
WIRC OF ICAI

DIRECT TAX REFRESHER COURSE 2022

TAX ASPECTS FOR RE-DEVELOPMENT PROJECTS

BY YOGESH A. THAR

BANSI S. MEHTA & CO.

CHARTERED ACCOUNTANTS



SCOPE OF DISCUSSION

Tax implications on the re-development projects for the existing societies, flat owners and the developers.

Special considerations around TDR, conversion of tenancy rights.

SOCIETY RE-DEVELOPMENT PROJECTS

- Commercial rationale:
 - Old building in dilapidated condition – needs extensive repairs or reconstruction
 - Members / Society do not have funds and wherewithal to carry out such reconstruction
 - Re-development project is given to a builder (Developer)
 - Developer re-develops at his own cost – so Society / members have not to spend any money
 - Members are given additional area and some cash – this acts as a catalyst to let the project happen, else there is resistance to any change from the members
 - Developer is permitted to construct additional area which he can sell without any interference from the Society / members. This gives a business purpose for the developer to take the project in hand

SOCIETY RE-DEVELOPMENT PROJECTS

- How is the additional construction made possible?
 - Road widening – compensation in form of additional FSI
 - Change in DC Regulations in 1991 and thereafter – increasing the FSI
 - Use of TDR by the builder
 - Use of fungible FSI / premium FSI
- Win-win situation for all parties – Society/members, Developer and the Municipal Corporation
- Another variety of such projects – Slum Redevelopment Projects
 - Slum-dwellers Society
 - Agreement with a Developer to demolish the slum hutments and construct flats in buildings for rehabilitation of slum-dwellers – who get ownership rights (“Rehab portion”)
 - Developer also constructs additional buildings / towers for sale to third parties (“Free sale portion”)

NORMAL DOCUMENTATION

- Resolutions passed by the members of the Society
 - 51% members consent required
- Development Agreement:
 - Between the Society, Members, Developer
- Permanent Alternate Accommodation Agreement
 - Between Builder and the existing Members
- Sale Deeds
 - Between Builder and the new members

No conveyance is executed. Society was the legal owner. Continues to be the legal owner.

POPULAR STRUCTURE OF TRANSACTION AND ITS TAXATION

- Developer agrees to compensate the members by:
 - Offering additional area in the new flat as compared to their present floor area;
 - Cash compensation – lump sum: often by way of hardship allowance for getting displaced during construction period;
 - Cash compensation – periodic: generally in form of rent for alternate accommodation during the period of construction.
- Developer agrees to compensate the Society by:
 - Cash compensation – lump sum: at times referred to as “corpus” which becomes part of the corpus of the Society and which belongs to the old members;
 - Cash compensation – lump sum: as contribution towards corpus from the new members so as to equalize the share of the new and existing members in the total corpus.

POPULAR STRUCTURE OF TRANSACTION AND ITS TAXATION

- Taxation popularly followed for members:
 - Hardship Compensation is a capital receipt not chargeable to tax:
 - Deepak S. Shah v. ITO (2009) 29 SOT 26 (Mum)
 - Kushal K. Bangia v. ITO (2012) 18 taxmann.com 31 (Mum)
 - Jitendra Kumar Soneja v. ITO (2016) 161 ITD 269 (Mum-SMC)
 - Periodic rentals received from the Developer:
 - Tax payers treating it as part of hardship compensation and not treated as taxable;
 - Department treating it as income – either as IFOS or as IFHP
 - Giving away the possession of the old flat and getting a new flat is treated as “exchange” and claim is made (and often allowed) under section 54 so that there is no tax implication.
 - Some cases, section 45(5A) is followed and capital gains are offered and claim u/s. 54 is made

POPULAR STRUCTURE OF TRANSACTION AND ITS TAXATION

- Taxation popularly followed by Societies:
 - Cash compensation is towards transfer of development rights which have no cost of acquisition and hence capital gains are not chargeable to tax following the principles laid down in CIT v. B. C. Shrinivasa Shetty (1981) 128 ITR 294 (SC)
 - Maheshwar Prakash-2 Co-op Hsg. Society Ltd. v. ITO 24 SOT 366 (Mum)
 - CIT v. Sambhaji Nagar Co-op Hsg. Society Ltd. (2015) 370 ITR 325 (Bom)
 - Followed in many other cases

