

**INTRICATE ISSUES OF WORKS  
CONTRACT UNDER MVAT VAT ACT,2002**

**AT  
SEMINAR  
AT  
WIRC OF ICAI**

**On  
17-05-2014**

**BY  
CA MAYUR R. PAREKH  
F.C.A./DISA(ICAI)**

# WORKS CONTRACT

## INTRODUCTION

### ■ Distinction between Works Contract and Sale

#### Sales Vs. Works Contracts

- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>➤ 'Sale' of 'Goods'</li><li>➤ Transfer of property and ownership</li><li>➤ Intention to buy and sell goods</li><li>➤ Goods are the essence of the contract</li><li>➤ Property passes under the contract</li></ul> | <ul style="list-style-type: none"><li>➤ Transfer of property in goods involved in the execution of works contracts</li><li>➤ No intention to purchase goods</li><li>➤ Agreement for one kind of property but transfer of another</li><li>➤ Property passes on theory of 'accretion' or 'accession'</li></ul> |
|---|--|

■ Intention of the parties & Object of the Transaction play a major role in determining whether it is a Works Contract or sale.

- Purchasing a car
- Purchasing clothes
- Buying a house
- Buying a book
- Buying a tyre
- Buying machinery
- Purchasing paint

- Repairs of a car
- Stitching clothes
- Constructing a house
- Printing of stationery
- Re-treading of tyre
- Setting up a plant
- Painting of building

# INTRODUCTION (Contd.)

- Types of Contract
  - Contracts can be divisible or indivisible. Where the value of materials can be identified separately, it is a Divisible Contract.  
e.g. Sales and after sales service contract.
  - When Contract awarded for a lump sum amount, it is an Indivisible Contract.  
e.g. turnkey contract
  - Terms of the Contract plays an important role in deciding whether Works Contract or not.

# PROVISIONS OF WORKS CONTRACT UNDER MVAT ACT

- **“Works contract” defined w.e.f. 20.6.06.**
- **Means “works contract namely, an agreement (express or implied) for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, filling out, improvement, modification, repair or commissioning of any movable or immovable property”.**

# Taxable Event

The taxable event would be the transfer of property in goods which takes place during the execution of works contract. The goods transferred or delivered simply as it is at site of the contractee it will not attract the tax, but when such goods are used in the execution of works contract, taxability arises. The tax is payable at that time. In other words, in case of execution of works contract, transfer of property in goods takes place not before or after, but during the course of the execution, on the principle of accession, accretion or blending of the property. The tax is payable on the value of the goods so transferred during the execution of the works contract.

# Determination of Turnover of Sales:

**Under the MVAT Act, the Contract Price or Contract Value is not to be considered as turnover of sales. It is defined to mean amount paid or payable to a dealer for transfer of property in goods involved in the execution of works contract. In other words now the cost of goods, expenses incurred thereon and profit earned will be treated as Sales Price. Since the State has got no power to levy tax on expenses, labour and services, involved in the execution of works contract Rule 58 is provided, for such determination of sales price.**

# How to Determine Sales Price under Works Contract

## □ Three Different Methods

- ❖ Normal Method
- ❖ Table Method
- ❖ Composition Method



# DETERMINATION OF SALE PRICE FOR WORKS CONTRACTS – (RULE 58)

[Gannon Dunkerly & Co. V/s State of Rajasthan (1993)  
88 STC 204 (SC)]

<b>Total Contract Value (Value of Entire Contract)</b>	<b>Say 100</b>
<b><u>Less: Allowable Deductions:</u></b>	
1. Amounts paid by way of price for sub-contract	XXX
2. Labour & Service Charges for execution of WC	XXX
3. Planning, Designing & Architect's fees	XXX
4. Hire Charges or otherwise, for obtaining Machinery & Tools for WC	XXX
5. Cost of Consumables in which there is no transfer of property e.g.: Water, Electricity, Fuel, etc.	XXX
6. Cost of Establishment relatable to supply of labour & services	XXX
7. Similar other expenses relatable to supply of Labour & Services	XXX
8. Profit relatable to supply of Labour & Services	<u>XXX</u> Say 33
<b>Balance Sales Price ----- Deemed Sale Value of Goods involved in execution of WC, in which transfer of property takes place</b>	<b>= ..... 67 9</b>

