



GST Applicability on JOINT DEVELOPMENT

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Practitioners (SZ)
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Presenter

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AGENDA

Basics of Joint Development

Taxation for Land Owner & Builder

JD before March 2019

Taxability of TDR

Not Covered

Input Tax Credit

- Transition Credit 1st July 2017 availment & Reversal
- Transition Credit 1st Apr 2019 availment & Reversal
- Common Credit Reversal – New Rule 42

Taxability of Plotted Development of Land

Impact on Project Take over by another Builder

Notifications 29th March 2019

Not. No.	Particulars
3/2019	Changes in <u>GST rates</u> – Real Estate
4/2019	<u>Exemption to TDR</u> , FSI and Premium -Long Term Lease
5/2019	<u>RCM for TDR</u> , FSI and Premium for Long Term Lease
6/2019	<u>Time of Supply for JDA</u> ~ CTR 04/2018 Notification
7/2019	RCM Rate for Services + 80% criteria 9(4) Purchases
8/2019	New Rate 18% for Un registered purchase of Goods
16/2019 (CT)	Changes in GST Rules (Rule 42 and Rule 43)
4/2019 (ROD)	Credit attributable to be determined based on carpet area

Questions to resolve – Development Rights

1. What is Development Rights
2. Are Development Rights Taxable?
3. What is the Value of the Development Rights
4. What would be the Rate of Tax?
5. When is Development Rights taxable?
6. Who has to pay GST for the Development Rights?
7. Can the Input Tax Credit be availed for this levy?

Questions to Resolve - Taxability

1. Would the sharing agreement matter for taxation?
2. Does this applicable to plotted development?
3. What about the past JDA agreements?
4. How do we reverse the common credits for those completed before April 2019 ?
5. What will be the valuation if there is no Sale near the date of JD
6. What will be the valuation if there is no apartment sold before JD

Key Definitions

Apartment – 2(e) of RERD Act 2016

Apartment

shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016)

As per RERA – An “apartment”

- whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, **means**
- a separate and self-contained part of any immovable property,
- including one or more rooms or enclosed spaces, located on one or more floors or any part thereof,
 - in a building or
 - on a plot of land, used or intended to be used for any residential or commercial
- **use** such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;

Apartment Types

1. Residential Apartment:

shall mean an apartment **intended** for residential use as **declared** to the Real Estate Regulatory Authority or to competent authority.

- An apartment intended for residential use
- As declared to the RERA or to competent authority

2. Commercial Apartment:

An apartment other than a residential apartment

Affordable Residential Apartment

AH shall mean, -

- a residential apartment in a project having carpet area not exceeding
 - 60 sq.mts(~645 SFT) in metropolitan cities or
 - 90 sq.mts(~969 SFT) in cities or towns other than metropolitan cities and
- for which the gross amount charged is not more than 45 Lakhs rupees.

Gross Amount shall be the sum total of:

- Amount charged for Construction services
- Amount charged for the transfer of land or undivided share of land, as the case may be including by way of lease or sub lease; and
- Any other amount charged by the promoter from the buyer of the apartment including preferential location charges, development charges, parking charges, common facility charges etc.

What is a Booked apartment

An apartment booked on or before the date of issuance of completion certificate or first occupation of the project” shall mean

an apartment which meets all the following three conditions, namely-

- a) part of supply of construction of the apartment service has time of supply on or before the said date; and
- b) consideration equal to at least one instalment has been credited to the bank account of the registered person on or before the said date; 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 said date.

Project

“Real Estate Project (REP)”

shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016)

The Development of building or building consisting of apartments

- Converting an existing building in to apartments
- Development of land into plots or apartments
- for the purpose of selling all or some or them

“Residential Real Estate Project (RREP)”

- shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;
- REP where Commercial apartment is $\leq 15\%$ of Total Carpet Area

Key Definitions

- “floor space index (FSI)”
 - shall mean the ratio of a building’s total floor area (gross floor area) to the size of the piece of land upon which it is built”
- “carpet area”
 - shall have the same meaning assigned to it in in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
 - Net usable floor area of an apartment
 - **Excludes** area covered by external walls, services shafts, exclusive balcony or veranda exclusive open terrace area
 - **Includes** area covered by internal partition walls
- “Real Estate Regulatory Authority”
 - shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No. 16 of 2016) by the Central Government or State Government

Key Definitions

- “project”
 - shall mean a Real Estate Project or a Residential Real Estate Project
- "competent authority"
 - means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property

Key Definitions

- "commencement certificate"
 - means the commencement certificate or the building permit or the construction permit, by whatever name called
 - issued by the competent authority
 - to allow or permit the promoter to begin development works on an immovable property,
 - as per the sanctioned plan

Promoter– 2(zk) of RERD Act 2016

- AS per RERA

- A person who construct or causes to be constructed
- An independent building or building consisting of apartments -----etc

- AS per GST -03/2019

- (i) “**developer- promoter**” is a promoter who constructs or converts a building into apartments or develops a plot for sale,
- (ii) “**landowner- promoter**” is a promoter who transfers the land or development rights or FSI to a developer- promoter for construction of apartments and receives constructed apartments against such transferred rights and sells such apartments to his buyers independently.

Development Works

- means the external development works and internal development works on immovable property

"external development works"

- includes roads and road systems landscaping, water supply, sewage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws;