WHAT IS DEVELOPMENT AGREEMENT

- Faqir Chand Gulati v. Uppal Agencies P. Ltd. (SC) (Civil Appeal No. 3002 of 2005, dated 10.07.2008)
 - Question: whether a land owner, who enters into an agreement with a builder, for construction of an Apartment Building and for sharing of the constructed area, is a 'consumer' entitled to maintain a complaint against the builder as a 'service-provider' under the Consumer Protection Act, 1986
 - Nature of Agreement explained thus:

Appellant is the owner of the land. He wants a new house, but is not able to construct. He, therefore, enters into an agreement with the builder. He asks the builder to construct a house and give it to him. He says that as he does not have the money to pay for the construction and will therefore permit the builder to construct and own additional floor/s as consideration.

He also agrees to transfer an undivided share in the land corresponding to the additional floor/s which falls to the share of the builder. As a result, instead of being the full owner of the land with an old building, he becomes a co-owner of the land with a share in the land and absolute owner of certain constructed area of the newly constructed building and agrees that the builder will become the owner of the balance area with corresponding share in the land.

As the cost of the undivided share in the land which the land owner agrees to transfer to the builder, is more than the cost of construction of the area by the builder for the landowner, it is also mutually agreed that the builder will pay the landowner certain additional cash consideration.

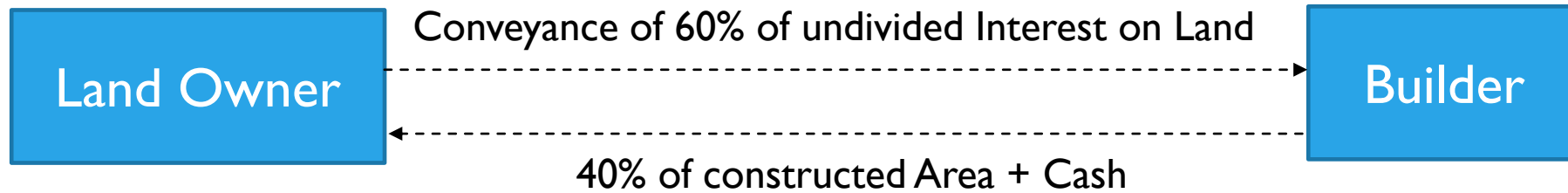
WHAT IS DEVELOPMENT AGREEMENT

The basic underlying purpose of the agreement is the construction of a house or an apartment in accordance with the specifications, by the builder for the owner, the consideration for such construction being the transfer of undivided share in land to the builder and grant of permission to the builder to construct additional area.

Such agreement is a contract for construction of an apartment or house for the owner, in accordance with the specifications and in terms of the contract. There is a consideration for such construction, flowing from the landowner to the builder (in the form of sale of an undivided share in the land and permission to construct and own the upper floors). To adjust the value of the extent of land to be transferred, there is also payment of cash consideration by the builder.

But the important aspect is the avilment of services of the builder by the land-owner for a house construction (construction of owner's share of the building) for a consideration. To that extent, the land-owner is a consumer, the builder is a service-provider.

COMPUTATION OF COMMERCIAL PROFITS



- Capital Gains to Land-Owner
 - A. What he gets : Cost of Construction of 40% area + cash
 - B. What he gives up (transfer) : 60% of undivided interest in land
 - C. Capital Gains : A-B [Subject to indexation]
- Gains to Builder
 - A. What he gets : Sale proceeds of 60% of Constructed Area
 - B. What is his cost : Cost of construction of 100%
 - C. Profits : A-B

DEVELOPMENT AGREEMENT IN SOCIETY RE-DEVELOPMENT PROJECTS

- SC in Faqir Chand's case:
 - *Appellant is the owner of the land. He wants a new house, but is not able to construct. He, therefore, enters into an agreement with the builder. He asks the builder to construct a house and give it to him. He says that as he does not have the money to pay for the construction and will therefore permit the builder to construct and own additional floor/s as consideration.*

This aspect gets satisfied in the case of a Society re-development project like any other development agreement.