## DETERMINATION OF S.P. FOR WC (CONTD...)

1. Where the contractor has not maintained accounts which enable proper evaluation of different deductions as above or where the Commissioner finds that the accounts are not sufficiently clear or intelligible, then the Contractor or Commissioner may in lieu of deductions as above, deduct a Lumpsum deduction as provided in the Table u/r 58, to determine the S.P. of goods involved in WC.

TABLE

<b>Serial No.</b>	<b>Type of Works contract</b>	<b>*Amount to be deducted from the contract price (expressed as a percentage of the contract price)</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
<b>1</b>	<b>Installation of plant and machinery</b>	<b>Fifteen per cent.</b>
<b>2</b>	<b>Installation of air conditioners and air coolers</b>	<b>Ten per cent.</b>
<b>3</b>	<b>Installation of elevators (lifts) and escalators</b>	<b>Fifteen per cent.</b>
<b>4</b>	<b>Fixing of marble slabs, polished granite stones and tiles (other than mosaic tiles)</b>	<b>Twenty five per cent.</b>
<b>5</b>	<b>Civil works like construction of buildings, bridges, roads, etc.</b>	<b>Thirty per cent.</b>
<b>6</b>	<b>Construction of railway coaches on under carriages supplied by Railways</b>	<b>Thirty per cent.</b>

<b>7</b>	<b>Ship and boat building including construction of barrages, ferries, tugs, trawlers and dragger</b>	<b>Twenty per cent.</b>
<b>8</b>	<b>Fixing of sanitary fittings for plumbing, drainage and the like</b>	<b>Fifteen per cent.</b>
<b>9</b>	<b>Painting and polishing</b>	<b>Twenty per cent.</b>
<b>10</b>	<b>Construction of bodies of motor vehicles and construction of trucks</b>	<b>Twenty per cent.</b>
<b>11</b>	<b>Laying of pipes</b>	<b>Twenty per cent.</b>
<b>12</b>	<b>Tyre re-treading</b>	<b>Forty per cent.</b>
<b>13</b>	<b>Dyeing and printing of textiles</b>	<b>Forty per cent.</b>
<b>14</b>	<b>Annual maintenance contract (w.e.f. 08-09-06)</b>	<b>Forty per cent.</b>
<b>15</b>	<b>Any other works contract up to 07-09-06 w.e.f. 08-09-06</b>	<b>Twenty per cent. Twenty Five per cent</b>

❖ **Whether Standard deduction should be consider before or after sub-contractors value deduction ?**

❖ **The value of goods so arrived at shall be the S.P. relating to the transfer of property in goods involved in execution of WC, for the purposes of levy of tax @ 0% / 1% / 5% / 12.5% as applicable.**

- **Whether Rule 58 - Table Method is mandatory?**
- **When less expenditure is incurred for labour and services then whether deduction as per table will apply?**
- **Whether G. P. Method to be Allowed to arrive at value of materials used during execution of Works Contract while conducting VAT Audit ?**

# COMPOSITION SCHEME

- Effective from 20.6.06
- Two types of composition Rate
  - Construction contract – 5%
  - Other contract – 8%

■ COMPOSITION SCHEME FOR WORKS CONTRACTS –  
[Sec. 42(3)]

Option to Contractors – **Contract-wise**

Total Contract Value XXXXXXXX

Less :Sub-Contracts Value XXXXXXXX

Balance contract value **LIABLE @ 5%/8%** XXXXXXXX

**❑ Whether under the MVAT Act,2002, a works contractor opting for composition scheme is entitled to reimbursement of taxes as per the provisions of rule 57(1) when Price is including Composition sum?**

