DELHI TAX COMPLIANCE ACHIEVEMENT SCHEME, 2013

containing

FAQs and Notification

by

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CONTENTS

F.A.Q.

Chapter 1 Scope of the Scheme (DCS) 03

Chapter 2 Procedure of Calculation of Tax Dues 06

Chapter 3 Manner of Payment of Tax Dues 09

Chapter 4 Process of Declaration 10

Chapter 5 Immunities 12

Chapter 6 Miscellaneous 13

Notifications

Appendix-A Notification 14

Form DSC-1 20

Form DSC-2 22

Form DSC-3 23

Appendix-B Amended Rule 3 of the DVAT Rules 24

FREQUENTLY ASKED QUESTIONS (FAQs)

DELHI TAX COMPLIANCE ACHIEVEMENT SCHEME, 2013 (DCS)

(by Rakesh Garg, FCA)

CHAPTER-1 – SCOPE OF THE SCHEME

Q1. What is DCS under the Delhi VAT?

DCS is a "Scheme" notified under the Delhi Value Added Tax Act, 2004 (DVAT Act), which draws powers from newly inserted section 107 under the Act with effect from 12.9.2013. Notification is annexed in Appendix A. The section 107 reads as, -

> *"107. **Amnesty Scheme(s) -** Notwithstanding anything to the contrary contained in this Act and Rules thereto, the Government may by notification in the official Gazette, notify amnesty scheme(s) covering payment of tax, interest, penalty or any other dues under the 'Act', which relate to any period ending before 1st day of April, 2013, and subject to such conditions and restrictions as may be specified therein, covering period of limitation, rates of tax, tax interest, penalty or any other dues payable by a class of dealers or classes of dealers or all dealers."*

Purpose of this Scheme is two fold:

(i) To achieve the self compliances by the dealer: Dealer (including trader, manufacturer, works contractor, builder, leasing company, etc.) or any other person, such as contractee, (hereinafter referred as **"declarant"**), who has not paid due taxes under the DVAT Act or under the Central Sales Tax Act, 1956 (CST Act, in short) as specified in the respective Statute, may pay tax under DCS. Further, the time of default is immaterial for the purpose of this Scheme; and

(ii) To resolve disputes: Where dispute in relation to tax, interest and penalty is pending before any higher forum, such as the Objection Hearing Authority, the DVAT Tribunal, the Delhi High Court or the Supreme Court, the declarant may resolve his dispute under this Scheme by paying tax and interest stated in the assessment order. He will get immunity from payment of interest from the date of order till the date of declaration, and penalty in relation to such tax. The dispute might pertain to the DVAT Act, CST Act, or the erstwhile repealed Acts, that is, the Delhi Sales Tax Act, 1975 or the Delhi Sales Tax on Works Contract Act, 1999 or the Delhi Sales Tax on Right to Use Goods Act, 2002 or the Delhi Tax on Entry of Motor Vehicles into Local Areas Act, 1994.

General Scheme of the DCS:

(i) Where assessment order/notice of assessment has not been issued, the declarant shall pay only tax; and he will get immunity from interest, penalty and prosecution, and

(ii) Where the order/notice has been issued by the Department, the declarant shall pay tax and interest as stated in such order/notice. He will get immunity from payment of interest from the date of notice till the date of declaration, penalty and prosecution under the Act.

Q2. Who can declare tax dues under DCS?

As per Clause 2(1)(d) of the DCS, following persons may declare their tax dues:-

(i) Dealers **not** registered under the Delhi VAT Act and/or CST Act;

(ii) Dealers registered under the Delhi VAT Act and/or CST Act and assessment of tax in respect of tax dues has not been made;

(iii) Dealers registered under the Delhi VAT Act and/or CST Act and assessment of tax in respect of tax dues, with or without penalty, has been made;

(iv) Persons, who were liable to deduct tax at source under section 36A of the Act, but failed to deduct TDS as specified.

(v) Dealers, who were registered under the erstwhile Delhi Sales Tax Act, 1975 or the Delhi Sales Tax on Works Contract Act, 1999 or the Delhi Sales Tax on Right to Use Goods Act, 2002 or the Delhi Tax on Entry of Motor Vehicles into Local areas Act, 1994, and their disputes/objections/appeals for the period up to 31.3.2005 are pending before any higher forum.

Q3. What is the meaning of “Tax Dues” and how would it be calculated?

As per Clause 2(1)(d) of this Scheme, the term “tax dues” under the DCS means the tax payable by the declarant under the DVAT Act, CST Act or erstwhile Acts which have been repealed under the DVAT Act on 1.4.2005. Tax dues, however, shall be calculated in the manner stated in Clause 3 of the DCS, discussed later in Chapter-2 of this FAQ.

Thus, the term “tax dues” consists of the following taxes due or payable for the period stated below, **which have not paid, fully or partly, till 31.8.2013**, under the: -

(i) DVAT Act for the period from 1.4.2005 to 31.3.2013;

(ii) CST Act for the period from 1.4.2005 to 31.3.2013;

(iii) CST Act for the period up to 31.3.2005;

(iv) Erstwhile Delhi Sales Tax Act, 1975 for the period up to 31.3.2005;

(v) Erstwhile Delhi Sales Tax on Works Contract Act, 1999 for the period up to 31.3.2005;

(vi) Erstwhile Delhi Sales Tax on Right to Use Goods Act, 2002 for the period up to 31.3.2005;

(vii) Erstwhile Delhi Tax on Entry of Motor Vehicles into Local areas Act, 1994 for the period up to 31.3.2005;

(viii) DVAT Act by a person, who is liable to deduct tax at source under section 36A of the Act.

As per explanation 1, “tax dues” includes the amount of tax assessed in terms of notice of assessment or assessment order issued under any of the afore-stated Acts, whether pending in objection/revision before the objection hearing authority (OHA) or in appeal/ revision before appellate authority/Tribunal or any higher Court, including writ petition and special leave petition.

