

# DELHI VAT ON BUILDERS COLLABORATION AGREEMENTS

[Revised & Incorporating Amendments dated 20<sup>th</sup> September 2013]

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Incorporating Amended Rule 3 of DVAT Rule vide Notification No.F.3(16)/Fin.(Rev-I)/2013-14/ dsVI/785 dated 20.09.2013 with effect from 20.09.2013.

**Abbreviations used: LO - Land Owner; BD - Builder/Developer; IP - Intended Purchaser; DVAT Act - Delhi Value Added Tax Act, 2004; CST Act - Central Sales Tax Act, 1956**

## 1. Introduction

Delhi Government has always been a front-runner in bringing Rules for the builders for computation of their taxable turnover under the Delhi VAT. Rule 3 of the DVAT Rules was amended in 2006 immediately after the Judgment in *Raheja* case (*next Para*) was pronounced in 2005. Now, for the sake of bringing simplicity and uniformity, the Government has carried comprehensive amendment in Rule 3 with effect from 20.09.2013. It may also be noted that the Government has simultaneously announced the Amnesty Scheme (VVAS) for tax dues for the period up to 31.3.2013; and the builders could compute the value of land even for the earlier years with the assistance of amended Rule 3, and pay tax for those years, without any interest and penalty. VVAS has briefly been discussed in Para 5 of this Paper.

**“Builders Collaboration Contracts” or “Joint Development Agreements” (referred as “Builder Contracts”)** for the purpose of our present discussion means the contracts where LO offers his land to BD for construction of residential/ commercial complex/units and the latter offers part of the constructed flats/units to LO; and remaining flats are sold by BD to the customers, either during construction or post construction as ready units. Size of complex, which may contain 4 units or 400 units, will not have an effect on our discussion; nonetheless, in big complexes, number of LOs can certainly be more than one, and certain other issues would also crop up. Revenue sharing contracts between LO and BD have been excluded from our present discussion. **Thus, our present discussion is confined to implication of Delhi VAT on those contracts where, apart from material and services, value of land is also taking part of the bargain.**

## 2. Background

Before coming to the taxability part, it is necessary to look at the history of the same. In a case before the *Division Bench of the Supreme Court in K. Raheja Development Corporation vs. State of Karnataka (2005) 141 STC 298 (hereinafter referred as Raheja case)*, the owners of the land were also engaged in the business of constructing apartments/complexes, and for this purpose, they entered into agreements of sale with the intended purchasers. It was held by the Supreme Court that even an owner of the property might also be said to be carrying on a works contract if the builder enters into an agreement to construct with the intended purchasers. However, if the agreement is entered into after the unit is already constructed, then there would be no works contract. But so long as the agreement is entered into before the construction is complete, it would be a works contract.

### Delhi VAT on Builders Agreements (Incorporating Amendments w.e.f. 20.09.2013)

The *Raheja case* was referred to the larger bench in the case of *Larsen & Toubro Limited vs. State of Karnataka (2008) 17 VST 460 (SC)*; but, without grant of any stay by the Apex Court.

Relying upon the judgment in *Raheja case*, Delhi Government initiated imposition of VAT on the material involved in the transfer of residential and commercial complexes by considering the activity as works contracts. It also amended Rule 3 of the DVAT Rules for this purpose.

The Bombay High Court in *Maharashtra Chamber of Housing Industry vs. State of Maharashtra (2012) 51 VST 1 (Bom)* also examined this issue and held that the activities of builders are of the nature of works contract. The High Court also held that the definition of the term “works contract” in the Maha-rashtra VAT Act is constitutionally valid and within the legislative competence of the State Legislature. In its later case, the Court also approved the composition scheme for the builders under the VAT Act.

**Very recently, the Larger Bench of the Supreme Court pronounced its judgment in L&T Case (supra) on 26.09.2013 and approved the Raheja case. Para No. 114 and 118 of the judgment reads as,**

*“114. In Article 366(29-A)(b), the term “works contract” covers all genre of works contract and it is not limited to one specie of the contract. In Raheja Development (supra), the definition of “works contract” in KST Act was under consideration. That definition of “works contract” is inclusive and refers to building contracts and diverse construction activities for monetary consideration viz; for cash, deferred payment or other valuable consideration as works contract. Having regard to the factual position, inter alia, Raheja Development (supra) entered into development agreements with the owners of the land and it also entered into agreements for sale with the flat purchasers, the consideration being payment in installments and also the clauses of the agreement **the Court held that developer had undertaken to build for the flat purchaser and so long as there was no termination of the contract, the construction is for and on behalf of the purchaser and it remains a “works contract”. The legal position summarized by us and the foregoing discussion would justify the view taken by the two Judge Bench in Raheja Development.***

*118. We are clearly of the view that Raheja Development (supra) lays down the correct legal position and we approve the same.”*

After pronouncement of the judgment by the Larger Bench of the Supreme Court, the law has been settled in respect of imposition of VAT on builder contracts. Nevertheless, the charge of VAT would certainly depend upon the terms of the contracts between the parties.

In respect of determination of VAT on the builder contracts, the Delhi Government has amended Rule 3 of the DVAT Rule vide Notification No.F.3(16)/Fin.(Rev-I)/2013-14/dsVI/785 dated 20.09.2013 with effect from 20.09.2013 comprehensively, discussed hereinafter.

## **3. Delhi VAT on Builder Contracts**

### **3.1 Taxability / Incidence of tax**

In accordance with *Raheja case*, builder contract, where agreement is executed with intended purchasers before completion of the building, falls within the definition of works contract.

Under the DVAT Act, the term “works contract” has been defined under section 2(1)(zo) as, **“works contract” includes any agreement for carrying out for cash or for deferred payment or for valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, repair or commissioning of any moveable or immovable property.**

In view of *Raheja case (as approved by the Larger Bench)*, recently amended DVAT Rules and analyzing the activity in detail, it can be stated that BD executes works contract for two separate persons, that is, -

- (A) Works Contract for the LO: where BD constructs the units for a consideration in the form of share in the land; and
- (B) Works contract for IP, if BD receives payment (or enters into agreement of sale) from IP before completion of the construction.

So far as activity stated at (A), it is always of the nature of works contract activity (unless, it can be termed as barter transaction, discussed in next Para); whereas activity referred to at (B) has become taxable with the decision in *Raheja case*.

#### **Valuable Consideration – Barter Transaction [Builder’s Activity for land-owner]**

As per the Courts, valuable consideration includes cash, money, cheques, bill of exchange, promissory notes, shares and like instruments. Whether exchange of goods (barter) constitutes a valid sale? It had been a matter of great controversy and the Courts had expressed different views in this regard. While discussing the basic elements of “sale”, the Apex Court in the case of *Devi Dass Gopal Krishnan vs. State of Punjab (1967) 20 STC 430 (SC)* opined that cash or other valuable consideration is essential for completion of a sale; and in its absence, it is exchange of goods (barter), and not a sale.

