

FREQUENTLY ASKED QUESTIONS [FAQs]
ON
TAXATION OF DEVELOPERS

1. What is the effective date from which the VAT will be applicable for sale of under constructed flat?

Ans: The VAT is payable from the date of amendment i.e. 1st November, 2015.

2. On what type of contracts the VAT is payable?

Ans: VAT is payable in respect of sale of under construction flat / dwelling units, row houses / bungalow/ etc.

3. Whether VAT is payable on the sale of completed flat?

Ans: VAT is not payable if a completed flat, having completion certificate issued by a competent authority, is sold by the developer by way of sale deed.

4. Who has to pay VAT; Flat buyer or Developer?

Ans: The liability to pay VAT is on developer.

5. Who has to pay VAT if a developer has not told the buyer of VAT to be paid when he purchased flat post 1/11/2015?

Ans: The developer has to pay the VAT.

6. The agreement to sell the flat was executed before 01/11/2015 and the building was under construction and possession is given after 01/11/2015. Whether the VAT will apply in such case because the agreements were executed prior to 1/11/2015? If yes, how the sale value will be determined for calculation of VAT? Whether the amount received prior to 01/11/2015 will be exempt from VAT?

Ans: No, VAT will not apply in such cases provided that the agreements executed before 01/11/2015 are also registered before that date; and in cases where such agreements are not registered before that date, stamp duty in accordance

with the provisions of the Indian Stamp (Goa, Daman and Diu Amendment) Act, 1968, as amended from time to time, has been duly paid before that date.

7. Whether the levy of VAT on agreement for under construction flats/ shops etc. is covered within the amended definition of Works Contract / sale? When is it not leviable?

Ans: Yes. It is covered. If the sale is after completion i.e. if the sale is of an immovable property, then there is no levy of VAT.

8. What are the various options available to the developers for disclosing tax liability?

Ans: Developers can discharge their tax liability by any of the following option:-

From 01/11/2015

Composition Scheme U/s 7- Under this scheme developer has to pay tax on the agreement value at the rates specified in this regard. Land deduction is not available. Input tax credit is not available. Conditions specified in Rule 6 (2A) shall be complied.

Actual Expense Method U/r 4A - Under rule 4A(1) and (2), the deduction of Labour & service charges is available on actual basis. Land deduction is also available. The accounts must be audited.

Standard Deduction Method under Proviso to Rule 4A (1)- Under proviso to Rule 4A (1) deduction of land cost will be allowed as provided in Rule 4A (2). Standard deduction from remaining amount will be available as per proviso to sub-rule (1).

9. Whether the developers will be eligible to claim Input Tax Credit of VAT paid on purchases?

Ans: Yes. The Purchases made on or after 1/8/2015, will be eligible for Input Tax Credit subject to GVAT rules. However, if the developer opts for composition scheme for agreements registered from 1/11/2015 onwards, then no Input Tax Credit is eligible.

10. If composition scheme is not opted then what is the rate of tax and how the sales price will be determined? What are the deductions permissible like labour charges, profit margin etc. In such cases how the Input Tax Credit will be worked out?

Ans: Deductions are available as per rule 4A. Input Tax Credit will be worked out as per the GVAT Rules.

11. Whether the credit of input tax paid while effecting purchases of materials like cement, iron & steel etc. required to be used in the Construction project, will be available?

Ans: Yes, they will get input tax credit of the taxes paid on purchases subject to the rules and subject to the condition that the dealer has not opted for composition scheme.

12. Many times mere advances are received and agreement is executed much later. What will be the point of liability whether at the time of receiving the advances or at the time of execution of the agreement or thereafter on possession?

Ans: Tax will be levied from the date of the agreement. The amount of advance, as and when it is adjusted towards the agreement amount, will be taxed.

13. The builders receive non-refundable deposits and other charges under the agreement such as electricity deposit, water charges, legal charges, development charges etc. Whether such receipts will also form part of sale price of VAT?

Ans: The amounts which are received as deposits will be a deduction to the extent such amounts are actually paid to other authorities.

14. In under construction flats, the amounts are received in installments. How the sale price will be determined? Whether the actual receipts will be taken as sales or the whole of the agreement value will be taken as sale at the time of execution of the agreement, even though the amount is yet to be received?

Ans: Received or receivable. Receivable means due and payable.

