate of 12% latest by 10th May, 2019. If the builder doesn't exercises his option to continue to pay tax at the old rate by the said date, then the effective GST rate applicable on all your installments payable to the builder on or after 01.04.2019 as per the contract shall be either 1% or 5%, depending on whether the apartment is an affordable or other than affordable residential apartment.</p>
<p>In respect of supply made in an ongoing Project covered by clauses (ie) 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</p>	<p>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.</p>

option exercised by the Promoter ultimately by 10th May 2019?	
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.	<p>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.</p> <p>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.</p>
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.
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 on going 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.
In respect of the construction and supply of premises under specific schemes like PMAY, Housing for All (Urban), RAY etc. as mentioned in sub items (b), (c), (d), (da), (db) of item (iv) and sub items (c), (d), (da) of item (v) of Entry 3 of Notification 11/2017 – CT (R), whether the pre-existing effective rate of 8%, with ITC benefit continues to be available in case of any New Project that has commenced under any such scheme after 1/4/2019?	No. The rate of 8% and 12% with ITC is not available for construction of apartments in a project that commences on or after 01-04-2019. It makes no difference whether or not the apartments are being constructed under PMAY or any other housing schemes of the Central or State Government.
In respect of any ongoing project undertaken under the specific schemes like PMAY, Housing for All(Urban), RAY etc. as mentioned in items(iv) and (v) of Entry 3 of Notification 11/2017- CT (R), prior to 31/3/2019, whether an option is	Yes. The promoter has the option to pay tax either at the old rate of 8% (with ITC) or at 1% (without ITC) on construction of residential apartments in ongoing projects being constructed under PMAY and other specified housing schemes of the Central or State Governments in items (iv) and (v) of Entry 3 of Notification 11/2017- Central Tax (Rate) dated 28-06-2017. The option to pay tax on construction of apartments in the ongoing projects at the old rates of 8% with ITC

available to the Promoter to pay the tax at the new rates of 1% or 5% (without ITC) or at the existing rates of 8% (with ITC)?	has to be exercised by the promoter for ongoing project.
In case where the Development rights are supplied by the Landowner to the Promoter, under an area sharing arrangement between 1st July 2017 and 31/3/19, but the allotment of constructed area in an ongoing project is made by the Promoter to the Landowner on or after 1/4/2019, whether the tax liability, if any, is required to be discharged in terms of the Notification No. 4/2018 – CT (R)?	Yes. Tax liability on service by way of transfer of development rights prior to 01-04-2019 is required to be discharged in terms of Notification No. 4/2018-CentralTax (Rate) dated 25.01.2018.
Whether the GST is leviable on the output supply of Transferrable Development rights by a developer (usually evidenced by TDR Certificate issued by the authorities). If yes, under which entry and at what rate?	Yes, GST is payable on transfer of development rights by a developer to another developer or promoter or to any other person under reverse charge mechanism @ 18% with ITC under Sl. No. 16, item (iii) of Notification No. 11/2017 - Central Tax (Rate) dated 28-06-2017 (heading 9972).
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 on going 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 on going 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.
(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.
Whether TDR purchased on or after 1.4.2019 to be consumed by a developer-promoter in an ongoing project, in respect of which the	Yes. Portion of such TDR transferred on or after 01-04-2019 which is used in an ongoing project in respect of which the promoter has opted for new rate of tax on construction of apartment @ 1% or 5% without ITC which remained un-booked on the date of issuance of

