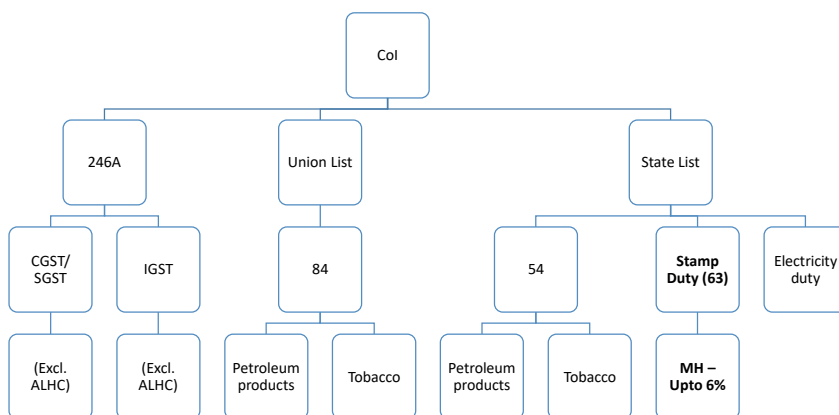


GST

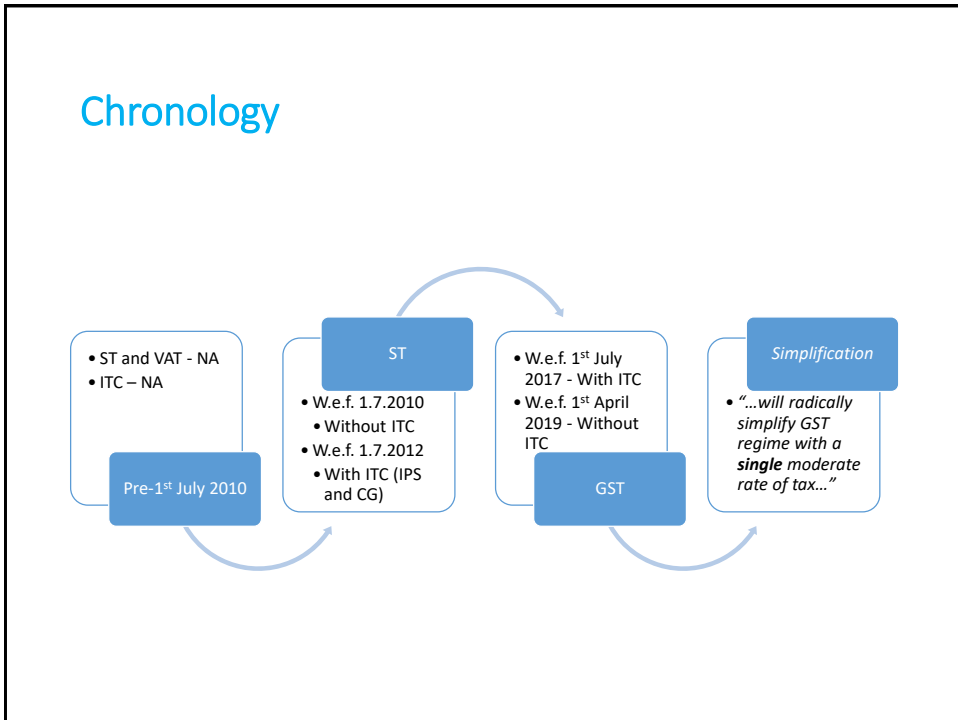
Real Estate – Real Changes

CA Pritam Mahure and Associates

RE – Unique sector – Why?



Chronology



7. Scope of supply

(1) Supply includes—

- (a) all forms of supply of **goods or services or both** such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business,
- (b) Import of services, for a consideration whether or not in the course or furtherance of business, and
- (c) The activities specified in Schedule I, made or agreed to be made without a consideration ~~and~~
- (d) ~~the activities to be treated as supply of goods or supply of services as referred to in Schedule II.~~

(1A) Where certain activities or transactions, constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

Ellis Bridge Gymkhana 1997 (9) SC 24

The rule of construction of a charging section is that before taxing any person, it must be shown that **he falls within the ambit** of the charging section **by clear words** used in the section.

No one can be taxed by implication. A charging section has to be construed **strictly**. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.

Rational (refer Draft Proposal)

***Classification** of certain specified activities or transactions (which qualify as a supply under the CGST Act) either as supply of goods or supply of services is supposed to be done in Schedule II. However, it is observed that clause (d) being part of the subsection defining the term 'supply' leads to a situation where an activity listed in Schedule II would be **deemed to be a supply even if it does not constitute a supply** as per clauses (a), (b) and (c) of sub-section (1).*

*Hence, it is proposed to insert a new sub-section (1A) in section 7 and **omit** clause (d) of sub-section (1).*

Land Value - Deemed Deduction

Schedule III - ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

...

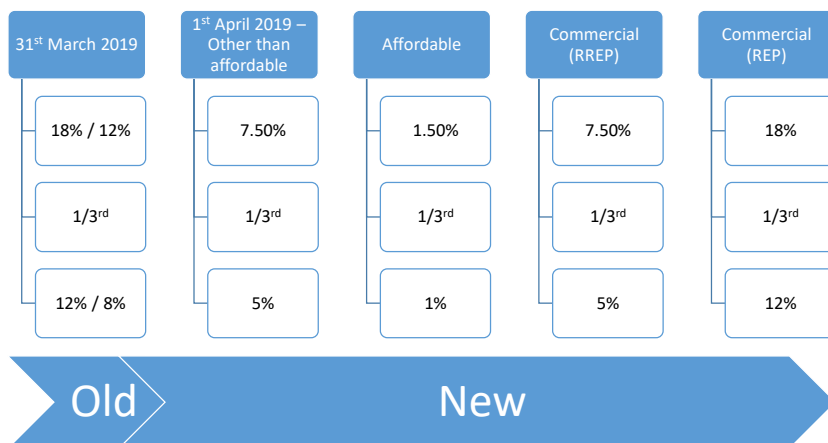
5. Sale of **land** and, subject to clause (b) of paragraph 5 of Schedule II, sale of **building**.

6. **Actionable claims**, other than lottery, betting and gambling.

