

VAT IMPLICATIONS ON
REAL ESTATE TRANSACTIONS UNDER
DELHI VAT ACT, 2004

BY



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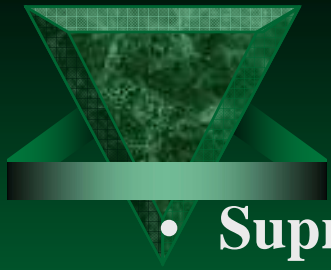


- ✓ **Sale of Land or Built up Property - Immovable Property – Exempt**
- ✓ **Sale of units / Flats (Residential or Commercial) during construction by Builders/ Developers to Prospective Customers**
 - **Supreme Court Judgement in K. Raheja Development Corporation (2005) 5SCC162**
 - Builders/Developers constructing flats/units even on their own land for and on behalf of prospective customer – the activity will be covered as works contract liable to VAT/Sales Tax
 - Sale of Built up Flats/units will not attract VAT/ Sales Tax



- **Allahabad High Court Judgement in Assotech Realty Pvt. Ltd Dated 23.03.2007 - 46 DSTC J-4**

- In the Present case we find that the petitioner is constructing flats not for prospective allottees but otherwise – The payment schedule would not alter the transaction - Right, title & Interest in construction remain with petitioner – thus Construction in question would not fall under clause (m) of Section 2 read with Section 3F of the Act and therefore cannot be subjected to tax under the Act and the action in imposing tax on them is out of Jurisdiction.

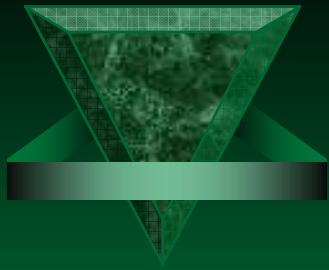


- **Supreme Court Judgement in Larsen & Toubro case (Dated 19.08.2008 47 DSTC J-49)**

Special Leave Petition – The Petitioner is engaged in Property Development involving construction and building of Flats and Subsequent sale thereof – show cause notice was served to pay tax on sale of flats on the basis of Judgement of M/s Raheja Development Corporation Vs. State of Karnataka.

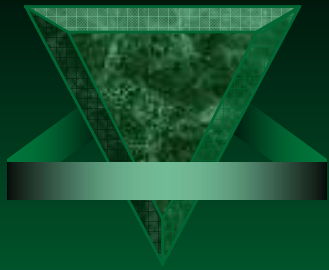
- We direct the Office to place this matter before the Hon'ble Chief Justice for appropriate directions in this regard, as we are of the view that the Judgement of Division Bench in the case of Raheja Development needs reconsideration by the larger bench

- **Taxes and Penalties on such transactions can be levied but may be stayed by tribunal at nominal amount in view of the above judgement.**

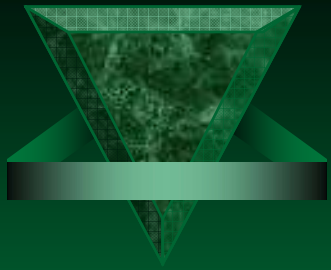


- **Circular (Circular No. 108/02/2009 – ST. dt.29.01.09) from CBEC – Construction for Prospective Buyers - not liable to service Tax**

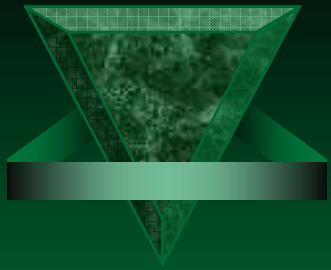
The matter has been examined by the Board. Generally, the initial agreement between the promoters/ builders/ developers and the ultimate owner is in the nature of ‘agreement to sell’. Such a case, as per the provisions of the Transfer of Property Act, does not by itself create any interest in or charge on such property. The Property remains under the ownership of the seller. It is only after the completion of the construction and full payment of the agreed sum that a sale deed is executed and only the ownership of the property gets transferred to the ultimate owner.