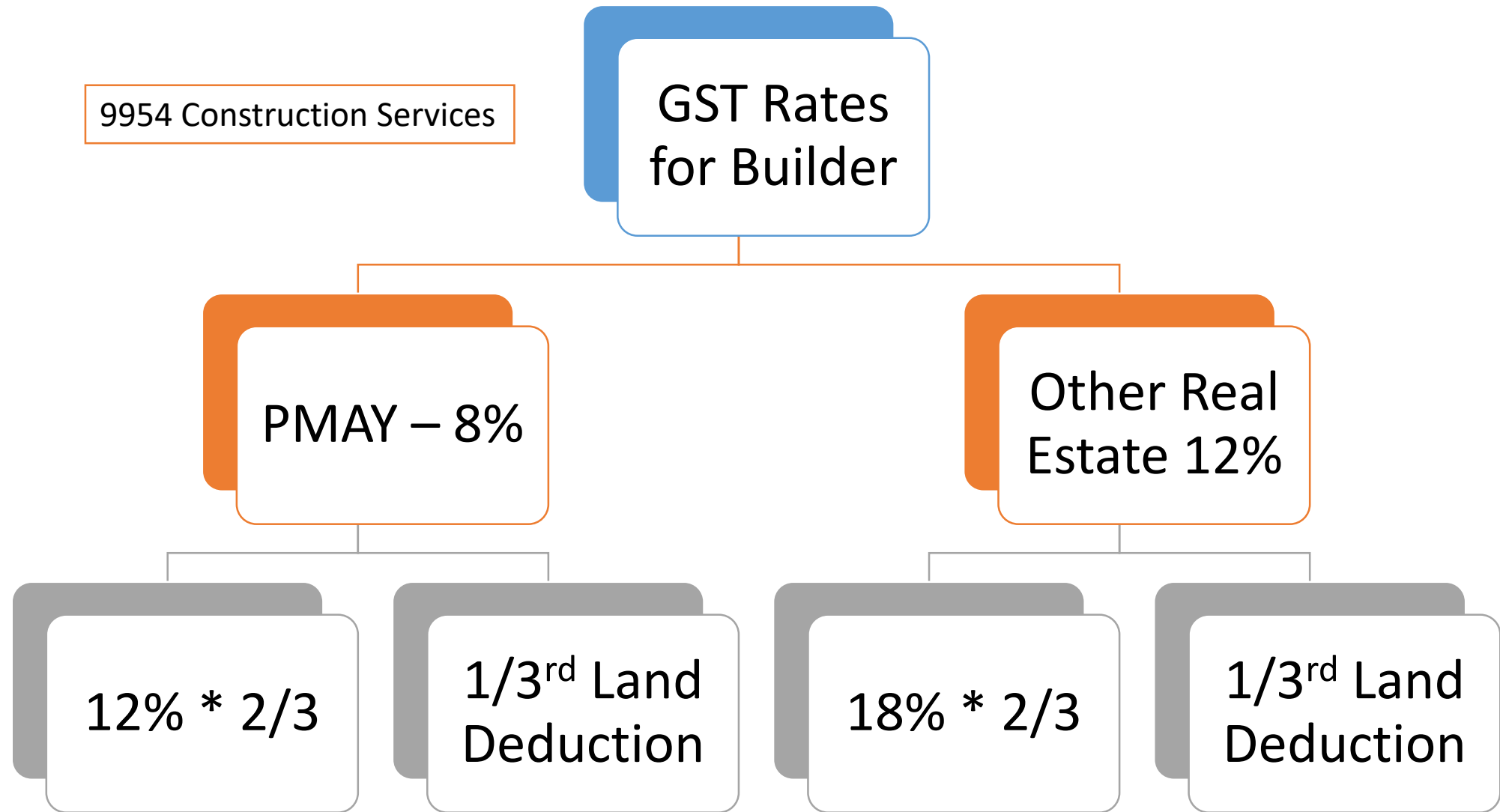
• "internal development works"

- means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as educational health and other public amenities or any other work in a project for its benefit, as per sanctioned plans

Decoding New Rates of Taxes

03/2019

Past Rates – With ITC – Before April 2019



Updated 11/2017 CTR - 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.	<div>(i) Affordable RREP</div> <hr/> <div>(ia) Other than Affordable RREP</div> <hr/> <div>(ib) Commercial under RREP</div> <hr/> <div>(ic) Affordable REP</div> <hr/> <div>(id) Other than Affordable REP</div> <hr/> <div>(ie) On Going – Affordable</div> <hr/> <div>(if) On Going – Others (incl Commercial under REP)</div>

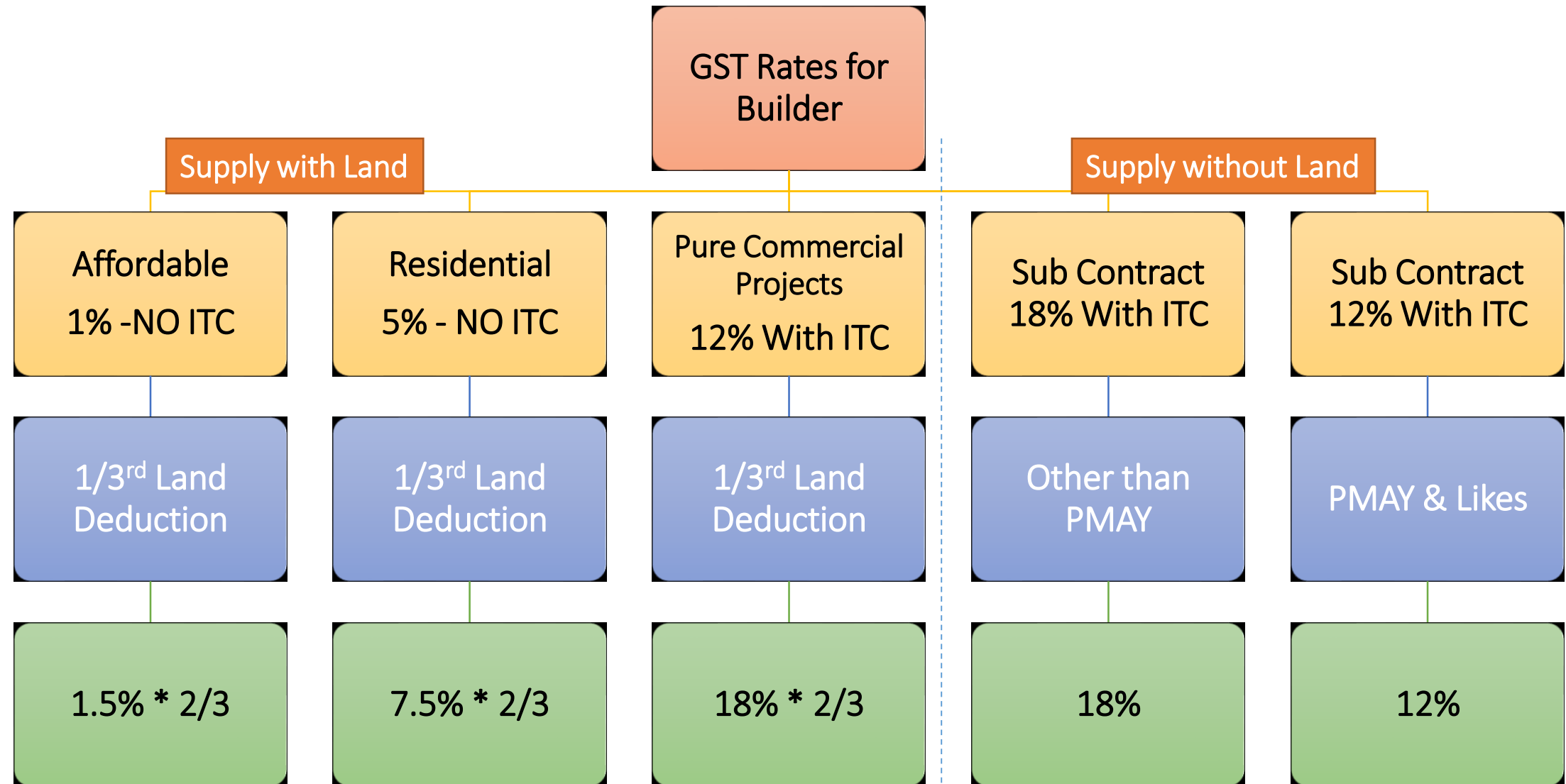
Affordable Housing

Sl	Heading	Old Entry	New Entries
3	9954 Constru ction Services	<p>(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,-</p> <p>(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;</p>	<p>(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,-</p> <p>(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;</p>