In the case of *CST vs. Ram Kumar Agarwal (1967) 19 STC 400 (All)*, gold was paid as a price of jewellery. The jeweller purchased gold from the market, prepared ornaments, and transferred to the customer against the gold. It was held that exchange of goods was “barter” and not a “sale”. In another case, the dealer collected kansa, melted it and returned to the customer after deducting certain percentage in weight and collected labour charges extra: the Court held it as a barter transaction and not as sale. [*CST vs. Kansari Udyog (1979) 43 STC 176 (MP)*].

**However**, contrary views were observed in the case of *VP Vadivel Achari vs. State of Madras (1969) 23 STC 273 (Mad)*, where gold was exchanged for new jewellery; it was held to be a “sale” since gold, handed over to assessee, could easily be converted into money.

Where goods are sold partly for goods and partly for money, it is a transaction of sale. [*Aldridge vs. John. (1887) 7 E & B 885; LJ QB 296; Sheldon vs. Cox (1824) 3 & C 420*]. Similarly, in the case of *CIT vs. M. & G. Stores AIR 1968 SC 200*, an old car was returned and difference was paid in cash: While explaining the word “price”, the Supreme Court held that it was a transaction of sale.

Likewise, where machinery was transferred against allotment of shares, it was considered as sale since transfer of shares was a mode of payment of price and discharge of liability. [*Premier Electro Mechanical Fabricator vs. State of T.N. (1984) 55 STC 371 (Mad)* followed in *State of T.N. vs. T.M.T. Drill (P) Ltd. (1991) 82 STC 59 (Mad)*; *I.B.P. Co. Ltd. vs. Asstt. CCT (2000) 118 STC 33 (WBTT)*]

In *Dhampur Sugar Mills Ltd. vs. CTT (2006) 147 STC 57 (SC)*, a company, which owned a sugar mill, executed a deed of licence in favour of the dealer; wherein the licence fee for the use of the entire sugar mill complex was to be paid in the shape of molasses. Looking at the facts of the case and terms of the agreement between parties, it was held that the transaction could not be termed as “barter”.

In another case, the Madras High Court held that even barter or exchange of goods might be considered as sale, provided there is transfer of property in the goods. [*Vishweshwasadars Gokuldas vs. Govt. of Madras (1962) 13 STC 113 (Mad)*]

Therefore, looking at the afore-stated pronouncements, *in the view of author*, it *prima-facie* appears that “exchange of land” against “value of construction” is not a barter transaction for the purposes of DVAT Act; hence, VAT would be payable on construction carried on by BD for LO.

### 3.2 Measure of tax

Determination of VAT in case of works contract depends upon the provisions under the State VAT Act. Three Schemes have been laid for computation of DVAT in builder contracts:

**(1) Regular Scheme (1)** – Total consideration receivable from the land-owner (in the form of land) and the intended purchaser (–) Value of Land as per Rule 3 (–) Value of **actual** labour & services in accordance with Rule 3 of the DVAT Rules;

**(2) Regular Scheme (2)** – Total consideration receivable from the land-owner (in the form of land) and the intended purchaser (–) Value of Land as per Rule 3 (–) Value of labour & services calculated as per **percentage** specified in Rule 3(2) of DVAT Rules;

**(3) Composition Scheme** – Discussed later.

**Under the regular scheme, determination of turnover and output VAT of the builders' transaction is as under: -**

i	Gross Turnover – Work executed during the tax period	.....
ii	Less : Cost of land and labour & services [Rule 3] [Either on actual basis or at percentage basis]	.....
iii	Taxable value of material (Taxable Turnover)	.....
iv	Computation of Output Tax on (iii)	
	Declared goods, e.g., iron & steel @ 5% .....	Tax .....
	(transferred in the same form)	
	Other goods @12.5%.....	Tax .....

#### Provisions under the Delhi VAT Act and Rules:

**As per section 2(1)(zd)(vii) of the DVAT Act**, the term “sale price”, in relation to works contract means the amount of valuable consideration paid or payable to a dealer for execution of the works contract.

**As per section 5(2)**, in the case of turnover arising from the execution of a works contract, the amount included in taxable turnover is the total consideration paid or payable to the dealer under the contract excluding the charges towards labour, services and other like charges, subject to such conditions as may be prescribed:

Provided that where the amount of charges towards labour, services and other like charges is not ascertainable from the books of accounts of the dealer, the amount of such charges shall be calculated at the prescribed percentages.

#### As per Rule 3(1) of the DVAT Rules

In the case of turnover arising from the execution of a works contract, the amount included in taxable turnover is the total consideration paid or payable to the dealer under the contract **and exclude** –

- (i) the charges towards labour, services and other like charges; and
- (ii) the charges towards cost of land, if any, in civil works contracts,

subject to the dealer’s maintaining proper records such as invoice, voucher, challan or any other document evidencing payment of above charges to satisfaction of the Commissioner.

*Explanation.* – The term “civil works contracts” for the purpose of this rule shall include construction of building or complexes - residential or commercial, bridges, flyovers, dams, barriers, canals, diversions, other works of similar nature, and the collaboration agreements or joint development agreements or similar other agreements/arrangements between the land-owner(s) and the contractor(s)/builder(s)/ developers/ collaborators/ similar other persons by whatever name called for construction of complex or property.

### **3.3 Determination of value of land in the builder contracts**

#### The value of land is required to be determined for two purposes, namely:

- (A) Determination of value of works contract executed by the builder for the land-owner where consideration has been received in the form of land; and
- (B) Determination of taxable turnover in the case of sale by the builder to the intended purchaser where consideration includes value of land.

#### Relevance of "Circle Rate" in determining value of land

The amended Rule 3 of the DVAT Rules is primarily based upon the circle rates prevalent in Delhi. The Delhi (Prevention of Under Valuation of Instruments) Rules, 2007 (hereinafter referred as "circle rates"), depending upon the location of the property in Delhi, has laid twin circle rates for the purpose of registration of conveyance/sale deed, as under:

- (a) Circle rate for land, and
- (b) Circle rate for construction

Present applicable circle rates have been notified vide notification no. F.1 (152)/Regn.Br./Div.Com./ HQ/2611/780 dated 4.12.2012, wherein Delhi has been divided in Eight Zones: 'A' to 'H'. Base unit rate of land varies from Rs.6,45,000/- to Rs.19,400/- per sq. mt.; and rate of construction varies from Rs.21,000/- to Rs.2,900/- per sq. mt. Few adjustments are made in the base unit rate to arrive at applicable circle rate of that property.

