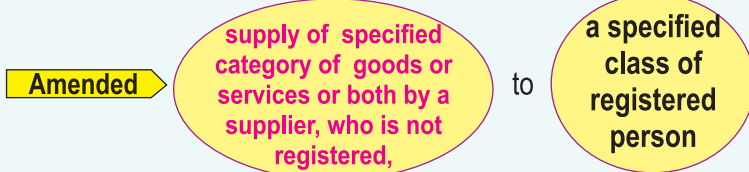


Amendments in Reverse Charge

Amendment in Reverse Charge Sec 9(4)

Sec 9(4) (CGST) Reverse Charge - when supply of goods or services by unregistered person to registered person

The central tax in respect of the



shall be paid by such person on reverse charge basis as the recipient of such supply of goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

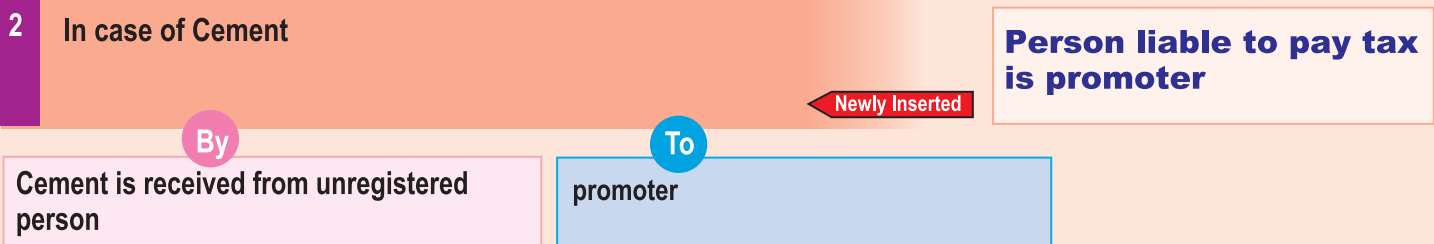
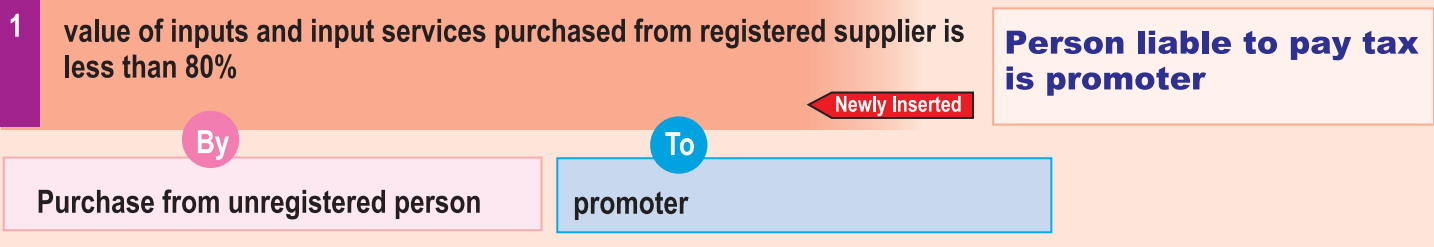
Analysis

As per the erstwhile provision, tax under reverse charge was payable by ALL registered persons on ALL intra-State supplies of goods and/or services received by such registered persons from any unregistered supplier. However, such tax liability had been deferred vide an exemption notification.

Under the amended provision, tax under reverse charge is payable by the NOTIFIED class of registered persons on NOTIFIED categories of intra-State supplies of goods and/or services received by such registered persons from any unregistered supplier.

Similar amendment has also been carried out in section 5(4) of the IGST Act by the IGST (Amendment) Act, 2018. Consequently, tax under reverse charge is payable by the NOTIFIED class of registered persons on NOTIFIED categories of inter-State supplies of goods and/or services received by such registered persons from any unregistered supplier.

Amendments in GST in Real Estate Sector



Note :

- (i) Promoter has to pay GST under section 9(4) of the CGST Act, at the rate of 18% on all such inward supplies (to the extent short of 80% of the inward supplies from registered supplier).
- (ii) Where cement is received from an unregistered person, the promoter shall pay tax on supply of such cement on, under section 9(4) of the CGST Act, at the applicable rate which is 28% (CGST 14% + SGST 14%) at present.
- (iii) Moreover, GST on capital goods shall be paid by the promoter on reverse charge basis, under section 9(4) of the CGST Act at the applicable rates.