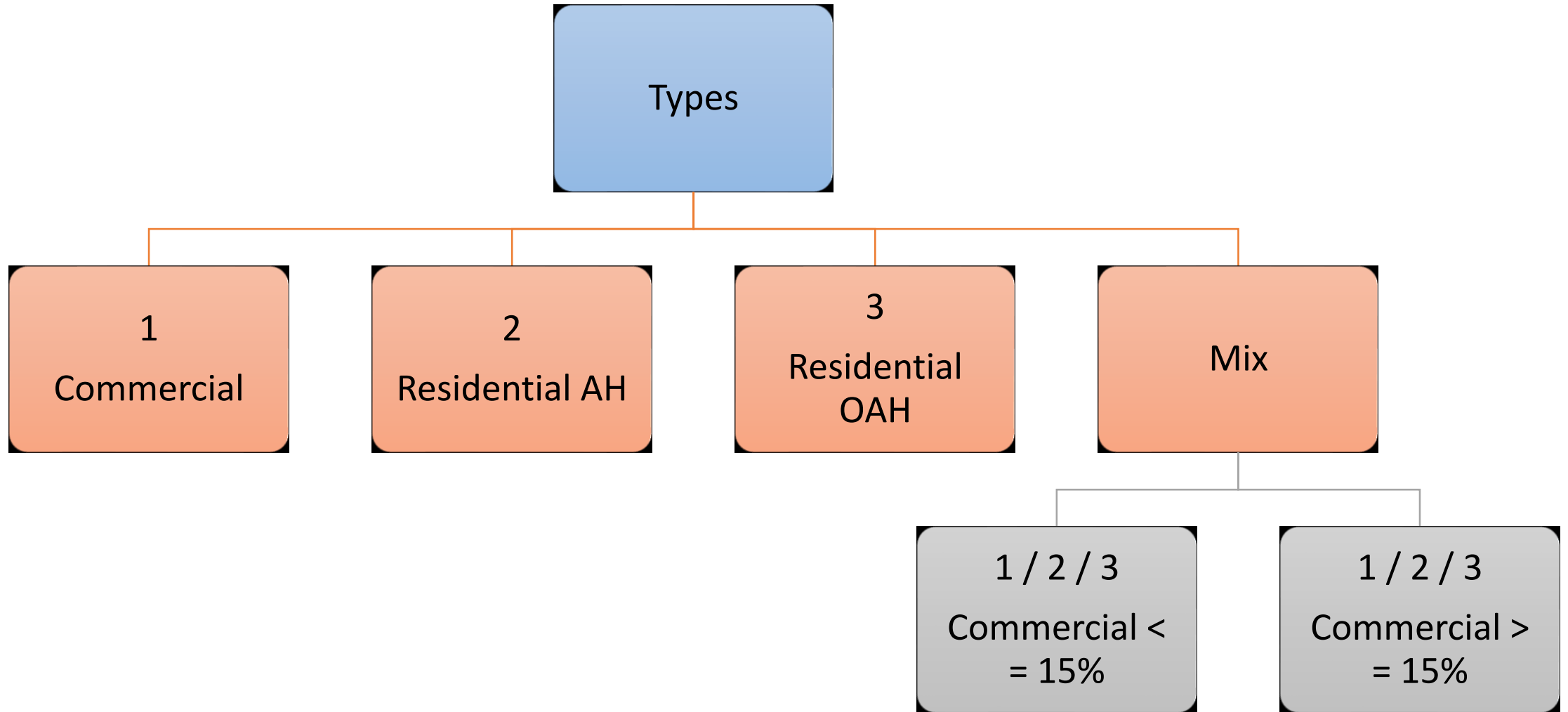
Residual Entry

Sl	Heading	Old Entries	New Entries
3	9954 Constructi on 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