#### **3.3.1 Transaction between the builder (BD) and the land-owner (LO)**

In relation to determination of value of works contract executed by BD for LO, where consideration has been received in the form of land, Rule 3(1A) has been inserted. As per the said Rule, value of works contract carried out by BD **shall be highest of the following amounts:**

- (i) **Actual value of construction, including profit**, transferred by BD to LO in **accordance with the books of accounts** maintained by the BD.
- (ii) Where proportionate land is transferred by LO to BD by **executing a separate conveyance/sale deed:**
  - Value stated in the deed for the purpose of payment of stamp duty  
(-)
  - Consideration paid by BD to LO through account payee cheque/draft/pay order/ electronic transfer, if any.
- (iii) **Based upon Circle Rates of land in Delhi:**
  - Circle rate of proportionate area of land transferred by LO to BD in accordance with the circle rates prevailing at the time of execution of agreement between them  
(-)
  - Consideration paid by BD to LO through account payee cheque/draft/pay order/ electronic transfer, if any.

#### **Where separate circle rates for land and construction have not been notified in respect of certain buildings or properties: -**

In such cases, circle rate for land and construction prevailing in that locality for other buildings or properties, in respect of which separate circle rates have been notified, shall be taken for the purpose of determination of value under this sub-rule.

#### Minimum value of construction by BD for LO:

As per the Proviso to Rule 3(1A), it is further stated that the value of works contract executed by BD for LO shall **not be less than the circle rate of construction** applicable on the date on which agreement between LO and BD for the construction of property was executed.

### **3.3.2 Transaction between the builder (BD) and the intended purchaser (IP)**

Sub-rule 3(3) applies to those cases where BD has sold units/property to IP before completion of construction.

#### **(A) Definitions**

The terms “builder”, “intended purchaser” and “completion of construction” have been described in explanations to sub-rule 3(3), as under:-

(i) **Builder:** The term “Builder” means and includes,

- The person who undertakes the construction of property, either as owner of the land or under an agreement of power of attorney with the land owner or under some other arrangement, **and**

such person transfers the property to some other person before completion of construction for a consideration, which may be received by him either as a composite sum or under separate agreements for land and construction.

- The land-owner who transfers the property to IP before completion of construction.

(ii) **Intended Purchaser (IP):**

The term, “IP”, means the person who agrees to buy the property before completion of construction and pays the consideration, in full or part, before such completion.

(iii) **Completion of construction:**

Construction shall be deemed to be completed,

- at the time of issuance of completion certificate by the competent authority, or
- at the time and in the manner notified by the Government for this purpose. No such notification has been issued by the Government till date.

#### **(B) Determination of cost of land on actual basis or at circle rate**

In relation to determination of cost of land for the purpose of computation of value of works contract in the case of sale by BD to IP, Rule 3(3) prescribes, as under:-

**(a) Where separate conveyance/sale deed of the land has been executed** between BD and IP, the consideration amount of land stated in that deed.

**(b) Where separate conveyance/sale deed of the land has not been executed for transfer of land** between BD and IP, then the value of land in the value of “composite works contract inclusive of land” **may be** arrived at on any of the following basis:-

(i) **Where proportionate land is transferred by LO to BD by executing a conveyance/sale deed:** On the basis of rate of land arrived at from such deed for the purpose of payment of stamp duty.

(ii) **Where clause (i) is not applicable:** On the basis of rate of land arrived at by adding the followings:

- Amount paid by BD through account payee cheque/draft/pay order/ electronic transfer to LO towards the land rights,

**( + )**

- Value of construction transferred by BD to LO determined as per sub-rule (1A).

**To illustrate,** LO and BD enter into an agreement, where BD would build four units, which would be shared equally between them. In addition, BD pays Rs.1 crore to LO. Total construction cost for four flats is Rs.4 crores. Here, BD transfers the value of construction worth Rs. 2 crores [Rs.4 crores divided by two, since 50% share in the

Delhi VAT on Builders Agreements (Incorporating Amendments w.e.f. 20.09.2013)

construction is transferred to LO]. In this case, value of land transferred by LO is: Rs.1 crore + Rs.2 crores = Rs.3 crores; and total value of land transferred by BD to IP for his share of the land shall also be Rs.3 crores (Rs. 1.5 crs. per flat if there are two IP).

**(iii) Based upon circle rate - In all other cases where clauses (i) and (ii) are not applicable:**

The value of land shall be determined on the basis of notified circle rates of land, prevailing at the time of execution of agreement between BD and IP.

**- Where separate circle rates for land and construction have not been notified in respect of certain buildings or properties: -**

In such cases, circle rate for land and construction prevailing in that locality for other buildings or properties, in respect of which separate circle rates have been notified, shall be taken for the purpose of determination of value under this sub-rule.

**- Where the value of conveyance/sale deed between BD and IP exceeds the circle rate (land + construction): -**

The difference between the two shall be proportionately divided between the value of land and the works contract (comprising material and services).

**For example**, in case of composite works contract, circle rate of land is Rs.2 crore and circle rate of construction is Rs.1 crore respectively, and the consolidated value of sale deed (inclusive of land and cost of construction) is Rs.3.60 crores. Difference of Rs.0.60 crore shall be divided in the ratio of 2:1; and thus, value of land for the purpose of this sub-rule shall be Rs.2.40 crores.

**(C) Determination of cost of land on percentage basis**

As per Rule 3(3)(c), where charges towards cost of land is not ascertainable from the books of accounts of the dealer (or the preceding clause), the amount of such charges shall be calculated on percentage basis, as under-

- In the case of construction of **commercial buildings** or complexes: **@ 50%** of the total value of the contract.
- In **other cases**: **@ 30%** of the total value of the contract.

**(D) Determination of cost of land where a part of the constructed area is transferred by BD**

As per Rule 3(3)(d), where only a part of the total constructed area is being transferred by BD, the charges towards the cost of land shall be calculated on a pro-rata basis, through the following formula: -

$$\frac{\text{Proportionate super area} \times \text{Value of land as determined in this sub-rule}}{\text{Total plot area} \times \text{Floor Area Ratio}}$$

- Proportionate super area for the purpose of this clause means: Covered area booked for transfer ( + ) Proportionate common constructed area attributable to it.
- Floor Area Ratio = Total constructed area / Total plot Area

**3.4 Determination of value of labour, services, etc. in the builder contracts**

**3.4.1 Meaning of the term "labour & services & other like charges"**

As per rule 3(2), the charges towards labour, services, etc. shall include: -

- i. Labour charges for execution of works;
- ii. Charges for planning and architects fees;
- iii. Charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;



Delhi VAT on Builders Agreements (Incorporating Amendments w.e.f. 20.09.2013)

- iv. Cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract;
- v. Cost of establishment of contractor including cost of marketing, finance expenses and security deposits to the extent relatable to supply of labour & services;
- vi. Other similar expenses relatable to supply of labour and services;
- vii. Profits earned by contractor to the extent it is relatable to supply of labour and services subject to furnishing of a profit and loss account of the works sites.