15. Can the VAT applicable in above cases be collected by raising a debit note or the same should be mentioned in the agreement itself? Whether VAT should be collected on each installment or at one go upon execution of the agreement?

Ans: Yes. It can be collected by raising a debit note. Specific mention in the agreement is a choice of the contracting parties. It should be collected as and when the installment becomes due, provided builder/developer has not opted for composition scheme.

16. Whether any interest or penalty will be attracted for non registration with sales tax authorities under VAT and no submission of VAT returns for the transactions executed for sale of flats/shops under construction after 01/11/2015.

Ans: Yes.

17. What will be the VAT implications where mere advances are received from buyers and agreement for sell is not executed with the buyer?

Ans: There is no tax liability.

18. 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?

Ans: If the first sale of flat is cancelled then the subsequent sale of the same flat by the developer is taxable. The tax paid on first sale can be adjusted towards subsequent sale.

19. 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?

Ans: Builder is liable to pay tax only in respect of sale of flats to prospective buyers. The flats which are given to land owners will not be taxable. The land owner when subsequently sales the flat will not liable to pay any tax as he is not a dealer.

20. 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 01/11/2015 and some may be sold after 01/11/2015. In that scenario, whether the flat purchasers who have entered into an agreement after 01/11/2015 will be liable to pay VAT to the developers at the rates prescribed?

Ans: Yes.

21. 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.

Ans: Yes, the cost of TDR will be available for deduction from sale price along with cost of land, provided the dealer does not opt for composition scheme.

22. A project was launched in 2014-15. Major purchases of cement and steel were effected during the year 2014-15. The purchases effected after 01/11/2015 are much lesser as compared to those effect prior to it. Sales of flats are/are being effected during 2014-15, 2015-16 that is after 01/11/2015. Dealer is liable to pay tax on all these sales. Even if he chooses to discharge liability by way other than composition, he is losing Input Tax Credit of taxes paid prior to 01/08/2015. In the normal course this Input Tax Credit 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?

Ans: Developer will not be entitled for Input Tax Credit on purchase effected prior to 01/08/2015. Interest will be payable in addition to taxes paid.

23. If the builders/developers commences project of 100 flats and the said project is sold for three years 2015-16, 2016-17 and 2017-18, like 30 flats in first year, 40 flats in next year and 30 flats in third year and the dealer is not eligible/opted for composition scheme, then whether builder/developer is allowed to claim land deduction proportionately in three years or in first year only?

Ans: He may claim land deduction in first year or proportionately in three years.

24. Developer has started construction of a project prior to 01.04.2014 consisting of about 100 units. The work was started in the year 2014 and will complete in 2017. Whether it has to pay GVAT in respect of all the 100 units or only the units sold under construction i.e. 30 units and not on 70 units which have been sold after construction was completed, occupation certificate obtained and documents registered.

Ans: The taxability will arise only in respect of agreement to sell property after 01/11/2015.

25. A buyer has purchased ready flat in October 2015 when no VAT was in place. Building society got formed after November 2015. Can the developer ask VAT from such buyers?

Ans: Since it is a sale of completed flat, no VAT is payable.

26. If the buyer refuses to pay VAT as per the provisions, does the developer have to pay VAT?

Ans: Yes. The liability to pay VAT is on developer. It is not contingent on collection by developer.

27. Will the developers get the credit of input tax paid while effecting purchases of materials like cement, iron & Steel etc. required to be used in the Construction project. The developers would pay the tax under the GVAT Act

as the applicable rate of 5% or 12.5% depending on the material required to be used.

Ans: Yes, they will get input tax credit provided they do not opt/are not eligible for composition scheme.

28. In this type of industry, the practice is that an Agreement to Sell is prepared much in advance at the time when a prospective buyer book the accommodation in a building under construction and the developer concerned undertake to give possession of the accommodation so booked after obtaining completion certificate with the promised position, we would like to know as to at what point of time the VAT under the amended law would be payable?

Ans: Taxability arises on agreement. Tax is levied as and when the installments become due and payable or are received, whichever is earlier.

29. What is the rate of tax under VAT Act applicable for agreement to sell under construction flats?

Ans: Tax rates would be those which apply to the goods in which property is transferred; and in case of dealer opting for composition scheme, the rates as notified (presently vide Notification No.4/5/2005-Fin(R&C) (127)/243 dated 26/10/2015) would apply.