**❑ The contractor has opted to discharge works contract tax (VAT) liability under composition scheme. He has charged composition sum (VAT) and service tax on basic selling price separately in his Tax Invoice. Whether it is correct or composition sum (VAT) is payable on the basic selling price plus service tax?**



## Explanation Added to Rule 58(1) and Sec 42(3)(ii)- Table Method and Composition Method

- Vide amendment effected on 20.6.2006, in sub clause (ii) of the Explanation to section 42(3) and Explanation Added to Rule 58(1) it is provided that the deduction towards sub contract should be the quantum of price on which tax is paid by the sub-contractor, if any, and the quantum of tax separately charged by the contractor if the contract provides for separate charging of tax or the aggregate value of the goods on which tax is paid and the quantum of said tax paid by the sub-contractor or the sub-contract value on which tax by way of composition is paid by the sub-contractor, as the case may be. What will be repurcussion of above amendment?

□ Suppose Total Contract Value is Rs.10 Lacs. Out of that Contract worth Rs.8 lacs was Sub-Contracted. Sub-Contractor has raised bill to Main Contractor of Rs.8 lacs plus composition Sum 64,000.similarly Main Contractor has raised bill to Principal of Rs.10 lacs plus Composition Sum 80,000. In such case when Main Contractor will work out his Vat liability he will workout as under:

Total Contract Value	10,00,000
Add: Composition Sum	<u>80,000</u>
Total Value	10,80,000
Less : Sub-Contract Value	<u>8,64,000</u>
Taxable Value	2,16,000
Less :Tax Collected	<u>16,000</u>
Net Taxable Turnover	<u>2,00,000</u>
Tax Payable @ 8 %	16,000

## Return Form under VAT

### ➤ Form 233

When Dealer is doing Both Trading And Works Contract Activity

➤ Form 233 and not Form 231 to be filed in the said months

## Construction contract

In exercise of the powers conferred by clause (i) of the **Explanation** to sub-section (3) of section 42 of the Maharashtra Value Added Tax Act, 2002 [Mah. IX of 2005], the Government of Maharashtra hereby notifies the following works contracts to be the 'Construction Contracts' for the purposes of the said sub-section, namely (w.e.f.20-06-2006) :-

- (A)** Contracts for construction of,--  
Buildings, Roads, Runways, Bridges, Railway Overbridges, Dams, Tunnels, Canals, Barrages, Diversions, Rail tracks, Causeways, Subways, Spillways, Water supply schemes, Sewerage works, Drainage, Swimming pools, Water Purification plants and Jettys.

**(B)** Any works contract incidental or ancillary to the contracts mentioned in paragraph (A) above, if such work contracts are awarded and executed before the completion of the said contracts.

**□ When does property pass in the execution of Works Contract ? In a construction contract cement, water, sand, stones are mixed and concrete is made. Whether property passes in cement, water etc or in concrete? At what rate and on which items VAT is to be paid?**

**❑ When Contract price is consolidated under contract but in Annexures of the contract details of BOQ for Materials and Labour given and bill is also to be prepared by giving materials and labour details separately , Whether it is Works Contract and Provisions of Works contract as well as WCT TDS will apply ?**

**❑ When Builder himself construct the Building and award various contracts like Plumbing , Paintings , Electrification etc, whether such Contracts can be considered as incidental and ancillary contracts and treated as Construction Contracts liable to Vat @ 5% ?**

# REPAIRS & MAINTENANCE CONTRACT

**❑ In a construction contract, contract is awarded for construction of compound wall of a building which is already being constructed. Similarly contract is awarded to another person for erection of gate and other arches of metal etc, whether such contract is construction contract attracting 5% tax?**



□ Let us take an example of repairs contract and decide whether in the given situations it will be treated as construction contract and liable to vat @ 5 % or not.