**3.4.2 Two methods for determination of labour, services, etc. prescribed in DVAT Rules**

- (A) Actual Basis                      (B) Percentage Basis

**(A) Actual Basis**

If labour and services are determined on actual basis, the contractor shall maintain the records in a manner so as to easily quantify the value of material, amount of direct labour and services and proportionate amount of indirect labour and services. Scope of "labour and services" is not confined to wages and salaries; but it extends to the other charges of the nature of expenses stated in seven clauses of Rule 3(2) discussed above.

**(B) Percentage Basis**

Where amount of charges towards labour, services and other like charges are not ascertainable from the books of accounts of the contractor, the amount of such charges shall be calculated on the basis of percentages specified in the table given in Rule 3(2) of DVAT rules. Builder contracts fall within the following clause: -

Sl. No.	Type of contract	Percentage of total value of the contract
6	Civil works	25% [excluding the cost of land transferred, if any]

**3.4.3 Specific provisions for labour, services, etc. in case of contracts between BD and IP**

- (i) Where only a part of total constructed area is being transferred by BD, the deduction towards labour, services and other like charges mentioned shall be calculated on a pro-rata basis. [Rule 3(4)]

**To illustrate**, out of two flats of BD, one flat is booked by IP, and another flat is sold after completion of construction. If both the flats are of equal area, then deduction towards labour and services shall be available only to the extent 50% of total charges.

- (ii) BD shall be eligible to deduct labour, services, other like charges in relation to (i) above in the tax period when output tax becomes payable [Rule 3(5)(iii)].

This provision will ensure the matching of output tax *vis-à-vis* claim of deduction towards labour charges; and also bring consistency in showing the taxable turnover by BD.

It may be notes that as per Rule 3(5)(ii), in such cases, tax shall be payable at the time of receipt of consideration by BD, in whatever form or manner, from IP in relation agreement towards sale of property/unit.

Continuing the illustration given at (i) above,

- (a) BD is eligible for 50% of labour charges, and
- (b) Labour and like charges shall be claimed as deduction by BD at the time when output tax is payable (i.e., at the time of receipt of consideration).



### **3.5 “Amount of turnover of sale” in case of contracts between BD and IP**

As per Rule 3(5)(i), where an agreement is executed between BD and IP before completion of construction, then total value of agreement, as reduced by cost of land, and amount of labour, services and like charges (determined in accordance with this Rule), shall be deemed to be taxable turnover of sale.

#### **3.5.1 Booking/Sale of flat during construction with IP**

In a collaboration agreement, BD’s share in the property could be sold prior to completion, but at various stages of construction. Sometimes, BD sells the flat when the project has just started, and sometimes when the flat is almost complete. The question generally arises as to on which value of construction, VAT shall be paid; that is, on the total value of flat or on the value received after the date of agreement? As per Rule 3(5)(i), where an agreement is executed between BD and IP before completion of construction, then total value of agreement shall be deemed to be turnover of sale.

However, the Larger Bench of the Supreme Court in L&T Case (*supra*), pronounced on 26.09.2013, clarified,

*“115. It may, however, be clarified that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the State Government.”*

Therefore, *in the opinion of the author*, the judgment by the Supreme Court will prevail over Rule 3(5)(i) of the DVAT Rule, and BD shall pay tax only on that value of goods which is transferred by him to IP after the date of agreement, and not on the entire value of agreement.

Simultaneously, it may also be noted that since BD is liable to pay tax on post-agreement value, he shall be eligible for deduction towards labour and services and benefit of input tax credit only in respect of works contract executed post-agreement.

#### **3.5.2 “Manner of determination of turnover” on receipt of every installment**

As per Rule 3(5)(ii) of the DVAT Rules, goods shall be deemed to be sold at the time when installment is received.

**However**, it would be practically difficult to arrive at the correct value of taxable turnover at that time since every installment would consist of payment towards land, material and services. Therefore, the **author is of the view** that amount of output VAT may be calculated, in advance, as a percentage of per square foot rate; and tax be computed accordingly on the basis of per square foot receipt of every installment. At the time of completion of the project, actual liability of VAT shall be ascertained and shortfall of VAT, if any, be paid.

### **3.6 “Time of turnover” in case of builder contracts**

Unless otherwise contrary in the contract, works contracts are taxable at the time of incorporation of goods in the contract by the contractor.

As per section 12(4) of the Act, the Government may prescribe the time at which a dealer shall treat the (a) turnover; (b) turnover of purchases; and (c) adjustment of tax or adjustment to a tax credit; as arising for a class of transactions.

As per 4(c) of the DVAT Rules, the amount of turnover or turnover of purchases arising in the tax period in the case of a sale or purchase occurring by means of transfer of property in goods (whether as goods or in some other form) under a works contract executed or under execution in the tax period, is the consideration received or receivable by the dealer for such transfer of property in goods during the relevant tax period.

**The Government has further laid rule 3(1B) and 3(5) in the DVAT Rules in this regard, discussed hereinafter.**

### **3.6.1 Transaction between BD and LO**

In this case, entire land is received by BD in advance, before commencement of construction. Therefore, it might be said that time of turnover would be the execution of agreement between LO and BD, and tax would be payable at that time itself on total construction value. However, it may be noted that no material is transferred by BD on that date; therefore, time of turnover should be the time when goods are incorporated in the works contract.

As per Rule 3(1B), in case of works contract carried by BD for LO, tax shall be payable **at the time of incorporation of goods** in the execution of works contract.

### **3.6.2 Transaction between BD and IP**

Tax shall be payable by BD at the time of receipt of consideration, in whatever form or manner, from IP in relation agreement towards sale of property/unit. [Rule 3(5)(ii)].

Thus, for the purpose of builder activity, time of turnover will not depend upon the incorporation of goods or raising of an invoice by BD.

### **3.7 Input tax credit (ITC) in case of builder contracts between BD and IP**

- (i) Where only a part of total constructed area is being transferred by BD, input tax credit under section 9 shall be calculated on a **pro-rata basis**. [Rule 3(4)]

**To illustrate**, out of two flats of the builder, one flat is booked by IP and another is sold after completion of construction. If both the flats are of equal area, then input tax credit shall be available to BD only to the extent 50% of total credit.

