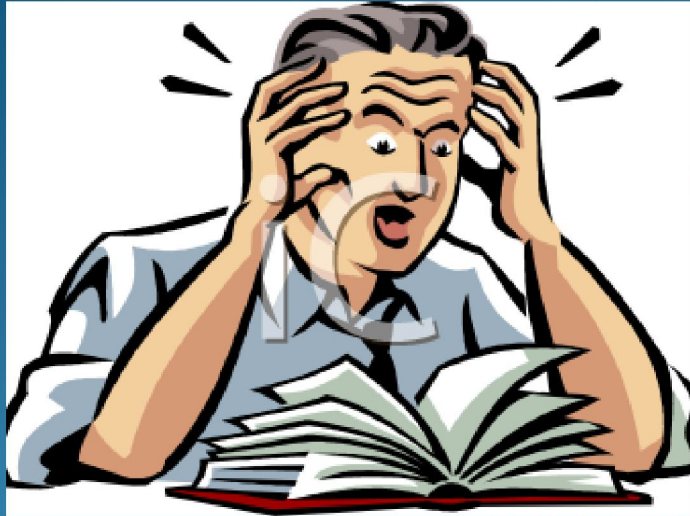


SEMINAR ON REDEVELOPMENT



ORGANIZED BY WIRC OF ICAI

05 MARCH 2016

LIABILITY OF MVAT
(UNDER MVAT ACT, 2002)

PRESENTATION BY:
CA. JANAK VAGHANI

Redevelopment of Housing Society

- Agreement with the Developer for Development of property- Utilization of potential FSI and/or TDR
- Balance or Full
- Tripartite Agreements with the Individual Flat Owners offering extra carpet Area without any Additional Consideration with various other offerings
- Surrender of the old premises to the developer and in turn new premises with additional Area- Whether Transfer?
- When Society is the confirming party - not liable to vat as no transaction of sale or purchase for transfer of title to the Goods

Redevelopment of Housing Scty

- Barter exchange qua the flat Owner not resulting in Sale- no transfer of title to the property- no movement of consideration- not within the definition of sale-not liable to VAT
- Flat Owner Buying the Additional Area from the Builder for specific consideration- subjected to VAT by the Builder ?
- If yes on Which Value?
- Builder to charge vat @ 1⁰% under the composition scheme u/s 42(3A)

Redevelopment By Society

- Member collectively decides to develop- Society at its own appoints the construction contractor and other agencies
- Contractor to charge Composition VAT @ 5% of the contract value in case of composite contract for material and labour.
- No vat if contract is purely for labour – society buying the material
- Society paying taxes on Purchase of Materials without any set off or input credit. No C form Purchases. On Purchase of iron and steel and tiles from outside the steel liable for entry tax

Redevelopment by Society

- Housing Society to deduct TDS @ 2% in case of Regd. Contractor and else 5% and deposit with Govt. Regardless of its own registration under MVAT. To file annual return in form 424 (section 31)- Pure labour contract not liable to VAT TDS
- Society may sell additionally constructed area to Member or outsider- Liable for VAT?
- Constructed units sold after OC not liable to vat at all.

Re-Dev. Of Tenanted Properties

- Land owner entering into Agreement with Developer for Development of Property by transfer of Land/development rights.
- Land owner giving constructed units to tenants- whether transfer and liable to VAT?
- Joint Development -who is liable
- Whether land owner or developer?
- Sharing in Sale Proceeds- liability

Re-Dev of tenanted Properties

- Tenants Holding the Tenancy rights getting additional carpet Area with ownership rights not liable to vat on the theory of barter exchange without any monetary consideration as being the outside the purview of defination of sale.
- Tenants buying the Additional Area from the developer to pay 1⁰% composite vat on the Agreement value or stamp duty valuation which ever is higher.

Builder and Developers

- Builders and Developers liable to pay Tax @1% composition in respect of Under construction units flats/shops as per the scheme notified u/s 42(3A) W.E.F. 1/4/2010 vide notification No.1510/CR/Taxation-1 dt.9.7.2010.
- Compliance of various conditions
- Tax on the Agreement Value or Stamp Duty Value whichever ever is higher
- Registration triggers the VAT Liability
- No set off/input credit allowed

Builder and Developers

- Builder can not issue tax invoice
- OMS Purchases of Raw Materials not allowed on C Forms
- Compulsory payment of tax by electronic mode.
- No requirement of intimation to the dept for exercising the option to pay tax under composition scheme
- Applies to all the agreements which are registered on or after 1/4/2010

Builders and Developers

- Other composition scheme u/s 42(3)- vat @ 5% of the agreement value
- Set off u/r 53(4) after retention of 4% of taxable purchases of raw materials
- No other deductions allowable
- Applicability of Rule 58- allowing deduction for cost/value of land u/r 58(1A)and inserted rule 58(1B) in view decision of L & T (SC)
- Various Stages of construction to be certified by the Local Authorities to decide the passage of property in execution of contract

THANK YOU

Presented by :-

CA Janak Vaghani