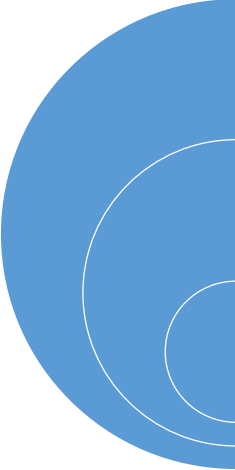
Land Value - Deemed Deduction

*‘...the value of such transfer of land or undivided share of land, as the case may be, in such supply shall be **deemed to be one third** of the total amount charged for such supply’*

GST Rates



Suresh Kumar Bansal [2016-TIOL-1077-HC-DEL-ST]



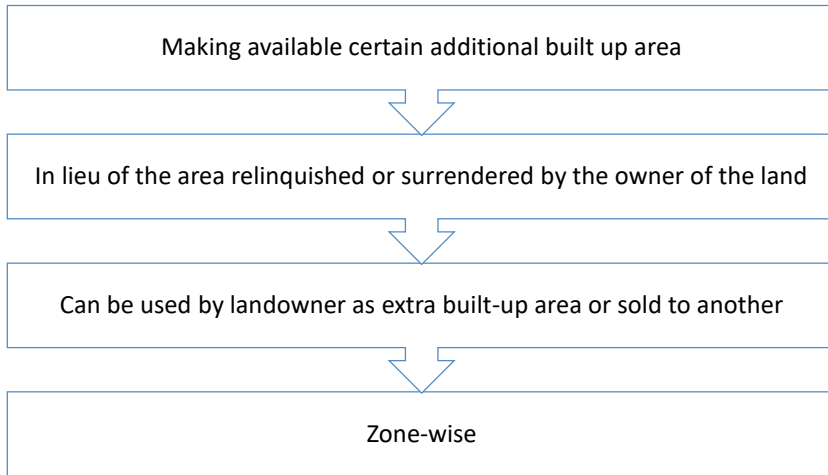
In order to sustain the levy of service tax on services, it is essential that the **machinery provisions provide for** a mechanism for **ascertaining the measure of tax**, that is, the value of services which are charged to service tax

Levying a tax on ... land would **clearly intrude into the legislative field reserved for the States** under List II of the Seventh Schedule of the Constitution of India.

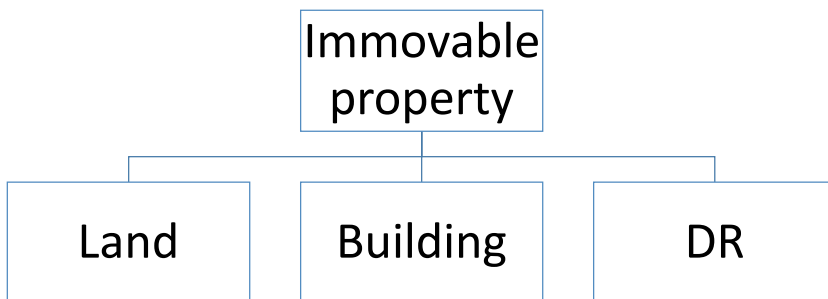
*"The **abatement** to the extent of 75% **by a notification or a circular cannot substitute** the lack of statutory machinery provisions to ascertain the value of services involved in a composite contract."*

DR

Meaning



Transactions



Schedule III - ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

...

5. Sale of **land** and, subject to clause (b) of paragraph 5 of Schedule II, sale of **building**.

6. **Actionable claims**, other than lottery, betting and gambling.

Goods and services

2 (52) “goods” means every kind of **movable property** other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply

2 (102) “services” means **anything other than goods**, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged

Land

Col	Section 3(a) of Land Acquisition Act, 1894,	Sec.3(4) of Bombay Land Revenue Code, 1879	Safiya Bee (2011) 2 SCC 94
<ul style="list-style-type: none"> • 49. Taxes on lands and buildings 	<ul style="list-style-type: none"> • 'Land' includes benefits that arise out of land and things attached to earth or permanently fastened to anything attached to the earth. 	<ul style="list-style-type: none"> • 'Land' includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth and also shares in or charges on the revenue or rent of village or other defined portions of territory. 	<ul style="list-style-type: none"> • 'Land' includes rights in or over land, benefits to arise out of land. The Apex court in the case of Pradeep Oil Corporation vs Municipal Corporation of Delhi – (2011) 5 SCC 270 observed that land includes benefits to arise out of land.

DR

G.S.R.....(E).- In exercise of the powers conferred by **section 148** of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby **notifies** the following classes of registered persons, namely :-

- (a) **registered persons** who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and
- (b) **registered persons** who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights, as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service referred to in clause (a) above and in the form of development rights referred to in clause (b) above, **shall arise at the time when** the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a **conveyance deed** or similar instrument (for example **allotment letter**).

148. Special procedure for certain processes

The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain **classes of registered persons**, and the **special procedures** to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.

Real Estate

Issues from
1st April 2019

Notifications

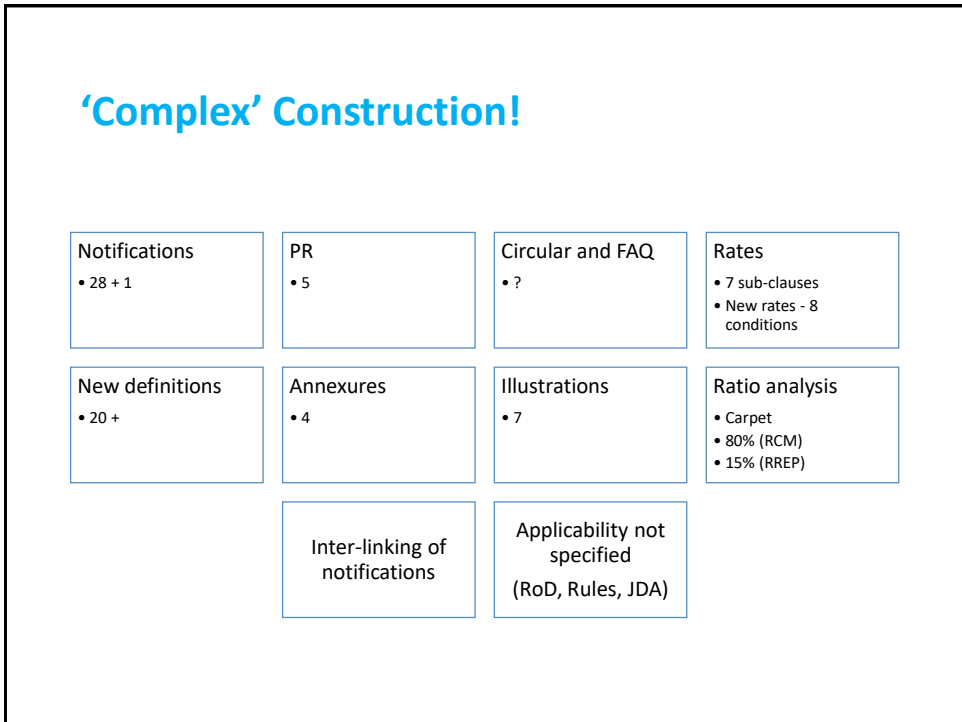
3/2019	• Changes in rates
4/2019	• Exemption to DR, FSI, premium
5/2019	• RCM for DR, FSI, premium
6/2019	• Time of Supply for JDA
7/2019	• RCM (shortfall)
8/2019	• Rate for RCM
16/2019	• Changes in GST Rules
4/2019	• Credit on carpet (RoD)