Just for Knowledge

Earlier, the effective rate of GST on real estate sector was 8%/12% with ITC. With effect from 01.04.2019, the effective rates of GST for the new projects have been brought down to a large extent.

However, the promoters/builders have been given a one-time option to continue to pay tax at the old rates on ongoing projects (buildings where construction and actual booking both have started before 01.04.2019) which have not been completed by 31.03.2019.

New effective rates of GST for the new projects by promoters are as follows:

- (i) **New rate of 1% without ITC on construction of affordable houses (area 60 sqm in metros/ 90 sqm in non-metros and value upto ₹ 45 lakh).**
- (ii) **New rate of 5% without ITC shall be applicable on construction of:**
 - (a) **all houses other than affordable houses, and**
 - (b) **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:

Above tax rates shall be available subject to following conditions:

- (a) Input tax credit shall not be available.
- (b) 80% of inputs and input services [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI), electricity, high speed diesel, motor spirit, natural gas], used in supplying the service shall be purchased from registered persons.

Amendments in Time of Supply

Significant Notifications/ Circulars/ Orders

1. Special procedure for determining the time of supply of services in certain cases

With effect from 01.04.2019, supply of services by a landowner to a developer by way of –

- (i) transfer of transferable development rights (TDR) or floor space index (FSI);
- (ii) granting of long term lease,

for construction of residential apartments have been exempted subject to the condition that the constructed flats are sold before issuance of completion certificate or first occupation of the project, whichever is earlier, and tax is paid on them.

Such exemption for TDR, FSI, long term lease (premium) shall not be available in case of flats which remain un-booked on the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

The promoter (developer) shall be liable to pay tax at the applicable rate, on reverse charge basis, on such proportion of

- (i) value of development rights and/or FSI, or
- (ii) upfront amount paid for long term lease, as is attributable to such un-booked residential apartments.

In view of the above change, **with effect from 01.04.2019**, a special procedure for payment of tax has been laid down for following classes of registered persons, namely-

- (i) a promoter who receives development rights or FSI (including additional FSI) on or after 1st April, 2019 for construction of a project against consideration payable or paid by him, wholly or partly, in the form of construction service of commercial or residential apartments in the project or in any other form including in cash;
- (ii) a promoter, who receives long term lease of land on or after 1st April, 2019 for construction of residential apartments in a project against consideration payable or paid by him, in the form of upfront amount*,

* Such upfront amount is called as premium, salami, cost, price, development charges or by any other name.

For such persons, the liability to pay tax on, -

- (a) the consideration paid by him in the form of construction service of commercial or residential apartments in the project, for supply of development rights or FSI (including additional FSI);
 - (b) the monetary consideration paid by him, for supply of development rights or FSI (including additional FSI) relating to construction of residential apartments in project;
 - (c) the upfront amount paid by him for long term lease of land relating to construction of residential apartments in the project; and
 - (d) the supply of construction service by him against consideration in the form of development rights or FSI (including additional FSI), shall arise on the date of issuance of completion certificate or first occupation of the project, whichever is earlier.
- [Notification No. 6/2019 CT (R) dated 29.03.2019/ Notification No. 6/2019 IT ® dated 29.03.2019]

EXEMPTION

Exemption Newly Inserted

5 **Sl.No. 41A/41B**
of notification

Supply of TDR, FSI, long term lease (premium)

Newly Inserted N/N 28/2018
-CT(R) dt 31/12/2018

Supply of TDR, FSI, long term lease (premium) of land by a landowner to a developer have been exempted subject to the condition that the constructed flats are sold before issuance of completion certificate and tax is paid on them.

Exemption of TDR, FSI, long term lease (premium) shall be withdrawn in case of flats sold after issue of completion certificate, but such withdrawal shall be limited to 1% of value in case of affordable houses and 5% of value in case of other than affordable houses.

This will achieve a fair degree of taxation parity between under construction and ready to move property [Effective from 01.04.2019]

Clarification on availability of GST exemption on the upfront amount payable in installments for long term lease of plots

In respect of GST exemption granted vide Entry 4113 on the upfront amount which is determined upfront but is paid or payable in instalments for long term (30 years, or more) lease of industrial plots or plots for development of financial infrastructure, it has been clarified vide Circular No. 101/20/2019 GST dated 30.04.2019 that GST exemption on the upfront amount is admissible irrespective of whether such upfront amount is payable or paid in one or more instalments, provided the amount is determined upfront