

S&J **Shah & Jhalawadia**
Chartered Accountants



GST UPDATE

Recent Notifications and Circulars issued under GST

For the Real Estate Sector

From March-2019 to May-2019

YEAR

2019

GST Updates

From March-2019 to May-2019

This presentation contains all the amendments and clarifications issued during March-2019 to May-2019 under GST for the Real Estate Sector only.

This presentation has been prepared topic wise and references of relevant notifications and circulars have been given at the end of each topic.

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1. Important Terms

1. Promoter

Section 2(zk) of RERA Act, 2016

- i. a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, **for the purpose of selling** all or some of the apartments to other persons and includes his assignees; or
- ii. a person who develops land into a project, whether or not the person also constructs structures on any of the plots, **for the purpose of selling to other persons** all or some of the plots in the said project, whether with or without structures thereon; or
- iii. any development authority or any other public body in respect of allottees of—
 - a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or
 - b) plots owned by such authority or body or placed at their disposal by the Government, **for the purpose of selling all or some of the apartments or plots**; or
- iv. an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or
- v. any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is **developed for sale**; or
- vi. such other person who constructs any building or apartment **for sale to the general public**.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sell apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

2. Project

“Project” shall mean a Real Estate Project or a Residential Real Estate Project;

3. Real Estate Project (REP)

Section 2(zn) of RERA Act, 2016

"Real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto.

4. Residential Real Estate Project (RREP)

RREP shall mean a REP in which the carpet area of the commercial apartments is not more than 15 percent of the total carpet area of all the apartments in the REP;

5. Apartment

Section 2(e) of RERA Act, 2016

"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;

6. Apartment Booked on or before 31.03.19

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 installment 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;

7. Affordable Residential Apartment

- a) A residential apartment in a project which commences on or after 1st April, 2019, or in an ongoing project in respect of which the promoter has not exercised option in the prescribed form to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3 of Notification 11/2017 Central Tax (Rate) dated 28.06.17 (as amended) as the case may be,
 - having carpet area not exceeding 60 square meter in metropolitan cities or
 - 90 square meter in cities or towns other than metropolitan cities
 - and for which the gross amount charged is not more
 - than forty five lakhs rupees.

Gross amount shall be the sum total of; -

- Consideration charged for the services specified at item (i) and (ic) in column (3) against sl. No. 3 in Notification 11/2017 Central tax (Rate) dated 28.06.17 (as amended)
- 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.

- b) an apartment being constructed in an ongoing project under any of the schemes specified in sub-item (b), sub-item (c), sub-item (d), sub-item (da) and sub-item (db) of item (iv); sub-item (b), sub-item (c), sub-item (d) and sub-item (da) of item (v); and sub-item (c) of item (vi), against serial number 3 of Notification 11/2017 Central Tax (Rate) dated 28.06.17. above, in respect of which the promoter has not exercised option to pay central tax on construction of apartments at the rates as specified for item (ie) or (if) against serial number 3 of said notification as the case may be.

8. Metropolitan Cities

Metropolitan cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR) with their respective geographical limits prescribed by an order issued by the Central or State Government in this regard;

9. Ongoing Project

The term “ongoing project” shall mean a project which meets all the following conditions, namely-

- a) commencement certificate in respect of the project, where required to be issued by the competent authority, has been issued on or before 31st March, 2019, and it is certified by any of the following that construction of the project has started on or before 31st March, 2019:-
- an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
 - a chartered engineer registered with the Institution of Engineers (India); or
 - a licensed surveyor of the respective local body of the city or town or village or development or planning authority.
- b) where commencement certificate in respect of the project, is not required to be issued by the competent authority, it is certified by any of the authorities specified as above that construction of the project has started on or before the 31st March, 2019;
- c) completion certificate has not been issued or first occupation of the project has not taken place on or before the 31st March, 2019;
- d) apartments being constructed under the project have been, partly or wholly, booked on or before the 31st March, 2019.

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 31st March, 2019, if the earthwork for site preparation for the project has been completed and excavation for foundation has started on or before the 31st March, 2019.