Notifications and ROD

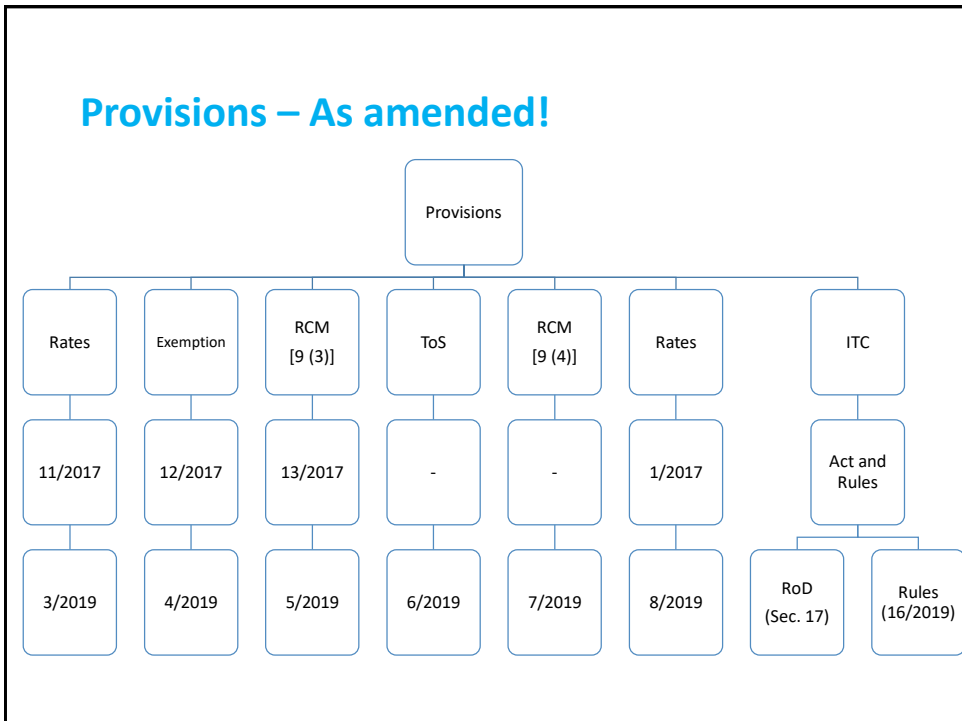
CG Not.	Particulars	W.e.f.	CGST	SGST	IGST	UTGST	Pages
3/2019	Changes in rates	1.4.19	Y	?	Y	Y	27
4/2019	Exemption to DR, FSI, premium	1.4.19	Y	?	Y	Y	4
5/2019	RCM for DR, FSI, premium	1.4.19	Y	?	Y	Y	2
6/2019	Time of Supply for JDA	1.4.19	Y	?	Y	Y	2
7/2019	RCM (shortfall)	1.4.19	Y	?	Y	Y	2
8/2019	Rate for RCM	1.4.19	Y	?	Y	Y	2
16/2019	Changes in GST Rules	1.4.19	Y	?	AA	AA	26
4/2019	Credit on carpet (RoD)	1.4.19	Y	?	AA	AA	1

(?)

'Complex' Construction!



Provisions – As amended!



'Complex' Construction!

Charge	RCM	Rates	Exemption
Value	ToS	ITC	Invoicing
Returns	Anti-profiteering	Special provisions	Rules
	Annual Return	GST Audit	

Take Away!

New project

- Can any credit be claimed?
- What are the conditions to be complied with?

Ongoing project

- What is ongoing?
- What to choose?

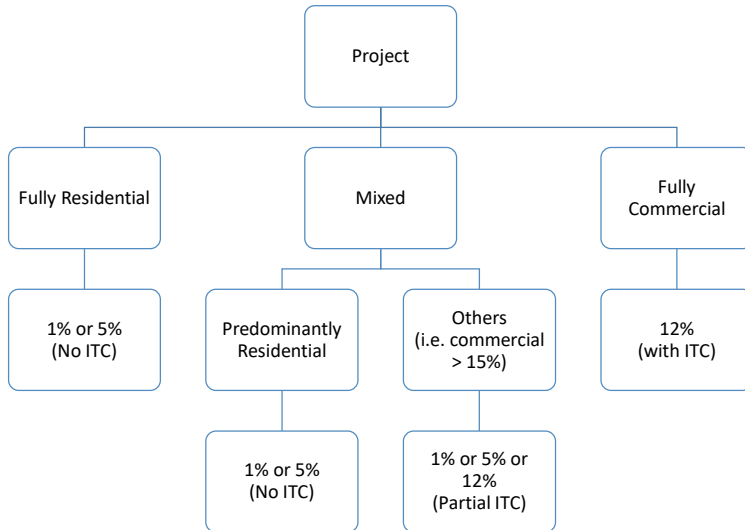
JDA

- New implications

ITC

- What to do with TRAN-1 credit and availed from 1st July 2017 to 31st March 2019?

