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Ref. No. MCHI/PRES/18-19/184

March 5, 2019

To,
Hon'ble Shri Narendra Modi
Prime Minister
Government of India
152, South Block,
Raisina Hill,
New Delhi-110011

Sub: CREDAI-MCHI submission to the GST Council questionnaire.

Respected Sir,

At the outset, the Sector hails the Council's decision to significantly bring down the rates of GST applicable in case of both, affordable and non-affordable housing. The decision is quite bold and laudable and shall certainly provide a fillip to the demand in the Sector which is, at present, facing some challenges.


However, it is apprehended that the non-grant of ITC shall result into the disruption of the ITC chain with cascading effect of tax creeping in the valuation of the housing units under both the categories. The Sector is, therefore, of the humble view that while the tax burden on the housing sector shall be as reasonable as possible, the ITC chain shall be allowed to remain intact. The effective rates of GST for both the general and affordable segments the categories can be worked out keeping this aspect in mind.

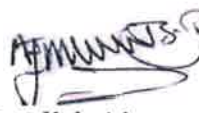
In order to bring parity to some of the above mentioned underlying issues, the GST Council had issued a questionnaire seeking the industries reply. Please find attached herewith, CREDAI-MCHI's detailed response for your kind perusal and consideration.


We look forward to your kind acceptance of our submissions which is likely to ease lot of the transient issues and bring much awaited relief to the industry.

Thanking you,

Your sincerely,
For CREDAI-MCHI


Nayan A. Shah
President


Bandish Ajmera
Hon. Secretary


Sanjiv S. Chaudhary MRICS
Chief Operating Officer

REAL ESTATE SECTOR

The proposed Answers to Questions raised by officials of Finance Ministry.

1. In the industry what is the weighted average tax rate of input goods & services (excluding capital goods)?
 - **The average GST incidence on Input goods & services (excluding capital goods) is in the range of 19 %. The ratio of average input tax as percentage of Sales will vary from 4 % to 7 %.**

2. Out of the total ITC eligible in typical residential project, what is the percentage of ITC utilized for payment of tax liability on construction services?
 - **There is no standard percentage of utilization of ITC for discharging Tax liability.**

Typically, in Construction industry, bookings and sales realizations should start at the inception of the project. This phenomenon of buying the flat under construction is on great decline, and there is emerging trend of buying completed flat (Post OC/CC). In view of this, ITC gets accumulated and then at a later date is utilized for payment of GST on flat booked before completion. Hence, initially there will be substantial discharge of tax liability from ITC and at later stage of project, there would be discharge in cash.

In any case, the government has already realized GST from the vendors supplying inputs, capital goods and input services to the builder. The Government is not affected adversely in respect of tax collections.

3. Data on procurement of input goods, services and capital goods may be provided as per the table below:

S. No.	Nature of input	Value of input procured from registered person	Input tax credit availed on such procurement	Value of input procured from unregistered person
1	Capital goods			
2	Inputs other than capital goods			
3	Input services			
4	Total			

- **Such data is not available due to typical nature of the sector. Construction industry, being labour intensive, there are hardly any Capital Goods purchase for projects.**
4. Whether mandatory sourcing from registered person should be computed project wise or registered entity wise?

- It is administratively convenient to take this entity wise on annualized basis.
- 5. In case project wise what should be the definition of “project” as it has varied meaning across industry?
 - In view of our answer to Question 4 above, project definition may not be relevant.
- 6. Whether the capital goods should be used in computing the mandatory sourcing?
 - Yes
- 7. In case of shortfall in mandatory purchase, what should be the frequency of self-assessment of such shortfall and the liability to discharge the same if liability is placed under RCM?
 - We believe that government intends to tax developers on shortfall of procurement from registered vendors. In non-metropolitan cities, the real estate sector depends on small suppliers and contractors who may not be having turnover exceeding the threshold limit. It is therefore advisable to have limit of procurement from unregistered suppliers to the extent of 40 % of total supplies for the year. Such limit for the metropolitan city should be kept at 30%.

The Government should specify standard rate of not more than 5% on shortfall of the purchases from registered person as output tax for Real Estate sector is proposed at 5%

For calculating the limits of sourcing from unregistered person should be calculated with reference to the construction cost i.e inputs goods, capital goods, labour, manpower supply, security services and works contractor charges etc.

It is the experience of the sector that initially the supply such as sand, khadi, excavation services, site formation services, demolition services etc. will be from unregistered persons. These expenses pertain to entire project life which may run into 3 – 4 years. It is therefore unfair to charge GST on shortfall on month to month basis.