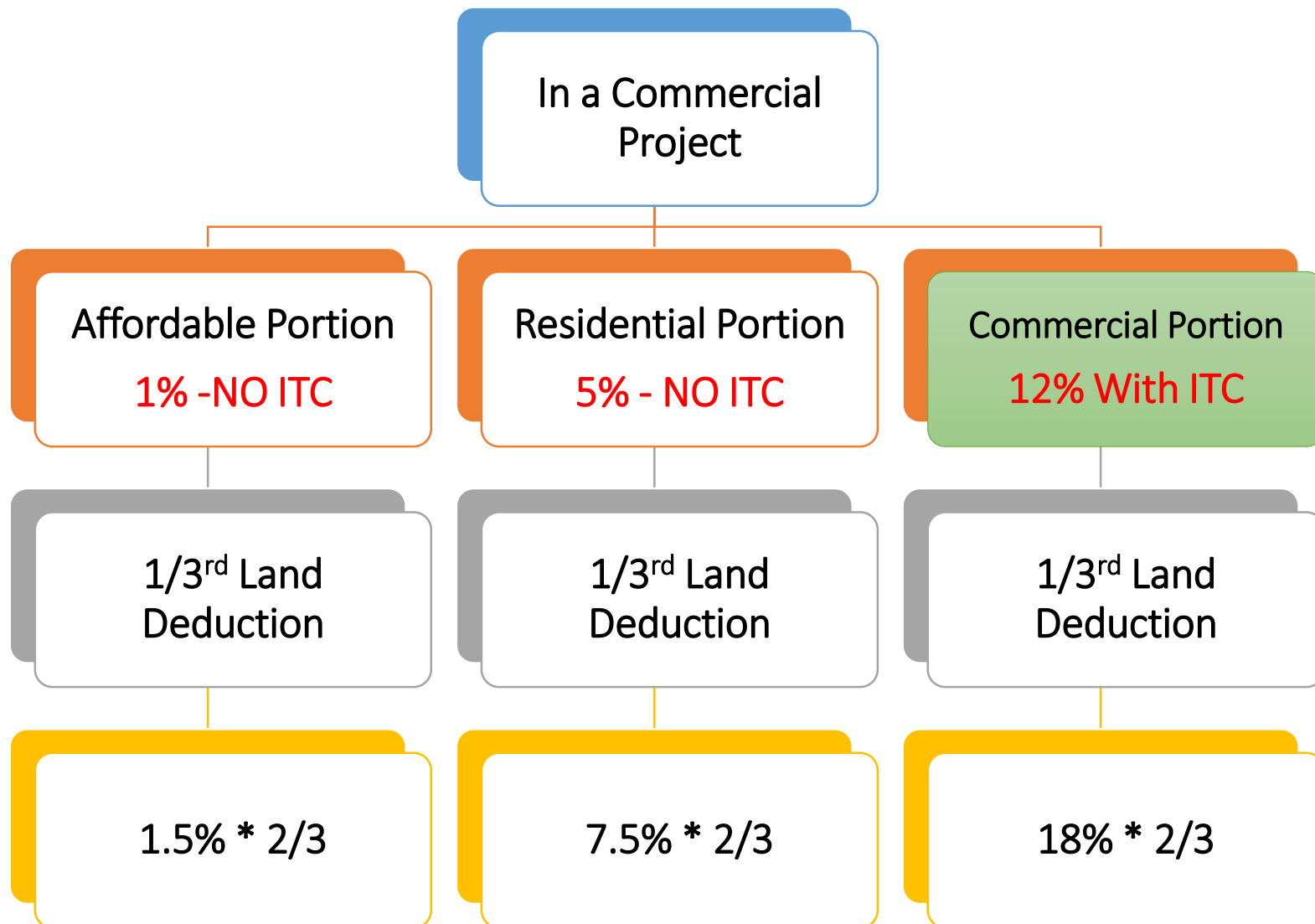
For New Projects wef 1st April



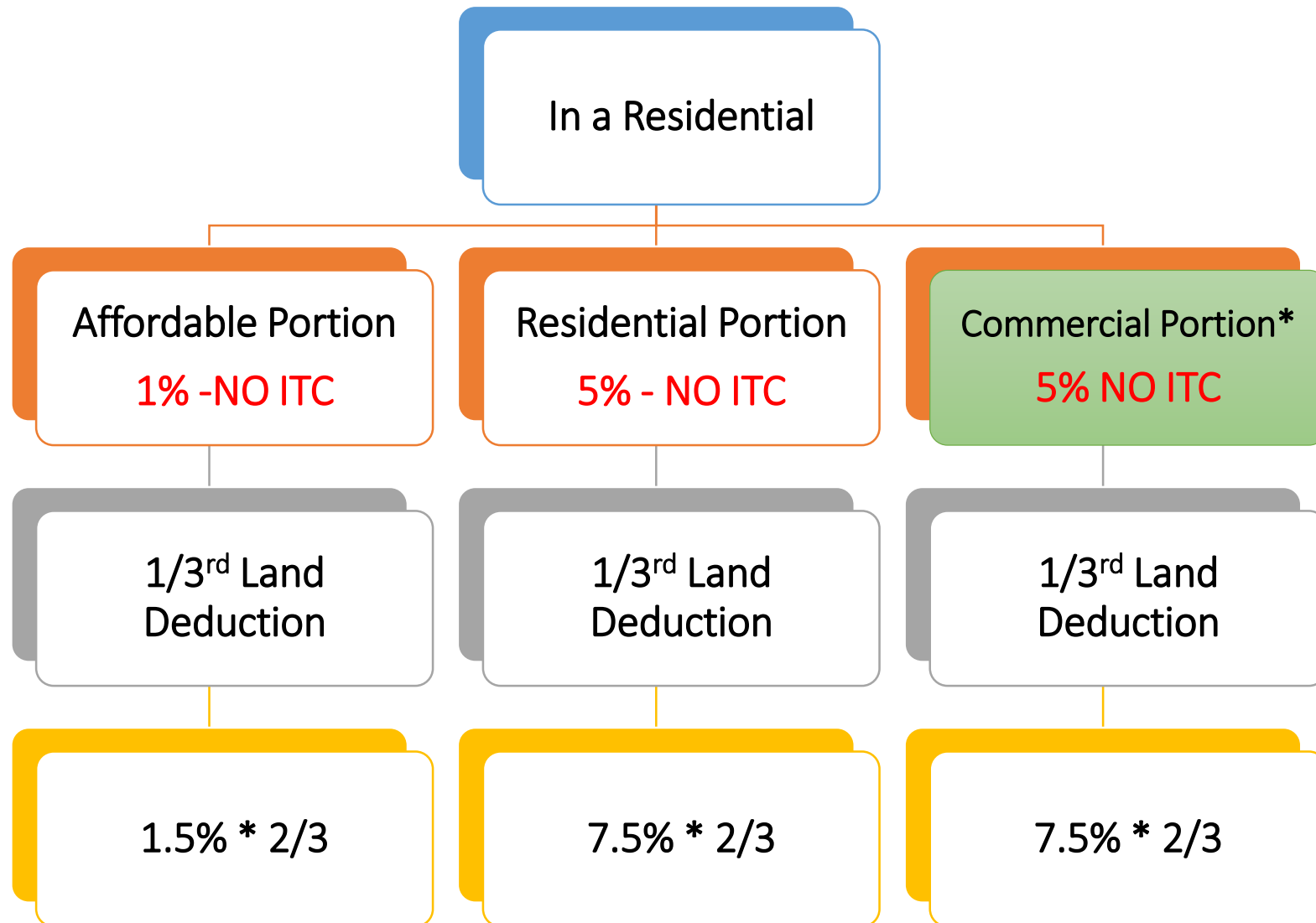
Constructions



New Mixed Projects (Commercial + Residential)



New Mixed Projects (Commercial + Residential)



To Qualify as a residential project Maximum permitted Commercial Portion is 15% of Total Project Carpet Area

