

# Welcome to ConsultEase

Understanding GST  
Applicability for REAL  
ESTATE Industry

**New Taxation for**

**REAL ESTATE**

**In GST**

Notifications on  
Rate of Tax, RCM, Exemption,  
ITC, Transition, Returns

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*Ver 1.0 31<sup>st</sup> Dec 2019*

# AGENDA

1. Overview of Notifications
2. Key Definitions and Rates of Taxes
3. Taxation for Builder
4. Taxation for Land Owner
5. Transition adjustment

# Notifications 29<sup>th</sup> March 2019

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

# Key Definitions

# Apartment – 2(e) of RERA 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

# On Going Project

Means a project which meets **ALL** the 3 conditions,

- 1) **Commencement certificate** received before 31st March, 2019 + and it is certified by any of the following that construction started on or before 31st March, 2019:-
  - an architect registered / a chartered engineer registered; / a licensed surveyor of the respective local body of the city or town or village or development or planning authority.
  - Note: where commencement certificate is **not** required to be issued by the competent authority, it is certified by any of the authorities specified above
- 2) **Completion certificate** has NOT been issued or **First occupation** of the project has not taken place on or before the 31st March, 2019;
- 3) Apartments being constructed under the project have been, **partly or wholly, booked** on or before the 31st March, 2019

# Promoter– 2(zk) of RERA 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

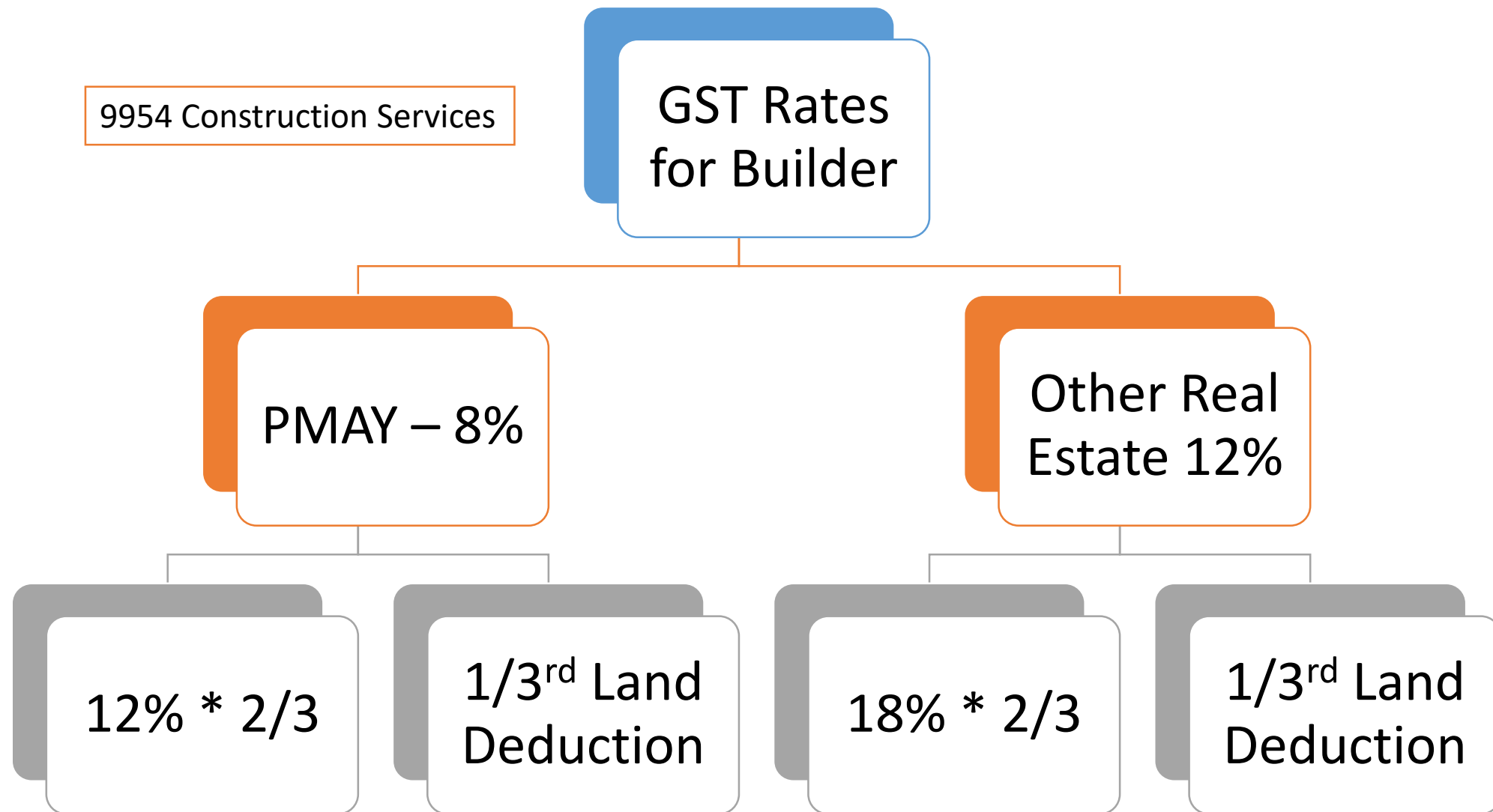
- means the external development works and internal development works on immovable property
- "external development works"
  - includes roads and road systems landscaping, water supply, sewage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any 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