As per explanation 2, where a notice of assessment or assessment order has been issued to a person in respect of some default(s), the term “tax dues” shall also include tax dues relating to default(s) **not** covered in the notice of assessment or assessment order for the same tax period.

As per explanation 3, this Scheme does **not** cover cases of notice of assessment of penalty issued under any of the relevant Acts without having any relation to tax deficiency.

Q4. Can a dealer, who is not registered with the DVAT Department, make declaration under DCS?

Yes. However, such dealer will be required to take registration under the DVAT Act prior to filing of the declaration under this Scheme. Likewise, where the declarant is a person who was required to deduct TDS under section 36A, he shall obtain TAN Number, if not already obtained. [Clause 4(8)]

Q5. Will a declarant referred to in Q4 get immunity from payment of penalty for not having taken registration earlier or not filed the return?

Yes. Beside interest and penalty, immunity would also be available from any other proceeding under the DVAT Act and Rules for non-registration. [Clause 5(1)]

As per proviso to Clause 4(5) of the Scheme, where an unregistered dealer has made declaration, such dealer shall obtain registration and pay net tax for the period from 1.4.2013 to the date of registration. He shall furnish return in Form DVAT-16 for that period along with proof of payment in Form DVAT-20 to the designated authority at the time of furnishing of declaration under this Scheme. Such a dealer shall be eligible for immunity under Clause 5 for late payment of such tax and non-filing of return.

Q6. Can an assessee, to whom notice of assessment u/s 32 of the Act has been issued, file declaration under DCS for some other issue of the same tax period?

Yes. In terms of Clause no. 2(1)(d) of the DCS, the tax dues, in respect of which any notice of assessment has been issued, may be declared under the Scheme.

The dealer may also file declaration in respect of those issues which have not been dealt in the notice of assessment. In this case, the dealer would get immunity from payment of interest as well.

Q7. Can a dealer, to whom notice of assessment or the assessment order has been issued and matter is pending before the higher Authorities or the Courts, file declaration under DCS?

Yes. In terms of Clause no. 2(1)(d) of the DCS, “tax dues” includes the amount of tax assessed in terms of notice of assessment or assessment order issued, whether pending in objection/revision before the objection hearing authority (OHA) or in appeal/revision before appellate authority/Tribunal or any higher Court, including writ petition and special leave petition.

Dealers on whom assessment order has been issued under the erstwhile Delhi Sales Tax Act, 1975 or the Delhi Sales Tax on Works Contract Act, 1999 or the Delhi Sales Tax on Right to Use Goods Act, 2002 or the Delhi Tax on Entry of Motor Vehicles into Local areas Act, 1994 for any period up to 31.3.2005, may also declare tax dues under the Scheme.

Q8. Can a declaration be made under this Scheme in respect of input tax credit (ITC) wrongly availed/claimed?

Yes. Such amount would be covered under the definition of “tax dues”, and hence a declaration may be made in respect of wrongly claimed/availed ITC.

Q9. Can a party, against whom an inquiry, investigation, audit or special audit is pending, or against whom an enforcement survey has been carried out, make a declaration under the DCS?

Yes. There is no bar from filing of declaration in such cases.

Q10. Whether the scope of DCS covers those cases where penalty has alone been imposed, without creating any demand towards tax deficiency?

As per explanation 3 of Clause 2(1) of this Scheme, tax dues does **not** cover those cases where notice of assessment of penalty has been issued **without** having any relation to tax deficiency. For example, where notice of penalty alone is issued under section 33 for late filing of Returns or other documents or for non-maintenance of stock records, etc. Such cases would not be covered under the scope of DCS.

Q11. Can a dealer, who has made inter-State sale against Form C, declare the tax dues in respect of missing Forms C?

Yes. The dealer may declare such amount where he is not expecting Forms C from the purchasing dealers. By declaring the tax dues under DCS, he would get immunity from payment of interest and penalty.

Q12. Whether a person, who has paid VAT/CST for a particular period but failed to file his return, may take the benefit of DCS Scheme so as to avoid payment of penalty for non-filing of return?

No. Under DCS, a declaration can be made only in respect of "tax dues". Where no tax is pending, but return has not been filed, it does not come under the ambit of the Scheme. However, the Authorities may be grant relief to the dealer or remit his penalty under second proviso to section 86(2) of the Act [or section 74(7) of the Act] since there would certainly exist some reasonable cause for not filing of return inspite of paying tax.

CHAPTER-2 – PROCEDURE OF CALCULATION OF TAX DUES

[Clause 3 of the DCS]

S.N.	Nature of Tax Dues	Procedure of Calculation
1	Dealers, whether registered or not, under the DVAT Act or the CST Act on whom notice of assessment under section 32 of the Act has **not** been served **(Other than Works Contractors)** [Clause 3(1)]	(i) The dealer shall first determine the commodity wise taxable turnover in respect of which declaration to be made; (ii) He shall then ascertain the rate of tax of that commodity applicable as per Schedules appended to the Act for the period under declaration. (iii) Tax dues shall be calculated by multiplying the rate of tax as per (ii) in respect of every class of commodity stated at Sl. No. (i). Note - Declarant is not required to pay any interest or penalty.
2	Dealers registered under the DVAT Act or the CST Act on whom notice of assessment under section 32 of the Act has been served on certain issues, but declaring tax dues on different issues [would be covered in Clause 3(1) or 3(3)]	As stated at Sl. No. 1 or 4, as the case may be

<table>
<tr><th>S.N.</th><th>Nature of Tax Dues</th><th>Procedure of Calculation</th></tr>
<tr><td>3A</td><td>Dealers registered under the DVAT Act or CST Act on whom notice of assessment under section 32 of the Act has been served (Other than Works Contractors) [Clause 3(2)]</td><td rowspan="2">Aggregate of amount of tax and interest stated in Form DVAT-24, or as the case may be, an assessment order <u>(less)</u> amount paid by the dealer, voluntarily or pursuant to a court direction, towards the said demand.