1. Normal repairs where entire building is new building and work involves removing and making of plaster, plumbing, painting.
2. Slum rehabilitation project - where new floors on existing building and renovate with amenities in the old building

## Input Credit:

- Set off on goods used for works contract –
- WC- opted for Normal Method and Table Method – Full Set Off
- WC- opted for Composition scheme ( 8%) – Set Off shall be reduced by 9/25 i.e. 36% ( i.e. allowable only 64%) – Rule 53(4)
- WC- opted for Composition scheme (Construction Contract) @5% - Set Off after retention @ 4% ( w.e.f. 20-06-2006). – Rule 53(4)



□ **When Materials Supplied by the Principal/Contractee and forms part of the Contract Price - Implications**

## Section 57

### **Agreement to defeat the intention and application of the Act to be void:-**

(1) If the Commissioner is satisfied that an arrangement has been entered into between two or more persons or dealers to defeat the application or purposes of this Act or any provision of this Act, then the Commissioner may by order declare the arrangement to be null and void as regards the application and purposes of this Act. He may, by the said order, provide for increase or decrease in the amount of tax payable by any person or dealer who is affected by the arrangement whether or not such dealer or person is a party to the arrangement, in such manner as the Commissioner considers appropriate so as to counter act any tax advantage obtained by that dealer from or under the arrangement.

## Form 704

### Specific Concentration Required of VAT Auditor

- **Schedule-3**
- **Annexure C**
- **Annexure D**
- **Part-1- Certification as well as credit to be considered for WCT TDS Certificates not received**

# CONSTRUCTION INDUSTRIES

## □ Builders and Developers Liability

➤ **LARSEN & TOUBRO LIMITED AND ANOTHER  
VS.STATE OF KARNATAKA AND ANOTHER ON 26-  
09-2013-SUPREME COURT JUDGEMENT**

# RULE 58(1A)

- ***Deduction for Cost of Land* from Total Agreement Value (Retrospective w.e.f. 20<sup>th</sup> June 2006)**
- **Applicable when in the course of execution of Works Contract, land/Interest in Land is also conveyed to the buyer along with transfer of Property in goods.**
- **Method of Deduction prescribed as per value determined by Bombay Stamp office (Ready Reckoner ) as applicable on the 1st January of the year in which the agreement to sell the property is registered**

**Proviso : Provided that, after payment of tax on the value of goods, determined as per this rule, it shall be open to the dealer to prove before the Department of Town Planning and Valuation that the actual cost of the land is higher than that determined in accordance with the Annual Statement of Rates (including guidelines) prepared under the provisions of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995. On such actual cost being proved to be higher than the Annual Statement of Rates, the actual cost of the land will be deducted and excess tax paid, if any, shall be refunded.**

## Rule 58(1B)

“(1B)(a) Where the dealer undertakes the construction of flats, dwellings, buildings or premises and transfers them in pursuance of an agreement along with the land or interest underlying the land then, after deductions under sub-rules(1) and (1A) from the total contract price, the value of the goods involved in the works contract shall be determined after applying the percentage provided in column (3) of the following TABLE depending upon the stage at which the purchaser entered into contract.



Sr No. (1)	Stage during which the developer enters into a contract with the purchaser	Amount to be determined as Value of goods involved in Works contract
(a)	Before issue of the Commencement Certificate.	100%
(b)	From the Commencement Certificate to the completion of plinth level.	95%
(c)	After the completion of plinth level to the completion of 100% of RCC framework.	85%
(d)	After the completion of 100% RCC framework to the Occupancy Certificate	55%
(e)	After the Occupancy Certificate	NIL %

**(b) For determining the value of goods as per the Table of clause (a), it shall be necessary for the dealer to furnish a certificate from the Local or Planning Authority certifying the date of completion of the stages referred above and where such authority does not have a procedure for providing such certificate then such certificate from a registered RCC consultant.**

**Rule-(1C) : If the dealer fails to establish the stage during which the agreement with the purchaser is entered, then the entire value of goods as determined after deductions under sub\rules (1) and (1A) from the value of the entire contract, shall be taxable.**