# 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.	(i) Affordable RREP <hr/> (ia) Other than Affordable RREP <hr/> (ib) Commercial under RREP <hr/> (ic) Affordable REP <hr/> (id) Other than Affordable REP <hr/> (ie) On Going – Affordable <hr/> (if) On Going – Others (incl Commercial under REP)

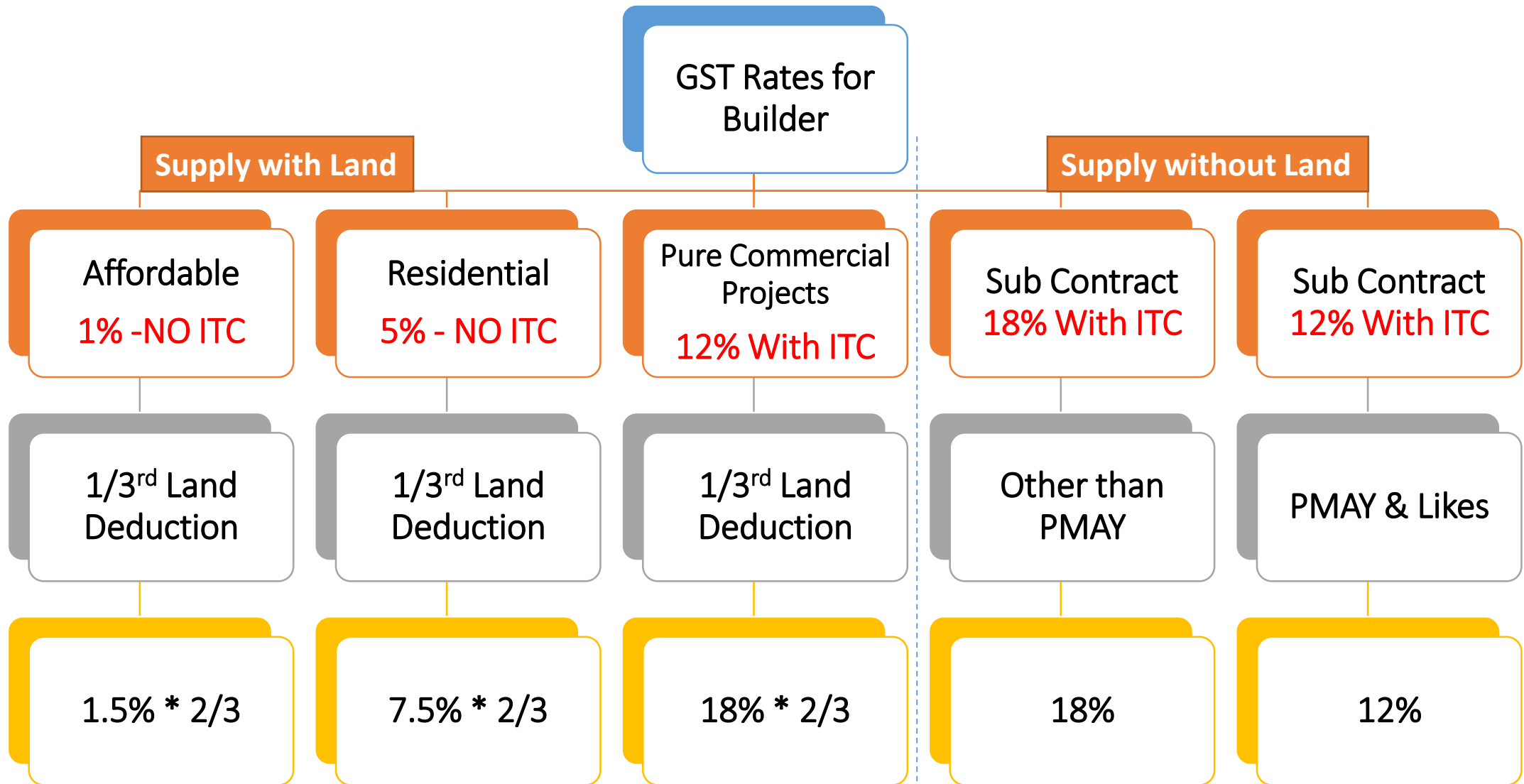
# Affordable Housing

Sl	Heading	Old Entry	New Entries
3	9954 Construction 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, <b>other than that covered by items (i), (ia), (ib), (ic), (id), (ie) and (if) above</b> 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>

