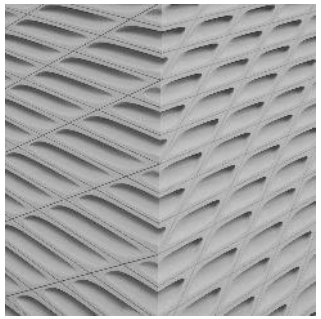
HSKA & Associates

GST Implications

Real Estate Sector

Basic Aspects



Section 9

Charging Section and Reverse Charge Mechanism

Section 11

Partial or Full Exemption from GST

Section 15(5)

Notify value notwithstanding the transaction value

Section 16(1)

Conditions and restrictions can be prescribed

Section 148

Special provisions for registration, furnishing of return, payment of taxes and administration of registered persons

Overview

Particulars	Old Scheme	New Scheme
Residential Projects		
Affordable Housing	8% with ITC	1% without ITC [Only Cash]
Other than Affordable Housing	12% with ITC	5% without ITC [Only Cash]
Commercial Projects		
REP	12% with ITC	12% with ITC
RREP	12% with ITC	5% without ITC [Only Cash]
Sub-Contractor		
Affordable Housing	18%	12%
Other than Affordable Housing	18%	18%
Joint Development Agreement		
Constructed Area transferred	Developer to pay	Developer to pay
Development Rights transferred	Land Owner to pay	Developer to pay under RCM

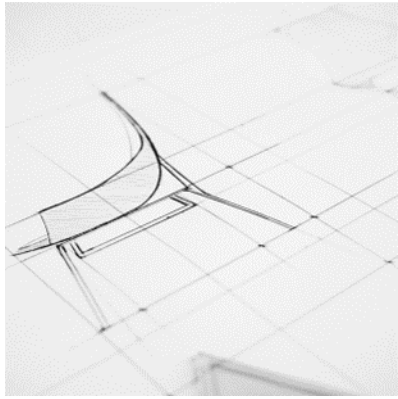
Two types of Projects

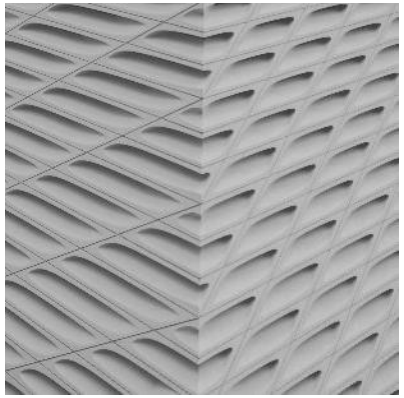
On Going Projects

- Rate of Tax – **Old Scheme or New Scheme** based on the choice of the promoter
- Commencement Certificate, if required, issued before March 31, 2019
- Certificate from Architect / Chartered Engineer / Licensed Surveyor that project has commenced
  - *Commencement – Earthwork is completed and excavation for foundation has commenced*
- Completion Certificate / First Occupation not before March 31, 2019
- Apartments are partly or wholly booked before March 31, 2019
  - *Time of Supply for part of construction*
  - *Atleast one instalment to be credited to Bank Account*
  - *Allotment Letter or Sale Agreement*

Projects commencing on or after April 1, 2019

- Rate of Tax – **Mandatory New Scheme**
- Projects other than on going project
- Conditions for New Scheme
  - Payment through cash [No Credit can be utilized]
  - Credit True Up from July 1, 2017 (including TRAN)
  - Default Scheme unless Annexure IV filed
- Minimum purchase from registered persons
  - 80% from Registered Persons (incl Composition)
  - Expenses to be excluded
  - Project Wise records to be maintained
  - Short fall to attract GST under RCM – Project Wise to be discharged by June of next year
  - Cement & Cap Goods from URD – Pay taxes under RCM on Applicable Rate on monthly basis