## Let's try to understand the above Rule by an example

**Working For Rule 58(1B) , for contractor following Rule 58(1) Table method**

<b>Agreement Value</b>	<b>100</b>
<b>Less : Land cost</b>	<b><u>60</u></b>
<b>Balance</b>	<b>40</b>
<b>Less : Subcontract</b>	<b><u>20</u></b>
<b>Balance</b>	<b>20</b>
<b>Less : 30% dedn. as per Table</b>	<b><u>6</u></b>
<b>Balance</b>	<b><u>14</u></b>

**Taxable value of goods, say 85% = 11.9 ( if Developer has entered into a contract with the purchaser at the stage after the completion of plinth level to the completion of 100% of the RCC framework)**

## **□ Composition Scheme for Builders and Developers**

**As per the Notification No.VAT-1510-Cr-65-Taxation-1,Dated 09-07-2010 the composition Rate notified at 1% For any Agreement for Sale Registered on or after 01-04-2010.**

# Vat Audit Report Submission Date For F.Y.12-13

- ❖ Trade Circular 1T and 2T of 2014 Dt.04-01-14 and 07-01-14 date extended till 15-02-14
- ❖ Trade Circular 6T of 2014 Dt.21-02-14 date extended till 31-03-14
- ❖ Trade Circular 10T of 2014 Dt.29-03-14 date extended till 30-04-14
- ❖ Trade Circular 7T and 12T of 2014 Dt. 21-02-14 and 17-04-14 – Dealer should revise the returns from 20-06-06 to 31-12-13 based on amended Rule 58(1A) as well as New Rule 58(1B) till 30-04-14 and Clarification given by Sales Tax Department for queries raised by Trade and Associations for computation of tax liability of developers

□ “A” is in the business of development of premises (residential and commercial). It is registered under MVAT – though currently A is filing 6 monthly VAT returns and complies with Tax deduction provisions under section 31 of the MVAT Act.

A new commercial project has been proposed to be developed in Suburban Mumbai. In this regard, the assessee has entered into a composite contract with a registered dealer whereunder, the contractor shall be responsible to demolish an existing structure, clear all the *raabit*, dispose the same in accordance with the relevant regulations and handover clear ground for further action by the builder. Further as per the terms all the material namely raabit, steel and iron rods, wood and other materials which is extracted or found in the course of the said demolition process shall belong to the contractor and the builder shall not claim any of such material. The contract value shall be Rs 71 lakhs for the whole premises which shall be subjected to all tax deduction under Income Tax, VAT or any other taxes and duties whichever may be applicable.

**1. Whether the contract is a Works contract liable for VAT?**

2. What is the liability of vat on the Builder as well as contractor under MVAT which arises due to materials carved out from demolition process under the said contract?

3. Whether the provisions of TDS under MVAT are applicable?

## □ Redevelopment Case

□ A developer enters into an agreement under SRA scheme whereby the existing occupants are given 400sq ft each free and on the balance available land, a tower is constructed and also an additional TDR is bought to increase the number of floors of the new building.

Whether tax is payable on the transfer of property to the existing occupant?

If no, whether the cost of construction pertaining to existing occupant can be added to the cost of construction of new tower and whether for the payments of tax under Works Contract the said cost will be allowed?

## Negative list w.r.t. set off shall apply - Rule-54

- Purchases effected by the employer by way of works contract where the Contract Results in immovable property. (Rule-54g) [Other than plant & machinery w.e.f. 8.9.06]
- From 8.9.06 Purchases of any goods by a dealer, the property in which is not transferred (whether as goods or some other form) to any other person, which are used in the erection of Immovable property other than plant & machinery. (Rule-54h)



- M/s. Resins Ltd. has spent Rs. 42,00,000 + VAT @ 5% + Service Tax @ 12.36% on 33% value for Construction of Road inside the Factory Premises.
  
- a) Whether M/s. RPL is eligible to claim VAT Input credit on the construction of roads ?
  
- a) Would it make any difference if M/s. Resins Ltd. itself has purchased materials and give labour contract for construction of New Roads and capitalised in the Balance Sheet ?