DEVELOPMENT AGREEMENT IN SOCIETY RE-DEVELOPMENT PROJECTS

- *He also agrees to transfer an undivided share in the land corresponding to the additional floor/s which falls to the share of the builder.*

This aspect is missing. Society does not transfer any undivided interest in the land to the developer. Title continues with the Society. Member's rights remain intact. No rights of members get reduced. On the contrary, the members may get larger area and better facilities post re-development.

- *As a result, instead of being the full owner of the land with an old building, he becomes a co-owner of the land with a share in the land and absolute owner of certain constructed area of the newly constructed building and agrees that the builder will become the owner of the balance area with corresponding share in the land.*

Builder gets right to construct and sell the additional area. His buyers get a membership in the Society. Nobody becomes co-owner of the land. Society continues to be the sole owner of the land.

DEVELOPMENT AGREEMENT IN SOCIETY RE-DEVELOPMENT PROJECTS

- Q: Then, what is getting transferred in case of Society re-development projects?
- A: Development potential of the land is getting transferred.

Stamp duty on the development agreement – higher of the following:

- Cash payable to Society + Members + cost of construction (what builder gives); and
- Development potential of free sale area (what builder gets)

Thus, what is transferred is the Development potential

- Q: Where did this development potential come from?
- A: (1) road cutting FSI (set back area) granted by the Municipal corporation; and / or
(2) change in DC Regulations in 1991 (partly conditional upon TDR that may be loaded by the Builder.)
- Q: Who transfers the development potential?
 - Society; or
 - Members?

LEGAL OWNER V. REAL OWNER

- Unlike a condominium, in a Society, the members do not get undivided interest in the land. Society remains the legal owner of the land.
- CBDT Circular no. 9 [F.No. 8/2/69-IT(A-1)] dated 25.3.1969 – *“for all purposes (including attachment and recovery of tax etc.) the individual members should be regarded as the legal owners of the property in question.”*
- S. 27(iii): deemed to be the owner of the building or part thereof for the purposes of S. 22 to 26.
- Conveyance in favour of a Society by the Builder is in pursuance of his commitment under the flat sale agreement.
- Society is merely a representative of the individual members.
- Valuation of a flat factors in all the benefits attached to all the common areas and therefore, commercially, the real owner of the entire property are the members, though the legal owner is the Society.

LEGAL OWNER V. REAL OWNER

- Assessments of Society usually happen as a mutual association. The surplus remaining from members contributions is never charged to tax. This also indicates that the real owner are the members and not the Society.
- However, income from other than members contribution is taxable in the hands of the Society – it is assessed as a BOI.
- Bombay HC in the case of CIT v. Raj Ratan Palace Co-op Hsg. Soc. Ltd. [ITA No. 2292 of 2011 dated 27.2.2013] has held that when the amounts received from the developer are received by the members, Society cannot be taxed on the said amount.
- **Conclusion** as regards – “who is the transferor of the development potential?”
 - Members have a power of disposal by passing appropriate resolution
 - If they decide that the consideration is to be received by the Society, it will be assessed in the hands of the Society.
 - If they decide that the consideration is to be received by the members, the same could be regarded as being **diverted by overriding title** to the members – who are the real owners.

LEGAL OWNER V. REAL OWNER

- This is akin to merger or demerger where consideration is received by shareholders. Society's case is better than those cases, because in a company a member is not the beneficial owner of the company's property, a company is not a mutual association, whereas a Society is.
- The legal transferor is the Society, but the real transferor are the members.
- Consideration accruing or arising to either the Society or to the members, as the case may be, would be taxable in the hands of the Society or the members. Tax department cannot re-write the commercial agreements. What is accruing to one cannot be taxed in the hands of the other.

WHAT IS THE NATURE OF CONSIDERATION?