<p>promoter has opted for the new rate of tax, shall be liable to be taxed at the applicable rate, but limited to 1% or 5%, as the case may be, of the unsold area at the time of issuance of completion certificate?</p>	<p>completion certificate or first occupation of the project shall be liable to tax at the applicable rate not exceeding 1% of the value in case of affordable residential apartments and 5% of the value in case of other than affordable residential apartments.</p>
<p>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?</p>	<p>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), (va) and (vi) against sl. no. 3 of the table in Notification No. 11/2017-Cenral 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-Cenral Tax (rate) dated 28-06-2017 shall be applicable.</p>
<p>A registered project has three blocks and Completion Certificate has been received for one block prior to 1st April, 2019 and for two blocks will be received after that date. Will such a project for which multiple completion certificates are received partly before 1st April, 2019 and partly after that date, constitute an ongoing project?</p>	<p>Where more than one completion certificate is issued for one project, for the purpose of definition of ongoing project as defined in the clause (xx) in the paragraph 4 of the notification No. 11/ 2017- CTR, dated 28.06.2017, completion certificate issued for part of the project shall not be considered to have been issued for the project on or before 31-03-2019 unless completion certificate(s) have been issued for the entire project. Therefore, if completion certificate has not been issued for part of the project on or before 31- 03-2019, the project shall still be considered as ongoing project provided other conditions of the definition of „ongoing project „are met.</p>
<p>It is a prevalent practice that more than one commencement certificate is issued by competent authority for single project. For example, in case of a single tower comprising of 50 floors and registered as single project, separate commencement certificates may be issued by the competent authority for (i) basement and parking which is common to entire building (ii) first twenty floors (iii) next thirty floors. If one or two commencement certificates are received by the Developer prior to 1st April, 2019 and remaining on or after that date, will such a project be considered as an ongoing project?</p>	<p>Where commencement certificate has been issued even for part of the project on or before 31-03- 2019, it shall be treated as an ongoing project provided other requirements of the definition of ongoing project are met.</p>
<p>There are many projects of redevelopment/slum rehabilitation in pipeline as on 1st April, 2019. It is possible that in such projects the development rights have been conferred upon the developer and pursuant to which the development process has been initiated such as receipt of commencement certificate, excavation for foundation etc., but</p>	<p>In case of redevelopment or slum rehabilitation projects, the original inhabitants or the slum dwellers are not required to pay any monetary consideration to the promoter for the residential apartments allotted to them. Therefore, the residential apartments allotted to the original inhabitants in case of redevelopment project or slum dwellers in case of slum rehabilitation or redevelopment project, the requirement that at least one installment has been credited to the bank account of the promoter shall not be required to be met for such apartments to be considered as having been booked on or before 31-03-2019 provided other requirements for</p>

<p>booking against units for sale has not been received prior to 1st April, 2019. However, allotment of units to the existing dwellers (in respect of free supply units) which will yield no monetary consideration has been done. Clause (xiii) of Para 4 of Notification No 11/2017-CTR as amended by Notification No. 3/2019-CTR requires credit of at least one installment in the bank account prior to 1st April, 2019 for a project to be considered as ongoing project. It may please be clarified whether in such cases, apartments being constructed in the project shall be deemed to have been booked prior to 1st April, 2019 in case development agreement is executed prior to that date and whether accordingly such projects shall be considered as an ongoing project?</p>	<p>considering an apartment booked on or before 31.03.2019 have been met. The consideration for such apartments is receipt in the form of transfer of development rights from the original inhabitants in case of redevelopment projects or the government in case of slum rehabilitation projects. Hence, the condition relating to credit of at least one installment in the bank account of the promoter for the apartments being constructed in a slum redevelopment project to have been partly or wholly booked shall be deemed to have been satisfied in order to consider the project as an ongoing project, provided all other conditions for considering an apartment as booked are met in case of apartments allotted to slum dwellers; as there is no cash payment to be made by the slum dwellers.</p>
<p>Can a developer take deduction of actual value of Land involved in sale of unit instead of taking deduction of deemed value of Land as per Paragraph 2 to Notification No. 11/2017-CTR ?</p>	<p>No. Valuation mechanism prescribed in paragraph 2 of the notification No. 11/2017- CTR dated 28.06.2017 clearly prescribes one- third abatement towards value of land.</p>
<p>Para 3 of Annexure I and II to Notification No. 3/2019-CTR dated 29.03.2019, stipulate three different conditions. Clause (i) and (ii) of the said Para 3 are relating to percentage of invoicing. It is requested to clarify as to how and where the percentage of invoicing is to be taken into consideration while determining quantum of ITC reversal.</p>	<p>The illustrations given in the said annexure clearly explain how the provisions given in the clause (i) and (ii) of para 3 of the said annexure relating to percentage of invoicing shall operate. The same may be referred to.</p>
<p>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.</p>	<p>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.</p>
<p>Land Owner being an individual is not engaged in the business of land relating activities and thus whether the transfer of development rights by an individual to a promoter is liable for GST and whether the same will fall within the scope of „Supply“ as defined in Section 7 of CGST / SGST</p>	<p>The term business has been assigned a very wide meaning in the CGST Act and it includes any trade, commerce, manufacture, profession, vacation, adventure, or any other similar activity whether or not it is for a pecuniary benefit irrespective of the volume, frequency, continuity or regularity of such activity or transaction. Therefore, the activity of transfer of development rights by a land owner, whether an individual or not, to a promoter is a supply of service subject to GST.</p>