The amount of penalty <u>in relation to such tax</u> shall stand waived off.

Declarant is liable to pay the amount of interest stated in the DVAT-24 (or the assessment order) and gets immunity for interest due and payable from the date of issuance of said notice till the date of payment of tax dues under this Scheme.</td></tr>
<tr><td>3B</td><td>Dealers who have been issued assessment order under the erstwhile Delhi Sales Tax Act, 1975 or the Delhi Sales Tax on Works Contract Act, 1999 or the Delhi Sales Tax on Right to Use Goods Act, 2002 or the Delhi Tax on Entry of Motor Vehicles into Local areas Act, 1994 for the period up to 31.3.2005 [Clause 3(4)]</td></tr>
<tr><td>4</td><td>Dealers, whether registered or not, under the DVAT Act or the CST Act (being Works Contractors) [Clause 3(3)]</td><td>(a) Works contractors engaged in 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, where value of land is included in total consideration: @1% of total consideration (including labour & services);

(b) Other works contractors [including the dealers stated at Sl. No. (a), who opt to exclude the value of land as per Rule 3 of the DVAT Rules]: @ 3% of total turnover (including value of labour and services).

Value of land shall be arrived as per newly amended Rule 3 annexed in Appendix B.

Note - Declarant is not required to pay any interest or penalty.</td></tr>
<tr><td>5</td><td>The persons required to deduct tax at source u/s 36A of the DVAT Act [Clause 3(5)]</td><td>3% of total sum paid or credited by the person for discharge of any liability for the execution of works contract or the amount actually deducted, whichever is greater <u>(less)</u> amount already deposited towards such discharge.

This sub-clause covers those cases where neither the contractee has deducted tax at source nor the contractor has paid the taxes due and payable on that contract. Immunity under this sub-clause shall be granted from payment of interest and penalty in relation to such tax to the declarant and his immediate contractor.</td></tr>
</table>

Q13. What is the manner of calculation of tax dues by the dealers, other than works contractors?

The declarant has to first decide the relevant tax period for which he wants to declare the tax dues. In Form DSC-1, he shall state the commodity wise turnover and the rate of tax applicable on that date.

For example, the declarant is dealing in *Desi Ghee*, whose rate of tax in March 2010 was 5%; and 12.5% in March 2013. In such a case, applicable tax rate under this Scheme would depend upon the tax period for which the declarant is making the declaration.

Q14. What is the manner of calculation of tax dues by works contractor, other than builders?

They shall pay tax dues @3% if their total turnover, which would include the amount of labour and services as well. Therefore, the works contractor will not be eligible for any type/nature of deduction from his total turnover; and thus, the tax would be of the nature of lump-sum tax.

Q15. What is the manner of calculation of tax dues by the works contractor, being builders?

Transactions of builders may be divided in two parts: -

(i) Activity carried by the builder for the land owner, that is, determination of value of works contract for the land-owner where consideration has been received by the builder in the form of land : Here the value of land shall be determined as per newly inserted Rule 3(1A) of the DVAT Rules;

(ii) Activity carried on by the builder for the intended buyer (booking of property/unit before completion of construction by the builder): Builder has two options, namely -

  (a) Pay tax @1% of total consideration, including the value of land, receivable/ received from the intended buyer; or

  (b) Pay tax @ 3% of total turnover (including value of labour and services) as reduced by the value of land. In such cases, value of land shall be determined in accordance with the newly inserted Rule 3(3) & (4) of the DVAT Rules.

It may be noted that the Government has amended Rule 3 of the DVAT Rules. This Rule facilitates the works contractor to determine their taxable turnover. The amended Rule has laid the manner of calculation of value of land and labour & services by the works contractors comprehensively. Amended Rule 3 is appended with this FAQ in **Appendix B**.

Q16. There appears to be some ambiguity in Clause 3 of DCS in relation to computation of tax by the works contractors. Is it correct?

As already stated in Q1, General Scheme of the DCS is :

- Where assessment order/notice of assessment has **not** been issued by the Department, the declarant shall pay tax only. The declarant shall get immunity from payment of interest and penalty;
- And where such order/notice has been issued, the declarant shall pay tax and interest stated in the order/notice. He will get immunity from payment of interest from the date of notice till the date of declaration, and penalty under the Act.

However, in case of works contractors, there appears to be some drafting issue, as under-

Sub-Clause (3) of Clause 3 dealing with works contractors begins with the phrase, "Notwithstanding anything contained in Sub-Clause (1) or (2) of this Clause". Sub-Clause (1) of Clause 3 is applicable where order/notice has not been issued; and Sub-Clause (2) is applicable where order/notice has been issued to any dealer.

Therefore, reading Clause 3 as a whole, it appears that the works contractors may get the immunity even for that interest, which is stated in the order/notice; which certainly would not be the intention of the Government. Nevertheless, Form DSC-1 has been framed in accordance with the General Scheme, already discussed.

Therefore, this anomaly needs suitable amendment or necessary clarification.

CHAPTER-3 – MANNER OF PAYMENT OF TAX DUES

Q17. What is the manner and time of payment of tax dues under DCS?

The declarant shall pay **at least** 50% of the declared tax dues along with declaration in Form DSC-1 by 31.1.2014, and submit proof of such payment to the designated authority. Remaining tax dues shall be paid by the declarant on or before the 21.3.2014. [Clause 4(3) & (4)]. It may be noted there is no bar in paying entire declared tax dues in one installment on or before 31.1.2014.

Q18. Can the declarant adjust the amount of input tax credit as per section 9 of the Act in relation of such tax dues declared under DCS?

No. Though there are no specific provisions in this regard; but looking at the manner of calculation of tax dues and declaration in Form DSC-1, it is clear that input tax credit cannot be adjusted against payment of tax dues under DCS. Accordingly, entire tax dues under the Scheme shall be paid in cash through the normal e-payment method.

