

## **GST COMPILATIONS FOR MARCH 2019 AND NEW PROVISIONS EFFECTIVE 01-04-2019**

### **Decisions taken in 34th GST Council Meeting held on 19 March, 2019**

#### ***Background:***

The GST Council in the 34<sup>th</sup> meeting held on 19<sup>th</sup> March, 2019 at New Delhi discussed the operational details for implementation of the recommendations made by the council in its 33<sup>rd</sup> meeting for lower effective GST rate of 1% in case of affordable houses and 5% on construction of houses other than affordable house. The council decided the modalities of the transition as follows.

#### ***Option in respect of ongoing projects:***

Promoters shall be given one -time option to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) on ongoing projects (buildings where construction and actual booking have both started before 1 April 2019) which have not been completed by 31 March, 2019. Where the option is not exercised within the prescribed time limit, new rates shall apply.

#### ***New tax rates:***

New tax rates which shall be applicable to new projects (or ongoing projects which have exercised the option to pay tax in the new regime) are as follows.

- I. New rate of 1% without input tax credit (ITC) on construction of affordable houses shall be available for,
  - a. all houses which meet the definition of affordable houses as decided by GST Council (area 60 sqm in metros / 90 sqm in non- metros and value upto Rs. 45 lakhs), and
  - b. affordable houses being constructed in ongoing projects under the existing central and state housing schemes presently eligible for concessional rate of 8% GST (after 1/3<sup>rd</sup> land abatement).
- II. New rate of 5% without ITC shall be applicable on construction of,
  - a. all houses other than affordable houses in ongoing projects whether booked prior to or after 1 April, 2019. In case of houses booked prior to said date, new rate shall be available on instalments payable on or after the said date.
  - b. all houses other than affordable houses in new projects.
  - c. commercial apartments such as shops, offices etc. in a residential real estate project (RREP) in which the carpet area of commercial apartments is not more than 15% of total carpet area of all apartments.

#### ***Conditions for the new tax rates:***

- a. ITC shall not be available,
- b. 80% of inputs and input services (other than capital goods, TDR/ JDA, FSI, long term lease (premiums)) shall be purchased from registered persons. On shortfall of purchases from 80%, tax shall be paid by the builder @ 18% on Reverse Charge Mechanism (RCM) basis. However, Tax on cement purchased from unregistered person shall be paid @ 28% under RCM, and on capital goods under RCM at applicable rates.

### ***Transition for ongoing projects opting for the new tax rate:***

- Ongoing projects (buildings where construction and booking both had started before 1 April, 2019) and have not been completed by 31 March, 2019 opting for new tax rates shall transition the ITC as per the prescribed method.
- The transition formula approved by the GST Council, for residential projects extrapolates ITC taken for percentage completion of construction as on 1 April, 2019 to arrive at ITC for the entire project. Then based on percentage booking of flats and percentage invoicing, ITC eligibility is determined. Thus, transition would thus be on pro-rata basis based on a simple formula such that credit in proportion to booking of the flat and invoicing done for the booked flat is available subject to a few safeguards.
- For a mixed project transition shall also allow ITC on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects (on which tax will be payable @ 12% with ITC even after 1 April 2019) to the total carpet area of the project.

### ***Treatment of TDR/ FSI and Long term lease for projects commencing after 1 April 2019:***

- Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer shall be exempted provided the constructed flats are sold before issuance of completion certificate and tax is paid on them.
- Exemption shall be withdrawn in case of flats sold after issue of completion certificate, however such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses. This will achieve a fair degree of taxation parity between under construction and ready to move property.
- The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under RCM. The date on which builder shall be liable to pay tax in respect of flats sold after completion certificate is being shifted to date of issue of completion certificate.
- Liability of builder to pay tax on construction of houses given to land owner in a Joint Development Agreement is also being shifted to the date of completion. The treatment mentioned above is expected to address the problem of cash flow in the sector.