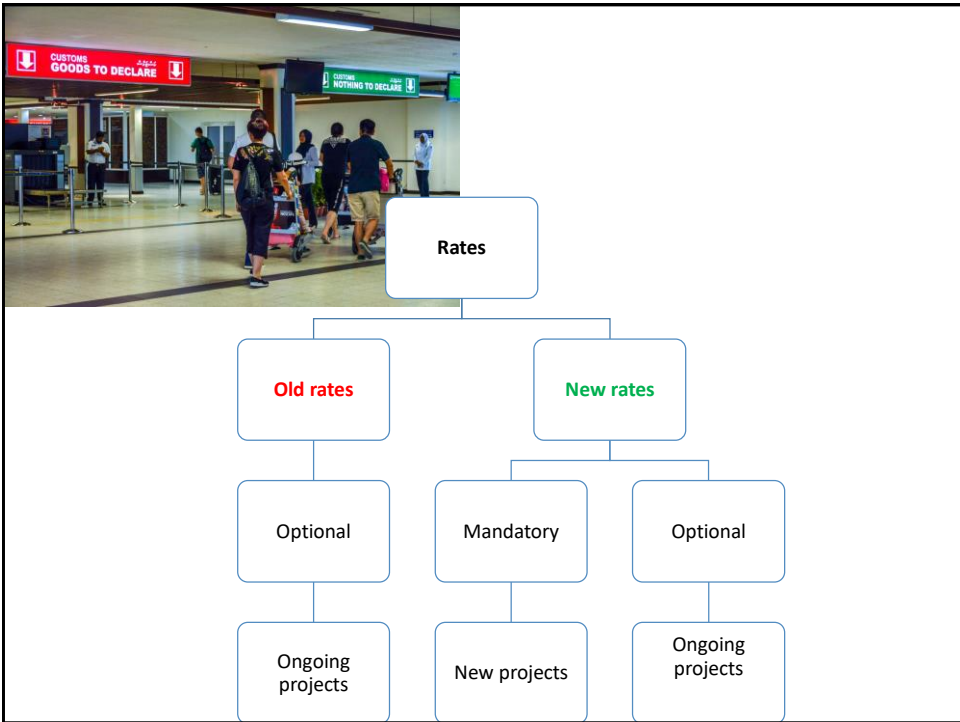
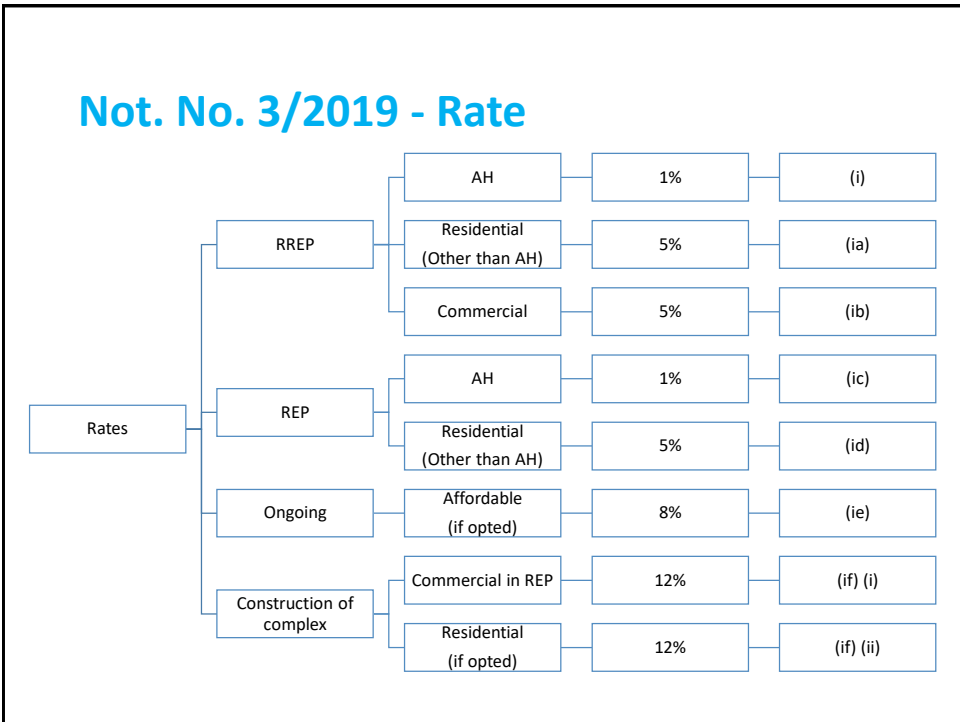
Projects



Brief

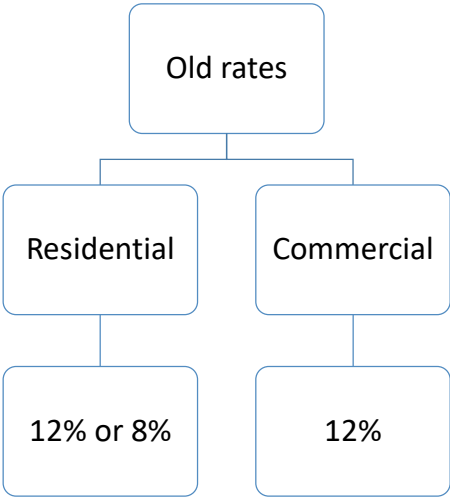
Rate	<ul style="list-style-type: none"> • New projects <ul style="list-style-type: none"> • New rates <ul style="list-style-type: none"> • Residential – 1% or 5% • Commercial - 5% or 12% • Ongoing projects <ul style="list-style-type: none"> • Option to continue old rates (8% and 12%)
ITC	<ul style="list-style-type: none"> • New rates <ul style="list-style-type: none"> • 1 and 5% - ITC not available • 12% - ITC Available • Old rates – ITC available • Completion – Reversal on carpet area
DR/FSI / Upfront premiums	<ul style="list-style-type: none"> • Residential – Applicable subject to conditional exemption (payable on carpet area sold after CC) and under RCM • Commercial – Applicable and under RCM
JDA	<ul style="list-style-type: none"> • Time of Supply shifted • Value specified