**□ Under painting contract when paints applied to building which was already being constructed, Whether set off will be available or will it hit by Rule 54-G ?**

**□ Whether Purchases made by works contractor will hit by Rule 54-H ?**

# Main contractors & Sub contractors

- Relationship shall be deemed to be that of the Principal & Agent [Sec45(4)].
  1. Their liability to pay tax shall be joint & several.
  2. Deductions will be given to either, based on producing prescribed Certificate/Declaration i . e. for main contractor Form No: 406 & 409 to be issued and for sub-contractor Form No: 407 & 408 to be issued.
- VAT Auditor Should check respective Forms and should allowed the claims accordingly otherwise suitable Remarks should be given in Form 704.
- When Sub – Contractor is Unregistered whether deduction available to the Main Contractor ?

■ The principal has awarded contract worth Rs.1crore to main contractor and in turn the same contract has been awarded by the main contractor to sub-contractor for Rs. 90 lakhs . Sub-Contractor has discharged tax liability on Rs. 90 lakhs under say either under Normal method or Table method. Whether main contractor is liable to discharge liability on Rs.10 lakhs ?

□ Will the answer differ if Sub-Contractor has discharged tax liability under Composition Scheme ?

**□ A main contractor has accepted contract of Rs.10 lacs . Out of which he has subcontracted contract of Rs.4 lacs . Main contractor has opted to pay composition sum on whole contract value. Whether sub contractor can claim setoff on materials purchased and used in the execution of works contract? If yes, whether the assessing officer can apply retention on set-off if the main contractor has paid by way of composition tax ?**

Total contract value is Rs.1 crore . Out of that Main Contractor has given contract of Rs. 60 lacs to Registered Sub-Contractor. if main contractor decided to discharged tax liability on whole contract value **and issue certificates in form 406 & 409 to the sub contractor** . Whether Main Contractor is entitled to claim set off on purchases made by Sub-Contractor or only Sub-Contractor can claim Set-off on Purchases made by him ?

Will the answer differ if the Sub-Contractor is Un-registered ?

□ In case of sub contract the sub contractor has taken over to discharge liability on his part. Therefore the main contractor is discharging liability on the balance value. However the main contractor charges tax on full amount to the employer. Whether can it be said that there is excess collection by the main contractor and hence such excess collection is liable to forfeiture ?

□ In case of Works Contract whether Main Contractor Instead of claiming Sub-contractor's value as deduction from total contract value, can he treat the same as purchases and claim Input Credit under the provisions of MVAT Laws ?



# ON GOING WORKS CONTRACTS

## [Sec. 96(1)(g)]

- What is ongoing contract?
  - Entered into up to 31.3.05
  - Execution started before 1.4.05 and also continued after 1.4.05
- Vide amendment made as per the ordinance no. VI of 2006 and effective from 1-4-05 Liability to be discharged based on the system adopted under the Works Contract Act, 1989
- No set off on corresponding purchases
- VAT Auditor should take care while verifying ongoing contract calculation. As some dealers are treating contracts as ongoing even though awarded after 01-04-05 and still continued.

## TDS UNDER VAT – [ Sec. 31 / Rule 40]

- **TDS provisions applicable to payments made for Works Contracts, or other purchases, as notified.**
- **No such Deduction shall be made where the amount or the aggregate of amount payable to a dealer by such employer is less than rupees 5 lacs during any year**

# Person notified to deduct tax

Serial No	Classes of Employers	Amount to be deducted
1	The Central Government and any State Government,	<u>Two percent</u> of the amount payable as above In the case of a contractor who is a registered dealer and <u>Five percent (from 1-4-12)</u> in any other case.
2	All Industrial, Commercial or Trading Undertakings, Company or Corporation of the Central Government or of any State Government, whether set up under any special Law or not, and a Port Trust set up under the Major Ports Act, 1963	-----“-----
3	A Company registered under the Companies Act, 1956	---“---
4	A local authority, including a Municipal Corporation, Municipal Council, Zilla Parishad, and Contonment Board,	-----“-----
5	A Co-operative Society excluding a Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960	-----“-----