### ***Amendment to ITC rules:***

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

## Clarification on doubts related to sales promotion schemes under GST

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

Sales promotion scheme	Background	Clarification issued
Free Samples and Gifts	<ul style="list-style-type: none"> <li>It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration.</li> <li>The expression 'supply' includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.</li> </ul>	<ul style="list-style-type: none"> <li>It has been clarified that samples which are supplied free of cost (i.e, without consideration) do not qualify as 'supply' under GST, except where the activity falls within the ambit of Schedule I of the CGST Act.</li> <li>ITC shall not be available to the supplier to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples is treated as 'supply' as per provisions contained in Schedule I, the supplier would be eligible to avail ITC.</li> </ul>
'Buy one, get one free' offer	<ul style="list-style-type: none"> <li>It may appear at first glance that in case of such offers, one item is being 'supplied free of cost' without any consideration.</li> <li>In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.</li> </ul>	<ul style="list-style-type: none"> <li>Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply. Rate of tax shall be determined as per section 8 of the CGST Act.</li> <li>ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.</li> </ul>

Sales promotion scheme	Background	Clarification issued
<p><b>Discounts including 'Buy more, save more' offers</b></p>	<ul style="list-style-type: none"> <li>• Sometimes, the supplier offers staggered discount to his customers, such as - Get 10 % discount for purchases above Rs. 5000/-, 20% discount for purchases above Rs. 10,000/- and 30% discount for purchases above Rs. 20,000/-. Such discounts are shown on the invoice itself.</li> <li>• Volume discounts passed on by suppliers through credit notes - Some suppliers also offer periodic / year ending discounts to their stockists, etc. For example- Get additional discount of 1% if you purchase 10000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year. Such discounts are established in terms of an agreement entered into at or before the time of supply though not shown on the invoice as the actual quantum of such discounts gets determined after the supply is effected and generally at the year end.</li> </ul>	<ul style="list-style-type: none"> <li>• Such discounts offered by the suppliers to customers shall be excluded to determine the value of supply provided they satisfy the parameters u/s 15(3) of the CGST Act, including the reversal of ITC by the recipient of supply as is attributable to the discount on the basis of document (s) issued by the supplier.</li> <li>• Supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.</li> </ul>

**Sales promotion  
scheme**

**Background**

**Clarification issued**

- These are the discounts which are not known at the time of supply or are offered after the supply is already over. For example, M/s A supplies 10000 packets of biscuits to M/s B at Rs. 10/- per packet. Afterwards M/s A re-values it at Rs. 9/- per packet. Subsequently, M/s A issues credit note to M/s B for Rs. 1/- per packet.

- Representations have been received from industry that whether credit notes(s) u/s 34(1) of the CGST Act can be issued in such cases even if the conditions laid down in section 15(3)(b) are not satisfied. It is hereby clarified that financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned in section 15(3)(b) are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.

**Secondary  
Discounts**

- Such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in section 15(3)(b) are not satisfied.
- In other words, value of supply shall not include any discount by way of issuance of credit note(s) or any other means, except in cases where the provisions contained in section 15(3)(b) are satisfied.
- There is no impact on availability or otherwise of ITC in the hands of supplier in this case.

## **Nature of Supply of Priority Sector Lending Certificates (PSLC)**

Government has issued the following clarification in relation to whether IGST or CGST/ SGST is payable for trading of PSLC by the banks on e-Kuber portal of RBI.

- Circular dated 12 September, 2018 was issued clarifying that GST on PSLCs for the period 1 July, 2017 to 27 May, 2018 will be paid by the seller bank on forward charge basis and GST rate of 12% will be applicable on the supply. Further, Notification dated 28 May, 2018 was issued levying GST on PSLC trading on RCM basis from 28 May, 2018 onwards to be paid by the buyer bank.
- It has been clarified that nature of supply of PSLC between banks may be treated as a supply of goods in the course of inter-State trade or commerce. Accordingly, IGST shall be payable on such supply for both periods i.e 1 July, 2017 to 27 May, 2018 and from 28 May, 2018 onwards. However, where the bank liable to pay GST has already paid CGST/SGST or CGST/UTGST, such banks shall not be required to pay IGST towards such supply.