- (ii) BD may claim input tax credit in relation to taxable sales **in the tax period when output tax becomes payable** on the basis of separate books of accounts maintained for that property. [Rule 3(5)(iv)]. It may be noted that this clause requires that BD shall maintain project wise accounting for the purpose of claiming input tax credit.

It has already been stated that in such cases, tax shall be payable at the time of receipt of consideration, in whatever form or manner, from IP in relation agreement towards sale of property/unit. [Rule 3(5)(ii)]

**For example**, BD starts construction of the property, comprising his share of one flat to be sold to IP ultimately. The flat (BD's share) would be sold at a value of Rs.1 crore (apprx.); and out of which, taxable value of material component would be, say, Rs. 20 lacs. After incorporating materials worth Rs. 4 lacs (ITC - Rs.20000/-) up to June, he enters into agreement with IP in July, and receives Rs. 5 lacs as booking cum first installment. In December ending quarter, he further incorporates material worth Rs. 6 lacs (ITC-Rs.30000/-). Next installment is received in October of Rs.7 lacs. In such a case, first output tax would be payable in July on Rs. 5 lacs; and second in October on Rs. 7 lacs. BD would claim input tax credit of Rs.20000/- in July; and Rs.30000/- in October.

It may further be noted that BD could not claim ITC in the month of purchase; and will claim in the month when output tax is payable. Therefore, procedurally, in the quarter when goods were purchased, he will show it as turnover of purchase in Form 16 & 2A, which would, however, be reversed through Annexure of Form DVAT-16. He will reclaim the ITC in the subsequent tax period, when so eligible, through Annexure of Form DVAT-16.

### **3.8 Cancellation of booking by IP**

If booking of the flat/unit is cancelled during the construction thereof, and subsequently the construction is carried by BD for himself, the sale shall be treated as cancelled in accordance with section 8(1)(a) of the DVAT Act and Supreme Court Judgment dated 26.09.2013; and BD would be entitled to adjust/refund the tax already paid. However, if the same flat is again sold to another IP during construction, then it would be taxable under the DVAT, as discussed earlier.

### 3.9 Sale of units by the Land-Owner during construction

As per explanation 1 to Rule 3(3): -

“The term “Builder” for the purpose of this sub-rule means the person who undertakes the construction of property, **either as owner of the land** or under an agreement of power of attorney with the land owner or under some other arrangement, and transfers the property to some other person before completion of construction for a consideration, which may be received by the builder either as a composite sum or under separate agreements for land and construction. **The term “builder” shall also include the land-owner(s) who transfers the property to the intended purchaser before completion of construction.**”

Therefore, where LO also enters into agreements with IP in respect of sale of his portion of building, being constructed by BD, before completion of construction, then LO would also be liable to pay tax. However, he could claim input tax credit for the amount charged from him by BD.

### 3.10 Composition Scheme

Under the DVAT Act, in relation to builders contracts, following composition schemes are applicable with effect from 01.04.2013:-

S.N.	Nature of the Contract	Scheme A	Scheme B
1	Construction, of complex, building, a civil structure or a part thereof, including residential unit or complex or building, for sale whether wholly or partly, to a buyer before construction is complete, <b>where value of land is included in total consideration.</b> (Excluding contracts where entire consideration is received after issuance of completion certificate by competent authority).	1%	3%
2	Other construction/building contracts	3%	6%

**Scheme A:** The contractor shall (i) not purchase or procure goods from any place outside Delhi at any time during the period for which he opts to avail this Scheme; and (ii) not sell or supply goods to any place outside Delhi at any time during the period for which he opts to avail this Scheme. However, he may procure his own plant & machinery and equipments from outside Delhi, meant exclusively for use in execution of the works contract by him.

**Scheme B:** Contractor shall be entitled to make purchases of goods required for execution of the contract in the course of inter-State trade or commerce on the strength of his certificate of registration against declaration in Form C or by way of inward transfer of stocks from other States against Form F or by way of imports from other countries solely for the purposes of utilizing the same in the execution of works contract in Delhi only. However, the dealer shall use the material/goods imported or procured from outside Delhi strictly for use in execution of the works contract transactions.

Apart from various other restrictions, the composition dealer is not eligible for input tax credit on purchases made within Delhi. He cannot also issue tax invoices. Further, he can purchase goods from unregistered dealers only to the extent of 2% of his total purchase turnover during the year or Rs. 25 lakhs, whichever is lower.

### 3.11 Liability of BD – Computation of Delhi VAT – An Illustration

**Let us adapt our discussion in the form of an illustration:**

LO enters into a collaboration agreement with BD, wherein -

(Rs. In lacs)

- BD constructs 4 flats/units.
- Out of which, BD gives 2 flats to LO towards consideration of land.
- Remaining 2 flats are kept by BD for further sale in market.
- BD sells 2 flat to IPs during construction for Rs.1200 (600/- per flat); sale deed also executed for Rs.1200.
- Value of land is Rs.2000 and value of construction is Rs.400 (Rs.100 per floor).
- Since BD receives land worth Rs.1000 (2000\*2/4) and gives Rs.200 as value of construction for 2 floors (100 per floor); it is further agreed that BD will give Rs.800 to LO towards land or as value for transfer of construction rights.
- Break-up of value of construction of Rs.400 is:-
  - Material with proportionate overheads & profit - Rs. 240
  - Labour & Services with proportionate overheads & profit - Rs. 120
  - Permissions and sanctions (treated as services) - Rs. 40
  - Total Expenses - Rs. 400
  - Proportion of expenses by BD towards LO and IP portion - 50 : 50
- It is assumed that total material consists of 1/3 iron & steel taxable @5%; and 2/3 other materials taxable @12.5%: thus average VAT rate comes to 10%.
- VAT input tax credit is assumed at Rs.16 (10% of 66% of 240).
- It is also assumed that majority of the contract is executed by BD himself, and thus, Cenvat Credit is only Rs.2.
- Circle rate in Delhi, per flat, of land : Rs.500; and for construction : Rs.90
- Here, Value of construction of Rs.400/- exceeds circle rate of construction of 360/-[90/-(x) 4]
- Total Investment of BD comes to : Rs.800 paid to LO (+) Construction value of all four flats being Rs.400 (=) Rs.1200.