Act, 2017? Position of such a transaction may be clarified in light of amendments recently made.	
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.
Whether the Form as per Annexure IV of the Notification No. 3/2019-CTR is to be filed with both the jurisdictional commissioner i.e. Central Tax, State Tax. Whether modification / amendments in such Form are allowed subsequent to filing of the form, after 10th May, 2019?	No. The Form shall be filed manually with the office of the Commissioner in whose jurisdiction the registration of the promoter is assigned. No modification / amendment of the option is allowed in the Form once submitted.

DIRECT TAX

Date – 4th May 2019

Income Tax Department conducts searches on a business group dealing in lotteries

Income Tax Investigation Directorate, Chennai conducted searches on a Coimbatore based business group handling the lotteries run by certain State Governments under agreements with them to function as a Marketing Agent. The search commenced on 30.04.2019 across 70 premises located in Coimbatore, Chennai, Kolkata, Mumbai, Delhi, Hyderabad, Guwahati, Siliguri, Gangtok, Ranchi and Ludhiana. The group is particularly active in lotteries of West Bengal and North - Eastern States where it has monopoly control. The group also has dealings in Real Estate and finance business in Coimbatore in a big way.

The group has been under the Department's radar for quite some time due to the continuous and huge fall in its advance tax payments in the last two years.

During the search, the assessee admitted unaccounted income of Rs. 595 crore received from stockists towards manipulation of PWT (Prize Winning Tickets).

In respect of its real estate and finance business in Coimbatore, the assessee has also admitted to offer further unaccounted income to tax after reconciliation of the over Rs.600 crore of unaccounted receipts (including on-money received in real estate and interest received on loans given) and payments made for various investments.

During the search, Rs.8.25 crore of unaccounted cash was found, out of which Rs.5.8 crore cash was seized. The remaining cash has been kept under prohibitory orders for further verification. Prima facie, unaccounted gold and diamond jewellery of an approximate value of about Rs.24.57 crore was also found in the search which was also placed under prohibitory orders as verification is under process.

Prohibitory orders have been placed in several premises where incriminating evidence comprising a large volume of paper and electronic documents still remain to be examined.

E-filing of Income Tax Returns registers an increase of 19%

There have been some incorrect reports in media pertaining to reduction in numbers of Income Tax Returns (ITR) e-filed during Financial Year (F.Y.) 2018-19 as compared to F.Y. 2017-18. This is factually untrue, because the figures for F.Y. 2017-18 and F.Y. 2018-19 are not directly comparable.

It is stated that during F.Y. 2017-18, out of a total of 6.74 crore ITRs which were e-filed, 5.47 crore ITRs were filed for Assessment Year (A.Y.) 2017-18 (the current year). In comparison, during F.Y. 2018-19, a total of 6.68 crore ITRs were e-filed which included 6.49 crore ITRs of current A.Y. 2018-19 marking an increase of almost 19%. This would imply that substantially larger number of taxpayers filed their ITRs electronically in the F.Y. 2018-19 as compared to F.Y. 2017-18.

