



## ERGO

*Analysing developments impacting business*

### 33<sup>RD</sup> GST COUNCIL MEETING – REAL ESTATE SECTOR UPDATE

4 March 2019

In its 33rd meeting held on 24 February 2019, the GST Council has recommended reduction in GST rates for under-construction residential properties. The GST Council has proposed a slab rate of 1% for the affordable housing segment and a slab rate of 5% in all other housing segments without benefit of the input tax credit (ITC) of GST paid on the inward supplies of goods and services. The change in rate is proposed to be made effective from 1 April 2019.

The GST Council also recommended exemption on intermediate tax on transferable development rights (TDR), joint development agreements (JDA), floor-space index premium, etc., in case of residential properties on which GST is payable. The exact modalities of such exemption will be recommended in a subsequent meeting of the GST Council.

Notifications operationalizing the above changes are awaited.

#### **Comments**

It is not clear whether the reduced GST rate is optional, subject to foregoing of ITC, or mandatory for all. Denial of ITC would lead to increase in the cost necessitating price revision by the builders/developers. Price revision may lead to complaints of profiteering by the home buyers on account of not passing the commensurate benefit of reduction in rate of tax. Builders/developers would be required to carry out detailed impact analysis of loss of ITC and commensurate increase in the price to avoid anti-profiteering allegations. It also needs to be seen whether price charged for preferential allotment would be eligible to reduced rate.

In case of JDAs, there has been ongoing controversy as to whether such arrangements are exigible to GST. Industry is of the view that JDA involves nothing but transfer of land and, hence, outside the ambit of GST levy. However, the Government of India had earlier specified the time of supply in case of JDA transactions. This notification implicitly has confirmed that JDA is exigible to GST. Now, the proposed exemption will reinforce that JDA are indeed taxable supply.

It is pertinent to note that interim tax on JDA is proposed to be exempt if GST is payable on the residential properties. GST is payable on supply of residential property only if the consideration is received before completion of the project. No GST is payable on supply of residential properties which are sold after issuance of completion certificate. There is no clarity as to whether GST would be payable on JDA if a part of the project

is sold after issuance of completion certificate. If yes, the question remains as to who would be liable to pay such GST, and what would be the time of supply.

It is expected that notification implementing the recommendation will clarify all these aspects.

- *Dinesh Agrawal (Executive Director) and Abhishek Deodhar (Associate)*

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)

*We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).*

**For private circulation only**

The contents of this email are for informational purposes only and for the reader's personal non-commercial use. The views expressed are not the professional views of Khaitan & Co and do not constitute legal advice. The contents are intended, but not guaranteed, to be correct, complete, or up to date. Khaitan & Co disclaims all liability to any person for any loss or damage caused by errors or omissions, whether arising from negligence, accident or any other cause.

© 2019 Khaitan & Co. All rights reserved.

**Mumbai**

One Indiabulls Centre, 13<sup>th</sup> Floor  
Tower 1 841, Senapati Bapat Marg  
Mumbai 400 013, India

T: +91 22 6636 5000  
E: [mumbai@khaitanco.com](mailto:mumbai@khaitanco.com)

**New Delhi**

Ashoka Estate, 12th Floor  
24 Barakhamba Road  
New Delhi 110 001, India

T: +91 11 4151 5454  
E: [delhi@khaitanco.com](mailto:delhi@khaitanco.com)

**Bengaluru**

Simal, 2nd Floor  
7/1, Ulsoor Road  
Bengaluru 560 042, India

T: +91 80 4339 7000  
E: [bengaluru@khaitanco.com](mailto:bengaluru@khaitanco.com)

**Kolkata**

Emerald House  
1 B Old Post Office Street  
Kolkata 700 001, India

T: +91 33 2248 7000  
E: [kolkata@khaitanco.com](mailto:kolkata@khaitanco.com)