Not. No. 3/2019 - Rate

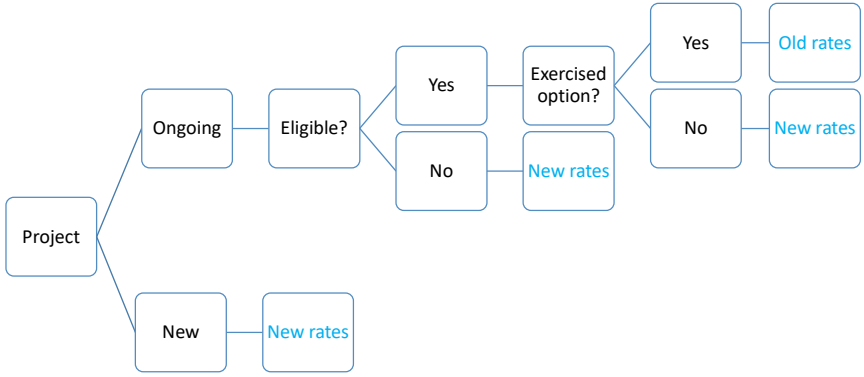


Ongoing Projects

Ongoing project

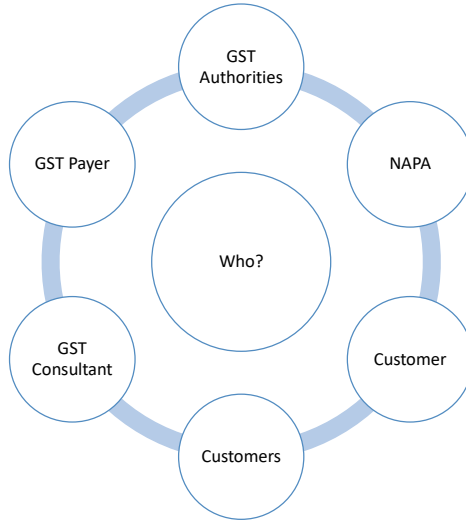


Rates applicability



Option

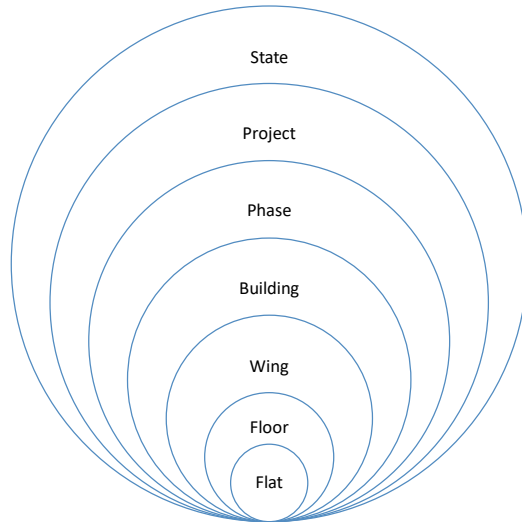
Who can choose?



Option – Which one?

Option	Rates	New
I	12% & 8%	5% & 1%
II	12% &	1%
III	8% &	5%

Option-wise, be wise!



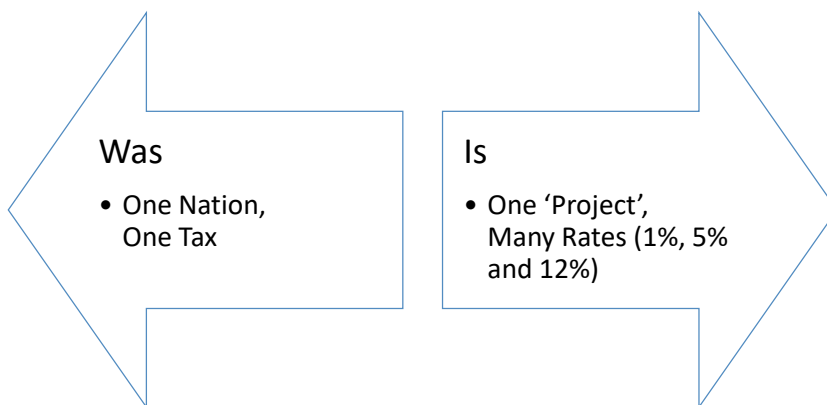
One time option - PR

Promoters shall be given a **one-time option** to continue to pay tax at the old rates (effective rate of 8% or 12% with ITC) **on ongoing projects** (**buildings** where construction and actual booking have both started before 01.04.2019) which have not been completed by 31.03.2019

Notification No. 3/2019

- *'Construction of affordable residential **apartments** by a promoter in a Residential Real Estate **Project** (herein after referred to as RREP) which commences on or after 1st April, 2019 or **in an ongoing RREP in respect of which** the promoter has not exercised the option to pay Central GST on the construction of apartments at the rates as specified for item (ie) and (if)...'*
- Eg.
 - 100 flats scheme
 - 60 sold and 40 unsold
 - 80% already billed (upto 31st March 2019)
 - 20% unbilled for 60 flats
 - 100% unbilled for 40 flats
 - What is option?

Where are we!



What is an ongoing project?

Ongoing Projects

Sr.	Condition	Comply?
a.	Commencement certificate in respect of the project, (if required by the competent authority) has been issued on or before 31st March, 2019 and it is certified by Architect, Chartered Engineer or License Surveyor that construction of the project has started on or before 31st March, 2019	Yes
b.	Certified by an Architect, Chartered Engineer or License Surveyor that construction of the project has started on or before 31st March, 2019 (if Commencement certificate in respect of the project, is not required from competent authority)	Yes

Ongoing Projects

Sr.	Condition	Comply?
	Explanation.- For the purpose of sub- clause (a) and (b) above , construction of a project shall be considered to have started on or before the 31.03.19, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31.03.19	Yes
c.	Completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;	Yes
d.	Apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.	Yes

Ongoing Projects

Sr.	Condition	Comply?
	An apartment booked on or before the 31st March, 2019 shall mean an apartment which meets all the following three conditions, namely- (a) part of supply of construction of which has time of supply on or before the 31st March, 2019 and (b) at least one instalment has been credited to the bank account of the registered person on or before the 31st March, 2019 and (c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the 31st March, 2019'	Yes

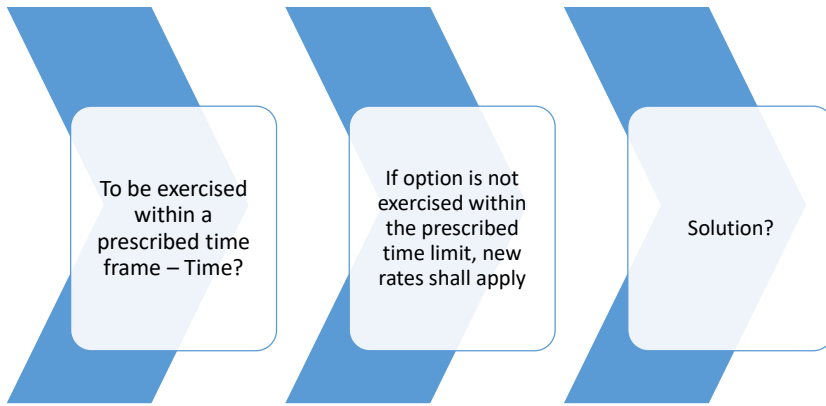
Ongoing Projects

Scenario	Construction	Booking
I	Before 1.4.2019	Before 1.4.2019
II	Before 1.4.2019	After 1.4.2019
III	After 1.4.2019	Before 1.4.2019
IV	After 1.4.2019	After 1.4.2019