10. Commencement Certificate

"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;

11. Development Works

"Development works" means the external development works and internal development works on immovable property;

12. External Development Works

"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;

13. Internal Development Works

"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;

14. Competent Authority

the term "competent authority" as mentioned in definition of "commencement certificate" and "residential apartment", 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;

15. Carpet Area

Section 2(k) of RERA Act, 2016

"Carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Explanation. —For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and

"exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;

16. Real Estate Regulatory Authority

The term “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;

17. Project other than Ongoing Project

“Project which commences on or after 1st April, 2019” shall mean a project other than an ongoing project;

18. Commercial Apartment

“Commercial apartment” shall mean an apartment other than a residential apartment;

19. Floor Space Index (FSI)

“floor space index (FSI)” shall mean the ratio of a building’s total floor area (grossfloor area) to the size of the piece of land upon which it is built.”

[Notification 03/2019 Central Tax (Rate) dated 29.03.2019. Applicable from 01.04.2019]

2. GST Rates for Real Estate Sector

A. Residential Real Estate Project (RREP)

Single project consist of both residential and commercial construction but commercial portion is not more than 15% (Calculation based on carpet area)

Sr No	Description	Project Status (New/ Ongoing) (Note-1)	Old Tax Rate Option exercised ? (Note-1)	Affordable /Non – Affordable	Residential /Commercial Portion	GST Rate (Note-2)	Relevant Sr No of Notification 11/2017 CGST (Rate) as amended by Notification 03/2019 CGST (Rate)
1	Carpet area not exceeding 60/90 sq meter and gross amount charged is not more than 45 lakhs	New	N.A.	Affordable (Note-3)	Residential	1%	3(i)
					Commercial	5%	3(ib)
2	Carpet area not exceeding 60/90 sq meter and gross amount charged is not more than 45 lakhs	On going	No	Affordable (Note-4)	Residential	1%	3(i)
					Commercial	5%	3(ib)
3	Carpet area not exceeding 60/90 sq meter and gross amount charged is not more than 45 lakhs	On going	Yes	Non affordable (Note-5)	Residential	12%	3(if) (ii)
					Commercial	12%	3(xii)
4	Carpet exceeding 60/90 sq meter and or gross amount charged is more than 45 lakhs	New	NA	Non-Affordable (Note-6)	Residential	5%	3(ia)
					Commercial	5%	3(ib)
5	Carpet exceeding 60/90 sq meter and or gross amount charged is more than 45 lakhs	On Going	No	Non-Affordable (Note-6)	Residential	5%	3(ia)
					Commercial	5%	3(ib)
6	Carpet exceeding 60/90 sq meter and or gross amount charged is more than 45 lakhs	On Going	Yes	Non-Affordable (Note-6)	Residential	12%	3(if)(ii)
					Commercial	12%	3(xi)

B. Real Estate Project other than Residential Real Estate Project

(REP other than RREP)

Single project consist of both residential and commercial construction but commercial portion is more than 15% (Calculation based on carpet area)

Sr No	Description	Project Status (New/ Ongoing) (Note-1)	Old Tax Rate Option is exercised? (Note-1)	Affordable /Non – Affordable	Residential /Commercial Portion	GST Rate (Note-2)	Relevant Sr No of Notification 11/2017 CGST (Rate) as amended by Notification 03/2019 CGST (Rate)
1	Carpet area not exceeding 60/90 sq meter and gross amount charged is not more than 45 lakhs	New	NA	Affordable (Note-3)	Residential	1%	3(ic)
					Commercial	12%	3(if) (i)
2	Carpet area not exceeding 60/90 sq meter and gross amount charged is not more than 45 lakhs	On going	No	Affordable (Note-4)	Residential	1%	3(ic)
					Commercial	12%	3(if) (i)
3	Carpet area not exceeding 60/90 sq meter and gross amount charged is not more than 45 lakhs	On going	Yes	Non affordable (Note-5)	Residential	12%	3(if) (ii)
					Commercial	12%	3(if)(i)
4	Carpet exceeding 60/90 sq meter and or gross amount charged is more than 45 lakhs	New	NA	Non-Affordable (Note-6)	Residential	5%	3(id)
					Commercial	12%	3(if)(i)
5	Carpet exceeding 60/90 sq meter and or gross amount charged is more than 45 lakhs	On Going	No	Non-Affordable (Note-6)	Residential	5%	3(id)
					Commercial	12%	3(if)(i)
6	Carpet exceeding 60/90 sq meter and or gross amount charged is more than 45 lakhs	On Going	Yes	Non-Affordable (Note-6)	Residential	12%	3(if)(ii)
					Commercial	12%	3(if)(i)