30. What will be the amount of input tax credit available in such cases i.e. full input tax credit of VAT paid on purchases or part of that?

Ans: Purchases made on or after 01/08/2015, will be eligible for input tax credit subject to rules.

31. A Builder may construct more than one project, in such case, whether different calculation method for different project can be applied?

Ans: Yes, he may adopt different method for each project, but he is not allowed to change the method till the completion of that project.

32. There are regular assesses / dealers who are already registered under the VAT Act, for other businesses etc. Can they continue to have normal VAT registration for other business and opt for Composition Scheme for construction activity.

Ans: Yes. The dealers who are already registered under the Goa VAT Act, 2005 as on 01/11/2015, can opt for the composition scheme for developers (and not for other works contractors) with effect from 01/11/2015. The provision of making application within 30 days from the commencement of the financial year will not apply in such cases since the levy itself is attracted from 01/11/2015.

33. If they chose to opt for Composition Scheme as a builder / developer, they are not able to fill composition details in the existing VAT Return Form. Kindly clarify whether they need to seek a new registration and file separate returns.

Ans: No separate registration would be required in such cases. Such builders / developers have to file different returns for normal business and for composition scheme for builders/developers.

34. The current Composition Application Form cannot be used by the builders / Developers, as the same is containing turnover limits and other details which are not applicable to builders / developers. Should they still use the same Form or is the Government going to release new Forms or since there are no turnover limits, such dealers are not required to apply in such Form or merely a letter opting for Composition will do.

Ans: The application for composition of tax shall be made in Form VAT XIII. The fields not applicable for developers/builders like turnover limits may be entered as not applicable.

35. Kindly clarify as to when VAT is to be paid by the builder / developer - whether it is to be paid when the payment becomes due or when the payment is actually received or when the agreement is executed or payment due / received, whichever is earlier.

Ans: VAT is payable when the payment is received or become receivable. Receivable means due and payable.

36. Is this applicable only for new contracts or will it be applicable to agreements which were signed earlier but payments against these agreements are received now - which is the applicable date? Will registration date of the agreement matter?

Ans: VAT will be applicable for agreements entered into on or after 01/11/2015. VAT will also be applicable in case of agreements entered into on or before 31/10/2015, if such agreements are registered on or after 01/11/2015. However, VAT will not be applicable in case of agreements entered into on or before 31/10/2015, if stamp duty in accordance with the provisions of the Indian Stamp (Goa, Daman and Diu Amendment) Act, 1968, as amended from time to time, has been duly paid before that date, even if such agreements are not registered on or before 31/10/2015.

37. In case money is received in advance but the agreement is signed / registered on or after November 2015, how will this money be treated for calculation of VAT.

Ans: Tax will be levied from the date of the agreement. The amount of advance, as and when it is adjusted towards the agreement amount, will be taxed.

38. What happens in case of agreements that are executed before 31st October but registered after 1st November.

Ans: Such cases would be covered.

39. Is VAT applicable only on base price or on base price plus service tax?

Ans: Yes. VAT is applicable in base price plus service tax.

40. Whether other charges / parking / water - are they to be included in the base price for calculation of VAT?

Ans: Yes. However, the amounts which are received as deposits/charges will be allowed as a deduction to the extent such amounts are actually paid to other authorities / society.

41. It is the understanding of the industry that sale post occupancy (ready flats) will not be liable to VAT.

Ans: True.

42. After execution of agreement, builder / developer may carry out extra work for the flat buyer (in addition to the contracted amount) for a certain additional charge. Will this additional charge be liable to VAT under Composition Scheme or as regular works contract? Will it make a difference if the same (main) agreement continues for extra work or if a new agreement / supplementary agreement is made for extra work.

Ans: If the main agreement includes a clause for carrying out extra work, then the total agreement value, including the charge for additional work, will form the basis for determining the sale price, for which the dealer may opt for the composition scheme. The additional charge for extra work by way of additional / supplementary agreement will also be eligible for a composition scheme.

43. Can a dealer file two returns in the same quarter:
- One regular
- One under composition?

Ans: Yes. The dealer opting for composition scheme for builders /developers of flats, dwelling units, etc, who also carries on other business will have to file two returns for a single quarter.

44. Whether the builder opting for composition scheme can recover VAT separately from the customer?

Ans: No.