- In substance the consideration is for transfer of the development potential.
- To the extent the consideration is higher than the FMV of the Development Potential (which the Stamp duty authorities value at 65% of the land value), it is generally on account of hard bargaining by the members who would undergo hardship during the construction period.
- Rent compensation is also, in substance, compensation for hardship. It is a mere mode of computation of hardship. Mode of computation of a compensation does not determine the nature of compensation. (See Supreme Court decision in the case of
- Similarly, “corpus” is nothing but consideration for transfer of the development potential. Merely by calling it a “corpus” it doesn’t become a capital receipt independent of transfer.
- Thus the popular practice

APPLICABILITY OF S. 50C

- Decisions to the effect that S. 50C applies to capital asset “being land or building or both” and hence it does not apply to transfer of development potential:
 - Shakti Insulated Wires P. Ltd. v. ITO (Mum) [ITA No. 3710/Mum/07. Order dt 27.04.2009.
 - Voltas Ltd. v. ITO (2016) 74 Taxmann.com 99 (Mum)
 - ITO v. Ronak Marble Industries [ITA No. 3318/Mum/2015 dt. 14.03.2017]
- Decisions to the effect that S. 50C applies to transfer of development rights
 - Chiranjeev Lal Khanna (2012) 66 DTR 260 (Mum)
 - Mrs.Arlette Rodrigues v. ITO [ITA no. 343/Mum/2010]
 - Smt. Myrtle D’Souza v. ITO [ITA no. 3168/Mum/ 2011]
 - Arif Akhtar Hussain v. ITO (2011) 59 DTR 307 (Mum)

APPLICABILITY OF S. 50C

- In the context of Society, where there is no ultimate conveyance of land or building at all, S. 50C should have no applicability.
- A mere development potential, not followed by transfer of undivided interest in land, should not come within the net of S. 50C
- Even the stamp authorities, as a practice, consider merely 65% of the full land value for computing stamp duty on development agreement. Thus, even the stamp duty authorities do not consider the development agreement as “land” but something lesser than that.
- In cases where the AO has applied S. 50C, an alternate argument should be taken that:
 - Consider 65% of full land value;
 - Consider the aggregate of consideration received by the Society and the members and the cost of construction so as to determine the 50C value

COST OF ACQUISITION OF DEVELOPMENT POTENTIAL

- Q: What is the cost of acquisition of the road cutting FSI?
- A: Cost is embedded in the cost of the land conveyed by the builder to the Society in the past.
- Q: How to compute the cost as the cost is paid by each buyer and not by the Society?
- A: View 1: Aggregate of the costs paid by the original buyers to the Builder;
View 2: No cost of acquisition.

View 1 seems to be a better view. Cost was paid by the members. Conveyance was executed in favour of Society by the Builder based on his commitment in the agreement with the flat buyers. Society, therefore, is a mere representative of the members. It is a legal owner. Real owners are the members. If the Tax Department taxes every member on a proportionate basis, such assessment is likely to be upheld.

COST OF ACQUISITION OF DEVELOPMENT POTENTIAL

- CBDT Circular no. 9 [F.No. 8/2/69-IT(A-1)] dated 25.3.1969 – *“for all purposes (including attachment and recovery of tax etc.) the individual members should be regarded as the legal owners of the property in question.”*
- S. 27(iii): deemed to be the owner of the building or part thereof for the purposes of S. 22 to 26.
- Based on above, a reasonable view is that there is a cost of acquisition of the land acquired in road widening scheme and hence no cost theory may not be applicable.
- Q:When does the income accrue in the hands of the Society in case of receipt of FSI under the road widening scheme?
- A: View 1:When the compensation in the form of FSI/TDR certificate is received upon surrendering the land strip; and
View 2:When the FSI is actually transferred to the developer

COST OF ACQUISITION OF DEVELOPMENT POTENTIAL

- Based on S. 45(5), gains on compulsory acquisition are taxable on receipt of consideration.
- Based on CIT v. Excel Industries Ltd. (2013) 358 ITR 295 (SC), the benefit accrues only on use of the FSI. Till it is not used, there is no liability on the part of the Municipal Corporation to actually grant the FSI. At best, till that stage it is a contingent liability.
- View 2 seems to be a better view in light of the decision of the SC.
- Q: What is the cost of acquisition of Development Potential arising on account of change in DC regulation in 1991?
- A: No cost theory accepted in several cases listed earlier
- Q: Is the exemption u/s. 54 available?
- A: Exemption u/s. 54F is available since there is no transfer of a residential house. The transfer is of the development potential only.