## **Increase in threshold limit for exemption from GST registration**

Government has increased annual threshold limit for exemption from GST registration, from Rs.20 lakh to Rs.40 lakh except for following persons:

- Persons required to take compulsory registration u/s 24 of CGST Act
- Persons supplying following goods:

<b>Tariff item, sub-heading, heading or Chapter</b>	<b>Description</b>
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa.
2106 90 20	Pan Masala
24	All goods, i.e. Tobacco and manufactured tobacco substitutes

- Persons making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand, and
- Persons exercising option u/s 25(3), or such registered persons who intend to continue with their registration under the CGST Act.

## New scheme for supplier of services with a tax rate of 6% from 1st April, 2019

Government has notified composition scheme in case of intra-state supply of goods or services or both, at the rate mentioned below along with the corresponding conditions:

Description of supply	Rate (%)	Conditions
First supplies of goods or services or both up to an aggregate turnover of Rs. 50 lakh made on or after the 1st April in any financial year, by a registered person.	3	<ol style="list-style-type: none"><li>1. Supplies are made by a registered person, -<ol style="list-style-type: none"><li>I. whose aggregate turnover in the preceding financial year was &lt; Rs. 50 lakh;</li><li>II. who is not eligible to pay tax u/s 10(1) i.e. composition scheme;</li><li>III. who is not engaged in making any supply which is not leviable to tax;</li><li>IV. who is not engaged in making any inter- state outward supply;</li><li>V. who is neither a casual taxable person nor a non-resident taxable person;</li><li>VI. who is not engaged in making any supply through an electronic commerce operator who is required to collect TCS u/s 52; and</li><li>VII. who is not engaged in making supplies of:<ul style="list-style-type: none"><li>• Ice cream and other edible ice, whether or not containing cocoa.</li><li>• Pan masala</li><li>• Tobacco and manufactured tobacco substitutes</li></ul></li></ol></li><li>2. Where more than 1 registered persons are having same Permanent Account Number (PAN), central tax on supplies by all such registered persons is paid at the given rate.</li><li>3. The registered person shall not collect any tax from the recipient nor shall he be entitled to any credit of input tax.</li><li>4. The registered person shall issue, instead of tax invoice, a bill of supply.</li><li>5. The registered person shall mention the following words at the top of the bill of supply, namely: - 'Taxable person paying tax in terms of Notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, not eligible to collect tax on supplies'.</li><li>6. Liability to pay central tax at the rate of 3% on all outward supplies notwithstanding any other notification issued u/s 9 or u/s 11 of CGST Act.</li><li>7. Liability to pay central tax on inward supplies on reverse charge u/s 9(3) or u/s 9 (4).</li></ol>

*PS: In computing aggregate turnover to determine eligibility of a registered person to pay central tax at the rate of 3% under this notification, value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be considered.*

## **Notification of time limits for filing GST returns for the period April - June 2019**

Due dates are tabulated below:

Returns	Tax Period	Due Dates
Monthly GSTR-1  (for taxpayers having aggregate turnover > Rs.1.5 crore in preceding financial year or current financial year)	April 2019	11th May, 2019
	May 2019	11th June, 2019
	June 2019	11th July, 2019
Quarterly GSTR-1  (for taxpayers having aggregate turnover upto Rs.1.5 crore in preceding financial year or current financial year)	April 2019 - June 2019	31st July, 2019
Monthly GSTR-3B	April 2019	20th May, 2019
	May 2019	20th June, 2019
	June 2019	20th July, 2019

### **Extension of threshold for Composition Scheme**

Government has notified that a registered person may opt for Composition Scheme whose aggregate turnover in the preceding financial year is upto Rs. 1.5 crore (Rs.75 lakh in case of persons registered in Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura and Uttarakhand). The facility, however, is not available to manufacturer of following goods:

- a. Ice cream and other edible ice, whether or not containing cocoa.
- b. Pan Masala
- c. All goods, i.e. Tobacco and manufactured tobacco substitutes

### **Tax collection at source (TCS) not to be included in the value of supply under GST**

Government has clarified that TCS under the provisions of Income-tax Act, 1961 would not be includible in the

value of supply under GST, as it is not a tax on goods but an interim levy on the possible 'income' arising from the sale of goods by the buyer and to be adjusted against the final

income- tax liability of the buyer.