



Reverse Charge under GST in Real Estate for Purchase of goods and services from Unregistered Vendors`

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The Real Estate sector has witnessed litigation galore even after the advent of the Goods & Services Tax. Since inception of GST we have seen a barrage of notifications and circulars being issued. On 29th March, 2019, six notifications were issued each under Central Tax (Rate), Integrated Tax (Rate) and UT Tax (Rate) in respect of Real Estate Sector. Further one more notification was issued under Central Tax amending the CGST Rules, 2017.

GST Rates for Real Estate Sector effective from 1 st April, 2019

Affordable housing properties: Effective GST rate of 1% without ITC

Residential properties outside affordable segment: Effective GST rate of 5% without ITC

A one time option was also provided for ongoing projects.

Hence, with effect from, Supply of Construction of residential apartments other than for which entire consideration was received after the completion certificate was taxable as per following:

Affordable Housing	Other than Affordable Housing	Ongoing Projects
Actual Rate GST – 1.5%	Actual Rate GST – 7.5%	Actual Rate GST – 18%
Effective Rate GST – 1%	Effective Rate GST – 5%	Effective Rate GST – 12%
ITC – Cannot be availed	ITC – Cannot be availed	ITC – Can be availed

Certain conditions were imposed for the new rates as stated above, viz.:

- Input tax credit shall not be available,
- 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 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.

Refer notification 3/2019-CT(R) and 7/2019-CT(R) and annexure III of 3/2019

Mandatory Conditions

- At least 80% of the total purchases (excluding capital goods, TDR, FSI, high speed diesel, electricity, motor spirit, etc) should be procured from registered dealers. The criteria of 80% should be applied to each project on a financial year basis.
- In case of shortfall, tax would have to be paid on reverse charge only to the extent of shortfall. The rate of tax applicable for shortfall would be 18% in case of goods and services other than cement. In case of cement the rate of tax would be 28%.
- In case of capital goods although the criteria of 80% does not apply, each and every purchase of capital good should be procured from registered dealers only.
- In case of purchase of capital goods from unregistered dealer, the entire liability to pay tax would be on the promoter under reverse charge mechanism.

Certain pertinent questions that arise on the above issue of RCM may be summarized as under:

What if purchases from registered suppliers is more than 80% of purchases?

Where the promoter has procured more than 80% of the goods and/or services [other than services by way of grant





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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], from a Registered Person, he will have not have to pay GST under RCM. Hence under any given case, he has purchase goods other than Cement from unregistered person upto a limit of 20% to avoid the RCM applicability.

In other words where the promoter has purchased goods from registered suppliers to the tune of say 85% but has purchased cement from unregistered supplier, mandatory RCM will apply on the portion of purchase of cement.

What is the rate applicable for payment under RCM?

Where cement is purchased from Unregistered person, rate of cement will be applicable and on the balance shortfall tax rate of 18% will be applicable.

How will the payment be made?

It may be noted that Instruction No. 3/2/2020- GST dated 24th June 2020 issued by TRU in para 4 specifies as under:

“It has been decided that FORM GST DRC-03, as already prescribed, shall be used for making the payment of such tax by promoter/developer. Accordingly, person required to pay tax in accordance with the said notification on the shortfall from threshold requirement of procuring input and input services (below 80%) from registered person shall use the form DRC-03 to pay the tax electronically on the common portal within the prescribed period.”

Based on the above instructions the payment has to be made through DRC 03 for the shortfall. It may have happened that the said payment has been discharged through GSTR 3B. In this case it would be advisable to intimate the Proper officer about the payments already made towards this liability through your returns along with the calculation for the shortfall.

What is the section that has to be mentioned in DRC 03 for payment of the tax under RCM?

Reference notification 7/2019(*supra*), the promoter shall pay tax on the supplies received from an unregistered supplier on reverse charge basis as recipient of such goods

or services or both and payments for the shortfall will have to be made under section 9(4) of CGST Act, 2017. Hence it is advisable that the same has to be chosen as section while filing the DRC 03 and the reason would be shortfall in procurement from registered suppliers.

One needs to calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year. Which is the form prescribed for the same.

Reference the instruction dated 24th June 2020 the assessee needs to make the payment of taxes vide DRC 03. Since no separate form has been provided for intimation of the calculations for short payments, the same form **DRC 03** has to be used to submit the relevant information.

We calculated the procurements made from registered and unregistered persons project wise and we have not purchased cement from unregistered person and we also don't have any shortfall in procurement from registered persons. Do we still need to file any form?

The promoter shall maintain project wise account of inward supplies from registered and unregistered supplier and **calculate tax payments on the shortfall at the end of the financial year and shall submit the same in the prescribed form electronically on the common portal by end of the quarter following the financial year.**

From the above explanation it can derived that the statement has to be furnished only if there is a shortfall at the end of the financial year. Hence if there is no shortfall the requirement to furnish any statement will not arise. Moreover since the information has to be given along with the DRC 03 payments, if one does not have any liability, it cannot file the DRC 03.

Before concluding, it would not be over emphasizing to add that the term '80% of value of input and input services' as used in notification 3/2019 (*supra*) is not free from litigation. One can keep thinking what would constitute input and input service here... some food for thought!

(views expressed in the article are personal)