Furthermore, during F.Y. 2017-18, apart from the returns for the A.Y. 2017-18, nearly 1.21 crore ITRs were filed for A.Y. 2016-17. The balance number of ITRs filed for A.Y. 2015-16 and prior A.Ys is 0.06 crore. In comparison, during F.Y. 2018-19 only 0.14 crore ITRs for A.Y. 2017-18 were filed. Thus, the apparent decrease in the number of ITRs filed during F.Y. 2018-19 pertaining to earlier years was due to an amendment in Section 139(5) of the Income-tax Act, 1961 brought in vide Finance Act, 2017, w.e.f. 01.04.2018, which mandated that a revised return could be furnished only up to the end of the relevant Assessment Year. As a result, only 0.14 crore ITRs pertaining to A.Y. 2017-18 were filed during F.Y. 2018-19 as these were the revised ITRs for the relevant A.Y. which could only be filed due to change in law and no other ITR of any earlier A.Y. could be filed in view of the amended provisions of law.

These figures are also available in the Tab-> 'Filing growth (A.Y.)' on the e filing website.

It is also stated that the number of paper ITRs for A.Y. 2017-18 was only 9.2 lakh (1.5% of total ITRs filed) and the number of paper ITRs for A.Y. 2018-19 is 4.8 lakh (0.6% of total ITRs filed). As per the above details, it is evident that most of the taxpayers have steadily switched to e-filing which is clear from the dwindling numbers of paper returns filed for A.Y. 2018-19 compared to earlier years.

JUDGEMENTS

INDIRECT TAX

GST relief for Flat Buyers, AAR says 12% Tax Applicable on Preferential Location Charges

Bengal Peerless Housing Development Company Limited vs. W.B AAR

Case No. – 7 of 2019
Date – 8/02/2019

Fact of the Case

- In the present case the applicant, Bengal Peerless Housing Development Company Limited, a joint venture of the West Bengal Housing Board and Peerless General Finance and Investment Company Limited, provides services like preferential location service, which includes services of floor rise and directional advantage.
- The applicant sought for an advance ruling on whether the supply of these services constitutes a composite supply with construction service as the principal supply, and if so, whether abatement is applicable on the entire value of the composite supply.

Decision of the Case

The AAR noted the followings-

- The buyers of the service of constructing dwelling units in such upscale residential complexes like Avidipta II expect, apart from the preferential location of the dwelling unit, right to use car parking space and enjoyment of common areas and facilities like landscaped gardens, gym, conference hall, a club with swimming pool etc. They usually buy them as a bundle while booking a flat in such a complex.
- It is, therefore, reasonable to conclude that the services described in para 4.1 above are naturally bundled and offered in conjunction with one another in the ordinary course of business, and the other services of the bundle are ancillary to the supply of

the construction service, which describes the essential character of the bundle of services being supplied.

- Entire value of the composite supply is, therefore, to be treated, for the purpose of taxation.
- The Authority for Advance Rulings (AAR), West Bengal has held that the services such as preferential location and facilities like car parking in apartments should be treated as “composite construction service” and attract the same levy as construction.

Hostel Service with a Tariff of a unit of Accommodation below Rs. 1000/ day is exempt from GST: AAR

Kamal Kishor Agarwal vs. Chattisgarh AAR

Case No. – STC/AAR/11/2018
Date – 2.03.2019

Fact of the Case

- In the present case M/S Shri Kamal Kishore Agarwal for Ramnath Bhimsen Charitable Trust is the applicant here.
- The applicant, a charitable trust is running a hostel providing basic facilities which are required to stay and to study which include well-furnished residence, round the clock security, homely ambience, etc.
- It was the contention of the applicant that the service provided by them is exempt from GST since the same falls within the Entry No. 12 of Notification 12/2017 which exempts services provided by way of renting of residential dwelling for use as residence to the occupants.

Decision of the Case

The Honorable Bench explained that

- The girls residing in both the hostels are provided with various facilities like food supply from canteen, parking space, coaching, library, etc. which are all taxable supplies. Further, all the facilities are only for the occupants of

the hostels. The occupant girls are neither allowed to have food from outside nor are outsiders allowed to have food from the hostel. Signifying, accommodation facility is the only principal supply and all other facilities are inter-related as they are provided without any extra charge.