Notes

1. Project Status

Ongoing projects are having option to pay tax either as per old tax rates (applicable before 01.04.2019) or as per new tax rate (applicable w.e.f 01.04.19)

Here new projects means projects construction of which starts on or after 01.04.2019. New projects shall not have any option to pay tax as per old rate. Only new GST rates (applicable w.e.f 01.04.2019) shall be applicable to new projects

2. GST Rates

If consideration includes value of land, then 1/3 is deducted from total value. In simple language we can say that 1/3 abatement is available in GST rates. Above rates have been notified assuming that consideration consist of land also. Means GST rates have been calculated after deduction of 1/3 abatement.

[Notification 03/2019 Central Tax (Rate) dated 29.03.2019. Applicable from 01.04.2019]

3. In the case of **new project** where the carpet area of the residential apartment is not exceeding 60/90 sq. meters and gross amount charged is not exceeding than 45 lakhs, then such apartment in the project is affordable residential apartment.
4. In case of **Ongoing** Project where the carpet area of the residential apartment is not exceeding 60/90 sq. meter and gross amount charged is not exceeding 45 lakhs and the option to pay tax under old tax rate is **not exercised**, then such residential apartment falls under the Affordable Residential Apartment.
5. In case of **Ongoing** Project where the carpet of the residential apartment is not exceeding 60/90 sq. meter and gross amount charged is not exceeding 45 lakhs and the option to pay tax under old tax rate is **exercised**, then such residential apartment does not fall under the Affordable Residential Apartment.
6. Where the carpet area of the residential apartment in the project is exceeding 60/90 sq. meter **and or** gross amount charged is exceeding 45 lakhs, then such residential apartment does not fall under the Affordable Residential Apartment whether project is on-going project or new project

C. Ongoing Projects for Economic weaker, low cost house, Pradhan Mantri Awas Yojna, single residential unit etc (Please verify complete list given below the rates table)

[These projects (list given below) are mostly covered in RREP as per our opinion, as there is no objective of commercial construction]

Old Tax Rate Option Exercised? (Note-1)	Affordable /Non –Affordable	GST Rate (Note-2)	Relevant Sr No of Notification 11/2017 CGST (Rate) as amended by Notification 03/2019 CGST (Rate)
No	Affordable (if option to pay old tax rate is not exercised then such projects are affordable)	1%	3(i)
Yes	Non-Affordable (if option to pay old tax rate is exercised then such projects are non affordable)	8%	3(ie)

List of projects

- scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awas Yojana;
- Insitute development of existing slums using land as a resource, under the Housing for All (Urban)Mission/ Pradhan Mantri Awas Yojana (Urban);]
- “Beneficiary led individual house construction / enhancement” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;
- “Economically Weaker Section (EWS) houses” constructed under the Affordable Housing in partnership by State or Union territory or local authority or urban development authority under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);
- houses constructed or acquired under the Credit Linked Subsidy Scheme for Economically Weaker Section (EWS)/ Lower Income Group (LIG)/ Middle Income Group-1 (MIG-1)/ Middle Income Group-2 (MIG-2)” under the Housing for All (Urban) Mission/ Pradhan Mantri Awas Yojana (Urban);]
- a single residential unit otherwise than as a part of residential complex;
- low-cost houses up to a carpet area of 60 square metre per house in a housing project approved by competent authority empowered under the 'Scheme of Affordable Housing in Partnership' framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;
- low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under
 - the “Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;
 - any housing scheme of a State Government;
- low-cost houses up to a carpet area of 60 square metres per house in an affordable housing project which has been given infrastructure status vide notification of Government of India, in Ministry of Finance, Department of Economic Affairs vide F. No. 13/6/2009- INF, dated the 30thMarch,2017;]
- a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Service Tax Act, 2017.