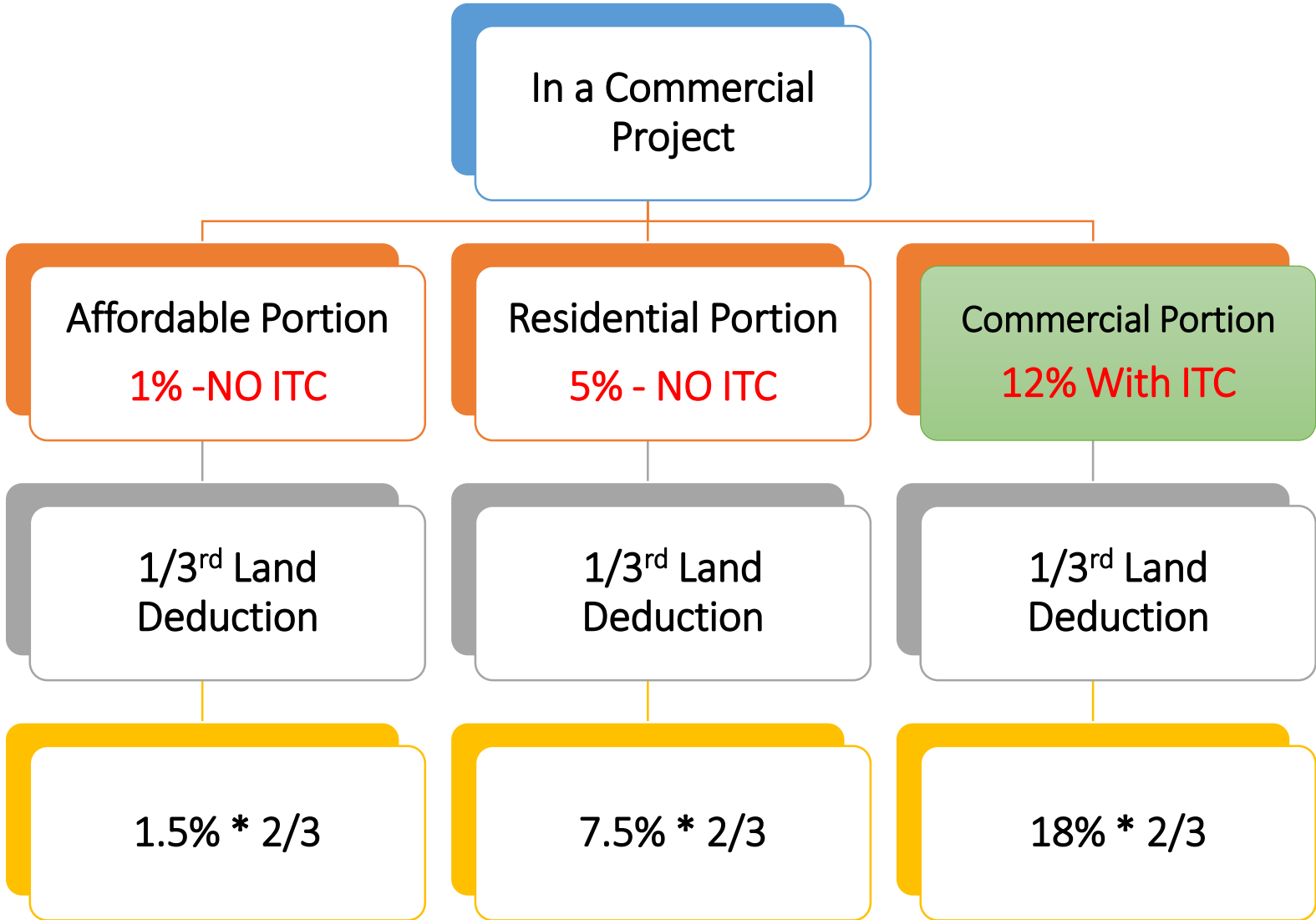
# Residual Entry

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), <del>(ii)</del> , (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

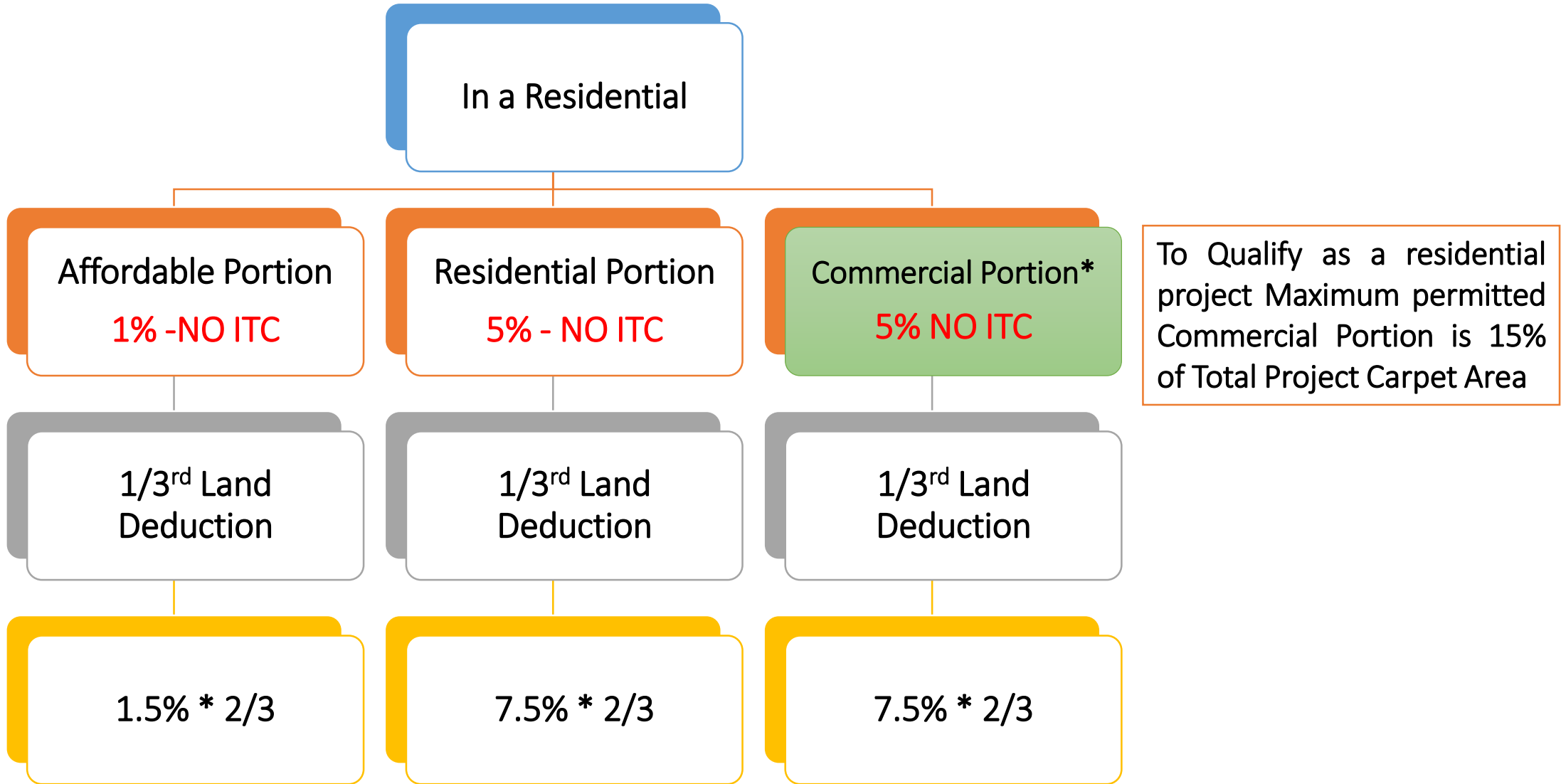
# For New Projects wef 1<sup>st</sup> April