- Another Circular dated 12.02.2018 has been pointed out which signifies that the hostel facility does not fall within the ambit of 'charitable activity'. However, it has been provided by Noti. No. 12/2017 that having declared a tariff of a unit of accommodation below Rs. 1000 per day is exempt. Since the applicant is collecting hostel charges of Rs. 7000/ month per bed single room and the same being less than Rs. 1000 per day shall stand exempted.

**Refund under Gujarat Textile Policy
available to be adjusted towards Taxes:
Gujarat High Court**

Khushbu Vinyl Pvt. Ltd. v State of Gujarat

Case No. – 12175 of 2018

Fact of the Case

- The petitioners in the present case are engaged in the business of manufacture and sale of cotton fabrics.
- They have been made eligible to refund of tax paid on the purchase of raw material and intermediate products from the Industries Department of output tax paid on sales under the textile policy for which they have been granted Certificate of Entitlement under the Gujarat Value Added Tax, 2003.
- However, the petitioners have been discharging tax liability under the GVAT Act like a normal dealer by claiming the input tax credit on tax paid on purchases and adjusting the same against output tax liability.
- The act made them defaulters of tax and hence making their certificate liable to be cancelled.
- The petitioners before the present Court argued on the above lines and additionally pleaded that the provisions of the textile policy and

notifications thereunder being investment linked incentive scheme.

- Further, it has been contended that the retrospective cancellation of the certificate of entitlement is arbitrary, bad and illegal.
- On the other hand, the respondents submitted that the petitioners have not cleared their dues and could not comply with the conditions of the policy and therefore the certificate has been cancelled.

Decision of the Case

- It was held that the issue in the present matter is a result of the retrospective grant of certificate.
- The petitioners were being taxed for output tax liability and were denied the refund since they had claimed the input tax credit on output tax liability.
- The Bench constituting of Justice Harsha Devani and Justice Dr. A.P. Thaker quashed and set aside the order passed by the Deputy Commissioner of Commercial Tax, restored the Certificate of Entitlement and directed the respondents to work out the amount of refund that petitioners would be entitled to and adjust the same towards outstanding dues.

**Supply of Ice-Cream Scoop would attract
18% GST: AAR**

Arihant Enterprises vs. Maharashtra AAR

Case No. – 126

Date- 25.02.2019

Fact of the Case

- In the present case Arihant Enterprises is the applicant company.
- Under a franchisee model, it sold ice-creams in retail packs and also by way of ice cream scoops.
- The company argued that even when it served scoops of ice-cream, the only activity was transfer of goods (ice-cream) to a cone or a cup. The service element involved was minimal.
- Only some of its outlets provided a few seats, but this was to benefit senior citizens and mothers accompanied by

toddlers. Customers were free to eat the scoops outside the outlets.

Decision of the Case

- The AAR held that even serving scoops of ice-cream did not contain any service element and was a supply of goods. It would attract GST at 18% and the applicant would be able to avail input tax credit.
- The AAR observed that “the ice creams are sold in the same form as received by them and at agreed rates not exceeding the MRP and in most of the case, the said ice creams appear to be consumed outside the premises of the applicant.
- It was, therefore, held that there is a transfer of title in ice creams from the applicant to their customers and therefore as per entry no. 1(a) of the Schedule II of the CGST Act, the subject transaction is nothing but a supply of goods.

Dev Snacks liable for Profiteering and issuing Incorrect Tax Invoices: NAA directs to deposit Rs. 6, 38,153 along with interest

Kerala State Screening Committee on Anti-Profiteering v. M/s. Dev Snacks

Case No. – 25/2019

Date – 16.04.2019

Fact of the Case

- M/S Dev Snacks is the respondent and liable for Anti-profiteering and for issuing incorrect tax invoices in contravention of section 122 of GST Act.
- Kerala State Screening Committee forwarded to the standing committee against the respondent on the supply of “Snacks” for non-passing the benefit of reduction in the rate of GST from 12% to 15% after imposition of GST.
- The application was scrutinized by the Standing Committee on Anti Profiteering followed by an investigation by DGAP, who further called upon the Respondent to submit his reply on the allegation.
- It was contended by the respondent that the reduced GST @5% was

chargeable only for a duration of 35 days after the introduction of GST; That according to the new law, certain items being sold in unit containers and having a registered brand name or bearing a brand name which is an actionable claim, would attract a rate of 12% and others would be liable to a GST of 5%.