D. 100% Commercial projects

- GST Rate is 12% whether ongoing or new projects as new GST rates not applicable to commercial projects

3. Conditions for New Rates of Tax

I ITC availability

ITC shall not be available

II Reversal of ITC

ITC will have to be reversed (by debit in ledger or by cash) equivalent to ITC attributable to construction in a project, time of supply of which is on or after 01.04.2019.

Calculation shall be in a manner prescribed in Annexure-1(REP other than RREP) and Annexure-II (RREP) of Notification 03/2019 Central Tax (Rate) dated 29.03.2019

III TDR or FSI

Transfer of development rights (TDR) or FSI by land owner- Promoter to developer-Promoter

- Developer-promoter shall pay tax on supply of construction of apartments to the landowner –Promoter
- Land-owner promoter shall be eligible for ITC if he further supplies such apartments before BU of first occupation whichever is earlier
- Such land owner pays tax which is not less than the amount of tax charged from him by developer-promoter

IV Registered Dealer

- 80% of value of Input and Input services used for supplying services shall be received from registered person
- However following services need not to be obtained from registered dealer
 - Development right
 - Long term lease of land
 - FSI
 - Electricity, high speed diesel, motor spirit, natural gas
- Input and input services on which RCM is paid, shall be deemed to have been purchased from registered person
- Any shortfall on 80% purchase from Registered Dealer will be liable for RCM @ 18%
- If cement is purchased from URD, then RCM will be applicable @ 28%. . Cement has to be purchased from RD only otherwise RCM shall be applicable even if 80% or more than 80% purchase is from RD
- Maintain project wise account of inward suppliers from registered and unregistered supplier and calculate tax payment on shortfall at the end of financial year and do the following process
 - Submit the form on common portal by end of quarter following the financial year
 - Liability on shortfall of inward suppliers from URD so determined shall be added to output tax liability in the month note later than June following the end of financial year

E.g. Liability on shortfall of inward suppliers from URD for the financial year 2019-20 has to be added to output tax liability within 30.06.2020

V Unavailed ITC

ITC not availed shall be reported every month as ineligible credit in GSTR-3b [Row No. 4(D) (2)]

VI Option

- In the case of ongoing project, the registered person shall exercise one time option in the form at Annexure IV to pay tax at old rates. It will have to be exercised by the 10/05/2019. Now it is extended to 20.05.2019. **{By Notification 10/2019 Central Tax (Rate) dated 10.05.2019}**
- If such option is not exercised by 20/05/2019, it shall be deemed that option to pay tax at new rate has been exercised
- Invoices for supply of the service can be issued during the period from 1st April 2019 to 20th May 2019 before exercising the option, but such invoices shall be in accordance with the option to be exercised.;

[Notification 03/2019 Central Tax dated 29.03.2019. Applicable from 01.04.2019]

4. GST Rate on Works Contract Services for Affordable Houses-Sub Contractor to Contractor

- Composite supply of works contract service by sub-contractor to developer-promoter of affordable residential apartments on which new rate of GST is applicable shall be liable to GST @ 12%
- Conditions for this rate
 - **Carpet area of affordable residential apartments minimum 50%**
Carpet area of the affordable residential apartments is not less than 50 per cent of the total carpet area of all the apartments in the project;
 - **Value of affordable residential apartments**
For the purpose of determining whether the apartments at the time of supply of the service are affordable residential apartments or not, value of the apartments shall be the value of similar apartments booked nearest to the date of signing of the contract for such composite supply of works contract
 - **Promoter will be liable for RCM if actual carpet area of affordable residential apartments turns out to be less than 50%**
In case it finally turns out that the carpet area of the affordable residential apartments was less than 50 per cent. of the total carpet area of all the apartments in the project, the recipient of the service, that is, the promoter shall be liable to pay such amount of tax on reverse charge basis as is equal to the difference between the tax payable on the service at the applicable rate but for the rate prescribed herein and the tax actually paid at the rate prescribed herein.