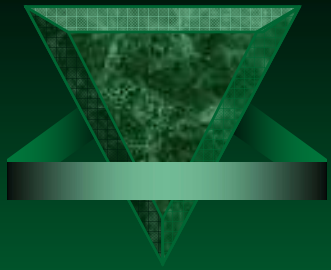
Therefore , any service provided by such seller in connection with the construction of residential complex till the execution of such sale deed would be in the nature of “Self service” and consequently would not attract service tax. Further, if the ultimate owner enters into a contract for construction of a residential complex with a promoter/builder/developer, who himself provides service of design, planning and construction; and after such construction the ultimate owner receives such property for his personal use, then such activity would not be subjected to service tax, because this case would fall under the exclusion provided in the definition of “residential complex”.



However, in both situations, if services of any person like contractor, designer or a similar service provider are received, then such a person would be liable to pay service tax.

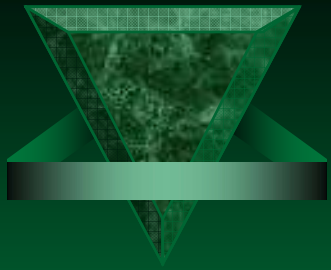


- ✓ Construction by contractors and Sub-Contractors incase of Indivisible contracts of material and labour.
- ✓ Rate of Tax
 - 12.5% of Value of goods transferred in execution of a works contract
 - Value of services and labour not taxable.
Rule 3A to determine value of land, labour and services.



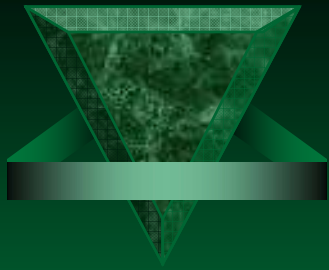
Composition Schemes For Civil Contractors (Optional)

- a) Tax @ 1% upto Turnover Rs. 50,00,000.
- b) Tax @ 2.5 % - No Turnover Limit (Local Purchases and Execution of Works Contracts)
- c) Tax @ 3% - No Turnover Limit (Interstate Purchases & Interstate Works Contract Permitted)

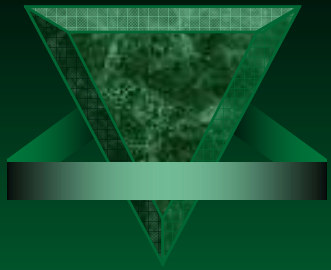


Important Conditions and Restrictions under Composition Scheme

- Filing of Quarterly returns incase of (b) and (c) above - Mandatory
- Consequences of Late Filing of Two Consecutive Returns –Out of Composition
 - Tax Paid under Composition stands forfeited and Tax at Full rate to be paid.
- Detail of Purchases (DVAT 30) to be attached with return since September 2007 and onwards.
- Opt the Scheme at the time of registration or by applying within 15 days of beginning of the year.

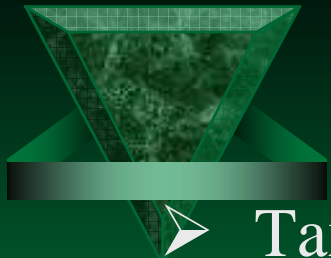


- No Purchases from unregistered dealers. However Exempted goods can be purchased from Unregistered Dealers dealing exclusively in these goods.
- Withdraw from the Scheme by applying within 15 days from the beginning of the year.
- Cannot claim Input tax Credit
- Cannot collect tax from the Contractee
- Cannot issue Tax Invoice



TDS Liability of Contractee

- Every Dealer except Individual and HUF – Contracts exceeding Rs. 20000/- at the time of Payment or Credit , whichever is earlier.
- 2% of the amount paid / credited. However, Contractor can apply for lower rate to Commissioner.
 - Contractor appointing Sub Contractor to execute work. TDS deducted by contractor from Sub Contractor. Turnover of Subcontractor can be reduced from the Turnover of the main contractor to ascertain the amount on which the contractee should deduct the TDS from the main Contractor. Supreme Court Judgement incase of Larsen & Toubro can be relied upon 47 DSTC J-54.



- Tax Deducted to be paid shall be deposited within 15 days of the following month. Interest @ 15% for the delay. Penalty for non deduction or non payment is twice of TDS
- TAN to be obtained within 7 days of tax deducted or deductible in **Form DVAT 44** Penalty Rs 200 / day (Maximum Rs. 20000)
- TDS Certificate in Form DVAT 43 to be issued within 7 days of making payment along with certified copy of the challan. Penalty Rs. 100 per day (Maximum Rs. 20000) .
- Annual return to be filed within 28 days of end of the year on DVAT Form 48 .