Q19. Can the declarant adjust his 'excess tax credit' or 'carry forward amount' from the tax dues under this Scheme?

No. There are no provisions for such adjustment and, thus, entire amount shall be paid by the declarant in cash. He 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 this Scheme. In such a case, he shall pay entire Rs.12 lacs in cash, without adjusting the carry forward amount of Rs.10 lacs.

Q20. Whether the amount of tax dues paid under DCS would be eligible as input tax credit (ITC) to purchaser of goods (transferred by declarant through invoice or debit note?

No. The amount paid by the declarant under DCS cannot be transferred to the purchaser of goods or any other person. Therefore, amount paid under DCS is not eligible as input tax credit under the DVAT Act.

Q21. What will be the consequences where a declarant fails to pay balance declared amount of tax dues by the 21.3.2014?

As per Clause 7 of the Scheme, where the declarant fails to pay the tax dues, either fully or in part, after making declaration by him, such balance dues along with interest thereon shall be recovered under the provisions of the DVAT Act.

Q22. Since the scope of DCS is confined in relation to tax dues upto 31.3.2013, what would be the procedure for payment of tax relating to period after 31.3.2013? Are there any specific provisions for unregistered dealers?

As per Clause 4(5) of DCS, any tax which becomes due or payable by the declarant for the tax period from 1.4.2013 and thereafter shall be paid by him in accordance with the provisions of the DVAT Act.

Further, where the declaration has been made by a dealer, who was earlier not registered under the Act, he shall obtain registration and pay net tax for the period from 1.4.2013 to the date of registration; and furnish return in Form DVAT-16 for that period along with proof of payment in Form DVAT-20 to the designated authority at the time of furnishing of declaration under this Scheme.

Such a dealer shall be eligible for immunity from interest and penalty under Clause 5 of the Scheme for late payment of such tax and non-filing of return under the Act.

CHAPTER-4 – PROCESS OF DECLARATION

Q23. What is the step-wise procedure for making declaration?

1. Compute the amount of tax dues in accordance with Chapter-1 of the FAQs;
2. If the declarant is not registered under the DVAT Act (either as a dealer or as a TDS deductor), obtain registration. He shall also pay tax and file his returns for the period after 1.4.2013 along with his declaration under this Scheme;
3. As per Clause 5(3), where declaration is made in relation to the tax dues against which objection/appeal/revision is pending before the higher forum, then-
   1. all statutory appeals/revisions pending before quasi-judicial forums up to the stage of Tribunal shall be deemed to have been withdrawn once the Scheme is opted for;
   2. all matters pending in the High Court and Supreme Court shall be withdrawn by the declarant, and the declarant shall submit the copy of the application filed before the Court for withdrawal along with Form DSC-1;
4. Fill the declaration in Form DSC-1 on the web-site of the Department;
5. 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;
6. File hard copy of Form DSC-1 along with Challan to the designated authority on or before 31.1.2014;
7. 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;
8. Pay remaining (unpaid) amount of tax dues through Challan online on or before the 21.3.2014;
9. Submit proof of such payment along with a copy of acknowledgement in DSC-2 (already received at Step No. 7) to the designated authority;
10. 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;
11. A declaration made under this Scheme shall become conclusive upon issuance of Form DSC-3 by the designated authority.

Q24. After filing of declaration, if a declarant realizes that the declaration filed by him was incorrect by mistake: can he file an amended declaration?

The declarant is expected to declare his tax dues correctly. In case, the mistake is discovered *suo-moto* by the declarant himself, the declarant may approach the designated authority, who, considering the facts of the case, may allow amendments in the declaration, provided that the amended declaration, along with proof of payment of short-paid tax dues, if any, is furnished by declarant before the cut off date, i.e., 31.1.2014. However, it may be noted that amount already paid will not be refunded in terms of Clause 6 of DCS.

Q25. What are the consequences if a declarant fails to pay at least 50% of declared amount of tax dues by the 31.1.2014?

One of the conditions of the Scheme is that the declarant shall pay at least an amount equal to 50% of the declared tax dues on or before the 31.1.2014. **Therefore, if the declarant fails to pay at least 50% of the declared tax dues by 31.1.2014, he would not be able to avail the benefit of this Scheme.**

Q26. What are the consequences where the declaration is found "false" at a later stage?

(A) Service of Notice:

Where the Commissioner has, for a period beginning from 1.4.2009, reasons to believe that the declaration was false in material particular, he may, for **reasons to be recorded in writing**, **serve notice on the declarant** in respect of such declaration requiring him to show cause why he should not be required to pay the tax dues unpaid or short-paid as per provisions of the Scheme. [Clause 8(1)]

(B) Limitation period for issuance of Notice:

Within one year from the date of declaration. [Clause 8(3)]

(C) Consequences:

As per Clause 8(2), if the Commissioner is satisfied, **for reasons to be recorded in writing**, that the declaration made by the declarant was **substantially false**,

(i) he shall within three months of service of notice on the declarant make assessment of tax and penalty under section 32 and 33 of the Act, **as if that dealer had never made declaration under this Scheme**.

(ii) However, the dealer shall be **entitled to the credit of tax paid** by him under this Scheme; and

(iii) Such dealer may be proceeded under sub-section (2) of section 89 of the Act for furnishing of false declaration.

Q27. Clause 8 of DCS prescribes that where the Commissioner has reasons to believe that the declaration made by the declarant was 'false in material particular' or 'substantially false'; he may serve a notice on the declarant in respect of such declaration. What are the attributes of a 'substantially false' declaration?

The Commissioner would, in the overall facts of the case, taking into account the reasons he has to believe, take a judicious view as to whether a declaration is 'substantially false'. The term "substantially false" would be decided in view of facts of the case; and proceeding would be initiated in accordance with the principles of natural justice.