[Notification 03/2019 Central Tax (Rate) dated 29.03.2019. Applicable from 01.04.2019]

5. GST Rate on Services on RCM basis when there is shortfall from minimum purchase from Registered Dealer

Supply of 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) **by an unregistered person to a promoter** for construction of a project on which tax is payable by the recipient of the services under sub-section 4 of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), as prescribed in notification No. 07 / 2019- Central Tax (Rate), dated 29th March, 2019, published in Gazette of India.

[Notification 03/2019 Central Tax (Rate) dated 29.03.2019. Applicable from 01.04.2019]

6. TDR/FSI

A. Valuation

Where a registered person transfers development right or FSI (including additional FSI) to a promoter against consideration, wholly or partly, in the form of construction of apartments, the value of construction service in respect of such apartments shall be deemed to be equal to the Total Amount charged for similar apartments in the project from the independent buyers, other than the person transferring the development right or FSI(including additional FSI), nearest to the date on which such development right or FSI(including additional FSI) is transferred to the promoter, less the value of transfer of land, if any.

[Notification 03/2019 Central Tax (Rate) dated 29.03.2019. Applicable from 01.04.2019]

B. Exemption /Taxability on TDR/FSI

Usage for TDR/FSI	Supplier	Recipient	Exempt/Taxable
For residential construction by promoter	Any person	Promoter	Exempt Notification 04/2019- Central Tax (Rate) dated 29.03.19 w.e.f 01.04.2019 Note: Transfer of TDR/FSI for residential construction before 01.04.2019 is taxable
For Commercial construction by promoter	Any person	Promoter	Taxable Note: Transfer of TDR/FSI for commercial construction before 01.04.2019 is also taxable
For both residential and commercial	Any person	Promoter	$\text{Exempt GST} = \frac{\text{Total GST on TDR /FSI} \times \text{Carpet Area of Residential Apartments in the project}}{\text{Total Carpet Area of Residential and Commercial Apartments}}$ $\text{Taxable GST} = \text{Total GST On TDR/FSI} - \text{Exempt GST on TDR/FST}$

Note: This exemption is available only if there is Transfer of TDR/FSI on or after 01.04.2019. It is very much confirmed that those projects which begin on or after 01/04/2019, new rate (5%/1%) of GST only will be applicable. That means there is no question of exemption on transfer of TDR/FSI for ongoing project.

[Notification 04/2019 Central Tax (Rate) dated 29.03.2019. Applicable from 01.04.2019]

C. RCM on TDR/FSI

If any residential apartments remain un booked on date of completion certificate or first occupation, then **promoter** will have to pay tax on RCM basis as under

	GST on		Carpet area of residential apartments		
	on TDR/FST		in project which remains un booked		
RCM	=		-----	X	
	for residential		Total carpet area of residential apartments		
	apartments		in the project		

Notes

- I For calculation of GST as above , GST rate shall be 5% for non-affordable and 1% for affordable
- II The liability of such GST shall arise on the date of completion or first occupation of the project, as the case may be, whichever is earlier

[Notification 04/2019 Central Tax (Rate) dated 29.03.2019. Applicable from 01.04.2019]

7. GST exemption on the upfront amount payable in installments for long term lease of plots

GST exemption on the upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business under Entry No. 41 of Exemption Notification 12/2017 – Central Tax (R) dated 28.06.2017 is admissible irrespective of whether such upfront amount is payable or paid in one or more installments, GST exemption on the upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable for long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business under Entry No. 41 of Exemption Notification 12/2017 – Central Tax (R) dated 28.06.2017 is admissible irrespective of whether such upfront amount is payable or paid in one or more installments, **provided the amount is determined upfront.**

[Circular No.101/2019 dated 30.04.2019.]

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