Met- hod	Description	Output VAT- LO	Output VAT- IP	Input Tax	Net Liabi- lity	Liability (% of Invest- ment)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
I	<b>Regular Scheme (1) (Services-Actual; Land - Actual)</b> • LO-10% of (240)/2 [50% material pertains to LO] • PB -10% of [(1200-1000) – (160)/2]	12	12	16	8	0.07
II	<b>Regular Scheme (2) (Services-%; Land-Actual)</b> • LO-10% of 75% of 200 • PB -10% of 75% of (1200-1000)	15	15	16	14	1.17
III	<b>Composition Scheme</b> • LO-3% of 200 • PB -1% of 1200	6	12	0	18	1.5

#### 4. Activities carried on up to 31.03.2013 – Amnesty Scheme (VVAS)

We are aware that the DVAT Department has carried number of surveys at builders' premises and also gathered information from MCD. In number of cases, notices of assessment have already been issued. In such cases, where tax deficiency pertains to the period up to 31.03.2013, the builders may opt for Delhi Tax Amnesty Scheme (VVAS) introduced on 20.09.2013.

In VVAS, tax for the period upto 31.03.2013 shall be payable in two installments: (i) First, upto 31.03.2014; and (ii) Second, upto 21.03.2014. If notice of assessment (i.e., assessment order) has **not** been issued, the builder is required to pay tax only (no interest or penalty); and where assessment order has been issued, the builder shall pay tax and interest stated in the order. The builder would get immunity from payment of (i) interest from the date of order till the date of declaration under this Scheme, (ii) penalty, and (iii) prosecution under the Act.

Following are the highlights of the VVAS: -

##### 4.1 Calculation of tax dues by the builder

S.N.	Nature of Tax Dues	Procedure of Calculation
1	Builder, <b>whether registered or not</b> , under the DVAT Act or the CST Act on whom assessment order has <b>not</b> been served by VATO/AA	(a) Works contractors engaged in construction, of complex, building, etc., for sale to a buyer before completion of construction, <b>where value of land is included</b> in total consideration: <b>@1%</b> of total consideration (including labour & services);  (b) <b>Other works contractors</b> [including the dealers stated at Sl. No. (a), <b>who opt to exclude the value of land</b> as per Rule 3 of the DVAT Rules]: <b>@ 3%</b> of total turnover (including value of labour and services).
2	Builders registered under the DVAT Act, CST Act, Works Contract Act, 1999 on whom assessment order has been served	Aggregate of amount of tax and interest stated in the assessment order (exclude penalty, if any)  <b>(less)</b>  Amount paid by the dealer towards the said demand.

##### ▪ Manner of calculation of tax dues by the builders:

Activities of builders may be divided in two parts: -

- (i) **Activity carried by BD for LO (consideration has been received by BD in the form of land):** Here, the value of land shall be determined as per recently inserted Rule 3(1A) in the DVAT Rules; and builder shall calculate tax @ 3% of that value.
- (ii) **Activity carried on by BD for IP:** Builder has two options for calculation of turnover and tax, as stated in row 1 of table given above.

▪ **Adjustment of input tax credit from declared tax dues:** Input tax credit cannot be adjusted against payment of tax dues under VVAS. Accordingly, entire tax dues under the VVAS shall be paid in cash through challan.

▪ **Adjustment of 'excess tax credit' or 'carry forward amount' from declared tax dues:** The declarant shall not be entitled to adjust his carry forward amount as per the Returns, if any. For example, a declarant, who has carry forward amount of Rs. 10 lacs as on the date of declaration, declares the amount of tax dues of Rs.12 lacs under the VVAS. In such a case, he shall pay entire Rs.12 lacs in cash, without adjusting carry forward amount of Rs.10 lacs.

#### **4.2 Steps to be followed in VVAS, in brief**

1. Compute the amount of tax dues upto 31.03.2013 (and not paid upto 31.08.2013) in accordance with preceding Para;
2. If not registered under the DVAT Act, obtain registration. In addition, pay tax and file returns for the period after 1.4.2013 along with the declaration in DSC-1;
3. Fill the declaration in Form DSC-1 on the web-site of the Department;
4. Pay **at least** 50% of amount of declared tax dues through Challan online. It may be noted that declarant may pay even the entire amount of tax dues at this stage;
5. File hard copy of Form DSC-1 along with Challan to the designated authority on or before 31.1.2014;
6. The designated authority shall *suo-moto* issue the acknowledgement in Form DSC-2 within a period of 15 working days from the date of receipt of the declaration. If it is not received, then designated authority may be contacted;
7. Pay remaining (unpaid) amount of tax dues through Challan online on or before 21.3.2014;
8. Submit proof of such payment along with a copy of acknowledgement in DSC-2 (already received at Step No. 6) to the designated authority;
9. Obtain Form DSC-3 from the designated authority: On furnishing the details of full payment of declared tax dues, the designated authority shall issue an acknowledgement of discharge of such dues within 15 days in Form DSC-3.

#### **4.3 Immunities**

##### **A. Immunities, where assessment order has NOT been issued:**

- Immunity from interest, penalty and any other proceedings in relation to declared tax.
- Immunity from prosecution.
- If declarant is not already registered under the Act: -
  - Immunity from penalty of late registration.
  - Immunity from interest for late payment of tax for the period after 1.4.2013.
  - Immunity for late filing of returns for the period after 1.4.2013.

##### **B. Immunities, where assessment order has been issued:**

- Immunity from interest in relation to declared tax for the period after issuance of order till the date of declaration.
- Immunity from penalty or any other proceedings in relation to declared tax.
- Immunity from prosecution.

## **5. Conclusion**

The Government has undoubtedly attempted to simplify the computation of VAT in respect of builder contract. Nevertheless, the exact implication of tax would depend upon the time and terms of the agreement between the parties. Where the property is booked by the intended purchaser at the time of commencement of the project and the builder is paying VAT (as applicable) on its entire revenue, there would be minimum complexity. But, wherever the builder considers his certain receipts as non-taxable (such as, construction for himself, non-booking of property, etc.), then the burden of proof lies upon him. In such cases, he would not be eligible for deduction towards labour, services, etc., and input tax credit in relation to such exempted sales; that is, he would claim these deductions proportionately. Moreover, at a single point of time, the builders would be carrying on construction of

### Delhi VAT on Builders Agreements (Incorporating Amendments w.e.f. 20.09.2013)

number of properties; where the terms of the agreements, cost of the projects and time of agreements with IP would be diverse. Therefore, to determine his taxable turnover, he would be required to maintain his books of accounts in a manner so as to provide details and information in respect of every project separately (that is, Project-wise Accounting). Simultaneously, the agreements should be drafted in a manner so as to avoid overlapping and ambiguity.