# New Mixed Projects (Commercial + Residential)



# New Mixed Projects (Commercial + Residential)



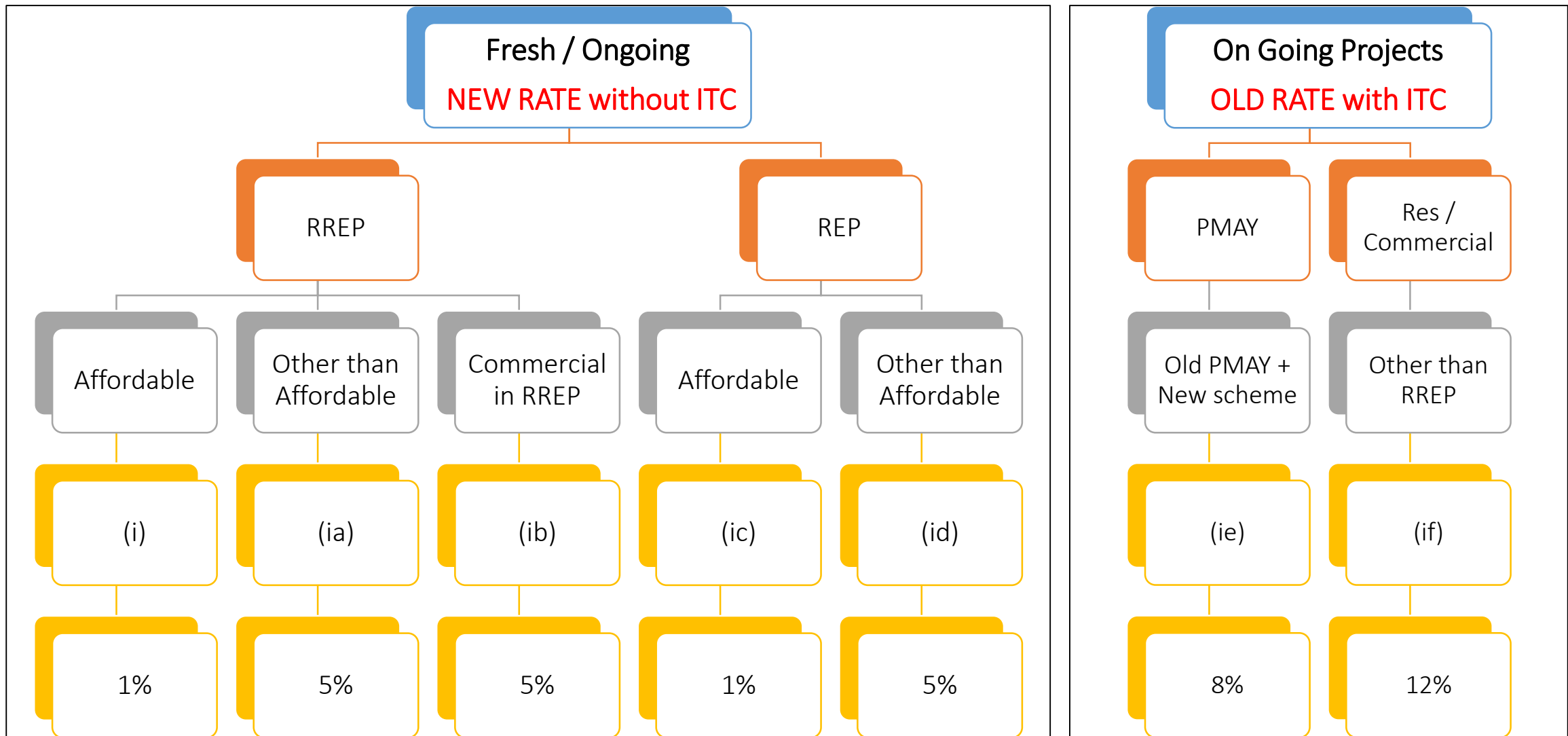


# PMAY Sub Contract Rates

- 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

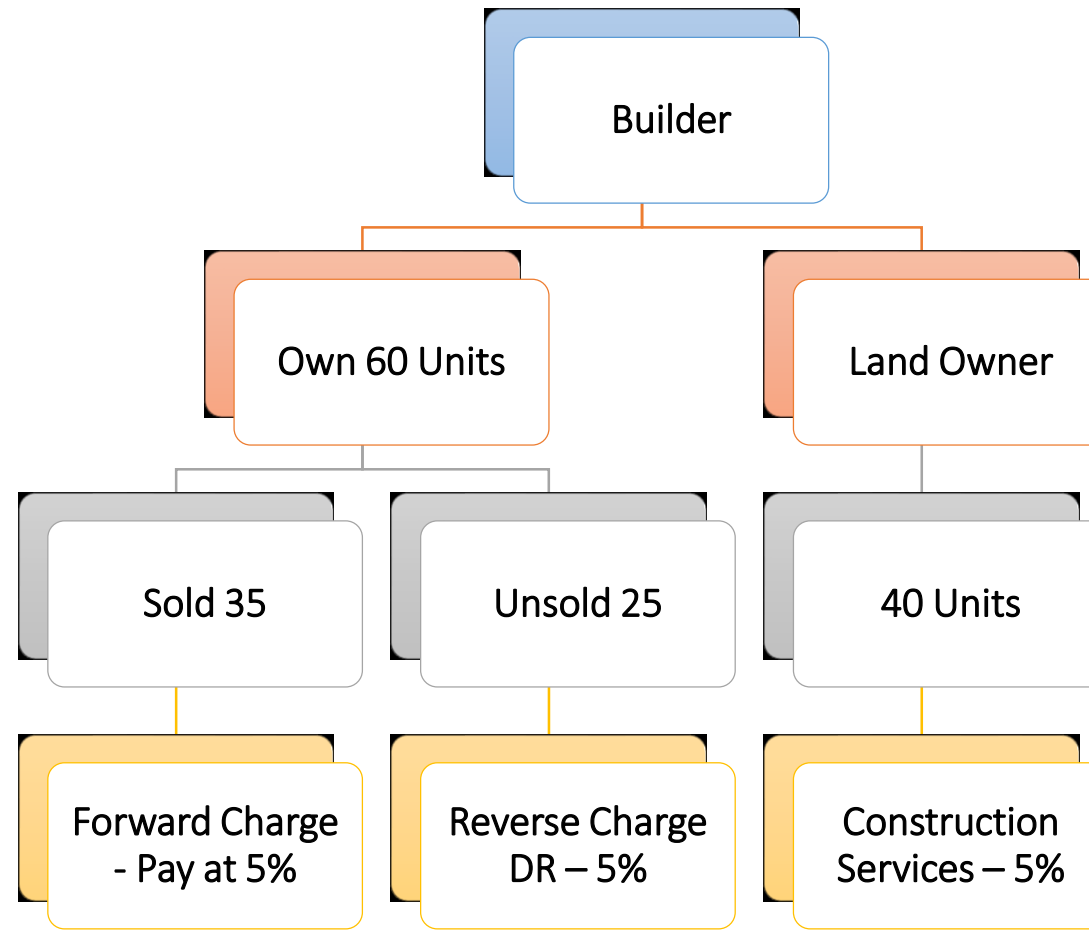
**By 20<sup>th</sup> of May, 2019**

# 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 31<sup>st</sup> 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%)

# GST Liability for Builder

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



# GST Liability for the Land Owner

For the 40 Units received he shall be paying

## For Units Sold

- Rate of Tax – 5% or 1% accordingly
- ITC – Available
- Conditions – Tax Payable shall be greater than ITC Available

## For Units Unsold

- ITC lapsed as per Rule 42

# 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

# Reverse Charge Liability

04/2019 – TDR,



# RCM U/s 9(4)

## Notn No 07/2019 CT(R)-Sec 9(4)

S.No	Category of supply of goods and services	Recipient of goods & services
1	Supply of such goods and services or both [other than TDR & upfront premium] which constitute the shortfall of 80%	Promoter
2	Cement falling in chapter heading 2523	Promoter
3	Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975	Promoter

# Rate of goods under RCM 9(4)

- Notn No 08/2019 CT(R)-

Sl No	Chapter	Description	Rate of Tax
452Q	Any chapter	Supply of any goods <b>other than capital goods and cement</b> , by an unregistered person to a promoter for construction of the project on which tax is payable by the promoter U/s 9(4)	9%
Overrides the any specific chapter or heading which is covered			

# Rate of services under RCM 9(4)

- Notn No 03/2019 CT(R)-

Sl No	Chapter	Description	Rate of Tax
39	99	Supply of <b>Input</b> services other than TDR, FSI, Upfront Premium- to the extent of 80%.	9%
Overrides the any specific chapter or heading which is covered			

# Development Rights Taxation

04/2019 – TDR,

# RCM U/s 9(3)

- Notn No 05/2019 CT(R)-Sec 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