WHEN DOES THE TRANSFER TAKE PLACE?

- Important clauses of S. 2(47):
 - (v) transaction involving allowing of possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in S. 53A of the TOPA;
 - (vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society....etc...or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.

WHEN DOES THE TRANSFER TAKE PLACE?

- Seshasayee Steels P.Ltd. v.ACIT (2020) 115 taxman.com 5 (SC)
 - Facts:
 - Agreement to sell land on 15.5.1998
 - Consideration was fixed
 - Both parties are entitled to specific performance
 - Seller gives permission to the Buyer to start advertising, selling, construction on the land
 - PoA executed on 27.11.1998
 - Compromise Agreement on 19.7.2003 (AY 2004-05) under which various amounts had to be paid by the Builder to the owner so that a complete extinguishment of owner's rights would take place.
 - Held:
 - Transfer has happened not in 1998 but in AY 2004-05

WHEN DOES THE TRANSFER TAKE PLACE?

- Mere 'permission' to start construction is a licence to enter upon the land for the purpose of development and such licence "cannot be said to be 'possession'"
- "Possession" denotes control over the land and not just actual physical occupation.
- The phrase "enabling the enjoyment" in section 2(47) must mean enjoyment as a purported owner. The idea is to tax the transaction where, though title may not be transferred in law, there is, in substance, a transfer of title in fact.
- CIT v. Balbir Singh Maini (2017) 86 taxmann.com 94 (SC)
 - Facts:
 - JDA between Society, original developer (H) and subsequent developer (T);
 - Land owned and registered in the name of Society;
 - Members of the Society were beneficial owners of plots of different sizes;

WHEN DOES THE TRANSFER TAKE PLACE?

- Agreement for:
 - Irrevocably and unequivocally assigning in perpetuity the development rights for developing, licensing, selling; and
 - transferring the title
- T to develop the land at its costs;
- Consideration to be paid by T (through H) to members in cash based on agreed milestones and also by allotting flats;
- Third milestone was receipt of approvals from authorities;
- Owner to execute in favour of T the sale deeds of part of the land parcels based on the milestone payments being received.
- Owner also had a right to terminate the agreement in cases of default by it in making payment and allotment of flats to members as agreed.

WHEN DOES THE TRANSFER TAKE PLACE?

- Held:
 - S. 2(47)(v) is not applicable as the agreement is not registered;
 - In s. 2(47)(vi) “enabling the enjoyment of” takes colour from earlier expression “transferring”, which means *de facto* transfer, though legal title is not passed. It implies enjoyment as a purported owner. In the present case, the owner remains the owner throughout the agreement;
 - At the highest possession alone is given and that too for specific purpose of developing;
- The following facts weighed heavily on the SC in arriving at the decision:
 - Payments under the third instalment were only after grant of approvals, which has never happened and the agreement had to be aborted; and
 - The owner had a power to terminate the agreement and no conveyance would take place.

WHEN DOES THE TRANSFER TAKE PLACE?

- In both the above decisions, the ultimate transfer of title was contemplated. In Society's case, that is not so. Hence, the theory that developer is entering as a mere licensee on land is not a "transfer" of land, may not be appropriate here.
- What is relevant in Society's cases is when is the Development Potential transferred?
 - If it is unconditional, it gets transferred when PoA is granted to get the plans approved and exploit the development potential;
 - If it is conditional upon plans getting sanctioned, then, the transfer gets complete on approval of the plans;
 - If it is conditional upon getting IOD/CC, it gets transferred when IOD/CC is received;
 - If it is agreed that the Development potential shall be transferred in stages or on completion of milestones, it gets transferred at that time;
 - If the agreement is made terminable in case the developer fails to deliver the members' area, then, the transfer happens on delivery of the members' area;
 - If the agreement contemplates only specific performance and is not terminable, but only provides for damages, then, on termination it may be difficult to argue that the transfer had not happened