New Rates v Old Rates

- Notification 3/2019 is change in rate of tax
- Section 14 determines the Time of Supply in case of change in rate of taxes
- Three events to be taken into consideration
  - Due date for completion of a milestone
  - Date of receipt of money
  - Date of raising invoice
- 2 out of 3 events criteria to decide the rate of tax for such instalment

Reading the notifications

Construction Services

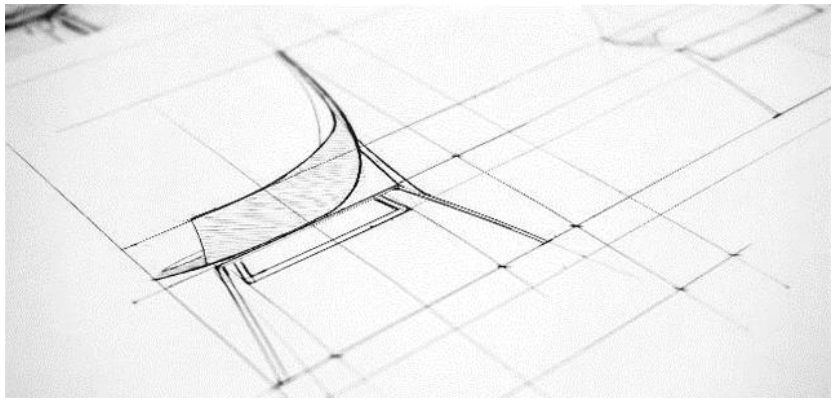
Sl	Heading	Old Entry	New Entries
3	9954 Construction Services	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.	(i) Affordable RREP
			(ia) Other than Affordable RREP
			(ib) Commercial under RREP
			(ic) Affordable REP
			(id) Other than Affordable REP
			(ie) On Going – Affordable
			(if) On Going – Others (incl Commercial under REP)
		(Provisions of paragraph 2 of this notification shall apply for valuation of this service)	
			Explanation. -For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id) and (ie) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry.

Affordable Housing

Sl	Heading	Old Entry	New Entries
3	9954 Construction Services	(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;	(iv) Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, **other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above** supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,- (b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;

Residual Entry

Sl	Heading	Old Entries	New Entries
3	9954 Construction Services	(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017	**Omitted**
		(xii) Construction services other than (i), (ii), (iii), (iv), (v), (vi), (vii), (viii),(ix), (x)and (xi) above and serial number 38 below	(xii) Construction services other than (i), **(ia), (ib), (ic), (id), (ie), (if)**, ~~**(ii),**~~ (iii), (iv), (v), **(va)**, (vi), (vii), (viii), (ix), (x) and (xi) above
			Explanation. - For the removal of doubt, it is hereby clarified that, supply by way of services specified at items (i), (ia), (ib), (ic), (id), (ie) and (if) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5) and shall not be levied at the rate as specified under this entry



Project Taxability

Affordable Housing

- What was affordable housing?
- What is affordable housing?
- What is the rate of tax for earlier affordable housing projects?
- Concessional Rate to be charged by sub-contractor
  - Atleast 50% of the houses should be under affordable housing
  - Else, Developer to pay differential tax of 6%
- Non Affordable Housing
- REP / RREP

- Gross Amount Charged
  - Consideration charged for construction
  - Amount charged for UDS in Land
  - Other amounts like preferential location charges, development charges, parking charges, common facility charges etc

- Houses construed under
- Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana
- In-situ redevelopment of existing slums
- Beneficiary led individual house construction / enhancement
- Economically Weaker Section (EWS) houses
- Houses constructed or acquired under CLSS
- Low-cost houses up to a carpet area of 60 square metres