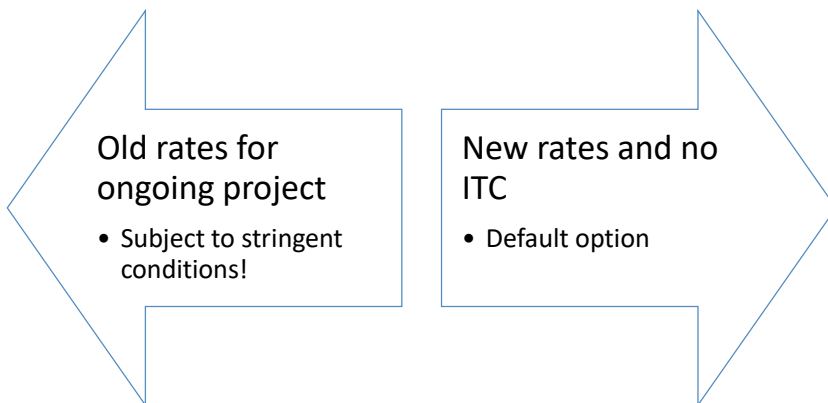
Existing Projects

- Meaning of booking?
 - Registered agreements?
 - Booking in Building 'A' in a project having 3 buildings?
- Any challenges?
 - Rates and value
 - Convincing customers
 - Competitors
 - Nearby projects

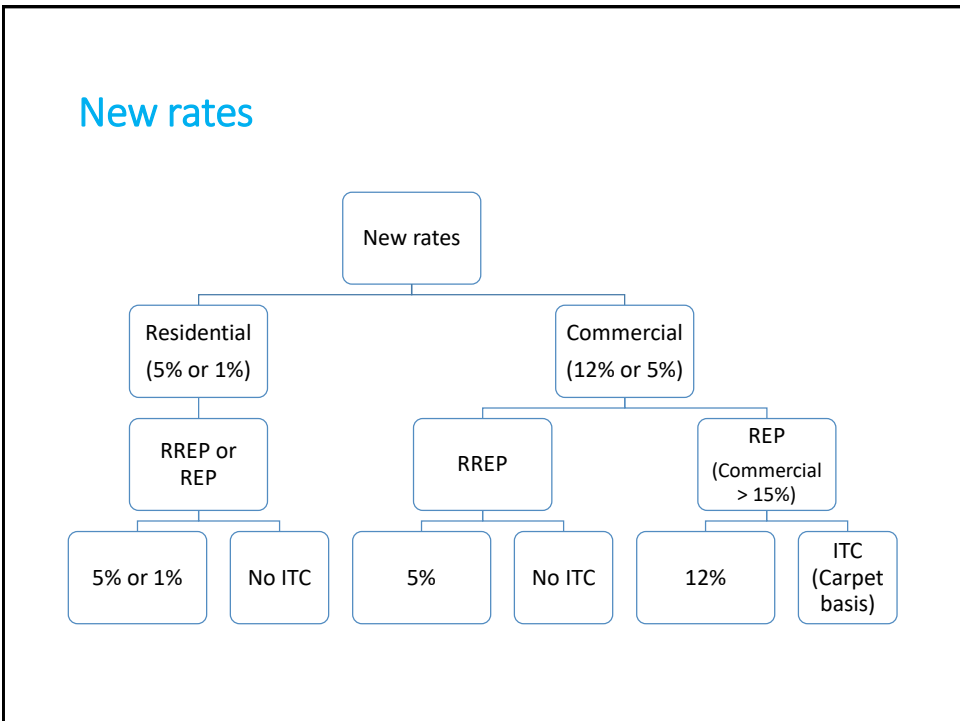
Option – How to exercise?



Rule



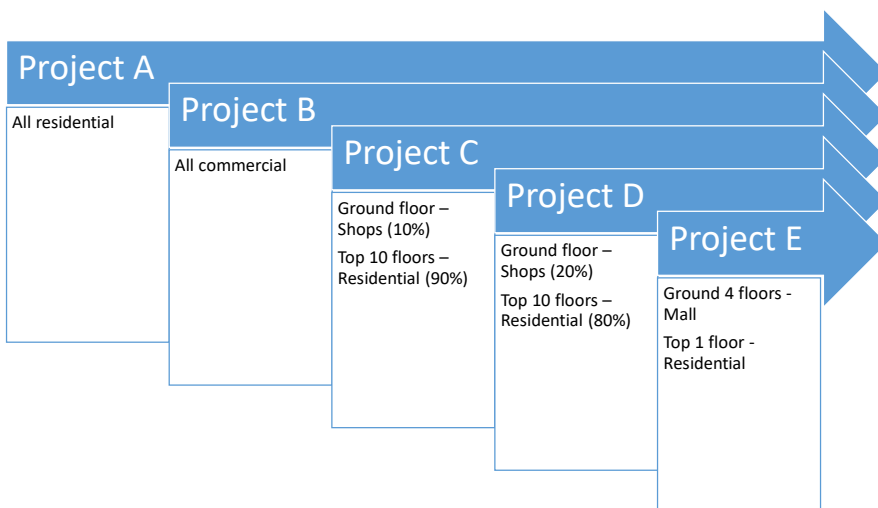
New projects
or
Ongoing Projects for which
option not exercised



Ongoing vs new

Conditions	Ongoing	New
ITC	Available	Not available
Payment	ITC or cash	Cash
JDA	?	Pay GST and Landowner to claim ITC
Procurement	-	80%
Intimation	Yes (10 th May 2019)	Not required
Procurement	NA	12% (subject to conditions)