The tax liability, if any arising, on account of this should be due for payment within 6 months from the year end. This is in line with ITC credit reversal.

Further the developer should at the time of completion of the project, be asked to work out the same for the entire project duration and shortfall/excess should be worked out and tax collected/refunded accordingly.

8. How should the apportionment of ITC be done between commercial property and residential property, whether project wise or entity wise?
 - Should be done entity wise as there may be substantial overhead which are subject to GST. What we mean entity wise is according to each GSTIN.

9. Whether apportionment should be done on the basis of ratio of residential and commercial properties area or on the basis of ratio of value?
- **The apportionment should be done on the basis of ratio of value as it is being done in case of services like restaurants, GTA etc.**
10. If the apportionment is done on the basis of value, how should the value be arrived at where the properties is yet to be sold / booked?
- **It should be done as per the formula prescribed U/r 42 of CGST Act. The sale of residential flats (taxable at 1% or 5%) be treated as exempt supply and other sales be treated as taxable supply for the purpose of apportionment.**
11. If apportionment is done on the basis of area, what area (carpet, built up or super built up) should be considered?
- **Not applicable. However, if area is selected, the same shall be on the basis of Carpet Area under RERA.**
12. In a residential project, if the value of TDR is required to be apportioned between properties sold prior to issuance of completion certificate(CC) and after issuance of CC, what should be method adopted?
- **It is strongly suggested that this rights are akin to land and land is finally conveyed to the ultimate buyers, and hence should not be taxed at later date also.**

If there is an attempt to tax such rights (pertaining to completed flats), the price of completed flats will shoot up. It is therefore strongly suggested that such move should be dropped.

We presume that the TDR will be exempt in the hands of the Output Supplier. What is proposed is that the TDR will be taxed in the hands of the developer (on RCM basis) if the same is used in the Construction of the exempt goods i.e. houses after completion. Neither the supplier of such rights nor the builder have any idea as to the area which will be sold post OC/CC. Supplier will have to treat this supply as exempt on the date of transaction, if it is for residential complex. The position will be clear only on completion of the project.

In our opinion, this should be taken into account only at the time of completion of the project. At that time the unsold portion which will not attract the GST any more will be worked out and taxed.

Formula: total unsold area (Carpet RERA) divided by total sale area (Carpet RERA) Multiplied by TDR Cost = Cost of TDR apportioned to unsold area.

Thereafter this cost may be subjected to Tax at appropriate rate.

13. In a mixed project if the value of TDR is required to be apportioned between commercial properties and residential properties, what should be method adopted?

- **On the same basis as above. However, in case of the Commercial properties, it is tax neutral situation as input tax is allowable as ITC. Therefore, no Tax on TDR/Development Right/FSI/ Lease Premium etc. bought for mixed project.**
14. What is the average percentage of ITC utilized prior to the day of transition to new scheme?
- **See reply of Q.no.2**
15. What is the best method to determine whether on the date of transition(DoT) the ITC utilized prior to DoT is more than the ITC eligible for output construction services calculated on pro-rata basis.
- **ITC balance is accumulated on account of Input Tax paid to the vendors. The government has already received the revenue in respect of such accumulated ITC balance. If this balance is lapsed it is a double taxation and it will amount to frittering of vested legal right of the developer.**
16. Whether the above calculation should be done entity wise or project wise?
- **Entity wise**
17. How should the recovery be made for those having utilized ITC in excess of eligible credit?
- **Installments be granted of about 18 months**
18. What facility for payment of tax should be made to the person having utilized ITC in excess?
- **Installments be granted**
19. What treatment of ITC should be made for work in progress & inputs lying in stock on the DoT?
- **Same as above**
20. What should be the treatment of ITC balance lying in the ledger on the DoT, after paying the liability relating to supplies made prior to the DoT?
- **Same should be allowed to discharge GST liability on all supplies (1%, 5%, 8%, 12%) made on or after 0104.2019.**
21. What treatment of ITC should be made pertaining to capital goods on the DoT?
- **Same as point 20.**

Note:

1. We have also forwarded a letter on the subject of revised definition of “affordable housing” (As part of the letter with subject line: Representation on proposed GST amendments for Real Estate Sector), taxability of JDA/JV/TDR/Slum etc. we request that the said note be considered first before considering the answers as above.

The definition is reproduced below for your ready reference.

- Limit of Rs. 45 lakhs to qualify for affordable house should be raised to:
 - Rs. 1.5 crores for Mumbai (MCGM limits) and Thane;
 - Rs. 1 crore for rest of MMR
2. Reg reversal of ITC etc, existing Rule 42 shall be continued to avoid any contradicting legal provision.