

ISSUES VAT AUDIT – BUILDERS DEVELOPERS – CA DILIP PHADKE

Q.No.	Issue
1	Are the builders liable for vat audit?
2	What are the records to be maintained by builders? What should be comments in audit report?
3	For which period the builders have to file the returns? What should be the periodicity of returns to be filed? Whether qualification necessary?
4	What is the late fee, Interest & penalty u/s 29(2A) payable? What should be comment in the audit report?
5	What is administrative relief and how to get it? Any comments in report?
6	Whether tax becomes payable only on registration of agreement for sale of flat?
7	What is the point of taxation of builders (Receipt, agreement or completion)? How to show method followed in report?
8	Whether tax is payable on completed portion of building at the time of agreement? How to incorporate it in the audit report?
9	Which are the methods by which builders can pay the vat on flats? Any comments on cir. 18 T necessary?
10	Can the different methods of calculation applied for payment of Vat on different flats/ projects?
11	When the deduction of 30% to be taken – after deduction of land & subcontract or after deduction of subcontracts only?
12	Audit is to be done for which period and what is the date of submission of audit report?
13	The agreement to sell the flat was executed before 20.06.2006 and the building was under construction and possession is given after 20.06.2006. Whether the VAT will apply in such case because the agreements were executed prior to 20.06.2006? If yes how the sale value will be determined for calculation of VAT? Whether the amount received prior to 20.06.2006 will be exempt from VAT?
14	Whether the developers will be eligible to claim set-off of VAT paid on purchases? Any comments in audit report necessary?
15	The builders receive non-refundable deposits and other charges under the agreement such as electricity deposit, water charges, legal

	<p>charges, development charges etc. Whether such receipts will also form part of sale price for VAT? Any comments in audit report necessary ref. to circular 14T?</p>
16	<p>What will be the VAT implications where mere advances are received from buyers and agreement for sell is not executed with the buyer? Any comments in audit report necessary?</p>
17	<p>Whether a possession letter or letter from architect can be termed as completion of building. Who is the proper authority to grant the completion letter? Sometimes application for completion is made but completion is granted much later in such case whether date of application is considered to be the date of completion? Any comments in audit report necessary?</p>
18	<p>In the event where an agreement entered into is cancelled and said flat is sold to someone else and the agreement is again entered. What would be the VAT implication for the first sale and the second one? Any comments in audit report necessary?</p>
19	<p>If builder constructs the flat on the land which is owned by land owner and out of the constructed flats some flats are given to land owner and other flats are sold by builder to prospective buyer. Land owner sales the flat afterwards to buyers. In such instance what will be the point of taxation? Whether land owner is liable to pay the VAT on sales of flats which were handed over to him by builder? Any comments in audit report necessary?</p>
20	<p>Out of the three different methods of tax working, the builders/developers are given option to choose a method of their choice with a restriction that method should be applied to whole of the project concerned and no deviation is permitted. It may happen that in a project having execution period of more than 2 years, there may be possibility that some flats may have been sold before 31.03.2010 and some may be sold after 31.03.2010. In that scenario, whether the flat purchasers who have entered into an agreement after 31.03.2010 will be entitled to pay VAT to the developers @ 1% of Agreement Value? Any comments in audit report necessary?</p>
21	<p>Most of the development/redevelopment projects involve purchase of Transferable Development Rights (TDR) as these are related to land only, the cost of TDR should also be available as deduction from sale price, along with cost of land. Any comments in audit report necessary?</p>