PMAY Sub Contract Rates

- Rate

- 12% Composite supply of works in a affordable residential apartments

- Condition

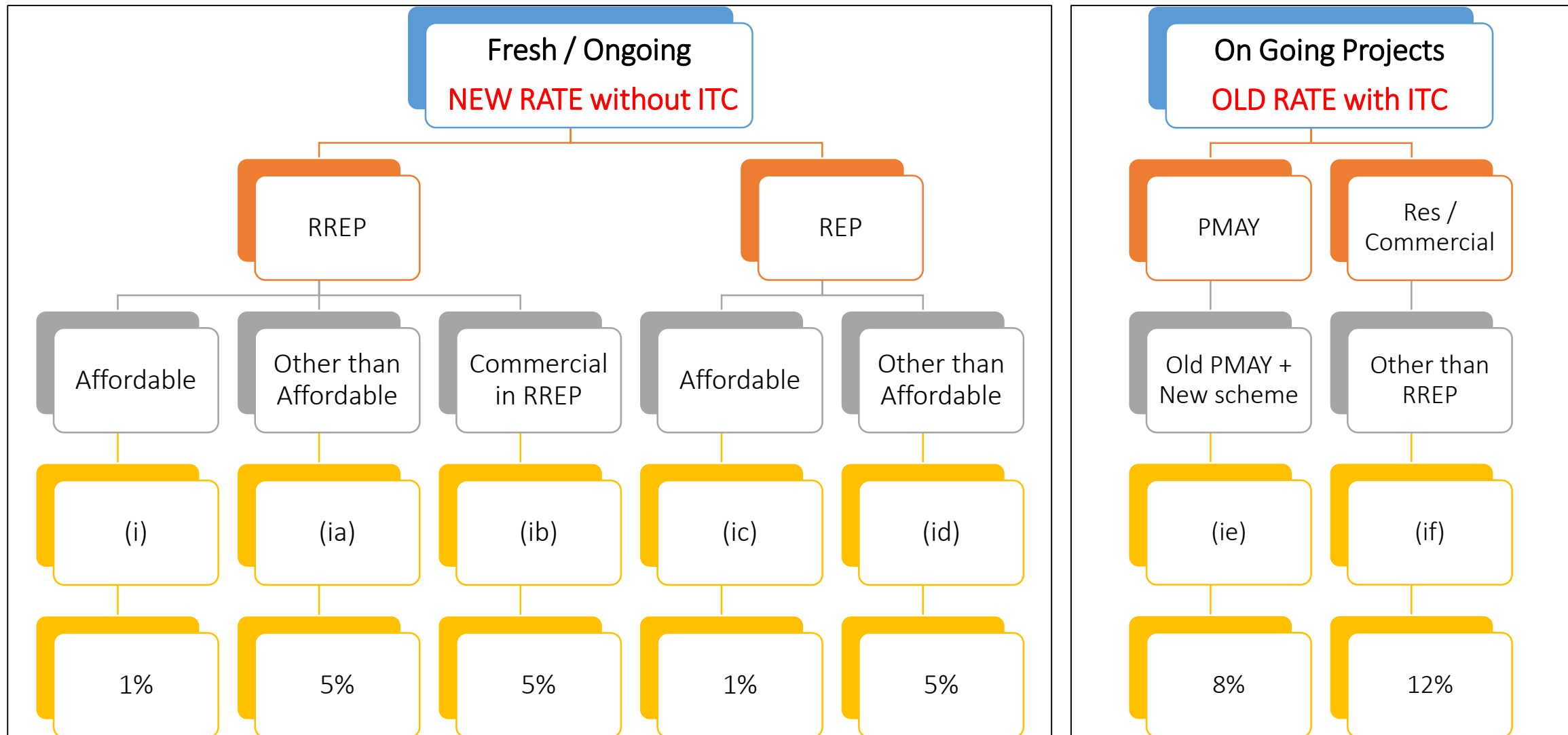
- PMAY (AH) Carpet Area is $> 50\%$ Carpet Area of NAH

- Violation

- If sub contractor is charging at 12% and Affordable housing Carpet area is less than Total Carpet area, then
- Builder / Developer Promoter shall pay the difference 6% (18%-12%) on the Subcontractor bill under RCM

is new rate Optional /
Compulsory

New Rate of Tax



CONFIRM to Retain in OLD SCHEME
File Annexure IV to Commissioner

By 20th of May, 2019

Conditions for the New Rates without ITC

1. **Tax Payment** : Paying of GST is only in cash and use of ITC is not permitted
2. **ITC**:
 - Not to avail of ITC on the future purchases
 - Report ITC not availed as ineligible credit in GSTR-3B [No. 4 (D)(2)]
 - Reversal/Availment of Excess ITC as on 31st March 2019 as per
Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;
3. **JDA TAX** : Tax on Development Rights to be paid by Builder on RCM basis.
4. **Purchases**
 - Procure 80% inputs and input services from registered vendors other than
 - TDR, long term lease premium, salami, FSI , electricity, high speed diesel, motor spirit, natural gas
 - RCM Payments made are deemed as Registered Purchase
 - Purchases <80% from RP to be paid tax at 18%,
 - Short fall Tax to be assessed and paid **project** wise by **JUNE** of next Financial YEAR
 - CEMENT Purchased from URD to be paid under RCM irrespective of % threshold on monthly basis at the applicable rates.(Currently 28%)