# 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

# 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

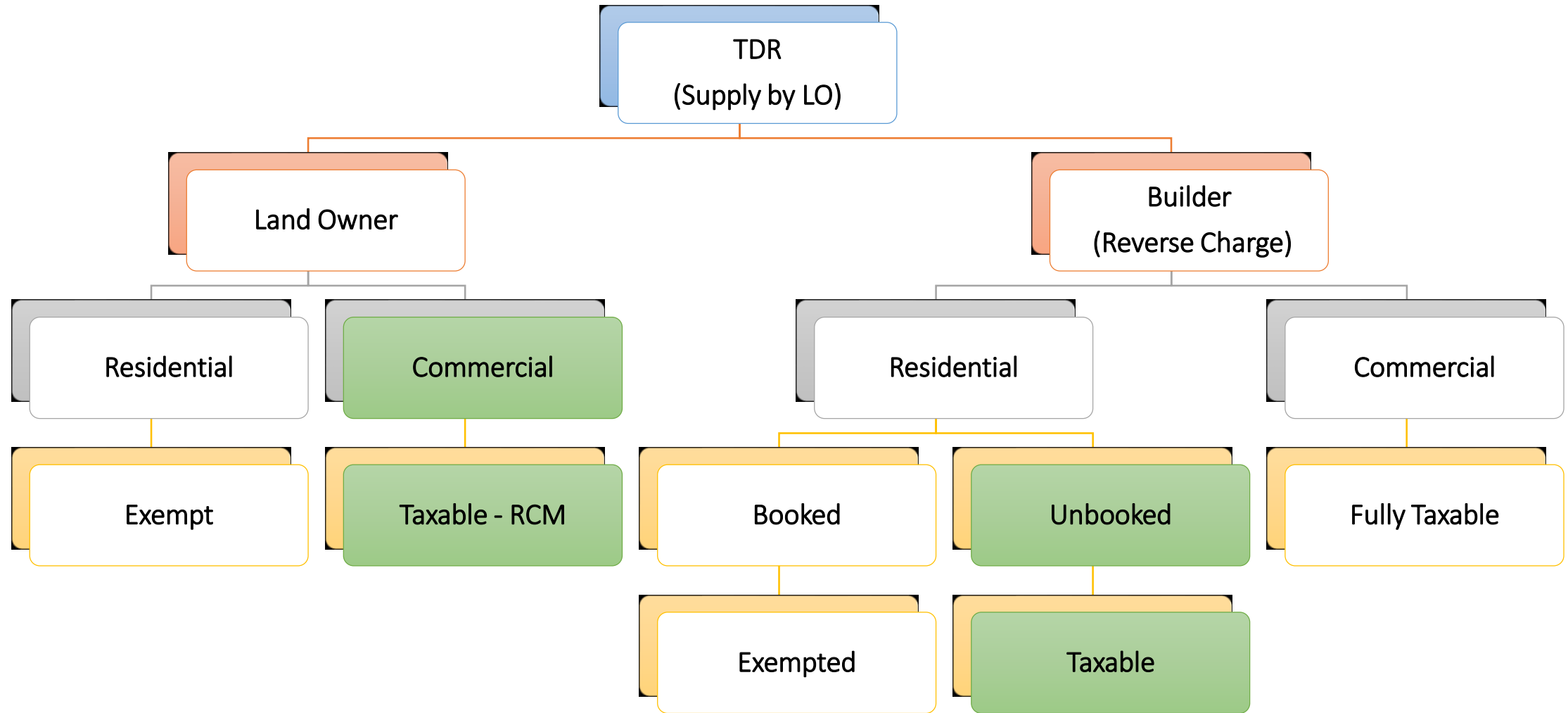
The said liability shall arise on

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

## 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*

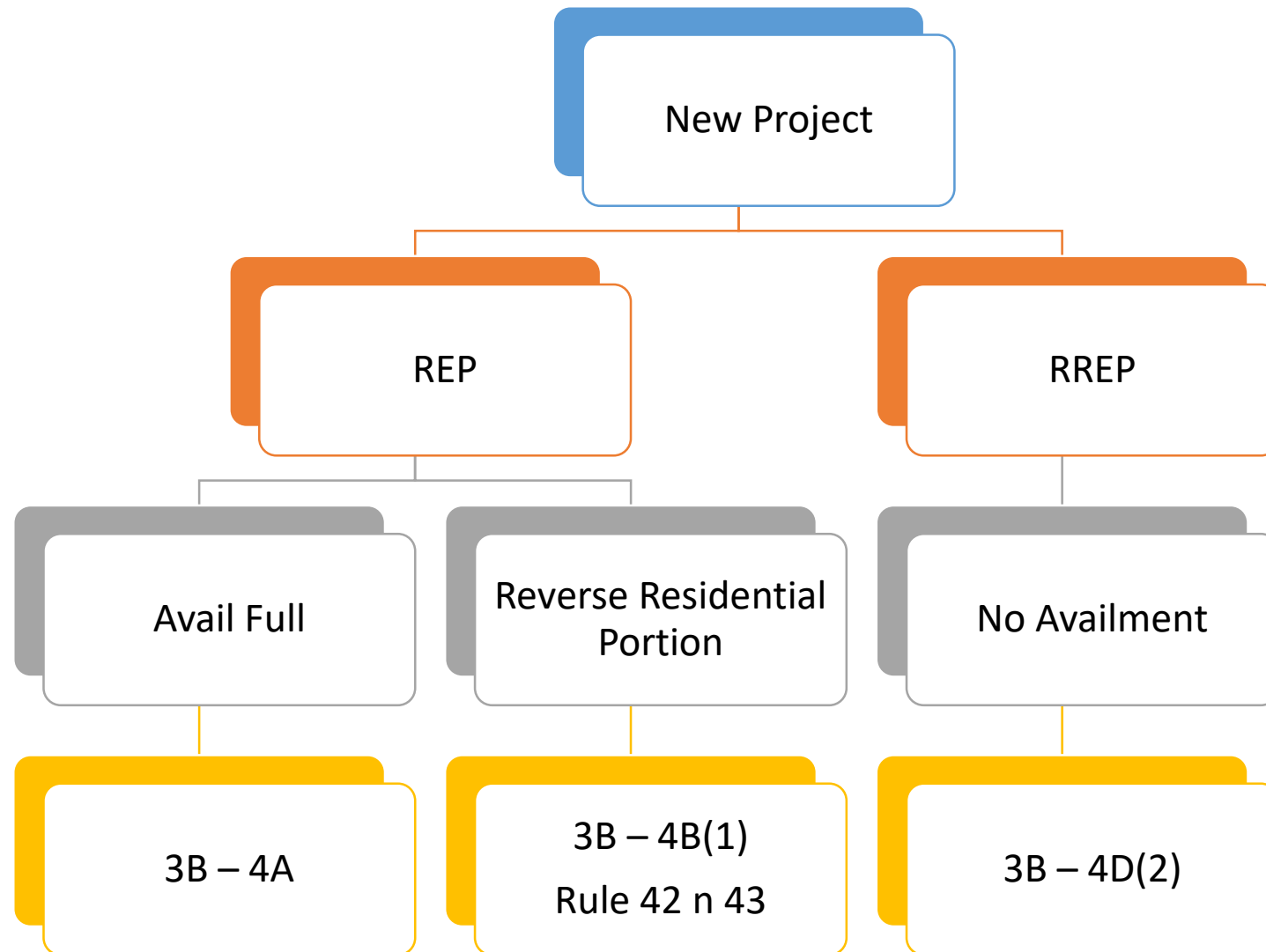
# Taxation of TDR



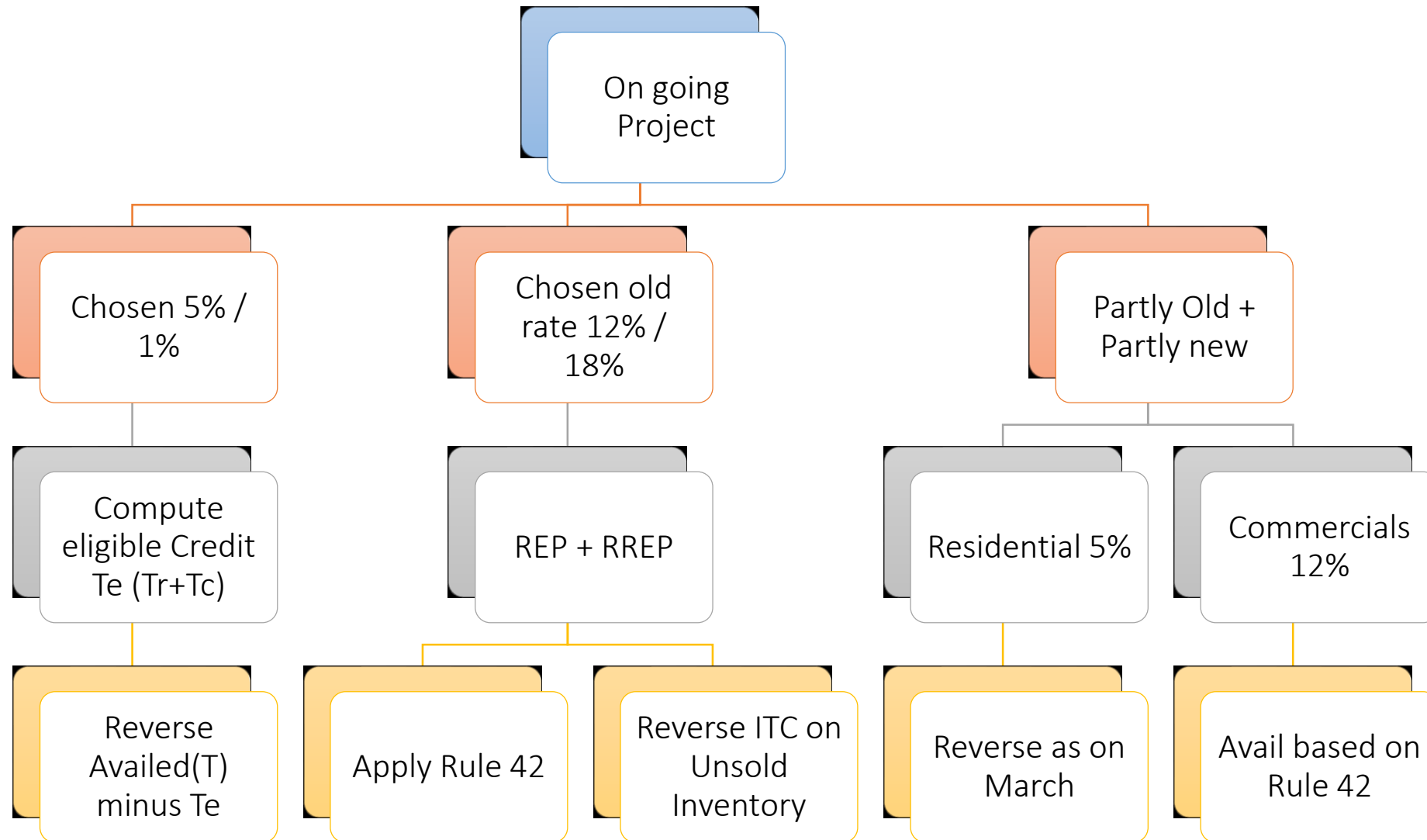
# For Ongoing Projects + New

04/2019 – TDR,

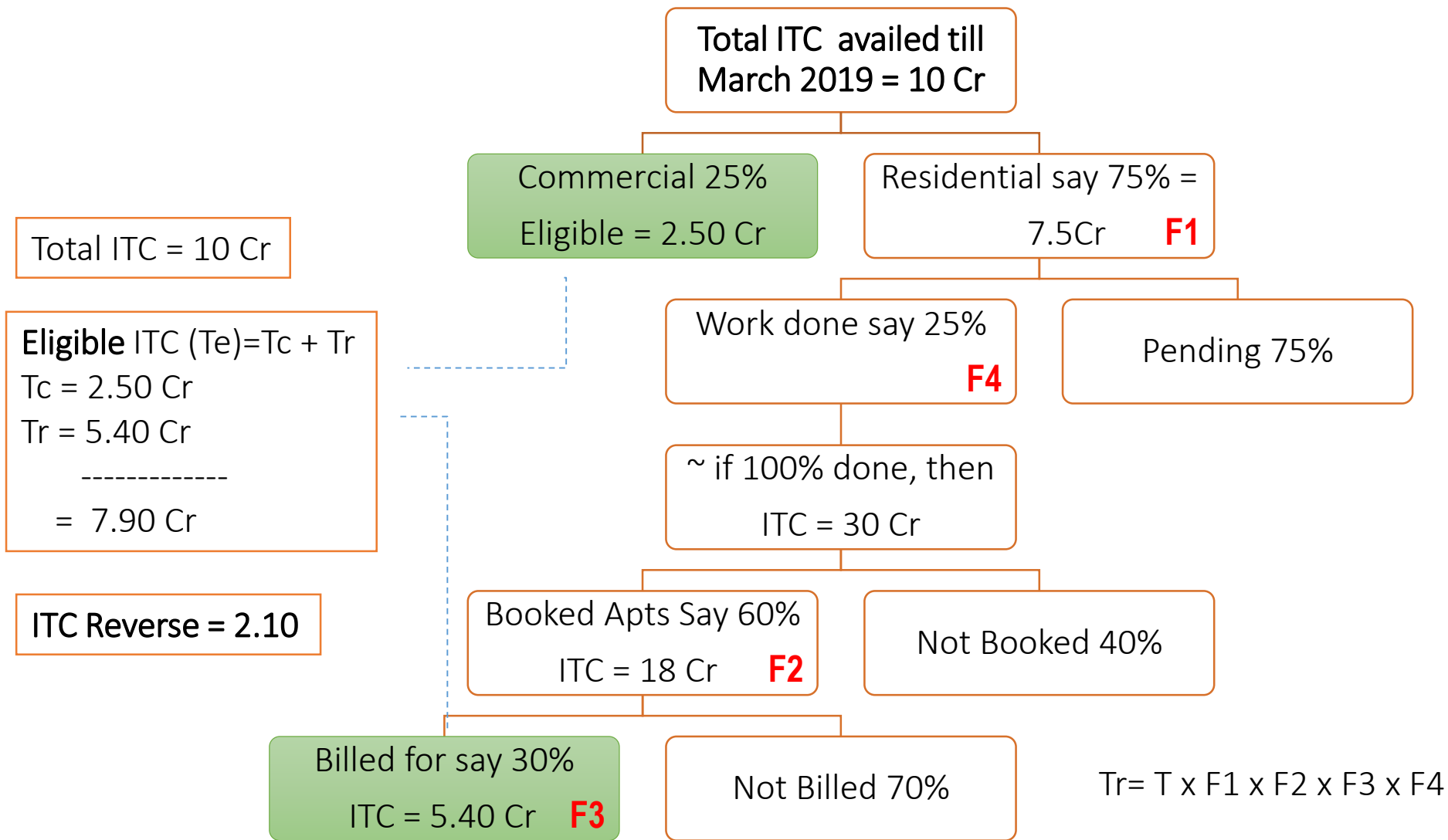
# ITC Reversal – New Projects



# ITC Reversal – On going Projects



# ITC Reversal – On going Projects



# Common Credit Reversal

Rule 42 n Rule 43

# On Going Project + Commercial

- Rule 42 – Project Credits