22	<p>28. A scheme was launched in 2005-06. Major purchases of cement and steel were effected during the year 2005-06. The purchases effected after 20.06.2006 are much lesser as compared to those effected prior to it. Sales of flats were effected during 2007-08, 2008-09, 2009-10 etc. that is after 20.06.2006. Dealer is liable to pay tax on all these sales as there was no completion certificate. Even if he chooses to discharge liability by way of composition @ 5%, he is losing set-off of taxes paid prior to 20.06.2006. In the normal course this set-off is not admissible as per provisions of law. Whether such cases can be dealt with administratively? In addition to taxes whether there will be burden of interest for these old periods?</p> <p>Ans: Developer will not be entitled for set-off on purchase effected prior to 20/06/2006. Interest will be payable in addition to taxes paid.</p>
23	<p>If the buyer refuses to pay VAT more than 5% as per Government's order, does the developer have any right to demand more VAT?</p>
24	<p>If the builders/developers commences project of 100 flats and the said project is sold for three years 2007-08, 2008-09 and 2009-10, like 30 flats in first year, 40 flats in next year and 30 flats in third year. Whether builder/developer is allowed to claim land deduction proportionately in three years or in first year only?</p> <p>Any comments in audit report necessary?</p>
25	<p>41. At what point of time deduction has to be given in respect of value of undivided share in Land u/r 58(1A). Whether such value of land be deducted from first few installments till the value of land is covered and thereafter deduction for payment made (or to be made) to subcontractors and from the final installments reduction on account of other services (as per Table), or all these deductions have to be apportioned proportionately on all the installments (as and when amount received from the purchaser/s). And the periodic taxable value should be calculated accordingly</p> <p>Ans: The developer may apply the initial installments towards cost of land</p>

ISSUES OF 1% NOTIFICATION

1	Is this scheme qua project, qua contract/agreement or qua dealer?
2	The scheme envisages transfer of land / interest in land along with the construction. Normally, the land is transferred to the society. In such a case, is this scheme applicable?
3	At the time of booking flat, booking letter is given. Is composition amount payable on such receipts?
4	Are the agreements entered into after 1.4.2010 but payment(s) / part payment(s) received prior to 31.3.2010 eligible under the scheme?
5	If the builder has made purchases from out of Maharashtra will the builder entitled for 1% composition scheme?
6	The scheme provides that the dealer opting for the scheme cannot issue Form 409 to the sub-contractor. In past, Form 406 & 409 would have been issued. Would it be required to withdraw it? Thus the sub-contractor would charge the applicable VAT. Would it not amount to unjust enrichment to the Govt.?
7	If R.D. dealer has paid taxes in past as regular W/C or @5% (construction contract). Can they now switch over to new composition scheme? Can such dealer revise the earlier return and claim refund of the taxes so paid under those returns?
8	<p>If dealer has paid tax u/s 42(3) or u/r 58 for period up to 31.3.2010. Can he now opt for composition u/s 42(3A) for agreements entered into after 1.4.2010?</p> <p style="padding-left: 40px;">a) if yes, will it be eligible for set off (whatever it is) for period up to 31.3.2010?</p> <p style="padding-left: 40px;">b) how to compute liability up to 31.3.2010 & after 1.4.2010 ?</p> <p>On cancellation of booking – can the VAT collected @1% be refunded & claimed as goods return? Will period of 6 months apply? Will the fresh agreement entered in to after 1.4.10 for the same flat eligible under the scheme?</p>
9	How is the 'investor' transaction treated? At the time of booking flat, booking letter is given. Is composition amount payable on such receipts?
10	Is set off available on construction machineries, centering material, expenses (purchases) debited to Profit & loss A/c etc. where the property

	never gets transferred? Purchases prior to the effective date of Registration certificate? Can purchases against Form 'C' made for construction equipments, machinery etc.?
11	Can such a dealer receive goods as stock transfer against Form 'F'?
12	Can the sub- contractor issue Form 'C' for inter-state purchases?
13	Certificate issued by architects, chartered engineers & licensed surveyors for completion of work acceptable under the MVAT Act? What is the treatment for 'OC' issued for part of the building?
14	Can 'Demand Letter/ Tax invoice' issued by the builder?
15	Whether persons making payments to the Builders/developers are liable to deduct WCT TDS?
16	Is VAT payable on flats / premises given free of cost to the land owner / member of the existing societies / any other interested parties? If yes, on what amount? In the above case, will the notional value of 'displacement charges/ amount', rental paid for temporary accommodation added? Is this barter arrangement? What is 'valuable consideration'?