Supplies in Joint Development

Development >>>> Joint Development



SELF
DEVELOPMENT



SUB
CONTRACTING



JOINT
DEVELOPMENT

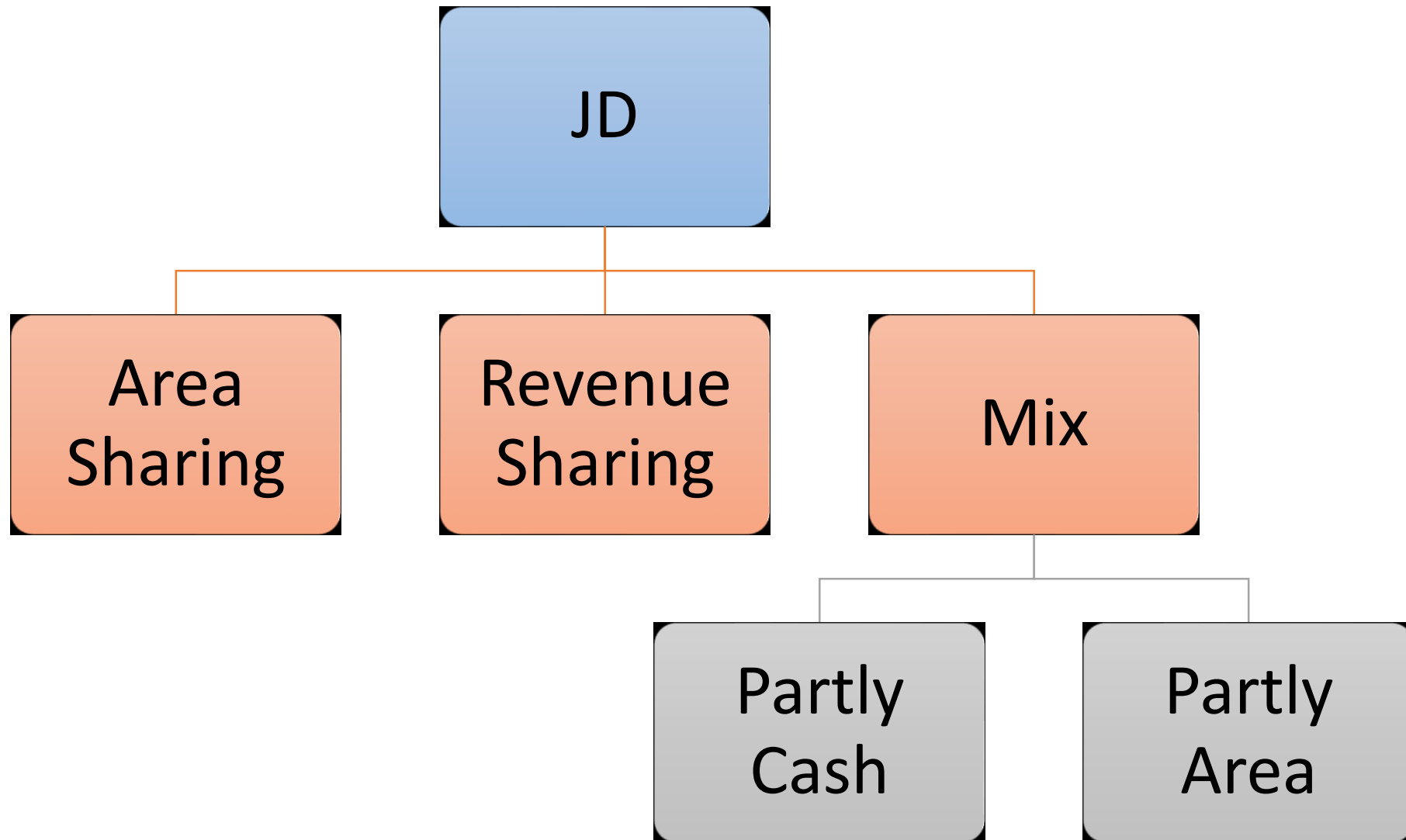


JOINT
VENTURE



PARTNER SHIP

Classification



Landowner

Area Sharing Agreement
Residential - RREP

Builder

Landowner Share
Development Rights



Construction services
Forward Charge NO ITC

Development Rights understand
RCM the taxation

Builder Share



Own use or
Sold After OC

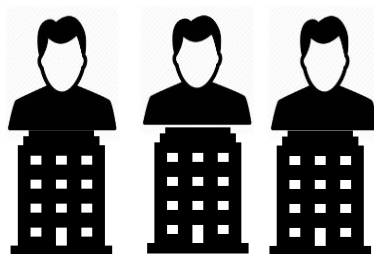
Sold before OC

Own use or
Sold After OC

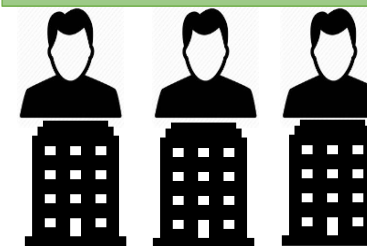
Sold to Customers
before OC



Reversal under
Rule 42



Forward Charge
with ITC



Forward Charge
Without ITC

Supplies in JD

By Land Owner

- Transfer of Development rights to builder
- Sale of Constructed units BEFORE OC / CC
- Sale of Constructed units AFTER OC / CC

By Developer

- Construction Services to Landowner
- Sale of Constructed units BEFORE OC / CC
- Sale of Constructed units AFTER OC / CC

Landowner

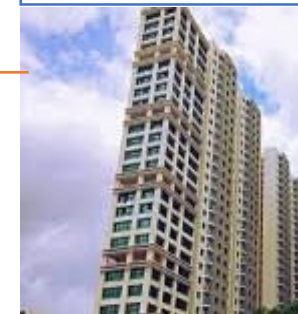
Revenue Sharing Agreement
Residential - RREP

Builder

Landowner Share



Builder Share



No Construction
So NO TAX

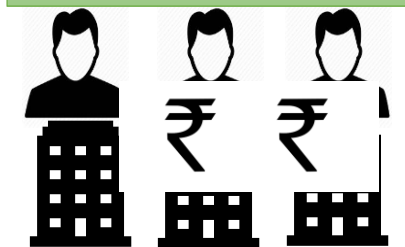
Development Rights
Units are retained and
Sold by Builder only