To illustrate, a declarant has declared his "tax dues" as Rs. 20 lacs. However, Commissioner has specific information that declaration has been made only for part liability, and the actual "tax dues" are Rs 40 lacs. This declaration might fall in the category of "substantially false".

Q28. What is the mechanism of appeal against the order of the designated authority rejecting the declaration under Clause 8 of DCS?

The Scheme does not have a specific statutory provision for filing of appeal against the order of rejection of declaration under Clause 8 by the designated authority.

Q29. A declarant pays certain amount under the Scheme and subsequently his declaration is rejected under Clause 8 of DCS. Would the amount so paid by him be adjusted against his liability that may be determined by the department?

Yes. The amount so paid shall be adjusted against the liability of tax and penalty determined by the Commissioner. [Clause 8(2)]

CHAPTER-5 – IMMUNITIES

Q30. What are the immunities available to a declarant under DCS?

As per Clause 5 of DCS, upon payment of declared tax dues by the declarant, he shall get following immunities: -

1. Penalty or penalties in relation to declared tax dues;
2. Interest, other than the amount stated in the assessment order or notice of assessment, if any, in relation to declared tax dues;
3. Prosecution;
4. Any other proceedings, to the extent of tax dues declared by the declarant;
5. Dealers or Tax-deductor u/s 36A obtaining registration with the intention of declaring tax dues under this Scheme: -
   a. No proceeding shall be instituted within 48 hours of securing a registration, provided, the registrant declares his intent of opting under the Scheme at the time of applying for TIN/TAN;
   b. Penalty and prosecution for non-registration by the declarant;
   c. Interest for non payment of tax for the period after 1.4.2013 by declarant – Such tax shall be paid at the time of furnishing of declaration under this Scheme;
   d. Penalty and prosecution for non-furnishing of returns in time for the period after 1.4.2013 by the declarant – He shall furnish return in Form DVAT-16 for that period at the time of furnishing of declaration under this Scheme;
6. To avoid double taxation, if the contractee has declared tax dues, his immediate contractor will also get immunity to that extent, and *vice-a-versa*, as under: -
   a. In case the declarant being a contractee, who has awarded the works contract under section 36A(1) of the Act, his immediate contractor to whom he has awarded works contract, to the extent of amount declared by the contractee;
   b. In case the declarant being a contractor, his immediate contractee who has awarded the works contract under section 36A(1) of the Act;

7. A declaration made under this Scheme shall become conclusive upon issuance of Form DSC-3, and no matter shall be reopened/reassessed/reviewed thereafter in any proceedings under this Scheme or under the Act before any Authority or Court relating to the period covered by such declaration to the extent of tax dues declared by the declarant;
8. The information gathered vide a declaration under the Scheme shall be kept confidential, and shall not be used except under the Scheme and the same shall not be shared with any other person / government department / agency.

Q31. Where the declaration is rejected under Clause 8 of DCS: will the declarant get immunity under Clause 5 from penalty, prosecution, etc.?

No. Since Clause 8 commences with the non-obstacle clause "Notwithstanding anything contained in Clause 5 of the Scheme", such declarant will not be eligible for any immunity.

CHAPTER-6 – MISCELLANEOUS

Q32. What are the drawbacks of DCS? Is there any grey area?

DCS introduced by the Delhi Government is certainly an innovative and futuristic Scheme. It would increase the number-base of the dealers registered with the DVAT Department; and help in reducing the existing disputes/litigations. However, certain issues are there, which need our attention, as under:

(i) Tax under this Scheme shall be paid by the declarant in cash, and he shall **not** be entitled to adjust carry forward amount, if any, as per DVAT Return. For example, a declarant, who has carry forward amount of Rs. 10 lacs as on the date of declaration in his DVAT Returns, declares the amount of tax dues of Rs.12 lacs under this Scheme. In such a case, he shall pay entire Rs.12 lacs in cash, without adjusting the carry forward amount of Rs.10 lacs. The Department is of the view that such adjustment will require verification and assessment by the Department; therefore, it is not possible to allow self-adjustment by the declarant under this Scheme.

(ii) The declarant would **not** be eligible for any input tax credit (ITC). Department would certainly state that since it is not possible for the Department to verify the genuineness of tax invoices and eligibility of the declarant to claim ITC at the time of disposal of declaration under this Scheme; therefore, the benefit of ITC has not been allowed under this Scheme.

(iii) The Government has stated in Clause 5(5) of the Scheme that the information gathered under the Scheme shall be kept confidential and shall not be used except under the Scheme and the same shall not be shared with any other person / government department / agency. However, if information of declarant come in the knowledge of the Income Tax Authorities through books of accounts of the declarant or otherwise, then certainly, there might be a big issue.

Disclaimer:

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Appendix 'A'

(TO BE PUBLISHED IN PART IV OF THE DELHI GAZETTE EXTRAORDINARY)

GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI

FINANCE (REVENUE-I) DEPARTMENT

DELHI SACHIVALAYA, I. P. ESTATE: NEW DELHI-110002

No.F.3(16)/Fin.(Rev-I)/2013-14/dsVI/786 Dated the 20.09.2013

NOTIFICATION

Whereas the Lt. Governor of National Capital Territory of Delhi is of the opinion that it is necessary in the interest of general public so to do.

Now, therefore, in exercise of the powers conferred by section 107 of the Delhi Value Added Tax Act, 2004 (Delhi Act 3 of 2005) (hereinafter referred to as "the Act"), the Lt. Governor of National Capital Territory of Delhi, hereby provides for the Delhi Tax Compliance Achievement Scheme, 2013, subject to fulfilling the eligibility conditions and compliance procedures specified in this notification, namely:-

1. Short title, extent and commencement.-

1. This Scheme may be called the Delhi Tax Compliance Achievement Scheme, 2013.
2. It shall come into force from the date of its publication in the official Gazette.