Serial No	Classes of Employers	Amount to be deducted
6	A registered dealer under the Maharashtra Value Added Tax Act, 2002	-----“-----
7	An Insurance or Finance Corporation or Company, and any Bank included in the Second Schedule to the Reserve Bank of India Act,1934, and any Scheduled Bank Recognized by the Reserve Bank of India.	-----“-----
8	Trusts, whether public or private	---“---
9	A Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960 which has awarded contracts of value aggregating to rupees 10 lakhs or more in the previous year as the case may be, in the current year	---“---
10	Societies registered under the Societies Registration Act, 1860 (W.E.F.01-06-2012)	---“---

# Important Points To Be Noted For TDS Under VAT:

- **On advance payment tax is only to be deducted when it is adjusted against amount payable.**
- **Contractor may apply in Form No.:410 to his Assessing Authority for NO T.D.S. only if it is not a works contract.**
- The quantum of such deduction shall not exceed the quantum of tax payable towards such works contract.
- **No tax to be deducted on amount of tax as well as Service Tax, if any, separately charged by the contractor.**
- **No tax is to be deducted from the payments made to sub contractor.**
- **TDS credit can be available in the month in which TDS certificate was received. [section 31(4)(w.e.f.20-6-06)]**

- Important Points For TDS Contd.....
- No tax to be deducted on Purchases covered by section 8 of the VAT Act [Section 31(1) (b) (i)]
  - Sales/Purchases outside the State
  - Sales/purchases in the course of interstate trade and commerce
  - Sales/ purchase in the course of import of goods or the export of goods
- If Tax is not deducted by Contractee , still TDS is payable. [Section-31(5)]
- Interest is payable for late payment of TDS.

## TDS – important due dates

- TDS payment – By 21st of next month by the Contractee in Challan No.: MTR-6 .
- Prescribed TDS certificate – Issue in Form No: 402 immediately on deduction / payment.
- Register of TDS to be made by the Contractee in Form No: 404
- Annual TDS return in Form No. 424 is required to be within three months from the end of relevant accounting year.
- Unregistered employers who have deducted tax at source, on payments made to the contractors, are required to file Chalan No. 210 along with demand draft/ pay order and photocopy of his PAN card before the Deputy Commissioner of Sales Tax (E-810), Business Audit(2), Vikrikar Bhavan , Mazgaon for Mumbai location and concerned Sales Tax Officer, Returns Branch for rest of the Maharashtra locations (Refer Circular No.42T of 2008 dt.26.12.2008).

**❑ VAT Auditor to check WCT TDS certificates Received/Not Received as well as Issued.**

❑ VAT Auditor to check Register of WCT TDS deducted and paid in Form 404 and if not maintained to be reported accordingly.

**❑ VAT Auditor To check details of Annexure-C and Annexure-D and consider credit of WCT TDS in Part-1 for which certificates not received**



**❑ If Private Ltd Co. who is Registered dealer in Mumbai having additional place of business in Nashik gives a construction contract to the contractor for consideration of Rs.10 lacs but the consideration is payable on completion of portion of work i.e. Milestone basis . The contract is awarded in Financial year 2012 - 2013. The work was done in Financial year 2012-2013 was Rs.7.50 lacs. Out of which amount paid to the Contractor during the year was Rs.4 lacs and for balance Rs.3.50 lacs company has made provision and shown as amount payable to the Contractor in their books. Whether Company has to deduct WCT TDS since amount paid was less than Rs.5 lacs during the year?**

❑ Consider a Situation that a contract of Rs.10 Crores is subcontracted for a sum of Rs.9 crores. The subcontractor undertakes to make the payment of taxes. The contractee deducts TDS of main contractor. Whether the subcontractor shall be entitled to take credit of the TDS deducted of the Main Contractor by the Contractee ?[Section 31(4) & 31(9)]

❑ In a printing contract, vendor has treated the same as normal sale and charged 5% VAT in his bill and filed return in Form 231. But buyer has treated the same as Works Contract and deducted TDS. How to claim such credit of TDS in return in form 231?