Own use or
Sold After OC

Revenue Shared
For Units sold

Own use or
Sold After OC

Sold to Customers
before OC



Taxes already paid
NO GST

Taxes already paid
NO GST

Forward Charge
Without ITC

Redevelopment

What do flat-owners owner loose

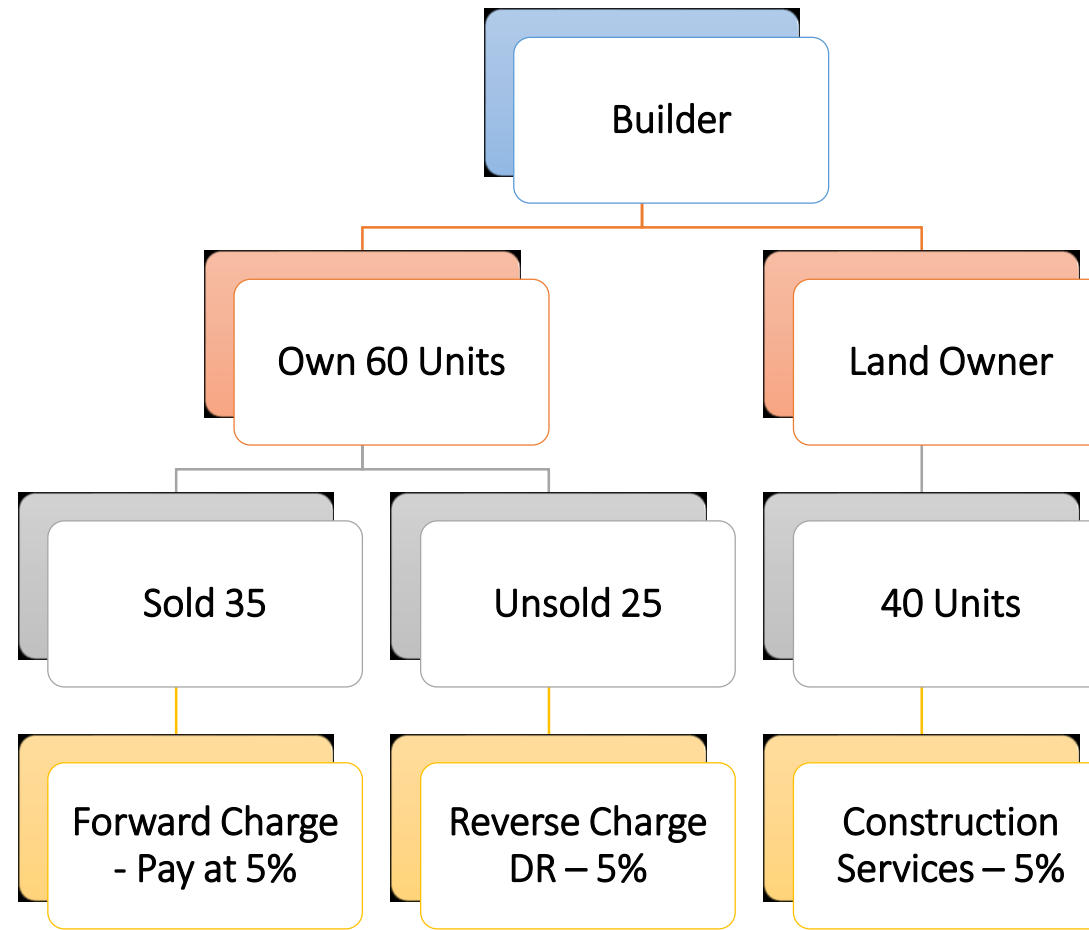
- Surrender the exiting apartment

What do they gain

- A new flat , some times with a larger area than their current flat
- Monthly displacement compensation (rent) for the flat-owners to arrange temporary accommodation
- Compensation for the inconvenience caused to them during the interim period,
- Additional compensation for displacement (as an incentive for them to vacate the old property as early as possible) and reimbursement of shifting charges and brokerage (collectively referred to as 'corpus')

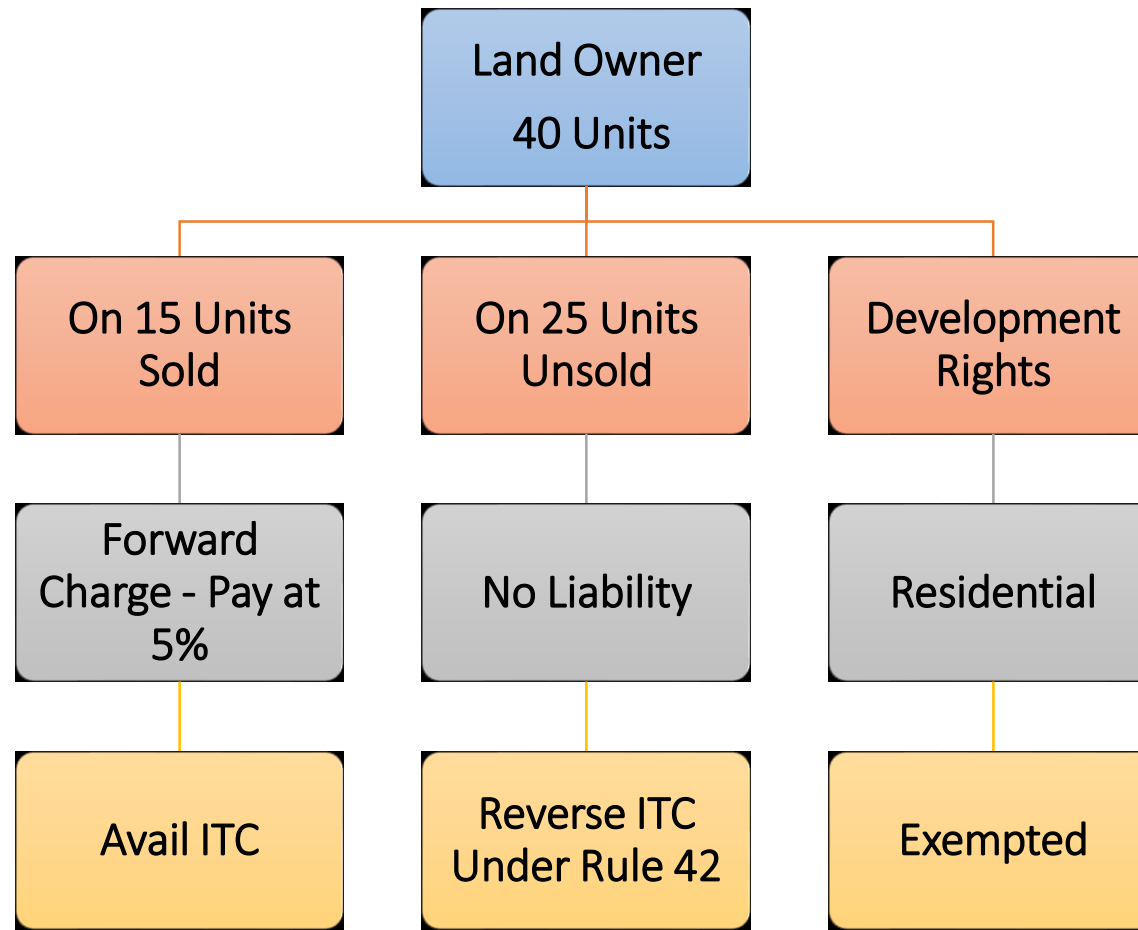
GST Liability for Builder

Example : A project with Area Sharing 60 to Builder 40 to Land Owner



GST Liability for Landowner

Example : Say 15 units are sold before OC and 25 unsold as on OC



Construction Services by Sub Contractors

- Rate of Tax
 - Commercial Housing - 18%
 - Residential Housing – 18%
 - Affordable Housing – 12%
 - Partly Affordable where AH >50% - 12%
- ITC
 - Fully Available
- Refund of Inverted Duty Structure
 - Allowed to the extent of Inputs and not on Input Services or Capital Goods

Development Rights Taxation

04/2019 – TDR Exempt

05/2019 – TDR RCM by Promoter

Notn No 05/2019 CT(R)-RCM U/s 9(3)

S.No	Category of supply of goods and services	Recipient of goods and services
1	Services supplied by any person by way of transfer of TDR	Promoter
2	Long term lease of land (30 years or more)	Promoter

Special Points : Both Residential & Commercial and No Specific Date

Notn.No 04/2019 CT(R) – Sec 11

Landowner is Exempted for – Service by way of

- **Transfer of Development Rights** or FSI **after 1.4.2019** for construction of **residential apartments**
- Upfront Premium - Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for construction of Residential apartment

But Promoter is liable to pay tax On RCM basis

- **Value** : on such proportion of value of development rights/ upfront amount as is attributable to the residential apartments, which remain **unbooked** on the date of issuance of completion certificate or first occupation.

Calculation of RCM – By Promoter

Carpet area of the residential apartments **un-booked** on the date of issuance of completion certificate or first occupation

GST payable on TDR *

Total carpet area of the residential apartments in the project

Subject to Maximum of

- Value of un sold Apartments * (5% or 1%)
 - remaining un- booked on the date of issuance of completion certificate or first occupation

Value of Development Rights

Explanation 1A.