2. Definitions.-

(1) In this Scheme, unless the context otherwise requires,—

(a) "Act(s)" means the Delhi Value Added Tax Act, 2004 (Delhi Act 3 of 2005) or Central Sales Tax Act, 1956 or the erstwhile Delhi Sales Tax Act, 1975 (43 of 1975) or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) or the Delhi Sales Tax on Right to Use Goods Act, 2002 (Delhi Act 13 of 2002) or the Delhi Tax on Entry of Motor Vehicles into Local Areas Act, 1994 (Delhi Act 4 of 1995), whichever is relevant;

(b) "declarant" means any person who makes a declaration under sub-clause (1) of clause 4;

(c) "designated authority" means officer(s) not below the rank of Joint Commissioner as notified by the Commissioner, Value Added Tax for the purposes of this Scheme;

(d) "tax dues" means-

(i) tax due or payable by the dealers, registered or required to be registered, under the Act or the Central Sales Tax Act, 1956 for the period beginning from the 1st day of April, 2005 and ending on the 31st day of March, 2013, but not paid or partly paid till the 31st day of August, 2013 and calculated in accordance with sub-clauses (1), (2) and (3) of clause 3 of the Scheme; and

(ii) tax due and payable under the Central Sales Tax Act, 1956 or the erstwhile Delhi Sales Tax Act, 1975 (43 of 1975) or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) or the Delhi Sales Tax on Right to

Use Goods Act, 2002 (Delhi Act 13 of 2002) or the Delhi Tax on Entry of Motor Vehicles into Local Areas Act, 1994 (Delhi Act 4 of 1995) for the period prior to 1st April, 2005, but not paid or partly paid till the 31st day of August, 2013 and calculated in accordance with sub-clause (4) of clause 3 of the scheme; and

(iii) tax due and payable by a person who is liable to deduct tax at source under section 36A of the Act in accordance with the provisions of said section for the period 1st day of April 2005 and ending on 31st day of March, 2013 but not paid or partly paid till the 31st day of August, 2013, and calculated in accordance with sub-clause (5) of clause 3 of this Scheme.

Explanation.-1- "Tax dues" includes the amount of tax assessed in terms of notice of assessment or assessment order issued under any of the Acts referred to in this sub-clause, whether pending in objection/revision before the objection hearing authority (OHA) or in appeal/revision before appellate authority/ Tribunal or any higher court, including writ petition and special leave petition.

Explanation.-2- Where a notice of assessment or assessment order has been issued to a person in respect of some default(s), the term "tax dues" shall also include tax dues relating to default(s) not covered in the notice of assessment or assessment order for the same tax period.

Explanation.-3- This Scheme does not cover cases of notice of assessment of penalty issued under any of the relevant Acts and without having any relation to tax deficiency.

(e) "tax" means tax dealt under Act(s) referred to in sub-clause (1)(a) above.

(2) Words and expressions used herein and not defined in this scheme, shall have the meanings respectively assigned to them in the respective Acts or the rules framed thereunder.

3. Procedure for Calculation of Tax Dues.-

(1) Tax dues in respect of sub-clause (i) of clause 2(1)(d) by the dealer on whom notice of assessment under section 32 of the Act has not been served shall be calculated by him in the following manner:

(i) The dealer shall first determine the commodity wise taxable turnover in respect of which declaration is to be made under this Scheme;

(ii) He shall then ascertain the rate of tax of that commodity applicable as per Schedules appended to the Act for the period under declaration.

(iii) Tax dues shall be calculated by multiplying the rate of tax as per item (ii) above in respect of every class of commodity stated at item (i) above.

Explanation.- Where any audit, special audit, survey, or inspection has been initiated or conducted under Chapter X of the Act, but no notice of assessment under section 32 of the Act has been issued, the dealer shall be eligible to make declaration of his tax dues under this Scheme.

(2) Tax dues in respect of sub-clause (i) of clause 2(1)(d) by the dealer on whom notice of assessment under section 32 of the Act has been served, shall be calculated by

aggregating the amount of tax and interest determined as per Notice of default assessment of tax and interest in Form DVAT-24 less the amount paid by the dealer, voluntarily or pursuant to a court direction, towards the said demand. The penalty in relation to such tax for which a notice of assessment of penalty may have been issued under section 33 of the Act shall stand waived off.

Explanation.- The dealer shall be liable pay the amount of interest charged in Notice of assessment in Form DVAT-24 only under this sub clause and shall get immunity for interest due and payable thereafter.

(3) Notwithstanding anything contained in sub-clause (1) or (2) of this clause, tax dues in respect of the dealers engaged in the execution of works contract shall be calculated by multiplying their total turnover (including value of labour and services relating to works contract) at the following rate:

(a) 1% of the total consideration by the dealers, being works contractors, engaged in 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, where value of land is included in total consideration; and

(b) 3% of the total turnover (including value of labour and services) by the other works contractors [including the dealers stated at (a) above, who opt to exclude the value of land in accordance with the provisions of rule 3 of Delhi Value Added Tax Rules, 2005].

(4) Tax dues in respect of sub-clause (ii) of clause 2(1)(d) by the dealer shall be calculated by aggregating the amount of tax and interest determined in the assessment order less the amount paid by the dealer, voluntarily or pursuant to a court direction, towards said demand. The penalty, if any, leviable in relation to such tax whether in the assessment order or by way of separate order shall stand waived off.

Explanation.- The dealer shall be liable to pay the amount of interest charged in the assessment order and shall get immunity for interest due and payable thereafter.

(5) Tax dues in respect of sub-clause (iii) of clause 2(1)(d) by the persons required to deduct tax at source shall be calculated at the rate of three percent of the total sum paid or credited by the person for discharge of any liability for the execution of works contract or the amount actually deducted, whichever is greater less the amount already deposited towards such discharge.

Explanation.- This sub-clause covers those cases where neither the contractee has deducted tax at source nor the contractor has paid the taxes due and payable on that contract. Immunity under this sub clause shall be granted from payment of interest and penalty in relation to such tax to the declarant and his immediate contractor.