- ❑ Suppose contractee has not deducted WCT TDS from the payment made to contractor but contractor has discharged his tax liability on the said transaction than whether still Sales Tax Department can recover the said TDS amount from the Contractee ?
- ❑ VAT Auditor should give Suitable Remarks for said transactions.

# Interstate Works Contract

- Dealer liable to pay tax on interstate Works Contract W.E.F.11-5-2002
- Definition of Sales-Section 2(g) & Sales Price-Section 2(h) was amended so as to incorporate transactions of interstate W.C.
- Section 2(ja) introduced to define works contract.
- **"works contract"** means contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property;
- Ingredients of Interstate Purchase or Sales :
- It occasions the movement of goods from one state to another State.
- There must be transport of goods from one State to another under the Contract of Sale or Purchase.
- It is effected by a transfer of documents of title to the goods during their movement from one State to another.

- Under Interstate Works Contract whether C.S.T. is payable on the Whole Contract value or on the value of materials transferred in the execution of such contract?
- At what rate C.S.T. is payable on interstate works Contract?
- Is set-off under the MVAT Act & Rules available to a contractor on purchases made for Inter-State works contract ?
- Whether standard deduction method provided by Table in Rule 58 (1) of MVAT Rules, 2005 can apply to inter-state works contract?
- Whether in the case of Interstate Works Contract Composition Scheme be applicable ?

❑ Is T.D.S. to be deducted from the value of inter-State works contract ?  
[Section 31(1)(b)(i)]

❑ Can a contractor purchase the goods as well as machinery to be used in the execution of W.C. against “C” Form ?

❑ Can a Principal/Contractee issue Form ‘C’ to a contractor ?

❑ Whether 6(2) transactions are possible for inter-State works contract ?

**□ Whether Entry Tax is payable on Purchases of goods which are purchased from other States and are to be used in Execution of works contract?**

**□ The branch of XYZ LTD. at Gujarat entered in to a contract with ABC LTD. Of Gujarat for steel Fabrication Contract. In pursuance of contract it placed an order with its Head Office, Mumbai to supply Steel Rods. Head Office has Transferred Steel Rods to Branch and claimed exemption from Tax being Branch Transfer u/s 6A of the CST Act,1956. Whether Such claim is allowable ?**

**□ Will the answer differ if Branch has entered in to a contract for Construction and Head Office has transferred Cement and sand to Branch ?**



□ Where there is specific mention in the contract to use say Fasad (glass) to be purchased from specified manufacturer abroad and to be used after cutting as per required size and to be fixed on building with the help of Panel and gum solution during the execution of Works Contract. Whether Contractor can Import the same and used during execution of Works Contract and claim exemption of Section 5(2) of the CST Act being sales in the course of Import ?

❑ The Dealer has entered into works contract with say ABC LTD for Construction of Building. It is consolidated Contract. Major portion of the contract is Sub-Contracted. For Civil Work the dealer has given Sub-Contract to say M/s PQR worth Rs.145 Crores . There is a Condition that such work should be completed within 24 months. In the said sub-contract sub-contractor has to raise the bill on the basis of BOQ Rate. The contract is framed in such a way that Total BOQ Value would be raised by sub-contractor throughout the contract would be 140 Crores . The amount Rs.3 crores will be payable as Milestone Payment as and when total work will be completed say within Two Years or thereafter. But Rs.2 crores will be payable as Performance bonus only if work will be completed within Two years. Whether sub-contractor is liable to pay VAT on Rs.145 crores or Rs.143 crores or on Rs.140 crores?

# THANKS

PRESENTER:

CA MAYUR R.PAREKH

CA Mayur R.Parekh,  
FCA,DISA(ICAI)