Decision of the Case

- The DGAP relying upon the invoices held that the Respondent had increased the base prices of the Snacks after the rate of tax was reduced and charged GST wrongly when the effective rate was Nil and was liable for not passing the benefit of rate reduction to his customers for the period of 35 days.
- The Respondent was held in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and is directed to deposit the profiteered amount of Rs. 6,38,153 along with interest to be calculated @18% from the date from which the above amount was collected by him.
- Additionally, he was held liable to issue incorrect tax invoices under Section 122(1)(i) compelling the buyers to pay additional GST although they were not required to pay it.
- However, the matter shall be heard separately and notice has been granted to explain reasons for the same.

DIRECT TAX

Channel Subscription Fee paid to Cable Operator under Contract not FTS, attract TDS u/s 194C: Bombay High Court

Wire & Wireless (India) Ltd. vs. Commissioner of Income Tax

Case No. – 217 of 2017

Date – 22.04.2019

Fact of the Case

- Cable Operator is the applicant in the present case.
- The Income Tax Appellate Tribunal (ITAT) held that the channel subscription fees paid to cable operators/MSO/DTH Operators. It is paid for work contract covered u/s 194C and not fees for technical services u/s 194J.
- Challenging the order of ITAT the applicant contended that the order was passed without appreciating that the services received by assessee are technical in nature.

Decision of the Case

- On appeal, the High Court noticed the fact that the assessee is a Multi System Operator. “While making payment of subscription fees paid to the channels, the assessee would deduct tax at source u/s 194C.
- The Revenue contended that such deduction should have been in terms of Section 194J.
- The Court was of the opinion that the deduction made by the payer u/s 194C was correct.
- A two-judge bench of the Bombay High Court has held that the subscription fees paid to the cable network operator /MSO /DTH Operators attracts TDS liability under Section 194C of the Income Tax Act.

TDS u/s 194I must be Deducted by Tenant before remitting Rent: Allahabad High Court

The Society of Marry Immaculate & others vs. Union of India & others

Case No. – 391 of 2019

Fact of the Case

- In the present case the assessee is a person who collects lease rent from Yamuna Express way Industrial Development Authority.
- The assessee failed to deduct on lease rent and interest paid to Yamuna Expressway Industrial Development Authority amounting to Rs.7,55,18,885/- u/s 194-I & 194-A.
- The ITAT had held that there was sufficient/reasonable cause as contemplated u/s 273-B for the assessee’s failure to deduct tax at the source without upsetting/reversing the finding recorded by AO in the penalty order passed u/s 271-C.
- The Revenue Department challenged the action of ITAT in deleting the penalty of Rs.7,55,18,885/- imposed u/s 271-C

Decision of the Case

- The two judges bench of the Allahabad High Court explained that the word “Rent” means any payment by whatever name called under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land.
- The bench came to the conclusion that lease money or annual rent is rent within the meaning of section 194-I.
- The Allahabad High Court has held that the TDS under Section 194I of the Income Tax Act, 1961 must be deducted by the tenant before remitting such rent.

80IA(4)(i) Deduction can't be denied on Ground that assessee deducted TDS under Section 194C: ITAT

Porel Dass Water & Effluent Control Pvt. Ltd. vs. Income Tax Officer

Case No. – 1354/Kol/2015

Date - 06/03/2019

Fact of the Case

- In the present case Porel Dass Water & Effluent Control Pvt. Ltd is the applicant.