4. Procedure for making declaration and payment of tax dues.-

(1) Subject to the other provisions of this Scheme, a person may make a declaration of the tax dues to the designated authority on or before the 31st day of January 2014 in **Form DSC-1** appended to this notification.

(2) The designated authority shall acknowledge the receipt of declaration in **Form DSC-2** appended to this notification, within a period of fifteen working days from the date of receipt of the declaration.

(3) The declarant shall pay not less than fifty per cent of the tax dues declared under sub-clause (1) along with the declaration and submit proof of such payment to the designated authority.

(4) The remaining amount of tax dues or part thereof remaining to be paid after adjusting the payment made under sub-clause (3) shall be paid by the declarant on or before the 21st day of March, 2014.

(5) Notwithstanding anything contained in sub-clause (3) and sub-clause (4), any tax which becomes due or payable by the declarant for the tax period(s) beginning from 1st day of April, 2013 and thereafter shall be paid by him in accordance with the provisions of the Act:

Provided that where an unregistered dealer has made declaration referred to in sub-clause (1) of this clause, such dealer shall obtain registration and pay net tax for the period from 1st day of April 2013 to the date of registration and furnish return in Form DVAT-16 for that period along with proof of payment in Form DVAT-20 to the designated authority at the time of furnishing of declaration under this Scheme. Such a dealer shall be eligible for immunity under clause 5 of the Scheme for late payment of such tax and non-filing of return under the Act.

(6) The declarant shall furnish to the designated authority, details of payment made from time to time under this Scheme along with a copy of acknowledgement issued to him under sub-clause (2).

(7) On furnishing the details of full payment of declared tax dues payable under sub-clause (4), the designated authority shall issue an acknowledgement of discharge of such dues within fifteen days to the declarant in Form DSC-3 appended to this notification.

(8) A dealer who has not taken registration shall obtain registration prior to filing of declaration as referred in sub-clause (1) of clause 4. Likewise, a person who is responsible for making deduction of tax under section 36A of the Act, shall obtain a Tax Deduction Account Number (TAN), if not already obtained.

5. Immunity from interest, penalty and other proceedings.-

(1) Notwithstanding anything contained in any provision of the Scheme, the declarant, upon payment of the tax dues declared by him under sub-clause (1) of clause 4, shall get immunity from penalty or penalties, interest other than interest payable in terms of sub-clauses (2) and (4) of clause 3, prosecution or any other proceedings under the Act or, as the case may be, under the Central Sales Tax Act, 1956 or the erstwhile Delhi Sales Tax Act, 1975 (43 of 1975) or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) or the Delhi Sales Tax on Right to Use Goods Act, 2002 (Delhi Act 13 of 2002) or the Delhi Tax on Entry of Motor Vehicles into Local areas Act, 1994 (Delhi Act 4 of 1995), in relation to the tax dues declared by the declarant; and from penalty and prosecution for non-registration and non-furnishing of returns in time.

Explanation.- For the purpose of this sub-clause, the term “declarant” shall include-

(i) in relation to the declarant being a contractee, who has awarded the works contract under section 36A(1) of the Act, his immediate contractor to whom he has awarded the works contract, to the extent of amount declared by the contractee; and

(ii) in relation to the declarant being a contractor, his immediate contractee who has awarded the works contract under section 36A(1) of the Act.

Explanation -For removal of doubts, it is hereby declared that, to avoid double taxation, if the contractee has declared tax dues, his immediate contractor will also get immunity to that extent, and vice-versa.

(2) Subject to the provisions of clause 8, a declaration made under sub-clause (1) of clause 4 shall become conclusive upon issuance of acknowledgement of discharge under sub-clause (7) of clause 4 and no matter shall be reopened/ reassessed/ reviewed thereafter in any proceedings under this Scheme or under the Act before any authority or court relating to the period covered by such declaration to the extent of tax dues declared by the declarant.

(3) All statutory appeals/ revisions pending before quasi-judcial forums upto the stage of Tribunal shall be deemed to have been withdrawn once the Scheme is opted for. Further, all matters pending in the High Court and Supreme Court shall be withdrawn by the declarant and he will need to submit the application filed for withdrawl with the declaration. for the case to be withdrawn before the court.

(4) No proceeding shall be instituted within 48 hours of securing a registration, provided, the registrant declares his intent of opting under the Scheme at the time of applying for TIN/TAN.

(5) The information gathered vide a declaration under the scheme shall be kept confidential and shall not be used except under the Scheme and the same shall not be shared with any other person/ government department/ agency.

6. No refund of tax paid under this Scheme. -

Any amount paid in pursuance of a declaration made under sub-clause (1) of clause 4 shall not be refundable under any circumstances.

7. Failure to pay tax dues after making declaration.-

Where the declarant fails to pay the tax dues, either fully or in part, as declared by him, such dues along with interest thereon shall be recoverable under the provisions of the Act.

8. Failure to make true declaration.-

(1) Notwithstanding anything contained in clause 5 of the Scheme, where the Commissioner has, for a period beginning from 1st April, 2009, reasons to believe that the declaration was false in material particulars, he may, for reasons to be recorded in writing, serve notice on the declarant in respect of such declaration requiring him to show cause as to why he should not be required to pay the tax dues unpaid or short-paid as per the provisions of the Scheme.

(2) If the Commissioner is satisfied, for reasons to be recorded in writing, that the declaration made by the dealer was substantially false,

(i) he shall within three months of service of notice under sub-clause (1) make assessment of tax and penalty under section 32 and 33 of the Act, as if that dealer had never made declaration under this Scheme. However, the dealer shall be entitled to the credit of tax paid by him under this Scheme; and

(ii) such dealer may be proceeded under sub-section (2) of section 89 of the Act for furnishing of false declaration.