+

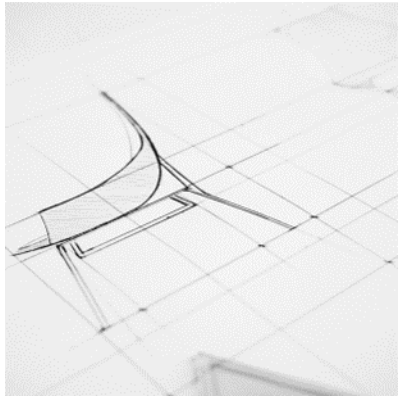
- Commences on April 1, 2019 or On Going Project
- Tax not being paid under old scheme
- Area cap – 60 sq mt in metro and 90 sq mt in other than metro
- Value cap – Gross amount charged is not more than Rs 45 Lakhs

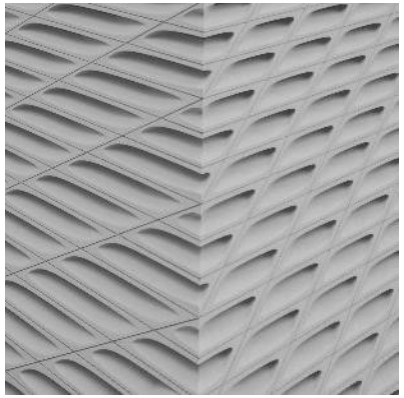
Snapshot – Rate of Taxes

New Scheme	RREP (Residential)	RREP (Commercial)	REP (Residential)	REP (Commercial)
Affordable Housing	1%	5%	1%	12%
Non Affordable Housing	5%	5%	5%	12%
Old Scheme				
Affordable Housing	8%	12%	8%	12%
Non Affordable Housing	12%	12%	12%	12%

Joint Development Agreements

- Developer provides construction services to Landowner
- Landowner provides Developmental Rights to Developer





JD Agreements

JDA Entered	Land Owner Status	Project Completed	Time of Supply	Value of Supply	GST Rate
Pre GST	Not Relevant	Any time	Project Completion	Launch Price	Service Tax
Upto 24.1.2018	Not Relevant	Any time	Date of Area Share	Cost + 10%	18%
Not covered by 4/2018	Unregistered	Any time	Date of Area Share	Cost + 10%	18%
Covered by 4/2018	Registered	Before 31.3.2019	Project Completion	Cost + 10%	18%
	Covered by 3/2019	After 31.3.2019	Project Completion	Launch Price	12% / 8%
		After 31.3.2019	Project Completion	Launch Price	5% / 1%
Covered by 6/2019	Not Relevant	Not Relevant	Project Completion	Launch Price	5% / 1%

Credits by Land Owner

Tax Rate Opted by	**Rate of Taxes**			
Developer	12%	12%	5%	5%
Land Owner	12%	5%	12%	5%
Credit Eligibility in the hands of the Land Owner for discharging taxes on apartments sold by him before OC	Yes – No restriction since higher rate being paid	No – Credit in the hands of land owner is subject to condition that Developer pays tax under regular scheme	No Land owner will opt for this mechanism since it increases the price of his apartment	Credit Available – Subject to the condition that tax payable is greater than the tax charged
Wherever credit is available, the Land Owner needs to get registered and developer should raise invoice charging GST on land owner share of apartments before Land Owner is liable to pay tax on sale of his share of apartment				

JDA Entered	Land Owner Status	Project Completed	Time of Supply	Value of Supply	GST Rate
Pre GST	Registered	Any time	No Tax		
Upto 24.1.2018	Covered by 4/2018	Any time	Date of Area Share	Cost + 10%	Credit to developer unless he opts to pay taxes under new rates
25.1.2018 to 31.3.2019	Registered	On or before 31.3.2019	Project Completion	Cost + 10%	
Not covered by 4/2019	Covered by 3 and 5/2019	After 31.3.2019	Project Completion	Cost + 10%	18% - RCM
After 31.3.2019	Not Relevant	Not Relevant	Project Completion	Value of unsold Flats	18% -RCM
Covered by 4/2019			Tax Payable on Launch Price (no land deduction) x [Unsold Area / Total Area] Restricted to 1% / 5% on value of unbooked apartments as on the date of completion		No Credit of tax paid

HSKA

Team HSKA

Thank You

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Thank You

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