- All Credits to be considered as Common
- Project based reversal
- On the date of CC
- Reverse
  - Total Credit \* Unsold carpet area / total Carpet Area

- Rule 43 – Capital Goods

- Reverse Commonly used
- Used for Residential projects
- Used for Commercial projects unsold



# Miscellaneous

# Procedures

1. Check Filing of Form - Annexure IV the option of choice by **20<sup>th</sup> May 2019**
2. Unregistered Purchase calculation and payment
  1. Other than Cement by **June** of next Financial year @18%
  2. Cement Monthly – Applicable Rate
3. ITC Reversal for ongoing project under new scheme
  1. By **Sept 2019 – DRC 03**
  2. Instalment Scheme application in DRC 20
4. ITC Reversal for ongoing project under Old Scheme
  1. Application of Rule 42 & 43 on a monthly basis.
  2. Final computation and Reversal , by Sept of the subsequent year in which OC /CC received

# Things to know more in Specific

## Watch out for the future sessions

1. Taxation of Development Rights
2. Landowner Liabilities in GST
3. GST Applicability on Plotted Development
4. Taxation in case JD cancellation , incomplete Projects and Project Takeover
5. Computation of ITC Reversal on Transition
6. Reverse Charge Liability under GST
7. Reversal under Rule 42
8. Reversal under Rule 43
9. Checklist or Care to be taken in GST Audits

**Thank You**

For Clarifications, mail to  
[venu@vnv.ca](mailto:venu@vnv.ca)