- Value of supply of service by way of transfer of development rights or FSI by a person to the promoter against consideration
- in the form of residential or commercial apartments
- shall be deemed to be equal to the value of **similar apartments** charged by the promoter from the independent buyers **nearest to the date** on which such development rights or FSI is transferred to the promoter

• Issues

- Value of Consideration partly paid in Cash
- Value in case of Revenue Sharing Arrangements

GST Computation on Development Rights

Value of Supply (Development Rights)

- value of similar apartments **charged by the promoter** from the independent buyers nearest to the **date** on which such development rights or FSI is transferred to the promoter

Rate of Tax : 18%

Time of Supply : Date: JD Date / Allotment Letter Date

Computation of GST on Development Rights

- Land Owner Share of Units * Launch Price(JD Date) * 18% **(OR)**
- Carpet Area of LO Share * Launch Price per unit of Carpet Area * 18%

Tax Liability / Timing - 06/2019

The said liability to **pay tax** shall arise on

- the date of completion or first occupation of the project,
- as the case may be, whichever is earlier.

- **Issue**

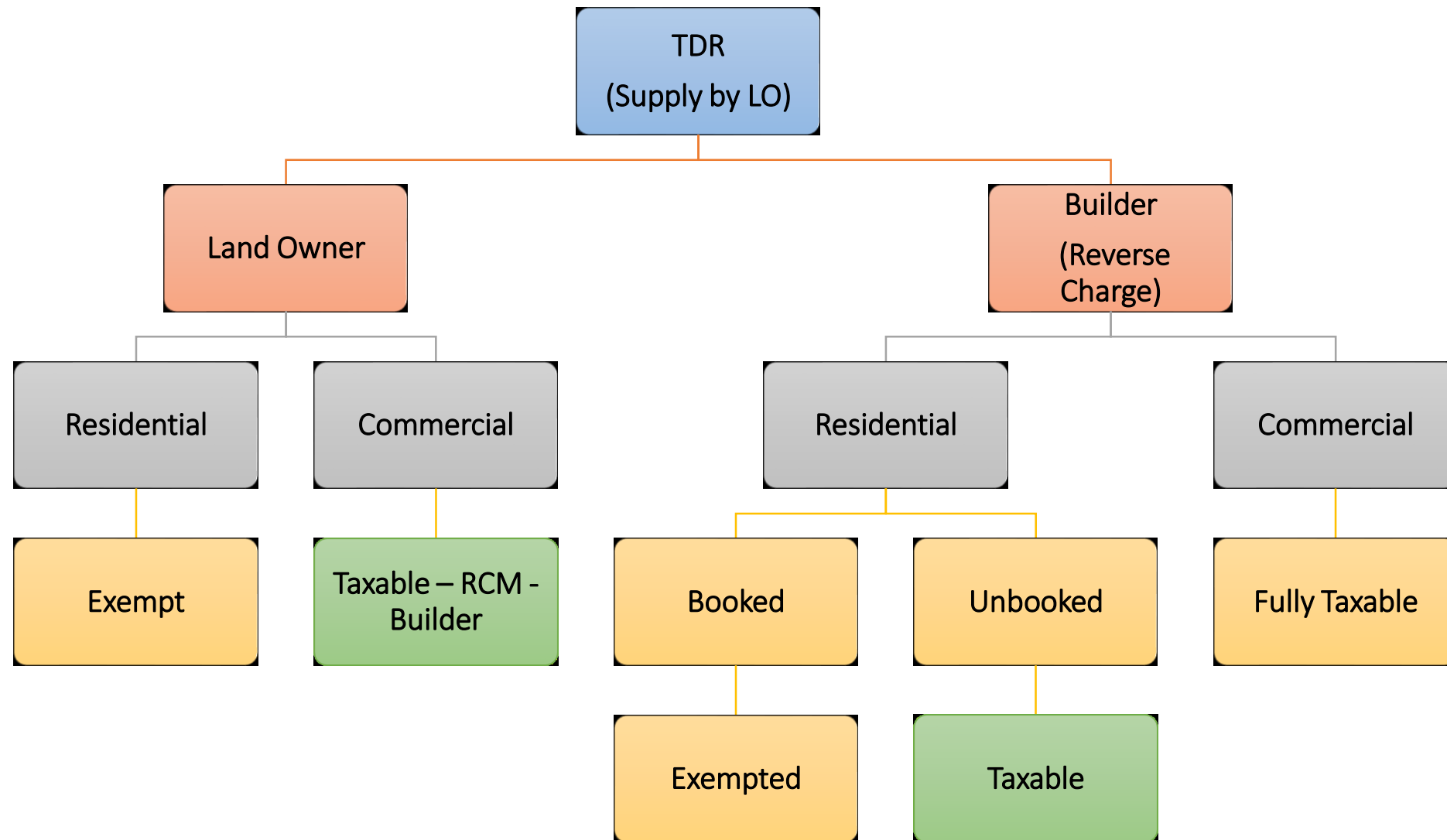
- Notification is issued u/s 148 (Spl Procedures for Registration, Furnishing of Return, Payment of Tax and other Administration)
- Is deferment for
 - Time of Supply also or
 - Only for payment of Tax

Developer Liability

Summary of Liability to Builder

- Sold before OC Tax Payable – Forward Charge 5%
Can be collected from the Customers
- Unsold on OC Tax Payable – RCM 5% (In the form of Development Right)
Cannot be collected from the Customers – Out of Pocket Cost

Taxation of TDR



Transition Issues

Position in Service Tax regime

- Transferrable development right is immovable property
- As per Section 3 (26) of General Clauses Act, 1897 the transfer of development rights is termed as immovable property
- For Transfer of immovable property no service tax is payable as per the exclusion in terms of Section 65B(44) of the Finance Act, 1994

Position before 31st March 2019

- TDR is supply of service
- SCH III : Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building
- Supply of TDR is different from sale of Land
- Hence it is liable as forward charge in the hands of Land Owner

Time of supply / Payment of Tax

- For JD entered before 24th Jan 2018
TOS / Paymt of Tax - as per Sec 13
- For JD entered after 24th Jan 2018
TOS / Paymt of Tax – on CC or OC
- Issues
For Monetray & Non Monetary Considerations
Non refundable Deposits

JD entered Dates

Agreements Pre GST

- JD before GST Project completion before 24 Jan 2018
- JD before GST Project completion before 31st March 2019
- JD before GST Project completion after 31st March 2019

Agreements POST GST

- JD after 1/7/2017 Project completion before 31st March 2019
- JD after 1/7/2017 Project completion after 31st March 2019

Thank You

For Clarifications, mail to
venu@vnm.ca