SECTION 45(5A)

- Notwithstanding anything contained in S. 45(I)
- Where CG arises to an assessee being an **Individual or HUF**
- From transfer of a capital asset, **being land or building** or both,
- Under a specified agreement
- CG shall be chargeable to tax in the year in which completion certificate for the whole or part of the project is issued by the competent authority
- For the purposes of S. 48:
 - SDV, on date of issue of CC, of his share in land+building; as increased by
 - Cash

= FVC

SECTION 45(5A)

- “Specified Agreement” means
 - A registered agreement in which
 - a person owning the land or building or both
 - Agrees to allow another person
 - To develop a real estate project on such land or building or both
 - In consideration of
 - A share, being land or building or both in such project;
 - With or without payment of part consideration in cash.

DOES S. 45(5A) APPLY IN CASES OF SOCIETY RE-DEVELOPMENT PROJECTS?

- It applies to Individuals and HUFs. Society is assessed as BOI. Hence, *prima facie*, the section is not applicable to receipt by Societies.
- The Society does not transfer “land or building”. Also the member does not transfer “land or building”. The transfer is only of the development potential. Hence, this section cannot apply.
- Can it be said that the member is transferring his flat in “exchange” of new flat and hence there is a transfer of “land and building”?
 - “Exchange” is defined I S. 118 of TOPA: “when two or more persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both the things being money only, the transaction is called “exchange”
 - “Exchange” presupposes existence of different properties owned by different persons. As a result the ownership of one property is transferred to the owner of the other property and *vice versa*. [CIT v. Rasiklal Maneklal HUF 177 ITR 198 (SC)]

DOES S. 45(5A) APPLY IN CASES OF SOCIETY RE-DEVELOPMENT PROJECTS?

- Here, the new flat and the old flat do not exist simultaneously. This is not a case of an “exchange”.
- Is it a case of “relinquishment” of the asset?
 - CIT v. Grace Collis (2001) 248 ITR 323 (SC) has held that “relinquishment of an asset” need not be in the nature of a sale or an exchange. It does not require the existence of two properties at the same time. Thus, it held that the shares of amalgamated company held by a shareholder were relinquished in consideration of shares of the amalgamated company.
 - Hence there is a relinquishment of the old flat by the member
- What is the consideration accruing or arising as a result of transfer?
 - Cash compensation and additional area have accrued to the member as a result of transfer of development potential and as hardship compensation
 - No consideration is accruing or received as a result of relinquishment of the old house.
 - Consequently, the question of replacing the FVC by SDV of the new house u/s. 45(5A) does not arise.
 - Any other view would mean double taxation of the same consideration – one on account of transfer of development potential and the other on account of relinquishment of houses of each individual member.

DOES S. 45(5A) APPLY IN CASES OF SOCIETY RE-DEVELOPMENT PROJECTS?

- It is a settled law that in absence of any consideration, question of taxability of capital gains does not arise. [see e.g. Taxspin's case 263 ITR 345 (Bom)]
- Even section 50D presupposes an existence of consideration received or accruing as a result of transfer. And it applies only where such consideration is not ascertainable or cannot be determined. It does not apply where consideration is not existing at all.
- Giving possession of the old flat is a condition precedent for enabling the use of the development potential that is transferred. That does not mean that consideration is received or accruing as a result of such giving possession.
- Based on the above analysis, S. 45(5A) cannot be said to apply in case of Society re-development projects.