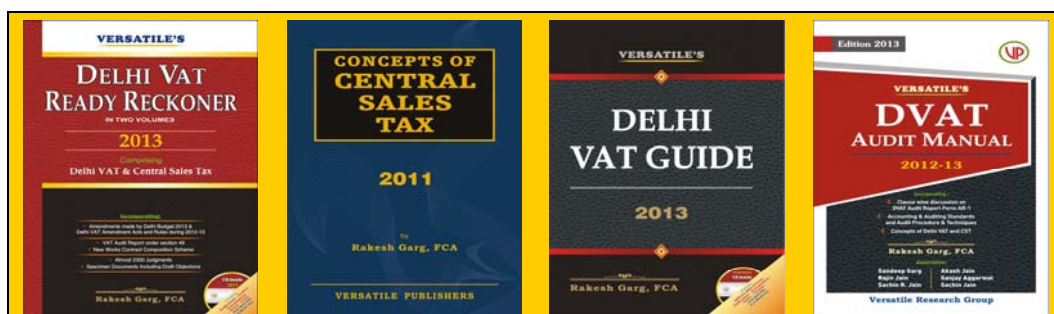
Further, the exact taxation would mainly depend upon the value of land involved in that project. The variance in the total price of a flat/unit is mainly due to land rates. For example, a flat of 500 sq. yards with same amenities would price for Rs.10 crores in south Delhi and Rs.5 Crores in east Delhi; the value of material and services would, by and large, remain the same everywhere. The price difference in the value of land in the builder contracts has been taken care of, to a larger extent, by recently amended Rules in the DVAT Rules. As already stated, these Rules are primarily based upon circle rates, which have been divided in eight slabs, depending upon the location of the property in Delhi.

The step of the Delhi Government to clarify and simplify the determination of VAT on the builders' activities is laudable. Exact impact and complications would, however, be known at the time when these rules are applied by the builders for calculation of their turnover and VAT. Nevertheless, these amended Rules have certainly created a platform for removal of the complications faced by them in determining the DVAT.

28<sup>th</sup> September 2013

#### **Disclaimer:**

*This Paper contains personal views of the author and has been prepared for academic use only. The taxability would also depend upon the contents and nature of agreement between the parties. Since these views might not be acceptable to the Authorities, the readers/stake-holders are advised to understand the implications of discussion contained therein. Errors or omission may kindly be brought to the notice of the author.*





**Rule 3 of the DELHI VAT RULES**

***[As amended vide Notification No.F.3(16)/Fin.(Rev-I)/2013-14/dsVI/785 dated 20.9.2013]***

**RULE 3(1):**

(1) In the case of turnover arising from the execution of a works contract, the amount included in taxable turnover is the total consideration paid or payable to the dealer under the contract and exclude –

- (i) the charges towards labour, services and other like charges; and
- (ii) the charges towards cost of land, if any, in civil works contracts,

subject to the dealer's maintaining proper records such as invoice, voucher, challan or any other document evidencing payment of above referred charges to the satisfaction of the Commissioner.

*Explanation.* – The term “civil works contracts” for the purpose of this rule shall include construction of building or complexes - residential or commercial, bridges, flyovers, dams, barriers, canals, diversions, other works of similar nature, and the collaboration agreements or joint development agreements or similar other agreements/arrangements between the land-owner(s) and the contractor(s)/builder(s)/ developers/ collaborators/ similar other persons by whatever name called for construction of complex or property.

**RULE 3(1A):**

(1A) In case the civil works contract mentioned in sub-rule (1) are of the nature wherein the agreement executed between the land owner(s) and contractor(s) or similar other agreements/ arrangements is of the nature of collaboration or joint development where the contractor(s) constructs the building/units and consideration for the construction is given by the land owner in the form of share in the land with or without additional money exchange, the value of works contract carried out by the contractor(s) for the land owner shall be highest of the following amounts:

- (i) Actual value of construction, including profit, transferred by the contractor to the land-owner in accordance with the books of accounts maintained by the contractor.
- (ii) Where proportionate land is transferred by the land-owner to the contractor by executing a separate conveyance/sale deed, the value stated in the deed for the purpose of payment of stamp duty as reduced by consideration paid by the contractor to the land owner through account payee cheque/ draft/ pay order/ electronic transfer, if any.
- (iii) On the basis of circle rate of proportionate area of land transferred by the land-owner to the contractor in accordance with the notification under Delhi (Prevention of Under Valuation of Instruments) Rules, 2007 as amended from time to time (hereinafter referred as “circle rates”) prevailing at the time of execution of agreement between them, as reduced by the consideration paid by contractor to the land-owner through account payee cheque/draft/pay order/electronic transfer, if any.

Provided that where separate circle rates for land and construction have not been notified in respect of certain buildings or properties, then circle rate for land and construction prevailing in that locality for other buildings or properties, in respect of which separate circle rates have been notified, shall be taken for the purpose of determination of value under this sub-rule.

Provided further that the value of works contract under this sub-rule shall not be less than the circle rate of construction applicable on the date on which agreement between the land-owner and the contractor for the construction of property was executed.

*Explanations:-*

1.- The term “contractor” for the purpose of this sub-rule shall include the builders, developers, collaborators and similar other persons by whatever name called.

2.- The taxable turnover in relation to contractor’s share of construction for activity carried on by him for the intended purchaser shall be calculated separately as per sub rule (1) of this rule.

**RULE 3(1B):**

(1B) In case of works contract falling under sub-rule (1A), tax shall be payable at the time of incorporation of goods in the execution of works contract by the contractor.

**RULE 3(2):**

(2) For the purpose of sub-rule (1), the charges towards labour, services and other like charges shall include-

- (i) labour charges for execution of works;
- (ii) charges for planning and architects fees;
- (iii) charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;
- (iv) cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract, the property in which is not transferred in the course of execution of a works contract;
- (v) cost of establishment of the contractor including cost of marketing, finance expenses and securities deposits to the extent it is relatable to supply of labour and services;
- (vi) other similar expenses relatable to supply of labour and services;
- (vii) profits earned by the contractor to the extent it is relatable to supply of labour and services subject to furnishing of a profit and loss account of the works sites:

PROVIDED that where amount of charges towards labour, services and other like charges are not ascertainable from the books of accounts of the dealer, the amount of such charges shall be calculated at the percentages specified in the following table :-

**TABLE: PERCENTAGES FOR WORKS CONTRACTS**

Sl. No.	Type of contract	Labour, service and other like charges are percentage of total value of the contract
1	Fabrication and installation of plant and machinery.	Twenty five percent
2	Fabrication and erection of structural works of iron and steel including fabrication, supply and erection of iron trusses, purloins and the like.	Fifteen percent
3	Fabrication and installation of cranes and hoists.	Fifteen percent
4	Fabrication and installation of elevators (lifts) and escalators.	Fifteen percent