New projects



Brief

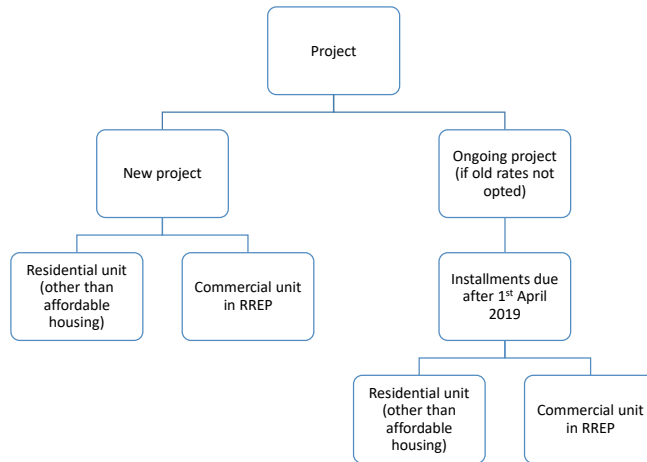
Scenario	Project	Rate	ITC	After CC
I (RREP)	New (1 % and 5%)	New	Not available	NA
II (REP)	New (1 % , 5% and 12%)	New	Available (carpet basis)	Reversal (carpet basis)
III (RREP and REP)	Ongoing	Old	Available (carpet basis)	Reversal (carpet basis)
IV (RREP and REP)	Ongoing	New	Reversal on carpet area, billed amount etc	RREP – NA REP -Reversal on carpet area
V	Ongoing and new	-	?	?
VI	Ongoing (new rate) and new REP	-	?	?

Can basic price be increased?

- **Section 171**

- **Any reduction** in rate of tax on any supply of goods or services **or the benefit** of input tax credit shall be passed on to the recipient by way of **commensurate reduction in prices**

Rate – 5%



Rate – 1% - PR

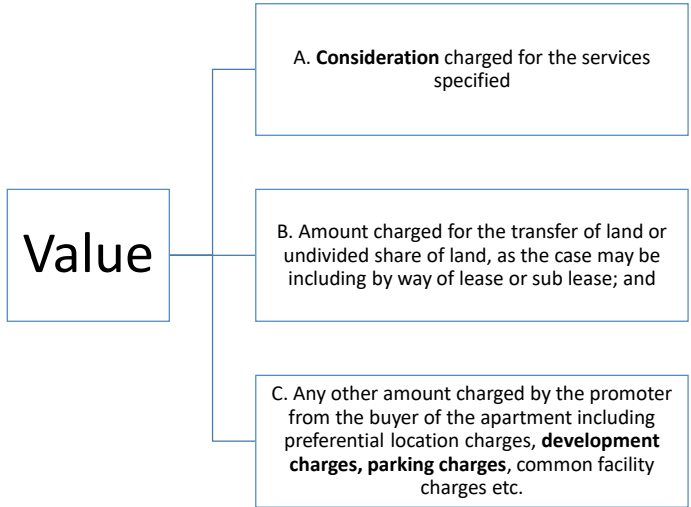
(a)

- All houses which meet the **definition of affordable** houses as decided by GSTC (area **60 sqm in metros / 90 sqm in non-metros** and value upto RS. 45 lakhs) and

(b)

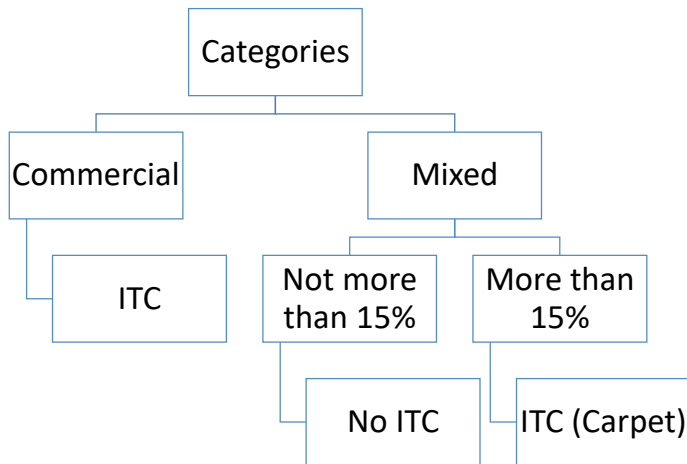
- Affordable houses being constructed in ongoing projects under the existing Central and State Housing Schemes presently eligible for concessional rate of 8% GST (after 1/3rd land abatement) [eg. PMAY]

45 lacs



Commercial >15%

Commercial Projects



How to compute 15%?

15% of total
carpet area of
'all apartments'

What if
changed later?

New rates (1% and 5%) Conditions

New rates and new conditions

No ITC

ITC availed as per
carpet

Landowner can
avail ITC (if he
further pays GST)

80% criteria

Project-wise

Disclosure in 3B

Not. No. 3/2019 - 80% requirement

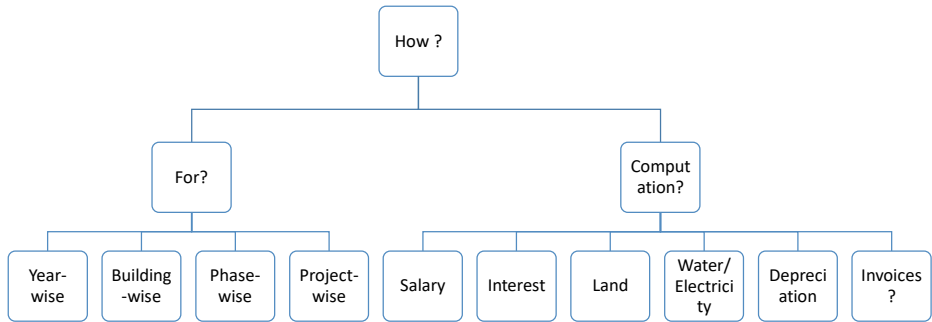
*'Provided also that **eighty percent** of value of **input and input services**, [other than services by way of grant of **development rights**, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or **FSI** (including additional FSI), **electricity, high speed diesel**, motor spirit, natural gas], used in supplying the service shall be received from registered supplier only;'*

DR/FSI/Premium – 9 (4)