- The assessee claimed deduction u/s 80IA (4)(i) of Income Tax Act.
- The Assessing Officer (AO) asked for explanation from the assessee, who had claimed deduction under S. 80IA(4)(i) of the Act.
- The AO on submission of such explanation noted that the assessee is engaged in 'works contract' since there is no element of 'operating and maintaining, or developing' infrastructure facility involved and is ineligible for the claimed deduction.
- Aggrieved by the Order of Commissioner of Income Tax (Appeals) the assessee appealed to the ITAT of Kolkata Bench.
- The assessee has submitted that the company is a "Developer" and has fulfilled all the conditions to claim deduction under Section 80IA(4) (i). The Departmental Representative hence contended the contrary.

Decision of the Case

- After perusing the contentions raised by both the parties, the Authority came to the conclusion that definition of "Work" mentioned in the Explanation to section 194C cannot be used for the assessee under consideration for the purpose of section 80IA(4)(i) of the Act.
- Moreover, just because the assessee has deducted TDS while making some payment or received amount after deducting TDS as per provisions of section 194C, does not make the assessee to be engaged in execution of 'works contract'.
- The Kolkata Bench of the Income Tax Appellate Tribunal (ITAT) in the case of Porel Dass Water and Effluent Control Pvt. Ltd, v ITO held that the assessee cannot be denied S. 80IA(4)(i) deduction on the ground that it deducted TDS as per provisions of Section 194C of the Income Tax Act.

Transfer of Residential Property need not include Transfer of Land in order to claim Capital Gain Exemption u/s 54: Bombay HC

V V Satyanarayan vs. Income Tax Officer

Case No. – 1231/Hyd/2016

Date – 17.11.2017

Fact of the Case

- The assessee, a co-owner of a flat situated at Napean Sea Road, Mumbai received the same under a Will made by his father, who was also a member of the Cooperative Housing Society. After his death, the Assessee received half share, other half going to his mother.
- These co-owners sold the flat under a registered deed for a sale consideration of Rs.23 Crores. After such sale, the assessee had invested a part of the sale consideration of Rs.2.89 Crores in purchase of a new residential unit.
- While filing his return, the assessee had shown the sale consideration of Rs.11.50 Crores by way of capital gain. He claimed the benefit of cost indexation and also claimed exemption of the sum of Rs.2.89 Crores while computing his capital gain tax liability in terms of Section 54. The AO also rejected his claim on the ground that the Assessee had not transferred the building and the land appurtenant thereto.

Decision of the Case

Considering the departmental appeal, the Bench of Bombay High Court observed the followings-

- In the present case, what is important is that there should be a transfer of capital asset being a building or land appurtenant thereto and being a residential house. The requirements of this Section would be satisfied if these conditions are met with.
- The Revenue strangely argued that the transferrer of a capital asset of a residential unit, in order to claim benefit of Section 54, must also transfer the land appurtenant thereto.
- The very concept of Co-operative Housing Society is that the society is the owner of the land and continues to be so irrespective of the incomings and outgoings of its members. In case of a constructed building of a Co-operative Housing Society, the member owns the constructed property and along with

other members enjoys the possessory rights over the land on which such building is situated. In either case, a member of the Co-operative Housing Society even when he sells his house, never transfers the title in land to the purchaser”.

- The Bombay High Court has held that in order to avail the benefit of capital gain exemption under Section 54 of the Income Tax Act transfer of land is not necessary along with the transfer of residential property.

Builder not liable to pay Deemed Rent on Unsold Flats: ITAT

M/S Bengal Tea & Fabrics Ltd. vs. DCIT

Case No. – 1667/Kol/2016

Date – 28.02.2018

Fact of the Case

- The assessee is in the business of Civil Engineers, Builders and Developers. The assessee, during the relevant year, had 32 unsold flats/shops and no rental income was derived by the assessee from such properties.
- The income tax department was of the view that since assessee was owner of two or more house properties and assessee should have offered deemed rental income from the aforesaid properties and asked the assessee to pay tax on the deemed rent.