Sl. No.	Type of contract	Labour, service and other like charges are percentage of total value of the contract
5	Fabrication and installation of rolling shutters and collapsible gates.	Fifteen percent
6	Civil works.	Twenty five percent*
7	Installation of doors, doorframes, windows, frames and grills.	Twenty percent
8	Supply and fixing of tiles, slabs, stones and sheets.	Twenty percent
9	Supply and installation of air conditioners and air coolers.	Fifteen percent
10	Supply and installation of air conditioning equipment including deep freezers, cold storage plants, humidification plants and de-humidors.	Fifteen percent
11	Supply and fitting of electrical goods, supply and installation of electrical equipments including transformers.	Fifteen percent
12	Supply and fixing of furniture and fixtures, partitions including contracts for interior decoration and false ceiling.	Twenty percent
13	Construction of Railway coaches and wagons on under carriages supplied by Railway.	Twenty percent
14	Construction or mounting of bodies of motor vehicle and construction of trailers.	Twenty percent
15	Sanitary fitting for plumbing and drainage or sewerage.	Twenty five percent
16	Laying underground surface pipelines, cables or conduits.	Thirty percent
17	Dyeing and printing of textiles.	Thirty percent
18	Supply and erection of weighing machines and weighbridges.	Fifteen percent
19	Painting, polishing and white washing.	Thirty percent
20	Book-binding	Fifty Percent
21	Textile processing such as dying, fabrication, tailoring, embroidery and other similar activities where textile is supplied by the contractee	Fifty percent
22	Electro plating, electro galvanizing, anodizing, powder coating and other similar activities	Fifty percent
23	Re-treading of old tyres	Forty Percent
24	All other contracts not specified from Sl. No. 1 to 23 above.	Twenty percent

\* Twenty five percent of total value of the contract, excluding the cost of land transferred, if any, as determined under this Rule.

**RULE 3(3):**

(3) For the purpose of sub-rule (1), the cost of land, if any, in a civil works contract carried on by the builder for the intended purchaser, shall be determined in the following manner:

- (a) Where separate conveyance/sale deed of the land has been executed between the builder and the intended purchaser, the consideration amount of land stated in that deed;
- (b) Where separate conveyance/sale deed of the land has not been executed for transfer of land between the builder and the intended purchaser, then the value of land in the value of composite works contract inclusive of land may be arrived at on any of the following basis:-
  - (i) Where proportionate land is transferred by the land-owner to the builder by executing a conveyance/sale deed: On the basis of rate of land arrived at from such deed for the purpose of payment of stamp duty.
  - (ii) Where clause (i) is not applicable, on the basis of rate of land arrived at by adding the amount paid by the builder through account payee cheque/draft/pay order/electronic transfer to the land-owner towards the land rights and value of construction transferred by the builder to the land-owner determined as per sub-rule (1A).

To illustrate, land-owner and builder enter into an agreement, where builder would build four units, which would be shared equally between them. In addition, builder pays Rs.1 crore to the land owner. Total construction cost for four flats is Rs.4 crores. Here, builder transfers the value of construction worth Rs. 2 crores [Rs.4 crores divided by two, since 50% share in the construction is transferred to the land-owner]. In this case, value of land transferred by the land-owner is: Rs.1 crore + Rs.2 crores = Rs.3 crores; and total value of land transferred by the builder to the intended purchasers for his share of the land shall also be Rs.3 crores (Rs. 1.5 crs. per flat if there are two intended purchasers).

- (iii) In all other cases where clauses (i) and (ii) are not applicable, the value of land shall be determined on the basis of notified circle rates of land prevailing at the time of execution of agreement between the builder and the intended purchaser.

Provided that where separate circle rates for land and construction have not been notified in respect of certain properties, then circle rate for land and construction prevailing in that locality for other properties in respect of which separate circle rates have been notified, shall be taken for the purpose of determination of value under this sub-rule.

Provided further that where land has been valued at circle rate and the value of conveyance/sale deed with the intended purchaser exceeds the circle rate, then the difference between the two shall be proportionately divided between the value of land and the works contract (comprising material and services).

For example, in case of composite works contract, circle rate of land is Rs.2 crore and circle rate of construction is Rs.1 crore respectively, and the consolidated value of sale deed (inclusive of land and cost of construction) is Rs.3.60 crores. Difference of Rs.0.60 crore shall be divided in the ratio of 2:1; and thus, value of land for the purpose of this sub-rule shall be Rs.2.40 crores.

*Explanation 1:* The term "Builder" for the purpose of this sub-rule means the person who undertakes the construction of property, either as owner of the land or under an agreement of power of attorney with the land owner or under some other arrangement, and transfers the property to some other person before completion of construction for a consideration, which may be received by the builder either as a

composite sum or under separate agreements for land and construction. The term “builder” shall also include the land-owner(s) who transfers the property to the intended purchaser before completion of construction.

*Explanation 2:* The term “intended purchaser” for the purpose of this sub-rule means the person who agrees to buy the property before completion of construction and pays the consideration, in full or part, before such completion.

*Explanation 3:* For the purpose of this sub-rule, construction shall be deemed to be completed at the time of issuance of completion certificate by the competent authority, or at the time and in the manner notified by the Government for this purpose.

- (c) In the case of works contract of civil nature where the payment of charges towards the cost of land, if any, is not ascertainable in accordance with the preceding clauses of this sub-rule, the amount of such charges shall be calculated @ 30% of the total value of the contract except in the case of construction of commercial buildings or complexes where it shall be calculated @ 50% of the total value of the contract.
- (d) In the case of works contract of civil nature where only a part of the total constructed area is being transferred, the charges towards the cost of land shall be calculated on a pro-rata basis through the following formula:

$$\frac{\text{Proportionate super area} \times \text{Value of land as determined in this sub-rule}}{\text{Total plot area} \times \text{Floor Area Ratio}}$$

*Explanation1.-* Proportionate super area for the purpose of this clause means the covered area booked for transfer and the proportionate common constructed area attributable to it.

*Explanation 2.-* Floor Area Ratio = Total constructed area/ Total plot Area

**Rule 3(4):**

(4) In the case of works contract of civil nature where only a part of total constructed area is being transferred, the deduction towards labour, services and other like charges mentioned in sub-rule (2) and input tax credit under section 9 shall be calculated on a pro-rata basis.

**Rule 3(5):**

(5) Where an agreement is executed by the builder with the intended purchaser before completion of construction as referred in sub-rule (3),

- (i) total value of agreement, as reduced by cost of land, and amount of labour, services and like charges, determined in accordance with this Rule, shall be deemed to be taxable turnover of sale;
- (ii) tax shall be payable at the time of receipt of consideration, in whatever form or manner, from the intended purchaser in relation to (i) above;
- (iii) the builder shall be eligible to deduct labour, services, other like charges in relation to (i) above in the tax period when output tax becomes payable; and
- (iv) the builder may claim input tax credit under section 9 in relation to turnover of sale stated in (i) above in that tax period on the basis of separate books of accounts maintained for that property.”

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