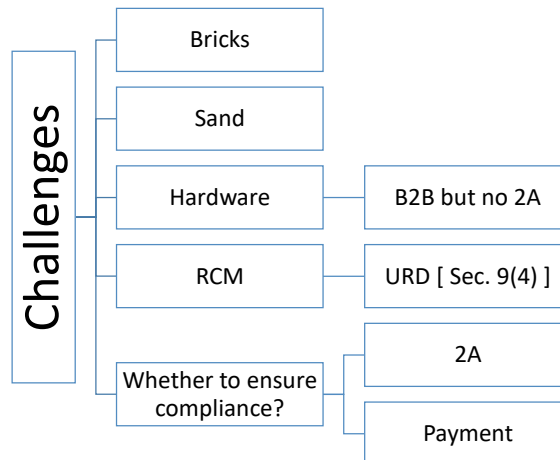
Not. No. 7/2019

- Category of goods and service and shortfall from minimum
 - Goods or service or both (80%)
 - Cement (No threshold ?)
 - CG (No threshold ?)
- Person liable to pay - Promotor

Additional Requirement - 80%

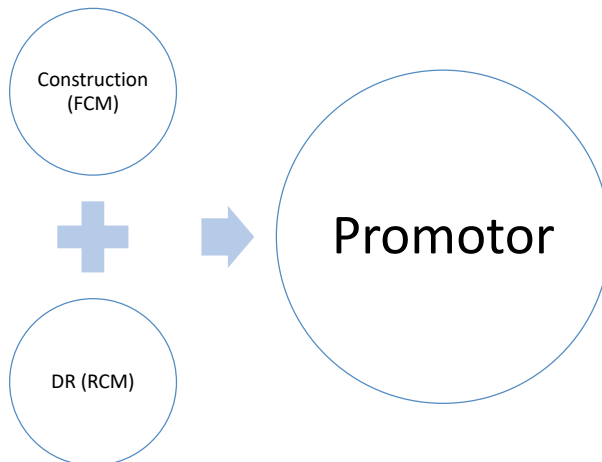


Additional Requirement - 80%



DR/FSI/ Premium

Promotor – FCM and RCM



RCM - DR/FSI/Premium – 9 (3)

Not. No. 5/2019

- Supply – DR/ FSI/ Premium
- Supplier – Any person
- Person liable to pay - Promotor

DR/FSI/Premium

Not. No. 4/2019

- Exemption for services from 1st April 2019
- Only for **Residential**
- Payable if residential remain un-booked on completion
- Value
 - Value nearest to date of transfer of DR to promotor
 - However, GST payable not to be more than GST payable on such apartments (Value nearest to date of CC)

ToS

ToS

Not. No. 6/2019

- DR/FSI/ Premium
 - Transferred on or after 1st April 2019
- ToS
 - Completion or Occupation

Press Release

DR -RCM - Developer

- 7.2 The liability to pay tax on TDR, FSI, long term lease (premium) shall be shifted from land owner to builder under reverse charge mechanism (**RCM**)

TDR - ToS - CC

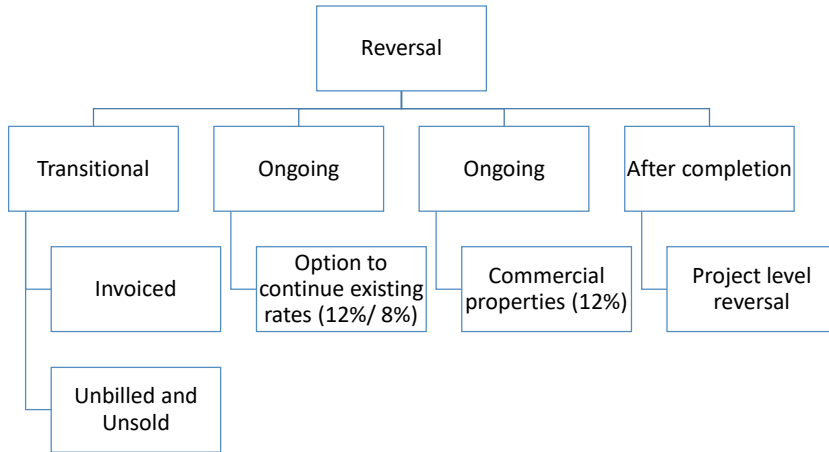
- 7.3 The date on which builder shall be liable to pay tax on TDR, FSI, long term lease (premium) of land under RCM in respect of flats sold after completion certificate is being shifted to **date of issue of completion certificate**

JDA – ToS - CC

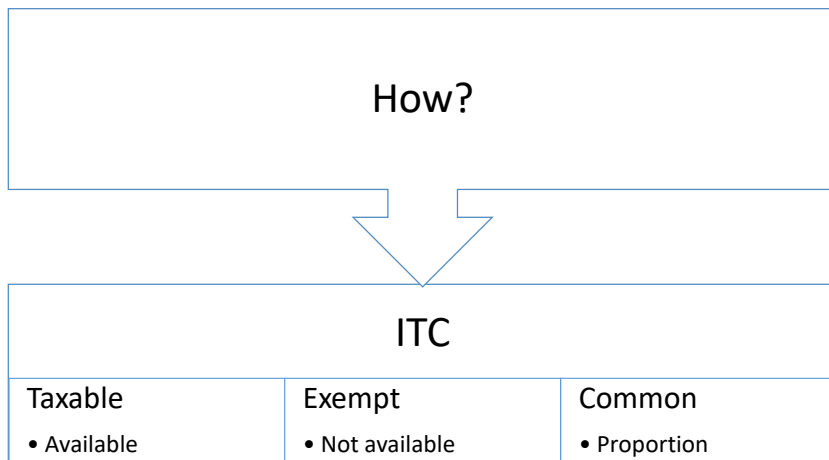
- 7.4 The liability of builder to pay tax on construction of houses given to land owner in a **JDA** is also being shifted to the **date of completion**

ITC

ITC



ITC



Transitional ITC!

Transition formula approved by the GST Council, for residential projects extrapolates ITC taken for percentage completion of construction as on 01.04.2019 to arrive at ITC for the entire project

Then based on percentage booking of flats and percentage invoicing, ITC eligibility is determined

Thus, transition would thus be on pro-rata basis based on a **simple formula** such that credit in proportion to booking of the flat and invoicing done for the booked flat is available subject to a few safeguards

Reversal of ITC

For a mixed project transition shall also allow ITC on pro-rata basis in proportion to carpet area of the commercial portion in the ongoing projects (on which tax will be payable @ 12% with ITC even after 1.4.2019) to the total carpet area of the project

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GST on REAL ESTATE Law & Procedure

With amended
Notification No. 11/2017-CT (Rate), dated 28-6-2017:
To notify the rates for supply of services under CGST Act

CA. PRITAM MAHURE

2019 Edition

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