(3) No notice shall be issued under sub-clause (1) of this clause after the expiry of one year from the date of declaration.

9. Removal of doubts.-

For the removal of doubts, it is hereby declared that nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the declarant other than the benefit, concession or immunity granted under clauses 3 and 5 of this scheme.

By order and in the name of the Lt. Governor
of the National Capital Territory of Delhi,

(H.P. Sharma)
Dy. Secretary (Infra)

No.F.3(16)/Fin.(Rev-I)/2013-14/dsVI/786 Dated the 20.09.2013

FORM DSC-1

[In duplicate]

Declaration under sub-clause (1) of clause 4 of the Scheme

(Please read the instructions carefully before filling the form)

1. **Name of the declarant**

2. **Address of the declarant**

3. **Telephone No./Mobile No.**

4. **Email id**

5. **Tax Identification Number (TIN), Registration Number, if any**

6. TAN

6.A If the dealer is engaged in sales other than works contract

Name of Commodity	Commodity Code	Turnover (Rs.)	Rate of Tax as on the relevant date		Amount of tax (Rs.)
			Entry/ Schedule of relevant Act, if any	(%)	
Total tax due					

6B (i) Dealers (including builders/developers) engaged in Works Contract including the value of land (Part (a) of sub clause(3) of clause 3 of the Scheme) - @ 1%

Name of project	Turnover Including value of land	Amount of tax @ 1% (Rs.)
Total tax due		

(ii) Other Works contractors (Part (b) of sub-clause (3) of clause 3 of the Scheme) - @ 3%

Name of contract	Turnover (Rs.)	Value of land as per Rule 3 (Rs.)	Contract amount excluding value of land (Rs.)	Amount of tax @ 3% (Rs.)
(i)	(ii)	(iii)	(iv)=[(ii)-(iii)	
Total tax due				

6 C. Details of demands pending under litigation

Act under which demand is pending (please specify)	Period to which demand pertains	Date of Default Assess-ment/ Assess-ment Order	Refere-nce No./ DCR No.	Amount assessed		Amount paid		Outstan-ding demand		Balance Payable		Object-ion No./ Appeal No. (which ever is applica-ble)	Supreme Court/ High Court/ Appell-ate Tribunal /OHA
				Tax	Interest	Tax	Interest	Tax	Interest	Tax	Interest		
DST Act													
DVAT Act													
CST Act													

6D. Total Tax Due **Rs. ……………………………..**

7. Details of payment

Amount deposited by the dealer (attach proof)				
S.No.	Date of deposit	Challan No.	Name of Bank and Branch	Amount (Rs.)
Balance payable				

8. Any submissions/ clarifications:

<u>VERIFICATION</u>

I……………………(name in block letters) son/daughter of Shri…………………… solemnly declare that I have read and understood the Delhi Tax Compliance Achievement Scheme, 2013, and to the best of my knowledge and belief, the information given in this declaration and the enclosures accompanying it are correct and complete and the amount of tax dues and other particulars shown therein are truly stated.

Signature of the declarant/authorised person with stamp

Place:
Date:

Declaration No. (To be assigned by the department) **Date**

<u>Instructions:</u>

1. The Scheme has been notified under section 107 of the DVAT Act, 2004. The provisions contained therein may be read carefully (refer www.dvat.gov.in).

2. This Form shall be submitted online on departmental website and hard copy to be submitted to the concerned designated authority or any other officer deputed for the purpose.

3. The tax dues may be computed separately for each commodity/works contract, if the tax dues relates to more than one commodity/works contract during the period of declaration.

5. Obtain an acknowledgment from the designated authority in form DSC -2.

6. The declarant may approach the concerned Addl. Commissioner/Joint Commissioner for any clarification.

FORM DSC-2

[Acknowledgment of declaration issued under sub-clause (2) of clause 4 of the Scheme].

No									

Receipt of a declaration filed under sub-clause (1) of clause 4 of the Scheme, as per the details below, is acknowledged.

1. **Declaration No.** **Date**

2. **Name of the declarant**

3. **Address of the declarant**

4. **Tax Identification Number (TIN)/Registration Number, if any**

5. **Tax dues declared**

6. **Schedule for payment of VAT Dues**

A.	**Minimum amount to be paid with the application**								
B.	**Remaining tax dues to be paid on or before the 21st day of March, 2014**								
	Total Tax Paid/Payable								

Signature of the declarant/
authorised person with stamp

Delhi:

Date :

Instructions:

1. This acknowledgment has been issued on the basis of declaration furnished by the declarant and it does not certify the correctness of the declaration made. This Acknowledgement does not certify payment of any tax dues.

2. Certificate of discharge in form DSC-3 shall be issued only upon full payment of tax dues along with interest if any.

FORM DSC-3

ACKNOWLEDGEMENT OF DISCHARGE

[Issued under sub-clause (7) of clause 4 of the Scheme]

No.

This acknowledgment of discharge has been issued under sub- clause (7) of clause 4 of the Scheme, to ACKNOWLEDGE that the tax dues declared under sub- clause (1) of clause 4 of the Scheme have been paid, in respect of declaration so made as per the following details.

1. **Declaration No.** **Date**
2. **Name of the declarant**
3. **Address of the declarant**
4. **Tax Identification Number (TIN)/Registration Number**
5. **Tax dues declared under the scheme**
6. **Payment of tax dues**

A.	**Minimum amount to be paid with the application**	
B.	**Remaining tax dues to be paid on or before the 21st day of March, 2014**	
	Total Tax Paid/Payable	

7. **Details of challan(s)**

Challan No (s) (CIN)	Amount

Signature, name and seal of designated authority

Delhi **Date:**

Appendix 'B'

Rule 3 of the DELHI VAT RULES

[Extracts – Relating to Valuation of Land]

[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)**: Related to computation of labour and service, hence not given here.*

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."

DELHI TAX COMPLIANCE ACHIEVEMENT SCHEME, 2013

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