Decision of the Case

- The Tribunal noticed the decision of the Gujarat High Court where such movable and immovable properties would be taken to be “stock-intrade” and any income derived from such stocks cannot be termed as “income from house property”.
- Relying on a catena of judicial decisions, the Tribunal concluded the matter in favour of the assessee by holding that no notional annual rental value on unsold flats held in stock-intrade can be made in assessee’s hands.
- The Income Tax Appellate Tribunal (ITAT), Pune bench has held that since

the unsold flats amount to stock-intrade in the hands of the builder, no deemed rent can be derived from the same under the head “income from house property.”

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

Date	Return Type
20-05-2019	Form GSTR-3B for the month of April 2019
20-05-2019	Form GSTR-5 - to be filed by the Non-Resident taxable person & OIDAR for the month of April 19
28-05-2019	Form GSTR - 11 - Details of inward supplies to be furnished by a person having UIN and claiming a refund to be filed for the month of April 2019

DIRECT TAX CALENDAR - MAY, 2019

07.05.2019

- Due date for deposit of Tax deducted/collected for the month of April, 2019. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

15.05.2019

- Due date for issue of TDS Certificate for tax deducted under Section 194-IA & 194-IB in the month of March, 2019
- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of April, 2019 has been paid without the production of a challan
- Quarterly statement of TCS deposited for the quarter ending March 31, 2019
- Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of April, 2019

30.05.2019

- Submission of a statement (in Form No. 49C) by non-resident having a liaison office in India for the financial year 2018-19
- Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA & 194-IB in the month of April, 2019

31.05.2019

- Quarterly statement of TDS deposited for the quarter ending March 31, 2019
- Return of tax deduction from contributions paid by the trustees of an approved superannuation fund
- Due date for furnishing of statement of financial transaction (in Form No. 61A) as required to be furnished under sub-section (1) of section 285BA of the Act respect of a financial year 2018-19.
- Due date for e-filing of annual statement of reportable accounts as required to be furnished under section 285BA (1) (k) (in Form No. 61B) for calendar year 2018 by reporting financial institutions.
- Application for allotment of PAN in case of non-individual resident person, which enters into a financial transaction of Rs. 2,50,000 or more during FY 2018-19 and hasn't been allotted any PAN.
- Application for allotment of PAN in case of person being managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in Rule 114(3)(v) or any person competent to act on behalf of the person referred to in Rule 114(3)(v) and who hasn't allotted any PAN.

DIRECT TAX CALENDAR - JUNE, 2019

07.06.2019

- Due date for deposit of Tax deducted/collected for the month of May, 2019. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

14.06.2019

- Due date for issue of TDS Certificate for tax deducted under section 194-IA & section 194-IB in the month of April, 2019

15.06.2019

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of May, 2019 has been paid without the production of a challan.
- Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March 31, 2019
- First instalment of advance tax for the assessment year 2020-21
- Certificate of tax deducted at source to employees in respect of salary paid and tax deducted during Financial Year 2018-19
- Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of May, 2019

29.06.2019

- Due date for e-filing of a statement (in Form No. 3CEK) by an eligible investment fund under section 9A in respect of its activities in financial year 2018-19.

30.06.2019

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA & section 194-IB in the month of May, 2019
- Return in respect of securities transaction tax for the financial year 2018-19
- Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending March 31, 2019
- Statement to be furnished (in Form No. 64C) by Alternative Investment Fund (AIF) to units holders in respect of income distributed during the previous year 2018-19
- Report by an approved institution/public sector company under Section 35AC(4)/(5) for the year ending March 31, 2019
- Due date for furnishing of statement of income distributed by business trust to its unit holders during the financial year 2018-19. This statement is required to be furnished to the unit holders in form No. 64B

NOTES

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TAXATION COMMITTEE - PLAN OF ACTION

Proposed Action Plan:

1. Successful conduct of Certificate Course on GST.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

Disclaimer:

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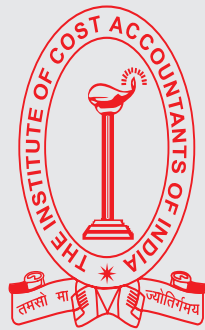
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