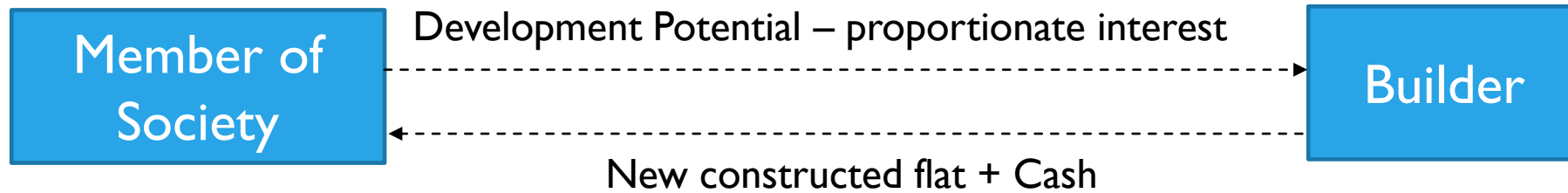
TDS PROVISIONS

- S. 194IC – Payment under specified agreement:
 - Notwithstanding anything contained in S. 194IA
 - Any person responsible for paying to a resident
 - Any sum by way of **consideration**
 - Not being consideration in kind
 - **Under the agreement referred to in S. 45(5A)**
 - Shall at the time of credit or payment whichever is earlier
 - Deduct 10% of such sum as income tax thereon.
- Q: Is the DA “the agreement referred to in S. 45(5A)”?

TDS PROVISIONS

- Specified Agreement”
 - A registered agreement in which
 - a person owning the land or building or both
 - Agrees to allow another person
 - To develop a real estate project on such land or building or both
 - In consideration of
 - A share, being land or building or both in such project;
 - With or without payment of part consideration in cash.
- This is a case of reference by incorporation. Hence other requirements of S. 45(5A) are irrelevant.
- Payment of “corpus” or “hardship compensation” or “rent compensation” are all payment of consideration **under the agreement referred to in S. 45(5A)**. Whether it is a consideration for transfer of land or building is not relevant for TDS purposes.
- TDS u/s. 194IC should apply to the entire cash element of the consideration. It overrides S. 194IA. Hence S. 194IA shall not apply.

COMPUTATION OF COMMERCIAL PROFITS



- Commercial Gain to Member
 - A. What he gets : Cost of Construction of his flat + cash
 - B. What he gives up (transfer) : Development Potential (cost is Zero)
 - C. Commercial Profits : $A-0$ [i.e.A]
- Gains to Builder
 - A. What he gets : Sale proceeds of entire free sale portion
 - B. What is his cost : Cost of construction of 100%
 - C. Profits : $A-B$

WHERE THE MEMBERS ARE OWNERS OF SHOPS / COMMERCIAL PREMISES

- Based on the theory that the member is transferring his old premises in consideration of new premises, we find that members owning shops / commercial premises in a Society building do not get S. 54 benefit and hence could be subjected to full taxation.
- Where they have claimed depreciation, the in and out of the block is popularly considered as under:
 - FVC taken as SDV of the new office + cash consideration (S. 45(5A) being generally applied). This amount is taken as a base to compute S. 50 profit
 - WDV of the office (assuming that is the only asset in the block) is reduced from SDV
 - Actual cost of the new asset acquired during the PY is to be reduced from FVC to determine S. 50 profit
- Since the transfer and the purchase is not happening in the same year, there is a fear of tax liability.
- S. 50 applies where FVC received or accruing as a result of transfer of the asset which forms part of the block of asset. Since there is no FVC accruing as a result of relinquishment, S. 50 has no applicability. It is S. 45(1) that applies to transfer of development potential.

WHERE THE MEMBERS ARE OWNERS OF SHOPS / COMMERCIAL PREMISES (CONT'D)

- Will there be any addition or deduction to the Block of asset for future depreciation?
 - The commercial gain to the member is the cost of construction + cash
 - If there is a cost of the set back FSI area, then, there is a proportionate deduction from the cost of the old asset. But it can be reduced from the block only if it is received in cash (“moneys payable in respect of asset falling within the block”).
 - In respect of the development potential which came without cost, there cannot be any reduction from the block as its cost is not embedded in the WDV.
 - Cash is generally hardship compensation. That cannot be added to the cost of the new asset.
 - Cost of construction of the new premises gets added to the block of asset for future depreciation.

OTHER ISSUES

- Can the no cost theory apply to flat owners who have acquired flats after 1991? Can it be said that the cost of acquisition of their flats have, within it embedded, the value of the potential FSI available under the new DC regulations?
- What happens in cases of self-redevelopment projects?
- In Owner – Developer type of cases, if there are tenants, who get ownership premises in the newly developed building, how is their taxability?



THANK YOU.